



Hero Health
Terms and Conditions

Licensee and Order Information

Licensee Details (‘Licensee’ or ‘you’)	See GCloud15 Call off contract
Sub-licensees (if any) (‘Sub-licensee’)	See GCloud15 Call off contract

Licensed Use	Non-exclusive in the Territory for the Authorised Users to access Hero’s proprietary patient management Platform solely for the Designated Use and for any further use described in and subject to the Hero Licence Terms set out in Schedule 1.
--------------	--

Effective Date	See GCloud15 Call off contract
----------------	--------------------------------

Initial Term	See GCloud15 Call off contract	to	See GCloud15 Call off contract
Break Point	See GCloud15 Call off contract		
Territory	United Kingdom		

Designated Use	See GCloud15 Call off contract
----------------	--------------------------------

Payment Terms	See GCloud15 Call off contract
---------------	--------------------------------

Special Conditions	See GCloud15 Call off contract
--------------------	--------------------------------

Commercial Terms

See GCloud15 Call off contract

This Agreement is entered into as of the Effective Date identified above between Hero Doctor Limited t/a Hero Health, of 256 Mayfield House, 3rd Floor, 256 Banbury Road, Oxford, United Kingdom, OX2 7DE (“**Hero**”) and the company or organisation identified above (“**Licensee**”) pursuant to which Hero shall grant to Licensee a licence for Authorised Users to access the Hero Service, subject to and in accordance with the Hero Licence Terms and any and all additional schedules that form part of the Hero Licence Terms. All capitalised terms in this Order Form shall have the meaning set forth in the Hero Licence Terms.

In the event of any conflict or inconsistency between:

- (a) the G-Cloud 15 Call-Off Contract;
- (b) this Order Form; and
- (c) the Hero Licence Terms and any Schedules,

the G-Cloud 15 Call-Off Contract shall take precedence, followed by the Order Form, and then the Hero Licence Terms and Schedules.

Nothing in this Order Form or the Hero Licence Terms shall operate to exclude, limit, amend or vary any provision of the G-Cloud 15 Call-Off Contract.

Schedule 1

Hero Licence Terms

The following terms, in addition to the terms of the Order Form, shall govern the provision of the Service (as defined below). These Hero Licence Terms apply solely as supplementary terms governing the operational use of the Service and shall apply only to the extent permitted by, and consistent with, the G-Cloud 15 Call-Off Contract. Where any provision of these Hero Licence Terms conflicts with or duplicates a provision of the G-Cloud 15 Call-Off Contract, the relevant provision of the G-Cloud 15 Call-Off Contract shall prevail and the conflicting or duplicative provision shall be deemed disapplied.

1. Definitions and Interpretation

1.1 Capitalised terms not defined herein, shall have the following meanings:

"Affiliate" means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with, the Licensee.

"Agreement" means this agreement between Hero and Licensee comprising the Order Form, these Hero Licence Terms, and any and all additional schedules attached to these Hero Licence Terms.

"Application" means the area on the Site through which Authorised Users access the Platform through the email link sent by Hero.

"Authorised Users" means those employees of the Licensee and/or Sub-licensee(s) (to the extent included in the Order Form) who are authorised by the Licensee to use the Service.

"Available" means the Licensee is able to access and use all functionality of the Service which shall be measured on a 24 hours a day, seven days a week basis, and the term **Availability and Service Availability** shall be construed accordingly.

"Break Point" means the date identified as such in the Order Form. If no break point date is identified in the Order Form, no Break Point exists.

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

"Confidential Information" has the meaning set out in clause 14.

"Control" means 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 a company or other entity or organisation, and **controls, controlled** and the expression **change of control** shall be construed accordingly.

"Customers" the consumers using the Platform to book appointments or purchase Services from the Licensee.

“Documentation” means those support materials in the form of FAQs, factsheets and presentations printed or online instructions, and diagrams distributed or otherwise provided or made available by Hero that relate to the Service.

