

## SERVICES AGREEMENT

This Agreement is made the

between:

(1) **SURGERY HERO LIMITED**, a company incorporated in England with registered number 12607401 whose registered office is at Runway East, Whitechapel road, E1 1EW (**Surgery Hero**); and

(2) **[Customer Legal Entity] (the customer)** whose registered office is at **[Address]**

each a 'Party' and together the 'Parties'.

|                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| <b>Appointment</b>       | The Customer appoints Surgery Hero to provide the Contract Services in connection with Perioperative Health Coaching on the terms and subject to the conditions of this Agreement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Contract Services</b> | <p>Surgery Hero shall provide the Contract Services as set out in Schedule 2 in accordance with this Agreement and the schedules attached hereto.</p> <p>The Contract Services will be available to patients of the Customer undergoing intermediate or major grade surgery.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Term</b>              | This Agreement shall come into effect on the date of this Agreement and will continue in force for an initial term of <b>[1 year after the date the first patient is onboarded. Parties shall conduct a review at 11 months post first patient being onboarded to look at outcomes and renewal / expansion]</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Termination</b>       | <p>Both Parties agree that, subject to the terms below, this Agreement shall remain in force for the Term.</p> <p>Either Party shall be entitled to terminate this Agreement immediately by notice in writing to the other Party if the other Party:</p> <ul style="list-style-type: none"><li>i. commits any material or persistent breach of any of its obligations under this Agreement, and in the case of a breach capable of being remedied, fails to rectify such breach within 30 Business Days of being notified to do so by the other Party;</li><li>ii. becomes involved in an Insolvency Event or liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed under this Agreement);</li><li>iii. has anything similar to any of the foregoing under law of any jurisdiction occurring to it; ceases, or threatens to cease, to carry on its business or any substantial part of its business, other than a transfer of the business to</li></ul> |

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|                                     | <p>another entity within that Party's Group or any other form of intra-group restructure; or</p> <p>iv. is guilty of any fraudulent activity, dishonesty, serious misconduct or is convicted of a criminal offence or if either Party participates in any conduct which brings that Party into disrepute.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Fees</b>                         | The Customer shall pay Surgery Hero for the Contract Services as set out in Schedule 4 (the <b>Fees</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Payment</b>                      | An invoice for the fee in full as detailed in schedule 4 shall be issued and this is to be paid within 28 days of invoice being issued.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Intellectual Property Rights</b> | <p>Surgery Hero hereby grants to the Customer, for the duration of the Term only, a non-exclusive, royalty free, world-wide licence and all necessary permissions or consents required to use the pre-existing Intellectual Property Rights of Surgery Hero, as appropriate, during the Term to enable the Customer to benefit from the Contract Services.</p> <p>The Customer hereby grants to Surgery Hero and its group, for the duration of the Term only, a non-exclusive, royalty free, world-wide licence and all necessary permissions or consents required to use the pre-existing Intellectual Property Rights of the Customer, to include the information of the Customer's patients, as appropriate, during the Term to enable Surgery Hero to provide the Contract Services.</p> <p>Unless otherwise agreed in writing between the Parties on a case by case basis, any and all Intellectual Property Rights in any deliverables produced for, in connection with, on behalf of, or at the request of the Customer pursuant to this Agreement shall, on creation, immediately vest in Surgery Hero, and the Customer shall be granted a licence to such Intellectual Property Rights on the basis set out above.</p> |
| <b>Confidentiality</b>              | Both Parties will keep all confidential information (defined as information not in the public domain) shared between the Parties as confidential from the signing of this                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

