

## SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT

THIS Software as a Service Subscription Agreement is dated: 1<sup>st</sup> July 2023

### PARTIES:

- (A) **THALAMOS LIMITED** incorporated and registered in England and Wales with company number 10814088 whose registered office is at Health Foundry, 1 Royal Street, London SE1 7LL (“**Thalamos**”); and
- (B) **Care Quality Commission** an executive non-departmental public body, sponsored by the Department of Health and Social Care whose registered office is at 151 Buckingham Palace Rd, London SW1W 9SZ (the “**Client**”).

### BACKGROUND

- (A) The Client is a stakeholder in the provision of acute mental health services and support pursuant to the Mental Health Act 1983 (as may be amended from time to time). It wishes to subscribe to Thalamos’s platform which is a cloud-based integrated clinical system accessed via its Website which enables the digital completion, communication and administration of MHA statutory forms and associated work flows (the “**Service**”).
- (B) Thalamos has agreed to provide to the Client access to the Service in return for which the Client has agreed to pay a subscription, subject to the terms and conditions set out in this Agreement.

### AGREED TERMS:

#### 1. DEFINITIONS AND INTERPRETATION

- 1.1. Unless otherwise defined in this Agreement, the following words and expressions have the following meanings:

“**Additional Services**” means any additional services that the Parties agree that Thalamos shall supply as set out in Schedule 1.

“**Agreement**” means these agreed terms and the Schedules. The Schedules shall be governed by these agreed terms. In the event of any conflict between the two, the terms of the Schedules shall prevail.

“**Applicable Laws**” means any law, statute, regulation or by-law that may apply from time to time in any jurisdiction, or any applicable judgment of a relevant court of law or legal authority which is enforceable and binding, including the Data Protection Legislation.

“**Available**” means the Client is able to access and use all functionality of the Service and any Additional Services, including the Website and the Software, which shall be measured on a 24 hours a day, seven days a week basis, and the term **Availability and Service Availability** shall be construed accordingly.

“**Business Day**” means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in London.

“**Client Data**” means the data, including User Data, Patient Data and other Personal Data, inputted by the Client or its Users, for the purpose of using the Service and any Additional Services and any data generated by, or derived from the Client or Users use of the Service and any Additional Services, whether hosted or stored within the Service or elsewhere.

“**Commencement Date**” means the date of this Agreement.

**“Confidential Information”** means all information in any form or medium which is not publicly available (either in its entirety or in the precise configuration or assembly of its components, or separately and disparately that can be attributed or identified as that of either Party), together with any copies of that information in any form or medium or any part or parts of that information including accounts, business plans, strategies and financial forecasts, tax records, correspondence, designs, drawings, manuals, specifications, Client Data, sales or supplier information, technical or commercial expertise, software, formulae, processes, methods, knowledge, know-how and trade secrets. Confidential Information does not need to be labelled or otherwise declared confidential to constitute Confidential Information.“

**“Fees”** means the fees payable in accordance with clause 7 and Schedule 1.

**“Good Industry Practice”** means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a reasonable company within the relevant industry or business sector.

**“Help Centre”** means the help centre available online via the Website which sets out the user instructions for the Service and any Additional Services.

**“Initial Term”** has the meaning given to it in Schedule 1.

**“Intellectual Property Rights”** means all copyright and other intellectual property rights, howsoever arising and in whatever media, whether or not registered, including (without limitation) patents, rights to inventions, trademarks, service marks, trade names, registered design, goodwill, moral rights, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how knowhow and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered including the underlying rights to such properties, and any applications for the protection or registration of these rights and all renewals and extensions thereof and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection throughout the world, whether in a currently subsisting form or a form that comes to be recognised by any Applicable Law as such.

**“Normal Business Hours”** means 9.00 am to 6.00 pm local UK time, each Business Day.

**“Notice”** means written notice and includes but is not limited to any information, documents or other correspondence containing any data by attachment or directly included in the body of the notice.

**“Parties”** means the Client and Thalamos and **“Party”** means either one of them and includes any director, officer, and includes any successor or assign of the relevant party.

**“Patient Data”** means the Personal Data (including all health related data) of any patient of the Client that is entered into the Service by a User.

**“Renewal Term”** has the meaning given to it in Schedule 1.

**“Service”** has the meaning set out in the Background.

**“Software”** means any software contained in the Website or otherwise used by Thalamos in providing the Service and any Additional Services.

**“Sub-Processors”** means those Sub-Processors listed in Schedule 2.

**“Term”** means the period commencing on the Commencement Date and terminating in accordance with clause 2 of this Agreement.

