

## PERFECT WARD SUBSCRIPTION AGREEMENT

This Subscription Agreement is entered into between Perfect Ward Ltd (registered number 09954491) of Evergreen House North, Grafton Place, London, NW1 2DX (“**Perfect Ward**”) and you, the “**Customer**” whose details are set out below.

Perfect Ward has developed the Perfect Ward software application which it makes available to subscribers via an online or remote-accessed location where applications are made available for downloading such as the Apple App Store and Google Play (or such other method as Perfect Ward may determine from time to time) on a pay-per-area basis (“**Perfect Ward**”), where an “area” is a distinct area of your facility with an individual QR code.

Perfect Ward has agreed to provide and the Customer has agreed to take and pay for the Perfect Ward service (including any updates) subject to the terms and conditions of this agreement.

This Subscription Agreement front sheet and the attached terms and conditions shall apply to all arrangements between Perfect Ward and the Customer in respect of Perfect Ward unless otherwise agreed in writing by Perfect Ward.

The terms contained in this front sheet shall prevail in the event of any conflict with any of the terms in the attached terms and conditions.

CUSTOMER INFORMATION:		INVOICE ADDRESS (if different):	
CUSTOMER NAME	Sussex Partnership NHS Foundation Trust		
Address	Swandean Trust HQ Arundel Road	Address	
Town	Worthing	Town	
County	Sussex	County	
Country	UK	Country	
Post Code	BN13 3EP	Post Code	
Contact Name	Soni Gaffney	Contact Name	
Contact Job Title	CQC project lead	Contact Job Title	
Contact Email	<a href="mailto:Soni.gaffney@sussexpartnership.nhs.uk">Soni.gaffney@sussexpartnership.nhs.uk</a>	Contact Email	
Contact Tel.	07391415379	Contact Tel.	

<b>PERFECT WARD SUBSCRIPTION TERM &amp; FEES:</b>	
<i>All fees are in GBP (£) and exclusive of VAT. Payment terms are 30 days from date of invoice.</i>	
Start Date	10 <sup>th</sup> Sept 2021
Initial Term	3 years
Areas Included	Up to 25 areas and 105 community service teams An area is defined as a distinct clinical area (such as a ward) or service team which has a unique QR code identifying the area/service team and their tailored audit questions for inspection. Pricing is based on our standard pricing model with reduced pricing for service teams.
Implementation Days Included	Up to 16 days
Number of Types of Audit Included	Up to 5 separate types of audit
Annual Subscription Fees	£38,839+ VAT per annum subject to annual inflation adjustment per clause 6.7
Other Key Terms	<ul style="list-style-type: none"> <li>• Subscription fees to be paid annually in advance</li> <li>• All prices are subject to VAT at prevailing rate</li> <li>• Any additional areas or types of audit to be authorised in advance in writing by the client and priced incrementally per Perfect Ward pricing schedule at the date of the request</li> <li>• Additional implementation days will be charged at the current day rate</li> </ul>

<b>AUTHORISATION</b>			
<b>Signed for and on behalf of Perfect Ward Ltd:</b>		<b>Signed for and on behalf of the Customer:</b>	
Perfect Ward Signature		Customer Signature	
Name:	Tim Bolot	Name:	Dr Jane Padmore
Position:	Director, Perfect Ward	Position:	Chief Nursing Officer
Date:	15 September 2021	Date:	14 September 2021

## PERFECT WARD SUBSCRIPTION AGREEMENT: TERMS AND CONDITIONS

### 1. Interpretation

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

**agreement:** these terms and conditions (including Appendix 1), together with the Front Sheet.

**Authorised Users:** those employees, agents and independent contractors of the Customer who are authorised by the Customer to use Perfect Ward and the Documentation, and have been issued with a username and password by Perfect Ward, as further described in clause 2.3(b).

**Available:** means the % availability of Perfect Ward determined on a monthly basis in accordance with the following formula:

$$\frac{(\text{Total Uptime} - \text{Unplanned Downtime})}{\text{Total Uptime}} \times 100$$

*where:*

"Total Uptime" means the total number of minutes during the given month (60 x 24 x days of the month);

"Unplanned Downtime" means the total number of whole minutes during the given month during which Perfect Ward is Unavailable other than as a result of Planned Maintenance;

"Unavailable" means Perfect Ward is not accessible or available in accordance with normal, reasonable business usage and/or is functioning at a quality of performance that is inconsistent with normal, reasonable business usage; and

"Planned Maintenance" means any general, non-remedial maintenance of Perfect Ward that may require interruption of the service, with any such work being carried out during the hours of 10pm to 6am (UK time), Monday to Friday, or at any other time provided at least five (5) working days' notice of such work is given to the Customer.

