Birdie Terms and Conditions

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1. Introduction

1.1. These Terms (together with the documents referred to in them) describe how you may make use of the Services and the Platform.

1.2. Please read these Terms carefully before you start to use the Services. Certain Services may be subject to additional terms and conditions which will be set out in your Order Form.

1.3. These Terms refer to the following additional terms which are also relevant to your use of the Services. By agreeing to these Terms and using the Services, you confirm that:

a. you have read and understood our Privacy Notice, which sets out the terms on which we process any personal data as a Controller;

b. you agree to and will comply with our Acceptable Use Policy, which sets out the permitted uses and prohibited uses of our Services, including any material and data transmitted using the Services; and

c. you agree to and will comply with our DPA (which forms part of the Agreement and is not a separate contract to these Terms).

1.4. Birdie Care Services Limited (referred to in these Terms as "**Birdie**", "**us**", "**our**" or "**we**") is the provider of the Services and operator of the Platform. We are registered in England and Wales under company number 10863579 and have our registered office at 1 New Fetter Lane, London, United Kingdom, EC4A 1AN. You are the customer (referred to in these Terms as "**you**", "**your**", "**Customer**") whose details are set out in, or entered into, the Order Form.

1.5. By submitting the Order Form or otherwise indicating your confirmation that you wish to receive our Services, you agree to be bound by these Terms. These Terms apply to the provision of the Services by Birdie to you, including the Authorised Users.

1.6. In the event of any conflict or inconsistency between the terms of the DPA and any other part of the Agreement, the DPA shall take precedence.

2. Definitions

2.1. In these Terms and the Order Form, the following terms have the following meanings:

"**Acceptable Use Policy**" means the policy available at https://www.Birdie.care/acceptable-use-policy;

"Agreement" means the Terms together with the Order Form, the Acceptable Use Policy and the DPA;

"Applicable Data Protection Laws" means: (i) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; and (ii) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which Birdie is subject, which relates to the protection of personal data;

"**Authorised User**" means any end user authorised by you to access our Services in order to provide care to the Care Recipients;

"**Birdie Personal Data**" has the meaning given in clause 12.2(b);

"**Care Recipient**" is a Care Recipient who has been marked with an 'Active' status on the Platform for at least 5 days in a given month;

"**Confidential Information**" means information that is proprietary or confidential and is either clearly labelled as such or identified as confidential, including business information, customer and client lists, pricing of products or services, technology, agreements, business plans, software, technical documentation, and other information which is not publicly available.

"**Customer Data**" means data or other materials inputted by you or your Authorised Users or by us or a third party on your or your Authorised Users' behalf into the Platform, or which is provided by connected devices or generated within the Platform based on those inputs, in relation to your use of the Platform or Services, excluding personal data;

"**Customer Personal Data**" has the meaning given in clause 12.2(a);

"**DPA**" means the data processing agreement available at DPA;

"**Effective Date**" means the date the Order Form is signed and this Agreement comes into effect;

"**EU GDPR**" means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.

"**Fair Usage Limit**" has the meaning given in clause 8;

"**Fees**" has the meaning given in clause 3.1;

"**Minimum Subscription**" is the minimum number of Scheduled Hours or Care Recipients that you will be charged for each month in your Subscription Fee, regardless of the number of Scheduled Hours or Care Recipients you use on the Platform. For the avoidance of doubt, if the number of Scheduled Hours or Care Recipients exceeds the Minimum Subscription, you will also be charged for the number of Scheduled Hours or Care Recipients, as applicable, in excess of your Minimum Subscription (the "**Variable Hours** or **Variable Care Recipients**", as applicable). Variable Hours or Variable Care Recipients will be charged at the end of each month regardless of the agreed billing frequency for your Subscription Fee.

