

Intelligent surgical scheduling made simple, with Tetra

Tetra Operating Theatre Scheduling
G-CLOUD 15
Terms & Conditions
Lot 2b Software as a Service (SaaS)



This Agreement is made and entered into as of the Effective Date, between the parties below.

Parties

- (1) **TETRA AI LTD** incorporated and registered in England and Wales with company number 16286167 whose registered office is at 71-75 Shelton Street, Covent Garden, London, United Kingdom, WC2H 9JQ ("**Supplier**")
- (2) The subscriber or the services ("**Customer**")

BACKGROUND

- (A) The Supplier has developed a cloud-based elective surgery scheduling platform which it makes available to customers on a software-as-a-service basis to support the planning, optimisation and management of elective surgical activity.
- (B) The parties may agree to an initial, time-limited pilot period during which the Customer will evaluate the Services in a limited operational scope before any full subscription commences.
- (C) The Supplier has agreed to provide, and the Customer has agreed to receive, access to the Services on the terms and conditions of this agreement.

Agreed terms

1. Interpretation

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

Aggregated Data: statistical or summary data compiled from Customer Data (and possibly from other customers' data) that does not identify the Customer or any individual or patient.

Agreed Service Hours: the hours that end users will have access to the software-as-a-service platform, to be agreed between Parties. If this is not agreed, this defaults to Normal Business Hours.

Anonymised Data: data originally derived from Customer Data which has been permanently and irreversibly anonymised so that no individual, patient or the Customer can be identified, directly or indirectly, from that data.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation.

Background IP: all Intellectual Property Rights which are owned or controlled by a party before the Effective Date or developed independently of this agreement, and any modifications or enhancements to such rights.

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

Cyber Essentials: the UK government-backed cyber security certification scheme (including Cyber Essentials Plus, if applicable).

Confidential Information: has the meaning given to it in clause 11.1.

Contract Year: a 12 month period commencing on the Effective Date or any anniversary of it.

Customer Data: all data, information, text, images or other materials inputted by or on behalf of the Customer, or generated for the Customer through use of the Services, including any Personal Data and clinical information, but excluding Anonymised Data and Aggregated Data.

Data Controller: has the meaning given in the Data Protection Legislation.

Data Processor: has the meaning given in the Data Protection Legislation.

Data Protection Legislation: all applicable data protection and privacy legislation in force in the United Kingdom, including the UK GDPR, the Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), and any related codes of practice or guidance issued by the UK Information Commissioner.

Data Subjects: has the meaning given in the Data Protection Legislation.

Deliverables means any output of the Services to be provided by the Supplier to the Customer (which may include any bespoke software programs and/or integration components for the Software developed by the Supplier specifically for the Customer under this agreement).

Documentation: the document(s) and other materials made available to the Customer by the Supplier online via the Customer's dedicated web platform portal 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.

DSP Toolkit: the NHS Data Security and Protection Toolkit published by NHS England (as updated from time to time).

Effective Date: the date of this agreement.

Evaluation Scope: the limited, fixed-scope pilot configuration agreed by the parties for the Pilot, quantified using Operating-Theatre-Equivalent Volume as further set out in paragraph 4 of Schedule 2.

Implementation Phase: the period during which the Supplier implements the software-as-a-service platform.

Initial Subscription Term: the initial 12-month subscription period commencing on the day after the end of any Pilot Phase (or on the SaaS Commencement Date if no Pilot Phase applies).

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks, service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use and protect the confidentiality of confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Normal Business Hours: 8.00 am to 6.00 pm local UK time on each Business Day.

Operating-Theatre-Equivalent Volume or OTEV: a measure of the approximate volume of surgical activity (or equivalent operational scope) served by the Services, used to define the Evaluation Scope and to set Subscription Fees.

Personal Data: has the meaning given in the Data Protection Legislation.

Personal Data Breach: has the meaning given in the Data Protection Legislation.

Pilot: an initial, time-limited period for limited evaluation of the Services for the duration of the Pilot Phase.

Pilot Phase Duration: the duration the Pilot may run for, to be agreed with the Customer prior to project commencement.

Pilot Break Notice: has the meaning given to it in paragraph 7.1 of Schedule 2.

