

# Advanced Referral & Triage (ART) SOFTWARE AS A SERVICE AGREEMENT

**Reference:** ART-SD

**Document Contact:** [grant.gwyther@pshealth.co.uk](mailto:grant.gwyther@pshealth.co.uk)

Version 1.3

This Software as a Service Agreement (the “Agreement”) is entered into as of the date specified in Schedule A (“Effective Date”) between psHEALTH ART Healthcare Software Limited, a company registered in England and Wales under number 11119894 whose registered office is at Mercury House 117 Waterloo Road, London SE1 8UL (“psHEALTH”), and the client identified in Schedule A (“Client”).

The Client and psHEALTH have agreed that psHEALTH will provide the ART software-as-a-service and/or other services (the “Services”) to the Client, on the terms and subject to the conditions of this Agreement.

## **1. Definitions**

1.1 “Authorised Users” means employees of the Client and those third parties who necessarily require access to the Solution.

1.2 “Confidential Information” means information of a confidential nature. A party’s Confidential Information will not include information that: (a) is or becomes publicly known through no act or omission of the receiving party; (b) was in the other party’s lawful possession prior to 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, which independent development can be shown by written evidence.

1.3 “Software” means the object code, executable version, as developed and enhanced by psHEALTH and/or its licensors. The Software includes documentation and all updates, new releases, enhancements, revisions and versions provided by psHEALTH or its partners. For the purposes hereof, the Software shall be deemed to be incorporated into and made a part of the Solution.

1.4 “Client Data” means the proprietary information input into the Solution (i) by Client, (ii) by an Authorised User, or (iii) by psHEALTH on Client’s behalf.

1.5 “Deliverable” means a defined configuration, level of functionality or other pre-set milestone within a particular phase of implementation, delivery or extension of the Solution.

1.6 “Hosting Services” means the services psHEALTH provides to enable Authorised Users to access and use the Solution, including hosting set-up and ongoing support services, as further described in Schedule E.

1.7 “Initial Term” means the period as set out in Schedule A.

1.8 “Maintenance Service” means any bug fixes, updates and upgrades that psHEALTH may provide or perform with respect to the Solution, and any other support or training services provided to Client under this Agreement, as described in Schedule E.

1.9 “Services” means collectively, the Solution, the Hosting Services, and the Maintenance Services.

1.10 “Solution” means the Software as configured for the Client.

1.11 “Usage Terms and Conditions” means any terms and conditions which in addition to this Agreement specifically apply to the use of the Solution by Authorised Users, as such may be amended by psHEALTH by notice in writing to Client.

## **2. Solution Configuration**

2.1 Initial Configuration of the Solution. As set out in Schedule B.

2.2 Subsequent Configuration or Extension of the Solution. The Client may from time to time request psHEALTH to configure, change or extend the Solution outside the Initial Configuration. Such extension will be governed by the terms of this Agreement but with a separate Statement of Work detailing the changes and the agreed fee.

2.3 Acceptance Process. A Deliverable is deemed delivered to Client when psHEALTH notifies Client that it has been made available for Client to access online. If a Deliverable does not materially comply, the Client must notify psHEALTH in writing within 5 days including a sufficiently detailed description of the non-compliance ("Error"). psHEALTH will then use reasonable efforts to correct within a reasonable time any Errors and redeliver the Deliverable to Client. A Deliverable will be deemed as accepted if the Client does not provide written notice as set out in this paragraph.

## **3. Hosting and Use of Solution**

3.1 Access to the Solution. psHEALTH will provide the Hosting Services on the terms and subject to the conditions of this Agreement (including its schedules).

3.2 Users. Client's access to the Solution will be limited to the Authorised Users. Client will maintain a written list of current Authorised Users of the Solution, and will provide such list to psHEALTH on request. Client will procure that all Authorised Users receive a copy of the Usage Terms and Conditions (as detailed in Schedule F) and comply with such Usage Terms and Conditions. psHEALTH shall have the absolute right to refuse access to Authorised User in breach of this Agreement.