**“Data Protection Legislation”** means: UK GDPR,) the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as

amended and any other legislation relating to personal data in force in the United Kingdom from time to time;

**“UK GDPR”** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018.

**“User”** means any person that accesses the Service and any Additional Services with the authorisation of the Client from time to time.

**“User Data”** has the meaning set out in clause 5.1.

**“User Subscription”** means a subscription purchased by the Client for any healthcare or social care practitioner engaged by the Client, and any employee, officer of the Client as detailed in Schedule 1.

**“Virus”** means any thing or device (including any software, code, file or programme) other than zero day exploits, 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.

**“Website”** means Thalamos’s websites from time to time, currently hosted at [www.app.thalamos.co.uk](http://www.app.thalamos.co.uk) and [www.admin.thalamos.co.uk](http://www.admin.thalamos.co.uk)

- 1.2. The headings of the paragraphs of this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.
- 1.3. Unless a contrary indication appears, a reference to:
  - 1.3.1. either Party includes the employees, officers, assigns and successors of that Party, save in respect of any indemnification obligation set out in this Agreement;
  - 1.3.2. a provision of law is a reference to that provision, or associated regulation as may be amended or re-enacted from time to time;
  - 1.3.3. a time of day is a reference to London time;
  - 1.3.4. a reference to persons includes individuals, corporations, unincorporated bodies and associations which are recognised at law (whether or not having separate legal personality); general words are not to be given a restrictive meaning because they are followed by examples, and any words introduced by the word “including” or any similar expression are to be construed as illustrative and shall not limit the sense of the related general words.

## **2. DURATION AND RENEWAL**

- 2.1. This Agreement shall commence on the Commencement Date. Unless terminated earlier in accordance with this clause or clause 21 or as otherwise agreed between the Parties, this Agreement shall continue for the Initial Term and then terminate.
- 2.2. The Client may terminate the Agreement early at the end of the first year of the Initial Term by giving at least 30 days’ Notice before the end of the first anniversary of the Commencement Date.

2.3. At the end of the Initial Term the Agreement will automatically extend for a further year (Renewal Term) on the same terms unless the Client determines not to extend the Agreement by giving at least 30 days' Notice before the end of the Initial Term on which the Agreement shall terminate at the end of the Initial Term.

2.4. At the end of any Renewal Term the Agreement shall terminate unless the Parties each agree to extend the Agreement for a further Renewal Term.

### **3. THE SERVICE**

3.1. Thalamos shall provide the Service and any Additional Services to the Client and its Users with effect from the Commencement Date.

3.2. Thalamos grants the Client and its Users and Customers the right to access and use the Service. This right is non-exclusive, non-transferable, and limited by and subject to this Agreement.

3.3. Thalamos may agree to provide Additional Services. Any such Additional Services shall be set out in Schedule 1 and may be subject to further conditions, as agreed in writing by the Parties.

3.4. This Agreement shall not prevent Thalamos from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

### **4. LICENCE**

4.1. Thalamos hereby grants to the Client a non-exclusive, non-transferable right, without the right to grant sub-licences, to permit the Client and its Users to use the Service and any Additional Services during the Term solely for the Client's operations.

4.2. Thalamos reserves the right to monitor usage of the Service and any Additional Services for the sole purpose of ensuring compliance with this Agreement. The Client will keep a register of Users and make it available to Thalamos upon request.

4.3. The Client undertakes not to:

4.3.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Service, in any form or media or by any means except as reasonably required to make full use of the Service and any Additional Services;

4.3.2. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Service, in any form or media or by any means;

4.3.3. access all or any part of Thalamos's Intellectual Property including Thalamos's Website order to build a product or service that competes with the Service and any Additional Services;

4.3.4. attempt to obtain, or assist third parties other than the Users in obtaining access to Thalamos's Website, Service and any Additional Services other than as provided under this Agreement;

4.3.5. introduce or permit the introduction of any Virus into Thalamos's Website and/or Service and/ or Additional Services; or

4.3.6. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise make the Service and any Additional Services available to any third party except the Users.

## **5. USER ACCESS**

- 5.1. In order to access the Service and any Additional Services, the Client and Users must become registered users and provide accurate, up-to-date and complete information upon registration. The Client will ensure its Users keep secure passwords, usernames, account details and any other login details ("**User Data**") and will not disclose them to third parties.
- 5.2. The Client will use reasonable endeavours to prevent any unauthorised access to, or use of, the Service and any Additional Services using the User Data and shall notify Thalamos promptly in the event it becomes aware of any unauthorised access or use, or any suspected unauthorised access or use of the Service and any Additional Services using the User Data.
- 5.3. Thalamos accepts no responsibility for misuse of the Client's account in any manner due to the Client's disclosure of User Data to unauthorised third parties.
- 5.4. The Client will be responsible for instructing Thalamos to de-register any User that cease to have authorisation to access the Service on behalf of the Client.