Pilot Break Notice Period: the notice period required to terminate the agreement at the end of the Pilot Phase as specified in paragraph 7.1 of Schedule 2.

Pilot Phase: has the meaning given to it in paragraph 3 of Schedule 2.

Renewal Period: the period described in clause 15.1(b).

SaaS Commencement Date: means the date that the Customer first accesses or uses the Services following the Implementation Phase.

Services: the software-as-a-service platform, related functionality, hosting, maintenance, support and technical implementation services provided by the Supplier to the Customer under this agreement.

Software: the Supplier's proprietary software applications forming part of the Services, including all associated algorithms, models, databases, user interfaces, configurations and documentation.

Subscription Fees: the fees payable by the Customer for the Services under this agreement as set out in Schedule 1.

Subscription Phase: the Initial Subscription Term and any Renewal Period following the Implementation Phase and the Pilot Phase (if any).

Supplier Liability Cap: the total Subscription Fees paid in the Contract Year in which the defaults occurred.

Support Services Policy: the Supplier's policy for providing support in relation to the Services as made available via the Customer's dedicated web platform portal or such other website address as may be notified to the Customer from time to time.

Term: has the meaning given to it in clause 15.1.

UK GDPR: has the meaning given in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

Virus: any thing 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.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability of Customer Data / the Services, and the term **Vulnerabilities** shall be interpreted accordingly.

- 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 includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular includes the plural and in the plural includes the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender includes 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 includes 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** excludes fax but not email.
- 1.10 References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule to this agreement.

2. Licence and use of the Services

- 2.1 Subject to the Customer complying with the restrictions set out in this clause 2 and the other terms and conditions of this agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to permit the Authorised Users to access and use the Services, the Documentation and the Deliverables during the Term (which may include any Pilot Phase and Subscription Phase) solely for the Customer's internal operations.
- 2.2 In relation to the Authorised Users, the Customer undertakes that:
- (a) each Authorised User shall keep a secure password for their use of the Services and Documentation and each Authorised User shall keep their password confidential and change it no less frequency than every 90 days; and
 - (b) 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.
- 2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its access and use of the Services that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (b) facilitates illegal activity;
 - (c) depicts sexually explicit images;
 - (d) promotes unlawful violence;
 - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - (f) 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 access to any material that breaches the provisions of this clause.

2.4 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software, the Services, Documentation and/or Deliverables (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software, the Services or the Deliverables; or
- (b) access all or any part of the Services, Documentation or the Deliverables in order to build a product or service which competes with the Services, the Documentation and/or the Deliverables; or
- (c) use the Services, Documentation and/or Deliverables to provide services to third parties; or
- (d) subject to clause 23.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services, Documentation and/or Deliverables available to any third party except the Authorised Users; or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services, Documentation and/or Deliverables, other than as provided under this clause 2; or
- (f) introduce or permit the introduction of, any Virus or Vulnerability into the Services, Deliverables or the Supplier's network and information systems.

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

2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

3. Services

3.1 The Supplier shall, during the Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.

3.2 The Supplier shall use commercially reasonable endeavours to make the Services available during the Agreed Service Hours, except for:

- (a) planned maintenance carried out during the maintenance window of 7.00 pm to 6.00am UK time; and
 - (b) unscheduled maintenance performed during and outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 8 Normal Business Hours' notice in advance.
- 3.3 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at the Supplier's then current rates.

4. Pilot

- 4.1 Where Schedule 2 specifies that the Customer receives a Pilot under this agreement, Schedule 2 shall apply to this agreement.
- 4.2 The terms and conditions under this agreement (including the provisions set out in clause 2) apply to the parties during the Pilot Phase except where the terms and conditions are expressed to apply only to the Subscription Phase.

