

DATED

Framework Services Agreement

between

Health and Care Innovations Limited

and

[Name]

This agreement is dated []

Parties

1. Health and Care Innovations Limited, also known as HCI, incorporated and registered in England and Wales with number 8955041 whose registered office is at 5 The Rocklands, Chudleigh, Devon TQ13 0EA (**HCI**)
2. [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Customer**)

Background

- (A) HCI is in the business of providing the Available Services.
- (B) The Customer wishes to obtain and HCI wishes to provide the Available Services on the terms set out in this agreement.

Agreed terms

1. Interpretation

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

Applicable Laws: all applicable laws, statutes and regulations from time to time in force.

Available Services: the services which are available to be performed by HCI as notified by HCI to the Customer from time to time.

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

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Charges: the sums payable for the Works as set out in a Project Brief.

Consultancy: the service offered by HCI to assist the Customer in its service provision, or such other area as shall be set out in any Project Brief.

Content: HCI's existing videos, libraries of videos, library platforms, apps, software, any multi-media data type, including but not limited to film or video footage, videos, animations, graphics, drawings, websites, learning management systems, apps, software, photographic images, visual representations generated optically, electronically, digitally or by any other means or in any media or other material, together with any accompanying material.

Contract: the contract for the supply of Works between HCI and the Customer in accordance with this agreement and any Project Brief.

Control: the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and **controls, controlled** and the expression **change of control** shall be construed accordingly.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the Data Protection Legislation.

Customer Background IPRs: all Intellectual Property Rights in the Customer Materials.

Customer's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Works including any such items specified in a Project Brief.

Customer Materials: all materials, equipment and tools, videos, scripts, drawings, specifications, data visual representations, photographic images and any accompanying material, design components, modules, works and elements (such as application and tooling code, scripts, tools, subroutines, algorithms and plugins etc supplied by the Customer to HCI).

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Deliverables: any output of the Works to be provided by HCI to the Customer as specified in a Project Brief and any other documents, products and materials provided by HCI to the Customer in relation to the Works (excluding HCI's Equipment).

End Users: any person authorised on behalf of the Customer to access the Service.

Engagement: the engagement of HCI under any Project Brief to provide Consultancy or Implementation Support services.

Implementation Support: the service offered by HCI to enable the Customer to effectively deploy Content and New Content for maximum impact, such as patient experience, reduced demand and reduced cost, using guides, examples, case studies and face to face, telephone and video link support.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business 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 use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications 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.

Mandatory Policies: the Customer's business policies, as notified to HCI from time to time.

New Content: New Content which is to be produced (where applicable) for the Customer in accordance with the Project Brief such as (but not limited to) film or video footage, videos, animations, graphics, drawings, websites, learning

management systems, apps, software, photographic images, other web based Platform, visual representations generated optically, electronically, digitally or by any other means or in any media or other material, together with any accompanying material, or the creation of new content for the Customer or a customer or client of the Customer, whether or not that content is to be assigned absolutely to the Customer or provided to them by way of licence.

Platform: a video library, any other web based Platform, or an application (app).

Project Brief: the project plan, agreed in accordance with clause 3, describing the services to be provided by HCI and the timetable for their performance.

Reference Charges: the standard charges for the Available Services or the framework for calculating them as set out on HCI's website or as provided separately.

Supplier's Equipment: any equipment, including tools, systems, cabling or facilities, provided by HCI to the Customer and used directly or indirectly in the supply of the Works, including any such items specified in a Project Brief but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Customer.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Use: the way in which the Content is deployed to the End User, such deployment to include copying, hosting, electronically storing, caching, displaying, communicating, transmitting, making available and distributing the Content to End Users.

VAT: value added tax or any equivalent tax chargeable in the UK or elsewhere.

Video Library: a suite of videos providing the Content as described (where applicable) in the Project Brief, whether provided by way of a website, other web-based Platform or an application (app).

Website: <http://www.hci.digital>

Works: the Available Services which are provided by HCI under a Project Brief, including services which are incidental or ancillary to the Works and the Content and New Content.

- 1.2. Clause and paragraph headings shall not affect the interpretation of this agreement.
- 1.3. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.4. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
- 1.7. This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.8. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10. A reference to **writing** or **written** includes email.
- 1.11. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12. A reference to **this agreement** or to any other agreement or document is a reference to this agreement or such other agreement or document, in each case as varied or novated from time to time.
- 1.13. Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Commencement and duration

- 2.1. This agreement shall commence on the date when it has been signed by all the parties and shall continue, unless terminated earlier in accordance with clause 29 (Termination), until either party gives to the other party written notice to terminate.
- 2.2. If there are no uncompleted Statements of Work as at the date notice to terminate is served under clause 2.1 such notice shall terminate this agreement with immediate effect.
- 2.3. The parties shall not enter into any further Statements of Work after the date on which notice to terminate is served under clause 2.1.

2.4. The Customer may procure any of the Available Services by agreeing a Project Brief with HCI pursuant to clause 3 (Project Briefs and Works).

2.5. HCI shall provide the Works from the date specified in the relevant Project Brief.

3. Project Briefs and Works

3.1. Each Project Brief shall be agreed in the following manner:

- (a) the Customer shall ask HCI to provide any or all of the Available Services and provide HCI with as much information as HCI reasonably requests in order to prepare a draft Project Brief for the Available Services requested;
- (b) following receipt of the information requested from the Customer HCI shall, as soon as reasonably practicable either:
 - (i) inform the Customer that it declines to provide the requested Available Services; or
 - (ii) provide the Customer with a draft Project Brief.
- (c) if HCI provides the Customer with a draft Project Brief pursuant to clause 3.1(b)(ii), HCI and the Customer shall discuss and agree that draft Project Brief; and
- (d) both parties shall sign the draft Project Brief when it is agreed.

