



MedModus SaaS Platforms

Terms and Conditions

G-Cloud 15

info@medmodus.com
www.medmodus.com

Terms and Conditions

Background

- (A) The supplier is the entire legal and beneficial owner and licensor of the services.
- (B) The supplier has agreed to provide and the customer has agreed to take and pay for the services subject to the terms and conditions of this agreement.
- (C) The supplier, in the course of providing the services, will have access to certain personal data and non-personal data controlled by the customer. The parties' obligations under data protection legislation in respect of the processing of personal data are set out in schedule 3.
- (D) The parties have entered into this agreement pursuant to a public tendering competition conducted under the crown commercial services (ccs) g-cloud 15 call-off contract ("competition documentation") that resulted in the appointment of the supplier. The parties acknowledge that this agreement shall be read in conjunction with the competition documentation deriving from the supplier's initial appointment under the ccs g-cloud 15 call-off contract.
- (E) In the event of any conflict or discrepancy between this agreement and the provisions of the ccs g-cloud 15 call-off contract, the provisions of the competition documentation shall prevail.

Agreed Terms

- 1. Interpretation
- 1.1 The following definitions and rules of interpretation apply in this Agreement (including in the Recitals).

AFFILIATE

Means in relation to a body corporate, any other entiy which directly or indirectly controls, is controlled by, or is under direct or indirect common control with, that body corporate from time to time.

AGREEMENT

This software as a service licence Agreement.

AUTHORISED USERS

Those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in Clause 2.2.3.

BUSINESS DAY

A day other than a Saturday, Sunday, or public holiday in the UK when banks are open for business.

CONTROL

Means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly.

CONFIDENTIAL INFORMATION

Information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in Clause 11.5.

CUSTOMER DATA

the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of the Customer using the Services or facilitating the Customer's use of the Services.

DOCUMENTATION

the document made available to the Customer by the Supplier online via [enter software instance URL] or such other web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

EFFECTIVE DATE

the date of this Agreement.

INITIAL SUBSCRIPTION TERM

the initial term of this Agreement, being a period of one year from the date of this Agreement.

INTELLECTUAL PROPERTY RIGHTS

all intellectual property rights including patents, trade marks, service marks, design rights, copyright, database rights, moral rights (whether or not any of these are registered and including any applications for registration of any such rights), inventions, know how, confidential information and trade secrets, together with all goodwill attaching or relating thereto, and all rights or forms of protection of a similar nature or having similar effect to any of these which may exist or come into existence in the future anywhere in the world.

NORMAL BUSINESS HOURS

9am to 5.30 pm local UK time, each Business Day.

PERSONAL DATA

has the meaning given to such term in the Data Protection Act 2018.

RENEWAL PERIOD

the period described in Clause 15.1.

SERVICES

the services provided by the Supplier to the Customer under this Agreement, which will allow access to the Software and the Documentation via a website-based application (or any other website notified to the Customer by the Supplier from time to time).

SOFTWARE

the software provided by the Supplier as part of the Services, details of which are set out in Schedule 2.

SUBSCRIPTION FEES

the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in Part 1 of Schedule 1.

SUBSCRIPTION TERM

has the meaning given in Clause 15.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

USER SUBSCRIPTIONS

the user subscriptions purchased by the Customer pursuant to Clause 9.1 which entitle Authorised Users to access and use the Services in accordance with this Agreement (such number of User Subscriptions may be increased in accordance with Clause 3.1).

VIRUS

anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2

Clause, Schedule, and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3

A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality), and that person's legal and personal representatives, successors or permitted assigns.
- 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 genders.

- 1.7

A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.8

A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.9

A reference to writing or written includes e-mail.

- 1.10

References to Clauses and Schedules are to the Clauses and Schedules of this Agreement; references to paragraphs are to paragraphs of the relevant Schedule to this Agreement.

2. USER SUBSCRIPTIONS

- 2.1

Subject to the terms and conditions of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable, non-sub-licensable licence to permit the Authorised Users to use the Services only for the duration of the Subscription Term on computer equipment owned by the Customer.
- 2.2

In relation to the Authorised Users, the Customer undertakes that:
- 2.2.1

the maximum number of Authorised Users that it authorises to access and use the Services shall not exceed the number of User Subscriptions it has purchased from time to time;
- 2.2.2

it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services;
- 2.2.3

it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times; and

- 2.2.3

it shall permit the Supplier to audit the Services in co-operation with the Customer if, in the reasonable opinion of the Supplier, there has been inappropriate use of the Services. Such audit shall be conducted at the Supplier's expense, and this right shall be exercised with reasonable prior notice to the Customer, in such a manner as not to substantially interfere with the Customer's normal conduct of business.