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

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such, or is of commercial value to the party with which it originates.

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

**Customer Data:** the data inputted into the Software by the Customer or Authorised Users, including Customer Personal Data.

**Customer Personal Data:** Personal Data of Authorised Users.

**Data Protection Legislation:** means (i) (for so long as and to the extent that they apply to the parties) European Directive 2002/58/EC, the General Data Protection Regulation (EU) 2016/679 (the "GDPR"), the UK Data Protection Act 2018, and any legislation implementing or made pursuant to them; and (ii) all other applicable legislation relating to processing of Personal Data and privacy that may exist in any relevant jurisdiction. Any references to the GDPR or its provisions shall, if the UK leaves the EU such that the GDPR ceases to be directly applicable, be read as referring to equivalent/replacement UK law, *mutatis mutandis*.

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

**Documentation:** the documentation made available to the Customer by Perfect Ward online via

www.perfectward.com or such other web address notified by Perfect Ward to the Customer from time to time which sets out a description of Perfect Ward and the user instructions.

**Front Sheet:** the front sheet of this agreement.

**Group:** in relation to a party, that party, its subsidiaries, its holding companies and every subsidiary of each such holding company from time to time (and for this purpose “subsidiary” and “holding company” shall be construed in accordance with section 1159 of the Companies Act 2006).

**Implementation Fee:** the fee payable by the Customer to Perfect Ward for implementation of Perfect Ward..

**Initial Period:** A period of 3 years from the Start Date

**Intellectual Property Rights:** (i) patents, inventions, designs, copyright and related rights, database rights, trade marks, service marks and trade names (whether registered or unregistered), and rights to apply for registration; (ii) proprietary rights in domain names; (iii) knowhow and confidential information; (iv) applications, extensions and renewals in relation to any of these rights; and (v) all other rights of a similar nature or having an equivalent effect which currently exist anywhere in the world.

**Key Sponsor:** the Customer’s named contact as set out on the Front Sheet, or such other person as the Customer may notify in writing to Perfect Ward as having responsibility for managing the Customer’s relationship with Perfect Ward and its use of Perfect Ward.

**Loss:** any loss, expense, fine, penalty, liability, damages or costs (including court costs and reasonable legal fees).

**Normal Business Hours:** 9.00 am to 5.00 pm local UK time, each Business Day.

**Personal Data and Personal Data Breach:** have the meaning given in Data Protection Legislation.

**Privacy Policy:** Perfect Wards’ policy relating to the privacy and security of the Customer Data available at [www.perfectward.com](http://www.perfectward.com) or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by Perfect Ward in its sole discretion.

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

**Processing:** has the meaning given in Data Protection Legislation.

**Renewal Period:** A period of 3 years for which the Subscription shall be renewed automatically at the end of the Initial Period or preceding Renewal Period based on Perfect Ward fee levels at that point of time and subject to the notice period provisions outlined in clause 11.1.

**Start Date:** the start date of the Subscription as set out in the Front Sheet.

**Sub-processor:** a third party Processor engaged by Perfect Ward to process Customer Personal Data in connection and in accordance with this agreement.

**Subscription:** the Customer’s subscription to Perfect Ward, as defined in the Front Sheet or otherwise agreed by the parties from time to time.

**Subscription Fees:** the subscription fees payable by the Customer to Perfect Ward for the Subscription, as set out in the Front Sheet.

**Subscription Term:** the term of the Subscription, which shall commence on the Start Date and continue unless and until terminated in accordance with clause 11.

