



Terms and conditions of implementation and software services

Evergreen- SaaS Terms and Conditions (Including HCDOs)

1. **Definitions and Interpretation**

1.1. The following words will have the following meanings:

Agreement means a contract formed under these Terms and Conditions (**Terms**), including the Order Form.

Authorised User means those individuals (including employees, agents, independent consultants and contractors), who are authorised by the Customer (included those individuals at General Practices if the Customer is a HCDO) or its affiliates (i) in writing, (ii) through the Service's security designation, or (iii) by system integration or other data exchange process, to use the Software and the Documentation.

Customer Group means, if applicable, Customer and any affiliates and holding companies and each affiliate of those holding companies.

Documentation means the documentation and materials made available to the Customer by Evergreen from time to time which sets out a description of the Software and the user instructions for the Software (including, for example, webpage, videos and quick reference guides).

General Practice(s) means the General Practitioner surgeries, medical centres, practices and other providers within the Customer's boundary if it is a HCDO and for whom it is purchasing the Software and Services under the Agreement.

HCDO being any health care delivery organisation in the United Kingdom with authority to organise primary or secondary health care delivery including without limitation Integrated Care Boards, Clinical Commissioning Group and other commissioning organisations, Health Boards, Primary Care Networks, Integrated Care Systems.

Health Data means any data relating to a Patient and processed in performance of the Services via the Software.

IPR means intellectual property rights in and to patents, trademarks, service marks, trade and service names, copyrights, database rights and design rights (regardless of registration, and including applications for registration), know-how, moral rights, trade secrets, confidential and proprietary information, all rights or forms of protection of a similar nature or having similar or equivalent effect to any of them which may subsist anywhere in the world now existing or hereafter arising.

Modules: means each and any separate module of the Services, as may be made available by Evergreen for purchase by its customers from time to time under these Terms.

Order Form: means Evergreen's order documentation detailing the Services, Modules and Software purchased by the Customer, accompanying, and forming part of this Agreement;

Patient: means any individual patient, who may use the Services subject to the licence with the Customer and whose Health Data may be processed via the Software.

Services means the services to be provided to the Customer by Evergreen (including the supply of the Software), which may be made available in Module format and specified in the Order Form, and any Support Services.

Service Fee means any applicable fees for Services as specified in the Order Form.

Service Policy means Evergreen's policy setting out details of the Support Services, service levels and uptime commitments, as may be made available and updated from time to time by Evergreen, and which is attached at Appendix B for reference.

Software means Evergreen's software-as-a-service platform to be licensed or otherwise made available to Customer by Evergreen under this Agreement, specified in the Order Form, and including any third-party software that is incorporated within that software.

Subscription Fees has the meaning given in the Order Form.

Support Services means the additional support services made available by Evergreen, as further specified In Evergreen's Service Policy (as updated from time to time and Included as Appendix B for reference)

1.2. Use of the terms **include, including**, and any similar expressions, will be read without limitation.

2. **Agreement**

2.1. Evergreen agrees to license the Software and supply the Services to Customer, and Customer agrees to purchase such licence and Services from the Evergreen, on the terms of the Agreement.

2.2. Subject to clause 2.3 or any earlier termination in accordance with Clause 10, the Agreement will commence on the Order Effective Date specified in the Order Form and continue for the term specified in the Order Form (**Initial Term**). Following the Initial Term, the Agreement shall automatically renew for successive periods of 12 (twelve) months (each a **Renewal Term**), subject to either party being able to terminate the Agreement at the end of the Initial Term or any Renewal Term by providing written notice not less than 1 month prior to the end of the Initial Term or Renewal term.

2.3. In the event a HCDO agrees with Evergreen to purchase the Software and Services for a specified territory which includes the Customer, and agrees for the transfer to the HCDO of the Software licence and performance of any Services under this Agreement on materially the same terms, the Client will be permitted to terminate this Agreement from the date of transfer with no liability save as for payment of any Subscription Fees and Service Fees applicable up to the date of transition. If the Client has paid in advance, then Evergreen will refund any Subscription Fees and Service Fees which relate to after the transition date.