- 2.2.4

The Customer shall not, and it shall procure that the Authorised Users shall not, access, store, distribute or transmit any Viruses, or any material during the course of its/their use of the Services that:

- 2.3

is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

- 2.3.2

facilitates illegal activity;

- 2.3.3

depicts sexually explicit images;

- 2.3.4

promotes unlawful violence;

- 2.3.5

is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

- 2.3.6

in a manner that is otherwise illegal or causes damage or injury to any person or property; and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's or any Authorised User's access to any material that breaches the provisions of this Clause.

- 2.4

The Customer shall not, and it shall procure that the Authorised Users shall not:

- 2.4.1

except as may be allowed by any applicable law which is incapable of exclusion by agreement between the Parties:

- (a)

and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services and/or Software and/or Documentation (as applicable) in any form or media or by any means; or

- (b)

attempt to reverse compile, disassemble, reverse engineer, or otherwise reduce to human-perceivable form all or any part of the Software; or

- 2.4.2

access all or any part of the Services and/or Software and/or Documentation in order to build a product or service which competes with the Services or Software and/or Documentation; or

- 2.4.3

use the Services and/or Software and/or Documentation to provide services to third parties; or

- 2.4.4

subject to Clause 23.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services

and/or Software and/or Documentation available to any third party except the Authorised Users, or

- 2.4.5

attempt to obtain, or assist third parties in obtaining, access to the Services and/or Software and/or Documentation, other than as provided under this Clause 2; and

- 2.5

The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify the Supplier.

The rights provided under this Clause 2 are granted to the Customer only and shall not be considered granted to any Affiliate of the Customer.

3. ADDITIONAL USER SUBSCRIPTIONS

- 3.1

Subject to Clause 3.2 and Clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in Part 1 of Schedule 1 and the Supplier shall grant access to the Services to such additional Authorised Users in accordance with the provisions of this Agreement.

- 3.2

If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request.

- 3.3

If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions as set out in Part 2 of Schedule 1 and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

4. SERVICES

- 4.1

The Supplier shall, during the Subscription Term, provide the Services to the Customer on and subject to the terms of this Agreement.

- 4.2

Unless otherwise agreed in writing with the Customer, the Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

- 4.2.1

planned maintenance which shall be notified to the Customer at least one week in advance and which shall be carried out outside of Normal Business Hours' where possible; and

- 4.3

The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with:

- 4.3.1

reasonable technical support services during Normal Business Hours, through an individual specified by the Supplier from time to time (as may be set out in its support services policies in effect at the time). The Customer may purchase enhanced support services separately at the Supplier's then current rates.
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CUSTOMER DATA

5.1

The Customer shall own all right, title, and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy, and quality of the Customer Data.

5.2

The Supplier shall follow its archiving procedures for Customer Data (as may be set out in its archiving policies in effect from time to time). In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data. The Supplier shall not be responsible for any loss, destruction, alteration, or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up).

5.3

The Supplier shall, in providing the Services, comply with its obligations under the Data Protection Act 2018 relating to the privacy and security of the Customer Data. The Parties agree that the Supplier will not be extracting or storing any Personal Data on the Supplier's websites unless specifically asked to do so in writing by the Customer, and no Personal Data will be displayed in any of the views on the Supplier's websites.

5.4

If the Supplier processes any Personal Data on the Customer's behalf when performing its obligations under this Agreement, the Parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case:

5.4.1

if the Supplier is requested to process Personal Data, the Customer acknowledges and agrees that the Personal Data may, in certain circumstances, be transferred or stored outside the UK in order to carry out the Services and the Supplier's other obligations under this Agreement;

5.4.2

the Customer shall ensure that the Customer is entitled to transfer the relevant Personal Data to the Supplier so that the Supplier may lawfully use, process, and transfer the Personal Data in accordance with this Agreement on the Customer's behalf;

5.4.3

the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection law;

5.4.4

each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the Personal Data or its accidental loss, destruction, or damage.

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THIRD PARTY DATA

6.1

The Supplier does not own any data, information, or material that the Customer or any Authorised User submits to the Services in the course of using the Services ("Received Data"). The Customer, not the Supplier, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Received Data, and the Supplier shall not be responsible or liable for any infringement of Intellectual Property Rights of any third party or for the deletion, correction, destruction, damage, loss, or failure to store any Received Data. The Supplier reserves the right to withhold, remove and/or discard Received Data without notice for any breach, including, without limitation, non-payment by the Customer. Upon termination for cause, the Customer's right to access or use Received Data immediately ceases, and the Supplier shall have no obligation to maintain or forward any Received Data.

7

SUPPLIER'S OBLIGATIONS

7.1

The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

7.2

The undertaking at Clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in Clause 7.1. Notwithstanding the foregoing, the Supplier:

7.2.1

does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services and/or the information obtained by the Customer through the Services will be error free or will meet the Customer's requirements; and

7.2.2

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 Customer acknowledges that the Services may be subject to limitations, delays, and other problems inherent in the use of such communications facilities.

7.3

This Agreement shall not prevent the Supplier from entering into similar Agreements with third parties, or from independently developing, using, selling, or licensing documentation, products, software and/or services which are similar to those provided under this Agreement.