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network,

any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 The actions and omissions of the employees, agents, contractors, officers, or Authorised Users of the Customer shall be deemed to be the actions of the Customer, and the Customer shall be vicariously liable for all such actions and omissions, irrespective of whether it authorised the actions or omissions; the actions or omissions were wilful, deliberate, illegal or fraudulent; or the actions or omissions were in contravention of the Customer's instructions.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement unless otherwise stated.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.10 A reference to writing or written does not include fax but may include e-mail.
- 1.11 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

## **2. Subscription**

- 2.1 Subject to the Customer paying the Subscription Fee in accordance with clause 6.1, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, Perfect Ward hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use Perfect Ward during the Subscription Term solely for the Customer's internal business operations.
- 2.2 The Customer's Key Sponsor shall notify Perfect Ward in writing (including by email) if it wishes to add additional areas to its Subscription.
- 2.3 In relation to the Authorised Users, the Customer undertakes that:
  - (a) each Authorised User shall keep a secure password for his/her use of Perfect Ward, that such password shall be changed no less frequently than every 3 months and that each Authorised User shall keep his/her password confidential;
  - (b) it shall maintain a written, up to date list of current Authorised Users and provide such list to Perfect Ward within 5 Business Days of Perfect Ward's written request at any time or times;

- (c) it shall notify Perfect Ward when any Authorised User leaves its organisation and ensure that the Authorised User's account details are disabled.

2.4 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of Perfect Ward that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability;
- (f) in a manner that is otherwise illegal or causes damage or injury to any person or property;
- (g) constitutes Personal Data , including but not limited to images and text, relating to patients or any other person that is not an Authorised User or other care team member; or
- (h) infringes on any patient's or other individual's right to privacy and/or dignity.

and Perfect Ward reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's and/or Authorised Users' access to any material that breaches the provisions of this clause.

2.5 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
  - (i) and except to the extent expressly permitted under this agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of Perfect Ward and/or Documentation (as applicable) in any form or media or by any means; or
  - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Perfect Ward; or
- (b) access all or any part of Perfect Ward and/or the Documentation in order to build a product or service which competes with Perfect Ward and/or the Documentation; or
- (c) use Perfect Ward and/or the Documentation to provide services to third parties; or
- (d) subject to clause 18.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make Perfect Ward and/or the Documentation available to any third party except the Authorised Users; or
- (e) attempt to obtain, or assist third parties in obtaining, access to Perfect Ward and/or the Documentation, other than as provided under this clause 2.

2.6 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, Perfect Ward and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Perfect Ward.

2.7 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer without the prior written consent of Perfect Ward.

### **3. Implementation, Support & Development Services**

- 3.1 Perfect Ward will provide the Customer with implementation services to enable the Customer to use Perfect Ward.
- 3.2 In the event that the Customer wishes Perfect Ward to provide any bespoke development services in order to tailor Perfect Ward for the Customer's organisation, such services shall be subject to separate terms to be negotiated by the parties in good faith.

### **4. Customer data and Data Protection**

- 4.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. The Customer shall:
- (a) be entitled to directly contact Authorised Users, for example to let them know about new features in order to conduct user surveys, and to give notice of service disruptions;
  - (b) ensure that, to the extent it transfers Customer Personal Data to Perfect Ward, it has the relevant rights, consents and authorisations for such transfer to enable Perfect Ward to lawfully process the Customer Personal Data in accordance with this agreement; and
  - (c) ensure that all relevant third parties (including Authorised Users) have been informed of, and have given their consent to, the storage of information to or reading of information from end-user devices and if necessary the transfer of the Customer Personal Data to Perfect Ward in accordance with all applicable Data Protection Legislation.
- 4.2 Perfect Ward shall follow routine archiving procedures for Customer Data, including scheduled back-ups. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Perfect Ward to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Perfect Ward. Perfect Ward shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.
- 4.3 Both parties shall comply with all applicable obligations under Data Protection Legislation that respectively apply to them. Without prejudice to the foregoing, the parties acknowledge that Perfect Ward is the Processor and the Customer is the Controller of the Customer Personal Data. Each party agrees that it will comply with the Data Processing Terms set out in Appendix 1.
- 4.4 For the avoidance of doubt, the term 'Customer Data' shall not include (and the provisions of clause 4.1 shall not apply to) any anonymous, aggregated or statistical data or information derived from the Customer Data or the Customer's or any Authorised Users' use of Perfect Ward that is obtained, created or collected by Perfect Ward, and Perfect Ward shall be free at all times to use such data or information for its own purposes.

