

Dated DD/MM/YYYY

SilverCloud Health Limited
(Service Provider)

Customer Company Name
(Customer)

TERMS AND CONDITIONS

SilverCloud Health Limited
One Stephen St
Stephen St Upper
Dublin 8
D08 DR9P

THESE TERMS AND CONDITIONS are dated: DD/MM/YYYY

PARTIES:

1. **SilverCloud Health Limited**, a limited liability company incorporated in Ireland (registered no. 509506), whose registered office is at 1 Stephens Street Upper, Dublin 8 (the “**Service Provider**”); and
2. **[CUSTOMER NAME]**, an organisation, with an address at **[ADDRESS]** (the “**Customer**”).

BACKGROUND

- A. The Service Provider is the provider of a hosted “software as a service” wellness/therapy programme delivery platform.
- B. The Service Provider has agreed to provide the Services to the Customer subject to the terms and conditions of this Agreement;
- C. Both now wish to develop a commercial relationship that will allow the Customer to provide and deliver wellness programmes to its clients, patients and users.

The parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following expressions have the following meanings:

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| “Account Manager” | means an individual nominated by the Service Provider as the key contact with the Customer. |
| “Agreement” | means this Terms and Conditions and any Call-Off Contract, including all clauses and schedules hereto, as may be amended by agreement of the parties from time to time in accordance with the terms and conditions hereof. |
| “Authorised User” | means those employees, volunteers, consultants, contractors and End Users of the Customer who are authorised to access the Services. |
| “Business Day” | means a day (other than a Saturday or a Sunday) on which banks are open for business in London, UK. |

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| “Change of Control” | means the sale, disposal, transfer or alienation (or the grant or acquisition of any option or similar right in relation to the sale, disposal, transfer or alienation), or the acquisition (or the grant or acquisition of any option or similar right to acquire), by any means of more than 50 per cent of the equity share capital of the company. |
| “Confidential Information” | has the meaning ascribed to that term in clause 7.2. |
| “Customer” | means a customer of the Service Provider as may be set out in the Call-Off Contract. |
| “Customer Data” | means information relating to the Customer’s business inputted by or on behalf of the Customer in the course of using the Services but excluding any data, results, content, copyright, database rights or other intellectual property of the Service Provider. |
| “Customer Contact” | means an individual (or any individuals) nominated by the Customer as the key contact(s) with the Service Provider (as set out in the Call-Off Contract or as otherwise notified to the Service Provider). |
| “Data Protection Legislation” | means all laws relating to the processing of Personal Data, privacy and security including, without limitation, the General Data Protection Regulation (EU) 2016/679 (the “GDPR”), the Privacy and Electronic Communications Directive 2009/136/EC and the Data Protection Acts 1988 to 2018, and where the context so requires, equivalent, amendment or replacement legislation of any applicable jurisdiction, delegated legislation or other national data protection legislation. |
| “Effective Date” | means the order date specified as such in the Call-Off Contract. |
| “End User” | means any individual to whom the Customer provides any services, using the SilverCloud Platform or any Programme Content, subject to the terms of the Agreement. |
| “End User Personal Data” | means Personal Data received by the Service Provider from or on behalf of the Customer or as otherwise provided by the Customer in connection with any End User, further details of which are set out in Schedule 2. |
| “Excluded Unavailable Hours” | means the time periods specified in Part 2 of Schedule 1. |
| “Good Industry Practice” | |

means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a company within the sector in which the Service Provider operates.

“Initial Term”

means the initial term of the Agreement from the service start date to the service end date as set out in the Call-Off Contract.

“Insolvency Event”

means in respect of a Customer, that the Customer is unable to pay its debts as they fall due or becomes insolvent or an order is made or a resolution is passed for the liquidation, administration, winding-up or dissolution of the Customer (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a liquidator, administrator (whether appointed through the court procedure or outside the court procedure), examiner, trustee or similar officer is appointed over all or any substantial part of the assets of the Customer or the Customer enters into or proposes any composition or arrangement with its creditors generally or anything analogous to the foregoing occurs in any applicable jurisdiction.

“Intellectual Property Rights”

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

“Call-Off Contract”

means an order for the provisions of any Services, subject to this Terms and Conditions, and as may be annexed hereto.

“Personal Data”

means all data which are defined as personal data in the Data Protection Legislation.