## **6. THALAMOS, CLIENT AND MUTUAL OBLIGATIONS**

- 6.1. Thalamos undertakes that the Service and any Additional Services will be performed with reasonable skill and care in accordance with Good Industry Practice.
- 6.2. Thalamos does not warrant that the Client's use of the Services will be uninterrupted or error-free and is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Service may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.3. The Client shall:
  - 6.3.1. provide Thalamos with all necessary co-operation in relation to this agreement; and all necessary access to such information as may be required by Thalamos in order to provide the Service, including but not limited to Customer Data, security access information and configuration services;
  - 6.3.2. carry out all other Client responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the parties, Thalamos may adjust any agreed timetable or delivery schedule as reasonably necessary;
  - 6.3.3. ensure that its network and systems comply with the relevant specifications provided by Thalamos from time to time; and
  - 6.3.4. be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Website; and
  - 6.3.5. ensure that the internet browsers being used by their Users to access the Service are actively supported by their provider.
- 6.4. Each Party warrants and undertakes that it has, or shall do as follows:
  - 6.4.1. comply with all Applicable Laws with respect to its obligations under this Agreement including the Data Protection Legislation;
  - 6.4.2. full capacity and authority and all necessary consents to enter into and perform this Agreement and the Agreement is executed by a person duly authorised; and
  - 6.4.3. it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

**7. CHARGES AND PAYMENT**

- 7.1. The Client shall pay to Thalamos the Fees for the Service and any Additional Services as set out in Schedule 1, and in accordance with the payment frequency and payment method set out therein.
- 7.2. The Client shall pay each undisputed invoice within 30 days after the date of receipt of such invoice and acknowledges that all Fees paid by the Client are non-refundable.
- 7.3. If Thalamos has not received payment of an undisputed invoice within 30 days after the date of receipt of such invoice as set out in clause 7.3, and without prejudice to any other rights and remedies of Thalamos interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% 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.
- 7.4. If Thalamos has not received payment of an undisputed invoice within 60 days after the date of receipt of such invoice as set out in clause 7.3, Thalamos may, without liability to the Client, disable the Client's (and its Users') password, account and access to all or part of the Service and any Additional Services and Thalamos shall be under no obligation to provide any or all of the Service and any Additional Services while the invoice(s) concerned remain unpaid.
- 7.5. Should the Client have a bona fide dispute in respect of the whole or any part of any invoice then the Client shall notify Thalamos of the nature of such dispute in writing within 21 days of receipt of the invoice giving all relevant details. If the Client notifies Thalamos that it disputes the whole or any part of sums payable under any invoice in accordance with this clause, the Client shall be entitled to withhold payment of the disputed amount. The Parties shall cooperate in good faith to resolve the dispute and on settlement of any dispute the Company shall make the appropriate payment in accordance with this Agreement.
- 7.6. All amounts and fees stated or referred to in this Agreement:
- 7.6.1. shall be payable in pounds sterling;
- 7.6.2. are non-cancellable and non-refundable unless otherwise set out in this Agreement; and
- 7.6.3. are exclusive of value added tax, which if applicable shall be added to Thalamos's invoice(s) at the appropriate rate.
- 7.7. The Parties agree that Thalamos may review and increase the Fees set out in the Schedule 1 after the expiry of the Initial Term provided that such Fees cannot be increased more than once in any 12-month period. Thalamos shall give the Client written notice of any such increase at least 30 days before the proposed date of that increase.

**8. SERVICE LEVEL AVAILABILITY**

- 8.1. Thalamos shall make the Service Available 24 hours a day, seven days a week and shall use its reasonable endeavours to ensure Service Availability of not less than 99 per cent.
- 8.2. In the event that Availability of the Service and any Additional Services will not be and is not affected or restricted, Thalamos may perform maintenance or put in place any changes, modifications or upgrades to the Service and any Additional Services at any time.
- 8.3. In the event that it is anticipated that Availability of the Service and any Additional Services may be affected or restricted by planned maintenance undertaken by Thalamos or a subcontractor, Thalamos will use reasonable endeavours to provide reasonable notice to the Client regarding any matter that affects a core and fundamental feature of the Service and any Additional Services, and at least 48 hours' Notice regarding a part of the Service and any Additional Services which is not fundamental to its functionality. This will be undertaken outside of Normal Business Hours, except where it warrants immediate action, in which case Thalamos may perform such maintenance immediately. For the avoidance of doubt, any period



during which the Service and any Additional Services are not Available as a result of this clause shall not be taken into account when calculating Availability for the purpose of clause 8.1.