“Effective Date” means the date identified as such on the Order Form.

“Excluded Losses” has the meaning set out in clause 12.5.

“Fees” means the fees set out in the Order Form.

“Force Majeure Event” has the meaning set out in clause 16.7.

“Derived Data” means any data which is derived from the Licensee’s and Sub-licensee(s) (to the extent included in the Order Form) use of the Service or the Processing of Licensee Data, and shall include: (i) any data which is processed and stored as mathematical constructs; and (ii) statistical or aggregated data, but shall exclude any Personal Data.

“Hero Data Processing Agreement” means the data processing agreement associated with the Services, which is available on the Site at <https://www.herohealthsoftware.net/data-processing-agreement> or <https://www.herohealth.net/data-processing-agreement> and forms part of this Agreement.

“Initial Term” means the period identified as such on the Order Form.

“Insolvency Event” means, with respect to a Party, (a) entering into a composition or arrangement with its creditors other than for the sole purpose of a solvent reconstruction; (b) an inability to pay its debts as they become due; (c) a person becoming entitled to appoint or appointing a receiver or an administrative receiver over that Party’s assets; (d) a creditor or encumbrancer attaching or taking possession of the whole or any part of that Party’s assets which is not discharged within 14 days; or (e) the occurrence of any event, or the taking of any proceedings, in any jurisdiction that has an effect equivalent or similar to any of the events mentioned in (a) to (d) above.

“Intellectual Property Rights” means patents, rights to inventions, copyright and neighbouring and related rights, trade marks, goodwill 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.

“Licensee Data” means the data uploaded or submitted to the Platform by an Authorised User excluding any Derived Data.

“Licensee Personal Data” means Personal Data of the Authorised User contained in the Licensee Data which is detailed in the Privacy Policy

“Normal Business Hours” means 9.00 am to 6.00 pm local UK time, each Business Day.

“Order Form” means the order form signed by Hero and the Licensee to which these Hero Licence Terms are attached.

“Party” means a party to this Agreement, being either Hero or Licensee, and **“Parties”** means both of them.

“Payment Processing Partners” means the third parties Hero has selected to process the payments on the Platform as communicated to the Licensee and as may be updated from time to time.

“Platform” means the Hero Administrative Platform accessed via the Site.

“Privacy Policy” means Hero’s current privacy policy which is accessible on the Platform and be accessed here <https://www.herohealthsoftware.net/privacy-policy>

“Renewal Term” means the period defined as such in clause 11.1.

“Service” means the service provided over the Platform allowing Authorised Users to handle communication, manage scheduling (administrator-led diary management and patient-led booking), invoicing & payments (including use of the Stripe, GoCardless and Xero integrations) and private prescribing (including use of the SignatureRx integration). The EMISWeb integration is included.

“Service Commitment” means the specific service feature commitment identified in the Order Form.

“Service Credit” shall have the meaning given to it in clause 10.2.

“Setup Period” means the period identified as such on the Order Form, being the period in which Hero will onboard the Licensee and/or Sublicensee(s) (to the extent included in the Order Form) in preparation for the provision of the Service, and the Licensee will carry out the On Boarding Process set out in Schedule 3.

“Site” means www.herohealth.net and all relevant subdomains or such other URL as updated by Hero from time to time.

“Subscription Fees” means the subscription fees identified as such on the Order Form payable by the Licensee to Hero for use of the Service.

“Term” means the Setup Period, Initial Term and any Renewal Term(s).

“Territory” means that territory or those territories identified as such on the Order Form.

“User Terms” means the terms Authorised Users must comply with before using the Platform as set out in Schedule 2 of these Hero Licence Terms.

