

# Person Centred Software Limited

## Terms and Conditions

These Terms set out the terms and conditions that apply to the agreement between Person Centred Software Limited and the Account Holder (as defined below) for the provision of the Mobile Care Monitoring service and other related services and goods. The Account Holder must read these Terms before accepting any Order issued by Person Centred Software Limited.

These Terms were issued on the 26<sup>th</sup> August 2022

### I. INFORMATION ABOUT US

We are Person Centred Software Limited, a company registered in England and Wales. Our company registration number is 08539732 and Our registered office is First Floor, 1 Bell Court, Leapale Lane, Guildford, Surrey, GU1 4LY. Our registered VAT number is 162 9819 76. Our main business address is 1 Bell Court, Leapale Lane, Guildford, Surrey, GU1 4LY. A reference to “**We**”, “**Us**” or “**Our**” in these Terms shall be a reference to Person Centred Software Limited.

### 2. WHAT SOME WORDS OR PHRASES MEAN

So that We can be completely clear, here are some words We use which have specific meanings, some of which are set below and some of which are defined elsewhere in these Terms:

**Account Holder** means the individual company or other business entity that accepts the Order and who is a Party to the Agreement. A reference to **You** or **Your** is a reference to the Account Holder.

**Agreement** means the agreement between Person Centred Software Limited and the Account Holder for the provision of the Services and Goods, comprising these Terms (as may be updated from time to time) and Your accepted Order.

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

**Charges** means the charges payable by You for the Subscription Service, Training and Consultancy Services and Goods.

**Confidential Information** means trade secrets and non-public information including (but not limited to) financial, technical, operational, commercial, staff, customer, supplier, management and other information and including data, experience and know-how, databases, business strategies, business plans, specifications, processes, designs, internal systems, concepts and test results, software and IPR where the information is (i) identified as confidential at the time of disclosure; or (ii) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure, in whatever form and media.

**Devices** means a computing device (including a computer, phone or tablet) used by You and Your Permitted Users to access the Subscription Service.

**FOIA** means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Goods** means the goods We supply to You under the Agreement, including any Devices.

**IaaS** means the ‘infrastructure as a service’ that We use to host the Subscription Service, which is currently Microsoft Azure.

**IPR** means all intellectual property rights, in each case whether registered or unregistered. Examples of IPR are patents, trademarks, copyright and rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets).

<b>Order</b> means the order for the provision of Services and Goods which is issued or otherwise made available by Us to You and which You accept.
<b>Owner</b> means Papworth Computer Software Limited, a company registered in England with registered number 10199848 whose registered office is at First Floor 1 Bell Court, Leapale Lane, Guildford, Surrey, United Kingdom, GU1 4LY.
<b>Party</b> means You or Us and <b>Parties</b> means You and Us.
<b>Permitted User</b> means a person that is given permission to use the Subscription Service by You. Typically, these will be members of Your staff or relatives or representatives of a care resident.
<b>Relatives Gateway</b> means that part of the Subscription Service which is available to be accessed by a relative or representative of a care resident.
<b>Subscription Service</b> means Our Mobile Care Monitoring subscription service which is hosted on the IaaS and accessed via password protected websites and device applications and/or computers, including all software applications, user documentation and support services provided by Us as part of the service.
<b>Terms of Use</b> means the relevant end user or relative terms of use issued by Us from time to time which a Permitted User must accept before using the Subscription Service or the Relatives Gateway part of the Subscription Service in the case of a Permitted User who is a relative or representative of a care resident.
<b>Training and Consultancy Services</b> means the implementation, training, consultancy and other services we provide to You under the Agreement, as identified in the Order.
<b>Unsuitable Content</b> means any material or content that infringes any applicable law or third party rights or is unlawful, illegal or facilitates illegal activity, obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, promotes violence, discriminatory, blasphemous or in breach of any person's IPR.
<b>Virus</b> means 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.
<b>Vulnerability</b> means 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, and the term <b>Vulnerabilities</b> shall be construed accordingly.
<b>Your Data</b> means any data entered or uploaded by You or your Permitted Users while using the Subscription Service, including any personal data.
<b>Your Systems</b> means Your systems, networks, software, websites and equipment.

### 3. OUR AGREEMENT WITH YOU

- 3.1 **When the Agreement is formed.** We will issue an Order to You which is subject to these Terms. The Agreement will become legally binding once You accept the Order without amendment. By accepting an Order and/or You or Your Permitted Users accessing the Subscription Service, You agree to be bound by these Terms.
- 3.2 **No other terms apply.** No other terms or conditions (including any terms or conditions issued by You) will be incorporated into the Agreement, other than any variation to the Agreement the Parties may agree in writing.
- 3.3 **Our rights to update these Terms.** We reserve the right to update these Terms from time to time. We will publish any updated Terms on Our website. We will also notify You of any updated Terms, including by referencing the current version of these Terms when we invoice You. Any updated Terms will become binding on You upon the earlier of (a) You becoming aware of the updated Terms as published on Our website or (b) after receiving notification of the updated Terms, and then, in either case, continuing to use or access the Service. You are therefore advised to regularly

review the page on Our website where these Terms are published to check for changes to these Terms. Your continued use of the Service following the publication or notification of any updated Terms shall constitute your acceptance of the updated Terms. If You do not accept any updated Terms, You must immediately notify Us and stop accessing and using the Service. In the event of any conflict between the current version of these Terms and any previous version(s), the provisions current and in effect shall prevail unless it is expressly stated otherwise.

- 3.4 **Our Right to decline applications.** We reserve the right, at our discretion, not to accept an application to create an Agreement. No charge will be made by Us for any declined applications.
- 3.5 **Compliance with bribery and slavery law.** Each Party shall:
- comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption, including the Bribery Act 2010;
  - not engage in any activity, practice or conduct that would constitute an offence of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including but not limited to the Modern Slavery Act 2015; and
  - not engage in any activity, practice or conduct that would constitute an offence under the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.

#### 4. YOUR ACCOUNT

- 4.1 **Your account.** Before You or Your Permitted Users can access the Subscription Service, We will set up Your account. To do this, We will need a valid email address and You will need to set up a password.
- 4.2 **Adding additional Permitted Users.** You can add additional Permitted Users to Your account by accessing the Subscription Service and using the "Add staff" function on the "Home" page. We will activate the additional subscriptions as soon as reasonably practicable after We have received Your request and You will become liable for additional Charges for the subscriptions added to Your account.
- 4.3 **Controlling levels of access.** You can control the level of access of each Permitted User to the Subscription Service by accessing and adjusting the relevant settings.
- 4.4 **Errors when opening Your account.** If You made any mistakes in the details You gave to Us when applying for an account, these errors can be corrected by accessing the Subscription Service and using "Company details" or "People" pages. It is Your responsibility to ensure that all the information that You provide is accurate and correct.
- 4.5 **You must keep Your details up to date.** It is Your responsibility to keep the Subscription Service updated with details of Your staff and all Permitted Users in case We may need to contact You in connection with the Agreement, and to ensure We have complete and accurate billing and contact information including a billing contact email address. You accept that details of these people are shared with Us, and that We have rights to contact these people.

#### 5. THE SUBSCRIPTION SERVICE

- 5.1 **Your right to access the Subscription Service.** Subject to the terms and conditions of the Agreement, We grant to You a non-exclusive, non-transferable right, without the right to grant sublicences, to allow the Permitted Users to use the Subscription Services solely for purpose of social care provided by Your company or business.
- 5.2 **Your licence may restrict access to parts of the Subscription Service.** Your licence to access or use the Subscription Service may restrict Your use of parts of the Subscription Service, and You are responsible for informing Us if You wish to use parts of the Subscription Service that are not covered by your current license subscription as additional Charges may be incurred.
- 5.3 **Our Obligation to provide the Subscription Service.** Subject to the terms and conditions of the Agreement, We will use commercially reasonable endeavours to make the Subscription Services available to You 24 hours a day, seven days a week, except for:
- planned maintenance carried out during Our maintenance window and unscheduled maintenance performed at such time as We consider necessary, provided that We will use reasonable endeavours to give You as much notice in advance as is reasonably possible, taking into account the nature of the necessary work;
  - where We reasonably judge the IaaS and/or Subscription Service are at risk of a general security threat, denial of service attack or other widespread vulnerability that represents a threat to the data security of the Subscription Services; or

- in any other case where We have a right to suspend access to and use of the Subscription Service.