## **9. TECHNICAL SUPPORT AND ORIENTATION**

- 9.1. In the event of any technical malfunction or problem with the Service, any Additional Services, Website, or Software, the Client shall use reasonable endeavours to review and/or ascertain the issue as far as reasonably possible, including via the use of the Help Centre, before contacting Thalamos.
- 9.2. If Client still requires technical support, the Client shall contact Thalamos's client support team via email at [support@Thalamos.co.uk](mailto:support@Thalamos.co.uk). Thalamos shall provide such support during Thalamos's Normal Business Hours.
- 9.3. Thalamos shall log each email from the Client that reports a technical problem and shall assign a unique log reference to that report. Thalamos will assess the problem and assign to it one of the priority levels described in the table below, and shall email that log reference, and priority level to the Client as soon as reasonably possible noting estimated resolution time. Thalamos shall use its reasonable endeavours to comply with the corresponding response times and to meet the notified estimated resolution time during Normal Business Hours. Each response time is measured from the time at which the email is sent by the Client.

<b>Level</b>	<b>Description</b>	<b>Response Time</b>
<b>1</b>	<i>A core and fundamental failure of the Service and/or any Additional Services and where no work-around solutions are available that are acceptable to the Client reported during Normal Business Hours.</i>	<i>2 hour</i>
<b>2</b>	<i>A core and fundamental failure of the Service and/or any Additional Services and where no work-around solutions are available that are acceptable to the Client reported after end of Normal Business Hours.</i>	<i>8 am following working day</i>
<b>3</b>	<i>A core and fundamental failure of the Service and/or any Additional Services and where no work-around solutions are available that are acceptable to the Client reported during the weekend.</i>	<i>6 hours</i>

- 9.4. For the avoidance of doubt, technical support provided in accordance with this clause shall not include the diagnosis and/or rectification of any fault or malfunction in the Website, Service or any Additional Services arising out of or in connection with the following:

- 9.4.1. the failure by the Client to implement recommendations previously advised by Thalamos in respect of, or solutions to, faults;
- 9.4.2. any breach by the Client of any of its obligations under this Agreement or any other contract with Thalamos relating to the Website and/or Service and/or Additional Services;
- 9.4.3. use by the Client of the Service and/or any Additional Services for a purpose for which it was not designed; or
- 9.4.4. any issues caused by any hardware, software or any other system of the Client.

- 9.5. Thalamos shall provide the Client with orientation and onboarding assistance to enable its Users to use the Service as set out in Schedule 1.

## **10. MODIFICATIONS TO SERVICE**

- 10.1. Thalamos may make changes, modifications or upgrades to the Website, Service or any Additional Services ("**Upgrades**", which form part of the Service and any Additional Services) provided that:
- 10.1.1. such Upgrades shall not affect the Availability of the Service and/ or any Additional Services (except in so far as scheduled maintenance outages) or alter, or have the effect of materially reducing or detracting from the existing features of the Service and/ or any Additional Services or otherwise materially interfere with the Client's use of the Service and/ or any Additional Services;
  - 10.1.2. such Upgrades shall comply with the provisions of this Agreement and all Applicable Laws, including the Data Protection Legislation; and
  - 10.1.3. Thalamos shall provide reasonable notice (and where reasonably applicable not less than 24 hours' notice) to the Client of any Upgrade that is related to or bears upon a key functionality of the Service and/ or any Additional Services and which will materially impact or restrict the Client's use of the Service and/ or any Additional Services.
- 10.2. The Client shall be available for any input or feedback to Thalamos with regard to the ongoing development of the Service and/ or any Additional Services where reasonably requested by Thalamos.

## **11. INTELLECTUAL PROPERTY**

- 11.1. The Client acknowledges and agrees that Thalamos owns all right, title and interest in and to the Service, any Additional Services or the Website including without limitation all Intellectual Property Rights, and such rights are protected by English and international intellectual property laws.
- 11.2. Intellectual Property Rights that the Client holds, and/or develops or acquires during the term of the Agreement, shall remain the property of the Client. However, Thalamos is entitled to use the Client's Intellectual Property rights solely to the extent required, if any, to provide the Service and any Additional Services under the Agreement during the Term.