2.4. If there is any conflict or inconsistency between the provisions contained in the Order Form and these Terms, the Order Form will take precedence.

3. **Software and Services**

3.1. Evergreen grants to the Customer, a fully paid up, royalty-free, non-exclusive, non-transferrable non-sublicensable licence to access and use the Software, including by the Authorised Users, for its ordinary practise or business purposes and for no other purpose. Furthermore, such licence shall only apply to Health Data of Patients for whom the Customer has been granted access in accordance with clause 7.6. If the Customer is a HCDO, then any General Practices within its boundary and specified in the Order (or otherwise agreed in writing) will be granted access and use under the same licence and on the same terms.

3.2. Customer shall permit Evergreen or Evergreen's designated auditor to audit the Software and/or Services in order to establish they are being used in accordance with the licence and this Agreement. Each such audit may be conducted on reasonable notice no more than once per year, at Evergreen's expense, in such a manner as not to substantially interfere with the Customer's normal conduct of business;

3.3. Evergreen will perform the Services:

using reasonable skill, care, and diligence;

in compliance with all applicable UK laws and regulations; and

in accordance with any timescales set out in the Agreement (or, if there are none, within a reasonable time) save that time shall not be of the essence in respect of agreed timelines and milestones.

3.4. Evergreen warrants that, when the Software is used in accordance with the terms of the Agreement and in accordance with the Documentation and technical specification, that the Software will comply with that specification in all material respects (subject to any modification or update to the specification that Evergreen is permitted to make under Clause 3.5) and will be free from material errors and defects.

3.5. Evergreen may modify or update the Software (and its specification) from time to time, provided that Evergreen must:

(a) make an updated specification for the Software, and release notes for the modification or update, available to Customer either automatically or upon

written request on or before the date on which the modification or update is applied to the Software;

- (b) ensure that the modification or update does not: (i) materially degrade or adversely affect the performance of the Software or its functionality; or (ii) adversely affect, or require the modification or replacement of, any of the standard integrations or existing deliverables.
- 3.6. If implementation Services are specified in the Order Form, after the Start Date there will be a period of implementation in accordance with the Documentation and any timeline specified in writing by Evergreen to the Customer. During such implementation period the Customer's information technology infrastructure and systems shall be assessed and/or subject to diagnostic testing to ensure they meet the required security requirements of Evergreen and are able to access the Software, as made available from Evergreen from time to time. If the Customer does not meet the requirements, then Evergreen shall recommend further actions to remedy such failure, and if the Customer chooses to not remedy the failure or cannot do so within a reasonable time period, Evergreen reserves the right to terminate the Agreement immediately on written notice. Further to testing the security and accessibility requirements, Evergreen may require conduct of functionality testing on a sample data set provided by the Customer. If the functionality testing identifies any failures or issues with the Customer's use of the Software, then the parties shall work together in good faith to resolve such issues as soon as reasonably possible.

4 Support

- 4.1 Evergreen will provide its standard customer support services detailed in the Support Services. Evergreen shall also perform maintenance on the Software and the infrastructure supporting the Software, as required but with the objective of minimising the frequency and duration of incidents.
- 4.2 Evergreen will use all reasonable endeavours to ensure the Software is available, save for scheduled maintenance, in accordance with the availability commitment detailed in the Service Policy. Failure to achieve such availability service level for any 3 consecutive calendar months shall entitle the Customer to terminate this Agreement immediately on written notice to Evergreen.