3.3 Licence. Subject always to the terms and conditions of this Agreement and the Usage Terms and Conditions, psHEALTH hereby grants Client a non-exclusive, non-transferable right to permit Authorised Users to access the Solution through the Hosting Services and to use the Solution for the sole purpose as set out in the Solution Configuration. Client will not, and will procure that Authorised Users will not, store, distribute or transmit any material through the Hosting Services that (i) is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive, (ii) facilitates illegal activity, (iii) depicts sexually explicit images, or (iv) promotes unlawful violence, discrimination based upon race, gender, colour, creed, age, sexual orientation, disability, or any illegal activities or (v) contain any viruses, Trojan horses, worms, time bombs or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information or (vi) infringe any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy. The rights provided hereunder are granted to Client and Client's affiliated, subsidiary and/or holding companies (including direct or indirect parent companies). Client will not, and will procure that Authorised Users will not: (a) duplicate, modify, reverse engineer, disassemble, decompile or otherwise attempt to access or determine the source code of the Software or distribute the Solution or any part thereof; (b) transfer, temporarily or permanently, any of its rights hereunder. Client will not, and will procure that Authorised Users will not, attempt to obtain, or assist others in obtaining access to the Solution other than as expressly permitted by this Agreement. Any use of the Software or derivative works thereof on any other website or networked computer environment for any purpose is prohibited.

3.4 Retention of Marks. Client must retain all patent and copyright notices and other proprietary legends in or on the Software. Client may not remove from the Software, or alter, any of the trademarks, trade names, logos, patent or copyright notices or markings, or add any other notices or markings to the Software.

3.5 Data Maintenance and Backup Procedures. In the event of any loss or damage to Client Data, Client's sole and exclusive remedy will be for psHEALTH to use reasonable commercial efforts to restore the lost or damaged Client Data from the latest backup of such Client Data maintained by psHEALTH in accordance with the backup procedure described in Schedule E. psHEALTH will not be responsible for any loss, destruction, alteration or disclosure of Client Data caused by any third party (except third parties sub-contracted by psHEALTH to perform services related to Client Data maintenance and back-up).

#### **4. Maintenance Services**

4.1 psHEALTH will provide the Maintenance Services as described in Schedule E, on the terms and conditions set forth therein.

#### **5. Client Obligations**

5.1 Cooperation and Assistance. As set out in Schedule C.

5.2 Accounts. Client is responsible for all activity occurring as a result of its access to and use of the Solution and, in connection with this use, agrees to abide by all applicable national, and foreign laws, treaties and regulations including those related to data privacy, international communications and the transmission of technical or personal data in connection with its use of the Solution.

5.3 Use of Client's Name. Subject always to the terms and conditions of this Agreement, Client hereby grants psHEALTH the right to use Client's name for psHEALTH's marketing purposes, provided psHEALTH obtains Client's prior permission to the manner in which Client's name is represented (such permission not to be unreasonably withheld or delayed). Notwithstanding this, psHEALTH can include Client's name and logo in marketing material under the caption 'Our Clients' for the duration of this Agreement. psHEALTH will not use Client's name after any termination of this Agreement (provided that psHEALTH will not be obliged to recover any marketing collateral then in circulation).

#### **6. Fees and Expenses, etc.**

6.1 Fees and Payment Terms. In consideration of the provision of the Solution and Services, the Client will (a) during the Initial Term pay psHEALTH the amounts set out in Schedule D; and (b) for each twelve month period thereafter (each a "Renewal Term"), pay psHEALTH the amounts set by psHEALTH for that Renewal Term and notified to Client at least three months prior to the commencement of that Renewal Term.

6.2 Expenses. The Client will reimburse psHEALTH for all actual, reasonable, travel and subsistence expenses incurred by psHEALTH in configuring or developing the Solution or performing ongoing Services.

6.3 Tax. All amounts and fees stated or referred to in this Agreement are exclusive of value added tax, which will be added to psHEALTH's invoice(s) at the applicable rate. If psHEALTH is required to pay any other duties or taxes based on the provision of the Services, Solution or other Deliverables (other than taxes based on psHEALTH's net income), such duties or taxes will be billed to and paid by Client, in addition to the fees and expenses stated above.

#### **7. Proprietary Rights**

The Client owns all data pertaining to individual patients, referrals or cases submitted to the Solution by Authorised users.

The Client acknowledges that psHEALTH and/or its licensors own the Software and all intellectual property rights related to the implementation of the Solution. Except as expressly stated herein,

this Agreement does not grant Client any rights to algorithms, rules, pathways, process models, patents, copyrights, database designs, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights, or licences in respect of the Solution or any related documentation.

The Client acknowledges that psHEALTH shall have (i) royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Solution any suggestion, ideas or enhancement requests pertaining to the Software or Services and (ii) the right to use and retain data that is not patient identifiable for the purpose of training and improving algorithms, pathways or other functionality in the Solution. The exercise of any rights in this paragraph will comply with laws or regulations pertaining to data protection and patient data confidentiality.