- 1.2 In this Agreement: (a) a reference to writing or written includes e-mail; (b) 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. Access to the Service

- 2.1 Before Hero provides access to the Platform, the Licensee agrees to follow the on-boarding and registration process as instructed by the Hero accounts team (the **"On Boarding Process"**). The specific requirements of the On Boarding Process is set out in Schedule 3 and may be updated by Hero in writing from time to time.
- 2.2 Subject to the Licensee paying the Fees and complying with the On Boarding Process in accordance with this Agreement, Hero hereby grants to the Licensee a non-exclusive, non-transferable, sub licensable (only to the Sub-licensees (if any) as set out in the Order Form) right to permit the Authorised Users to use the Service for the Designated Use from the Effective Date and during the Initial Term and each applicable Renewal Term in accordance with the Agreement.
- 2.3 The Licensee shall not, and shall ensure the Sub-licensees and its and their Authorised Users do not, and shall not attempt to: (a) access all or any part of the Platform in order to build a product or service which competes with the Service; (b) subject to clause 13, make the Platform available to any third party except to its Authorised Users, or (c) attempt to obtain, or assist third parties in obtaining, access to the Service, other than as provided under this clause 2.
- 2.4 The Licensee shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Service and, in the event of any such unauthorised access or use, promptly notify Hero.
- 2.5 The rights provided under this clause 2 are granted to the Licensee only, and shall not be considered granted to any Affiliate (except to the Sub-licensee(s) to the extent set out in the Order Form). Hero shall not be liable for any delay, failure or breach of these Hero Licence Terms where the Licensee does not provide such authority, information and co-operation or the Licensee fails, delays or omits to act in respect of any of its obligations under these Hero Licence Terms.
- 2.6 The Authorised Users shall only be entitled to access the Platform once they have agreed to Hero's User Terms.
- 2.7 Other than as expressly stated otherwise in these Hero Licence Terms, the Licensee acknowledges it is its sole responsibility to determine that the Service meets its business requirements and, to the fullest extent permissible by law and without limitation, Hero gives no warranties that the Service will be fit for purpose. In particular, the Licensee is responsible for paying all taxes, fees and levies in connection with its use of the Service and the Platform.

3. Monitoring the Service

- 3.1 Where the Order Form states that Fees are linked to the number of Authorised Users or Locations, the Licensee undertakes that it shall allow Hero to monitor the Service in order to establish the Locations or Authorised Users using the Service. For any Authorised Users above the threshold set out in the Order Form and if the Licensee has underpaid Subscription Fees, then without prejudice to Hero's other rights, the Licensee shall pay to Hero such underpayment as set out in the Order Form within 10 Business Days of being notified of such underpayment.
- 3.2 For the avoidance of doubt, the Licensee shall be responsible for paying such costs relating to additional Authorised Users in the month that they are in excess of the threshold and such increase shall apply for the remainder of the Initial Term and any Renewal Term, payable in accordance with this Agreement.

4. Licensee Data and Derived Data

- 4.1 The Licensee shall own all right, title and interest in and to all of the Licensee Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Licensee Data.
- 4.2 Hero may use the Licensee Data to improve the performance and functionality of the Service or develop improvements, updates, upgrades, modifications and derivative works thereof. Hero shall own all rights, title and interest in and to all of the Derived Data.
- 4.3 Hero may track and analyse the Licensee's, the Sub-licensee(s) and any Authorised User's use of the Service for the purposes of security and to help Hero improve the Service and the Platform.
- 4.4 The Parties acknowledge that the data protection provisions set out in the G-Cloud 15 Call-Off Contract shall apply and shall take precedence. Both Parties shall comply with their respective obligations under the Hero Data Processing Agreement, which is incorporated into this Agreement as supplementary terms only and shall apply solely to the extent it is consistent with the G-Cloud 15 Call-Off Contract and applicable data protection legislation.
- 4.5 The Licensee shall indemnify Hero against all and reimburse to it losses, damages, liabilities and claims, arising from or in relation to any third party claims that the processing and use of the Licensee Data in accordance with this Agreement infringes or misappropriates any third party rights or breaches Data Protection Legislation (as defined in the Hero Data Processing Agreement).
- 4.6 Upon termination the Licensee may request that the Licensee Data is returned or destroyed in accordance with the provisions applying to Confidential Information at clause 14.5.

