

# WORLD HEALTH RECORD

## SOFTWARE-AS-A-SERVICE AGREEMENT ("Agreement")

This Agreement is made between:

- (1) **Innovations Infinite Ltd**, a company incorporated in England and Wales (company number 06487267) whose registered office is at 450 Brook Drive, Reading RG2 6UU ("**Supplier**", "**we**", "**us**"); and
- (2) The person or organisation identified during the online sign-up process or in any Order Form ("**Customer**", "**you**").

## IMPORTANT NOTICE – PLEASE READ CAREFULLY

By clicking "Accept", creating an account on World Health Record or otherwise using the Services, you agree to the terms of this Agreement.

If you do not agree to these terms, you must not use the Services.

## RECITALS

**WHEREAS** the Supplier provides the "World Health Record" platform as a digital public good intended to facilitate better coordination of care between patients, families, healthcare providers and other participants in the healthcare ecosystem, on a predominantly free-of-charge basis;

**AND WHEREAS** the Supplier does not and cannot accept responsibility for clinical decisions or outcomes, which remain the responsibility of healthcare professionals and users of the platform.

The parties agree as follows.

## 1. INTERPRETATION

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

### **Account / Customer Account:**

the account created by or on behalf of the Customer to access and use the Services.

### **Authorised Users:**

those individuals who are authorised by the Customer to use the Services and the Documentation under this Agreement, including (as applicable) Family Admins, Family Members, Patients, Hospital Admins, Hospital Staff, Healthcare Professionals, Pharmacy Admins, Pharmacy Staff, Lab Admins, Lab Staff and any other person authorised by the Customer.

**Business Day:**

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

**Change of Control:**

the direct or indirect acquisition of either the majority of the voting stock or of all, or substantially all, of the assets of a party by another entity, whether in a single transaction or a series of transactions.

**Clinical Decision:**

any decision, act or omission relating to the diagnosis, prevention, monitoring or treatment of disease, injury or other health condition, or the prescribing, dispensing or administration of any medicine, test or procedure.

**Confidential Information:**

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

**Contribution:** any voluntary monetary payment made to the Supplier by or on behalf of a Patient, Family Member, Customer, individual, organisation, philanthropist or other third party that is expressly described or treated as a voluntary support payment or donation and not as consideration for any specific goods or services.

**Customer:**

the person or organisation that enters into this Agreement with the Supplier and sets up an Account to use the Services. The Customer may be:

- an individual acting as a Family Admin and/or Patient for themselves and their Family Members;
- a Hospital, clinic or other Healthcare Provider;
- a Pharmacy;
- a Laboratory; or
- any other person or organisation agreed with the Supplier.

**Customer Data:**

all data inputted by or on behalf of the Customer, any Authorised User, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services, including Health Record Data.

**Documentation:**

the user guides, help content, policies and other documentation relating to the Services made available by the Supplier online at such web address as the Supplier may notify the Customer from time to time.

**Donor:**

the person or organisation making a Contribution.

**Emergency Care:**

any treatment or intervention required to address an actual or reasonably suspected immediate threat to life or serious deterioration in a person's health which requires urgent attention.

**Family Admin:**

an Authorised User who sets up and administers a family-based Customer Account for one or

more Patients and Family Members and who is responsible for the accuracy, completeness and lawfulness of Health Record Data relating to those Patients and Family Members.

**Family Member:**

a member of a family group (including relatives and dependants) whose Health Record Data is managed under a Customer Account controlled by a Family Admin.

**Health Record Data:**

all health, medical, care, diagnostic, prescription, test results and related information uploaded into or generated by the Services about Patients, including associated personal data and special category data (such as health data).

**Healthcare Professional:**

a doctor or other regulated health professional registered with, and subject to the professional conduct rules of, an applicable professional regulatory body.

**Healthcare Provider:**

any Hospital, clinic, doctor, nurse, pharmacist, Laboratory, allied health professional or other person or organisation providing regulated healthcare services.

**Hospital:**

a hospital, clinic or other healthcare organisation acting as a Customer.

**Hospital Admin:**

an Authorised User who creates and administers a Customer Account on behalf of a Hospital or other Healthcare Provider and is responsible for managing Authorised Users within that organisation's Account.