## **8. Confidentiality & Data Protection**

**8.1 Use and Nondisclosure.** The parties agree to hold each other's Confidential Information in confidence and, unless required by law, not to make each other's Confidential Information available to any third party or to use each other's Confidential Information for any purpose other than for the implementation of this Agreement. Each party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement (which in the case of the Client, shall include requiring third party Authorised Users to enter into confidentiality arrangements no less onerous than contained herein and which are directly enforceable by psHEALTH). Client acknowledges that for the purposes of this Agreement the Solution is psHEALTH's Confidential Information and Client will not and will procure that Authorised Users will not attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human perceivable form any of the Solution, except to the extent permitted by applicable laws which are incapable of exclusion by agreement between the parties. In addition, Client acknowledges that the results of any performance tests of the Solution and Services will also constitute psHEALTH's Confidential Information. psHEALTH acknowledges that the Client data is the Confidential Information of Client. The terms and conditions of this Agreement will be deemed the Confidential Information of both parties and neither party will disclose such information except to such party's affiliated companies, professional advisors, investors (and prospective investors), prospective acquirers and as required by any governmental agency.

**8.2 Protection of Data.** Whilst processing Client data, psHEALTH will act only in accordance with the requirements of this Agreement and written instructions from the Client. psHEALTH operates in compliance with the EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council ("**GDPR**" and collectively with the foregoing "**EU Data Protection Laws**") and any data protection laws substantially amending, replacing or superseding the GDPR following any exit by the United Kingdom from the European Union. This includes taking and continue to take appropriate technical and organisational measures against unauthorised or unlawful processing of Client data and against accidental loss or destruction of, or damage to, Client data. psHEALTH and the Client will work in good faith to implement guidance regarding new data protection legislation; the cost of such implementation will be covered by psHEALTH, unless the implementation relates to Client specific request (requests relating to individual referrals or requests relating to customised functionality) which will be covered by the Client at cost.

psHEALTH agrees to: (i) not to use a sub-processor without the prior written authorisation of the data controller, such authorisation shall not be unreasonably withheld, (ii) to co-operate with supervisory authorities (such as the ICO), (iii) to ensure the security of its processing, (iv) to keep records of processing activities, (v) to notify any personal data breaches to the data controller and (vi) to employ a data protection officer.

8.3 psHEALTH Confidential Information. Client will notify psHEALTH immediately upon becoming aware of or suspecting any unauthorised use or disclosure of psHEALTH's Confidential Information and will co-operate with psHEALTH in every reasonable way to help to terminate any unauthorised possession of such Confidential Information and to prevent any unauthorised use of the same.

8.4 No Solicitation of Employees. Neither the Client nor psHEALTH will not seek to recruit or contract with employees of the other party for a period of up-to 6 months after termination of this Agreement.

## 9. Warranty

9.1 Solution Warranty. psHEALTH warrants that the Software will perform substantially in accordance with the Solution Configuration (as detailed in Schedule B) during the term of this Agreement; provided that such warranty will not apply to the extent any non-compliance is caused by use of the Solution contrary to psHEALTH's instructions, or by modification or alteration of the Solution other than by or on behalf of psHEALTH. If the Solution does not conform to the preceding warranty, Client's sole and exclusive remedy will be to require psHEALTH (at psHEALTH's expense), to make reasonable efforts to within a reasonable time correct any such non-compliance or provide Client an alternate and efficient means of accomplishing the desired performance. Notwithstanding Clause 9.1, psHEALTH does not warrant or represent that Client's use of the Solution and Services will be uninterrupted or error-free, and Client acknowledges and agrees that psHEALTH may from time to time suspend Client's access to the Solution and the Services as psHEALTH reasonably deems necessary for reasons of security or necessary maintenance.

9.2 Disclaimer. Except as provided in Clause 9.1, Client assumes sole responsibility for all results obtained from the use of the Solution and Services and for conclusions drawn from such use, including the use of rules or algorithms provided within the Solution. Further, psHEALTH accepts no liability for any information available to Client within the Services and not provided by psHEALTH (including content published on linked third party websites). psHEALTH accepts no liability for any loss or damage caused by errors or omissions in any information, instructions or scripts provided to psHEALTH by Client in connection with the Services or any actions taken by psHEALTH at Client's direction.

9.3 Except as expressly stated in this Agreement, psHEALTH makes no warranties to Client, and all other warranties, conditions and other terms, express or implied, whether by statute, collaterally, or otherwise, and whether as to fitness for a particular purpose, satisfactory quality, non-infringement or any other matter are hereby excluded to the fullest extent permitted by applicable laws.