"**Normal Business Hours**" the hours between 9:00 AM and 5:00 PM in the UK on a day which is not a Saturday, a Sunday or a recognised public holiday in the UK;

"**Order Form**" means any Birdie order form, online quotation or other document by which you agree or request to subscribe to the Services for the Fees for the duration of the Subscription Term and any Renewal Period;

"**Platform**" means the Birdie web app, mobile app and other software;

"**Privacy Notice**" means our privacy notice available at https://www.Birdie.care/privacy-notice;

"**Renewal Period**" means a renewal period for your continued subscription for the Services following the Subscription Term, as set out in clause 15.4 or as otherwise agreed in the Order Form or subsequent Order Forms;

"**Scheduled Hours**" means the total number of hours of visits planned per Care Recipient in your Birdie rota, multiplied by the number of care professionals scheduled to attend, excluding hours that are subsequently cancelled and not charged, or tagged as shadowing, introductions or supervisions;

"**Service Data**" means all information, reports and data made available by us to the Authorised Users through the Platform;

"**Services**" means the provision of each part of the Platform by us to you as set out in the Order Form or otherwise agreed in writing (including email);

"**Subscription Start Date**" means the date on which the Subscription Term starts and Subscription Fees become chargeable, as set out in the Order Form;

"**Subscription Term**" means the period if your subscription for the Services as set out in the Order Form and including any Renewal Period;

"**Terms**" means these terms and conditions; and

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

2.2. Unless expressly provided otherwise, the following rules of interpretation apply in these Terms and the Order Form:

2.3. a reference to legislation or a legislative provision:

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

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

2.6. any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

3. Your Order Form

3.1. Your Order Form sets out the Services which you wish to access and purchase as well as the price for all Services you have chosen ("**Fees**"). Fees may include but shall not be limited to: Subscription Fees, Add-On Fees, Holding Fees, Professional Services Fees and Success & Support Fees and to the extent applicable, will be set out in your Order Form. Subscription Fees are either calculated based on Scheduled Hours or Care Recipients.

3.2. Your Order Form also sets out the period of your subscription for the Services ("**Subscription Term**") and any Renewal Periods. If no Renewal Period is agreed in the Order Form, clause 15.4 will apply.

3.3. For the avoidance of doubt, your Order Form forms part of the Agreement and is governed by these Terms and does not form a separate contract to these Terms.

4. User account

4.1. Each Authorised User will be issued with login credentials to access the Services. You are responsible for the use of our Services by the Authorised Users,

which includes all user passwords generated for each Authorised User, and for protecting all account details from unauthorised use.

4.2. You are also responsible for the security of any computer or mobile device from which you sign in to your account or from which Authorised Users sign in to their accounts. You will be responsible for setting the access rights for each of your Authorised Users. You shall ensure that each Authorised User shall keep his or her account credentials confidential.

4.3 Detailed instructions on how to onboard your staff, your care workers and any other Authorised Users can be viewed here.

5. Services

5.1. A description of certain Birdie Services is set out on the Birdie website at www.Birdie.care.

5.2. Any additional services other than the Services we provide to you will be as described in the relevant Order Form or otherwise agreed with you in writing (including email) and unless otherwise expressly agreed will be governed by these Terms.

5.3. We undertake that the Services will be performed in a professional manner in accordance with industry standards using reasonable skill and care, and in conformance with the description of the Services on our website. This undertaking shall not apply to the extent of any non-conformance which is caused by your use of the Services contrary to our instructions or any part of the Agreement, or any alteration or modification made to the Services or the software used in the provision of the Services by a third party who is not authorised by us. You understand and agree that we have no obligation to modify software to support your use of the Services.

5.4. If the Platform or the Services do not conform with the undertaking at clause 5.3, we will use reasonable commercial endeavours to correct any such non-conformance promptly, or provide you with an alternative means of accomplishing the desired performance. Such correction or substitution will constitute your sole and exclusive remedy for any breach of the undertaking at clause 5.3.

5.5 From time to time, we may introduce new services, features or functionality to the Services. These Terms will apply to such new services, features or functionality, unless they come with separate or additional terms, in which case you will be required to agree to such separate or additional terms before being permitted to use the new services, features or functionality.