7.4

The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions required for the performance of its obligations under this Agreement.

8

CUSTOMER'S OBLIGATIONS

The Customer shall:

8.1

provide the Supplier with:

8.1.1

all necessary co-operation in relation to this Agreement; and

8.1.2

all necessary access to such information as may be required by the Supplier; in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

8.2

comply with all applicable laws and regulations with respect to its activities under this Agreement;

8.3

carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the Parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;

8.4

ensure that the Authorised Users use the Services in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;

8.5

obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors, and agents to perform their obligations under this Agreement, including without limitation the provision of the Services;

8.6

ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and

8.7

be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

9

CHARGES AND PAYMENT

9.1

The Customer shall pay the Subscription Fees to the Supplier for [] User Subscriptions in accordance with this Clause 9 and Part 1 of Schedule 1.

9.2

The Customer shall on the Effective Date provide to the Supplier valid, up-to-date, and complete credit card details or approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date, and complete contact and billing details and, if the Customer provides:

9.2.1

its credit card details to the Supplier, the Customer hereby authorises the Supplier to bill such credit card on the Effective Date and on a monthly basis thereafter for the Subscription Fees payable in respect of the Subscription Term, as set out in Schedule 1;

9.2.2

its approved purchase order information to the Supplier, the Supplier shall invoice the Customer on the Effective Date and on a monthly basis thereafter for the Subscription Fees payable in respect of the Subscription Term, as set out in Schedule 1; and the Customer shall pay each invoice within 30 days after the date of such invoice.

9.3

If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:

9.3.1

the Supplier may, without liability to the Customer, disable the Customer's (and/or the Authorised Users') password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

9.3.2

interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of the Supplier's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

9.4

All amounts and fees stated or referred to in this Agreement:

9.4.1

shall be payable in pounds sterling;

9.4.2

are, subject to Clause 13.4.2, non-cancellable and non-refundable;

9.4.3

are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

9.5

The Supplier shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to Clause 3.3 at the start of each Renewal Period upon 90 days' prior notice to the Customer and, in such case, Schedule 1 shall be deemed to have been amended accordingly.

10

PROPRIETARY RIGHTS

10.1

The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Software and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any Intellectual Property Rights, or any other rights or licences in respect of the Services or the Software or the Documentation.

10.2

The Supplier confirms that it has all the rights in relation to the Services and the Software and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

11 **CONFIDENTIALITY**

- 11.1** Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under this Agreement. A Party's Confidential Information shall not be deemed to include information that:
- 11.1.1** is or becomes publicly known other than through any act or omission of the receiving Party;
- 11.1.2** was in the other Party's lawful possession before the disclosure;
- 11.1.3** is lawfully disclosed to the receiving Party by a third party without restriction on disclosure;
- 11.1.4** is independently developed by the receiving Party, which independent development can be shown by written evidence; or
- 11.1.5** is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 11.2** Each Party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 11.3** Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 11.4** Neither Party shall be responsible for any loss, destruction, alteration, or disclosure of Confidential Information caused by any third party.
- 11.5** The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 11.6** The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.7** This Clause 11 shall survive termination of this Agreement, however arising.
- 11.8** No Party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other Party (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.

12 **INDEMNITY**

- 12.1** The Customer shall defend, indemnify, and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses, and costs (including without

limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services, provided that:

- 12.1.1** on the Supplier becoming aware of any such claim, the Customer is given prompt notice same;
- 12.1.2** the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- 12.1.3** the Customer is given sole authority to defend or settle the claim.
- 12.2** The Supplier shall defend the Customer, its officers, directors, and employees against any claim that the Services infringe any patent, copyright, trade mark, database right or right of confidentiality effective as of the Effective Date, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- 12.2.1** on the Customer becoming aware of any such claim, the Supplier is given prompt notice of any such claim;
- 12.2.2** the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
- 12.2.3** the Supplier is given sole authority to defend or settle the claim.
- 12.3** In the defence or settlement of any claim referred to in Clause 12.2, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 12.4** In no event shall the Supplier, its employees, agents, and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- 12.4.1** a modification of the Services or Software or Documentation by anyone other than the Supplier; or the Customer's use of the Services or Software or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
- 12.4.2** the Customer's use of the Services or Software or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 12.5** The foregoing and Clause 13.4.2 constitute the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents', and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13 **LIMITATION OF LIABILITY**

- 13.1** This Clause 13 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, and sub-contractors) to the Customer:
- 13.1.1** arising under or in connection with this Agreement;
- 13.1.2** in respect of any use made by the Customer of the Services or any part of them; and
- 13.1.3** in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 13.2** Except as expressly and specifically provided in this Agreement:
- 13.2.1** the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
- 13.2.2** 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
- 13.2.3** the Services are provided to the Customer on an "as is" basis.
- 13.3** Nothing in this Agreement excludes the liability of the Supplier:
- 13.3.1** for death or personal injury caused by the Supplier's negligence; or
- 13.3.2** for fraud or fraudulent misrepresentation.
- 13.4** Subject to Clause 13.2 and Clause 13.3:
- 13.4.1** the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect, or consequential loss, costs, damages, charges, or expenses however arising under this Agreement; and
- 13.4.2** the Supplier's total aggregate liability in contract (including in respect of the indemnity at Clause 12.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which