9.4 Third Party Licensors. The Software contains software licensed to psHEALTH from certain third party licensors (collectively referred to herein as the "Third Party Licensors"). The Third Party Licensors require that the Client agree to the following terms in connection with Client's use of the Software, and Client hereby explicitly agrees to the following: Any warranty provided in connection with the Software is from psHEALTH, not the Third Party Licensors, and the Third Party Licensors make no warranty to Client in connection with the Software. The Third Party Licensors expressly disclaim any express, implied or statutory warranties in connection with the Software, including the implied warranties of merchantability or fitness for a particular purpose. The Third Party Licensors are not liable for any damages of any kind resulting from Client's use of the Software, including without limitation, direct, indirect, consequential, incidental, and special damages. The Third Party Licensors are intended third party beneficiaries of this Agreement.

## **10. Term and Termination**

10.1 Term. Unless and until terminated pursuant to and in accordance with this Agreement, this Agreement will continue for the Initial Term. The term of this Agreement will automatically renew for yearly periods, unless either party notifies the other in writing of its intent not to renew at least ninety days prior to the end of the then current term.

10.2 Termination for Breach. Either party may at any time terminate this Agreement or any licence on written notice if the other party materially breaches this Agreement and (if the breach is remediable) fails to correct the breach within thirty days following written notice specifying the breach and requiring its remedy within such thirty day period. In the event of termination, Client agrees that psHEALTH may terminate Client's passwords, accounts and use of the Solution immediately upon the effective date of termination. Furthermore, psHEALTH may immediately terminate this Agreement and any license granted hereunder, or suspend the Client's privilege to use the Solution prior to expiration of the Agreement, by giving written notice to Client, which termination or suspension shall be without any liability to Client, if psHEALTH has reason to believe there has been or may be a violation of the rights of a third party, breach of security, fraud, or misrepresentation in connection with Client's use of the Solution.

10.3 Termination for Insolvency. Either party may at any time terminate this Agreement on written notice if the other party passes a resolution, or the Court makes an order that the other party be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the other party, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the other party is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction.

10.4 Termination for Change of Control. The Client has the right to terminate this Agreement if there is a change of control of psHEALTH where control is exercised by a competitor of the Client. psHEALTH has an analogous right in the event of a change of control of the Client.

10.5 Consequences of Termination. The rights and obligations of psHEALTH and Client contained in Clauses 6 (Fees and Expenses, Etc.), 7 (Proprietary Rights), 8 (Confidentiality & Data Protection), 11 (Indemnity), 12 (Limitation of Liability & Insurance), and 13 (General) will survive any termination or expiry of this Agreement. On termination all licences granted hereunder by psHEALTH will immediately terminate and each party will return and make no further use of any of the equipment, property, materials and other items (and all copies thereof) belonging to the other party.

## **11. Indemnity**

11.1 Infringement Indemnity. psHEALTH will defend Client, its officers, directors and employees, against any claims that the Solution (1) infringes any United Kingdom (a) patent effective as of the Effective Date; (b) copyright; or (c) database right; or (2) misappropriates a trade secret, and will indemnify Client for any amounts awarded against Client in judgment or settlement of such claims; provided that (a) psHEALTH is given prompt notice of such claim; (b) Client provides reasonable co-operation to psHEALTH in the defence and settlement of such claim, at psHEALTH's expense as to out-of-pocket expenses; and (c) psHEALTH is given sole authority to defend or settle the claim. In the defence or settlement of the claim, psHEALTH may obtain for Client the right to continue using the Solution, replace or modify the Solution so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement. psHEALTH will have no liability under this Clause 11.1 if the alleged infringement is based on: (i) a modification of the Solution other than by or



on behalf of psHEALTH; (ii) Client's use of the Solution in a manner contrary to the instructions given by psHEALTH; or (iii) the use of the Solution after notice of the alleged or actual infringement. This Clause 11.1 states Client's sole and exclusive rights and remedies and psHEALTH's entire obligations and liability to Client for intellectual property rights infringement.

## **12. Limitation of Liability & Insurance**

12.1 Each party accepts liability for fraud, and for death or personal injury resulting from its negligence or the negligence of its employees or agents during performance of their duties

12.2 Subject to Clause 12.1 and with the exception of liabilities for breach of Clause 3.3 (Licence), in no event will either party be liable to the other party for any:

a) lost profits; or

b) lost revenue; or

c) anticipated savings; or

d) indirect, incidental, special, exemplary or consequential losses or damages, including for business interruption, costs of substituted facilities, equipment or services,

in each case whether or not such party has been advised of the possibility of such damages, and whether any claim for recovery arises in contract, negligence or any other tort.