6. Accessing the Services

6.1. Subject to your compliance with the terms of the Agreement, we give you (and the Authorised Users) the non-transferable, non-sublicensable (other than to the Authorised Users), non-exclusive, revocable right to access our Platform during your Subscription Term and any Renewal Periods solely for your business operations and for the benefit of, and to provide services to, your Care Recipients.

6.2. Whilst we will make reasonable efforts to ensure the Services are operational 24 hours a day, 7 days a week, we do not guarantee that the Services will always be available or be uninterrupted, error-free or free from viruses. In particular, but without limitation:

a. **Maintenance Services**: The Services will not be available to you when we carry out maintenance services. We will use reasonable endeavours to carry out maintenance outside Normal Business Hours and to give you at least three hours' notice in writing (via email where possible); however you acknowledge that this may not be possible in cases of urgency.

b. **Communication networks:** The Services may be subject to limitations, delays and other problems inherent in the use of communication networks and facilities. We will not be liable to you if the Services are unavailable at any time, or for any period due to an event or cause outside of our control.

6.3. Where a service involves the work of a third party or subcontractor, we will confirm the associated service levels separately.

6.4. We reserve the right to suspend your (or any Authorised User's) access to or use of the Services without notice in the event you or an Authorised User breaches the Agreement (or part thereof) or if we reasonably suspect that you or an Authorised User have breached the Agreement (or part thereof). To the extent remediable, we will withdraw such suspension when you have remedied the applicable breach.

7. Using the services

7.1. You will, and will procure that your Authorised Users (as applicable) will:

a. provide us with all necessary cooperation in relation to this Agreement and all necessary access to information that we require to deliver the Services;

b. comply with all applicable laws and regulations with respect to activities under this Agreement, in particular the regulations stipulated by any applicable Health & Social Care regulator in your jurisdiction;

c. use the Services and Service Data in accordance with the terms of the Agreement;

d. obtain and maintain all necessary licences, consents and permissions necessary for you and your Authorised Users to perform their obligations and exercise their rights under this Agreement, including, without limitation, to use the Services;

e. where the health of a Care Recipient is of concern, use your judgment to raise your concerns to the appropriate parties and not rely solely on the 'alert' functionality in the Platform such as automatic alerts sent to you when specific conditions are met in the Platform; and

f. ensure that your network and systems comply with the relevant specifications provided by us from time to time.

7.2. You will be solely responsible for:

a. for the correct scheduling and correct administration of medication, in the correct dosages, in accordance with the care plans and prescriptions for Care Recipients;

b. the management of the health and wellbeing of Care Recipients, including the actions taken by your Authorised Users and assessments and/or recommendations or the raising of alerts made by you and your Authorised Users;

c. procuring and maintaining your network connections and telecommunications links from your systems to our data centres, and for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet;

d. the acts and omissions of each Authorised User; and

e. compliance with the Care Quality Commission (CQC), the independent regulator of health and adult social care in England, and any other regulator applicable to you in your jurisdiction.

7.3. The licence granted to you to make use of the Services and Service Data, does not permit you to do, and you shall not do nor permit any third party to do, any of the following:

a. embed the Services or Service Data into any product of yours or any third party without first notifying us and provided that we do not object to such embedding;

b. make available through automated or manual means any part of the Services or the Service Data, by way of crawling, scraping, spidering or otherwise;

c. copy or access all or any part of the Services or the Service Data other than via the interface(s) provided to you by us (other than downloadable copies of Service Data for the purpose of your business operations); or

d. circumvent or attempt to override any security features we have installed around the Services or the Service Data.

7.4. You undertake that you will not allow or permit any Authorised User accounts to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services.