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|                        | Agreement. For the avoidance of doubt, confidentiality obligations will survive termination of this Agreement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Data Protection</b> | <p>To the extent it acts as a Data Controller in relation to any Personal Data received by it under this Agreement, Surgery Hero and the Customer shall:</p> <ol style="list-style-type: none"> <li>comply at all times with the Data Protection Laws, the Privacy Regulations and the General Medical Council Guidelines on Confidentiality;</li> <li>use its reasonable endeavours to act in accordance, in all material respects, with the guidelines, guidance notes, codes of practice and similar documents issued from time to time by any regulator, authority or body responsible for administering Data Protection Legislation (<b>Data Protection Supervisory Authority</b>) and the General Medical Council; and</li> <li>maintain as complete and accurate all necessary registrations and notifications under all relevant legislation including, but not limited to, notifications required by the Data Protection Legislation.</li> <li>An agreed DPIA for the project shall be completed.</li> </ol> |
| <b>Liability</b>       | <p>The maximum aggregate liability of Surgery Hero in any 12 month period in relation to this Agreement (howsoever arising and including as a result of breach of contract, tort, including negligence, or statutory duty) shall be limited to 100% of the aggregate Fees paid or payable in the 12 months preceding any claim brought. The maximum aggregate liability of the Customer in any 12 month period in relation to this Agreement shall be limited to 100% of the aggregate Fees paid or payable in the 12 months preceding any claim brought.</p> <p>Neither Party shall be responsible for indirect, consequential or special losses.</p> <p>Notwithstanding any other provision of this Agreement, liability shall not be limited in anyway in respect of:</p> <ol style="list-style-type: none"> <li>death or personal injury caused by negligence; or</li> <li>fraud or fraudulent misrepresentation.</li> </ol>                                                                                      |
| <b>Notices</b>         | Any notice required to be given pursuant to this Agreement shall be in writing and shall be delivered personally, or by commercial courier, or by prepaid post (by airmail post if to an address outside the country of posting), or by email to the relevant Party at the address set out in                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

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|                      | <p>this Agreement or any other address as either Party notifies to the other from time to time.</p> <p>The relevant point of contact for Surgery Hero are as follows:</p> <ul style="list-style-type: none"> <li>• Name:</li> <li>• Email:</li> </ul> <p>The relevant point of contact for the Customer are as follows:</p> <ul style="list-style-type: none"> <li>• Name:</li> <li>• Email:</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>General</b>       | <p>The Parties intend this Agreement to be legally binding.</p> <p>Each Party shall at its own expense comply with all laws and regulations relating to its activities under this Agreement, as they may change from time to time, and with any conditions binding on it in any applicable licences, registrations, permits and approvals.</p> <p>The Parties declare that they each have the right, power and authority and have taken all action necessary to execute, deliver, exercise their rights, and perform their obligations under this Agreement.</p> <p>If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal, or unenforceable, that provision or part provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this agreement shall not be affected.</p> |
| <b>Governing law</b> | <p>This Agreement and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and Wales.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Jurisdiction</b>  | <p>The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Other</b>         | <p>The terms and conditions of Surgery Hero, as amended from time to time, shall apply to this Agreement.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

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

|                                                                  |                   |
|------------------------------------------------------------------|-------------------|
| Signed by<br>for and on behalf of<br><b>SURGERY HERO LIMITED</b> | .....<br>Director |
|------------------------------------------------------------------|-------------------|

Signed by  
for and on behalf of  
[the customer]

.....

## Schedule 1

### Definitions and Interpretation

The following capitalised terms used in this Agreement shall have the meanings as defined below:

|                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|---------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Agreement</b>                | means this agreement and the schedules attached hereto.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Business Day</b>             | means any day, other than a Saturday or a Sunday, other than any day which is a bank or public holiday in England or Northern Ireland during which banks in London or Belfast generally are open for business.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Confidential Information</b> | <p>means, "Information" means all information of whatever nature relating wholly or partly to the Transaction or the affairs of a Party, including but not limited to information which relates to technical or financial data, projections, business plans and strategies, business alliances, trade secrets, research, products, services, customers, suppliers, markets, software, hardware, developments, inventories, processes, designs, drawings, engineering, marketing and any other information pertaining to the operations or business of a Party, which:</p> <p>(a) is supplied by or on behalf of a Party to the other Party or its Representatives, whether orally, in writing or otherwise and either before or after the date of this Agreement;</p> <p>(b) is obtained by a Party or its Representatives in writing, orally or otherwise, through or following discussions with the Representatives of another Party; or</p> <p>(c) consists of any reports, analyses, compilations, studies or other documents prepared by, on behalf of or for a Party, and which contain, derive from or otherwise reflect any information in (a) and (b) above.</p> |
| <b>Contract Services</b>        | means the services provided by the as set out in Schedule 2 in accordance with this Agreement and the schedules attached hereto.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Data Controller</b>          | shall have the meaning given to it in the relevant Data Protection Laws.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Data Protection Laws</b>     | <p>means any applicable laws relating to the processing, privacy and/or use of Personal Data, as applicable to either Party or the Contract Services including:</p> <ul style="list-style-type: none"><li>i. the General Data Protection Regulation (Regulation (EU) 2016/679), as amended from time to time, and any applicable national implementing laws as amended from time to time, including but not limited to the UK GDPR which is part of UK law by virtue of the European Union (Withdrawal) Act 2018;</li><li>ii. the Data Protection Act 2018;</li><li>iii. any laws which implement such laws; and</li></ul> <p>any laws that replace, extend, re-enact, consolidate or amend any of the foregoing.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Force Majeure Event</b>      | means any event which affects the performance by a Party of its obligations under this Agreement and arises directly from, without limitation, acts of God, fire, flood, war, acts of terrorism, riot, civil commotion, governmental actions, labour disputes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

(save where such disputes involve personnel of the non-performing Party (including personnel of the sub-contractors) which, a prudent service provider or supplier could not have foreseen and prevented or avoided the consequences of.