12.3 Subject to Clause 12.1, in no event will psHEALTH's aggregate liability in connection with this Agreement exceed an amount equal to the total sums paid by Client in the twelve month period immediately preceding the claim.

12.4 psHEALTH have in effect and undertakes to maintain in effect the following insurance: employer's liability insurance of not less than £10 million, public liability of no less than £2 million and professional indemnity of not less than £1 million per claim during the term of this Agreement and for a period of six (6) years after this.

## **13. General**

13.1 Governing Law and Jurisdiction. This Agreement and all matters arising out of or relating to it will be governed by the laws of England and Wales. Any legal action or proceeding relating to this Agreement will be instituted in the English Courts. psHEALTH and Client irrevocably submit to the jurisdiction of, and agree that venue is proper in, these courts in any such legal action or proceeding.

13.2 Waiver. The waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach. To be valid, waivers must be made in writing.

13.3 Notices. All notices, including notices of address change, required to be sent by one party under this Agreement will be in writing and sent by pre-paid recorded or registered post. Notices will be deemed served 48 hours after pre-paid recorded or registered posting.

13.4 Severance. In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

13.5 Force Majeure. Neither party will be liable by reason of any failure or delay in the performance of its obligations under this Agreement (except for the payment of money) on account



of strikes (other than strikes by the staff of that party), shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labour conditions, earthquakes, material shortages, or any other cause beyond the reasonable control of such party. If such state of affairs should continue for more than 30 days, Client shall have the right to terminate this Agreement forthwith.

13.6 Compliance with Laws. Each party agrees to comply with all applicable laws and regulations with respect to its activities hereunder, including any export laws and regulations, and laws relating to the protection of personal data.

13.7 The Parties' Relationship. This Agreement does not create a partnership, joint venture or agency relationship between the parties.

13.8 Assignment. Client shall be entitled to assign, novate, sub-contract or otherwise dispose of the whole (but not just a part) of this Agreement to any holding company of Client or any subsidiary of such holding company without the prior written consent of psHEALTH. Client may not, by operations of law or otherwise, assign any of its rights nor delegate any of its obligations under the Agreement to any third party. psHEALTH shall be entitled to assign, novate, sub-contract or otherwise dispose of any or all of its rights and/or obligations under this Agreement to any holding company of psHEALTH or any subsidiary of such holding company without the prior written consent of the Client. This Agreement will inure to the benefit of successors and permitted assigns.

13.9 Third Party Rights. Except as otherwise set forth in Section 9.4 Third Party Licensors of this Agreement, no third party shall have any rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise in connection with this Agreement.

13.10 Entire Agreement. This Agreement together with the Schedules sets out the entire agreement and understanding between the parties and supersedes any previous agreement between the parties relating to its subject matter. Unless otherwise expressly agreed in writing this Agreement applies in place of and prevails over any terms or conditions contained in or referred to in correspondence or elsewhere or implied by trade custom or course of dealing. In entering into this Agreement each party acknowledges and agrees that it has not relied on any representations made by the other. Any such representations are excluded. If a party has made or given any representation, warranty or promise or otherwise made any innocent or negligent misrepresentation then, (except to the extent that it has been expressly set out in this Agreement) the party to whom it is given or made waives any rights or remedies which it may have in respect of it and agrees that the other party shall have no liability in respect of it. Nothing in this Clause 13.10 shall limit liability for any representations made fraudulently.

SIGNED by

SIGNED by

.....

.....

Print name: .....

Print name: .....

Date: .....

Date: .....

For and on behalf of psHEALTH

For and on behalf of Client

## **SCHEDULES**

SCHEDULE A - GENERAL INFORMATION

SCHEDULE B – SOLUTION CONFIGURATION

SCHEDULE C – IMPLEMENTATION PLAN & PARTNER OBLIGATIONS

SCHEDULE D – FEES & PAYMENT TERMS

SCHEDULE E – HOSTING, SUPPORT & SLAs

SCHEDULE F – USAGE TERMS AND CONDITIONS

SCHEDULE G – THIRD PARTY LICENSOR TERMS (APPIAN FLOW DOWN)

## **SCHEDULE A – GENERAL INFORMATION**

Effective Date of this Agreement:

Initial Term:

Client's full name: [customer]

Client's registered number: [customer]

Client's registered office address: [customer]

## **SCHEDULE B – SOLUTION CONFIGURATION**

As will be set out in the agreed Service Design Document.