3.2. Unless otherwise agreed, the Charges shall be calculated in accordance with the Reference Charges.

3.3. Once a Project Brief has been agreed and signed in accordance with clause 3.1(d), no amendment shall be made to it except in accordance with clause 8 (Change control) or clause 30 (Variation).

3.4. Each Project Brief shall be part of this agreement and shall not form a separate contract to it.

4. Basis of contract

4.1. Any samples, drawings, descriptive matter or advertising issued by HCI, and any descriptions or illustrations contained in HCI's catalogues or brochures or displayed on the Website, are issued or published for the sole purpose of giving an approximate idea of the services described in them. They shall not form part of any contract between the parties nor have any contractual force.

4.2. The terms set out in this agreement apply to the contract between the parties to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

- 4.3. Any quotation given by HCI shall not constitute an offer and is only valid for a period of 6 months from its date of issue.

5. Supplier's responsibilities

- 5.1. HCI shall use reasonable endeavours to manage and complete the Works, and deliver the Deliverables to the Customer, in accordance with a Project Brief in all material respects.
- 5.2. HCI shall use reasonable endeavours to meet any performance dates specified in a Project Brief but any such dates shall be estimates only and time for performance by HCI shall not be of the essence of this agreement.
- 5.3. HCI shall appoint a manager in respect of the Works to be performed under each Project Brief, such person as identified in the Project Brief. That person shall have authority to contractually bind HCI on all matters relating to the relevant Works (including by signing Change Orders). HCI may replace that person from time to time where reasonably necessary in the interests of HCI's business.

6. Customer's obligations

6.1. The Customer shall:

- (a) co-operate with HCI in all matters relating to the Works;
- (b) appoint a manager in respect of the Works to be performed under each Project Brief, such person as identified in the Project Brief. That person shall have authority to contractually bind the Customer on all matters relating to the relevant Works (including by signing Change Orders);
- (c) provide, for HCI, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as required by HCI including any such access as is specified in a Project Brief;
- (d) provide to HCI in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or a third party) required under a Project Brief or otherwise reasonably required by HCI in connection with the Works and ensure that they are accurate and complete;
- (e) inform HCI of all health and safety and security requirements that apply at any of the Customer's premises.
- (f) ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Works and conforms to all relevant United Kingdom standards or requirements.
- (g) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable HCI to provide the Works,

including in relation to the installation of HCI's Equipment, the use of all Customer Materials and the use of the Customer's Equipment, in all cases before the date on which the Works are to start; and

- (h) comply with any additional responsibilities of the Customer as set out in the relevant Project Brief.

- 6.2.** If HCI's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, HCI shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

7. Non-solicitation and employment

- 7.1.** The Customer shall not, without the prior written consent of HCI, at any time from the date on which any Works commence to the expiry of 24 months after the completion of such Works, solicit or entice away from HCI or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of HCI in the provision of such Works.

- 7.2.** Any consent given by HCI in accordance with clause **7.1** shall be subject to the Customer paying to HCI a sum equivalent to 20% of the then current annual remuneration of HCI's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

8. Change control

Either party may propose changes to the scope or execution of the Works but no proposed changes shall come into effect until the amended Project Brief has been signed by both parties.

9. New Content Rights

- 9.1.** These Clauses 9 to 14 apply where the Customer orders New Content as detailed in the Project Brief.
- 9.2.** HCI will expressly state within the Project Brief whether Intellectual Property Rights in the New Content will be granted to the Customer by way of an assignment or a licence.
- 9.3.** In default of any express agreement HCI will provide the New Content to the Customer by way of licence.

10. New Content Customer Background IPRs

The Customer grants HCI a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Background IPRs for the purpose of providing the Works to the Customer in accordance with the Contract and for the purposes of HCI using the New Content for future use as Content.

11. New Content Assignment

11.1. If the Project Brief expressly states that the New Content is to be granted to the Customer by way of assignment, then this Clause 11 shall apply.

11.2. Upon payment of all fees and charges HCI grants and assigns to the Customer absolutely:-

- (a) The entire copyright throughout the world in all media whether now known or hereafter developed for the full period of copyright and all renewals, revivals, reversions and extensions thereof (and thereafter, in so far as it is able, in perpetuity) including so called rental and lending rights and, to the extent relevant, by way of present assignment of future copyright; and
- (b) all other rights whatsoever including all consents under Part II of the Copyright, Designs and Patents Act 1988 or any statutory modification or re-enactment thereof for the time being in force (CDPA) in the Products, and the Customer hereby agrees to procure the giving of similar consents from all persons engaged or employed by HCI and whose performances or intellectual property rights are incorporated in the New Content, to enable HCI to make the fullest use of the New Content without restriction or payment of further fees.

12. New Content Licence

12.1. Where the Customer has ordered New Content and HCI expressly grants a licence to use the New Content as is detailed in the Project Brief, HCI hereby grants to the Customer a non-exclusive, non-transferable, royalty-free licence to Use the New Content provided for in the Project Brief in accordance with this agreement for the purpose of providing the Service to End Users including, without limitation, the non-exclusive right to copy, host, electronically store, cache, display, communicate, transmit, make available and distribute the New Content to End Users.

12.2. HCI and the Customer agree that:-

- (a) All Intellectual Property Rights in the Materials and the New Content are the property of HCI;
- (b) Nothing in this agreement will confer on the Customer any right of ownership in the Materials and the New Content.

12.3. HCI shall be entitled to digitise, encode, aggregate, compress, index, technically manipulate and otherwise change or modify the New Content in accordance with this agreement, to the extent technically necessary to exercise the rights granted under this Clause 12.