5. Data protection

- 5.1 Both parties shall comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, either party's obligations or rights under the Data Protection Legislation.
- 5.2 For the purposes of the Data Protection Legislation, the Customer acts as Data Controller and the Supplier acts as Data Processor in respect of any Personal Data processed under this agreement.
- 5.3 The scope, nature and purpose of processing, categories of Personal Data and Data Subjects, and the technical and organisational measures in place are set out in Schedule 3 (Data Processing Schedule).
- 5.4 Without prejudice to the generality of clause 5.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance of its obligations under this agreement:
 - (a) process such Personal Data only on the documented written instructions of the Customer (as set out in this agreement or otherwise in writing), unless required by UK law to do otherwise in which case, the Supplier shall inform the Customer of that legal requirement before processing, unless UK law prohibits disclosure of

such information on important grounds of public interest and it will immediately inform the Customer if, in its opinion, an instruction infringes the Data Protection Legislation;

- (b) ensure that it has in place the technical and organisational measures set out in Schedule 3 to protect against unauthorised or unlawful processing of Personal Data, and against accidental loss or destruction of, or damage to, Personal Data, having regard to the nature of the data and the potential harm that might result from such processing;
- (c) ensure that all personnel who have access to and/or process Personal Data are subject to binding duties of confidentiality;
- (d) not transfer any Personal Data outside of the United Kingdom without the Customer's prior written consent (not to be unreasonably withheld or delayed) and without implementing appropriate safeguards under the Data Protection Legislation;
- (e) assist the Customer, at the Customer's reasonable cost, in responding to any request from a Data Subject and in ensuring compliance with the Customer's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach. The Supplier agrees to provide reasonable assistance to the Customer to facilitate the handling of any Personal Data Breach in an expeditious and compliant manner and in ensuring compliance with the Customer's obligations under the Data Protection Legislation with respect to breach notifications;
- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination or expiry of this agreement, unless required by UK law to retain the Personal Data;
- (h) maintain appropriate records of its processing activities and make them available for audit on reasonable written notice and during Normal Business Hours;
- (i) maintain appropriate records to demonstrate its compliance with this clause 5 and make such records available to the Customer upon reasonable written request for audit purposes; and
- (j) permit the Customer, at the Customer's expense, at any reasonable time and from time to time upon not less than 7 days' written notice, and subject to the Customer entering into such confidentiality undertakings as the Supplier requires, to have escorted access to the appropriate part of the Supplier's premises, systems, equipment and other materials and facilities to enable the Customer to inspect the same for the purposes of monitoring compliance with this clause 5.

- 5.5 The Customer acknowledges that the Supplier has appointed those sub-processors set out in Schedule 3, and further acknowledges and agrees that the Supplier may authorise those sub-processors to process Personal Data on behalf of the Customer, subject to the Supplier satisfying the obligations set out in clauses 5.6(a) to 5.6(c) below.
- 5.6 The Customer hereby provides the Customer's prior, general authorisation for the Supplier to appoint additional or replacement third-party sub-processors as reasonably necessary for the provision of the Services provided that the Supplier:
- (a) shall ensure that each sub-processor is bound by written terms that comply with the Data Protection Legislation and are substantially similar to this clause 5;
 - (b) shall remain fully liable for the acts and omissions of any sub-processor as if they were the acts and omissions of the Supplier; and
 - (c) shall inform the Customer of any intended changes concerning the addition or replacement of any sub-processors, thereby giving the Customer the opportunity to object to such changes.
- 5.7 The Supplier maintains current compliance with the DSP Toolkit and Cyber Essentials standards and shall provide evidence of such compliance upon written request by the Customer.
- 5.8 The Customer shall ensure that:
- (a) all Personal Data provided to the Supplier has been validly obtained and it is entitled to disclose and transfer the Personal Data to the Supplier so that the Supplier may lawfully use, process and transfer the Personal Data in accordance with this agreement; and
 - (b) in respect of all Personal Data collected by the Supplier on the Customer's behalf, the Customer will issue the relevant Data Subjects with a fair processing notice or privacy notice informing them how the Supplier intends to use their Personal Data.
- 5.9 The Customer agrees that it shall give full and proper instructions to the Supplier, in accordance with the Data Protection Legislation, to enable the Supplier to comply with its obligations set out in clause 5.