**Informational Use Only:**

use of the Services solely as a means to view, record, store and share information, without treating the Services as a source of medical advice, a medical device, a clinical decision support tool, or a replacement for professional judgment, legal medical records, prescriptions or emergency systems.

**Initial Subscription Term:**

the initial term of this Agreement as set out in Schedule 2 or any applicable Order Form.

**Laboratory / Lab:**

a diagnostic or test laboratory acting as a Customer.

**Lab Admin:**

an Authorised User who creates and administers a Customer Account on behalf of a Laboratory.

**Normal Business Hours:**

09:00 to 17:00 UK time on a Business Day.

**Order Form:**

any order form, online order, or similar document agreed between the parties that references this Agreement and sets out commercial terms such as Subscription Fees, Initial Subscription Term and any usage limits.

**Patient:**

an individual whose Health Record Data is processed in the Services.

**Pharmacy:**

a retail or hospital pharmacy acting as a Customer.

**Pharmacy Admin:**

an Authorised User who creates and administers a Customer Account on behalf of a Pharmacy.

**Public Benefit Service:**

the fact that the Supplier provides access to the Services without charge to Patients, Family Members and Family Admins, and without charge to Healthcare Providers up to the free usage limits set out in this Agreement.

**Renewal Period:**

has the meaning given in clause 14.1.

**Services:**

the “World Health Record” software-as-a-service platform provided by the Supplier to the Customer under this Agreement, as described in the Documentation and Schedule 2, made available via <https://HealthRecord.world> or such other URL as the Supplier may notify from time to time.

**Software:**

the online software applications provided by the Supplier as part of the Services.

**Subscription Fees:**

the fees payable by the Customer for User Subscriptions, if any, as set out in Schedule 1 and/or any Order Form.

**Subscription Term:**

the Initial Subscription Term together with any Renewal Periods.

**User Subscriptions:**

the subscriptions purchased by the Customer pursuant to clause 2 which entitle Authorised Users to access and use the Services and Documentation.

**Virus:**

any thing or device (including any software, code, file or program) 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 program or data (including the reliability of any program or data, by rearranging, altering or erasing the program or data in whole or in part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A person includes an individual, corporate or unincorporated body and that person's legal and personal representatives, successors or permitted assigns.

1.4 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.

1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes any subordinate legislation in force from time to time.

1.6 A reference to "including" shall be construed as "including without limitation".

1.7 References to clauses and schedules are to the clauses and schedules of this Agreement.

## **2. USER SUBSCRIPTIONS**

2.1 Subject to the Customer's compliance with this Agreement, the Supplier grants to the Customer a non-exclusive, non-transferable right, during the Subscription Term, to permit Authorised Users to use the Services and Documentation solely:

- (a) for the Customer's internal business operations where the Customer is an organisation; and/or
  - (b) for personal and family health record management where the Customer is an individual acting as a Family Admin or Patient,
- in each case for Informational Use Only.

2.2 In relation to Authorised Users, the Customer shall ensure that:

- (a) the maximum number of Authorised Users who access and use the Services does not exceed the number of User Subscriptions it has purchased or is permitted free of charge in accordance with Schedule 1;
- (b) each Authorised User keeps secure and confidential any password or other credentials used to access the Services and does not share them with any other person;
- (c) it maintains an up-to-date list of Authorised Users and provides such list to the Supplier within 5 Business Days of a written request;
- (d) it does not allow any individual User Subscription to be used by more than one individual Authorised User, except where it has been reassigned in full to another individual; and
- (e) it shall permit the Supplier to audit the Services in order to verify the Customer's compliance with this clause 2 (such audit to be conducted in a manner that does not unreasonably interfere with the Customer's normal operations).

2.3 The Customer shall not and shall ensure that Authorised Users do not access, store, distribute or transmit any Viruses or any material during their 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; or
  - (f) is otherwise illegal or causes damage or injury to any person or property,
- and the Supplier reserves the right, without liability, to suspend access to any material that breaches this clause.