13. New Content Delivery

13.1. This clause applies where HCI agrees to provide the Customer with New Content under the Project Brief.

13.2. Where appropriate or necessary to allow HCI to produce the New Content the Customer agrees that it shall;

- (a) Provide HCI with reasonable access to its premises at no expense to HCI inclusive of the cost of space, heat, light and power;
- (b) Inform all employees, agents and guests at its premises of the proposed filming and obtain relevant and sufficient release forms fully signed by all such persons;
- (c) Where necessary and agreed give HCI access to the Customer's personnel and instruct such personnel to assist and support HCI wherever possible, to comply with HCI's reasonable requests in making the New Content, and in particular to provide such information as HCI may request; and
- (d) Provide access to digital information, company graphics and website for use in the New Content.

13.3. Where agreed in the Project Brief the New Content shall be delivered to the Customer in the form of a MP4, or similar, file to keep and use forever without limitation.

13.4. The customer will respond to all requests from HCI in the course of production of New Content within a reasonable time scale, and no later than three months from the request. This will include for example any sign offs to Content. Failure to comply with this clause may at the discretion of HCI;

- (a) Be a material breach of this contract; or
- (b) Render all invoices due under this contract with immediate effect.

14. New Content Warranties

14.1. The Customer hereby warrants, represents and undertakes to HCI that;

- (a) The Customer is fully entitled to enter into and to perform this agreement;
- (b) The New Content will be wholly original to HCI and will not infringe the copyright or any other rights of any third party, including rights to privacy;

- (c) The New Content will not (including by way of inflection or gesture or otherwise) contain any defamatory matter or breach any contract or duty of confidence nor bring HCI into disrepute or subject it to criminal or civil proceedings, and does not incorporate any matter which constitutes contempt of court or breach of any provision of law;
- (d) The Customer shall not make any commercial exploitation of any to the New Content except as permitted under this agreement;
- (e) The Customer shall indemnify HCI and keep HCI fully and effectively indemnified against all actions, costs, demands, losses, claims and expenses of whatsoever kind or arising from any actual or threatened breach or non-performance of any of the warranties, representations, undertakings or obligations on the Customer's part contained in this agreement;
- (f) The Customer shall promptly notify HCI of a claim within 7 days of receiving notice of it.

14.2. Where the Customer requests HCI display the Customer's logo on Content or New Content (**Rebadged Content**) under a Project Brief, the Customer grants HCI a non-exclusive, non-transferable, royalty-free licence to use the logo, whether registered as a trademark or not, for the purpose of providing the Works to the Customer (and others where relevant) including, without limitation, the non-exclusive right to copy, host, electronically store, cache, display, communicate, transmit, make available and distribute the logo as part of the New Content.

14.3. Where the Customer orders Rebadged Content under a Project Brief, the Customer may use the Rebadged Content on its own website and for non-commercial purposes but may not make any other use of the Rebadged Content nor authorise or permit any other party to make use of it in any way, without the agreement of HCI in writing.

14.4. If the Customer is in breach of clause 14.3 it shall indemnify the HCI against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by HCI arising from the unauthorised use of the Rebadged Content.

15. Content Rights

15.1. These Clauses 15 to 16 apply where the Customer orders Content as detailed in the Project Brief.

15.2. HCI will provide the Content to the Customer by way of licence.

16. Content Licence

16.1. Where the Customer has ordered Content HCI expressly grants a licence to the Customer to use the Content.

16.2. Upon payment of all fees and charges; HCI will grant to the Customer a non-exclusive, non-transferable, royalty-free licence to Use the Content during the term provided for in the Project Brief in accordance with this agreement for the purpose of providing the Service to End Users including, without limitation, the non-exclusive right to copy, host, electronically store, cache, display, communicate, transmit, make available and distribute the Content to End Users.

16.3. HCI and the Customer agree that:-

- (a) All Intellectual Property Rights in the Materials and the Content are the property of HCI;
- (b) Nothing in this agreement will confer on the Customer any right of ownership in the Materials and the Content.
- (c) HCI shall be entitled to digitise, encode, aggregate, compress, index, technically manipulate and otherwise change or modify the Content solely for the purposes of making the Content available on the Platform in accordance with this agreement, to the extent technically necessary to exercise the rights granted under this Clause 16.

17. Content Delivery

17.1. Where HCI agrees to provide the Customer with Content under the Project Brief:

- (a) The parties agree to the Works as stated in the Project Brief.
- (b) The Parties may agree the Works from time to time by agreement in writing.
- (c) HCI shall commence delivery of the Content no later than the Launch Date as provided for in the Project Brief.
- (d) HCI shall, by no later than the Launch Date and solely for the purpose of delivering, identifying and managing the Content to and on the Platform provide the Customer with the rights to and means of:-
 - (i) Accessing the Platform in accordance with the Project Brief;
 - (ii) Using the Platform in accordance with the Project Brief;

And throughout the Term, maintain suitable facilities for the pick-up and transmission of the Content.

17.2. Upon serving 24 hours' advance notice to the Customer, where reasonably practicable, HCI may, from time to time, in its reasonable discretion either

temporarily suspend or permanently withdraw delivery of or access to any Content by the Customer.

17.3. The Customer shall, as soon as reasonably practicable, following a request from HCI, and in any event within 24 hours of such request, remove any specified Content from the Platform, if HCI considers that, in its good faith judgment:

- (a) The Customer's distribution of the Content might infringe upon the rights (including but not limited to the Intellectual Property Rights) of any third party (or HCI) or in the event of any allegation by a third party of infringement of such rights or if HCI has reason to believe that an allegation of infringement may be made by a third party as a result of such distribution;
- (b) It no longer has, or it considers that it may no longer have all requisite rights to permit the Customer distribution of the Content in accordance with this agreement;
- (c) HCI's distribution of the Content, in whole or in part, might violate any law, regulation, court order or other ruling of any governmental, judiciary or regulatory body;
- (d) Medical advice provided for within the Content is changed, no longer relevant or generally not advised (save that nothing within this clause shall prejudice the limitation of liability set out in clause 23);
- (e) There is any other bona fide legal or commercial reason.