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| “Programme Content” | means all the content (text, video, images, etc.) delivered via the SilverCloud Platform, as selected in the Call-Off Contract. |
| “Services” | has the meaning ascribed to that term in clause 2. |
| “SilverCloud Platform” | means the SilverCloud mental health and behavioural programmes platform. |
| “Technical Support Hours” | means 09.00 to 17.00 UK time on a Business Day. |
| “Term” | means collectively and separately the Initial Term and the Renewal Term as defined in clause 4. |

1.2 Interpretation

1.2.1 In this Agreement (except where the context otherwise requires):

- (a) any reference to a recital, clause or Schedule is to the relevant recital, clause or Schedule of or to this Agreement;
- (b) references to paragraphs are to paragraphs of the relevant Schedule to this Agreement;
- (c) the clause headings are included for convenience only and shall not affect the interpretation of this Agreement;
- (d) use of the singular includes the plural and vice versa;
- (e) use of any gender includes the other genders;
- (f) a reference to "writing" or "written" includes faxes but not e-mail;
- (g) any reference to "persons" includes individuals, firms, partnerships, companies, corporations, associations, organisations, foundations and trusts (in each case whether or not having separate legal personality);
- (h) any reference in this Agreement to any statute, statutory provision, subordinate legislation, code or guideline ("legislation") shall be construed as referring to such legislation as the same may from time to time be amended, modified, extended, varied, superseded, replaced, substituted or consolidated; and
- (i) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.2 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any references to this Agreement includes the Schedules.

- 1.2.3 This Agreement may be executed in any number of counterparts each of which when executed and delivered shall be an original but all the counterparts together shall constitute one and the same instrument.

2 THE SERVICES

2.1 Purpose

This Agreement sets forth the terms and conditions under which the Service Provider agrees to licence certain hosted software as a service to the Customer over the internet and provide access to the SilverCloud Platform (the “**Services**”), as more specifically described in the Call-Off Contract.

2.2 Control of Services

The method and means of providing the Services shall be via the SilverCloud Platform, as a communications tool to allow the Customer to communicate with End Users.

2.3 Backup and Recovery of the End User Personal Data and Customer Data

As a part of the Services, the Service Provider will keep one backup of the End User Personal Data and Customer Data at the Service Provider’s designated hosting centre¹, for an orderly and timely recovery of such data in the event that the Services may be interrupted.

2.4 Technical Support

During Technical Support Hours, the Service Provider shall make available a telephone help desk and email help desk to provide second-line technical support directly to the Customer.

3 RESPONSIBILITIES

Service Provider’s Responsibilities

3.1 The Service Provider shall:

- 3.1.1 make the Services available for access via the internet through agreed and specified URLs or IP addresses through standard Internet protocols (HTTPS);
- 3.1.2 provide the Services in a data centre environment with security corresponding to the levels of Good Industry Practice; and
- 3.1.3 provide the Services in accordance with Part 1 of Schedule 1.

¹ All UK based Customer Data and End User Personal Data is stored in data centres located in the United Kingdom

Customer's Responsibilities

3.2 The Customer shall:

- 3.2.1 ensure that the SilverCloud Platform is operated in a proper manner by the Customer and Authorised Users and that all Authorised Users treat any username, password or any other access credentials as confidential;
- 3.2.2 ensure that the Customer Contact is available to liaise with, and respond to queries from, the Account Manager for the resolution of any issues that the Account Manager requires to resolve;
- 3.2.3 at all times, be responsible for maintaining its own connectivity to the internet and the functioning of its own network in order to avail of the Services provided by the Service Provider;
- 3.2.4 provide hardware, software, space, power, internet connectivity and other services required to enable access to the Services from the Customer's location(s);
- 3.2.5 ensure that as applicable appropriate clinically trained and qualified staff are utilised in the supervision of the Authorised Users; and
- 3.2.6 ensure and take responsibility for the service development and clinical implementation of risk management protocols.

4 TERM AND TERMINATION

4.1 Term

Unless the Agreement is terminated early in accordance with its terms it shall commence on the Effective Date and continue for the Initial Term.

4.2 Renewal Term

On the expiry of the Initial Term, the Agreement shall be automatically renewed for successive periods of 12 months (each a "**Renewal Term**"), unless:

- 4.2.1 either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Term or any Renewal Term, in which case this Agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Term; or
- 4.2.2 otherwise terminated in accordance with the provisions of this Agreement.

4.3 Termination

- 4.3.1 Without affecting any other right or remedy available to it, the Service Provider may terminate this Agreement with immediate effect by giving written notice to the Customer if the Customer suffers an Insolvency Event.
- 4.3.2 The Service Provider may terminate this Agreement by notice in writing to the Customer if:

- (i) there occurs in respect of the Customer a Change of Control; or
- (ii) the Customer is in material breach of one of its obligations under this Agreement, and the Customer fails to remedy the breach within 30 days of receipt of notice from the Service Provider to remedy this breach.

4.4 Payments Upon Termination

Upon the expiration or termination of this Agreement for any reason, the Customer shall pay to the Service Provider all amounts due and payable hereunder, except where the Service Provider has failed to provide services detailed in clause two of this agreement. In the event of a payment dispute, resolution is to be achieved subject to the process detailed in clause 13.2. Only those disputed aspects of invoices shall be referred to this process with all undisputed amounts then discharged immediately.