14 **NON-SOLICITATION**

- 14.1** The Customer hereby covenants to the Supplier that it shall not, and it shall procure that its Affiliates shall not, during the period of 3 years from the Effective Date, solicit the services of, or endeavour to entice away from the Supplier any director, employee or consultant of the Supplier who at the Effective Date or at any time during the period of 12 months prior to the Effective Date was a director, employee or consultant of the Supplier (whether or not such person would commit any breach of his contract of employment or engagement by reason of leaving the service of the Supplier).

15 **TERM AND TERMINATION**

- 15.1** This Agreement shall, unless otherwise terminated as provided in this Clause 15, commence on the Effective Date, and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods of one year (each a "Renewal Period"), unless:
- 15.1.1** either Party notifies the other Party of termination, in writing, at least [] days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- 15.1.2** otherwise terminated in accordance with the provisions of this Agreement; and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the "Subscription Term".
- 15.2** 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:
- 15.2.1** 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 [] days after being notified in writing to make such payment;
- 15.2.2** 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 [] days after being notified in writing to do so;
- 15.2.3** the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- 15.2.4** 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;
- 15.2.5** 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;

15.2.6 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;

15.2.7 an application is made to court, or an order is made, for the appointment of an examiner, or if a notice of intention to appoint an examiner is given or if an examiner is appointed, over the other Party;

15.2.8 the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed a receiver;

15.2.9 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;

15.2.10 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 14 days;

15.2.11 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 15.2.4 to Clause 15.2.10 (inclusive);

15.2.12 the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

15.3 On termination of this Agreement for any reason:

15.3.1 all licences granted under this Agreement shall immediately terminate;

15.3.2 each Party shall return and make no further use of any equipment, property, documentation, and other items (and all copies of them) belonging to the other Party;

15.3.3 the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than [] days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data (for the avoidance of doubt, this shall not include data models created by the Supplier). The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within [] days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred

by the Supplier in returning or disposing of Customer Data as aforesaid (for the avoidance of doubt, this shall not include the return of any data models created by the Supplier); and

15.3.4 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.

16 **FORCE MAJEURE**

16.1 The Supplier shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

17 **CONFLICT**

17.1 If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

18 **VARIATION**

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

19 **WAIVER**

19.1 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.

20 **RIGHTS AND REMEDIES**

20.1 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.

21 **SEVERANCE**

21.1 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable, or illegal, the other provisions shall remain in force.

21.2 if any invalid, unenforceable or illegal provision would be valid, enforceable, or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

22 **ENTIRE AGREEMENT**

22.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the Parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

22.2 Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

23 **ASSIGNMENT**

23.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract, or deal in any other manner with all or any of its rights or obligations under this Agreement.

23.2 The Supplier may at any time assign, transfer, charge, sub-contract, or deal in any other manner with all or any of its rights or obligations under this Agreement.

24 **NO PARTNERSHIP OR AGENCY**

24.1 Nothing in this Agreement is intended to or shall operate to create a partnership between the Parties, or authorise either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

25 **NOTICES**

25.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other Party at its address set out in this Agreement, or such other address as may have been notified by that Party for such purposes, or sent by email to the other Party's email address as set out in this Agreement.

25.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by

email shall be deemed to have been received at the time of transmission.

25.3 The notice details for the Parties are as follows:

The Supplier:

Name: []

Address: []

Email: []

The Customer:

Name: []

Address: []

Email: []

26 **GOVERNING LAW**

26.1 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 laws of England and Wales.

27 **JURISDICTION**

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

SCHEDULE 1 - Subscription Fees

Part 1

1.

SUBSCRIPTION FEES FOR INITIAL
SUBSCRIPTION TERM

[To be added]
2.

SUBSCRIPTION FEES FOR RENEWAL PERIODS

To be agreed between the Parties in advance of the com-
mencement of any Renewal Period.

Part 2

2.

ADDITIONAL USER SUBSCRIPTION FEES

To be agreed between the Parties in the event that any
more than [] User Subscriptions are required.

SCHEDULE 2 – Software

[Add description here]

SCHEDULE 3 –
DATA PROCESSING PROVISIONS

1 DEFINITIONS

1.1 The following definitions and rules of interpretation apply in this Schedule.

Appropriate Technical and Organisational Measures: the appropriate technical and organisational measures referred to in Data Protection Legislation (including, as appropriate, the measures referred to in Article 32(1) of the GDPR).

Authorised Person: the personnel authorised on Your behalf to provide instructions to Us in relation to the Processing provisions in this Clause.