## **SCHEDULE C – IMPLEMENTATION PLAN & PARTNER OBLIGATIONS**

1. The parties will agree an Implementation plan and adhere to the obligations set out below (collectively the "Project Obligations").
2. The Client agrees to:
  - 2.1 Appoint a Senior Executive Sponsor.
  - 2.2 Appoint a Project Manager who will coordinate the day-to-day work. The Project Manager is the primary liaison for the development of the solution with psHEALTH. Adequate time must be allocated to the project.
  - 2.3 Appoint an IT Liaison Manager who will coordinate activities pertaining to Client's IT landscape, integration, security assessments, etc.
  - 2.4 Appoint at least two Super-User (of which one lead Super-User) that will be responsible for system administration, 1<sup>st</sup> line support and training.

## SCHEDULE D – FEES & PAYMENT TERMS

### 1 Fee Schedule and General Terms

[Insert Agreed Price Schedule]

Fees are payable 30 days from invoice. Fees are quoted excluding VAT.

In case of late payment, the amount shall be increased, without prior notice, by the greater of i) with an interest rate of 2% per month commenced or ii) a minimum of £500.

“Delivery Date” is the earlier of:

- (i) the date that live referrals are processed by the Solution
- (ii) 90 days from the ‘Effective Date’

### 2 Other Third-Party Service Costs

Third-Party Service Costs such as SMS/text messaging or the use of 3<sup>rd</sup> party web services such as postcode lookup or travel distance calculations to the Client at cost plus 20%.

### 3 SOW/Professional Services Rates

Configuration changes and extension outside the initial Solution Configuration or other ad hoc services are documented in a separate Statement of Work (“SOW”) for which we charge professional service day rates depending on the project. All SOWs are payable upfront on the Effective Date of the SOW.

### 4 Inflation Adjustment

Fee will be increased no more than once a year effective on the relevant anniversary and by no more than the most recent RPI per annum.

### 5 Other Provisions

In addition to the SLAs set out in Schedule E Section 4, psHEALTH commits to the following “Performance SLAs”:

SLA Name	Description	Performance SLAs

The Performance SLAs will be finalised in good faith between the Parties in the Service Design Document to accommodate Client specific processes.

The Performance SLAs will be measured from the first week the Solution is in full operational use which is defined as processing 80% of the expected monthly volume.

Service Credits: Each week psHEALTH fails to meet an Individual Performance SLA is deemed an Individual Performance SLA Failure and psHEALTH will provide the Client with Service Credits equal to 33.3% of the estimated monthly fee (calculated as 1/52 of the estimated annual fee) for each

Individual Performance SLA Failures. In order to claim Service Credits the Client must notify psHEALTH no less than 14 days after the alleged Performance SLA breach.

## **SCHEDULE E – HOSTING, SUPPORT & SLAs**

### **1. Hosting**

The Solution will be delivered inside the N3 (the NHS network) using RedCentric or AWS as hosting provider, at all times in compliance with NHS Digital's guidance

### **2. Client's Information Security Obligation**

The storage of, access to and use of patient data is controlled by law and regulations, including guidelines from the NHS Digital and other statutory bodies. It is the Client's responsibility to ensure that such access and use falls within these laws and guidelines.

If the Solution is hosted inside the N3, the Client confirms that information governance policies and standards directly applicable to the people accessing the Solution and the access points used to access the Solution comply with the prevailing information governance requirements.

### **3. System Availability & Access**

psHEALTH aims to ensure that the system is available 24 hours a day, 365 days a year (excluding service outage periods for routine maintenance and unexpected technical outages).

Where possible, routine maintenance will be performed outside core working hours (9am-5pm, Monday to Friday excluding English bank holidays).

psHEALTH will also from time to time release software updates to improve functionality, improve performance or correct defects. Such releases will be tested by psHEALTH and where possible only released to customers following timely communication.

The Solution is accessible via a standard web browsers as published from time to time. The Solution will require that users enable cookies. All cookies used by the Solution are "session cookies," meaning that they are automatically deleted from the hard drive at the end of a session. Solution will only be accessible over a secure HTTPs SSLv3 256 bit AES encrypted channel.

Each page will typically require a download of 30-40kbytes (depending on the amount of information displayed) and will typically be processed by psHEALTH servers within 5 seconds from receiving the request. The perceived download and response times for a user will be dependent on several factors including the users' connection to the internet, network capacity and machine capability.

psHEALTH will ensure that Client Data is backed up daily (incremental back-up) and weekly (full backup).