### **5. Customer's obligations**

- 5.1 The Customer shall:
- (a) provide Perfect Ward with:
    - (i) all necessary co-operation in relation to this agreement; and
    - (ii) all necessary access to such information as may be required by Perfect Ward;in order to provide Perfect Ward, including but not limited to Customer Data, security access

information and configuration services;

- (b) comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Perfect Ward may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use Perfect Ward and the Documentation in accordance with the terms and conditions of this agreement and any terms of use which govern use of Perfect Ward which are published on the Perfect Ward website or made available from time to time within Perfect Ward, and shall be responsible for any Authorised User's breach of this agreement and such terms of use;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for Perfect Ward, its contractors and agents to perform their obligations under this agreement;
- (f) ensure that its network, systems and devices used to access Perfect Ward comply with the relevant specifications provided by Perfect Ward from time to time; and
- (g) be solely responsible for ensuring the security of any device on which Perfect Ward is deployed and for procuring and maintaining its network connections and telecommunications links from its systems to Perfect Wards' data centres, and for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

5.2 The Customer shall permit Perfect Ward to audit its use of Perfect Ward no more than once per quarter, at Perfect Wards' expense, on reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business, in order to verify the Customer's compliance with its obligations under this agreement.

## **6. Charges and payment**

6.1 The Customer shall pay Fees to Perfect Ward in accordance with this clause 6 and the Front Sheet.

6.2 The Customer shall, prior to the start of the Subscription Term and within 5 working days of receipt of contract provide to Perfect Ward an approved purchase order and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:

- (a) its approved purchase order information to Perfect Ward, Perfect Ward shall invoice the Customer annually in advance and the Customer shall pay each invoice within 30 days after the date of such invoice.

6.3 If Perfect Ward has not received payment by the due date, and without prejudice to any other rights and remedies of Perfect Ward:

- (a) Perfect Ward may, without liability to the Customer, disable all passwords, accounts and access to all or part of Perfect Ward and Perfect Ward shall be under no obligation to provide access to Perfect Ward while the invoice(s) concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Barclays Bank plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

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

- (a) shall be payable in pounds sterling;
- (b) are, subject to clause 10.4(b), non-refundable;
- (c) are exclusive of value added tax, which shall be added to Perfect Ward' invoice(s) at the appropriate rate.

6.5 In the event that the Customer adds new areas to the Subscription in accordance with clause 2.2, the Subscription Fees shall be increased accordingly.

6.6 If, at any time whilst using Perfect Ward, the Customer exceeds any maximum amount of storage space specified in the Documentation, Perfect Ward shall charge the Customer, and the Customer shall pay, Perfect Wards' then current excess data storage fees.

6.7 The Subscription Fees and the excess storage fees payable pursuant to clause 6.6 shall be increased at the start of each year to reflect the higher of

- (a) 5% or
- (b) the change in the Retail Prices Index (RPI) published by the UK Office for National Statistics in the preceding 12 months,

*ie a 2.5% increase in the RPI will result in a 5% increase in subscription fees.*

The Front Sheet shall be deemed to have been amended accordingly, effective on each anniversary of the Start Date of the Customer's Subscription.

## **7. Proprietary rights**

7.1 The Customer acknowledges and agrees that Perfect Ward and/or its licensors own all Intellectual Property Rights in Perfect Ward and the Documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, or in, any Intellectual Property Rights, or any other rights or licences in respect of Perfect Ward or the Documentation.

7.2 Perfect Ward confirms that it has all the rights in relation to Perfect Ward and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

## **8. Confidentiality**

8.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
- (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

8.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

- 8.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 8.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 8.5 This clause 8 shall survive termination of this agreement, however arising.
- 8.6 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