17.4. In the event that HCI either suspends or withdraws delivery of, or access to, any Content, the parties shall negotiate, in good faith, the provision by HCI of replacement Content.

17.5. The Customer may, subject to obtaining the prior consent of HCI, where it is practicable to obtain such consent, cease making the Content available to End Users (**Takedown**), either in whole or in part where either party becomes aware that the Content:

- (a) Violates the Intellectual Property Rights or any other rights of any third party or HCI;
- (b) Violates any applicable law, regulation, code of practice or is subject to an injunction or other action by a third party;
- (c) Violates the Customer's policies; or

- (d) The placement of the Content is impacting the integrity or technical performance of any service technology.

17.6. Where it is not practicable for the Customer to obtain consent from HCI before a Takedown under clause 17.5, such action can be taken unilaterally by the Customer provided that such decision can be reasonably justified under the provisions of this clause.

17.7. Where the Customer conducts a Takedown, it shall immediately notify HCI, in writing, of the Takedown and the reasons behind it.

18. Functionality

18.1 The Customer shall not be entitled to edit, add to, delete from, alter, modify or, in any other way, change the Content (or any part of it) as delivered to it by HCI nor shall the Customer overlay or frame any content over the Content.

18.2 Without prejudice to the generality of this agreement the Customer shall not alter, remove or obscure any trade mark, copyright or other proprietary rights notice incorporated in the Content. The customer agrees to follow the reasonable instructions of HCI when accessing, operating, or otherwise dealing with Platforms provided by HCI.

19. Platform Security and IPR

19.1. The Customer shall, at all times, maintain in force a range of security measures to ensure the Content is protected using robust, state-of-the-art measures to prevent the unauthorised access to, and transmission, copying, modification and/or distribution of, the Content.

19.2. Where the Project Brief provides that HCI will provide a Platform for the Customer, that Platform may display Content, New Content or the Customer's own content.

19.3. The Intellectual Property Rights in the material displayed on the Platform in respect of Content and New Content remain as set out in this Agreement.

19.4. The Customer undertakes not to post inappropriate content on any Platform.

19.5. The Customer agrees to follow the reasonable instructions of HCI when accessing, operating, or otherwise dealing with Platforms.

20. Consultancy and Implementation Support

- 20.1.** Where HCI provides Consultancy or Implementation Support under a Project Brief, the provisions of this clause shall apply, in addition to the terms set out in this agreement.
- 20.2.** HCI shall provide the Consultancy or Implementation Support services, including any Deliverables, with all due care, skill and ability.
- 20.3.** The Customer shall reimburse all reasonable expenses properly and necessarily incurred by HCI in the course of its Engagement, subject to evidence of payment.
- 20.4.** The relationship of HCI to the Customer will be that of independent contractor and nothing in this agreement shall render them an employee, worker, agent or partner of the Customer.

21. Charges and payment

- 21.1.** The Charges for the Works are as set out in the Project Brief.
- 21.2.** HCI reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index (or such index as is reasonably comparable) in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index or such standards as are reasonably comparable.
- 21.3.** HCI shall invoice the Customer and the Customer shall pay each invoice submitted by HCI:
- (a) within 21 days of the date of the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by HCI, and
 - (c) time for payment shall be of the essence of the Contract.
- 21.4.** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by HCI to the Customer, the Customer shall, on receipt of a valid VAT invoice from HCI, pay to HCI such additional amounts in respect of VAT as are chargeable on the supply of the Works at the same time as payment is due for the supply of the Works.
- 21.5.** If the Customer fails to make a payment due to HCI under the Contract by the due date, then, without limiting HCI's remedies under clause 26, the Customer shall pay

interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 21.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

21.6. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

22. Data protection and data processing

22.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 21 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this clause 22, Applicable Laws means (for so long as and to the extent that they apply to HCI) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means any Data Protection Legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation.

22.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and HCI is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

22.3. Without prejudice to the generality of clause 22.1 the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to HCI for the duration and purposes of the Contract.

22.4. Without prejudice to the generality of clause 22.1 HCI shall, in relation to any Personal Data processed in connection with the performance by HCI of its obligations under the Contract:

- (a) process that Personal Data only on the written instructions of the Customer unless HCI is required by Applicable Laws to otherwise process that Personal Data. Where HCI is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, HCI shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit HCI from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, 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 (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or HCI has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
 - (iii) HCI complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) HCI complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) assist the Customer, 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 Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data breach;
- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 22.

22.5. The Customer does not consent to HCI appointing any third party processor of Personal Data under the Contract unless express written authorisation is provided

by HCI to the Customer in which event HCI shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 22.

22.6. Either party may, at any time on not less than 30 days' notice, revise this clause 22 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

23. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

23.1. HCI has obtained public and products liability insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover HCI has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

23.2. HCI will provide the Works with due care, skill and diligence. All the content and material available for purchase to the Customer has been prepared by healthcare professionals and HCI aims to ensure that the information is consistent with current knowledge, understanding and practice amongst healthcare professionals and within guidelines for legislation and practices around social inclusion.

23.3. HCI does not warrant or guarantee and will not accept liability for the applicability, accuracy or fitness of the Works for any particular purpose.

23.4. HCIs does not guarantee that the Works will be free from errors or omissions. The use of or reliance on any Works is entirely at the Customer's own risk and it remains entirely the responsibility of the Customer to check that such Works continue to be consistent with the Customers own appropriate policies, are safe, suitable and fit for the purpose and audience that the Customer intends to use it with.