**Insolvency Event**

means any event in which either Party:

- i. stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
- ii. is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the non-defaulting party reasonably believes that to be the case;
- iii. becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
- iv. becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;
- v. becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;
- vi. becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
- vii. has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- viii. has a resolution passed for its winding up;
- ix. has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
- x. is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
- xi. has a freezing order made against it; or
- xii. is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items.

**Intellectual Property Rights**

means any and all patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world,

**Personal Data**

shall have the meaning given to it in the relevant Data Protection Laws.

**Privacy Regulations**

means the Privacy and Electronic Communications (EC Directive) (Amendment) regulations 2003 (SI 2003/2426) (as amended).

|                       |                                                                                                                 |
|-----------------------|-----------------------------------------------------------------------------------------------------------------|
| <b>Service Levels</b> | means the service levels of the Contract Services to be provided under this Agreement as set out in Schedule 3. |
| <b>Term</b>           | means the Initial Term plus any Renewal Term.                                                                   |
| <b>VAT</b>            | means value added tax, as defined by the Value Added Tax Act 1994.                                              |

## **Schedule 2**

### **Contract Services**

#### **Launch Preparations**

Surgery Hero shall work collaboratively with the Customer's team to complete the necessary preparatory work ahead of the launch of the Surgery Hero solution. The preparatory work includes, but is not limited to, detailing deployment methodology, tailoring member and client support materials and training of relevant staff.

On completion of the launch preparations, the Surgery Hero software solution will be made available to the Customer and their respective members.

#### **Hosting Services**

Surgery Hero will provide the hosting services for the software solution. The Surgery Hero mobile application will be configured to capture patients' personal data, including health data and service engagement data points. A finalised list of data points to be captured will be decided in the launch preparations of this project. Surgery Hero and the Customer shall ensure the project complies with the UK-General Data Protection Regulation (UK-GDPR) and the Data Protection Act, taking all necessary steps to ensure adequate and effective protection of personal data collected.

#### **Health Coaching**

The Surgery Hero coaching services will be made available to the Customer's members to address modifiable risk factors for surgery through lifestyle modification and improved self-management.

#### **Support and Reporting**

Surgery Hero shall provide the technical support services for members and other end users as needed. This is in addition to coaching support members will receive. Surgery Hero will provide usage updates, performance reports and check-ins with the client against agreed targets.

#### **End Users**

Service will be available to [XXX] members of the Customer undergoing intermediate or major grade surgery at [the customer]

## **Schedule 3**

### **Service Levels**

Surgery Hero is the owner and provider of a healthcare platform which facilitates member behavioural change and improved self-care pre and post-surgery (the “**Platform**”). The Platform functionality includes but is not limited to; expert health coaching, behaviour change features, health and wellbeing metric tracking and member education,

The technology solution comprises of:

- i. the mobile applications through which members undergoing surgery may access the services.  
( the “**Technology Solution**”)

The Customer’s members accessing the Platform shall be the end users of the Technology Solution.

### **Service Objectives**

Surgery Hero has been commissioned by the Customer to provide an information technology service that complements the existing healthcare services.

Surgery Hero will develop and operate a technology solution that optimises both the physical and mental health and wellbeing of users pre and post-surgery. This solution will be available to patients undergoing intermediate or major grade surgery at [customer name]t, as determined by the Surgery Hero clinical team.

The technology will be available on iOS and Android mobile devices. The goal is to empower members with the knowledge, confidence and skills to drive better self-management. The desired knock-on effects are reduced unplanned cancellations, reduced length of hospital stay, fewer postoperative complications and an accelerated recovery.

The Customer and Surgery Hero will work together to promote the service and drive timely onboarding of patients onto the technology solution.

The Surgery Hero solution will;

- Facilitate the delivery of high quality perioperative care to members via;
  - Shared decision making,
  - Personalised health coaching,
  - Improved self management.
- Reducing morbidity related to surgery and accelerating member recovery.
- High uptake and engagement amongst the Customer’s patients.