4.5 Return of Materials

Upon expiration or earlier termination of this Agreement, each party shall return to the other party, or permit the other party to remove, any property of the other party then situated on such party's premises.

In the case of End User Personal Data and Customer Data, and subject to clause 8, the Service Provider shall immediately upon termination of this Agreement provide the Customer with a final export of the End User Personal Data and Customer Data and shall certify the destruction of any End User Personal Data and Customer Data within the possession of the Service Provider. The parties agree to work in good faith to execute the foregoing in a timely and efficient manner. This clause shall survive the termination of this Agreement.

5 FEES AND EXPENSES

- 5.1 The Customer shall be responsible for and shall pay to the Service Provider the fees as further described in the Call Off Contract and on the terms and conditions contained herein. Any sum due to the Service Provider for which payment terms have not been specified shall be due and payable thirty (30) days after receipt by the Customer of an invoice from the Service Provider.

5.2 Billing Procedures

The Service Provider invoices shall contain: (a) the invoice number and the Customer purchase order number, if any; (b) a description of Services rendered; (c) the Services fee or portion thereof that is due; (d); taxes, if any; and, (e) the total amount due.

5.3 Non-binding Terms

This Agreement applies to the sale and purchase of the Services as set out in the Call-Off Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate under any acknowledgement or confirmation of order, quotation, specification, delivery note, invoice or similar document, or which are implied by trade, custom, practice or course of dealing. The Service Provider hereby rejects any terms and conditions which may be provided by the Customer prior to or subsequent to receipt by the Service Provider of the Call-Off Contract and/or this Terms and Conditions.

5.4 Late Payment

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

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

5.4.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 2% per annum above the European Central Bank base rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

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

5.5.1 are non-cancellable and non-refundable; and

5.5.2 unless expressly set out other wise, are exclusive of value added tax or any other government taxes or duties, which shall (if applicable) be added to the Supplier's invoice(s) at the appropriate rate.

6 REPRESENTATIONS AND WARRANTIES

6.1 Each of the Customer and the Service Provider represent and warrant that:

6.1.1 it is a business duly incorporated, validly existing, and in good standing under the laws of its state of incorporation;

6.1.2 it has all requisite corporate power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement;

6.1.3 this Agreement, when executed and delivered, shall be a valid and binding obligation on it, enforceable in accordance with its terms; and

6.1.4 there is no outstanding litigation, arbitration or other dispute to which it is a party which, if decided unfavourably to it, would reasonably be expected to have a potential or actual material adverse effect on its ability to fulfil its obligations under this Agreement; and

6.2 The Customer represents and warrants that:

6.2.1 it shall comply with laws and regulations applicable to the performance by it of its obligations under this Agreement and shall obtain all applicable permits and licenses required of it in connection with its obligations under this Agreement;

6.2.2 it has reviewed and approved of all Programme Content that is delivered or made available through the Services and fit for its purposes.

7 NON-DISCLOSURE OF CONFIDENTIAL INFORMATION

7.1 The parties acknowledge that each may be exposed to or acquire communications or data of the other party that is confidential or privileged and not intended to be disclosed to third parties.

7.2 Meaning of Confidential Information

For the purposes of this Agreement, the term “**Confidential Information**” shall mean all information or documentation of a party that: (a) has been marked “confidential” or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked “confidential” or with words of similar meaning, was subsequently summarised in writing by the disclosing entity and marked “confidential” or with words of similar meaning; (c) any information or documentation that ought reasonably be treated as confidential; (d) any Confidential Information derived from information of a party. The term “Confidential Information” does not include any information or documentation that was: (a) already in the possession of the receiving entity without an obligation of confidentiality; (b) developed independently by the receiving entity, as demonstrated by the receiving entity, without violating the disclosing entity’s proprietary rights; (c) obtained from a source other than the disclosing entity without an obligation of confidentiality; or, (d) publicly available when received, or thereafter became publicly available (other than through any unauthorised disclosure by, through or on behalf of, the receiving entity).

7.3 Obligation of Confidentiality

The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know it in connection with this Agreement or to use it for the performance of their obligations under this Agreement. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep such information confidential.

7.4 Cooperation to Prevent Disclosure of Confidential Information

Each party shall use its best efforts to assist the other party in identifying and preventing any unauthorised use or disclosure of any Confidential Information. Without limitation of the foregoing, each party shall advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

7.5 Return or Destruction of Information

Upon termination of this Agreement each party shall promptly (a) return or destroy (at the election of the other party) all documents and materials (and any copies) containing, reflecting, incorporating, or based on the other party’s Confidential Information; (b) erase all of the other party’s Confidential Information from its computer systems to the extent possible; and (c) certify in writing to the other party that it has complied with the requirements of this clause, provided that a party may retain documents and materials containing, reflecting, incorporating, or based on the other party’s Confidential Information

to the extent required by law or any applicable governmental or regulatory authority, and to the extent reasonable to permit the party to keep evidence that it has performed its obligations under this Agreement.