23.5. To the fullest extent permitted by law HCI and third parties that are from time to time connected to HCI expressly exclude:-

- (a) All conditions, warranties and other terms which might otherwise be implied by statute, common law or the law of equity;
- (b) Any liability for any direct, indirect or consequential loss or damage (including any loss or damage of any kind, however arising and whether caused by tort (including negligence), breach of contract or otherwise even if foreseeable) incurred by the Customer in connection with HCI's Works, any websites linked to them and any content posted on them.

23.6. Notwithstanding any other term in this agreement HCI shall not be liable for any damages, costs or losses arising as a result of modifications made to Works by the Customer.

23.7. The customer shall be solely responsible for any claims made for damages, costs, losses, personal injury made against any party as a result of modifications as described in clause 23.6 above. Further, the Customer agrees to indemnify the supplier against any direct claims made against them by the end user in respect of modifications as described in clause 23.6.

23.8. The Customer shall be solely responsible for any liability arising in relation to the Content they select from the Video Library irrespective of who has prepared the Content but especially where the Content has been created by anybody other than the Supplier. It is for the Customer to assure themselves that they are happy with the said Content and what they release to their Patients.

23.9. The Customer agrees to indemnify, defend and hold HCI and its affiliates harmless from and against any and all claims, liability, losses, damages, costs and expenses incurred by HCI as a result of or in connection with any breach or alleged breach by the Customer or anyone acting on behalf of the Customer of any terms of this agreement.

23.10. Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

23.11. HCI has given commitments as to compliance of the Works with relevant specifications. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

23.12. This clause 23 shall survive termination of the Contract.

24. Compliance with laws and policies

24.1. In performing its obligations under this agreement, HCI shall comply with:

- (a) the Applicable Laws; and
- (b) the Mandatory Policies, provided that the Customer shall give HCI not less than two months' notice of any change to such policies.

24.2. Changes to the Works required as a result of changes to the Applicable Laws or the Mandatory Policies shall be agreed via the change control procedure set out in clause **8** (Change control).

25. Confidentiality

25.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party except as permitted by clause **25.2(a)**.

25.2. Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause **25**; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

25.3. No party shall use the 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.

26. Termination

26.1. Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party one month's written notice.

26.2. Without affecting any other right or remedy available to it, HCI may suspend the supply of services under the Contract or any other contract between the Customer and HCI if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause (b) to clause (d), or HCI reasonably believes that the Customer is about to become subject to any of them.

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

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 28 days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement

with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

27. Consequences of termination

27.1. On termination of the Contract:

- (a) the Customer shall immediately pay to HCI all of HCI's outstanding unpaid invoices and interest and, in respect of services supplied but for which no invoice has been submitted, HCI shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) any licence granted to the Customer by HCI under this Agreement shall automatically terminate.
- (c) the Customer shall return any and all of HCI's materials, equipment, documents and other property of HCI and any Deliverables which have not been fully paid for. If the Customer fails to do so, then HCI may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- (d) Both parties must immediately return or deliver to the other all documents and other material, including disks and tapes in its possession or under its control which contain Confidential Information of the other or, at the direction of the other party, destroy such documents or other material and certify that the destruction has taken place.
- (e) The Customer shall, at the election of HCI, delete or return to HCI all Content and cease distribution of the Content.
- (f) If the Customer fails to delete the Content and fails to cease distribution of the Content HCI will apply to the Court for an Injunction to force HCI to cease distribution. The Customer hereby agrees to indemnify HCI for all costs of the said injunctive proceedings and will make payment within 14 days of receiving the relevant associated invoices.

27.2. Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination

or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

27.3. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

28. Force majeure

28.1. Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) real or anticipated epidemic or pandemic, including any legislation or government guidelines made in respect of public safety as a consequence;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident; and
- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); and
- (h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
- (i) interruption or failure of utility service.

28.2. Provided it has complied with clause **28.4**, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

28.3. The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

28.4. The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than seven days from its start, notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

28.5. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 26 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving four weeks' written notice to the Affected Party.

29. Assignment and other dealings

29.1. The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

29.2. HCI may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under this agreement, provided that HCI gives prior written notice of such dealing to the Customer.

30. Variation

Subject to clause **8** (Change control), no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

31. Waiver

31.1. A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

31.2. 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. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

31.3. A party that waives a right or remedy provided under this agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

32. Rights and remedies

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

33. Severance

33.1. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

33.2. If any provision or part-provision of this agreement is deemed deleted under clause **33.1** the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

34. Entire agreement

34.1. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

34.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

35. No partnership or agency

35.1. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

35.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

36. Third party rights

36.1. Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

36.2. The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.

37. Notices

37.1. Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the address specified in the Project Brief.

37.2. Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting; or
- (c) if sent if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause **37.2(c)**, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

37.3. This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

38. Counterparts

38.1. This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

38.2. Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) by (a) email (in PDF, JPEG or other agreed format) or (b) by document signature software shall take effect as the transmission of an executed "wet-ink" counterpart of this agreement. If either method of transmission is adopted, without prejudice to the validity of the agreement thus made, each party shall on request provide the other with the "wet ink" hard copy original of their counterpart.

38.3. No counterpart shall be effective until each party has executed at least one counterpart.

39. Multi-tiered dispute resolution procedure

39.1. If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Customer and HCI shall attempt in good faith to resolve the Dispute;
- (b) if the Customer and HCI are for any reason unable to resolve the Dispute within 20 days, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 20 days after the date of the ADR notice.

No party may commence any court proceedings under clause 41 in relation to the whole or part of the Dispute until 20 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

39.2. If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 30 days, or the mediation terminates before the expiration of the said period of 30 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 41.