We will try to keep any suspension or disruptions to the Subscription Service to a minimum.

- 5.4 **Your subscription is based on number of registered beds.** The Subscription Service is based on the number of registered beds, unless specified differently on your order, and does not need to be assigned to a named Permitted User.
- 5.5 **Permitted Users.** In relation to Your Permitted Users, You must ensure that:
- the maximum number of Permitted Users that You authorise to access and use the Subscription Service at any one time do not exceed the number of subscriptions You have purchased from time to time;
  - each Permitted User will keep a secure password for their use of the Subscription Service, that such password will be changed frequently and that each Permitted User will keep their password confidential. You are ultimately responsible for administering and safeguarding any passwords created to control access to the Subscription Service; and
  - no person uses the Subscription Service unless authorised and permitted by You.
- 5.6 **Permitted Users are Your Responsibility.** You are responsible for the acts or omissions of each Permitted User accessing the Subscription Service. You must ensure the Permitted Users use the Subscription Service in accordance and comply at all times with the terms of the Agreement and Terms of Use and You will be liable to Us for any breach of the Agreement caused by a Permitted User or any breach of the Terms of Use by a Permitted User.
- 5.7 **We will audit Your use of the Subscription Service.** We will audit Your use of the Subscription Service and Your compliance with the Agreement, including the processes and procedures You have in place with regard to obtaining Permitted Users' acceptance of the relevant Terms of Use. If any of the audits reveal that You have underpaid Charges, for example, the number of your Permitted Users accessing the Subscription at any one time exceeds the number of concurrent subscriptions purchased, then You will be liable for additional Charges.
- 5.8 **You must use the Subscription service for lawful purposes** You and Your Permitted Users must not access, store, distribute or transmit any Viruses or any Unsuitable Content during their use of the Subscription Service.
- 5.9 **Your right to use the Subscription Service is subject to restrictions.** You and Your Permitted Users must not:
- 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 the Agreement:
    - attempt to or otherwise copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Subscription Service in any form or media or by any means; or
    - attempt to or otherwise discover the source code, de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Subscription Service;
  - allow the Subscription Service to be combined with, or to become incorporated or integrated in, any other programs, software or hardware except as specifically agreed by Us;
  - knowingly use the Subscription Service in any manner not permitted by the Agreement or otherwise than in accordance with these Terms;
  - knowingly use the Subscription Service in breach of Our or the Owner's licence management requirements or systems;
  - access all or any part of the Subscription Services in order to build a product or service which competes with the Subscription Services;
  - use the Subscription Services to provide services to third parties. For example, You cannot use the Subscription Services to provide a managed service to other organisations or entities who provide social care as part of their business;
  - license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Subscription Services available to access or use to any third party except the Permitted Users;
  - attempt to obtain, or assist third parties in obtaining, access to the Subscription Services; or
  - introduce or permit the introduction of, any Virus or a Vulnerability into Our network and information systems or the IaaS.

**5.10 Our right to suspend the Subscription Service.** We reserve the right to suspend all or any of the Subscription Service if:

- You breach the terms of the Agreement including where We believe that the Subscription Service is being used in breach of the Agreement (for example You use Unsuitable Content) or to fail to pay Our invoices on time; or
- We consider such suspension is necessary. We will only act reasonably and in good faith when exercising this right of suspension and We will use all commercially reasonable endeavours to give You as much notice of the suspension as is practicable, the reasons for the suspension and likely period of suspension. Examples of when We will exercise this right of suspension include:
  - We are obliged to comply with an order, instruction or request of Government, Court, law enforcement agency or other competent administrative or regulatory authority;
  - If there is an event in respect of which We reasonably believe that the suspension of the Subscription Services is necessary to protect the laaS or the Subscription Service, for example, to protect the laaS or the Subscription from disruption, damage, harm, attack or a Virus or other Vulnerability; or
  - Investigation for unauthorised or alleged unauthorised access to or use of the laaS or the Subscription Service.

If We suspend any aspect of the Subscription Service, You may not have access to all Your Data for the duration of such suspension. Suspension shall not affect Your liability to pay any Charges. If We cannot resolve the issue that causes the suspension and We have not lifted the suspension within thirty (30) Business Days of the date upon which it first took effect, We reserve the right to terminate the Agreement.

**5.11 Ending any suspension.** We will do our best to end any such suspension as soon as reasonably practicable after the event or circumstance requiring the suspension has ceased. We reserve the right to charge You a reasonable reinstatement fee (at Our discretion) upon reinstatement of the Subscription Service if suspended due to Your fault or wrongdoing.

**5.12 Unauthorised access.** You must use Your best endeavours to prevent any unauthorised access to, or use of, the Subscription Service and, in the event of any such unauthorised access or use, promptly notify Us.

**5.13 Our right to change or update the Subscription Service.** We reserve the right to:

- make such improvements, amendments or modifications to the laaS, and/or the Subscription Service as We think necessary or desirable or as may be required to comply with applicable law;
- provide updates to the Subscription Service from time to time and You accept that there are no rights to additional features or commitment for the Subscription Service or Software to continue with specific features; and
- to change the laaS or supplier of the laaS. If We do change the supplier of the laaS, We will notify You and shall use commercially reasonable endeavours to ensure the new laaS will be of equivalent or better quality as provided by the previous supplier.

**5.14 Recommended Devices.** In order to ensure support for the Subscription Service, You must use a Device supplied or approved by Us.

**5.15 Keeping Devices up to date.** It is Your responsibility to ensure that all Devices are kept up to date with the latest operating system and patches provided by the device manufacturer. We cannot be held responsible for the performance of the Subscription Service on Devices which do not utilise the latest release of the Device operating system.

**5.16 Mobile Devices.** A Permitted User will need to be able to access and use a Wi-Fi connection if accessing the Subscription Service using a mobile Device. If a Permitted User elects to use a Mobile Device for any other purpose, for example, inserting a SIM card and using mobile telephony services, they do so at their own risk, and we accept no responsibility for such use or if such use adversely affects or impacts use of the Subscription Service.

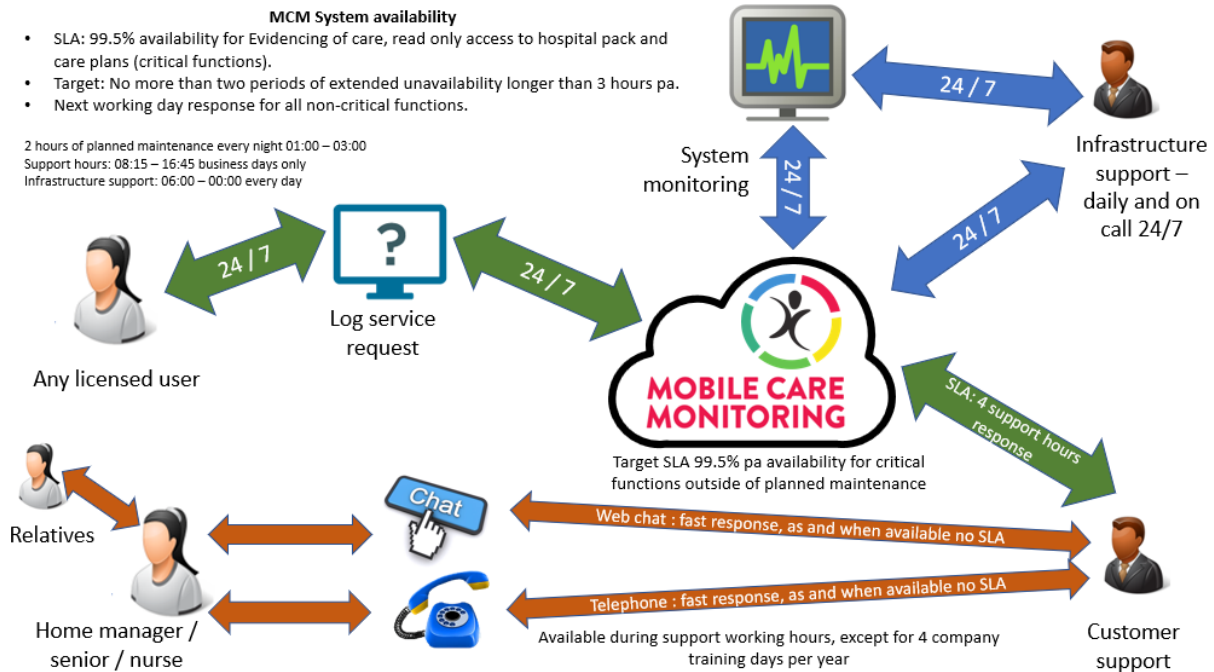
## **6. TERMS OF USE**

**6.1** Each Permitted User's use of the Subscription Service or Relatives Gateway is subject to the terms of the relevant Terms of Use. Each Permitted User must accept the Terms of Use before accessing or using the Subscription Service or Relatives Gateway. You must ensure that Permitted Users do not access or use the Subscription Service or Relatives Gateway unless they accept the Terms of Use. It is Your responsibility to ensure Permitted Users are given access to and given a copy of the current Terms of Use.