7.6 The provisions of this clause shall survive the termination of this Agreement.

8 END USER PERSONAL DATA AND CUSTOMER DATA

8.1 The Customer shall own all rights, title and interest in and to all of the End User Personal Data and Customer Data, and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of such data used in conjunction with and/or entered into the Services. The Service Provider shall make the Programme Content, the Customer Data available 'as is' and shall not be liable for any reliance placed by the Customer, an End User or any third party on the Programme Content or Customer Data, whether for medical decisions or otherwise.

8.2 The Customer hereby permits the Service Provider to anonymise or (where applicable) pseudonymise (and, at the Service Provider's option, aggregate) the End User Personal Data and the Customer Data ("**Usage Data**").

8.3 Notwithstanding termination of this Agreement, at any time during and after the Term, the Customer agrees that the Service Provider shall be permitted to monitor, analyse and use the Usage Data for any purpose, including without limitation: (a) the provision of statistical and market data or to otherwise improve the Services; (b) to analyse usage statistics of the Services; (c) to analyse how the Service Provider might improve the Services; (d) to improve efficiency and service tools for the use of the SilverCloud Platform; and (e) secondary research or clinical audit purposes.²

8.4 The Customer shall:

8.4.1 procure and confirm that it shall procure the consent of any End Users (where required) or any other individuals to the processing by the Service Provider of their data in accordance with the terms of this Agreement; and

8.4.2 agree that the Service Provider may access and disclose End User Personal Data and the Customer Data as required by applicable law, as permitted by the Customer and as is required to provide the Services.

8.5 The Service Provider may engage the services of third party providers who also provide back-up services for data stored in or entered (including End User Personal Data and the Customer Data) into the Services. Subject to clause 8.6: (a) in the event of any loss or damage to End User Personal Data and the Customer Data, the Customer's sole and exclusive remedy shall be for the Service Provider to use reasonable commercial endeavours to have its service providers restore the lost or damaged End User Personal Data and the Customer Data from the latest back-up of such End User Personal Data and the Customer Data; and (b) the Service

² Clause 8.3 refers specifically to Usage Data of the platform by End Users. It is not personal data as outlined in GDPR. Examples of usage data might include – how often a user logged in, devices used to log in, content viewed etc. SilverCloud collects this data to improve our product for our customers and their end users. SilverCloud will not provide the Services to the Customer without agreement to this clause.

Provider shall not be responsible for any loss, destruction, alteration or disclosure of End User Personal Data and the Customer Data caused by any third party.³

- 8.6 When processing End User Personal Data controlled by the Customer, the Service Provider shall:
- 8.6.1 process the End User Personal Data only on instructions from the Customer and in accordance with Schedule 2 (unless the Service Provider is required to process the End User Personal Data by applicable European Union, European Member State or United Kingdom law in which case the Service Provider shall notify the Customer of that legal requirement before such transfer or access occurs or is permitted, unless that law prohibits such notification on important grounds of public interest);
 - 8.6.2 ensure that all personnel authorised to process the End User Personal Data are party to confidentiality obligations in respect of the End User Personal Data;
 - 8.6.3 implement and at all times maintain appropriate technical and organisational measures to ensure the security of the End User Personal Data taking into account: (i) the state of the art; (ii) the costs of implementation; (iii) the nature, scope, context and purposes of the processing; and (iv) the inherent risk of the processing activities to data subjects;
 - 8.6.4 cooperate as reasonably requested by the Customer:
 - (i) to enable the Customer to comply with any exercise of rights by a data subject under the Data Protection Legislation in respect of End User Personal Data;
 - (ii) where the Customer conducts a data protection impact assessment; and
 - (iii) with any relevant supervisory authority in the performance of its tasks;
 - 8.6.5 notify the Customer without undue delay of any data security breach or in the event that any End User Personal Data is otherwise lost, stolen, misappropriated, destroyed or becomes damaged, corrupted or unusable;
 - 8.6.6 at the written direction of the Customer, delete or return End User Personal Data and copies thereof to the Service Provider on termination of this Agreement unless required by applicable law to store the End User Personal Data;
 - 8.6.7 make available information reasonably requested by the Customer to satisfy itself that the Service Provider is complying with its data protection obligations under this Agreement.
- 8.7 The Customer agrees that the Service Provider may use the sub-processors set out in Schedule 2 or as otherwise set out on the SilverCloud Platform to process Customer Data and End User Personal Data for the purposes of providing the Services and the SilverCloud Platform. The Service Provider shall ensure that such sub-processor has entered into data protection arrangements that are in all material respects similar to those set out in this Agreement as applicable to the sub-processor's data processing. The Service Provider will

³ Please see <https://www.silvercloudhealth.com/privacy/platform/#subprocessors> for a list of our third party providers

notify the Customer in advance of any proposed use of a new sub-processor and Customer shall have the right to object on reasonable grounds to the use of or change to any sub-processor within 7 days of the Service Provider notifying Customer of the change. In the event of the Customer raising such an objection, the Service Provider shall use reasonable endeavours to find an alternative solution to enable the Customer to continue to use the Services and shall agree any additional costs with Customer. In the event that no alternative solution can be arranged, the Service Provider or Customer may terminate the part of the Services impacted by the change on 30 days' notice.⁴

- 8.8 The Customer shall pay the Service Provider's charges calculated on a time and materials basis for any assistance provided under clause 8.6.