6. Third party providers

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-

party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

7. Supplier's obligations

- 7.1 The Supplier shall perform the Services substantially in accordance with the Documentation and with reasonable skill and care.
- 7.2 The Supplier's obligations 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 terms of clause 7.1, Supplier will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly. Such correction constitutes the Customer's sole and exclusive remedy for any breach of the obligation set out in clause 7.1.
- 7.3 The Supplier:
- (a) does not warrant that:
 - (i) the Customer's use of the Services and/or the Deliverables will be uninterrupted or error-free; or
 - (ii) that the Services, Documentation, Deliverables and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
 - (b) 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, Documentation and Deliverables may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.4 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 and/or services which are similar to those provided under this agreement.
- 7.1 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

- 7.2 The Supplier shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy, available on request, as such document may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in its Back-Up Policy. 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).

8. Customer's obligations

- 8.1 The Customer shall:

- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to this agreement; and
 - (ii) 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;
- (b) without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) 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 and the Supplier shall not be liable for any failure to deliver any or all of the Services to the extent caused by Customer's delay;
- (d) ensure that the Authorised Users' use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- (e) 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 providing the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time;
- (g) be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing 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; and

- (h) provide the Supplier with complete and accurate information in respect of the amount of surgery performed by the Customer which will be served by the Services in order to calculate the amount of the Subscription Fees.

- 8.2 The Customer shall own all right, title and interest in and to all of the Customer Data that is not Personal Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

9. Charges and payment

- 9.1 The Customer shall pay the Subscription Fees in accordance with this clause 9 and Schedule 1.

- 9.2 The Customer shall, on the Effective Date, provide to the Supplier approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details.

- 9.3 The Supplier shall invoice the Customer:

- (a) where the Customer receives a Pilot:
 - (i) on the Effective Date for the Subscription Fees (if any) payable in respect of the Pilot Phase; and
 - (ii) on the first day of the Initial Subscription Term for the Subscription Fees payable in respect of the Initial Subscription Term;
- (b) where the Customer does not receive a Pilot, on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
- (c) subject to clause 15.1, at least 30 days prior to each anniversary of the Effective Date or the anniversary of the commencement date of the Subscription Phase (as applicable) for the Subscription Fees payable in respect of the next Renewal Period,

and the Customer shall pay each invoice within 30 days after the date of such invoice.

- 9.4 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:

- (a) the Supplier may, on no less than 5 Business Days' notice to the Customer and without liability to the Customer, disable the Customer's 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

- (b) 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.

9.5 All amounts and fees stated or referred to in this agreement:

- (a) shall be payable in pounds sterling;
- (b) are, subject to clause 13.4(b), non-cancellable and non-refundable; and
- (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

9.6 The Supplier shall be entitled to increase the Subscription Fees at the start of each Renewal Period upon 90 days' prior notice to the Customer and Schedule 1 shall be deemed to have been amended accordingly.

9.7 The Customer shall obtain the Supplier's prior written consent in order to exceed the Customer's OTEV as specified in Schedule 1. The Supplier may charge the Customer additional Subscription Fees for any additional OTEVs in accordance with Schedule 1.

10. Proprietary rights

10.1 Each party shall retain ownership of all Intellectual Property Rights in and to its own Background IP. Nothing in this agreement transfers or assigns any ownership in either party's Background IP.

10.2 All Intellectual Property Rights in the Software, the Services, the Documentation, the Deliverables, the Supplier's algorithms, models, forecasts, analytics, reports, classifications, documentation, configurations, processes, and any improvements, enhancements, or derivative works created by or on behalf of the Supplier shall at all times remain the exclusive property of the Supplier (or its licensors).

10.3 All rights, title and interest in and to the Customer Data shall remain the property of the Customer.

10.4 The Customer hereby grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy, use and modify the Customer Data during the Term for the purpose of providing the Services and Deliverables to the Customer and otherwise performing its obligations under this agreement.

10.5 The Customer warrants that:

- (a) the Customer Data is owned by or properly licensed to the Customer; and

- (b) the Supplier's use or modification of such Customer Data in accordance with this agreement does not, and will not, infringe the Intellectual Property Rights of any third party.

10.6 The Supplier may generate, use and retain Anonymised Data or Aggregated Data derived, provided that such data does not identify the Customer or any individual. The Supplier shall own all Intellectual Property Rights in such Anonymised Data and Aggregated Data and may use it for any lawful purpose, including improving, training and marketing its products and services, analytics and marketing.