- 6.2 We reserve the right to change the Terms of Use. We will publish the new Terms of Use on our website as well as notifying You. If we change the Terms of Use, You must ensure Permitted Users are notified of the new Terms of Use and do not access or use the Subscription Service or Relatives Gateway unless they accept the new Terms of Use.

## 7. AVAILABILITY, SERVICE LEVELS AND SUPPORT SERVICES

7.1 **Summary of availability and support.** The following diagram shows the support infrastructure and availability.



7.2 **IaaS Uptime SLA.** Our IaaS provides at least 99.5% uptime, and is monitored 24 hours a day, seven days a week.

7.3 **Our SLA.** We will endeavour to ensure that the Subscription Service will operate substantially in accordance with Our service description shown in 7.1 above. This commitment does not apply to the extent of any non-conformance which is caused by use of the Subscription Service contrary to Our instructions or for a purpose for which it was not designed or specified, or any modification or alteration of the Subscription Service by any person other than by or on behalf of Us. If the Subscription Service does not conform with the above commitment, We will, at Our expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide You with an alternative means of operating the Subscription Service, as part of the Our support services. We shall not be responsible for any non-conformity if You fail to implement recommendations previously advised by Us,

7.4 **Availability Service Credits.** To the extent the IaaS is not available, and We receive service credits from the IaaS supplier in excess of £100, we shall refund each customer a pro rata proportion of the service credits based on each customer's concurrent subscriptions. Any service credit will be applied as a credit on the invoice issued in the next billing cycle.

### 7.5 **Support Services We provide.**

- We will provide telephone and web chat support between the hours of 08:15 and 16:45 Monday to Friday excluding English Bank and Public Holidays.
- We provide the ability to log support requests within the Subscription Service and this service is available whenever the Subscription Service is available.
- Our support team will respond to different requests as follows:
  - An interruption to service identified though system monitoring will normally be resolved within a maximum time period of 2 hours;
  - A request for customer support logged as a service request will be responded to within 4 support hours; and
  - A request for customer support logged as a web chat or phone call will be responded to if staff are available.
- Resolution times for customer support cannot be guaranteed, however the following are what we aim to achieve on a reasonable endeavours basis:

- Priority 1 (Immediate) - Total malfunction of the Subscription Service (or a material part of it) causing serious disruption to normal operational capability, will be resolved within 2 hours;
- Priority 2 (Business Critical) - Obvious and serious new flaw in the Subscription Service (or a material part of it) e.g. significantly impairs the use by a significant proportion of end users., will be resolved within 4 support hours;
- Priority 3 (Serious) - A Priority 2 incident where there is a software Workaround, for which there is a software work around available, will be resolved within 2 support weeks; and
- Priority 4 (Normal) - Important but non-material or non-critical functionality of the Subscription Service is not available, will be resolved within 4 support months.
- Where customer support is requested in connection with the operation of the Subscription Services on a mobile Device, the time for resolution will only commence once the Permitted User has reinstalled the mobile care app onto the Device.
- We will not provide support if You have disabled Us from accessing Your Data.
- We shall be under no obligation to provide Support Services if the subscription fee is not paid on time or if the Account Holder does not abide by the terms of this Agreement.

## 8. TRAINING AND CONSULTANCY SERVICES

- 8.1 **Our Obligation to provide the Additional Services.** We will provide the Training and Consultancy Services to You subject to the terms of the Agreement. If You require Training and Consultancy Services other than those contained in the original Order, We will provide a supplemental Order detailing the Training and Consultancy Services and relevant Charges. We shall be under no obligation to provide the Training and Consultancy Services unless you accept the Order.
- 8.2 **Recommendations.** All advice and recommendations given by Our staff during the course of providing the Training and Consultancy Services shall be made in good faith. We shall not be held responsible for oral advice given by Our staff.
- 8.3 **Cancellation Fees.** If You cancel any order for Training and Consultancy Services, You will be liable to pay the following cancellation fees:
- Less than 2 days' notice - 75% of the relevant Charges applies;
  - Less than 4 days' but more than 2 days' notice – 50% of the relevant Charges applies;
  - Less than 7 days' but more than 4 days' notice – 25% of the relevant Charges applies; or
  - More than 7 days' notice – no fee and the date can be rebooked.

Where a cancellation fee applies then the forfeited date will be re-charged to the Account Holder at Our normal rates for the appropriate service.

## 9. GOODS

- 9.1 **Delivery of the Goods.** You must inspect the Goods as soon as reasonably possible on delivery. You must notify Us in writing within one Business Day of the date of delivery if there is any visible damage to the Goods, or indication that the Goods have otherwise been tampered with. If You fail to notify Us, the Goods shall be deemed in all respects to be in accordance with the Agreement and You shall be deemed to have accepted the Goods on delivery and, save in respect of faulty Devices which will be dealt with in accordance with the manufacturer's warranty, You will not be entitled to raise any subsequent claim that the Goods are damaged or do not work. We will at our sole discretion either replace free of charge or provide a credit note in respect of any Goods which We are satisfied to have been damaged prior to delivery.
- 9.2 **The specification or type of Goods may change.**
- We will do what we can reasonably do to deliver Goods in accordance with the specification supplied to You. However, Our suppliers' policies are one of continuous development and consequently the specification of Goods may vary from time to time.
  - We reserve the right in consultation with You to supply different Goods from those ordered provided such replacement Goods are substantially similar in all material respects to those ordered.
  - We will do what We can reasonably do to ensure that all technical information and particulars of Goods and performance specifications and performance descriptions of Goods supplied by Us are as accurate as possible, but are not to be treated as binding or as forming part of the Agreement or part of any other agreement between the Parties.
- 9.3 **Manufacturer's warranty.** We purchase Goods from manufacturers and/or suppliers with industry standard warranties. We shall have no liability to You for the quality or performance of the Goods

and You shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer or supplier to Us to the extent that such warranty or guarantee is capable of being transferred or extended to You. If requested, We will arrange the repair or replacement of Goods in accordance with the applicable manufacturer's or supplier's warranty, but We are not responsible or liable if the manufacturer or supplier rejects any warranty claim.

- 9.4 **Damage caused by You.** We accept no responsibility or liability for loss or damage to Goods caused by the acts or omissions of Your staff or Permitted Users including any misuse, neglect, negligence or the acts or omission of a third party including any repair by a third party.
- 9.5 **Risk and title in the Goods.** Risk in Goods We supply to You will pass on delivery. You will own the Goods once the Charges applicable to the Goods have been paid in full.
- 9.6 **Our Protections until you own the Goods.**
- Until You own the Goods, You must:
    - hold the Goods separately from Your own goods and hardware and those of any third party;
    - keep the Goods in good condition and working order (fair wear and tear excepted), properly serviced and maintained, and make no alternation or remove any existing components of the Goods; and
    - keep the Goods properly stored, protected, insured and identified as Our property.
  - Until You own the Goods, Your right to possess or use the Goods shall immediately stop if You are subject to any insolvency event. If this happens, You must immediately return the Goods to Us, at Your cost and expense.
  - If You fail to pay the Charges applicable to the Goods by the due date, We reserve the right to take back the Goods and You must return the Goods to Us at Your cost and expense.
  - If You fail to return the Goods to Us in the circumstances described above, We shall have the right to collect the Goods on notice and You will ensure that We are given access to enter Your premises during Business Hours to collect the Goods.
- 9.7 **Maintenance of the Goods.** Our support services include general telephone support and advice in connection with the Goods, support of Our MDM application installed on Devices and dealing with manufacturer warranty claims on Your behalf. We accept no responsibility or liability in respect of any contract You enter into with a third party in connection with the support or maintenance of Goods.