## 9. Indemnities

- 9.1 The Customer shall defend, indemnify and hold harmless Perfect Ward against all Loss suffered or incurred by Perfect Ward arising out of or in connection with:
- (a) the Customer's and/or Authorised Users' use or misuse of Perfect Ward and/or the Documentation; and
  - (b) proceedings or claims brought by Data Subjects or supervisory authorities under Data Protection Legislation in respect of the Customer Personal Data processed by Perfect Ward under this agreement, except to the extent that such proceedings or claims have arisen out of or in connection with any negligence or wilful default of Perfect Ward or any breach by Perfect Ward of the terms of this agreement.
- 9.2 Perfect Ward shall defend, indemnify and hold harmless the Customer against all Loss suffered or incurred by the Customer arising out of or in connection with any claim made against the Customer by a third party:
- (a) that the access or use by the Customer of the Perfect Ward service or the Documentation infringes the patents, inventions, designs, copyright and related rights, database rights, trademarks, service marks and trade names of that third party; or
  - (b) in connection with the breach (or alleged breach) by Perfect Ward of its obligations under clause 4 or Appendix 1,
- each being a "**Claim**".
- 9.3 If a third party makes a Claim against Customer, or notifies an intention to make a Claim to Customer which is reasonably likely to give rise to a liability under the indemnity in clause 9.2, Customer shall:
- (a) as soon as reasonably practicable give written notice of the Claim to Perfect Ward specifying the Claim in reasonable detail;
  - (b) not make any admission of liability, agreement or compromise in relation to the Claim without Perfect Ward's prior written consent (not to be unreasonably withheld);
  - (c) give Perfect Ward's such assistance and access as Perfect Ward's may reasonably request, at Perfect Ward's expense, in order to assess, verify, avoid, dispute, compromise and/or defend the Claim; and
  - (d) if Perfect Ward's requests, give Perfect Ward's authority to avoid, dispute, compromise or defend the claim, at Perfect Ward's own expense.

## **10. Limitation of liability**

- 10.1 This clause 9.1(b) sets out the entire financial liability of Perfect Ward (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
- (a) arising under or in connection with this agreement;
  - (b) in respect of any use made by the Customer of Perfect Ward and the Documentation or any part of them; and
  - (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 10.2 Except as expressly and specifically provided in this agreement:
- (a) the Customer assumes sole responsibility for use of Perfect Ward and the Documentation by the Customer and Authorised Users, as well as the results of such use, and for conclusions drawn from such use. Perfect Ward shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Perfect Ward by the Customer in connection with the Services, or any actions taken by Perfect Ward at the Customer's direction;
  - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
  - (c) although Perfect Ward aims to make Perfect Ward Available no less than 99.00% of the time, Perfect Ward and the Documentation are provided to the Customer on an "as is" basis and Perfect Ward makes no guarantees as to the availability or suitability of Perfect Ward, or that it will be always up-to-date, complete, wholly accurate, non-infringing, error-free or virus-free.
- 10.3 Nothing in this agreement excludes the liability of either party:
- (a) for death or personal injury caused by that party's negligence; or
  - (b) for fraud or fraudulent misrepresentation.
- 10.4 Subject to clause 10.2 and clause 10.3:
- (a) Perfect Ward 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
  - (b) Perfect Wards' total aggregate liability:
    - (i) in respect of any and all Loss incurred by the Customer under or in relation to the indemnities given by Perfect Ward under clause 9.2 shall in no event exceed the greater of:
      - (A) £5,000; and
      - (B) an amount equal to two (2) times the total Subscription Fees paid to it by the Customer during the twelve (12) months immediately preceding the event giving rise to the Loss; and
    - (ii) save as provided for in clause 10.4(b)(i), in respect of any and all other Loss incurred by the Customer under or in relation to this agreement including in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise,

shall in no event exceed the greater of:

- (A) £2,500; and
- (B) an amount equal to one (1) times the total Subscription Fees paid to it by the Customer during the twelve (12) months immediately preceding the event giving rise to the Loss.

10.5 Subject to clause 10.3, the Customer's total aggregate liability in respect of any and all Loss incurred by Perfect Ward under or in relation to this agreement including in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, and under or in relation to the indemnities given by the Customer under clause 9.1 shall in no event exceed the greater of an amount equal to one and a half (1.5) times the total Subscription Fees paid or payable to Perfect Ward under this agreement, save that this shall not apply or in any way limit the Customer's liability and obligation to pay the Subscription Fees pursuant to this Agreement.

## 11. Term and termination

11.1 This agreement shall, unless otherwise terminated as provided in this clause 11, begin on the Start Date and shall continue for an Initial Period. At the end of the Initial Period, the Subscription shall be renewed automatically every 3 years for further consecutive periods of 3 years each (each a "**Renewal Period**") unless the Customer gives written notice to Perfect Ward not later than sixty (60) days before the end of the Initial Period or the relevant Renewal Period, to terminate this agreement at the end of the Initial Period or the relevant Renewal Period, as the case may be.

11.2 Perfect Ward may terminate this agreement at any time on giving not less than 30 days' notice in writing to the Customer. Any amounts paid by the Customer relating to the period after the end of the contract will be reimbursed within 30 days of the end of the contract.