## **12. CONFIDENTIALITY**

- 12.1. Each Party undertakes that it shall keep confidential all Confidential Information belonging or relating to the other Party, and shall not at any time disclose to any person or third party any Confidential Information of the other Party or of any member of the group of companies to which the other Party belongs, except as permitted by clause 12.2. A Party's Confidential Information shall not be deemed to include information (other than Client Data) that:
- 12.1.1. is or becomes publicly known other than through any act or omission of the receiving Party;
  - 12.1.2. was in the other Party's lawful possession before the disclosure;
  - 12.1.3. is lawfully disclosed to the receiving Party by a third party without restriction on disclosure; or
  - 12.1.4. is independently developed by the receiving Party, which independent development can be shown by written evidence.
- 12.2. Each Party may disclose the other Party's Confidential Information:
- 12.2.1. to its employees, officers, representatives, contractors, subcontractors who need to know such information for the purposes of exercising the Party's rights or carrying out its



obligations under or in connection with this Agreement. Each Party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other Party's confidential information comply with this clause and that such persons are obliged by their contracts of employment or service not to disclose the same; and

12.2.2.as may be required by any law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3. No Party shall use any other Party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

12.4. All Confidential Information that is in possession of the other Party and that is in deliverable form must be returned upon termination of this Agreement, or deleted, as directed by the other Party, except where any Applicable Law provides otherwise.

### 13. CLIENT DATA

13.1. Thalamos owns no right in or to Client Data which the Client or User (i) transfers to Thalamos or otherwise makes available to Thalamos through the Service or any Additional Services, or (ii) which is generated by the Client's or the User's use of the Service or any Additional Services.

13.2. Thalamos may use the Client Data only for the purpose of providing the Service and any Additional Services to the Client and its Users and Customers, and/or monitoring the Client's or any User's or Customer's compliance with this Agreement and/or use of the Service and any Additional Services. Notwithstanding the foregoing, nothing in this Agreement is intended to prevent Thalamos from generating and using aggregated and anonymised Client Data, and Thalamos is authorized to generate such data, for the purposes of providing, measuring, improving and marketing the Service and any Additional Services (such generated data shall not be Confidential Information for the purposes of this Agreement, provided that such data is not identifiable for the purposes of the Data Protection Legislation or capable of being identified as originating from the Client or the data subject).

13.3. Following termination of the Agreement, Thalamos shall, in accordance with the Client's instructions, either delete the Client Data or transfer all such Client Data to the Client, where instructed, and then delete all existing copies of such Client Data, except where otherwise required by any Applicable Law.

### 14. PRIVACY AND DATA PROTECTION

14.1. The Parties will comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.

14.2. The Parties acknowledge that, for the purposes of the Data Protection Legislation, the Client is the controller of Personal Data and Thalamos is the processor of Personal Data ("**control**", "**controller**", "**process**", "**processor**", "**Sub-Processor**", "**Data Subject**", "**Personal Data**", "**Personal Data Breach**" "**Special Category Personal Data**" and derived and inflected word forms have the meanings as defined in the Data Protection Legislation).

14.3. Without prejudice to the generality of clause 14.1, the Client will ensure that it has all necessary consents and notices in place to enable lawful collection and processing of Personal Data on behalf of the Client for the duration and purposes of this Agreement.

14.4. Without prejudice to the generality of clause 14.1, Thalamos shall, in relation to any Personal Data processed in connection with the performance by Thalamos of its obligations under this Agreement:

- 14.4.1. process Personal Data only in accordance with the instructions set out in Schedule 2, unless required to do otherwise by the Data Protection Legislation. If it is so required it will promptly inform the Client before processing the Personal Data, unless prohibited from doing so by the Data Protection Legislation;
- 14.4.2. implement and maintain throughout the term of this Agreement appropriate technical and organisational measures intended to protect Personal Data against accidental, unauthorised or unlawful access, disclosure, alternation, loss, damage or destruction. Such measures may include, but are not limited to, pseudonymisation, encryption, resilience testing and restoration measures (including back up plans and business continuity arrangements) and organisational measures around personnel access, confidentiality, and training. When considering what measures to put in place, Thalamos will take account of: (a) the nature of the data; (b) the harm that might result from a security breach; (c) technological developments; and (d) the cost of implementing any measures;
- 14.4.3. ensure that its staff, officers and those of any subcontractor or Sub-Processor do not process Personal Data other than in accordance with this Agreement, and are obligated to maintain the security and confidentiality of any Personal Data to which they have access;
- 14.4.4. not transfer any Personal Data outside of the European Economic Area and the United Kingdom without the prior consent of the Client and adequate safeguards are in place in relation to the transfer;
- 14.4.5. assist the Client, at the Client's reasonable cost, in responding to any request from a Data Subject in a reasonable time;
- 14.4.6. assist the Client with respect to matters of security, breach notifications, impact assessments and any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- 14.4.7. notify the Client without undue delay on becoming aware of a Personal Data Breach;
- 14.4.8. delete or return Personal Data and any copies to the Client on termination of the Agreement unless required by Data Protection Legislation to store the Personal Data (and for these purposes the term "delete" shall mean to put such data beyond use); and
- 14.4.9. maintain and make available to the Client all information and records that are reasonably necessary in order to demonstrate its compliance with this clause and with Data Protection Legislation, and to assist with any audit reasonably requested by the Client.
- 14.5. The Client approves Thalamos appointing the Sub-Processors set out in Schedule 2 as Sub-Processors of Personal Data under this Agreement. The Supplier shall inform the Client of any intended changes concerning the addition or replacement of other sub-processors. The Supplier confirms that it has entered or (as the case may be) will enter into a written agreement with the Sub-Processor in accordance with the requirements of the Data Protection Legislation. As between the Client and Thalamos, Thalamos shall remain fully liable for all acts or omissions of any Sub-Processor appointed by it pursuant to this clause 14.
- 14.6. The Parties may, on written agreement between the Parties, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).
- 14.7. The Parties agree to negotiate in good faith any reasonable amendments to this Agreement which are required as a result of any change in, or decision of a competent authority under, any Applicable Law, or to allow Thalamos's processing of Personal Data under the Service Agreement to be made (or continue to be made) without breach of Data Protection Laws.

**15. COMPLIANCE WITH LAWS**

- 15.1. The Parties shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including, but not limited to the Bribery Act 2010.
- 15.2. The Parties shall comply with all applicable laws, statutes, regulations and codes relating to modern slavery including, but not limited to the Modern Slavery Act 2015.
- 15.3. The Parties each warrant that it will not undertake any act or allow any omission which would put it in breach of the Criminal Finances Act 2017, including:
  - 15.3.1. not engage in any facilitation of tax evasion of any kind;
  - 15.3.2. have in place its own reasonable prevention procedures; and
  - 15.3.3. report any suspected tax evasion as a result of the provision of the Service.

**0. FREEDOM OF INFORMATION ACT**

- 16.1. Thalamos acknowledges that the Client is subject to the Freedom of Information Act 2000 (FoIA) and will co-operate with the Client to enable them to comply with their information disclosure obligations relating to the Service and this Agreement.
- 16.2. The Client shall notify Thalamos when it receives a relevant FoIA request so that Thalamos may make appropriate representations.
- 16.3. Thalamos acknowledges that the Client is responsible for determining whether any information is exempt from disclosure under the FoIA (on commercial interests grounds or otherwise) but shall take in to account the representations of Thalamos in making its decision.

**0. AUDIT RIGHTS**

- 17.1. Thalamos shall maintain complete, full and accurate records and supporting documents and accounts relating to this Agreement and the Service provided and shall retain the same for at least six (6) years following the termination or expiry of this Agreement.
- 17.2. Subject to any applicable regulatory obligations, the Client and/or its representatives shall be entitled at all reasonable times from time to time and on reasonable notice throughout the Term for any reason (at its own cost) to inspect and audit, and to make copies and take excerpts of, any or all of the records, supporting documents and accounts referred to in Clause 17.1. Thalamos shall provide the Client and its representatives with all reasonable access and co-operation for those purposes.

**16. INDEMNITY**

- 18.1. The Client shall defend, indemnify and hold harmless Thalamos against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Client's use of the Service provided that:
  - 18.1.1. the Client is given prompt notice of any such claim;
  - 18.1.2. Thalamos provides reasonable co-operation to the Client in the defence and settlement of such claim, at the Client's expense; and
  - 18.1.3. the Client is given sole authority to defend or settle the claim.
- 18.2. Thalamos shall defend, indemnify and hold harmless the Client, its officers, directors and employees against any claim that the Customer's use of the Service in accordance with this Agreement infringes any United Kingdom patent, copyright, trade mark, database right or right of confidentiality provided that:

18.2.1. Thalamos is given prompt notice of any such claim;

18.2.2. the Client provides reasonable co-operation to Thalamos in the defence and settlement of such claim, at Thalamos's expense; and

18.2.3. Thalamos is given sole authority to defend or settle the claim.

18.3. In the defence or settlement of any claim, Thalamos may procure the right for the Client to continue using the Service, replace or modify the Service so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 10 Business Days' notice to the Client without any additional liability or obligation to pay liquidated damages or other additional costs to the Client.