7.5 You shall not, except as allowed by applicable law and/or as expressly allowed under the Agreement:

a. attempt to reproduce, duplicate, copy, modify, duplicate, create derivative works from, frame, mirror, republish, re-sell, download, display, transmit, or distribute all or any portion of the Services or Platform in any form or media or by any means;

b. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services or Platform;

c. access all or any part of the Services or Platform in order to build a product or service which competes with the Platform or Services or that interferes with, damages or disrupts any part of the Services or Platform, any equipment or network on which the Services or Platform are stored, any software used in the provision of our Services or Platform;

d. use the Services or Platform to provide services to third parties (other than the Authorised Users or Care Recipients or where we expressly permit you to do this);

e. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services or Platform available to any third party except the Authorised Users;

f. attempt to obtain, or assist third parties in obtaining, access to the Services or Platform, other than as permitted under the Agreement; or

g. knowingly introduce or permit the introduction of, any virus into our network and information systems.

7.6. You further agree to comply with the Acceptable Use Policy with regards to your use of the Services and Service Data, including any material and data you transmit using the Services. This Acceptable Use Policy forms part of the Agreement and is not a separate contract to these Terms. A breach of the Acceptable Use Policy will constitute a breach of the Agreement, and may result in termination or suspension of your account in accordance with these Terms.

7.7. You acknowledge that the Platform or Services may enable or assist you to access the website content of, correspond with, and purchase products and services from third parties and that you do this solely at your own risk. We make no representation, warranty 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 you, with any such third party. Any contract entered into and any transaction completed via any third-party website is between you and the relevant third party, and not us. We recommend you refer to the third party's website terms and conditions and privacy policy prior to using such third-party website. We do not endorse or approve any third-party website nor the content of any of the third-party website made available via the Platform or Services.

7.8. You agree that you will carry out your responsibilities under the Agreement in a timely and efficient manner, and in the event of any delay or failure by you to do so:

a. we shall not be liable to you for any delay in the performance of our obligations under the Agreement; and

b. we shall be entitled to an extension in performance of our obligations equal to the delay caused by your delay or failure to perform your obligations.

8. Fair usage limit

8.1. This clause applies to the SMS notifications service provided as part of the Services. SMS notifications are a feature of our product that allow you to receive text messages from Birdie when alerts are raised.

8.2. We monitor the usage of our SMS notifications service on a continuous basis to ensure fair use. We have set a reasonable limit on the number of SMS messages that you can receive per month for no additional charge. This limit is 300 SMS notifications per month, resetting on the first of each calendar month (the "**Fair Usage Limit**").

8.3. If you exceed the Fair Usage Limit in any month, we reserve the right to:

a. charge you a fee of £0.04 per SMS for the any excess SMS usage above the Fair Usage Limit; and/or

b. suspend your SMS notifications service until your usage resets the following month.

8.4. If you exceed the Fair Usage Limit in three consecutive months, we may suspend your SMS notifications service until we are reasonably satisfied that you have taken sufficient measures to ensure your usage will not exceed the Fair Usage Limit in following months.

8.5. To avoid exceeding the Fair Usage Limit, we recommend that you:

a. monitor your SMS usage regularly across all your staff regularly and adjust your and their SMS notification settings if needed.

b. contact us if you have any questions or concerns about your SMS usage or the Fair Usage Limit.

9. Payment

9.1. You agree to pay us the Subscription Fees as set out on your Order Form (which do not include VAT). You will provide us with valid, up-to-date and complete payment details to enable us to process your payment. You authorise us to bill your payment card or bank account for the Subscription Fees monthly, quarterly or annually (as stated in your Order Form) and for additional purchases of subscriptions during the Subscription Term.

9.2. We may increase the Subscription Fees from time to time but we will communicate any pricing changes to you with reasonable notice of no less than one month. If you do not agree to the increases, you may terminate your agreement with one month's notice.

9.3. If we have not received payment of any Subscription Fees which you owe within 30 days of the due date, without prejudice to any other rights and remedies we may have:

a. we may, without liability to you, disable any password, account and/or access to all or part of the Platform and Services under your Order Form, including that of your Authorised Users, and we will be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

b. interest shall accrue on a daily basis on such due amounts at an annual rate of 4% above the base rate of the Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

10. Rights we grant you

10.1. During the Subscription Term, we will provide you access to use the Services as described in your Order Form. Your Subscription Term is stated on your Order Form and (if applicable) will renew automatically for further periods as set out in clause 15 below. To prevent automatic renewal of the subscription, you must notify us as set out in clause 15.