## 10.YOUR OBLIGATIONS AND PROMISES TO US

### 10.1 Your general responsibilities. You will (at no cost to Us):

- comply with all applicable laws and regulations with respect to Your receipt or use of the Services or Goods or other activities under the Agreement;
- use the Subscription Service exclusively for the social care provided by Your business and for the purpose the Subscription Service is designed for;
- ensure all persons who access the Subscription Service are Permitted Users;
- not do anything which could reasonably be expected to damage, disable, overburden, or materially impair the Subscription Service or Our website generally or which is likely to interfere with any other customer's use or enjoyment of the Subscription Service;
- fully cooperate with and assist with Us, on a timely basis, on all matters relating to the Agreement or as reasonably requested by Us to the extent necessary to perform the Services and/or deliver the Goods;
- provide Us with all necessary access to, and use of, such information and materials as may be reasonably required by Us to provide the Services and/or Goods, including but not limited to Your Data and Wi-Fi password;
- ensure such information and materials are true, accurate and complete and not misleading in any way; You accept that We are entitled to rely on such information and materials being true, accurate and complete without Us having to check or verify the information;
- Provide Our staff, in a timely manner, access to Your offices, staff, systems and facilities as We may reasonably require to perform the Services or perform Our obligations under the Agreement;
- ensure Our staff:
  - are not affected by any health or safety risk when they attend Your offices;
  - are treated with respect and courtesy; and
  - are provided with suitable and comfortable accommodation and reasonable refreshments during the time they attend your premises;

- ensure Your staff communicate in a polite, calm, and constructive way. Verbal harassment, vilification, abuse or discrimination against anyone is unacceptable;
- if Our staff are not treated as above or if Your staff are not available at the agreed times, We reserve the right to cancel the relevant Training and Consultancy Services and You will be liable for cancellation charges and the relevant Training and Consultancy Services will need to be rescheduled;
- carry out Your responsibilities in a timely and efficient manner. In the event of any delays, We may adjust any agreed timetable or delivery schedule as reasonably necessary.;
- ensure You install and use up to date Virus checking and repair software on Your Systems and ensure that the most up to date Virus database available is installed and used with such software;
- ensure that Your Systems comply with the relevant specifications provided by Us from time to time;
- ensure that Your Systems are not connected to a third-party SaaS system or other service, communications system or network in such a way that the Subscription Service may be accessed by unauthorised third parties; and
- be solely responsible for procuring, maintaining and securing network connections and telecommunications links from Your Systems to the IaaS, including Wi-Fi network connection, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Your network connections or telecommunications links or caused by the internet.

#### **10.2 Your Warranties to Us. You warrant that:**

- You have full capacity, power and authority to enter into and perform the Agreement;
- Your staff member issuing acceptance of the Order is duly authorised by You to bind You to the Agreement;
- You have and/or will obtain all necessary licences, permits and consents necessary to enter into and perform the Agreement or as may be required to enable Us to perform Our obligations under the Agreement or to provide the Services or Goods;
- You own and/or are licensed to use Your Data and other information or materials provided to Us and You have the power and authority to grant Us a right to use Your Data and such information or materials for the purposes of the Agreement;
- Your Data and other information or materials provided to Us will not infringe the IPR of any person; and
- Your Data will not contain any Unsuitable Content.

## **II. OUR OBLIGATIONS AND PROMISES TO YOU**

### **11.1 Our warranties to You. We warrant that:**

- We have full capacity, power and authority to enter into and perform the Agreement;
- We have or will obtain and maintain all necessary licences, permissions and consents to enter into and perform Our obligations under the Agreement and grant You the necessary rights to access and/or use the Services. In accordance with the Agreement; and
- The Subscription Service will not infringe the IPR of any person.

### **11.2 Quality of the Training and Consultancy Services.** We will endeavour to perform Training and Consultancy Services:

- with reasonable care and skill;
- in accordance with all applicable laws and regulations in England; and
- in a reliable, professional and timely manner, in conformity with good industry practice.

### **11.3 Quality of Our staff.** The staff We employ or engage to carry out the Services shall be competent with appropriate skills, qualifications and experience and will have, the ability and capacity to perform the Services. In addition, We will carry out DBS vetting on all Our staff.

### **11.4 Our checks for Viruses.** This section sets out Our responsibility regarding Viruses.

- The supplier of the IaaS will have full control and responsibility for the implementation of procedures and measures to protect the IaaS and Subscription Services from Viruses. We will use commercially reasonable efforts and take reasonable steps, to check and verify that such procedures and measures are in place and maintained by the supplier.
- However, given the nature of Viruses, neither We nor our supplier can guarantee the absence of Viruses when using the Subscription Service and You accept that We shall not be responsible or liable for such Viruses. We recommend that You implement industry standard virus checking software and procedures in connection with all Your Systems.

- If You or We discover the existence of a Virus in connection with the provision of the Subscription Services, We may provide technical assistance to help remove or mitigate the Virus, but such assistance shall be at Our discretion and may be subject to additional Charges, but we will discuss these with You before doing any work.

**11.5 Exclusion of other promises.** All statutory implied terms, warranties or conditions, are excluded from the Agreement, to the extent We can exclude them by law.

## **12. DATA, IPR AND WHO OWNS WHAT**

**12.1 Your Data.** Subject to rights of Your data subjects, We acknowledge You own all rights, title and interest (including all and any IPR) in and to all of Your Data and Confidential Information and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of Your Data.

**12.2 IPR in the Services is owned by Us and/or the Owner.** You acknowledge that We and/or Our licensees (including the Owner) own all rights, title and interest in (including all and any IPR) and to:

- the Subscription Services;
- the Training and Consultancy Services, including all work We undertake when performing or providing the Training and Consultancy Services, including all IPR we use, create or develop when undertaking or performing the work. This will include any ideas, know-how, and programs comprising enhancements or modifications to the Subscription Service which are developed by or on behalf of Us or the Owner in the course of providing any technical or maintenance services;
- Our Confidential Information; and
- Any Modification (as defined below).

You have no rights, title and interest in and to the Services except the rights to access and/or use the Services, subject to the Agreement and nothing in the Agreement transfers any ownership rights to You.

**12.3 Modifications You request.** If You request any modification to the Subscription Service ("**Modification**"), We reserve the right to develop and implement the Modification as part of the Subscription Service and make the Modification available to all customers, whether or not You pay Us to develop the Modification as part of the Training and Consultancy Services. You will have no rights, title or interest in such Modifications other than the right to use them as part of the Subscription Service.

**12.4 Third party applications.** All and any IPR in any external data sources or third party applications used or accessible in conjunction with the Subscription Service are owned or licensed to the relevant third party provider. You must only use such external data sources or third party applications in accordance with the relevant third party terms.

**12.5 Our Indemnity to You.** Subject to this section. We shall indemnify You against losses or damages suffered or incurred by You and arising directly as a result of any action or claim that the Software infringes any IPR of a third party. This indemnity is subject to the following conditions:

- You must promptly notify Us in writing of the action or claim;
- You making no admissions or settlements in connection with the action or claim without the Our prior written consent;
- at Our cost, You giving Us all co-operation, information and assistance that We may reasonably require in defending or settling the action or claim;
- at Our cost, You taking such action as We may request to avoid, dispute, compromise or defend the action or claim;
- at Our cost, You allow Us complete control over the litigation and settlement of any action or claim; and
- You must take reasonable steps to mitigate any loss or liability You may suffer or incur as a result of an event that may give rise to a claim or action under the indemnity in this section.