2.4 The Customer shall not:

- (a) except to the extent expressly permitted under this Agreement or by applicable law:
  - (i) copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit or distribute all or any portion of the Software and/or Documentation; or
  - (ii) reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
- (b) access all or any part of the Services or Documentation to build a product or service in competition with the Services;
- (c) use the Services to provide services to third parties as a service bureau or on an outsourced basis (other than in the ordinary course of providing healthcare services as a Healthcare Provider);
- (d) subject to clause 19, license, sell, rent, lease, transfer, assign, distribute, display, disclose or otherwise commercially exploit the Services or Documentation; or
- (e) attempt to obtain, or assist third parties in obtaining, unauthorised access to the Services or Documentation.

2.5 The Customer shall use all reasonable endeavours to prevent unauthorised access to the Services and Documentation, and shall promptly notify the Supplier if it becomes aware of any such unauthorised access.

2.6 The rights granted under this clause 2 are granted to the Customer only, and shall not be deemed granted to any subsidiary, holding company or affiliate of the Customer unless expressly agreed in writing.

### **3. ADDITIONAL USER SUBSCRIPTIONS**

3.1 The Customer may, from time to time during the Subscription Term, purchase additional User Subscriptions beyond any free allowance by contacting the Supplier or using any in-product upgrade mechanism.

3.2 If the Supplier approves the purchase of additional User Subscriptions, the Customer shall pay the relevant Subscription Fees in accordance with clause 9 and Schedule 1 / the applicable Order Form. Any additional User Subscriptions shall be co-terminous with the then current Subscription Term.

### **4. SERVICES**

4.1 The Supplier shall, during the Subscription Term, provide the Services and make the Documentation available to the Customer on the terms of this Agreement.

4.2 The Supplier shall use reasonable commercial endeavours to make the Services available 24 hours a day, 7 days a week, subject to:

- (a) planned maintenance, which the Supplier shall use reasonable endeavours to schedule outside Normal Business Hours;

- (b) emergency maintenance, for which the Supplier shall use reasonable endeavours to give as much notice as practicable; and
- (c) downtime caused by events outside the Supplier's reasonable control, including network or internet failures, cyber-attacks and other force majeure events.

#### 4.3 Nature of the Services

(a) The Customer acknowledges and agrees that the Services are provided solely as an **information management and collaboration platform**. The Services:

- (i) do not constitute, and are not a substitute for, medical advice, diagnosis, prescribing, dispensing or treatment;
- (ii) are not intended to be, and shall not be treated as, a medical device or clinical decision support system; and
- (iii) may display data that has been entered or uploaded by Patients, Family Members, Family Admins or other third parties and which has not been validated by the Supplier or any Healthcare Provider.

(b) The Customer and all Authorised Users remain solely responsible for all **Clinical Decisions**, including any decisions made in reliance on any Health Record Data or other information accessed via the Services.

(c) The Customer acknowledges and agrees that the Services are **not an emergency service** and are not designed or certified for use in Emergency Care. The Customer and Authorised Users must not rely on real-time availability of the Services during emergencies and must ensure they have alternative means of accessing essential clinical information.

(d) The Services are not an electronic prescribing system and do not create or replace any legally valid prescription. Any prescription or dispensing of medicine remains subject to the applicable legal, regulatory and professional standards of the relevant Healthcare Provider or pharmacist, who must verify the accuracy and validity of prescriptions through appropriate channels and not solely by reference to the Services.

## 5. CUSTOMER DATA

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

#### 5.2 Responsibility for Health Record Data

(a) The Customer shall at all times be solely responsible for the accuracy, completeness, lawfulness and adequacy of all Customer Data, including all Health Record Data, entered into or uploaded to the Services by or on behalf of the Customer or its Authorised Users.

(b) Where the Customer is a **Family Admin**, the Customer:

- (i) is solely responsible for ensuring that all Health Record Data entered for themselves, any Patient or Family Member is accurate, complete and kept up to date;
- (ii) confirms that they have obtained all necessary consents and authorisations from each Patient or their lawful guardian before entering or sharing Health Record Data relating to that Patient; and
- (iii) acknowledges that any Healthcare Provider or Pharmacy remains solely responsible for verifying prescriptions, dosages and treatment decisions and must not rely solely on Health Record Data shown in the Services.