10.2. You promise and agree that you will only make use of the Services and Service Data within the scope of the terms and conditions set out in the Agreement.

10.3 You acknowledge that all intellectual property rights in the Services, the Service Data and the Platform anywhere in the world belong to us or our licensors, and that you have no rights in or to the Services, Service Data or the Platform other than as set out in clauses 11 and 12 below.

11. Data and rights you give us

11.1. Customer Data shall belong to you or your Authorised Users (or your licensors or your Authorised Users' licensors, as applicable). However, to enable your use of the Services, we may need to use Customer Data. As such, we require, and you

grant us, a worldwide, non-exclusive, royalty free licence to store, use, reproduce, display and transmit the Customer Data and any other materials transmitted via the Service to the extent necessary to enable your (or your Authorised Users) use of the Platform and Services, including monitoring services. This licence shall remain in effect for the duration of the Subscription Term and any Renewal Period.

11.2. In addition to the rights granted to us above, we also require, and you grant to us, a licence to store, use, reproduce, display and transmit the Customer Data and any other materials transmitted via the Service in anonymised format for analytical purposes and to improve our Services. For the avoidance of doubt, this licence will not end upon termination of the Agreement (or part thereof).

11.3. You grant us a right to use the your trade name and trademarks and refer to you as a reference partner in customer listings and other marketing documentation and activities relating to the Services, provided that such use is in accordance with good business practice and in a manner to promote the reputation and goodwill of said trade name and trademarks.

12. Data protection and privacy

12.1. Each of us and you will comply with all applicable requirements of the Applicable Data Protection Laws. This clause 12 is in addition to, and does not relieve, remove or replace, either our or your obligations or rights under Applicable Data Protection Laws.

12.2. Each of we and you have determined that for the purposes of Applicable Data Protection Laws:

a. we shall process the personal data as set out in the DPA as processor on your behalf ("**Customer Personal Data**"); and

b. we shall act as controller of personal data which is provided to us by you for the purpose of managing the Agreement and our relationship with you ("**Birdie Personal Data**").

12.3. Should the determination in clause 12.2 change, each of we and you shall use all reasonable endeavours make any changes that are necessary to this clause 12 and the DPA.

12.4. You consent to, and shall procure all required consents from your personnel, representatives and agents in respect of, all actions taken by us in connection

with the processing of Birdie Personal Data, provided these are in compliance with the then-current version of our Privacy Notice.

12.5. In the event of any inconsistency or conflict between the terms of the DPA and these Terms, the DPA will take precedence.

12.6. Without prejudice to clause 12.1, you will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of Customer Personal Data and Birdie Personal Data to Birdie and lawful collection of the same by us for the duration and purposes of the Agreement.

12.7. Our liability for losses arising from breaches of this clause 12 and the DPA is as set out in clause 13.

13. Limitations of liability

13.3. Except where expressly provided in these Terms, you assume sole responsibility for the use of results obtained from the Services and the Platform by you, an Authorised User or a Care Recipient, and for conclusions drawn from such use and any act or omission of you, an Authorised User or a Care Recipient of the same. We have no liability in respect of your, an Authorised User, or a Care Recipient's use of or decision making in respect of the results of the Services.

13.2. We have no liability for:

a. any content, information (including medication schedules and correct administration of medication, in the correct dosages, in accordance with care plans and prescriptions), instructions or scripts provided to us by you, an Authorised User, or a Care Recipient in connection with the Services (including any errors or omissions in the Service Data caused by the same); or

b. any recommendations by you, an Authorised User, or a Care Recipient on the health or wellbeing of a Care Recipient (including the interpretation of the "alert" functionality and the recording of such alerts, whether automatic or otherwise), assessments made by you, an Authorised User, or a Care Recipient on the health, wellbeing or safety of Care Recipients, or any act or omission we make at your written direction or that of an Authorised User, or a Care Recipient.