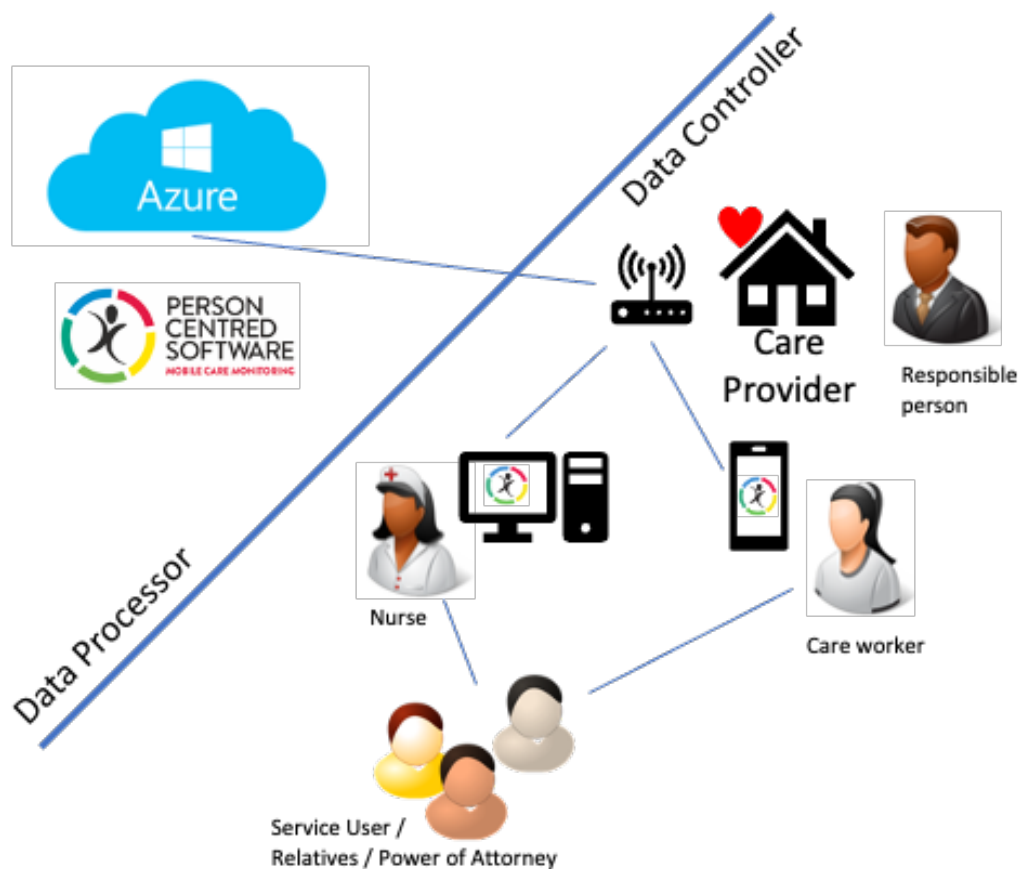
## **13. DATA PROTECTION**

**13.1 We take the privacy of Personal Data seriously.** In providing the Services, We will have access to personal data contained in Your Data (being **Your personal data**). We recognise and respect the importance of handling personal data in accordance with the Data Protection Laws and to protect the privacy of Data Subjects. This Section sets out our respective rights and responsibilities with regard to personal data contained in Your Data or personal data we collect during the term of the Agreement.

### 13.2 Summary of roles. During the course of the Agreement:

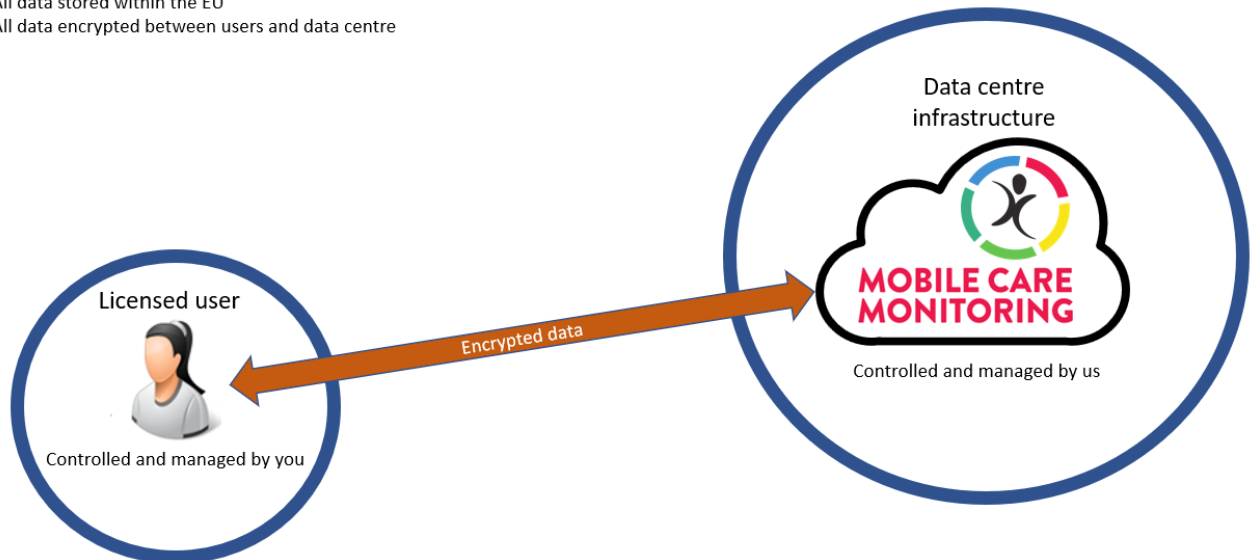
- We will act as a processor of Your personal data;
- The provider of the IaaS (currently Microsoft) and its subcontractors will act as Our sub-processors; if We change the provider of the IaaS on a temporary or permanent basis, the new provider will act as Our sub-processor;
- The Owner, who manages certain aspects of the IaaS and owns the Software, will act as our sub-processor;
- You will act as a controller of Your personal data;
- We will act as controller of certain 'business card' personal data of Your staff we collect in order to manage and administer the Agreement.

The relationship between the Parties in terms of the flow of personal data and the security of and access to data is shown in the following diagram:



The security of data and access to data is shown by the following diagram:

- Data security**
- All data stored within the EU
  - All data encrypted between users and data centre



**13.3 Mutual obligation to comply with applicable law.** Each Party will comply with all requirements of applicable data protection laws to which that Party is subject (**Data Protection Laws**). This section 13 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Laws. Terms defined in the Data Protection Laws, such as personal data, data subject, controller, processor, processing etc. shall have the same meaning when used in this section.

**13.4 Scope of Our processing activities.** It is anticipated that the scope of our processing activities and types of data subject and personal data to be processed in connection with the Agreement are as follows:

- **Subject matter, nature and purpose of processing:** To provide the Subscription Service under the Agreement;
- **Duration:** For the term of this Agreement; and
- **Type of data subject and personal data:** Data subjects will include Your staff, Permitted Users and Your customers/service users, and personal data will include race/ethnic origin, contact details, demographic data, data about children, offline/online identifiers, physical or mental health, sex, life/sexual orientation, biometric/genetic data, religious and philosophical beliefs and other personal data that You determine shall be processed by Us as a processor.

**13.5 Mutual obligation to implement appropriate technical and organisational measures.** Each Party shall ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

**13.6 Our obligations as a processor.** To the extent We process Your personal data in connection with the performance of Our obligations under the Agreement, We Will:

- process Your personal data only on the lawful documented written instructions reasonably given by You (to the extent that it is necessary to perform the Services and Our other obligations under this Agreement) unless We are required by applicable Data Protection Laws to process personal data. Where We rely on applicable Data Protection Laws as the basis for processing Your personal data, We will promptly notify You of this before performing the processing required by the applicable laws unless those applicable laws prohibit Us from so notifying You;
- ensure that all Our staff who have access to and/or process Your personal data are reliable and have been trained in relation to the requirements of Data Protection Laws and in the care and handling of personal data and are obliged to keep the personal data confidential;
- not transfer or process any of Your personal data outside of the UK or European Economic Area unless You give Your prior written consent and the following conditions are fulfilled:
  - You or We have provided appropriate safeguards in relation to the transfer;
  - the data subject has enforceable rights and effective legal remedies;
  - We comply with Our obligations under the Data Protection Laws by providing an adequate level of protection to any personal data that is transferred; and
  - We comply with reasonable instructions notified to Us in advance by You with respect to the processing of the personal data;
- taking into account the nature of the processing, reasonably assist You, in responding to any request from a data subject and in ensuring compliance with Your obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators, as soon as reasonably practicable. We reserve the right to charge Our costs for such assistance;
- notify You as soon as reasonably practicable on becoming aware of a personal data breach;
- at Your written direction, provide access via an API which will enable You to upload Your personal data on termination of the Agreement unless We are required by Applicable Law to store the personal data; and
- maintain complete and accurate records and information to demonstrate Our compliance with this section 13.6 and make such records and information available to You, at reasonable times and on reasonable notice, for such review as may be reasonable to demonstrate such compliance.