10.7 Except as expressly set out in this clause 10, nothing in this agreement grants the Customer any right, title or interest in or to the Intellectual Property Rights of the Supplier.

11. Confidentiality

11.1 Each party undertakes to treat as confidential all trade and business secrets and all other information (in any form) which it receives from the other party in connection with this agreement (whether prior to, on or after the Effective Date) and which is marked or otherwise identified as confidential, or which a reasonable person would understand to be confidential, including clinical, patient, operational and commercial information ("**Confidential Information**"). The Customer acknowledges that the details of the Software, the Services, the Documentation and the Deliverables shall constitute the Supplier's Confidential Information.

11.2 Each party agrees that it shall:

- (a) only use the other party's Confidential Information for the purposes of performing or receiving the Services or otherwise exercising its rights or performing its obligations under this agreement; and
- (b) not disclose the other party's Confidential Information to any third party without the other party's prior written consent, except to its employees, workers, contractors, agents or advisers who need to know it for that purpose and are bound by equivalent confidentiality obligations.

11.3 These obligations shall not apply to information which:

- (a) is or becomes public other than through a breach of this agreement;
- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;

- (d) is required to be disclosed by law, regulation, court order or under the Freedom of Information Act 2000, provided that, where lawful and practicable, the disclosing party is given reasonable notice of such disclosure; or
 - (e) the parties agree in writing is not confidential or may be disclosed.
- 11.4 Each party shall take all reasonable steps to protect the other party's Confidential Information and shall return or securely destroy it upon termination of this agreement, except where retention is required by law.
- 11.5 These confidentiality obligations shall survive termination of this agreement.

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 and/or Documentation or the Customer's breach of the warranty under clause 10.5, provided that:
 - (a) the Customer is given prompt written notice of any such claim;
 - (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - (c) 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 Customer's use of the Services or Documentation in accordance with this agreement infringes any third party United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or other Intellectual Property Right, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
 - (a) the Supplier is given prompt written notice of any such claim;
 - (b) the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - (c) the Supplier is given sole authority to defend or settle the claim.
- 12.3 In the defence or settlement of any claim, 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:
- (a) a modification of the Services or Documentation by anyone other than the Supplier; or
 - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
 - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority; or
 - (d) the Customer Data; or
 - (e) the Customer's breach of this agreement.
- 12.5 The foregoing and clause 13.4(b) states 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 or alleged infringement of any third party patent, copyright, trade mark, database right or other Intellectual Property Right by the Supplier.

13. Limitation of liability

- 13.1 The following definitions apply in this clause 13 and Schedule 2:
- (a) liability: every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise; and
 - (b) default: any act or omission resulting in one party incurring liability to the other.
- 13.2 Except as expressly and specifically provided in this agreement:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation 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 Customer Data, 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;
 - (b) 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
 - (c) the Services, the Documentation and the Deliverables are provided to the Customer on an "as is" basis.

- 13.3 Nothing in this agreement excludes the liability of the Supplier for:
- (a) death or personal injury caused by the Supplier's negligence;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any other liability that may not be restricted or excluded by law.
- 13.4 Subject to clause 13.2 and clause 13.3:
- (a) the Supplier shall have no liability under or in connection with this agreement for any:
 - (i) loss of profits;
 - (ii) loss of business;
 - (iii) wasted expenditure;
 - (iv) depletion of goodwill and/or similar losses;
 - (v) loss or corruption of documents, data or information;
 - (vi) loss of contract; or
 - (vii) any special, indirect or consequential loss, costs, damages, charges or expenses; and
 - (b) the Supplier's total aggregate liability to the Customer in connection with the Subscription Phase (including in respect of the indemnity at clause 12.2), in respect of all defaults shall not exceed the Supplier Liability Cap. If defaults committed in more than one Contract Year give rise to a single claim or a series of connected claims, the Supplier's total liability for those claims shall not exceed the single highest annual cap for those Contract Years.
- 13.5 Nothing in this agreement excludes the liability of the Customer for any breach, infringement or misappropriation of the Supplier's Intellectual Property Rights.