13.3. Except where expressly provided in this Agreement:

a. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law in relation to the Services and the Platform are, to the fullest extent permitted by applicable law, excluded; and

b. the Services and the Platform are provided to you on an "as is" basis.

13.4. Each of we and you shall not be liable to the other for:

a. any loss of profits;

b. loss of anticipated savings;

c. loss of business or business opportunity;

d. depletion of goodwill; or

e. any special, indirect or consequential loss, costs, damages, charges or expenses,

in each case however arising.

13.5. Our maximum aggregate liability to you in each 12 month period from the date your Order Form is entered into by you and each anniversary thereafter (a "**Contract Year**") in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to the higher of either:

a. the total amount paid to us by you in that Contract Year; and

b. £100.

13.6. Further, due to the nature of the Services, we do not take responsibility for:

a. any damage or loss caused by errors or omissions in any content, information (including medication schedules) or instructions provided by you, an Authorised User, or a Care Recipient to us in connection with the Services;

b. any recommendations by you or an Authorised User on the health or wellbeing of Care Recipients (including the recording of alerts),

c. assessments made by you or an Authorised User on the health, wellbeing or safety of the Care Recipients; or

d. any action taken by us (or not taken by us) at your, an Authorised User's or a Care Recipient's direction.

13.7. Nothing in the Agreement shall:

a. exclude liability for your payment obligations under the Agreement; or

b. either our or your liability for:

(i) death or personal injury caused by negligence;

(ii) fraud or fraudulent misrepresentation; or

(iii) any other liability that cannot be excluded or limited by law.

13.8. Except where otherwise specified, all warranties, conditions, representations or other terms implied by statute or common law in relation to the Services, the Service Data and the Platform provided by us are excluded to the fullest extent permitted by law.

14. Indemnity

14.1. You will defend, indemnify and hold us harmless against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with your use of the Services, Service Data or Platform in breach of the Agreement (or part thereof).

14.2. Subject to the cap on liability in clause 13.5 above, we will defend, indemnify and hold you harmless against claims, actions, proceedings, losses, damages and costs arising out of any claim made against you by a third party alleging infringement of their intellectual property rights through or in connection with your use of the Services, Service Data or Platform as long as:

a. you give us prompt notice of any claim;

b. you provide us reasonable co-operation in the defence and settlement of such claim, at our expense; and

c. you give us sole authority to defend or settle the claim.

14.3. In the defence or settlement of any such claim, we may procure the right for you to continue using the Services or the Service Data , replace or modify the Services and/or Service Data so that they become non-infringing or terminate the Agreement without any additional liability or obligation to pay you damages or additional costs. The indemnity we give you in this clause 14 shall not apply in respect of:

a. a modification of the Services or Platform by anyone other than us or any party we authorise to make such modification;

b. your use of the Services or Platform in a manner contrary to our instructions to you, or in a manner not permitted under the Agreement; or

c. your continued use of the Platform or Services after you receive notice of the alleged or actual infringement.

14.4. Clause 14.2 sets out your sole and exclusive rights and remedies, and our entire obligations and liability, for infringement of any third party intellectual property rights.

15. Termination and renewal

15.1. You may terminate the Agreement at any time via email to support@Birdie.care. You will be charged immediately for the remaining length of your Subscription Term (or Renewal Period if applicable).

15.2. If you request access to copies of data supplied by you to the Platform, we will provide this to you in electronic form within 10 working days of your request.

15.3. Upon termination of these terms:

a. all rights granted to you under the Agreement, including the right of access in clause 10, shall cease;

b. you must cease all activities authorised by the Agreement, including use of the Services and Service Data;

c. all fees payable to us under the Agreement shall become due and shall be billed immediately;

d. and you must immediately uninstall, delete or remove from all computer equipment in your possession or control, and destroy or return to us all copies of, any software used in the provision of the Services.