40. Governing law

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

41. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

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

Signed by [NAME] for and on behalf of Heath and Care Innovations Limited

Director

Signed by [NAME OF DIRECTOR] for and on behalf of [NAME OF CUSTOMER]

Director

DATED

SOFTWARE LICENCE AGREEMENT

between

Health and Care Innovations Limited

and

[NAME]

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This licence is dated [DATE]

Parties

- (1) Health and Care Innovations Limited, also known as HCI, incorporated and registered in England and Wales with number 8955041 whose registered office is at 5 The Rocklands, Chudleigh, Devon TQ13 0EA (**HCI**)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Customer**)

Background

HCI is either the entire legal and beneficial owner and licensor or holds a Licence which provides them with the legal capacity to sub licence the software products listed in **Schedule 1** and is willing to license the Customer to use these products.

Agreed terms

1. Interpretation

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

Acceptance Date: the date on which the Customer is deemed to have accepted the Software, where applicable.

Fee: the licence fee payable by the Customer to HCI under clause **4**.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, trade marks 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.

Maintenance Agreement: the form of maintenance agreement for the Software as attached to this licence as [ANNEX B].

Maintenance Release: release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.

Mandatory Policies: HCI's business policies attached in Schedule 3, as amended by notification to the Customer from time to time.

New Content: any new Software, materials, content, code, videos, libraries of videos, multimedia of any type including but not limited to film or video footage, photographic image, animations, graphics, drawings, website, learning management systems, app, other web based platform or visual representations generated optically, electronically, digitally or by any other means or in any media or other material, together with accompanying material created, made or introduced by the Customer and input into the Software.

New Version: any new version of the Software which from time to time is publicly marketed and offered for purchase by HCI in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

Open-Source Software: open-source software as defined by the Open Source Initiative (<http://opensource.org>) or the Free Software Foundation (<http://www.fsf.org>).

Site: the premises from which the Customer carries out its business as notified to HCI in writing from time to time.

Software: the computer programs listed in **Schedule 1** and any Maintenance Release which is acquired by the Customer during the subsistence of this licence.

Source Code Materials: the source code of the Software, and all technical information and documentation required to enable the Customer to modify and operate it.

Specification: the document detailing the specification of the Software which forms ANNEX A.

Third-Party Additional Terms: the additional terms and conditions set out in Annex D relating to Third-Party Software.

Third-Party Software: the third-party software identified in Annex D.

1.2. Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3. Unless the context otherwise requires:

- (a) words in the singular shall include the plural and in the plural shall include the singular;
- (b) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time ;
- (c) a reference to one gender shall include a reference to the other genders; and
- (d) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

- 1.4. In the case of conflict or ambiguity between any provision contained in the body of this licence and any provision contained in the schedules or appendices, the provision in the body of this licence shall take precedence.
- 1.5. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.6. References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.7. The Schedules and Annexes form part of this licence and shall have effect as if set out in full in the body of this licence. Any reference to this licence includes the Schedules and Annexes.

2. Licence

- 2.1. Upon payment of the Fee paid by the Customer to HCI, HCI grants to the Customer a non-exclusive licence for [a term of [NUMBER] years **OR** the full period of the copyright in the Software commencing on and including [the date of this licence **OR** the Acceptance Date]] to use the Software.

- 2.2. In relation to scope of use:

- (a) for the purposes of clause 2.1, use of the Software shall be restricted to use of the Software in object code form for the purpose of processing the Customer's data for the normal business purposes of the Customer.
- (b) the Customer may not use the Software other than as specified in clause 2.1 without the prior written consent of HCI, and the Customer acknowledges that additional fees may be payable on any change of use approved by HCI.
- (c) the Customer may make as many backup copies of the Software as may be necessary for its lawful use. The Customer shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying.
- (d) except as expressly stated in this clause 2, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer, unless HCI is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Customer shall request HCI to carry out such action or to provide such information (and shall meet HCI's reasonable costs in providing that information) before undertaking any such reduction.

- (e) [the Third-Party Software shall be deemed to be incorporated within the Software for the purposes of this licence (except where expressly provided to the contrary) and use of the Third-Party Software shall be subject to the Third-Party Additional Terms.]
- (f) [the Customer shall indemnify and hold HCI harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach of any Third-Party Additional Terms howsoever arising.]
- (g) [HCI may treat the Customer's breach of any Third-Party Additional Terms as a breach of this licence.]

2.3. The Customer may not use any such information provided by HCI or obtained by the Customer during any such reduction permitted under clause 2.2(d) to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.

2.4. The Customer shall not:

- (a) assign or novate the benefit or burden of this licence in whole or in part;
- (b) allow the Software to become the subject of any charge, lien or encumbrance; and
- (c) deal in any other manner with any or all of its rights and obligations under this agreement,

without the prior written consent of HCI, such consent not to be unreasonably withheld or delayed.

2.5. The Customer shall not sub-licence the benefit or burden of this licence in whole or in part without ensuring the end user to which they sub licence:-

- (a) Agrees to abide by the terms of an End User Licence Agreement in terms as is provided at Schedule 2; and
- (b) Agrees to an End User Data Protection Notice in terms as is provide at Schedule 2.

2.6. HCI may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this licence, provided it gives written notice to the Customer.

2.7. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

2.8. Notwithstanding clause 5, a party assigning any or all of its rights under this agreement may disclose to a proposed assignee any information in its possession that relates to this agreement or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 2.8 shall be made until notice of the identity of the proposed assignee has been given to the other party.

2.9. The Customer shall:

- (a) keep a complete and accurate record of the Customer's copying and disclosure of the Software and its users, and produce such record to HCI on request from time to time;
- (b) notify HCI as soon as it becomes aware of any unauthorized use of the Software by any person;
- (c) pay, for broadening the scope of the licences granted under this licence to cover the unauthorized use, an amount equal to the fees which HCI would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for in clause 4.3, from such date to the date of payment.