5. Hero's Obligations

- 5.1 Hero shall provide the Service to the Licensee on and subject to the terms of this Agreement.
- 5.2 The Licensee acknowledges and agrees that the Service will evolve over time and that functionality may be added and removed from time to time. Hero does not warrant that the Licensee's use of the Platform will be uninterrupted or error-free; or accept any responsibility for services provided via the Platform.
- 5.3 Hero is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Licensee acknowledges that the Service may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 5.4 This Agreement shall not prevent Hero from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

6. Licensee's Obligations

- 6.1 The Licensee shall provide Hero with all necessary co-operation in relation to this Agreement and all necessary access to information as may be required by Hero to fulfil its obligations under this Agreement as more particularly described in the Documentation.
- 6.2 The Licensee undertakes that it shall not circumvent, avoid, bypass, or obviate, directly or indirectly, the intent of this Agreement, to avoid payment of fees in any transaction with Customers introduced to the Licensee and/or Sub-licensee(s) via Hero's Service.
- 6.3 The Licensee shall ensure that all Sub-licensee(s) and its and their Authorised Users use the Service strictly in accordance with this Agreement and shall be responsible for any Sub-licensee(s) and Authorised User's breach of this Agreement.
- 6.4 The Licensee shall ensure that its network and systems comply with the relevant specifications provided by Hero from time to time necessary for the operation of the Service, and shall be solely responsible for procuring and maintaining all network connections and telecommunications links from its systems to Hero's data centres.

7. Fees and Payment

- 7.1 The Licensee shall pay the Fees set out in the Order Form in accordance with the provisions of the Order Form and this clause 7.
- 7.2 Unless otherwise specified in the Order Form, Hero shall invoice the Licensee for the Fees annually in advance on the anniversary of the start of the Initial Term every 12 months and the Licensee shall pay each invoice within fourteen (14) days after the date of such invoice.
- 7.3 If Hero has not received payment of any Fees by the due date specified in the Order Form, and without prejudice to any other rights and remedies of Hero, Hero may, without liability, suspend the Licensee's, the Sub-licensee(s) and its and their Authorised Users', accounts, access to all or part of the Service until the invoice(s) concerned are paid in full. Interest shall accrue on a daily basis on any overdue amounts at an annual rate equal to 5% above the Bank of England's base rate, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 7.4 Fees are payable in the currency detailed in the Order Form. Fees are stated exclusive of value added tax, which shall be added to the relevant invoice(s) at the appropriate rate where relevant.
- 7.5 Any increase to the Subscription Fees shall be subject to and implemented strictly in accordance with the pricing variation provisions of the G-Cloud 15 Call-Off Contract.

8. Compliance with Laws and Regulations

The Licensee shall comply with all applicable laws and regulations in the exercise of its rights and the performance of its obligations pursuant to this Agreement.