(c) Where the Customer is a **Hospital**, Healthcare Provider, Laboratory or Pharmacy, the Customer:

- (i) is solely responsible for ensuring that it has a lawful basis (including all required consents and notices) to input, process and share Health Record Data relating to its patients or customers;
- (ii) is solely responsible for the correctness and appropriateness of all clinical notes, prescriptions, diagnostic results and other Health Record Data it enters or uploads; and
- (iii) acknowledges that it remains at all times solely responsible for all Clinical Decisions, including any decision to rely on, disregard or supplement Health Record Data accessed through the Services.

(d) The Supplier shall have no liability for any loss, damage, injury or harm arising from:

- (i) any inaccuracy or incompleteness in Health Record Data entered by or on behalf of the Customer, a Family Admin or any Authorised User; or
- (ii) any Clinical Decision taken (or not taken) by a Healthcare Provider, Family Admin, Patient, Pharmacy or other third party, whether or not such decision was based on Health Record Data or other information made available through the Services, subject always to clause 13.2.

5.3 The Supplier shall follow its standard archiving and back-up procedures for Customer Data, as updated from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up maintained by the Supplier.

5.4 If the Supplier processes personal data on the Customer's behalf when performing its obligations under this Agreement, the parties shall comply with applicable data protection laws. The Customer shall ensure it has a lawful basis to share personal data (including Health Record Data) with the Supplier and shall provide all required notices to data subjects. The Supplier shall implement appropriate technical and organisational measures to protect such personal data and shall process it only on the Customer's documented instructions, unless required otherwise by law.

#### 5.5 Patient-initiated sharing with third parties

(a) The Services may allow a Patient, Family Member or Family Admin to export, download or otherwise share Health Record Data with third parties, including Healthcare Providers, Hospitals, Laboratories and Pharmacies, for example by:

- (i) generating or downloading a copy of Health Record Data (such as a PDF, file or report);
- (ii) transmitting Health Record Data by e-mail or other communication channel outside the Services;
- (iii) granting a third party access to such Health Record Data via a link or other mechanism that results in the third party receiving a copy of, or independent access to, the relevant data outside the Supplier's technical control; or
- (iv) enabling or using an API integration or other technical interface between the Services and a third-party system which, at the request or configuration of the Patient, Family Member, Family Admin or Customer, results in Health Record Data being transmitted to and stored in that third-party system.

(b) To the extent that a Patient, Family Member, Family Admin or other data subject chooses to share Health Record Data with any third party in any of the ways described in clause 5.5(a) (a "**Recipient**"):

- (i) the Recipient shall act as an independent data controller (or equivalent under applicable data protection law) in respect of its own processing of that data;



- (ii) the Patient, Family Member or Family Admin and the Recipient shall each be individually responsible for ensuring that their respective processing of such data complies with applicable data protection and privacy laws, including the UK GDPR and the Data Protection Act 2018; and
- (iii) the Supplier shall have no responsibility or liability for any processing of such data carried out by the Recipient once the data has left the Services or is otherwise outside the Supplier's reasonable technical control, including where data has been transmitted to and stored in a third-party system via an API integration or other technical interface.
- (c) For the avoidance of doubt, nothing in this clause 5.5 limits or excludes the Supplier's obligations as a data controller or data processor (as applicable) in respect of the processing of personal data within the Services and under the Supplier's control, as described in clause 5.4 and any applicable data processing agreement.

## **6. ADDITIONAL SERVICES**

6.1 The Supplier may provide configuration, training, integration or other professional services to the Customer, as described in Schedule 2 or any Order Form. Unless otherwise agreed, such services shall be charged at the Supplier's prevailing daily or hourly rates.

## **7. SUPPLIER'S OBLIGATIONS**

7.1 The Supplier undertakes that the Services will be provided with reasonable skill and care and will substantially conform to the Documentation.

7.2 The undertaking in clause 7.1 shall not apply to the extent of any non-conformance 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 its authorised sub-contractors. If the Services do not conform with clause 7.1, the Supplier will, at its expense, use reasonable commercial endeavours to correct any such non-conformance or provide an alternative means of accomplishing substantially the same functionality. This constitutes the Customer's sole and exclusive remedy for any breach of clause 7.1.

7.3 The Supplier does not warrant that:

- (a) the Customer's use of the Services will be uninterrupted or error-free; or
- (b) the Services, Documentation or information obtained by the Customer through the Services will meet the Customer's requirements.

7.4 The Supplier is not responsible for delays, delivery failures or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet.