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

Business Purpose: the provision of the Services.

Data: any data or information, in whatever form, including but not limited to images, still and moving, and sound recordings.

Data Controller: has the meaning given to such term in Data Protection Legislation.

Data Processor: has the meaning given to such term in Data Protection Legislation.

Data Protection Legislation: means the Data Protection Act 2018, any other applicable law or regulation relating to the processing of personal data and to privacy (including the E-Privacy Directive and the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (“E-Privacy Regulations”), as such legislation shall be supplemented, amended, revised or replaced from time to time, including by operation of the GDPR (and laws implementing or supplementing the GDPR, and laws amending or supplementing the E-Privacy Regulations).

Data Protection Officer: a data protection officer appointed pursuant to Data Protection Legislation.

Data Subject: an individual who is the subject of Personal Data which is contained in any document or information provided by You to Us (or made available to Us) through Your use of the Services.

Delete: to remove or obliterate Personal Data such that it cannot be recovered or reconstructed.

Effective Date: has the meaning given to such term in the Agreement.

EEA: European Economic Area.

GDPR: General Data Protection Regulation (EU) 2016/679.

Normal Business Hours: 9.00am to 5.00 pm in the UK.

ICO: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, England, SK9 5AF.

Our System: any information technology system or systems owned or operated by Us to which Your Data is delivered or on which the Services are performed.

Personal Data: has the meaning set out in Data Protection Legislation and relates only to personal data, or any part of such personal data, in respect of which You are the Data Controller, and in respect of which We are the Data Processor.

Personal Data Breach: means any “personal data breach” as defined in the GDPR in respect of the Personal Data which is caused by Us.

Processing: has the meaning given to such term in Data Protection Legislation, and Processed and Process shall be interpreted accordingly.

Representatives: a Party's employees, officers, representatives, advisers, or subcontractors involved in the provision or receipt of the Services.

Restricted Transfer: any transfer of Personal Data to countries outside of the EEA which are not subject to an adequacy decision by the European Commission, where such transfer would be prohibited by Data Protection Legislation.

Security Features: any security feature, including any encryption, pseudonymisation, key, PIN, password, token, or smartcard.

Services: has the meaning given to such term in the Agreement.

Specific Instructions: instructions meeting the criteria set out in Clause 2.1 of this Schedule.

Standard Contractual Clauses: the contractual clauses dealing with the transfer of Personal Data outside the UK which have been approved by the ICO or an equivalent competent authority under Data Protection Legislation.

Sub-processor: has the meaning given to such term in Clause 12.1 of this Schedule.

Term: the duration of the provision of the Services.

Us, Our, We: the Supplier (as defined in the Agreement).

You, Your: the Customer (as defined in the Agreement).

Your Data: the Personal Data uploaded during the Term by You or any Data Subject from time to time in respect of use of the Services, and any other Personal Data

Processed by Us on behalf of You or any Data Subject.

2 SERVICES

2.1 We shall not act on any specific instructions given by You from time to time during the Term in respect of Processing unless they are:

2.2.1 in writing (including by electronic means); and

2.2.2 given by an Authorised Person.

2.3 We shall Process Your Data for the Business Purpose only and in compliance with Your instructions from time to time, which may be:

2.3.1 Specific Instructions; or

2.3.2 the general instructions set out in this Schedule unless required to do otherwise by law, in which case, where legally permitted, We shall inform You of such legal requirement before Processing.

2.4 The types of Personal Data to be Processed pursuant to this Schedule shall include but shall not be limited to, patients' health record numbers and doctors' names, and any other Personal Data which may be contained in documents or information provided by You to Us (or made available by You to Us) through Your use of the Services, and the categories of data subject to whom such Personal Data relates shall be patients and doctors.

3 PARTIES' OBLIGATIONS

3.1 We shall:

3.1.1 only make copies of Your Data to the extent reasonably necessary for the Business Purpose (which, for clarity, may include for generating logs in relation to your use of the Services, back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and testing the Services); and

3.1.2 not extract, reverse-engineer, re-utilise, use, exploit, redistribute, re-disseminate, copy, or store Your Data other than for the Business Purpose.

3.2 We shall notify You in writing without delay of any situation or envisaged development that shall in any way change the ability of Us to Process Your Data as set out in this Agreement.

3.3 In general, Your Data and any logs created by us relating to Your Data will be kept and stored for the duration of the Term. Notwithstanding this, we shall, and taking into account the nature of Our Processing of Personal Data, promptly comply with any written request from You requiring Us to amend, transfer or Delete any of Your Data in advance of the expiration of the Term.