9. Intellectual Property Rights

- 9.1 As between the Parties, all Intellectual Property Rights in and to the Platform and the Derived Data, the Documentation and the Service shall belong to, and remain vested in, Hero at all times.
- 9.2 Without prejudice to clause 9.1 or to the provisions of clause 2.5 above, to the extent that the Licensee's, the Sub-licensee(s) or the Authorised User's use of the Service results in any modifications, adaptations, developments, or any derivative works of or to the Platform or the operation of the Platform ("**Improvements**"), then notwithstanding any rights or remedies of Hero, any and all Intellectual Property Rights in and to such Improvements shall immediately vest in and be owned by Hero.
- 9.3 Hero shall defend Licensee against any third party claims that the use of the Service in accordance with this Agreement infringes any third party Intellectual Property Right and subject to clause 12.5, shall indemnify Licensee for and against any amounts awarded against Licensee in judgment or settlement of such claims, provided that (i) Hero is given prompt notice of such claim; (ii) Licensee provides reasonable co-operation to Hero in the defence and settlement of such claim, at Hero's expense; (iii) Hero is given sole authority to defend or settle the claim; and (iv) Licensee makes no admission of liability or fault itself or on behalf of Hero.
- 9.3.1 In the defence or settlement of any claim pursuant to clause 9.3 above, Hero may at its sole option and expense either: procure for the Licensee the right to continue using the Service in the manner contemplated by this Agreement,
- 9.3.2 replace or modify the or Service as applicable so that it becomes non-infringing, or
- 9.3.3 terminate this Agreement forthwith by notice in writing and without liability to Licensee.
- 9.4 Hero shall not in any circumstances have any liability (including in respect of the indemnity provided under clause 9.3) if the alleged infringement is based on: (i) modification of the Platform by anyone other than Hero; or (ii) Licensee's, the Sub-licensee(s) or any Authorised User's use of the Platform otherwise than in accordance with this Agreement, the Documentation, the User Terms or in a manner contrary to the instructions given to Licensee (or Sub-licensee(s)) by Hero in connection therewith; or (iii) Licensee, the Sub-licensee(s) or Authorised User's use of the Platform after notice of the alleged or actual infringement from Hero or any appropriate authority; or (iv) use or combination of the Platform with any other software or hardware, in circumstances where, but for such combination, no infringement would have occurred.
- 9.5 Licensee shall defend Hero against all or any costs, claims, damages or expenses incurred by Hero in respect of any third party claims relating to the Licensee's, the Sub-licensee(s) or any Authorised User's use of the Service otherwise than in accordance with this Agreement, provided that (i) Licensee is given prompt notice of such claim; (ii) Hero provides reasonable co-operation to Licensee in the defence and settlement of such claim, at Licensee's expense; (iii) Licensee is given sole authority to defend or settle the claim; and (iv) Hero makes no admission of liability or fault itself or on behalf of Licensee or Sub-licensee.

10. Service Level Availability and Technical Support

- 10.1 Hero shall use reasonable commercial efforts to make the Service Available during the Initial Term and each applicable Renewal Term 24 hours a day, seven days a week.
- 10.2 If the Service Availability during the Initial Term and each applicable Renewal Term drops below 98% during three consecutive calendar months (the **"Availability Target"**), excluding unavailability arising from: (i) the use of third party hardware or software, (ii) a Force Majeure Event (iii) the Licensee's unauthorised actions or inaction when required, or (iv) due to scheduled downtime in accordance with clause 10.3, the Licensee will be entitled to a service credit of an amount equal to 5% of the relevant monthly Subscription Fees (a **"Service Credit"**).
- 10.3 If a Service Credit is due to the Licensee in accordance with clause 10.2, the Licensee must submit a written claim to Hero including the information necessary for Hero to manage the claim including: (i) a detailed description of the incident; (ii) information regarding the time and duration of the downtime; (iii) the number and location(s) of affected Authorised Users and/or Locations (if applicable); and (iv) descriptions of attempts to resolve the incident at the time of occurrence. This claim must be received by the end of the calendar month following the month in which the incident occurred. Upon receiving the claim Hero shall evaluate the claim and make a good faith determination of whether a Service Credit is owed in accordance with clause 10.2. Licensee must be in compliance with this Agreement in order to be eligible for a Service Credit.
- 10.4 In the event that it is anticipated that Availability of the Service during the Initial Term and each applicable Renewal Term may be affected or restricted by planned maintenance undertaken by Hero or a subcontractor, Hero will use commercially reasonable endeavours to provide reasonable notice to the Licensee regarding any matter that affects a core and fundamental feature of the Service, and at least 24 hours' notice regarding a part of the Service and which is not fundamental to its functionality, detailing the date and estimated time for such restriction or lack of access, and will perform such maintenance or put in place any changes, modifications or upgrades to the Service outside of Normal Business Hours, except where it warrants immediate action, in which case Hero may perform such maintenance immediately. For the avoidance of doubt, any period during which the Service is and any Additional Services are not Available as a result of this clause 10.3 shall not be taken into account when calculating Availability for the purpose of clause 10.
- 10.5 Service Credits are Customer's sole and exclusive remedy for any availability issues under this Agreement. Customer may not unilaterally offset for any availability issues.
- 10.6 In the event of any technical malfunction or problem with the Service the Licensee shall use reasonable endeavours to review and/or ascertain the issue as far as reasonably possible before contacting Hero.
- 10.7 If the Licensee still requires technical support, the Licensee shall contact Hero's support team via email at support@herohealth.net. Hero shall provide such support during Hero's Normal Business Hours.