5 Payment

- 5.1 Customer will pay undisputed invoices within 30 days following receipt of an invoice sent by or on behalf of Evergreen. If any payment due by the Customer remains unpaid 30 (thirty) days after Evergreen gives notice in writing that such payment is overdue, without prejudice to any other rights and remedies available to it, Evergreen may apply interest to the late payment in the amount of 5% above the Bank of England Base Rate, and suspend the Customer's access to all or part of the Services and shall be under no obligation to provide any or all of the Services.
- 5.2 Evergreen's Subscription Fees and Service Fees are stated exclusive of VAT, and such VAT as may be applied will be payable by the Customer.
- 5.3 Customer will only be required to pay Evergreen's expenses incurred in connection with the performance of the Services where the expenses have been reasonably incurred and have been approved by Customer in writing in advance.
- 5.4 Evergreen shall have the right to increase the Subscription Fees for each Renewal Term by providing not less than 2 months' notice prior to the end of the Initial Term or current Renewal Term. If the Customer does not agree to such changes, they may terminate the Agreement in accordance with clause 2.2.
- 5.5 In the event the Customer wishes to purchase the additional Modules then the parties shall be required to enter a new Order Form for such additional Modules.
- 5.6 In the event the number of Patients accessing the Software under the Customer's licence increases by more than 10% by reference to the agreed threshold in the Order, then Evergreen reserves the right to increase the Subscription Fee during the Initial Term, or any Renewal Term, on a pro rata basis, save that Evergreen will always notify the Customer in advance of any increase and discuss the proposed Subscription Fee increase.

6 Data and Confidential Information

- 6.1 Customer grants Evergreen a non-exclusive, non-transferable license to store, transmit, and process any information, materials and data provided by the Customer solely to the extent necessary for Evergreen to provide the Services in accordance with the Agreement. Nothing in the Agreement grants Evergreen any rights in the Customer Information, materials and data other than as expressly set out in Clause 6.1.
- 6.2 Customer agrees it shall not use or exploit Evergreen products and services in any manner, except as expressly permitted in this Agreement.
- 6.3 Evergreen will take appropriate physical, technical and organisational measures (aligned with good industry practice) to maintain the confidentiality, availability, security and integrity of the Software and Services.
- 6.4 Both parties shall comply with relevant data protection laws in their performance of this Agreement.
- 6.5 The parties hereby acknowledge and agree that the Customer, if it is a HCDO, is not the data controller for Patients and their Health Data because this role is fulfilled by the General Practices. However, the HCDO shall ensure an appropriate Data Protection Impact Assessment is carried out in respect of access to the Software and Services, and shall ensure it has all necessary data sharing agreements, consents and/or licences required to enter the Agreement and instruct Evergreen to provide the Software and Services to the Patients on behalf of the General Practices, including the processing of Health Data.
- 6.6 When processing personal data under the Agreement, Evergreen's Data Processing Addendum shall apply to both Evergreen and Customer, as attached at Appendix A.
- 6.7 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the products, services, business, affairs, customer, clients or suppliers or the other party or of any member of the group of companies to which the other party belongs, except that each party may disclose the other party's confidential information (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information in connection with this Agreement and providing the disclosing party ensures compliance with this clause 6.7; or (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 6.8 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
- 6.9 For the avoidance of doubt, the Customer acknowledges and agrees that the Health Data shall be considered the Personal Data of the Patient, in accordance with UK GDPR and Data Protection Act 2018, and as such the Customer shall not be deemed to have Intellectual Property Rights in, or any other ownership of, the same.

7 Customer Obligations

- 7.1 The Customer shall not access, store, distribute or transmit any material during the course of its use of the Software and Services that is offensive, facilitates illegal activity or violence, causes damage or injury, or is otherwise illegal.

- 7.2 Security: The Customer shall not:
- (a) introduce, store, transfer, distribute viruses, or permit or suffer the same, into Evergreen's network and information systems or in its use of the Software;
 - (b) access or attempt to gain access to the Software or related systems or networks other than in the manner set forth in the Documentation; or
 - (c) interfere with or disrupt performance of the Software, Evergreen's network and information systems or any data stored therein.
- 7.3 The Customer shall not, except as may be allowed by any applicable law which is incapable of exclusion and to the extent expressly permitted under this Agreement:
- (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software.
- 7.4 The Customer shall ensure that only the Authorised Users may access the Software and that the Authorised Users at all times comply with the requirements contained in these Terms and the Documentation, and Evergreen reserves the right to suspend access to the Software for any Authorised User(s) in breach of these Terms. The Customer shall ensure the Authorised Users and any other required personnel, undergo such training as may be provided by Evergreen from time to time.
- 7.5 If access to the Software will be via application programming Interface(s) (**APIs**) as made available by Evergreen from time to time and use of which by the Customer shall be subject to the testing set out in clause 3.6. Furthermore, the Customer shall comply with all reasonable Instructions provided by Evergreen from time to time as relate to the use of such APIs.
- 7.6 Subject to the applicable maximum number of Patients for which the Subscription Fee applies, the Software and Services are made available to the Customer in relation to Patients with whom the Customer has ongoing relationship and permission to access the Health Data. Subject to having such permission, the Customer, or Evergreen on behalf of the Customer, may invite the Patient to use the Services by sending them an email or other electronic communication including a link to the Software.
- 7.7 The Customer shall use its best endeavours and take appropriate physical, technical and organisational measures (as aligned with good industry practice) to:
- 7.7.1 maintain the security of its IT Infrastructure and systems, and the Customer shall immediately notify Evergreen of any breach or failure in security which may impact or affect the Software and/or Services;
 - 7.7.2 ensure that all data and information provided by the Customer which relates to a Patient is accurate in all material respects, including without limitation that data provided for the purpose of forming Health Data.