3.4 At Your request, We shall provide to You a copy of all Your Data held by Us in a commonly used format.

At Your request, taking into account the nature of Our

3.5 Processing of the Personal Data and the information available, We shall provide to You such information and such assistance as You may reasonably require, and within the timescales reasonably specified by You, to allow You to comply with Your obligations under Data Protection Legislation, including but not limited to assisting You to:

3.5.1 comply with Your own security obligations as set out in this Schedule with respect to the Personal Data;

3.5.2 discharge Your obligations to respond to requests for exercising Data Subjects' rights with respect to the Personal Data;

3.5.3 comply with Your obligations to inform Data Subjects about serious Personal Data Breaches;

3.5.4 carry out data protection impact assessments and audit data protection impact assessment compliance with respect to the Personal Data; and

3.5.5 comply with Your obligations in respect of the consultation with the ICO following a data protection impact assessment, where a data protection impact assessment indicates that the Processing of the Personal Data would result in a high risk to Data Subjects.

3.5.6 Undertake to delete any personal data sent to US in error and to notify You of same.

3.5.7 Implement the actions required by Us as part of the Data Protection Impact Assessment

3.5.8 Engage in regular service review meetings as part of the Service Level Agreement written by You.

3.6 Any proposal by Us to in any way use or make available Your Data other than as provided for pursuant to this Schedule shall be subject to prior written approval of You.

3.7 While We will use reasonable commercial endeavours to ensure the completeness, accuracy, and sufficiency of (i) any instructions received from You, or (ii) any of Your Data, it is agreed that We are under no duty to investigate/ensure same.

3.8 You shall:

3.8.1 ensure that You are entitled to transfer Your Data to Us so that We may lawfully process and transfer (if applicable) Your Data in accordance with this Schedule;

3.8.2 ensure that the relevant Data Subjects have been informed of, and have given their consent to, such use, processing, and transfer as required by Data Protection Legislation;

3.8.3 notify Us in writing without delay of any situation or envisaged development that shall in any way influence, change or limit the ability of Us to process Your Data as set out in this Schedule;

ensure that Your Data that You instruct Us to Process

3.8.4 pursuant to this Schedule is:

- (a) obtained lawfully, fairly and in a transparent manner in relation to the Data Subject (including in respect of how consent is obtained);
- (b) collected and processed for specified, explicit and legitimate purposes, and not further processed in a manner incompatible with those purposes;
- (c) adequate, relevant, and limited to what is necessary in relation to the purposes for which it is processed;
- (d) accurate, and where necessary kept up to date;
- (e) erased or rectified without delay where it is inaccurate, having regard to the purposes for which they are processed;
- (f) kept in a form which permits identification of Data Subjects for no longer than is necessary for the purposes for which the Personal Data are processed (subject to circumstances where Personal Data may be stored for longer periods insofar as it will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, and subject to the implementation of Appropriate Technical and Organisational Measures);
- (g) processed in a manner that ensures appropriate security of the Personal Data, including protection against unauthorised or unlawful processing and against accidental loss, destruction, or damage, using Appropriate Technical and Organisational Measures; and

3.8.5 provide such information and such assistance to Us as We may reasonably require, and within the timescales reasonably specified by Us, to allow Us to comply with Our obligations under Data Protection Legislation.

3.9 Your Data passed to Us for Processing shall not be kept by You for a period that is longer than necessary.

4 OUR EMPLOYEES

4.1 We shall take reasonable steps to ensure that Our employees have committed themselves to a binding duty of confidentiality in respect of Your Data.

5 RECORDS

5.1 We shall keep at Our normal place of business records (including in electronic form) relating to all categories of Processing activities carried out on behalf of You, containing:

5.1.1 the general description of the security measures taken

in respect of the Personal Data, including details of any Security Features and the Appropriate Technical and Organisational Measures;

5.1.2 the name and contact details of Us; any sub-supplier; and where applicable Our representatives; and where applicable any Data Protection Officer appointed by Us;

5.1.3 the categories of Processing by Us on behalf of You; and details of any non-UK Personal Data transfers, and the safeguards in place in respect of such transfers (as at the Effective Date, no non-UK Personal Data transfers are envisaged).

5.1.4

6 AUDITS

6.1 Subject to Clause 6.2, 6.3 and 6.5 below, and to the extent required by Data Protection Legislation, You shall have the right to examine and review the use by Us of Your Data provided to Us by You only for the purpose of ascertaining that Your Data has been used and Processed in accordance with the terms of this Schedule.

6.2 An audit under this Clause 6 shall be carried out on the following basis: (i) You must first contact Us by email asking for evidence of compliance with Our obligations under this Agreement, and We shall respond to such email within 30 Business Days; (ii) if We have not responded to Your email with a response which is reasonably satisfactory to You within such 30 Business Day period then, no more than once in any twelve (12) month period and during Normal Business Hours during the course of one Business Day You may audit Our Processing of Your Personal Data at a location agreed by Us. Any such audit shall not interfere with the normal and efficient operation of Our business. We may require, as a condition of granting such access, that You (and representatives of You) enter into reasonable confidentiality undertakings with Us.

6.3 The scope of any examination and review by You of the use by Us of the Personal Data shall be agreed in writing prior to the commencement of any such examination and review.