15.4. Your initial Subscription Term will be specified in your Order Form, and, unless otherwise specified in your Order Form, your subscription will automatically renew for consecutive Renewal Periods of the shorter of:

a. a period equal to the Subscription Term; and

b. one year,

unless

(i) either we or you notifies the other in writing at least 10 days before the end of your Subscription Term or any then-current Renewal Period, in which case your subscription shall terminate upon the expiry of the then-current Subscription Term or Renewal Period;

(ii) we notify you that the Services are being generally discontinued;

(iii) we no longer have the right to provide you with the Services or the provision of the Services is or has become unlawful and can no longer be provided; or

(iv) the Agreement (or part thereof) is otherwise terminated in accordance with the provisions of the Agreement.

15.5. Except as expressly provided in the applicable Order Form, renewal of subscriptions will be at Birdie's applicable list price in effect at the time of the applicable renewal.

15.6. Either we or you may terminate the Agreement on written notice if:

a. the other party commits a material breach of any provision of the Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or

b. the other party fails to make payment by the due date and such amount remains outstanding for 14 days.

16. Confidentiality

16.1. Our Confidential Information includes details of the Platform, Services, and the results of any performance tests of the Services. Your Confidential Information includes the Customer Data.

16.2. You and we each agree to hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation and performance of the Agreement.

16.3. Each of we and you shall take all reasonable steps to ensure that the other's Confidential Information is not disclosed or distributed by our or your employees or agents (as applicable) in violation of the Agreement, and in any event shall remain liable for any such disclosure or distribution.

16.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction.

16.5. The restrictions in this clause 16 on disclosure shall not apply to Confidential Information which:

a. is or becomes publicly known other than through breach of the Agreement;

b. was in the other party's lawful possession before the disclosure;

c. was or is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

d. is independently developed by the receiving party, which independent development can be shown by written evidence.

16.6. This clause 16 shall survive termination of the Agreement.

17. Update to T&Cs

17.1. Birdie may update the terms of the Agreement from time to time. Birdie will give you no less than 14 days' written notice (including email and notification through the Birdie mobile app) of updates prior to the date such updates take effect. If you do not agree to the updated terms of the Agreement, you may notify Birdie in writing of your objection within 14 days of the date you were notified of the updates. If you do so, the unamended Agreement will continue to have effect until the end of your then-current Subscription Term or Renewal Period, following which the Agreement will automatically terminate and you will no longer be able to use the Services.

18. Other important terms

18.1. **Assignment and other dealings:** You may not assign, transfer, sub-licence or deal in any other manner with any or all of your rights under the Agreement, without our prior written consent.

18.2. **Waiver:** A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of

that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.

18.3. **Severance**: If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any such modification to or deletion of a provision or part-provision shall not affect the validity and enforceability of the rest of the Agreement.

18.4. **Relationship**: Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties or constitute any party the agent of another party.

18.5. **Third Party Rights**: No one other than a party to the Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

18.6 **Entire Agreement**: The Agreement and all documents referred to in it 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.

18.7. **Jurisdiction/Governing Law**: The Agreement, its subject matter and its formation (and any non-contractual disputes or claims) are governed by English law. We both agree to the exclusive jurisdiction of the courts of England and Wales.

18.8. **Variation**: Other than as set out in clauses 9.2 and 17 of these Terms, no variation of the Agreement shall be effective unless it is in writing and signed by each of us and you (or their authorised representatives).

18.9. **Force Majeure**: We shall have no liability to you under the Agreement if we are prevented from or delayed in performing our obligations under the Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond our reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving our workforce or that of any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident,

breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors, provided that we use reasonable endeavours to notify you of such an event and its expected duration.

18.10. **Survival**: Any provision of the Agreement which expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.

18.11. **Contact us**: To contact us, or if you are experiencing problems with the Services, please email support@Birdie.care.