### **Service functionality and specifications**

The technology solution provided by Surgery Hero will perform a range of functions that will enable patients undergoing elective surgery to optimise their health and wellbeing pre and post surgery. Users will have access to 1-to-1 health coaching support via scheduled video calls and asynchronous chat messaging.

The Technology Solution will be securely hosted, supported and maintained in the UK or any other territories chosen by Surgery Hero provided that Surgery Hero obtains written agreement from the Customer prior to moving the Technology Solution outside the EEA, unless such change is due to a change in laws.

### **Roles and Responsibilities**

The Customer with the support of Surgery Hero will be responsible for the recruitment of new members.

Surgery Hero will be responsible for the member onboarding and configuration of the perioperative programme for use by the member.

Surgery Hero will be responsible for training members in the use of the platform and driving member engagement.

The Surgery Hero coaching team will be responsible for driving positive behaviour change of modifiable risk factors via 1-to-1 communication with the members.

Surgery Hero will be responsible for providing timely customer support to members who experience issues related to the platform.

Any devices integrated with the Technology Solution, shall be used by members on the third party manufacturer's licence and warranty terms.

### **Technical Defect**

If the Customer notifies Surgery Hero of a defect preventing members from using the Technology Solution, Surgery Hero shall use all reasonable endeavours to remedy the defect as soon as possible (Service Levels and Escalation Processes below).

If the Technology Solution does not operate in a manner that achieves the functionality requirements set out in this Agreement in respect of more than 10% of members for a period exceeding one month, the Customer shall have the right to terminate this Agreement by giving written notice.

Surgery Hero shall be under no obligation under the warranties given in the contract to provide corrections in respect of defects or perform support services in respect of issues which result from any unauthorised modification or alteration to the Technology Solution or incorrect handling or use of the Technology Solution by the Customer or the End Users or any issues outside of Surgery Hero's control (such as Internet connectivity, device issues, etc).

Surgery Hero makes no other representations or warranties and excludes the same whether expressed, implied, statutory or otherwise especially as to quality or fitness of the Technology Solution, including any third party software or hardware, for any particular purpose.

### **Service Levels**

**Target Timelines** – Target go-live / date of first patient being onboarded [XXX].

**Target Uptime** – subject to the Exclusions, Surgery Hero shall aim to make the Technology Solution available 24 hours per day, 7 days per week, 365 days of the year at the below Service Availability levels.

**Service Availability** – 99%, measured on a monthly basis.

## Target Response Times

| Priority | Descriptions | Target Response Time | Escalation Point     |
|----------|--------------|----------------------|----------------------|
| 1        | Critical     | 2 hours              | Executive Management |
| 2        | High         | 12 hours             | Head of product      |
| 3        | Medium       | 2 working days       | Account Management   |
| 4        | Low          | 4 working days       | Account Management   |

## Severity Levels

**Critical** – an Incident preventing the Technology Solution from being accessed by > 10% of End Users.

**High** – an Incident preventing the Technology Solution from being accessed by 2% to 10% of End Users.

**Medium** – any and all other Incidents, preventing access to < 2% of the End Users or otherwise impacting functionality of the Technology Solution.

**Low** – a Customer request or any other non-technical customer service query.

## Escalation Process

Service Requests shall be dealt with by the nominated Escalation Point in the above table. If a Resolution is not reached within the expected time frame communicated by Surgery Hero the Senior Management Representatives shall meet to discuss and agree the necessary action.

## Exclusions

The following shall not be included in the calculation of Service Availability:

- i. Incidents that occur due to events that are not within the control of Surgery Hero. Surgery Hero shall not be responsible for any errors or malfunctions arising before data has entered or after data has left the Technology Solution, including but not limited to transmission errors and incorrect installation or setup of software not residing within the Technology Solution. Surgery Hero is not liable for any delay in response time in accessing the internet;
- ii. Incidents that arise as the result of a Customer or End User caused error, Customer systems or services, Customer suppliers, or which result from the Customer's failure to comply with any obligation or the Customers dependency;
- iii. a Force Majeure Event; or
- iv. Scheduled Downtime.

## Schedule 4

### Fees

The Fees for the Contract Services shall be:

[Customer name] contribution: [£]

☒ Surgery Hero Coaching programmes & full programme maintenance, configuration and customer service.

**[All Surgery Hero programmes must be utilised within 1 year of the first patient being onboarded. For the avoidance of any doubt, Surgery Hero programmes not utilised within 1 calendar year of the date of this agreement will not rollover into the following year.]**