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

## **8. CUSTOMER'S OBLIGATIONS**

The Customer shall:

8.1 use the Services only for Informational Use Only and shall ensure that all Authorised Users are made aware that the Services do not replace professional medical advice, legal medical records, prescriptions or emergency systems;

8.2 ensure that it (and, where applicable, its Healthcare Providers) maintains its own primary medical records, prescribing records and other documentation as required by law and professional standards, and does not rely on the Services as the sole or primary repository of information necessary for safe care;

8.3 ensure that the Services are not relied upon for Emergency Care and that appropriate alternative arrangements exist for accessing essential health information during emergencies or where the Services are unavailable;

8.4 comply with all applicable laws and regulations with respect to its activities under this Agreement, including without limitation data protection, confidentiality, healthcare, professional conduct and medical records legislation and guidance;

8.5 ensure that all Authorised Users, including Family Admins, Hospital Admins, Pharmacy Admins and Healthcare Professionals, use the Services and Documentation strictly in accordance with this Agreement and any guidance provided by the Supplier;

8.6 provide the Supplier with all information and co-operation reasonably required to provide the Services; and

8.7 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres.

## **9. CHARGES AND PAYMENT**

9.1 Subscription Fees (if any) shall be as set out in Schedule 1 or any applicable Order Form.

9.2 Where the Customer exceeds any free usage limits set out in Schedule 1, the Supplier may charge the Customer Subscription Fees in accordance with its then current price list or an agreed Order Form.

9.3 Unless otherwise agreed:

(a) the Supplier may invoice the Customer for Subscription Fees in advance on a monthly or annual basis (as specified in the Order Form);

(b) the Customer shall pay each invoice within 30 days of the invoice date; and

(c) all amounts are exclusive of VAT or other applicable taxes, which shall be added to the invoice at the appropriate rate.

9.4 If the Customer fails to pay any amount due under this Agreement by the due date, the Supplier may:

(a) charge interest on overdue amounts at a rate of 4% per annum above the Bank of England base rate, accruing daily; and/or

(b) suspend access to the Services until all overdue amounts have been paid.

9.5 The Supplier may increase Subscription Fees and other charges at the start of any Renewal Period by giving at least 90 days' prior written notice.

## 9A. VOLUNTARY CONTRIBUTIONS

9A.1 The Services are offered as a Public Benefit Service. From time to time, Patients, Family Members, Customers, philanthropists or other third parties may choose to make a **Contribution** to support the ongoing development and operation of the Services. Any such Contribution is strictly **voluntary** and is **not required** in order to access the free tiers of the Services described in Schedule 1.

9A.2 Unless expressly agreed in a separate written funding or grant agreement, a Contribution:

- (a) is made as a **voluntary support payment** and does not constitute consideration for any specific supply of goods or services by the Supplier;
- (b) does **not** entitle the Donor to any priority support, enhanced service levels, feature commitments or other contractual benefits beyond those otherwise applicable under this Agreement;
- (c) does **not** create any ownership, equity, membership, governance or voting rights in the Supplier or any right to direct how the Supplier operates the Services; and
- (d) may be used by the Supplier at its **sole discretion** to support the development, operation, maintenance and promotion of the Services and the Supplier's broader public-benefit activities.

9A.3 Unless otherwise required by applicable law, Contributions are **non-refundable**. This does not affect any statutory rights a Donor may have in the event of unauthorised or fraudulent transactions processed by a payment provider.

9A.4 The Supplier reserves the right, in its sole discretion:

- (a) to decline or return a Contribution where the Supplier reasonably suspects that accepting the Contribution could breach applicable law (including anti-money-laundering, sanctions or anti-bribery laws) or could otherwise pose a material risk to the Supplier's reputation or operations; and
- (b) to request reasonable information from a prospective Donor to satisfy its legal and compliance obligations before accepting a Contribution.

9A.5 For the avoidance of doubt:

- (a) Contributions shall not be treated as Subscription Fees for the purposes of this Agreement and shall not be taken into account when calculating the limitation of liability based on Subscription Fees in clause 13.4; and
- (b) nothing in this clause 9A constitutes tax or legal advice. Each Donor is solely responsible for determining the tax treatment of any Contribution and for complying with any reporting or other obligations that may apply to them.