6.4 In the event that the audit process determines that We are materially non-compliant with our obligations under this Schedule, You may, by notice in writing, deny further access to Your Data.

6.5 To the extent permitted under Data Protection Legislation, We may demonstrate Our and, if applicable Our Sub-processors', compliance with Our obligations under this Schedule through Our compliance with a certification scheme or code of conduct approved under Data Protection Legislation.

7 DATA SUBJECT REQUESTS

7.1 Taking into account the nature of Our Processing of the Personal Data and at Your cost, We shall assist You by employing Appropriate Technical and Organisational Measures, insofar as this is possible, in respect of the

fulfilment of Your obligations to respond to requests from a Data Subject exercising his/her rights under Data Protection Legislation.

7.2 We shall notify You as soon as reasonably practicable if We receive:

7.2.1 a request from a Data Subject for access to that person's Personal Data (relating to the Services);

7.2.2 any communication from a Data Subject (relating to the Services) seeking to exercise rights conferred on the Data Subject by Data Protection Legislation in respect of Personal Data; or

7.2.3 any complaint or any claim for compensation arising from or relating to the Processing of such Personal Data.

7.3 We shall not disclose the Personal Data to any Data Subject or to a third party other than at the request of You, as provided for in this DPA, or as required by law in which case We shall to the extent permitted by law inform You of that legal requirement before We disclose the Personal Data to any Data Subject or third party.

7.4 We shall not respond to any request from a Data Subject except as required by law, in which case We shall to the extent permitted by law inform You of that legal requirement before We respond to the request.

8 DATA PROTECTION OFFICER

8.1 We shall appoint a Data Protection Officer, if required to do so pursuant to Data Protection Legislation, and provide You with the contact details of such Data Protection Officer.

8.2 You shall appoint a Data Protection Officer, if required to do so pursuant to Data Protection Legislation, and provide Us with the contact details of such Data Protection Officer.

9 SECURITY

9.1 We shall, in accordance with Our requirements under Data Protection Legislation, implement Appropriate Technical and Organisational Measures to safeguard Your Data from unauthorised or unlawful Processing or accidental loss, alteration, disclosure, destruction or damage, and that, having regard to the state of technological development and the cost of implementing any measures (and the nature, scope, context and purposes of Processing, as well as the risk to Data Subjects), such measures shall be proportionate and reasonable to ensure a level of security appropriate to the harm that might result from unauthorised or unlawful Processing or accidental loss, alteration, disclosure, destruction or damage and to the nature of the Personal Data to be protected.

9.2 We shall ensure that Your Data provided by You can only be accessed by persons and systems that are authorised by Us and necessary to meet the Business Purpose, and that all equipment used by Us for the Processing of Your

Data shall be maintained by Us in a physically secure environment. Your Users will only be given access to our systems after written confirmation from You. A user list will be maintained by Us and provided to You at regular intervals indicating users and system permission levels.

9.3 Both Parties shall make a back-up copy of Your Data as often as is reasonably necessary and record the copy on media from which Your Data can be reloaded in the event of any corruption or loss of Your Data.

10 BREACH REPORTING

10.1 We shall promptly inform You if any of Your Data is lost or destroyed or becomes damaged, corrupted, or unusable, or if there is any accidental, unauthorised, or unlawful disclosure of or access to any of Your Data. In such case, We will use Our reasonable endeavours to restore Your Data, and will comply with all of Our obligations under Data Protection Legislation in this regard. A Breach Management Policy is in place and updates of same will be shared with You.

10.2 We must inform You of any Personal Data Breaches, or any complaint, notice or communication in relation to a Personal Data Breach, without undue delay. Taking into account the nature of Our Processing of the Personal Data and the information available to Us and We will provide sufficient information and assist You in ensuring compliance with Your obligations in relation to notification of Personal Data Breaches (including the obligation to notify Personal Data Breaches to the ICO within seventy two (72) hours), and communication of Personal Data Breaches to Data Subjects where the breach is likely to result in a high risk to the rights of such Data Subjects. Taking into account the nature of Our Processing of the Personal Data and the information available to Us and We shall co-operate with You and take such reasonable commercial steps as are directed by You to assist in the investigation, mitigation, and remediation of each such Personal Data Breach.

11 RESTRICTED TRANSFERS

11.1 A Restricted Transfer may not be made by Us (other than transfers to our Affiliates and by any agents and contractors for the purposes of performing the Services, and You shall endeavour to obtain explicit consent from relevant Data Subjects in respect of such potential transfers) without the prior written consent of You (such consent not to be unreasonably withheld, delayed or conditioned), and if such consent has been obtained (or is unnecessary), such Restricted Transfer may only be made where there are appropriate safeguards in place with regard to the rights of Data Subjects (including but not limited to the Standard Contractual Clauses, Privacy Shield, binding corporate rules, or any other model clauses approved by the ICO). As at the Effective Date, no Restricted Transfers are envisaged.