2.10. The Customer shall permit HCI to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Customer is complying with the terms of this licence, provided that HCI provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

3. Maintenance releases

HCI will provide the Customer with all Maintenance Releases generally made available to its customers. HCI warrants that no Maintenance Release will adversely affect the then existing facilities or functions of the Software. The Customer shall install all Maintenance Releases as soon as reasonably practicable after receipt.

4. Fees

4.1. The Customer shall pay to HCI the Fees as per Schedule 3.

4.2. All sums payable under this licence are exclusive of VAT or any relevant local sales taxes, for which the Customer shall be responsible.

4.3. If the Customer fails to make any payment due to HCI under this agreement by the due date for payment, then, without limiting HCI's remedies under clause 11, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

5. Confidentiality and publicity

5.1. Each party shall, during the term of this licence and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this licence) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory

authority) any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this licence, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.

- 5.2. No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

6. Export

- 6.1. Neither party shall export, directly or indirectly, any technical data acquired from the other party under this agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

- 6.2. Each party undertakes:

- (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
- (b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

7. Supplier's warranties

WARNING: You are strongly advised to read the drafting note dealing with this clause before use.

- 7.1. HCI warrants that the Software will conform in all material respects to the Specification for a period of [90 days] from the date of this licence (**Warranty Period**). If, within the Warranty Period, the Customer notifies HCI in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects to the Specification, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it outside the terms of this licence for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by HCI, or it has not been loaded onto

Supplier-specified or suitably configured equipment, HCI shall, at HCI's option, do one of the following:

- (a) repair the Software;
- (b) replace the Software; or
- (c) terminate this licence immediately by notice in writing to the Customer and refund any of the Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,

provided the Customer provides all the information that may be necessary to assist HCI in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable HCI to re-create the defect or fault.

7.2. HCI does not warrant that the use of the Software will be uninterrupted or error-free.

7.3. The Customer acknowledges that any Open-Source Software provided by HCI is provided "as is" and expressly subject to the disclaimer in clause 7.4.

7.4. All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

8. New Content

8.1. The Customer hereby warrants, represents and undertakes to HCI that;

- (a) The New Content will be wholly original to HCI and will not infringe the copyright or any other rights of any third party, including rights to privacy;
- (b) The New Content will not (including by way of inflection or gesture or otherwise) contain any defamatory matter or breach any contract or duty of confidence nor bring HCI into disrepute or subject it to criminal or civil proceedings, and does not incorporate any matter which constitutes contempt of court or breach of any provision of law;
- (c) The Customer shall not make any commercial exploitation of any to the New Content except as permitted under this agreement;
- (d) The Customer shall indemnify HCI and keep HCI fully and effectively indemnified against all actions, costs, demands, losses, claims and expenses of whatsoever kind or arising from any actual or threatened breach or non-performance of any of the warranties, representations, undertakings or obligations on the Customer's part contained in this agreement;
- (e) The Customer shall promptly notify HCI of a claim within 7 days of receiving notice of it.

- 8.2.** The Customer accepts liability for all New Content introduced to the Platform whether by the Customer's employees, agents, service providers or anyone associated with the Customer by their instruction.
- 8.3.** Upon serving 24 hours' advance notice to the Customer, where reasonably practicable, HCI may, from time to time, in its reasonable discretion either temporarily suspend or permanently withdraw delivery of or access to any ability to create New Content by the Customer.
- 8.4.** If the Customer is in breach of this Clause 8 it shall indemnify HCI against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by HCI arising from any unauthorised use.
- 8.5.** The Customer shall, as soon as reasonably practicable, following a request from HCI, and in any event within 24 hours of such request, remove any specified Content from the Platform, if HCI considers that, in its good faith judgment:
- (a) The Customer's distribution of the Content might infringe upon the rights (including but not limited to the Intellectual Property Rights) of any third party (or HCI) or in the event of any allegation by a third party of infringement of such rights or if HCI has reason to believe that an allegation of infringement may be made by a third party as a result of such distribution;
 - (b) It no longer has, or it considers that it may no longer have all requisite rights to permit the Customer distribution of the Content in accordance with this agreement;
 - (c) HCI's distribution of the Content, in whole or in part, might violate any law, regulation, court order or other ruling of any governmental, judiciary or regulatory body;
 - (d) Medical advice provided for within the Content is changed, no longer relevant or generally not advised (save that nothing within this clause shall prejudice the limitation of liability set out in clause 23);
 - (e) There is any other bona fide legal or commercial reason.

9. Limits of liability

9.1. Except as expressly stated in clause 9.2:

- (a) HCI shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
 - (i) special damage even if HCI was aware of the circumstances in which such special damage could arise;

- (ii) loss of profits;
- (iii) loss of anticipated savings;
- (iv) loss of business opportunity;
- (v) loss of goodwill;
- (vi) loss or corruption of data,

provided that this clause 9.1(a) shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of clause 9.1(b) or any other claims for direct financial loss that are not excluded by any of categories (i) to (vi) inclusive of this clause 9.1(a);

- (b) the total liability of HCI, whether in contract, tort (including negligence) or otherwise and whether in connection with this licence or any collateral contract, shall in no circumstances exceed a sum equal to the Fee; and
- (c) the Customer agrees that, in entering into this licence, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this licence or (if it did rely on any representations, whether written or oral, not expressly set out in this licence) that it shall have no remedy in respect of such representations and (in either case) HCI shall have no liability in any circumstances otherwise than in accordance with the express terms of this licence.

9.2. The exclusions in clause 7.4 and clause 9.1 shall apply to the fullest extent permissible at law, but HCI does not exclude liability for:

- (a) death or personal injury caused by the negligence of HCI, its officers, employees, contractors or agents;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any other liability which may not be excluded by law.