## 10. PROPRIETARY RIGHTS

10.1 The Customer acknowledges that all intellectual property rights in the Services and Documentation belong to the Supplier (or its licensors), and that rights in the Services and Documentation are licensed (not sold) to the Customer.

10.2 The Customer shall not acquire any rights in or to the Services or Documentation other than those expressly granted in this Agreement.

10.3 The Customer grants the Supplier a non-exclusive, worldwide licence to host, copy, transmit and display Customer Data as reasonably necessary for the Supplier to provide the Services, comply with law and improve and support the Services.

10.4 The Supplier may aggregate and anonymise Customer Data for statistical, analytical and service improvement purposes, provided that no individual or organisation is identifiable from such data.

## **11. CONFIDENTIALITY**

11.1 Each party may be given access to Confidential Information of the other party in order to perform its obligations under this Agreement.

11.2 Each party shall:

- (a) keep the other party's Confidential Information confidential;
- (b) not disclose the other party's Confidential Information to any third party except as permitted by this Agreement; and
- (c) use the other party's Confidential Information only to perform its obligations under this Agreement.

11.3 A party may disclose the other party's Confidential Information:

- (a) to its employees, officers, representatives, subcontractors and advisers who need to know such information for the purposes of carrying out the party's obligations under this Agreement, provided that such recipients are bound by confidentiality obligations; and
- (b) as may be required by law, court order or any governmental or regulatory authority.

11.4 Customer Data (including Health Record Data) is Confidential Information of the Customer.

11.5 Confidential Information does not include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the lawful possession of the receiving party before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- (d) is independently developed by the receiving party.

## **12. INDEMNITY**

12.1 The Supplier shall defend the Customer against any claim that the Services or Documentation infringe any UK patent, copyright, trade mark, database right or right of confidentiality (an "IP Claim"), and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of an IP Claim, provided that:

- (a) the Customer promptly notifies the Supplier of the IP Claim;
- (b) the Supplier is given sole authority to defend or settle the IP Claim; and
- (c) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of the IP Claim.

12.2 In the event of an IP Claim, the Supplier may:

- (a) obtain the right for the Customer to continue using the Services;
- (b) replace or modify the Services so they become non-infringing; or
- (c) if such remedies are not reasonably available, terminate this Agreement on written notice without further liability (subject to refund of any unused pre-paid fees).

12.3 The Supplier shall have no liability for any IP Claim arising from:

- (a) modification of the Services or Documentation by anyone other than the Supplier;
- (b) use of the Services or Documentation in a manner contrary to the Supplier's instructions; or
- (c) use of the Services or Documentation after the Supplier has notified the Customer to cease such use.

12.4 The Customer shall indemnify and hold harmless the Supplier from and against any claims, losses, damages, costs and expenses arising out of:

- (a) Customer Data (including Health Record Data), including any allegation that such data is inaccurate, unlawful or infringes the rights of any third party; or
- (b) any Clinical Decision or healthcare service provided by the Customer or its Authorised Users, including any claim for clinical negligence, misdiagnosis, inappropriate prescription or failure to treat.

## 13. LIMITATION OF LIABILITY

13.1 This clause 13 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of this Agreement;
- (b) any use made by the Customer or any Authorised User of the Services and/or the Documentation; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

13.2 Nothing in this Agreement excludes or limits the liability of the Supplier:

- (a) for death or personal injury caused by its negligence;
- (b) for fraud or fraudulent misrepresentation; or
- (c) to the extent such liability may not lawfully be excluded or limited under applicable law.

13.3 Subject to clause 13.2, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise, for any:

- (a) loss of profits, revenue or business;
  - (b) loss of contracts or business opportunities;
  - (c) loss of or damage to goodwill or reputation;
  - (d) loss or corruption of data or information; or
  - (e) special, indirect or consequential loss,
- in each case arising under or in connection with this Agreement.

13.4 Subject to clauses 13.2 and 13.3, the Supplier's total aggregate liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising out of or in connection with this Agreement shall be limited to an amount equal to the total Subscription Fees actually paid by the Customer to the Supplier under this Agreement in the twelve (12) months immediately preceding the date on which the relevant claim first arose, excluding any Contributions made under clause 9A or any other payments that are not expressly described as Subscription Fees.