11.3 Perfect Ward may suspend Customer's or any Authorised User's use of Perfect Ward at any time in the event that the Customer or such Authorised User is in breach of the terms of this agreement.

11.4 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 10 Business Days after being notified in writing to do so;
- (b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (c) an order is made or a resolution is passed for the winding up of the other party or the other party has a receiver or administrator appointed of the whole or any part of its assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitles the Court to make a winding up or administration order or if the other party is unable to pay its debts; or
- (d) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

- 11.5 Without affecting any other right or remedy available to it, the Customer may terminate this agreement with immediate effect by giving written notice to Perfect Ward if Perfect Ward fails to achieve 99.00% (or greater) Availability for Perfect Ward in any three (3) consecutive months.
- 11.6 On termination of this agreement for any reason:
- (a) all licences granted by Perfect Ward to the Customer under this agreement shall immediately terminate and Perfect Ward shall be under no further obligation to provide the Customer with access to Perfect Ward or to any Customer Data stored in Perfect Ward;
  - (b) upon Customer's written request, provided such request is received by Perfect Ward within 30 days of termination of this agreement, Perfect Ward shall provide Customer with a compact disc, or such other format as Perfect Ward may determine, containing copy reports of the Customer's Customer Data in pdf format. Any other arrangements in respect of the return of Customer Data shall be on terms to be agreed by the parties in writing and subject to the Customer reimbursing Perfect Ward in respect of all associated costs;
  - (c) the Customer shall return and make no further use of Perfect Ward or any equipment, property, Documentation and other items (and all copies of them) belonging to Perfect Ward;
  - (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

## **12. Force majeure**

Perfect Ward shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Perfect Ward or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

## **13. Variation**

Except as set out in this agreement, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **14. Waiver**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **15. Rights and remedies**

Subject to clause 10.2(b) and except as expressly provided otherwise in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **16. Severance**

- 16.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

16.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

**17. Entire agreement**

17.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

17.2 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

**18. Assignment**

18.1 The Customer shall not, without the prior written consent of Perfect Ward, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

18.2 Perfect Ward may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

**19. 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).

**20. 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.

**21. Notices**

21.1 Any notice required to be given under this agreement shall be in writing (not email) and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes.

21.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

**22. Governing law**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**23. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

## Appendix 1 – Data Processing Terms

- 1.1 This Appendix only applies to the processing of Customer Personal Data by Perfect Ward in connection with the Customer's, and its Authorised Users', use of Perfect Ward. The types of Customer Personal Data Processed, categories of Data Subjects and types of Processing activities are set out in the Details of Processing table below:

Details of Processing	
Types of Personal Data:	<ul style="list-style-type: none"> <li>• Identification data of Authorised Users such as name, email address, phone number, job title, facial photograph, application username</li> <li>• Records of Authorised User input to and interaction with Perfect Ward (such as completed ward questionnaires)</li> </ul>
Categories of Data Subject:	<ul style="list-style-type: none"> <li>• Authorised Users of Customer</li> </ul>
Processing activities:	<ul style="list-style-type: none"> <li>• To permit Data Subjects to access and use the Perfect Ward service</li> <li>• To deliver, maintain and improve the Perfect Ward service on behalf of Customer, including tracking and reporting data subjects' activity inside the Perfect Ward service (where possible by first anonymising such data) for analytics purposes.</li> <li>• To enhance the safety and security of the Perfect Ward services on behalf of Customer - using device, location, profile, usage and other information to detect any unusual patterns and prevent any security breaches</li> </ul>

### Processing Obligations

- 1.2 Notwithstanding anything to the contrary in this Agreement, in relation to Customer Personal Data, Perfect Ward shall:
- 1.2.1.1 only process Customer Personal Data in accordance with the Customer's documented instructions (which are deemed to include Perfect Ward' compliance with and exercise of rights under this agreement, and its use and anonymisation of Customer Personal Data for purposes including the delivery, monitoring, maintenance and improvement of the services being rendered). The Customer shall ensure that any such instructions it provides to Perfect Ward in relation to its processing of Customer Personal Data will comply with Data Protection Legislation. Notwithstanding the foregoing, Perfect Ward may process Customer