9 INTELLECTUAL PROPERTY RIGHTS

- 9.1 The Customer acknowledges and agrees that the Service Provider and/or its licensors own all Intellectual Property Rights in the Programme Content, the SilverCloud Platform and the Services (including any improvements and developments to such whether made by the Service Provider or the Customer). Except as expressly stated herein, this Agreement does not grant the Customer any Intellectual Property Rights, or any other rights or licences in respect of the Programme Content, the SilverCloud Platform or the Services.
- 9.2 The Customer shall ensure that all titles, logos, trademarks, copyright and other notices applied by the Service Provider to the Services or any materials provided or produced by the Service Provider or the Services in connection with this Agreement shall be reproduced and not altered, deleted or removed.
- 9.3 The Customer agrees that the Service Provider shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into any Service Provider products or services any suggestions, enhancement requests, recommendations or other feedback provided by the Customer or the Authorised Users relating to the operation of the Services or other products of the Service Provider.
- 9.4 Return of End User Personal Data and Customer Data

The Customer shall be entitled to an export of End User Personal Data and Customer Data, without charge, upon the request of the Customer and upon termination of this Agreement. Subject to clause 8, the Service Provider is provided a licence to use End User Personal Data and Customer Data hereunder for the purpose of providing the Services in accordance with terms of this Agreement, including a license to store, record, transmit, maintain, and display End User Personal Data and Customer Data only to the extent necessary in the provisioning of the Services.

- 9.5 Data of Service Provider

The Service Provider's information and any Intellectual Property Rights, or any derivatives thereof (which shall be treated by the Customer as Confidential Information), shall be and remain the sole and exclusive property of the Service Provider. Upon termination of this Agreement the Customer shall return or destroy (at the instance of the Service Provider) all copies of the Services Provider's information and any Intellectual Property Rights.

⁴ Please see <https://www.silvercloudhealth.com/privacy/platform/#subprocessors> for a list of our sub-processors

9.6 No Licence

Except as expressly set forth herein, no licence is granted by either party to the other with respect to the Confidential Information, proprietary rights, End User Personal Data or Customer Data. Nothing in this Agreement shall be construed to grant to either party any ownership or other interest, in the Confidential Information, proprietary rights, End User Personal Data or Customer Data, except as may be provided under a licence specifically applicable to such Confidential Information, proprietary right, End User Personal Data or Customer Data.

9.7 The Customer shall not:

9.7.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:

- (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services, the SilverCloud Platform and/or the Programme Content (as applicable) in any form or media or by any means;
- (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the SilverCloud Platform;

9.7.2 access all or any part of the Services, the SilverCloud Platform and/or the Programme Content in order to build a product or service which competes with the Services, the SilverCloud Platform and/or the Programme Content;

9.7.3 use the Services, the SilverCloud Platform and/or the Programme Content to provide services to third parties;

9.7.4 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services, the SilverCloud Platform and/or the Programme Content available to any third party except the Authorised Users; or

9.7.5 attempt to obtain, or assist third parties in obtaining, access to the Services, the SilverCloud Platform and/or the Programme Content, other than as provided under this clause 9.

9.8 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services, the SilverCloud Platform and/or the Programme Content and, in the event of any such unauthorised access or use, promptly notify the Service Provider.

9.9 The provisions of this clause shall survive the termination of this Agreement.

10 RESPONSIBILITY AND INSURANCES

10.1 The Service Provider accepts no responsibility for the Customer's or its Authorised Users' use of the Services or the SilverCloud Platform. The Customer will ensure that appropriately trained and qualified staff (be they employees, consultants, contractors, volunteers or as

otherwise engaged by the Customer) are engaged to communicate and deliver the Services to its End Users and shall supervise them in connection with all of their interactions with the Services.