11.2 Subject to Clause 11.3, in the event of any Restricted Transfer by Us to a contracted Sub-processor, to any Affiliate of You or otherwise ("Data Importer") for which your consent has been obtained (or is unnecessary), We

and You shall procure that (i) You (where the Restricted Transfer is being made at the request of You) or Us acting as agent for and on behalf of You (where the Restricted Transfer is being made at the request of Us), and (ii) the Data Importer, shall enter into the Standard Contractual Clauses in respect of such Restricted Transfer.

11.3 Clauses 11.1 or 11.2 shall not apply to a Restricted Transfer if other compliance steps (which may include, but shall not be limited to, obtaining explicit consents from Data Subjects) have been taken to allow the relevant Restricted Transfer to take place without breach of applicable Data Protection Legislation.

12 SUB-PROCESSORS

12.1 You agree and acknowledge that We may seek to have Your Data Processed by any of Our Affiliates and by any agents and contractors for the purpose of providing the Service (a “Sub-processor”); however, as at the Effective Date, it is not envisaged to use any Sub-processors. We will also require written consent from You before using any Sub-processor. A list of the categories of Sub-processors used by Us may be maintained on our website at or may be otherwise notified to You by Us from time to time. If you object to such sub-processing arrangements, then You should confirm this to Us and, if you do so confirm, You acknowledge that You may no longer be able to avail of some or all of Our Services.

12.2 12.2 We must enter into a data processing contract with the Sub-processor which places similar data protection obligations on the Sub-processor as We have in this Schedule (in particular, providing sufficient guarantees to implement Appropriate Technical and Organisational Measures in such a manner that the Processing will meet the requirements of Data Protection Legislation).

12.3 12.3 With respect to each Sub-processor, We shall, before the Sub-processor first Processes Your Data, ensure that the Sub-processor is capable of providing the level of protection for Your Data required by this Schedule.

12.4 12.4 We will respect the conditions for engaging Sub-processors as set out in Article 28 (4) of the GDPR.

13 WARRANTIES

13.1 We warrant and undertake to You that:

3.1.1 We will Process Your Data in compliance with our obligations under Data Protection Legislation;

13.1.2 We will maintain Appropriate Technical and Organisational Measures against the unauthorised or unlawful Processing of Your Data and against the accidental loss or destruction of, or damage to, Your Data; and

13.1.3 We will discharge Our obligations under this Schedule with all due skill, care, and diligence.

13.2 You hereby warrant and undertake that:

13.2.1 You have complied with and shall comply with Your obligations under Data Protection Legislation;

13.2.2 You have the right to transfer (or to authorise Data Subjects to transfer) Your Data to Us in accordance with the terms of this Schedule;

13.2.5 Your instructions that are set out in this Schedule accurately reflect the instructions of the Data Controller to the extent that We are a Data Processor on behalf of the Data Controller;

13.2.6 You shall and shall cause, appropriate notices to be provided to, and valid consents (where required) to be obtained from, Data Subjects, in each case that are necessary for Us to Process (and have Processed by Sub-processors) Personal Data under or in connection with this Schedule, including Processing outside the UK on the basis of any of the legal conditions for such transfer and Processing set out in Clause 11 above; and

13.2.7 You shall not, by act or omission, cause Us to violate any Data Protection Legislation, notices provided to, or consents obtained from, Data Subjects as a result of Us or Our Sub-processors Processing the Personal Data.

14 INDEMNITY

14.1 You agree to indemnify and keep indemnified and defend at Your own expense Us against all costs, claims, damages, or expenses incurred by Us or for which We may become liable due to any failure by You or Your employees or agents to comply with any of our obligations under this Schedule and/or under Data Protection Legislation and/ or any breach of any warranty provided by You in this Schedule.

15 LIMITATION OF LIABILITY

15.1 Unless required to do so by the ICO or any other competent supervisory authority, We shall not make any payment or any offer of payment to any Data Subject in response to any complaint or any claim for compensation arising from or relating to the Processing of Your Data, without the prior written agreement of You.

15.2 You acknowledge and agree that We are reliant on You for direction as to the extent to which We are entitled to use and process Your Data. Consequently, We will not be liable for any claim brought by a Data Subject arising from any action or omission by Us, to the extent that such action or omission resulted directly from Your instructions and/or the transactions contemplated by this Schedule.

16 CONSEQUENCES OF TERMINATION ON YOUR DATA.

16.1 Upon termination or expiry of the Agreement, at the choice of You, We shall Delete or return all Your Data to You and Delete existing copies of Your Data, unless legally required/ entitled to store Your Data for a period of time. If You make no such election within a ten (10) day period of termination

or expiry of the Agreement, We may Delete any of Your Data in our possession; and if You elect for destruction rather than return of Your Data, We shall as soon as reasonably practicable ensure that all Your Data is Deleted from Our System, unless legally required/entitled to store Your Data for a period of time.



info@medmodus.com
www.medmodus.com