8 Intellectual Property Rights Infringement and Indemnity

- 8.1 Evergreen represents that it has all necessary rights, licences and permissions to provide the Software and Services to Customer on the terms of the Agreement.
- 8.2 Customer shall, at its sole cost and expense, indemnify, defend and hold harmless Evergreen, its controlled affiliates and its and their respective officers, directors, employees, consultants and agents from and against all losses, liabilities, costs, damages and expenses, including but not limited to reasonable legal fees and expenses (**Losses**), incurred or suffered by any of them as a result of third party claims, actions or demands, including, as applicable, investigations and audits by regulators (**Claims**), arising out of or in connection with (i) the unauthorised use of the Services, (ii) violations of applicable law; or (iii) Customer data and materials, including without limitation failure by Customer to secure all necessary rights, licenses and approvals such that Evergreen can utilize them as part of the Services in the manner contemplated hereunder.
- 8.3 Subject to Clause 7.4 Evergreen will indemnify the Customer from and against all Losses that are sustained or incurred by the Customer in connection with any Claim that the receipt and/or the use (in accordance with the terms of the Agreement) of the Software or Services by the Customer infringes the rights (including the intellectual property rights) of any third party (an **Infringement Claim**).
- 8.4 Evergreen will not be liable under Clause 8.3 to the extent that the Infringement Claim arises as a result of the use by the Customer (or affiliates) of the Software or Services in combination with goods or materials that have not been supplied, made available or approved by (or on behalf of) Evergreen, where without such combination the claim would not have arisen.
- 8.5 As between the parties, all right, title and interest, including all IPR in Evergreen's products and services, including the Services and any components thereof are and shall remain the sole and exclusive property of Evergreen. Providing Evergreen obtains prior consent from the Customer, Evergreen shall be entitled to use the Customer's (or any of its affiliates') name and logo in its lists of customers (including on its website and in any marketing materials)
- 8.6 Customer shall not use Evergreen trade names, trademarks and service marks, alone or in connection with any other words(s) or logo(s) without Evergreen's consent and if such consent is granted all uses thereof shall inure solely to the benefit of Evergreen and Customer shall acquire no right, title or interest therein or goodwill associated therewith and shall refrain from impairing Evergreen's rights therein.
- 8.7 In respect of an Infringement Claim:
- (a) upon becoming aware of a potential or actual claim, Customer will promptly notify Evergreen in writing;
 - (b) each party will (at Evergreen's sole cost and expense) provide reasonable cooperation to the other party in the defence and settlement of the claim; and
 - (c) Evergreen will, upon its written request, be given sole authority to defend or settle such claim, provided that (a) Evergreen, to the extent it is legally permissible, keeps the Customer reasonably informed of the progress of its defence or settlement; and (b) Evergreen does not compromise or settle such claim without releasing each member of the Customer Group of liability in respect of such claim.