### **4. Support & Issue Resolution**

The psHEALTH Customer Success & Support team ("CSS-Team") is the first point of contact for all support issues. The service desk's hours of operation are 9:00am to 5:30pm, Monday to Friday. psHEALTH provide second-line support with the Client providing first-line support to the named Super-Users.

Issues must be logged on the Customer Support Portal, which is a hub for monitoring and auctioning support queries. psHEALTH provides a small number of named accounts for Super-Users to allow access to the portal. The portal provides clients with real-time visibility of the status of support issues.

Client issues will be classified in terms of seriousness as defined below

Issue Type	Definition
Critical (Blocker & Critical)	A fault which causes or leads to system unavailability or which threatens loss of data
High (Major)	A fault which causes or leads to intermittent system unavailability of key business functionality
Medium (Minor)	A fault which causes or leads to intermittent system unavailability of business non-critical functionality
Low (Trivial)	A fault which can be worked around without difficulty or disruption and which does not lead to a loss of data or data corruption

psHEALTH Support team will match the Service Level Agreement (SLA) as follows:

Issue Type	Resolution Target	KPI	Notes
Critical (Blocker & Critical)	4 hours	95% fixed within 4 hours	Subject to release cycle agreement with Client
High (Major)	One business day	90% fixed within one business day	Subject to release cycle agreement with Client
Medium (Minor)	Four business days	90% fixed within four business days	Subject to release cycle agreement with Client
Low (Trivial)	Eight business days	90% fixed within eight business days	Subject to release cycle agreement with Client

psHEALTH reserves the right to amend and update the Support processes, including SLAs, provided it gives Client 30 days' notice.



## SCHEDULE F – USAGE TERMS AND CONDITIONS

### 1. Data Centre Terms of Use

The acceptable use policy (“AUP”) of our data centre provider is incorporated by terms of reference. In the case the AUP contradicts the terms in this schedule, the AUP shall prevail. The term ‘you’ in this schedule refers to the person using the Solution.

### 2. Employees and authorised third party

You may only use the psHEALTH Software and Service (“Solution”) provided by psHEALTH Limited (“psHEALTH”) if you are an employee of Client (the “Licensee”), or an affiliate, or if you are an authorised third party under contract to the Licensee and have been authorised by the Licensee to do so (an “Authorised User”). As an Authorised User, you must comply with these terms and conditions and any other terms and conditions laid down by the Licensee (whether in writing or otherwise). Your status as an Authorised User will be revoked if you breach either set of terms and conditions.

### 3 Intellectual Property Rights

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To the maximum extent permitted by applicable law, you do not and will not have any direct right of action against psHEALTH in respect to your use of the Solution. Any such claim will be bought by the Licensee against psHEALTH under the Agreement between psHEALTH and the Licensee.

## 6 Confidentiality

You undertake to the Licensee and psHEALTH that you will comply with any confidentiality obligations imposed on you by the Licensee. If the Licensee has not imposed any confidentiality obligations on you, you agree to keep any information you receive or obtain from using the Solution confidential and will not use such information or disclose such information to any other person. You should be aware that such a disclosure could be an offence under Section 55 of the Data Protection Act and therefore subject to criminal law penalties.

## 7 General

A change in these terms and conditions will be made by a change to the published version and psHEALTH therefore reserves the right to vary these terms and conditions from time to time. By continuing to use and access psHEALTH you agree to be bound by any variation to these Terms & Conditions.

These Terms & Conditions set out the rules under which you may use the Solution. They supersede and replace any statement or other communication (whether written or otherwise) made by psHEALTH to the extent there is a conflict or inconsistency.

Any failure or delay by psHEALTH in enforcing any rights or remedies available to it will not constitute a waiver of these rights or remedies.

Should any part of these terms and conditions for any reason be declared invalid or unenforceable by a court of a competent jurisdiction, that part will be deemed to be deleted without affecting the remaining provisions.

These Terms & Conditions are governed and construed in accordance with the laws of England and are subject to the exclusive jurisdiction of the English courts.

## 8 System Users

The Client can add and deactivate system users up to a maximum cap of active users calculated by dividing CARV by 2,000.

## **SCHEDULE G – THIRD PARTY LICENSOR TERMS (APIAN FLOW DOWN)**

This Appian flow down terms agreement (the “Appian Flow Down Agreement”) dated \_\_\_\_\_ is incorporated into the Agreement between [customer] Limited and psHEALTH Limited dated \_\_\_\_\_

### **1. DEFINITIONS**

- a. “End User” means [customer] Limited.
- b. “Licensor” means psHealth Limited.
- c. “Terms and Conditions” means the terms and conditions set forth in this Schedule.