**13.7 Your obligations as controller.** To the extent you act as controller and require Us to process Your personal data on Your behalf in connection with the performance of Our obligation under the Agreement, You will:

- comply with Your obligations as a controller under the Data Protection Laws;
- ensure that You have all necessary rights to transfer the personal data to Us and permit Us to access, use, process and/or transfer the personal Data in accordance with and for the duration and purposes of the Agreement, including ensuring that all relevant data subjects have been informed of, and have either given their consent to, such transfer to Us and such access, use, processing and/or transfer by Us or You have another suitable legal basis or legitimate grounds for such transfer to Us and such access, use, processing and/or transfer by Us, as required by Data Protection Laws;
- ensure that Your instructions (as controller) to Us (as processor) (including data processing instructions) will comply with Data Protection Laws; and
- not knowingly do, or omit to do, anything, which would cause Us or any Sub-processor to be in breach of Our or their obligations under the Data Protection Laws.

**13.8 We can use Sub-processors.** You consent to Us appointing the sub-processors mentioned in section 13.2 and such other subcontractor or service provider as a sub-processor as may be notified to You from time to time. We will inform You of any intended changes concerning the addition or replacement of such sub-processors thereby giving You the opportunity to reasonably object to such addition or replacement. We shall use commercially reasonable endeavours to ensure the reliability and competence of sub-processors who may have access to and process personal data and shall seek to include in any contract with the sub-processors appropriate to protect personal data in accordance with Data Protection Laws. Regardless of the terms of such contract between Us and a sub-processor, as between You and Us, We shall be fully liable for all acts or omissions of any sub-processor appointed by Us which cause Us to breach this section 13.

**13.9 Changes in law.** If the Data Protection Laws are amended or updated in any way to vary the obligations imposed on either Party as set out in this section 13 or impose additional obligations on

either Party not reflected in this section 13, the Parties shall use all reasonable endeavours, acting reasonably and in good faith, to agree consequential amendments to this section 13 to reflect the Data Protection Laws as amended or updated from time to time.

- 13.10 **We may collect personal data of Your staff.** You acknowledge that We will collect, process and transfer data and information related to the business relationship between the Parties, including the collection, processing and transfer of personal data of Your staff (for example names, email addresses, telephone numbers), for the purposes of allowing Us to perform Our obligations under the Agreement and manage the relationship between the Parties. Such personal data will be subject to the Our privacy policy from time to time in issue, a copy of which is available on Our website. You will use all reasonable endeavours to ensure Your staff are aware of such privacy policy and the circumstances that We may collect, process and transfer their personal data.
- 13.11 **Our use of anonymised data.** You acknowledge and agree We and the Owner have the right to use anonymised, aggregated data with the aim of benefiting social care, health care, or all providers generally.

#### 14. CONFIDENTIALITY AND FOIA REQUESTS

- 14.1 **Confidentiality Obligations.** The term of Annex A shall apply in connection with the exchange of Confidential Information between the Parties.
- 14.2 **FOIA Requests.** We acknowledge that You may be subject to the requirements of the FOIA. If the FOIA applies to You, We shall:
- provide all necessary assistance and cooperation as reasonably requested by You to enable You to comply with Your obligations under the FOIA;
  - transfer to You all requests for information relating to the Agreement that We receive as soon as practicable and in any event within 5 Business Days of receipt;
  - provide You with a copy of all relevant information belonging to You requested in the request for information which is in Our possession or control within 5 Business Days (or such other period as You may reasonably specify) of Your request for such Information; and
  - not respond directly to a request for information unless authorised in writing to do so by You.
- 14.3 **Exemptions.** We acknowledge that You may be required under the FOIA to disclose information (including commercially sensitive information) without consulting or obtaining consent from Us. You shall take reasonable steps to notify Us of a request for information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for You to do so but (notwithstanding any other provision in the Agreement) You shall be responsible for determining in Your absolute discretion whether any commercially sensitive information and/or any other information is exempt from disclosure in accordance with the FOIA.
- 14.4 **Full Publication.** Notwithstanding any other term of Agreement, We consent to the publication of the Agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA. You shall, prior to publication, consult with Us on the manner and format of publication and to inform Us of Your decision regarding any redactions but You shall have the final decisions in Your absolute discretion. We shall assist and co-operate with You to enable You to publish the Agreement.

#### 15. CHARGES

- 15.1 **Charges payable by you.** The Charges for the Services and Goods are set out in the Order (including the times We invoice and the times when invoices must be paid). We reserve the right to vary the Charges in accordance with this section 15.
- 15.2 **How to pay Your invoices.** Unless We agree otherwise, all invoices must be paid by electronic bank transfer or direct debit.
- 15.3 **Right to increase Subscription Fees.** We reserve the right to increase the Charges with effect from 1<sup>st</sup> January of each year. Any increase shall not exceed the increase in the Retail Prices Index (or equivalent index in the country You are based) during the period from the date of commencement of the Agreement or (if later) date of previous increase and the relevant 1<sup>st</sup> January, plus 1%. Any increase shall be notified to You as soon as practicable.

- 15.4 Right to increase Fees to reflect third party costs.** We reserve the right to vary the amount of the Charges in order to pass on to You any increase in costs relating to the provision of the Subscription Service, which are imposed on Us by a third party supplier from time to time. This includes any costs relating to the provision of the IaaS necessary to provide the Subscription Services. If We increase the Subscription Fees pursuant to this section, We will provide You with as much notice as is reasonably possible. We shall also use reasonable commercial efforts to limit any increase in costs proposed by such third party suppliers.
- 15.5 Our right of set-off.** You must pay all amounts due to Us under the Agreement in full without any set-off, counterclaim, deduction or withholding, without Our written consent, (other than any deduction or withholding of tax as required by law).
- 15.6 We can charge interest or suspend Services if You pay late.** If You do not make any payment to Us by the due date We may:
- charge interest to You on the overdue amount at the rate of 8% a year above the base lending rate of Bank of England from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay Us interest together with any overdue amount; and/or
  - suspend delivery, performance or availability of the Services and/or Goods.
- 15.7 Change in subscriptions during a month.** If the Account Holder changes their usage of the Subscription Service in the future, any change in the Charges will take effect at the next billing cycle. If the usage is above the level reflected by the current Charges due, then the next billing cycle will reflect the revised Charges based on the current usage and list prices.
- 15.8 Entitlement to discounts.** Any discount We give on the Charges for Services or Goods is contingent on You meeting all the terms and conditions set out in the Agreement and the Order. If You breach the Agreement or the conditions in the Order, We reserve the right to withdraw the discount which means You may have to pay additional Charges.
- 15.9 Change of Location.** If any location covered by Your subscription ceases to operate then the Charges for this location will be removed from the monthly subscription at the next billing cycle following the date we are informed of the location ceasing to operate, or the next billing cycle following the date the location ceases to operate, whichever is the later.