- 10.2 The Customer assumes sole responsibility for all results obtained from the use of the Services and the Programme Content by the Customer and the End Users, and for conclusions drawn from such use.
- 10.3 Notwithstanding any other clauses hereof, the Customer acknowledges and agrees that in using the Services, the Customer, its servants or agents, shall be covered by the Customer's participation in a suitable clinical indemnity scheme or another form of suitable insurance (covering medical malpractice, professional indemnity, etc.). It is understood and agreed by the Customer that the Service Provider will not be required to have medical malpractice insurance or any other form of insurance to cover the use of the Services by the Customer or its Authorised Users.
- 10.4 The Customer agrees at all times to indemnify, defend and to hold harmless the Service Provider its successors and assigns from each and every claim, suit, cost, damage, liability and award arising out of or in connection with use of the Services. The Customer confirms that its indemnity obligations hereunder will be supported by the Clinical Indemnity Scheme or other appropriate liability insurance under which the Customer's insurer has no right of subrogation against the Service Provider.
- 10.5 During the Term and for a period of one year afterwards the Customer shall maintain in force the following insurance policies with reputable insurance companies:
 - 10.5.1 public liability insurance with a limit of at least £5 million a claim;
 - 10.5.2 product liability insurance with a limit of at least £10 million for claims arising from a single event or series of related events in a single calendar year;
 - 10.5.3 professional indemnity insurance with a limit of at least £5 million for claims arising from a single event or series of related events in a single calendar year; and
 - 10.5.4 employer's liability insurance with a limit of at least £5 million for claims arising from a single event or series of related events in a single calendar year.
- 10.6 The Customer shall ensure that the Service Provider's interest is noted on each insurance policy or that a generic interest clause has been included.
- 10.7 On taking out and on renewing each policy, the Customer shall on request promptly send a copy of the receipt for the premium to the Service Provider.
- 10.8 The Customer shall notify the Service Provider if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.
- 10.9 The Customer's liabilities under this Agreement shall not be deemed to be released or limited by the Customer taking out the insurance policies referred to in clause 10.5.

11 INTELLECTUAL PROPERTY RIGHTS CLAIMS

- 11.1 The Service Provider undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession or use

of the SilverCloud Platform and the Programme Content in accordance with the terms of this Agreement infringes the UK or Irish Intellectual Property Rights of a third party (a "Customer Claim") and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Customer Claim.

- 11.2 The Customer undertakes at its own expense to defend the Service Provider or, at its option, settle any claim or action brought against the Service Provider alleging that its use of the SilverCloud Platform and the Programme Content or any content it uploads to the SilverCloud Platform infringes the UK or Irish Intellectual Property Rights of a third party (a "**Service Provider Claim**") and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Service Provider as a result of or in connection with any such Service Provider Claim.
- 11.3 If any Customer Claim is made, or in the Service Provider's reasonable opinion is likely to be made, against the Customer, the Service Provider may at its sole option and expense:
 - 11.3.1 procure for the Customer the right to continue to use the SilverCloud Platform and the Programme Content (or any part thereof) in accordance with the terms of this Agreement;
 - 11.3.2 modify the SilverCloud Platform and the Programme Content so that it ceases to be infringing;
 - 11.3.3 replace the SilverCloud Platform and the Programme Content so that it is no longer infringing any third party Intellectual Property Rights; or
 - 11.3.4 terminate this Agreement immediately by notice in writing to the Customer and refund any of fees prepaid by the Customer as at the date of termination (less a sum, calculated pro-rata in respect of the Customer's use of the Services to the date of termination).
- 11.4 If any third party makes a Customer Claim, or notifies an intention to make a Customer Claim against the Customer, the Service Provider's obligations under clause 11 are conditional on the Customer:
 - 11.4.1 as soon as reasonably practicable, giving written notice of the Customer Claim to the Service Provider, specifying the nature of the Customer Claim in reasonable detail;
 - 11.4.2 not making any admission of liability, agreement or compromise in relation to the Customer Claim without the prior written consent of the Service Provider (such consent not to be unreasonably conditioned, withheld or delayed); and
 - 11.4.3 subject to the Service Provider providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as the Service Provider may reasonably request to avoid, dispute, compromise or defend the Customer Claim.
- 11.5 If any third party makes a Service Provider Claim, or notifies an intention to make a Service Provider Claim against the Service Provider, the Customer's obligations under clause 11.2 are conditional on the Service Provider:
 - 11.5.1 as soon as reasonably practicable, giving written notice of the Service Provider Claim to the Customer, specifying the nature of the Service Provider Claim in reasonable detail;
 - 11.5.2 not making any admission of liability, agreement or compromise in relation to the Service Provider Claim without the prior written consent of the Customer (such consent not to be unreasonably conditioned, withheld or delayed); and
 - 11.5.3 subject to the Customer providing security to the Service Provider to the Service Provider's reasonable satisfaction against any claim, liability, costs, expenses,

damages or losses which may be incurred, taking such action as the Customer may reasonably request to avoid, dispute, compromise or defend the Service Provider Claim.