18.4. In no event shall Thalamos, its employees, agents and sub-contractors be liable to the Client to the extent that the alleged infringement is based on:

18.4.1. a modification of the Service by anyone other than Thalamos; or

18.4.2. the Client's use of the Service in a manner contrary to the instructions given to the Client by Thalamos; or

18.4.3. the Client's use of the Service after notice of the alleged or actual infringement from Thalamos or any appropriate authority.

18.5. The foregoing states the Client's sole and exclusive rights and remedies, and Thalamos (including its employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## **19. LIMITATION OF LIABILITY**

19.1. Nothing in this agreement excludes the liability of Thalamos:

19.1.1. for death or personal injury caused by Thalamos's negligence; or

19.1.2. for fraud or fraudulent misrepresentation;

19.1.3. any other liability to the extent such liability may not be excluded or limited as a matter of Applicable Law.

19.2. Subject to Clause 19.1 Thalamos 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.

19.3. Subject to clause 19.1 and 19.2, Thalamos's total aggregate liability in contract (including in respect of the indemnity at clause 18), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to amount equal to 125% of the Fees payable by the Client to Thalamos during the Initial Term.

19.4. The Client assumes sole responsibility for results obtained from the use of the by the Client. Thalamos shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Thalamos by the Client in connection with the Service or any actions taken by Thalamos at the Client's direction.

## **20. INSURANCE**

20.1. During this Agreement and for a period of six (6) years afterwards, Thalamos shall maintain in force insurance policies with reputable insurance companies, against all risks that would normally be insured against by a prudent business in connection with this Agreement including

but without limitation: professional indemnity in an amount of not less than £1,000,000 per claim and employee liability of not less than £5,000,000. Thalamos shall produce to the Client on request full particulars of that insurance and the receipt for the then current premium.

## **21. TERMINATION**

21.1. Without prejudice to any other rights or remedies which the Parties may have, either Party may terminate this Agreement immediately on giving Notice to the other if:

21.1.1. the other Party commits a material breach of any of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that Party being notified in writing of the breach;

21.1.2. the other Party repeatedly breaches any 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 this Agreement;

21.1.3. the other Party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

21.1.4. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party;

21.1.5. an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other Party.

21.2. On termination of the access to the Service and any Additional Services for any reason:

21.2.1. on Notice being duly given to the Client, the Client shall immediately pay to Thalamos all of Thalamos's outstanding unpaid, undisputed invoices and interest including in respect of any part of the Service and any Additional Services supplied to that date but for which no invoice had yet been submitted;

21.2.2. Thalamos shall provide the Client (or such third party as it may notify if permitted under Applicable Laws) with a copy of its Confidential Information, in the agreed electronic and machine readable format to assist the transition by the Client to any new supplier without unreasonable delay, and delete all copies of any such information held by Thalamos (unless Thalamos is obliged by Applicable Law to retain copies) within 30 days after the cancellation or termination of this Agreement; and

21.2.3. the accrued rights and liabilities of the Parties as at termination and the continuation of any provision expressly stated to survive including this clause 13 and clause 19 (Limitation of Liability), or implicitly surviving termination, shall not be affected.

21.3. In the event the Client requires additional services these are to be agreed between the parties acting reasonably and in good faith and Thalamos may charge for these on a time and materials basis.

## **22. FORCE MAJEURE**

22.1. "**Force Majeure Event**" means any circumstance not within reasonable control of the Party seeking to rely on such event including, without limitation: acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological

contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts; interruption or failure of utility service, subcontractor or supplier; and failure of a U.K. public utility service or public telecommunications network (to the exclusion of any service or communications network or system that is provided by or used by any Sub-Processor or supplier to Thalamos).

22.2. Provided it has complied with clause 22.4, if a Party is prevented or delayed in or from materially performing any of its obligations under this Agreement by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of this Agreement or otherwise be liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended according to the duration of the circumstance or event beyond the Affected Party's control.

22.3. The corresponding obligations of the other Party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

22.4. The Affected Party shall:

22.4.1. as soon as reasonably practicable after the start of the Force Majeure Event, give Notice to the other Party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement;

22.4.2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations; and

22.4.3. resume the performance of its obligations promptly following resolution of the Force Majeure Event and shall notify the other Party.