- 10.8 Hero will assess the Licensee's problem and assign to it one of the priority levels described in the table below, and shall email that log reference, and priority level to the Licensee as soon as reasonably possible, noting estimated resolution time. Hero shall use commercially reasonable endeavours to comply with the corresponding response times set out below. Each response time is measured from the time at which the email is sent by the Licensee.

Level	Description	Response Time
1	<i>A core and fundamental failure of the Service where no work-around solutions are available that are acceptable to the Licensee reported during Normal Business Hours.</i>	<i>1 hour</i>
2	<i>Failure of a part of the Service which is not fundamental or does not affect a key functionality, and where a temporary work-around solution is not acceptable to the Licensee.</i>	<i>1 Business Day</i>
3	<i>Failure of a part of the which is not fundamental or does not affect a key functionality, and where a temporary work-around solution is acceptable to the Licensee.</i>	<i>3 Business Days</i>

- 10.9 For the avoidance of doubt, technical support provided in accordance with this clause shall not include the diagnosis and/or rectification of any fault or malfunction in the Service arising out of or in connection with the following:

- 10.9.1 the failure by the Licensee to implement recommendations previously advised by Hero in respect of, or solutions to, faults;
- 10.9.2 any breach by the Licensee of any of its obligations under this Agreement or any other contract with Hero relating to the Service;
- 10.9.3 use by the Licensee of the Service for a purpose for which it was not designed; or
- 10.9.4 any issues caused by any hardware, software or any other system of the Licensee.

11. Term and Termination

- 11.1 This Agreement shall commence as of the Effective Date and, unless terminated earlier in accordance with this clause 11 shall continue for the Setup Period and the Initial Term. Unless specified otherwise in the Order Form this Agreement shall automatically renew for periods of the same length as the Initial Term (each, a “**Renewal Term**”), unless (a) either Party provides the other with written notice of at least sixty (60) days where the Initial Term is based on a yearly subscription, prior to the beginning of any such Renewal Term electing to not renew this Agreement for such Renewal Term or (b) this Agreement is otherwise terminated as set out in this clause 11. Unless specified otherwise in the Order Form, the Setup Period, the Initial Term and all Renewal Terms are referred to collectively as the “**Term**.”
- 11.2 Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if: (i) where a Break Point is specified in the Order Form, prior to the end of the Initial Term, a party provides the other with written notice of termination with effect from the Break Point by giving the other at least [sixty (60)] days prior to the Break Point; (ii) 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 fourteen (14) Business Days after being notified in writing to make such payment; or (iii) the other Party commits a material breach of any terms of this Agreement, which breach is irremediable or (if such breach is remediable) fails to remedy that breach within fourteen (14) Business Days after being notified in writing to do so; or (iv) the other Party suspends, ceases, or threatens to suspend or cease carrying on its business or a substantial part thereof, or suffers an Insolvency Event.
- 11.3 Without prejudice to any other rights or remedies hereunder to which Hero may be entitled, if Hero knows or has reasonable grounds to suspect that the Licensee and/or Sub-licensee(s) are acting in breach of its obligations under this Agreement, Hero may notify the Licensee in writing accordingly and may suspend the Service until such breach is remedied or until Hero is satisfied, acting reasonably, that its suspicions are unfounded.
- 11.4 Any suspension of the Service by Hero under this Agreement shall be exercised only in accordance with, and to the extent permitted by, the G-Cloud 15 Call-Off Contract. Hero shall not suspend the Service where doing so would cause the Licensee to be in breach of its obligations under the G-Cloud 15 Call-Off Contract, except where such suspension is expressly permitted under that contract.
- 11.5 On termination of this Agreement for any reason (a) all licences granted under this Agreement shall immediately terminate; each party shall return and make no further use of any Confidential Information, equipment, property and other items (and all copies of them) belonging to the other party; and (b) any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