- 11.6 In no event shall the Service Provider, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- 11.6.1 a modification of the Services or Programme Content by anyone other than the Service Provider;
 - 11.6.2 the Customer's use of the Services or Programme Content in a manner contrary to the instructions given to the Customer by the Service Provider and other than in accordance with the terms of this Agreement;
 - 11.6.3 the Customer's use of the Services and the Programme Content in combination with any hardware or software not supplied or specified by the Service Provider; or
 - 11.6.4 the Customer's use of the Services or Programme Content after notice of the alleged or actual infringement from the Service Provider or any appropriate authority.
- 11.7 The foregoing states the Customer's sole and exclusive rights and remedies, and the Service Provider's entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

12 LIMITATION OF LIABILITY

- 12.1 This clause 12 sets out the entire financial liability of the Service Provider (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 12.1.1 any breach of this Agreement;
 - 12.1.2 any use made by the Customer or the Authorised Users of the Services and Programme Content or any part of them; and
 - 12.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 12.2 Except as expressly and specifically provided in this Agreement:
- 12.2.1 the Service Provider shall have no liability for any damage caused by errors or omissions in any information, instructions or content provided to the Service Provider by the Customer in connection with the Services, or any actions taken by the Service Provider at the Customer's direction;
 - 12.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
 - 12.2.3 the Services and the Programme Content are provided to the Customer on an "as is" basis.
- 12.3 Nothing in this Agreement excludes the liability of the Service Provider which cannot legally be limited, including liability for:

12.3.1 death or personal injury caused by the Service Provider's gross negligence; or

12.3.2 fraud or fraudulent misrepresentation.

12.4 Subject to clause 12.2 and clause 12.3:

12.4.1 the Service Provider shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and

12.4.2 the Service Provider's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to one (1) times the total fees paid to the Service Provider during the 12 months immediately preceding the date on which the claim arose.

13 GENERAL

13.1 Governing Law and Jurisdiction

This Agreement and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales, and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

13.2 Dispute Resolution

In the event of any dispute or disagreement between the parties with respect to the interpretation of any provision of this Agreement, or with respect to the performance of either party hereunder, the Customer Contact and the Account Manager will meet for the purpose of resolving the dispute or disagreement. For the purpose of this clause 13.2, a dispute or disagreement shall be deemed to have arisen when one party serves on the other a notice in writing stating the nature of the dispute or disagreement. Unless this Agreement has already been terminated by the date of the notice of dispute or disagreement, the Service Provider shall in every case continue with the performance of the Services with all due diligence and the Customer shall continue to make payments therefor in accordance with this Agreement regardless of the nature of the dispute or disagreement. If the parties are unable to resolve the dispute or disagreement within ten (10) working days, or as otherwise agreed, either party will have the right to submit the dispute or disagreement to the Service Provider's Executive Chairman and the Customer's Chief Executive (the "**Representatives**") who will meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all essential, non-privileged information that the parties believe germane to resolution of the matter at issue. During the course of these non-judicial dispute resolution procedures, documents used to resolve the dispute or disagreement shall be limited to essential, non-privileged information. All requests shall be made in good faith and be reasonable in light of the economics and time efficiencies intended by the dispute resolution procedures. No formal proceedings for the judicial resolution of any dispute or disagreement may be commenced until twenty-one (21) days

following initiation of negotiations under this clause 13.2 or for such shorter period as the parties may mutually agree to in writing. Either party may then seek whatever remedy is available in law or in equity. The provisions of this clause 13.2 shall determine all disputes except any dispute relating to the parties' obligations of non-disclosure and confidentiality as further described herein. Nothing in this clause 13.2 shall prevent either party from abstaining from the procedures herein and obtaining injunctive relief where circumstances deem necessary.

13.3 Cooperation

Where agreement, approval, acceptance, consent or similar action by either party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld. Each party will cooperate with the other by, among other things, making available, as reasonably requested by the other, management decisions, information, approvals, and acceptances in order that each party may properly accomplish its obligations and responsibilities hereunder. The Service Provider will agree to cooperate at the Customer's expense with any Customer supplier performing services, and all parties supplying hardware, software, communication services, and other services and products to the Customer.

13.4 Force Majeure

13.4.1 Neither party shall be liable for delays or any failure to perform the Services or this Agreement due to causes beyond its reasonable control. Such delays include, but are not limited to, an act of God, fire, flood, earthquake, wind, storm or other natural disaster, war, insurrection, riot, act of terrorism, military operations, malicious damage, compliance with a law or governmental order, rule, regulation or direction, failure of any utility service including electric power, gas, water or telephone service, accident, breakdown of plant or machinery, strikes, lockouts, and other industrial disputes (in each case whether or not relating to the delayed party's workforce), to the extent not occasioned by the fault or negligence of the delayed party. Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of the delayed party. However, the delayed party shall use its best efforts to minimise the delays caused by any such event beyond its reasonable control. The delayed party must notify the other party promptly upon the occurrence of any such event, or performance by the delayed party will not be considered excused pursuant to this clause 13.4.1, and inform the other party of its plans to resume performance.