- Personal Data as required under UK or European Union law, or the law of any other member state to which it is subject. the law prohibits this on important grounds of public interest;
- 1.2.2 ensure that only its personnel who are contractually bound to respect the confidentiality of Customer Personal Data shall have access to the same;
  - 1.2.3 implement appropriate technical and organisational measures to protect against unauthorised or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Customer Personal Data. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction, damage or theft of Customer Personal Data, having regard to the nature of the Customer Personal Data which is to be protected;
  - 1.2.4 at the Customer's reasonable request, taking into account the nature of the processing, assist the Customer by implementing appropriate technical and organisational measures, insofar as this is possible, to assist with the Customer's obligation to respond to requests from Data Subjects of Customer Personal Data seeking to exercise their rights under Data Protection Legislation;
  - 1.2.5 at the Customer's reasonable request, taking into account the nature of processing and the information available to the Perfect Ward, assist the Customer with its obligations under Articles 32 to 36 of the GDPR. Perfect Ward reserves the right to charge a reasonable fee to cover its expenses and management time in providing such assistance;
  - 1.2.6 following the Customer's reasonable request, provide reasonable assistance to the Customer in the Customer's assessment and implementation of appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the Customer Personal Data. Perfect Ward reserves the right to charge a reasonable fee to cover its expenses and management time in providing such assistance;
  - 1.2.7 following the termination or expiry of this agreement, delete or (upon request and otherwise in accordance with Clause 11.6(b)) return to the Customer any Customer Personal Data, provided that if UK or European Union law, or the law of any other member state to which Perfect Ward is subject, requires storage of the Customer Personal Data, it will be retained in accordance with such laws; and
  - 1.2.8 not transfer or process any of the Customer Personal Data outside of the European Economic Area ("**EEA**") without the Customer's prior permission; such permission not to be unreasonably withheld, delayed or conditioned. The parties agree that it would be unreasonable to withhold, delay or condition such permission if such transfer or processing will be made: (a) pursuant to European Commission-approved standard contractual clauses for the transfer of personal data to data processors established in third countries (currently published under document number C(2010) 593 2010/87/EU) or equivalents or successors thereto; (b) pursuant to and in accordance with the EU-US Privacy Shield or other "adequacy determinations" of the European Commission or equivalent (including, should it be given the

powers to do so, the Information Commissioner's Office); or (c) pursuant to another appropriate legal data transfer mechanism.

### **Sub-processing**

- 1.3 Subject to paragraph 1.2.8, the Customer agrees that Perfect Ward may transfer Customer Personal Data to sub-processors for the purposes of providing the Perfect Ward services and any other purposes identified as 'Processing activities' in the Details of Processing table in paragraph 1.1 above, provided that Perfect Ward complies with the provisions of this paragraph 1.3 and in accordance with EU Law, GDPR regulations and the Data Protection Act 2018. For the avoidance of doubt Customer Personal Data remains within the EEA and in an encrypted format if transferred to a sub-processor:
- 1.3.1 Perfect Ward shall remain responsible for its sub-processors' compliance with the obligations of this agreement;
- 1.3.2 Perfect Ward shall ensure that any appointed sub-processors to whom Perfect Ward transfers Customer Personal Data, enter into written agreements with Perfect Ward requiring that the sub-processor abide by terms no less protective than this agreement; and
- 1.3.3 Perfect Ward can at any time and without justification appoint a new sub-processor provided that the sub-processors abide by terms no less protective than this agreement and in accordance with GDPR regulations, EU and Data protection laws. Should the customer require a list of current sub-processors, this can be provided upon request.

### **Security and Audit**

- 1.4 Perfect Ward shall notify the Customer without undue delay if Perfect Ward becomes aware of a Personal Data Breach affecting Customer Personal Data.
- 1.5 During regular business hours, following fifteen (15) Business Days' prior notice to Perfect Ward, Perfect Ward will allow the Customer and its respective auditors or authorised agents to conduct audits (including inspections), during the term of the Agreement. The sole purpose of an audit pursuant to this provision must be to verify that Perfect Ward' processing of Personal Data is in accordance with its relevant obligations under these terms. The Customer shall bear its own costs and any costs incurred by or on behalf of Perfect Ward in connection with such audit.

### **Lawfulness of instructions**

- 1.6 Perfect Ward shall notify the Customer immediately if it considers that any instruction from the Customer in connection with Perfect Ward's processing of the Customer Personal Data is in breach of Data Protection Legislation, and Perfect Ward shall be entitled but not obliged to suspend execution of the instructions concerned, until the Customer confirms such instructions in writing.