## **16. LIMITATION AND LIABILITY.**

- 16.1 Your acceptance of various aspects of the Subscription Services.** You accept:
- the Subscription Service cannot be tested in every possible combination or operating environment;
  - the Subscription Service is dependent on the reliability of the Internet and Your use of Your Systems to access Subscription Service. You therefore accept We are not responsible for Your Systems or 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 You accept that the Subscription Service may be subject to limitations, delays and other problems inherent in the use of such communications facilities and the internet;
  - the Subscription Service is not a substitute for a qualified carer and any information presented does not constitute care advice;
  - You will assume sole responsibility for results obtained from the use of the Subscription Service by You and Your Permitted Users, and for conclusions drawn from such use;
  - We shall have no liability for any loss or damage caused by errors or omissions in any information, instructions or scripts provided to Us by You or Your staff in connection with the Subscription Services, or any actions taken by Us at Your or Your staff's direction; and
  - Except as provided by Our SLAs, the Subscription Service is provided to You on an "as is" basis and You will use the Subscription Service entirely at your own risk.
- 16.2 What we do not promise.** Given the nature, limitations and dependencies of the Subscription Service, there are certain things we cannot promise. Except as provided by Our SLAs, We do not provide any warranties, guarantees or promises:
- with regard to third party applications, whether with regard to quality, performance, fitness for purposes, ownership or otherwise;
  - that We can remedy every fault or error with the Subscription Service;
  - that the Subscription Service will:
    - operate in conjunction in all selected combinations including with any hardware items or software products other than with those that are identified in the Order as being compatible with the Subscription Service or which We approve or recommend;

- operate uninterrupted or error-free;
- be timely, reliable, entirely secure, virus-free or available; or
- meet Your needs or requirements or achieve Your aims;
- as to the completeness or accuracy of any data migration We undertake on Your behalf. You are responsible for checking the accuracy and completeness of the migrated data and shall promptly give sufficient details to Us of any inaccuracies or omissions in order to permit Us to correct them.

**16.3 Our liability to You is subject to certain exclusions and limitations.** The following provisions of this Section set out Our entire financial liability (including without limitation any liability for the acts or omissions of Our staff) to You in respect of:

- any breach of the Agreement howsoever arising;
- any use made by You or Your Permitted Users of the Services, the Goods or any part of them; and
- any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Agreement.

**16.4 Liability We cannot exclude or limit.** Nothing in the Agreement shall operate to exclude or limit Our liability for:

- death or personal injury caused by Our negligence or the liability of Our staff;
- any breach of certain terms implied by statute which we cannot exclude, limit or restrict liability for;
- fraud or fraudulent misrepresentation; or
- any other liability which it would be unlawful for Us to exclude or limit or restrict under applicable law.

**16.5 Losses We are not liable for.** Subject to section 16.4, We shall not be liable to You (whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, or otherwise) for any:

- loss (whether direct or indirect) of profits, anticipated profits, business, contracts, business opportunities, revenue, turnover, reputation or goodwill;
- loss or corruption (whether direct or indirect) of data or information;
- loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time);
- loss (whether direct or indirect) of use or availability;
- loss or liability (whether direct or indirect) under or in relation to any other contract;
- indirect or consequential loss or damage.

For the avoidance of doubt, nothing in this section 16.5 excludes Our liability to You:

- for any direct loss suffered or incurred by You and caused by our breach of Data Protection Laws or Our obligations under section 13 relating to Data Protection, such losses being subject to section 16.6; or
- for any service credits which may be payable to You under section 7.4.

**16.6 Cap on Our liability to You.** Subject to sections 16.4 and 16.5, Our aggregate liability in respect of all claims based on events in any calendar year arising out of or in connection with the Agreement or the provision of the Services and/or Goods, whether in contract or tort (including negligence), misrepresentation, breach of statutory duty, under any indemnity or otherwise, shall in no circumstances exceed the aggregate amount that is recoverable under any applicable insurance policy that We hold in respect of such claims provided that, to the extent that:

- such policies do not cover such claims; or
- such claims are excluded from or are not recoverable for any reason under such policies (for example, the claims are for uninsured losses or the claims are time barred under the policies); or
- We are otherwise unable for any other reason to actually recover amounts under such policies in respect of such claims

Our aggregate liability shall be limited to 100% of the total Charges paid or payable by You under the Agreement in that calendar year.

**16.7 We are not responsible for “rogue” staff.** To the extent permitted by law, We do not accept responsibility or liability for any malicious, intentional or deliberate act, omissions or other wrong doing of Our staff which is aimed at deliberately causing You harm and which does not take place in the course of carrying out the Services on Our behalf or otherwise is not connected to their employment or engagement by Us or the provision of Services to You.

**16.8 Owner has no liability or obligation to You.** The Owner is not a Party to the Agreement. You accept that the Owner is not bound by Our obligations under the Agreement and is not liable to You for any loss or damages that You may suffer or incur arising from or in connection with Our breach of the Agreement.

**16.9 Your liability for Our costs.** You shall be liable to pay Us for all costs and expenses incurred by Us as a result of or in connection with any breach of the Agreement by You or Your Permitted Users.

## **17. THIRD PARTY APPLICATIONS**

Third party applications may, with Your permission, allow You to interact with the Subscription Service via the Mobile Care Monitoring API. Instructions on how to access the API are available in the help section of the Subscription Service. Please note that:

- Permitted Users should only enable API access if they have the permission of the Account Holder;
- By enabling API access to the Subscription Software, you agree to use the API in accordance with the terms and conditions of the Agreement and will ensure any such use will not breach the Agreement or Your obligations as the data controller;
- Any third party application which You use to access the Subscription Service has the ability to access Your Data. Before using any third party application, You should carefully assess whether or not you are happy with the assurances and commitments provided by the third party application provider regarding your privacy and security;
- We accept no responsibility for any loss or liability suffered by You as a result of the use of any third party application to access or interact with the Subscription Service; and
- Use of third party applications is subject to the terms of the relevant third party application provider and you must ensure you comply with these terms including any terms that are imposed with by the provider in connection with the interoperability of the third party application with the Subscription Service.

## **18. TERM AND TERMINATION**

**18.1 Term of the Agreement.** The Agreement will commence on the date the Agreement comes into existence and will continue indefinitely, without limit of time, until either Party terminates the Agreement in accordance with this section.

**18.2 Right to terminate within first 6 months.** During the 6 month period following the commencement of the Agreement the Agreement can be terminated:

- by mutual agreement of the Parties; or
- by either Party giving not less than 30 days prior written notice on the other Party.

**18.3 Right to terminate after first 6 months.** After such 6 month period, the Agreement can be terminated by either Party giving not less than 12 months' prior written notice on the other Party.

**18.4 Right to terminate for breach or insolvency.** Either Party may terminate the Agreement at any time:

- by either Party giving written notice to the other Party if the other Party becomes insolvent or bankrupt or otherwise suffers an insolvency or bankruptcy related event;
- by either Party giving notice to the other Party following a material breach by the other Party of any obligation under the Agreement which is not capable of remedy; or
- by either Party giving notice to the other Party following a material breach by the other Party of any obligation under the Agreement which is capable of remedy and which is not remedied within 30 days of a request to remedy the breach to the satisfaction of the first Party.

**18.5 What happens if the Agreement ends.** If the Agreement ends for any reason the following will apply:

- Our obligation to provide any Services or Goods and Your right to receive any Services or Goods shall cease. All licences and similar rights granted to You shall also end immediately and You will have no right to access or use the Subscription Service or Our IPR.
- You must immediately pay Us all outstanding unpaid invoices and in respect of Services performed or Goods delivered for which no invoice has been submitted, We may submit an invoice which You must pay on receipt.
- We will provide You access to Our APIs to enable You to download a copy of Your data.
- Any work we undertake to assist You in downloading Your Data may be chargeable.

- If You end the Agreement because of Our breach or insolvency, and You have paid Charges in advance, We shall refund to You such portion of the Charges as relates to the period after the Agreement ends on a pro rata basis. However, if We end the Agreement because of Your breach or insolvency, there will be no refund of Subscription Fees paid.
- We will provide such assistance as is reasonably requested by You in transferring any element of the Services We provide to You or another service provider, subject to You paying Our Charges based on a time and material basis at Our then current rates and You paying any expenses We reasonably incur in providing such assistance.
- At the end of the Agreement, all provisions of the Agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue will continue in full force and effect.
- If the Agreement ends, all accrued rights, remedies, obligations or liabilities of the Parties existing at the date the Agreement ends shall continue and shall not be affected.

**18.6 What happens to Your Data.** If the Agreement ends for any reason, We shall continue to hold Your Data for a period of 30 days after termination or expiry of the Agreement to allow You a period of time to download a copy of Your Data. After this 30 day period, We shall delete Your Data from our systems and You will no longer be able to access or download a copy.

**18.7 Termination in part.** If You have a right to terminate the Agreement and operate two or more care homes, You may terminate the Agreement in part in respect of terminating the access and use of the Service by an individual care home.