### **2. LIMITED LICENSE**

These Terms and Conditions govern End User’s use of Appian Software Switzerland LLC’s (“Appian”) business process management software suite and associated documentation (collectively, the “Software”).

- a. General. Commencing upon the date End User receives an initial user name and password from the Licensor and is able to access the Software through a connection to the Internet, Licensor grants End User a non-transferable, non-sublicenseable, nonexclusive license to access the Software via a password over the Internet. End User may only use the Software for its own internal business purposes. If End User allows another individual or organization to access or use the Software, End User will be liable for compliance with these Terms and Conditions, and for any violations by that user of these Terms and Conditions.
- b. Usernames and Passwords. End User may not disclose End User’s user names and passwords associated with the Software to any other party. End User is responsible for maintaining the confidentiality of its account and password information, and for restricting access to its computers. In the event of a breach of security, End User agrees to immediately change its passwords and to promptly notify Licensor of such breach in writing.
- c. General Restrictions. End User may not: (i) modify, reverse engineer, disassemble, decompile or otherwise attempt to access or determine the source code of the Software (except as and only to the extent any of the foregoing restrictions may be permitted by the licensing terms governing use of any open sourced components included with the Software), (ii) copy, or reproduce the Software in any way, in whole or in part, (iii) create any derivative work based on the Software, (iv) re-distribute or sublicense the Software, or any part thereof, to any third party, (v) create Internet “links” to the Software or “frame” or “mirror” any content available on the Software on any other server or wireless Internet-based device, (vi) operate the Software on a service bureau basis, or (vii) allow, assist or permit any third party to do any of the foregoing. If End User is located in a jurisdiction that permits limited reverse engineering or creation of back-up copies as a matter of law, and despite accepting contract terms to the contrary, End User may: (i) perform limited reverse engineering, provided End User first notifies Licensor of its intent to reverse engineer the Software, and provided the reverse engineering is limited to the extent permitted by the applicable law; and (ii) copy the Software as reasonably necessary for the End User to use the rights granted subject to all such copies remaining the property of Licensor and its licensors and being subject to these Terms and Conditions.

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### 4. RESPONSIBILITIES

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### 6. TERMINATION

a. Licensor may terminate the End User's license to use the Software at any time upon written notice to End User if End User breaches any material provision hereof and fails to cure such breach within thirty (30) calendar days after receiving written notice of such breach from Licensor. In addition, Licensor may terminate the End User's license to use the Software if End User directly or indirectly commences legal action or otherwise challenges the validity of the intellectual property rights in the Software.

b. Upon the termination of the End User's license, the End User will make no further use of the Software. Within five (5) business days after such termination, the End User will return to Licensor all originals and all copies of the Software in the End User's care, custody or control. The End User will certify to Licensor that it has complied with the foregoing requirements. The foregoing obligations apply to copies of the Software in all forms, partial and complete, in all types of media and computer memory, and whether or not modified or combined with other materials.

### 7. CONFIDENTIALITY

a. General. The Software contains confidential and proprietary information of Licensor and its licensors. End User agrees not use Software except as expressly set forth herein and to maintain reasonable procedures to prohibit the unauthorized disclosure, duplication, misuse or removal of the Software. End User agrees not to disclose the Software to any third party. Without limiting the foregoing, End User agrees to use the same procedures and degree of care to avoid unauthorized disclosure or use of the Software as End User uses to protect its own similar information, but in no event using less than a reasonable degree of care.

b. Exceptions. The foregoing restrictions will not apply to information that (i) is known to End User at the time of communication from Licensor or its licensors, (ii) has become publicly known

through no wrongful act of End User, (iii) has been rightfully received by End User from a third party authorized to make such communication without restriction, (iv) has been independently developed by End User as evidenced by End User's written records, or (v) is required to be disclosed pursuant to a subpoena or other validly issued administrative or judicial process, provided that End User must give Licensor sufficient notice of such disclosure to allow Licensor and its licensors a reasonable opportunity to object to and take necessary legal action to prevent such disclosure.

This Appian Flow Down Agreement has been entered into on the date written above.

SIGNED for and on behalf of

[customer]

Signature

Name .....

Title .....

Date .....

SIGNED for and on behalf of

psHEALTH Limited

Signature

Name .....

Title .....

Date .....