9 Liability

- 9.1 Nothing will limit a party's liability for wilful misconduct or deliberate default or any liability that cannot be excluded or limited by law.
- 9.2 EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT AND ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW, EVERGREEN SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE (WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED), WARRANTIES OF TITLE AND NON-INFRINGEMENT, ANY IMPLIED INDEMNIFICATION OBLIGATIONS, OR OTHER WARRANTIES THAT ARISE FROM TRADE USAGE OR CUSTOM, WITH RESPECT TO ANY ASPECTS OF EVERGREEN SERVICES AND ANY COMPONENTS THEREOF OR ITS USE IN CONJUNCTION WITH CLIENT DATA OR THE OUTPUT OR RESULTS OBTAINED FROM SUCH USE, ANY DECISIONS MADE OR ACTIONS TAKEN IN RELIANCE THEREUPON OR AS TO THE PERFORMANCE THEREOF (WHETHER PERFORMED IN WHOLE, PART OR

NOT AT ALL). EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT EVERGREEN DOES NOT GUARANTEE THE ADEQUACY, ACCURACY, TIMELINESS OR COMPLETENESS OF SOFTWARE, SERVICES OR ANY COMPONENTS OR OUTPUT THEREOF OR THAT THEY WILL BE ERROR FREE OR FREE FROM COMPUTER VIRUSES OR OTHER INFIRMITY OR CORRUPTION. THEREFORE, EVERGREEN SHALL NOT BE SUBJECT TO ANY DAMAGES OR LIABILITY FOR ANY ERRORS, OMISSIONS OR DELAYS OTHER THAN AS PROVIDED FOR IN THESE TERMS.

9.3 Subject to Clause 9.1:

- (a) neither party will be liable, whether in contract, tort (including negligence and breach of statutory duty) or otherwise, for any indirect or consequential loss; and
- (b) either Party's total aggregate liability under the Data Processing Addendum shall be limited to £1,000,000;
- (c) the Customer's total aggregate liability in relation to a breach of the licence granted in clause 3.1 shall be limited to £1,000,000; and
- (d) subject to clauses 9.3(a) to (c) inclusive, each party's total liability in contract, tort (including negligence and breach of statutory duty) or otherwise (save for clauses 9.3 a to c) in connection with the Agreement, will be limited to an amount equal to the greater of: (i) £100,000; and (ii) 150% of the total Subscription Fees paid and payable (whether invoiced or not) to Evergreen under the Agreement during the 12 months immediately preceding the date on which the claim arose.

10 **Termination and suspension**

10.1 Either party may terminate (and Evergreen may suspend performance of) this Agreement with immediate effect by giving written notice if the other party:

- (a) is in material breach of this Agreement (for the avoidance of doubt, material breach in respect of the Customer shall include non-payment of any fees by within 30 days of the due date for payment) and, if the breach is capable of remedy, the breaching party has failed to remedy the breach within 30 days of the date of written notice requiring it to do so; or
- (b) becomes unable to pay its debts or becomes insolvent or enters into or proposes any composition or arrangement with its creditors generally, or anything analogous to any of these events occurs.

10.2 Upon termination or expiry of the Agreement, (i) Evergreen will promptly delete or return to Customer (at Customer's option) all Health Data in its possession or control (except to the extent that it is required or permitted to retain a copy of the Health Data by applicable law, for example Evergreen has permission or lawful basis to retain Health Data within the Patient's personal health record), and provided that any retained Health Data will remain subject to the applicable terms of the Agreement including Clauses 6.4 to 6.7; and (ii) Customer will promptly delete or return to Evergreen all Documentation and any other materials related to the Services, which are in the Customer's possession.

10.3 If the Customer terminates the Agreement under Clause 10.1, then Evergreen will promptly refund any portion of the fees paid by Customer that relate to the period after the date of termination on a pro rata basis.

10.4 Termination or expiry of the Agreement will not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry. Any provision of the Agreement that is intended to continue in force on or after termination or expiry will remain in full force and effect.

11 **General**

11.1 If any provision, or part of a provision, of the Agreement is found by any authority of competent jurisdiction to be illegal, invalid or unenforceable, it shall be deemed to have been deleted and the legality, validity and enforceability of the remaining provisions of the Agreement will not be affected.

11.2 The Agreement contains the whole agreement between the parties and replaces all prior arrangements relating to its subject matter.