14. Insurance

- 14.1 The Supplier shall maintain in force throughout the term of this agreement insurance policies with reputable insurers, including:
- (a) Professional Indemnity Insurance of not less than £5,000,000 per claim;
 - (b) Public Liability Insurance of not less than £5,000,000 per claim;
 - (c) Employers' Liability Insurance of not less than £10,000,000 per claim (or such amount as required by law); and
 - (d) Cyber Liability Insurance of not less than £2,000,000 aggregate.

- 14.2 The Supplier shall provide the Customer with evidence of such insurance upon reasonable request.

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:

- (a) where the Customer receives a Pilot under this agreement, for the Implementation Phase and the Pilot Phase and, thereafter, this agreement shall automatically continue into the Subscription Phase on the day after the Pilot Phase ends, unless either party gives written notice of termination to the other party not less than the Pilot Break Notice Period set out in Schedule 2; and/or
- (b) where the Customer does not receive a Pilot or where the agreement continues following the Pilot in accordance with clause 15.1(a), for the Implementation Phase (unless the software-as-a-service platform has already implemented) and for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a **"Renewal Period"**), unless:
 - (i) either party notifies the other party of termination, in writing, at least 60 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
 - (ii) otherwise terminated in accordance with the provisions of this agreement;

and the Implementation Phase, the Pilot Phase (if applicable), the Initial Subscription Term (if applicable) together with any subsequent Renewal Periods shall constitute the **"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:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party suspends, or threatens in writing to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (f) 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;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (i) 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;
- (j) 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;
- (k) 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(c) to clause 15.2(j) (inclusive); or
- (l) the other party suspends or ceases, or threatens in writing to suspend or cease, carrying on all or a substantial part of its business.

15.3 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services, the Documentation and the Deliverables;
- (b) 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;

- (c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten 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. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 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; and
- (d) 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 Neither party shall be in breach of this agreement nor liable for delay or failure in performing its obligations (except any obligation to make payment) if and to the extent that such delay or failure results from events, circumstances, or causes beyond its reasonable control, including without limitation acts of God, flood, fire, epidemic or pandemic, war, terrorism, riot, industrial dispute (other than with the affected party's own workforce), or interruption or failure of utility service, telecommunications, or hosting provider.
- 16.2 The affected party shall:
 - (a) as soon as reasonably practicable after the start of the Force Majeure event, notify the other party in writing of the nature of the event and its expected duration; and
 - (b) use reasonable endeavours to mitigate the effect of the event on its performance.
- 16.3 The time for performance of such obligations shall be extended for the period during which the performance is prevented, hindered, or delayed.
- 16.4 If the Force Majeure event continues for more than 90 days, either party may (after consultation in good faith) terminate this agreement on 30 days' written notice.

17. Conflict

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 prevail.

18. Variation

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 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 19.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy does not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy.

20. 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.

21. Severance

- 21.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 21.2 If any provision or part-provision of this agreement is deemed deleted under clause 21.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

22. Entire agreement

- 22.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.
- 22.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 22.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.
- 22.4 Nothing in this clause shall limit or exclude any liability for fraud.

23. Assignment

23.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

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

24. No partnership or agency

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. Third party rights

25.1 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

26. Counterparts

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

27. Notices

27.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

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

(b) sent by email to the following addresses (or an address substituted in writing by the party to be served):

(i) Customer: [ADDRESS].

(ii) Supplier: **jamie.papasavvas@tetrattech.uk**

27.2 Any notice shall be deemed to have been received:

(a) if delivered by hand, at the time the notice is left at the proper address;

- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside Normal Business Hours in the place of receipt, when Normal Business Hours resume.

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

28. Governing law

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 interpreted in accordance with the law of England and Wales.

29. Jurisdiction

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).

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

Schedule 1 – Subscription Fees

Subscription Fees shall be as set out in the applicable Order Form or G-Cloud Pricing Document

Schedule 2 – Pilot

1. Overview

This Schedule applies only where the parties agree to conduct a Pilot prior to the Subscription Phase. If no Pilot is agreed, this Schedule shall not apply and the Initial Subscription Term shall commence on the Effective Date.

2. Purpose

The purpose of the Pilot is to allow the Customer to evaluate the Services in a limited operational scope before any full subscription commences.