13.5 Without prejudice to clauses 13.3 and 13.4, and subject always to clause 13.2, the Supplier shall have no liability for any loss, damage, injury or harm (including personal injury or death) to the extent arising from:

- (a) any Clinical Decision made or not made by any Healthcare Provider, Family Admin, Patient, Pharmacy or other third party, whether or not such decision was based on Health Record Data or other information made available through the Services;
- (b) any inaccurate, incomplete or outdated Health Record Data or other information entered or uploaded to the Services by or on behalf of the Customer, a Family Admin, an Authorised User or any third party;
- (c) any failure by a Healthcare Provider, Pharmacy or other third party to comply with their own legal, regulatory or professional obligations, including any duty to verify prescriptions, dosages, allergies, contraindications or other clinical information through appropriate channels;
- (d) any use of the Services as a substitute for emergency systems or as the sole source of clinical information in circumstances where it would be reasonably prudent to maintain alternative or backup records; or
- (e) any unavailability, suspension or interruption of the Services caused by:
  - (i) a denial-of-service attack, cyber-attack or other security incident;
  - (ii) internet or telecommunications failures beyond the Supplier's reasonable control; or
  - (iii) maintenance or downtime carried out in accordance with this Agreement, provided that the Supplier has implemented reasonable and proportionate technical and organisational measures to protect the Services and restore availability in accordance with good industry practice.

13.6 The Customer acknowledges that the Services are provided as a Public Benefit Service and that the disclaimers and limitations of liability in this Agreement are reasonable and proportionate having regard to:

- (a) the nature of the Services as an informational platform;
- (b) the fact that the Supplier does not charge Patients, Family Members, Family Admins or small Healthcare Providers for access up to certain usage limits; and
- (c) the Customer's own ability and responsibility to mitigate risk by maintaining primary medical records, following professional standards and not relying on the Services for Emergency Care.

## 14. TERM AND TERMINATION

14.1 This Agreement shall commence on the date the Customer first accepts it or first uses the Services (whichever is earlier) and shall continue for the Initial Subscription Term. Thereafter, it shall automatically renew for successive periods of 12 months (each a "Renewal Period"), unless either party gives the other at least 30 days' written notice before the end of the Initial Subscription Term or any Renewal Period.

14.2 Either party may terminate this Agreement with immediate effect by written notice if the other party:

- (a) commits a material breach of this Agreement which is irremediable or (if remediable) fails to remedy that breach within 30 days of being notified in writing; or
- (b) becomes insolvent, enters into administration or liquidation (other than for a solvent restructuring), or is otherwise unable to pay its debts as they fall due.

14.3 The Supplier may terminate this Agreement or suspend access to the Services with immediate effect if the Supplier reasonably believes that:

- (a) the Customer is misusing the Services in a way that creates a material risk of harm to patients, data subjects or the Supplier; or
- (b) continued provision of the Services would cause the Supplier to breach applicable law or regulatory requirements.



14.4 On termination of this Agreement for any reason:

- (a) all rights granted to the Customer shall immediately terminate;
- (b) the Customer shall cease all use of the Services and Documentation;
- (c) the Supplier shall, on request within 30 days of termination and subject to payment of applicable fees, provide the Customer with a copy of Customer Data in a commonly used electronic format; and
- (d) the Supplier may thereafter delete or anonymise Customer Data in accordance with its data retention policies, subject to any legal obligations to retain data.

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

## **15. FORCE MAJEURE**

The Supplier shall not be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control, including acts of God, flood, fire, war, terrorism, labour disputes, governmental action, pandemic, or failures of the internet or telecommunications networks.

## **16. WAIVER**

No failure or delay by a party in exercising any right or remedy under this Agreement shall constitute a waiver of that or any other right or remedy.

## **17. SEVERANCE**

If any provision of this Agreement is found by a court or other competent authority to be invalid, illegal or unenforceable, that provision shall be deemed deleted, and the remaining provisions shall continue in full force and effect.

## **18. ENTIRE AGREEMENT**

18.1 This Agreement, together with any Order Form, constitutes the entire agreement between the parties and supersedes all previous agreements, understandings and arrangements between them relating to its subject matter.

18.2 Each party acknowledges that it has not relied on any statement, promise or representation not set out in this Agreement.