13.4.2 Neither the Customer nor the Service Provider shall have any liability to the other in respect of termination of this Agreement due to a force majeure event, but rights and liabilities which have accrued prior to termination shall subsist.

13.5 Advertising and Publicity

13.5.1 The Service Provider may list the Customer as a customer of the Service Provider on its website, in press releases and in other marketing material.

13.5.2 At the Customer's discretion, it may be amenable to act as a customer reference for the Service Provider.

13.6 No Waiver

The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.

13.7 Notices

All notices to or by the respective Parties shall be in writing in the English language and shall be deemed to have been duly given when: (a) delivered by hand, (b) posted by recorded delivery post (postage prepaid), (c) sent by reputable overnight courier, or (d) sent by to the party to which such notice is required to be given under this Agreement addressed to the parties as provided for in this Agreement; or to such other address or fax number as either party may subsequently notify to the other in writing. Notices delivered by hand, sent by fax or by overnight courier shall be deemed received the first Business Day following such delivery or sending. Notices, which have been posted as above, shall be deemed received on the third Business Day following posting.

13.8 Assignment

The obligations of the Customer under this Agreement are personal to the Customer. The Customer shall not directly or indirectly assign this Agreement or the rights or duties created by this Agreement, whether such assignment is effected in connection with a sale of the Customer's assets or shares or through merger, an insolvency proceeding or otherwise, without the prior written consent of the Service Provider. Nothing in this clause 13.8 shall prevent the Customer from directly or indirectly assigning this Agreement or the rights or duties created by this Agreement within its group of companies.

13.9 Counterparts

13.9.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

13.9.2 For the avoidance of doubt, this Agreement may be executed by electronic signature.

13.10 Entire Agreement

This Agreement and its attached schedules constitute the entire agreement between the parties and supersede any and all previous representations, understandings, or agreements between the Customer and the Service Provider as to the subject matter hereof. This Agreement may only be amended by an instrument in writing signed by the parties.

13.11 Cumulative Remedies

All rights and remedies of the Customer herein shall be in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance against the Service Provider for the enforcement of this Agreement, and temporary and permanent injunctive relief.

13.12 Conflict

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

13.13 No Partnership or Agency

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

13.14 Third Party Rights

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

SCHEDULE 1
Details of data processing

| Description | Details |
|---------------------------------------|--|
| Subject matter of the processing | <i>The subject matter of the Processing is set out in the Agreement.</i> |
| Duration of the processing | <i>The personal data will be processed for:</i> <ul style="list-style-type: none"> • <i>the duration of the initial term and subsequent renewal term(s);</i> • <i>as long as required to comply with the other purposes stipulated in the Agreement;</i> • <i>as long as required to complying with applicable laws and regulations.</i> |
| Nature and purposes of the processing | <p><i>The purposes are set out in the Agreement.</i></p> <p><i>The purposes include without limitation:</i></p> <ul style="list-style-type: none"> • <i>to provide the SilverCloud's platform and programmes</i> • <i>to provide technical support</i> • <i>to understand usage and improve service</i> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The nature of processing includes without limitation:</i></p> <ul style="list-style-type: none"> • <i>to solicit and collect End User feedback to SilverCloud through SilverCloud's platform</i> • <i>to anonymise or (where applicable) pseudonymise (and, at SilverCloud's option, aggregate) the Personal Data to create Usage Data for use by SilverCloud and Customer</i> • <i>to monitor, analyse and use the Usage Data</i> |
| Type of Personal Data | <p><i>Name, address, email address, telephone number, and any other Personal Data provided by Authorised Users or End Users</i></p> <ul style="list-style-type: none"> • <i>Name and related login information of Customer's personnel;</i> • <i>Name and related login information of End Users;</i> • <i>Usage Data relating to Personal Data;</i> • <i>Contact details</i> • <i>Health data</i> • <i>Background and demographic data</i> • <i>Feedback and technical support data</i> • <i>Optional personal information uploaded by End Users</i> |
| Categories of Data Subject | <i>Staff (including volunteers, agents, and temporary workers) of Customer and/or Customer End Users of Customer</i> |

| | |
|---|--|
| <p>Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</p> | <p><i>The personal data will be processed for:</i></p> <ul style="list-style-type: none"> • <i>the duration of the initial term and any subsequent renewal term(s);</i> • <i>as long as required to comply with the other purposes stipulated in the Agreement;</i> • <i>as long as required to comply with applicable laws and regulations.</i> <p><i>No data shall be retained longer than it is necessary for the purpose for which the personal data were collected for.</i></p> <p><i>Data shall be returned to Customer in a suitable format and destroyed using industry standard mechanisms.</i></p> <p><i>Non-identifiable aggregate and anonymous Usage Data may be retained indefinitely by the SilverCloud.</i></p> |
| <p>Sub-processors</p> | <p><i>Sub-processors are set out at https://www.silvercloudhealth.com/privacy/platform#subprocessors</i></p> |