3. Duration

Following the Implementation Phase, the Pilot shall commence on the SaaS Commencement Date and continue for the Pilot Phase Duration. The duration of the Pilot Phase may be varied by written agreement between the parties.

4. Scope of Pilot

- 4.1 The Pilot Scope shall be limited to discrete users, specialties or operating theatres, per mutual agreement between Parties.
- 4.2 The Services shall be provided using the same platform configuration as the Services provided during the Subscription Phase but limited to the Evaluation Scope above.

5. Charges

Any Subscription Fees for the Pilot shall be set out in Schedule 1.

6. Data and Configuration Continuity

All Customer Data inputted through use of the Services, configurations, and user accounts created by or for the Customer during the Pilot Phase shall persist into the Subscription Phase unless a party terminates this agreement in accordance with paragraph 8 of Schedule 2 below.

7. Termination

- 7.1 Either party may terminate this agreement by giving written notice ("**Pilot Break Notice**") to the other party not less than 14 days before the end of the Pilot Phase (the "**Pilot Break Notice Period**") with such termination to take effect at the end of the Pilot.
- 7.2 If no Pilot Break Notice is served during the Pilot Break Notice Period, this agreement shall automatically continue and the Initial Subscription Term shall commence on the first day following the end of the Pilot Phase.

8. Conversion to Subscription Phase

Upon conversion from the Pilot Phase to the Subscription Phase, the Subscription Fees for the Subscription Phase set out in Schedule 1 shall apply.

9. Consequences of Termination and Data Handling

- 9.1 On termination of this agreement at the end of the Pilot Phase without conversion to the Subscription Phase, the Supplier shall delete or return all Customer Data in accordance with clauses 4 and 15.3(c).
- 9.2 Any rights, obligations or liabilities accrued prior to termination shall remain unaffected.

10. Liability

During any Pilot Phase, the Supplier's total aggregate liability shall not exceed £10,000.

Schedule 3 Data Processing Schedule

1. Processing by the Supplier

1.1 Scope.

This Schedule describes the processing of Personal Data by the Supplier (as Processor) on behalf of the Customer (as Controller) under this agreement.

1.2 Subject matter of the processing.

Provision of the Supplier's cloud-based elective surgery scheduling platform to support planning, optimisation, and management of elective surgical activity.

1.3 Nature of the processing.

Collection, storage, analysis, and reporting of scheduling and operational data; management of user accounts and access; generation of analytics and performance reports.

1.4 Purpose of the processing.

To enable the Supplier to provide the Services, which enable the Customer to plan and manage elective surgical capacity and performance through the Supplier's software-as-a-service platform.

1.5 Duration of the processing.

For the duration of this agreement and any retention period required by UK law following its termination or expiry.

2. Types of Personal Data

2.1 The Supplier may process the following types of Personal Data on behalf of the Customer:

- (a) Patient gender, age and health data (e.g. details of surgery being received and clinical details such as BMI and ASA scores);
- (b) Patient identifiers (e.g. NHS number or pseudonymised ID provided by the Customer);
- (c) Appointment and procedural information necessary for scheduling and theatre planning;
- (d) Staff names, roles, and contact details for Authorised Users; and

(e) User authentication and activity-log information.

2.2 The Supplier does not require or collect special-category Personal Data beyond what the Customer lawfully provides for these purposes, except where the Customer chooses to provide it for scheduling or analytics purposes.

3. Categories of Data Subjects

3.1 Categories of Data Subjects include:

- (a) Patients undergoing elective surgery managed within the Customer's systems;
- (b) NHS staff and Authorised Users involved in planning and theatre operations; and
- (c) Administrative and management personnel accessing reports or dashboards.

4. Technical and Organisational Measures

4.1 The Supplier shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including:

- (a) Encryption of Personal Data in transit and at rest;
- (b) Logical access control and authentication;
- (c) Data segregation between customers;
- (d) Regular security testing, monitoring, and patching;
- (e) Hosting of Personal Data only in UK-based data centres; and
- (f) Ongoing compliance with the DSP Toolkit and Cyber Essentials certification.

5. Sub-Processors

5.1 The Supplier may use sub-processors for hosting, analytics, authentication, and operational support. A current list is available on request.