11.3 Any waiver under this Agreement must be in writing. A failure or delay by a party to exercise any right or remedy provided under this 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.

11.4 The Agreement and any disputes arising out of or in connection with it or its subject-matter or formation (whether contractual or non-contractual) will be governed by the laws of England and subject to the exclusive jurisdiction of the courts of England.

Appendix A: Data Processing Addendum

1. This Data Processing Addendum (**DPA**) applies to the agreement formed under Evergreen Health Solutions Ltd Client Services - SaaS Terms and Conditions (inc. CCGs) (Agreement) where Evergreen is the Data Processor and the Customer is the Data Controller, or a HCDO acting on behalf of the Data Controllers. This DPA shall apply to the use of and access to any Software, Services or other SaaS solutions supplied by Evergreen.
 - 1.1 Defined terms shall have the meaning given in the Standard SaaS Terms and Conditions, unless otherwise specified in this DPA.
 - 1.2 For the purpose of this Data Processing Addendum (**DPA**) the following definitions shall apply:
 - (a) **Data Protection Laws** means all applicable data protection and privacy Laws in force from time to time in the UK including the UK GDPR and Data Protection Act 2018; the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426); the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419), all as amended.
 - (b) **Personal Data** means has the meaning given in the UK GDPR and, for the avoidance of doubt, shall include the Personal Data set out below in Exhibit A to this DPA.
 - (c) **Data Controller, Data Processor, Personal Data Breach, Data Subject, processing/process** have the meanings given the meaning set out in UK GPDR (Art.4).
2. Both parties will comply with all applicable requirements of the Data Protection Laws. This Appendix A is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Laws.
3. The parties acknowledge that for the purposes of the Data Protection Laws, if Evergreen processes Personal Data in performance of Services, Evergreen will be the Data Processor. Subject to paragraphs 4 and 5 below, the Customer will be the Data Controller. The Customer warrants that it has all necessary permissions, licences, consents and/or lawful bases to authorise and permit the processing of Personal Data by Evergreen under the Agreement.
4. **In the event the Customer is a HCDO acting on behalf of General Practices these paragraphs 4 and 5 will also apply.** The Data Controllers will be the General Practices within the Customer's HCDO boundary or authority who have given the Customer permission to enter the Agreement on their behalf, so that the General Practice may receive the Software and Services. Despite the General Practices not being a party to the Agreement, Evergreen hereby undertakes to be bound by the terms of this DPA in respect of any Data Processing on behalf of the General Practices, and the General Practice may enforce the terms of this DPA, as Data Controllers, as if they are a party to it.
5. The parties acknowledge and agree that, despite the Customer being a HCDO and not being a Data Controller, the Customer shall be entitled to enforce the terms of this DPA on behalf of the General Practices and exercise the rights of a Data Controller as provided under this DPA, save that the Customer shall not be entitled to access or receive Personal Data of Patients unless it provides additional evidence at the time of its lawful basis and any other permission required to access and/or receive the same.
6. This DPA further sets out the scope, nature and purpose of processing by Evergreen, the duration of the processing and the types of Personal Data and categories of Data Subject.
7. Without prejudice to the generality of paragraph 2, Evergreen shall, in relation to any Personal Data processed in connection with the performance by Evergreen of its obligations under the Agreement:

- 7.1 process that Personal Data only on the documented written instructions of the Data Controller unless Evergreen is required or permitted by applicable laws to otherwise process that Personal Data;
- 7.2 ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- 7.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 7.4 not transfer any Personal Data outside of the UK (or European Economic Area for as long as it has an adequacy decision from the UK Government) unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:
 - (a) the Data Controller or Evergreen has provided appropriate safeguards in relation to the transfer;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) Evergreen complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
 - (d) Evergreen complies with reasonable instructions notified to it in advance by the Data Controller with respect to the processing of the Personal Data;
- 7.5 assist the Data Controller, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Laws with respect to exercising data rights, security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 7.6 notify the Data Controller within 72 hours of becoming aware of a Personal Data Breach;
- 7.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Data Controller on termination of the agreement unless required by Applicable Law to store the Personal Data;
- 7.8 notify the Data Controller, if in Evergreen's reasonable opinion, a Customer instruction is likely to infringe the Data Protection Laws; and
- 7.9 maintain complete and accurate records and information to demonstrate its compliance with this Appendix A, and permit an audit to establish the same on reasonable notice from the Data Controller.
8. The Customer (including on behalf of the Data Controllers if it's a HCDO who is not a Data Controller), consents to Evergreen appointing third party processors of Personal Data under the Agreement, as identified in Exhibit A below. Evergreen confirms that it has entered or (as the case may be) will enter with the third-party processors into a written agreement terms which are substantially similar to those set out in this Appendix 1 and in either case which Evergreen confirms reflect and will continue to reflect the requirements of the Data Protection Laws. As between the Customer (and General Practices if Customer is a HCDO acting on their behalf) and Evergreen, Evergreen shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this paragraph 3.3.
9. The Customer (including on behalf of the General Practices if the Customer is a HCDO), consents to Evergreen asking each Patient, when accessing or using the Services, whether that Patient would like to open an Evergreen Life account and become a registered user for the same, which would include storing the Patient's special category Personal Data within the Personal Health Record made available to Evergreen Life users. If the Patient agrees then Evergreen shall become the Data Controller for the purpose of the Evergreen Life account, mobile application and related services.

Exhibit A

Nature and Purpose of Processing

Nature: Evergreen will process the Personal Data in order to perform the Services described in the Order Form and related services.

Purpose: The processing will take place in performance of the Services under the Agreement.

Evergreen will anonymise the Personal Data for use as comparative and statistical information.

Categories of Personal Data to be Processed

Data of Patients to be processed may include:

1. Contact data, including email, telephone and address/postcode
2. Identity data- being name and NHS number
3. profile information, including use of service/attendance, feedback and surveys, service registration and account details.
4. Device data related to device used to access the Services.
5. special category data including ethnicity (optional), medical information related to appointments, medical history and treatments, and use of the Service.

Data of Authorised Users to be processed will be:

1. Contact data
2. Work/job information
3. Profile and log-in information

Categories of Data Subjects

The Data Subjects will be either of (i) the Patients of the General Practice (or relevant Health Care Delivery Organization if they are engaged in secondary care) who are permitted to use the Services; (ii) Authorised Users at the General Practice who manage and use the Service on behalf of the General Practice.

Duration

The Personal Data will be processed for the duration of the Agreement or such shorter time if the Personal Data is no longer required for the Services.

APPENDIX B - Service Policy

Subject to clause 4.2 of the Evergreen SaaS Standard Terms and Conditions, availability will be:

Availability	98% availability of Software (excluding scheduled maintenance and/or network failures/issues)
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Support Services

- (1) During the subscription period (Term), the Evergreen Support Team will offer technical support to all users.
- (2) Access to manned Helpdesk and Named Application Support Specialist. Mon-Fri (excluding Bank Holidays) between the hours of 08:30 – 17:30.
- (3) Support: 20 hours per annum to be used by the customer for training, support, service requests and local development of the service. (Unused Support will not roll forward into subsequent years).

Extended support hours and services may be agreed on a case by case basis with a customer, but may be subject to additional fees to be agreed between the parties. Please contact us to discuss.

Support hours

Category	Time Period & Applicable Days
Support Hours	08.00 to 18.00 Monday – Friday (on normal working days) excluding Statutory and Public Holidays.
Non-Support Hours	overnight; 18:00 Friday to 08:00 Monday; and Statutory and Public Holidays.

Support Response Times

The level of priority for the application of remedial services is as according to the categories below. Response Time will be measured from the time the call was logged to the time there is remote intervention on the System. The solution will have a persistent connection to the Supplier's monitoring solution from where the System will be actively managed.

Evergreen will use all reasonable endeavours to provide a fix within the Intervention Time (being the point at which the issue is resolved and full functionality is returned to the Service, or an agreed workaround is provided. This is measured by reference to the below table.

Priority	Response Time	Intervention Time
Urgent	1 Hour	1 Working Day
Standard	8 hours	40 Working Days