12. Limitation of Liability

- 12.1 This clause 12 sets out the entire financial liability of Hero to the Licensee (and all Sub-licensee(s)) arising under or in connection with this Agreement, in respect of any use made by the Licensee or its Authorised Users of the Service; and in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 12.2 The Licensee acknowledges that Hero shall have no responsibility for the Authorised Users' outcomes from their use of the Platform or any results derived thereof. The Licensee is solely responsible and liable for the experiences that an Authorised User may book via the Platform.
- 12.3 Except as expressly and specifically provided in this Agreement, all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement and the Service and any information provided by or on behalf of Hero are provided to the Licensee on an "as is" basis.
- 12.4 Nothing in this Agreement excludes either party's liability for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation or for any liabilities that cannot be excluded under applicable law.
- 12.5 Subject to clause 12.4, Hero shall not be liable for any consequential, indirect, special, incidental, punitive or exemplary damages, whether foreseeable or unforeseeable, loss of profit, loss of business, loss of goodwill, loss of or corruption of data, loss caused or contributed to by any employee, agent, contractor or representative of the Licensee or Sub-licensee(s), loss caused as a result of the Service being unavailable as a result of planned downtime for the Service as notified to the Licensee, loss arising from any failure of the Licensee's and/or Sub-licensee(s)' infrastructure and/or utilities, loss caused as a result of the Service being unavailable caused by a Force Majeure Event, loss caused by the failure or delay of any third party application or service or network, however arising under this Agreement ("**Excluded Losses**"). Hero's entire, aggregate liability in contract, tort (including negligence) arising out of or relating to this Agreement shall be limited to the total Fees paid during the twelve (12) months immediately preceding the date on which the claim arose.
- 12.6 Nothing in this clause 12 shall operate to limit or exclude liability to the extent such limitation or exclusion is prohibited, restricted or overridden by the G-Cloud 15 Call-Off Contract.

13. Assignment

The Licensee shall not, without the prior written consent of Hero, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. Hero may, on notice to the Licensee assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