## **19. ASSIGNMENT**

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



19.2 The Supplier may assign or transfer its rights and obligations under this Agreement in connection with a corporate reorganisation, merger, sale or other transaction, provided that such assignment does not materially prejudice the Customer's rights.

## **20. NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership, joint venture, or relationship of principal and agent between the parties.

## **21. THIRD PARTY RIGHTS**

No person other than the parties to this Agreement shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

## **22. NOTICES**

22.1 Any notice given under this Agreement shall be in writing and shall be delivered by hand, sent by pre-paid first-class post or recorded delivery post, or sent by email to the address or email address specified by each party from time to time.

22.2 Notices shall be deemed received:

- (a) if delivered by hand, on signature of a delivery receipt;
- (b) if sent by pre-paid post or recorded delivery, at 9.00 am on the second Business Day after posting;
- (c) if sent by email, at the time of transmission, provided that no error message is received and if sent outside Normal Business Hours, at 9.00 am on the next Business Day.

## **23. GOVERNING LAW AND JURISDICTION**

23.1 This Agreement and any dispute arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and Wales.

23.2 The courts of England and Wales shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement.

# SCHEDULE 1 – SUBSCRIPTION FEES

## 1. Free Use for Patients, Families and Small Organisations

1.1 Access to the Services is provided **without charge** to:

- (a) Patients, Family Admins and Family Members using the Services for personal and family health record management; and
- (b) Hospitals, Healthcare Providers, Laboratories and Pharmacies for up to **ten (10) Authorised Users** per organisation, subject to this Agreement.

1.2 The fact that the Services are provided without charge to the categories of users described in clause 1.1 does not affect the application of the limitations and exclusions of liability set out in clause 13.

## 2. Paid Subscription Fees (if applicable)

2.1 Where a Customer wishes to exceed the free usage limits in paragraph 1, Subscription Fees shall be payable as set out in the applicable Order Form or the Supplier's then current price list.

2.2 Subscription Fees may be structured on a per-user, per-organisation, storage or usage basis, as specified in the Order Form.

# SCHEDULE 2 – SERVICES AND SERVICE LEVELS

## 1. Description of the Services

1.1 World Health Record is a cloud-based health information collaboration platform that enables:

- (a) Patients and Family Members (via a Family Admin) to maintain and manage a longitudinal electronic health record;
  - (b) Hospitals and Healthcare Professionals (via a Hospital Admin) to access, contribute to and review Health Record Data relating to their patients;
  - (c) Laboratories (via a Lab Admin) to upload and manage test results and diagnostic information; and
  - (d) Pharmacies (via a Pharmacy Admin) to view relevant Health Record Data and manage prescription and dispensing information,
- all subject to permissions and sharing settings controlled by the Customer Account.

1.2 The Services are provided for Informational Use Only and do not replace any legal obligation to maintain medical records or prescribe, dispense or treat in accordance with applicable clinical and regulatory standards.

## 2. Support Services

2.1 The Supplier will provide remote support during Normal Business Hours via email and/or such other channels as it may notify.

2.2 Additional support or consultancy outside Normal Business Hours or beyond standard support may be provided at the Supplier's discretion and may be subject to additional fees.

## 3. Service Levels

3.1 The Supplier will use reasonable commercial endeavours to ensure that the core Services have an uptime of at least 99% during each calendar month, excluding:

- (a) planned maintenance;
- (b) emergency maintenance; and
- (c) downtime caused by events beyond the Supplier's reasonable control.

3.2 Support response targets (non-binding but indicative):

- Severity 1 (Critical outage affecting all users): initial response within 4 Business Hours.
- Severity 2 (Major functionality impaired for many users): initial response within 8 Business Hours.
- Severity 3 (Non-critical defect or limited impact): initial response within 2 Business Days.
- Severity 4 (General query, enhancement request): initial response within 5 Business Days.

## **4. Initial Subscription Term**

Unless otherwise specified in an Order Form, the Initial Subscription Term shall be 12 months from the date the Customer first accepts this Agreement or first uses the Services (whichever is earlier).

## **5. Professional Services (if applicable)**

Any additional consultancy, integration, migration or training services will be described in an Order Form and provided on a time and materials basis, subject to this Agreement.

END OF AGREEMENT