9.3. All dates supplied by HCI for the delivery of the Software shall be treated as approximate only. HCI shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

9.4. All references to "HCI" in this clause 9 shall, for the purposes of this clause and clause 18 only, be treated as including all employees, subcontractors and suppliers of HCI and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 18.

10. Intellectual property rights

10.1. The Customer acknowledges that all Intellectual Property Rights in the Software and any Maintenance Releases, including all background IPR created in the course of making the Software and any Maintenance Releases whether created by HCI, or Customer, or created with both parties in conjunction with each other belong and shall belong to HCI or the relevant third-party owners (as the case may be), and the

Customer shall have no rights in or to the Software or any of the IPR as aforementioned relating to that Software other than the right to use it in accordance with the terms of this licence.

- 10.2.** HCI undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession or use of the Software (or any part thereof) in accordance with the terms of this licence infringes the UK Intellectual Property Rights of a third party (**Claim**) and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Claim. For the avoidance of doubt, clause 10.2 shall not apply where the Claim in question is attributable to possession or use of the Software (or any part thereof) by the Customer other than in accordance with the terms of this licence, use of the Software in combination with any hardware or software not supplied or specified by HCI if the infringement would have been avoided by the use of the Software not so combined, or use of a non-current release of the Software.
- 10.3.** If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, HCI's obligations under clause 10.2 are conditional on the Customer:
- (a) as soon as reasonably practicable, giving written notice of the Claim to HCI, specifying the nature of the Claim in reasonable detail;
 - (b) not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of HCI (such consent not to be unreasonably conditioned, withheld or delayed);
 - (c) giving HCI and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable HCI and its professional advisers to examine them and to take copies (at HCI's expense) for the purpose of assessing the Claim; and
 - (d) subject to HCI providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as HCI may reasonably request to avoid, dispute, compromise or defend the Claim.
- 10.4.** If any Claim is made, or in HCI's reasonable opinion is likely to be made, against the Customer, HCI may at its sole option and expense:
- (a) procure for the Customer the right to continue to use the Software (or any part thereof) in accordance with the terms of this licence;
 - (b) modify the Software so that it ceases to be infringing;
 - (c) replace the Software with non-infringing software; or
 - (d) terminate this licence immediately by notice in writing to the Customer and refund any of the Fee paid by the Customer as at the date of termination

(less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,

provided that if HCI modifies or replaces the Software, the modified or replacement Software must comply with the warranties contained in clause 7.1 and the Customer shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this licence been references to the date on which such modification or replacement was made.

- 10.5.** Notwithstanding any other provision in this agreement, clause 10.2 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession or use of any Third-Party Software or through the breach of any Third-Party Additional Terms by the Customer.
- 10.6.** This clause 10 constitutes the Customer's exclusive remedy and HCI's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 9.1.

11. Duration and termination

- 11.1.** Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 21 days after being notified in writing to make such payment;
 - (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 21 days after being notified to do so;
 - (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ;
 - (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;

- (g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within [21] days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1(c) to clause 11.1(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

11.2. Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

11.3. Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

11.4. On termination for any reason:

- (a) all rights granted to the Customer under this licence shall cease;
- (b) the Customer shall cease all activities authorised by this licence;
- (c) the Customer shall immediately pay to HCI any sums due to HCI under this licence; and
- (d) the Customer shall immediately destroy or return to HCI (at HCI's option) all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to HCI that it has done so.

11.5. Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement including clause 1, clause 5, clause 6, clause 7 (except clause 7.1), clause 9, clause 11 shall remain in full force and effect.

12. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13. Remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

14. Entire agreement

- 14.1.** This licence, the schedules and the documents annexed as appendices to this licence and any current or future representations made in writing or otherwise referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.
- 14.2.** Each party acknowledges that, in entering into this licence and the documents referred to in it, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this licence or not) (**Representation**) other than as expressly set out in this licence or those documents.
- 14.3.** Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in this licence.
- 14.4.** Nothing in this clause shall limit or exclude any liability for fraud.

15. Variation

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

16. Severance

- 16.1.** If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 16.2.** If any provision or part-provision of this agreement is deemed deleted under clause **16.1** the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

17. Counterparts

This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

18. Third-party rights

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

19. No partnership or agency

19.1. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

19.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

20. Force majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for [NUMBER] [weeks OR months], the party not affected may terminate this agreement by giving [NUMBER] [days'] written notice to the affected party.

21. Notices

21.1. Any notice given to a party under or in connection with this contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to its main email address.

21.2. Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- (c) if sent by email, the time of receipt to the recipients email inbox.

21.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

22. Governing law and jurisdiction

- 22.1.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 22.2.** The parties irrevocably agree that 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 or its subject matter or formation (including non-contractual disputes or claims).

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

SCHEDULE

1. Software Schedule

[List the computer programmes e.g. CONNECTPlus and any others, this includes any Maintenance Release which **is** acquired by the Customer during the subsistence of this licence]

CONNECTPlus App

2. Mandatory Policies

[List and attach the mandatory policies here]

The Mandatory Policies are:

- End User Licence Agreement
- Privacy Notice

3. Fees

[Fee details - Set up, Licence, Maintenance, extras.]

Signed by Richard
Wyatt-Haines for and on
behalf of Health Care
Innovations Limited

.....
Director

Signed by [NAME OF
DIRECTOR] for and on behalf
of [NAME OF CUSTOMER]

.....
Director

ANNEX

A. Software Specification

[A detailed specification of the Software and the reinsurance arrangements around it -
Data, Clinical, Operational]

B. Maintenance and Support Agreement

[The maintenance, support and upgrade agreement]

C. Third-Party Software and Third-Party Additional Terms

[Names and the additional terms and conditions relating to Third-Party Software]