14. Confidential Information and Publicity

- 14.1 **“Confidential Information”** means all confidential information (however recorded or preserved) disclosed by one Party or its employees, officers, representatives or advisers (together **“Representatives”**) to the other Party and the other Party’s Representatives whether before or after the Effective Date, including the terms of this Agreement; the business, affairs, Licensees, Sub-licensee(s), clients, suppliers, plans, intentions, market opportunities, the operations, processes, product information, know-how, technical information or trade secrets of the disclosing party.
- 14.2 Confidential Information of the disclosing party shall not include information which (i) is or becomes generally available to the public, other than as a result of a disclosure by the receiving party or any of its Representatives; (ii) has been rightfully received by the receiving party from a third party without confidentiality restrictions; (iii) has been independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information.; or (iv) the Parties agree in writing is not confidential or may be disclosed.
- 14.3 The Confidential Information of the disclosing party will be kept confidential and will not be disclosed or divulged by the receiving party to anyone except with the disclosing party’s prior written permission, or as may be required by law or by the order or demand of a court or government agency or authority.
- 14.4 Notwithstanding clause 14.3, the receiving party may disclose the disclosing party’s Confidential Information to the receiving party’s Representatives who need to review such Confidential Information pursuant to this Agreement, so long as they are bound by confidentiality obligations no less restrictive than those in this clause 14. The receiving party shall be liable for any breach of these confidentiality obligations by their Representatives.
- 14.5 Upon expiration or earlier termination of this Agreement for any reason, the receiving party will return to the disclosing party or destroy (at the disclosing party’s sole discretion) all Confidential Information of the disclosing party and all copies thereof.
- 14.6 Notwithstanding this clause 14, the Licensee permits Hero to identify the Licensee as a client. To this end, the Licensee grants Hero a perpetual, non-exclusive, royalty-free and non-transferable licence during the Term of the Agreement for Hero to use the Licensee’s logo, name and branding on the Platform and in any marketing and publication materials.

15. Independent Contractor

The relationship between the Parties is that of independent contractors and nothing herein shall be construed to create a partnership, joint venture, or agency relationship between the Parties hereto nor authorise any Party to make or enter into any commitments for or on behalf of any other Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

16. Miscellaneous

- 16.1 **Entire Agreement:** This Agreement constitutes the entire Agreement between the Parties and supersedes and extinguishes all prior and current agreements, negotiations, promises, assurances, warranties, understandings and representations between them, whether written or oral, relating to its subject matter. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 16.2 **Amendment:** This Agreement may not be amended or otherwise modified, and no variation of this Agreement shall be effective unless it is in writing signed by the Parties or their authorised representatives.
- 16.3 **Waiver:** A waiver by any Party of any of its rights hereunder shall not be binding unless in writing signed by an authorised representative of the Party expressly waiving such rights. The non-enforcement or waiver of any provision on any occasion shall not constitute a waiver of such provision on any other occasions unless expressly so agreed in writing.
- 16.4 **Severability:** If any provision or part-provision of this Agreement becomes or is held invalid, illegal, or unenforceable, it shall be deemed modified or deleted to the minimum extent necessary but that shall not affect the validity and enforceability of the rest of this Agreement.
- 16.5 **Rights and 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.
- 16.6 **Force Majeure:** Neither Party shall in any circumstances 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 results from events, beyond its reasonable control, including, without limitation, strikes, acts of God, war, terrorism, riot, denial of service attacks, epidemic, pandemic or compliance with any law or governmental order ("**Force Majeure Event**"). In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for three (3) months, the Party not affected may terminate this Agreement by giving thirty (30) days' written notice to the other Party.
- 16.7 **Third Party Rights:** No one other than a Party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 16.8 **Notices:** Any notice given to a Party under or in connection with this contract shall be in writing and shall be deemed to have been received: (i) if delivered by hand at the time the notice is left at the receiving party's registered address; (ii) 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; and (iii) if sent by or email, at 9.00 am on the next Business Day after transmission.

16.9 *Governing Law and Jurisdiction*: This Agreement shall be governed by and construed in accordance with the laws of England and the Parties agree that the English courts shall have exclusive jurisdiction.

Schedule 2

User Terms

The User Terms can be accessed on our website: <https://www.herohealthsoftware.net/terms-and-conditions>

Schedule 3

On Boarding Process

In compliance with clause 2.1, the Licensee shall complete the following steps before they can access the Service:

- Nominate at least one of the Licensee's chosen Authorised Users at each site requiring integration, and provide their contact details (this can be done by completing the "I want to get setup" form on the Hero website)
- Ensure all Authorised Users have reviewed and agreed to the User Terms, Hero's privacy policy and any other policies provided to the Licensee during the On Boarding Process;
- Provide any other information as Hero may reasonably require to complete the On Boarding Process.