## **19. GENERAL PROVISIONS**

**19.1 Transfer of the Agreement to someone else.** We may transfer our rights and obligations under the Agreement to another organisation or entity. We will always tell You in writing if this happens and We will ensure that the transfer will not affect Your rights under the Agreement. You may only transfer the Agreement to another person if we agree to this in writing. We will not unreasonably object to you transferring the Agreement.

**19.2 The Agreement is the entire agreement between the Parties.** This means:

- The Agreement constitutes the entire agreement between relation to the supply of the Services and Goods. Any previous agreements, arrangements or understandings shall cease to have any force or effect.
- Neither Party has relied on and shall have no remedy in respect of any statement, promise, representation, assurance or warranty made or given which is not expressly set out in the Agreement.
- Any damages payable shall be based on breach of contract and not misrepresentation. The remedy of rescission shall not be available to either Party.

**19.3 The Owner has rights under the Agreement.** As owner of the Software, the Owner has the benefit of Our rights under the Agreement and has the right to enforce these Terms, particularly the licence terms on which You and Your Permitted Users access and use the Software. This right is pursuant to the Contracts (Rights of Third Parties) Act 1999. Although the Owner can enforce terms of the Agreement, the Owner is not liable or responsible in any way for Our obligations under the Agreement.

**19.4 Any delay in enforcing the Agreement will not prevent later enforcement.** If either Party delays exercising its rights under the Agreement, this will not prevent that Party exercising its rights at a later date.

**19.5 Rights and remedies are not exclusive.** Rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**19.6 If a court finds part of the Agreement illegal, the rest will continue in force.** Each of the sections of these Terms operates separately. If any court or relevant authority decides that any of them are invalid, unlawful or unenforceable the following rules apply:

- the relevant provision or part-provision shall be deemed deleted from the Agreement; and
- any deletion of a provision or part-provision under this section shall not affect the validity and enforceability of the rest of the Agreement and the remaining sections of these Terms will remain in full force and effect.

**19.7 How to give notice under the Agreement.** Any notice given by either Party shall be in writing and sent to the recipient's business address or a valid email address.

**19.8 How the Agreement can be varied.** Subject to clause 3.3, the Agreement can only be amended or varied if both Parties agree in writing to the amendment or variation.

- 19.9 **Parties are not responsible for events outside their control. Neither Party will** be in breach of the Agreement or liable for delay in performing, or failure to perform, any of that Party's obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond that Party's reasonable control.
- 19.10 **Laws and Courts.** The Agreement shall be governed by and construed in accordance with the law of England and Wales and the courts of England and Wales shall have jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement.

## Annex A – Non-Disclosure Agreement

- 1.1 **Disclosure of Confidential Information.** Each Party acknowledges that it (being the **Recipient**) may receive Confidential Information of the other Party (including its Affiliates) (being the **Discloser**) pursuant to or in connection with the Agreement.
- 1.2 **Recipient's duty to protect Discloser's Confidential Information.** The Recipient will treat as secret and confidential all Confidential Information of the Discloser which is disclosed to the Recipient and not knowingly or wilfully disclose such Confidential Information to a person other than as permitted by this Annex A and the Recipient will use all reasonable endeavours to protect such Confidential Information against other unauthorised disclosure by using the same degree of care as the Recipient takes to preserve and safeguard its Confidential Information, being at least a reasonable degree of care.
- 1.3 **Recipient's use of Discloser's Confidential Information.** The Recipient shall not (whether knowingly, wilfully or otherwise) use such Confidential Information except as permitted by this paragraph 1.3, and in particular shall not use or exploit such Confidential Information for any commercial purpose.
  - We can only use Your Confidential Information for the for the purpose of providing the Services to You, and not for any other purpose.
  - You can only use Our Confidential Information for the for the purpose of receiving the benefit of or using the Services, and not for any other purpose.
- 1.4 **Permitted Disclosures.** The Discloser's Confidential Information may be disclosed by the Recipient to its staff who need to know such Confidential Information for the purposes of the Agreement and on the basis that the Recipient:
  - informs such staff of the confidential nature of such Confidential Information before it is disclosed;
  - procures that such staff comply with the confidentiality obligations in this Annex as if they were the Recipient; and
  - shall be liable for the actions or omissions of such staff in relation to such Confidential Information as if they were the actions or omissions of the Recipient.
- 1.5 **Circumstances where there is no obligation of confidentiality.** The obligations set out in this Annex A shall not apply to Confidential Information which the Recipient can demonstrate:
  - is or has become publicly known other than through breach of this Annex A;
  - was in lawful possession of the Recipient prior to disclosure by the other Party without any restriction or obligation of confidentiality;
  - was received by the Recipient from an independent third party who has full right of disclosure without any restriction or obligation of confidentiality; or
  - was independently developed by the Recipient without access to or use of such Confidential Information;
- 1.6 **Mandatory Disclosure.** The Recipient may disclosure Confidential Information in accordance with this Annex A:
  - Subject to the provisions of this paragraph 1.6, the Recipient may disclose Confidential Information to the minimum extent required by:
    - an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction;
    - the rules of any listing authority or stock exchange on which its shares or those of any of its Affiliates are listed or traded; or
    - the laws or regulations of any country to which its affairs or those of any of its Affiliates are subject.
  - Before the Recipient discloses any Confidential Information pursuant to this Annex A it shall, to the extent permitted by law, use all reasonable endeavours to give the Discloser as much notice of this disclosure as possible. Where notice of such disclosure is not prohibited and is given in accordance with this Annex A, the Recipient shall consider the reasonable requests of the Discloser in relation to the content of this disclosure and/or co-operate with the Discloser in seeking any protective order.
  - If the Recipient is unable to inform the Discloser before Confidential Information is disclosed pursuant to this Annex A it shall, to the extent permitted by law, inform Discloser of the full circumstances of the disclosure and the information that has been disclosed as soon as reasonably practicable after such disclosure has been made.

- 1.7 **Restrictions on copying.** The Recipient shall not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the provision or receipt of the Services. Any such copies, reductions to writing and records shall be the property of the Discloser. For the avoidance of doubt, copying shall not include forwarding an email between either Party, or printing an email for it to be more manageable.
- 1.8 **Personal Data.** The obligations of confidentiality under this Annex A will apply to Personal Data subject to the Parties obligations under section 14 of these Terms.
- 1.9 **Obligations when the Contract ends.** Subject to paragraph 1.10, if the Agreement ends for any reason (or during the term of the Agreement if requested by the Discloser), the Recipient shall:
- destroy or return to the Discloser all documents and materials (and any copies) in its possession or control containing, reflecting, incorporating or based on the Discloser's Confidential Information;
  - take all reasonable steps to permanently delete or erase all the Discloser's Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form save that the Recipient shall not be obliged to erase Confidential Information held in any archived computer system in accordance with its security and/or disaster recovery procedures ;and/or
  - to the extent technically and legally practicable, erase all the Discloser's Confidential Information which is stored in electronic form on systems and data storage services provided by third parties
- other than (where We are the Recipient) to the extent We need to use Your Confidential Information for the purpose of running down the Subscription Services or transferring responsibility for the continuation of the services similar to the Subscription Services to You or any other person.
- 1.10 **Regulatory Obligations.** Notwithstanding Our obligations in this Annex A, if We are required by any law, regulation, or government or regulatory body to retain any documents or materials containing Your Confidential Information, We shall notify You in writing of such retention, giving details of the documents and/or materials that We must retain. However, Our obligations of confidentiality will continue to apply to Your Confidential Information that We retain under this Annex A.
- 1.11 **Our right to disclose.** We reserve the right to disclose your Confidential Information or Data to law enforcement officials in the investigation of fraud, bribery or other alleged unlawful activities, without first notifying You of such disclosure, where we have reasonable grounds to believe you are involved in such activities.
- 1.12 **Specific Confidential Information.** For the avoidance of doubt, the content, structure, organisation and code comprised in Software and the information in the Documentation are Our or the Owner's valuable trade secrets and Confidential Information.
- 1.13 **Confidentiality obligations continue after the Agreement ends.** Each Party's obligations under this Annex A shall continue in full force and effect for a period of 3 years from the date of termination of the Agreement.