22.5. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations materially for a period of more than 6 weeks, the Party not affected by the Force Majeure Event may terminate this Agreement immediately upon giving 4 weeks' written Notice to the Affected Party.

## **23. GENERAL**

23.1. This Agreement, including the Schedules represents the entire agreement between the Parties and it may only be amended by mutual agreement of the Parties, executed by both Parties in writing.

23.2. Neither Party shall assign, encumber or otherwise transfer, charge, or deal in any other manner with all or any of its rights or obligations under this Agreement in whole or in part to any other person without the prior written consent of the other Party, except where expressly provided in this Agreement. Any acts and/or omissions of any of Thalamos's subcontractors will be treated as acts/omissions by Thalamos.

23.3. 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).

23.4. This Agreement shall continue for the benefit of and shall be binding on the Parties' successors and assigns.

23.5. A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of this Agreement.

23.6. Any Notice given under this Agreement by either Party to the other must be in writing by email



and will be deemed to have been given on the same date as transmission, or the next nearest Business Day, except where there is a notification to the sender of addressee's absence, or a notification of a failure to send or a failure to receive.

- 23.7. Notices to Thalamos must be sent to [hello@Thalamos.co.uk](mailto:hello@Thalamos.co.uk) or the email address of the person nominated by Thalamos when setting up the Client's access to the Service and any Additional Services and Notices to the Client will be sent to the email address which the Client provided when setting up its access to the Service and any Additional Services or the email address of the person nominated by the Client.
- 23.8. In the event of any complaint or dispute in connection with this Agreement, both Parties agree that the complaining Party will first provide Notice to the other in stating the subject of the complaint or dispute, and the other undertakes to respond in writing within 30 days.
- 23.9. Failure or neglect or delay by either Party to enforce at any time any of the provisions of this Agreement shall not be construed as or deemed a waiver of its rights nor in any way affect the validity of the whole or any part of this Agreement nor prejudice its rights to take subsequent action. Further, any waiver asserted by any Party shall not constitute a waiver of any right to subsequently enforce its rights in respect of the same.
- 23.10. Except as expressly provided 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.
- 23.11. In the event that any provision or part-provision of this Agreement shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, that clause or part of this Agreement shall be severed from the remaining Agreement which shall continue to be valid to the fullest extent permitted by any law and shall not affect the validity or enforceability of the remaining provisions.
- 23.12. This Agreement shall be governed by and construed in accordance with the laws of England and Wales.
- 23.13. In the event of any complaint or dispute in connection with this Agreement, both Parties agree that the complaining Party will first provide Notice to the other in stating the subject of the complaint or dispute, and the other undertakes to respond in writing within 30 days.

**SIGNED** for and on behalf of

[REDACTED]

**Care Quality Commission**

[REDACTED]

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Dated:

27/07/23

**SIGNED** for and on behalf of  
**THALAMOS LIMITED**

[REDACTED]

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Dated:

23.07.2023

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**SCHEDULE 1**

<b>Initial Term</b>	24 months
<b>Renewal Term</b>	12 months
<b>Service</b>	Thalamos Assess
<b>Fees for the Service</b>	
<b>Number of Users</b>	
<b>Orientation/Training</b>	Included in fees for Service
<b>Additional Services</b>	n/a
<b>Initial payment due date</b>	On the Commencement Date (being the date stated at the top of this Agreement).
<b>Payment frequency</b>	Monthly
<b>Payment method</b>	Via Tradshift
<b>Special Terms:</b>	n/a

## SCHEDULE 2

### Data Processing Instructions

<b>Subject matter, Nature and Purpose of processing</b>	Providing administrative support for the online booking system and video-link access for appointments with healthcare professionals, and storage of records that relate to medical records.
<b>Duration</b>	For the duration of the provision of the Services by Thalamos under the terms of this Agreement.
<b>Client Personal Data</b>	Such Personal Data may include, but is not limited to name, age, address, telephone number, registered GP and other medical and health information relating to a Data Subject.
<b>Data Subjects</b>	<p>Patients of the Client.</p> <p>Personal Data may also be processed in relation to staff or officers or directors of the Client, or Users in so far as their access may depend on personally identifiable information.</p>
<b>Specific Restrictions</b>	Any variation to the above must be instructed in writing
<b>Retention / destruction arrangements</b>	In accordance with the provisions of the Agreement.
<b>Permitted Sub-Processors and transfers</b> <p>The following Sub-Processors are approved:</p> <p>Microsoft Azure Amazon Web Services</p>	