

# Conkaa Limited (Medical Tracker) terms and conditions

## TERMS AND CONDITIONS

Please read these Terms and Conditions carefully. All contracts that the Provider may enter into from time to time for the provision of the Hosted Services and related services shall be governed by these Terms and Conditions, and the Provider will ask the Customer for the Customer's express acceptance of these Terms and Conditions before providing any such services to the Customer.

### 1. Definitions

1.1 Except to the extent expressly provided otherwise, in these Terms and Conditions:

**"Account"** means an account enabling a person to access and use the Hosted Services, including both administrator accounts and user accounts;

**"Affiliate"** means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

**"Agreement"** means a contract between the parties incorporating these Terms and Conditions, and any amendments to that contract from time to time;

**"Business Day"** means any weekday other than a bank or public holiday in England;

**"Business Hours"** means the hours of 08:30 to 17:00 GMT/BST on a Business Day;

**"Charges"** means the following amounts:

(a) such amounts as may be agreed in writing by the parties;

**"Control"** means the legal power to control (directly or indirectly) the management of an entity (and **"Controlled"** should be construed accordingly);

**"Customer"** means the Schools or other establishment or organisation that contracts with the Company;

**"Customer Confidential Information"** means:

(a) any information disclosed by or on behalf of the Customer to the Provider at any time before the termination of the Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure:

(i) was marked or described as "confidential"; or

(ii) should have been reasonably understood by the Provider to be confidential; and

(b) the Customer Data;

**"Customer Data"** means all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer;

**"Customer Indemnity Event"** has the meaning given to it in Clause 16.3;

**"Customer Personal Data"** means any Personal Data that is processed by the Provider on behalf of the Customer in relation to the Agreement;

**"Data Protection Laws"** means all applicable laws relating to the processing of Personal Data including, while it is in force and applicable to Customer Personal Data, the General Data Protection Regulation (Regulation (EU) 2016/679);

**"Documentation"** means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer;

**"Effective Date"** means the date upon which the parties execute a hard-copy Services Order Form; or, following the Customer completing and submitting the online Services Order Form published by the Provider on the Provider's website, the date upon which the Provider sends to the Customer an order confirmation;

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**"Hosted Services"** means Medical Tracker which will be made available by the Provider to the Customer as a service via the internet in accordance with these Terms and Conditions;

**"Hosted Services Defect"** means a defect, error or bug in the Platform having an adverse effect on the appearance, operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Customer or any person authorised by the Customer to use the Platform or Hosted Services;
- (b) any use of the Platform or Hosted Services contrary to the Documentation, whether by the Customer or by any person authorised by the Customer;
- (c) a failure of the Customer to perform or observe any of its obligations in the Agreement; and/or

- (d) an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification;

**"Hosted Services Specification"** means the specification for the Platform and Hosted Services set out in the Documentation;

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**"Maintenance Services"** means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades;

**"Minimum Term"** means, in respect of the Agreement, the period of 12 months beginning on the Effective Date;

**"Personal Data"** has the meaning given to it in the Data Protection Laws;

**"Platform"** means the Medical Tracker platform managed by the Provider and used by the Provider to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;

**"Provider"** means Conkaa LIMITED, a company incorporated in England and Wales (registration number 10253269) having its registered office at 4 Aztec Row, Berners Road, Islington, London, United Kingdom, N1 0PW;

**"Provider Indemnity Event"** has the meaning given to it in Clause 16.1;

**"Services"** means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under these Terms and Conditions;

**"Services Order Form"** means an online order form published by the Provider and completed and submitted by the Customer, or a hard-copy order form signed or otherwise agreed by or on behalf of each party, in each case incorporating these Terms and Conditions by reference;

**"Set Up Services"** means the configuration, implementation and integration of the Hosted Services;

**"Support Services"** means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services;

**"Supported Web Browser"** means the current release from time to time of Mozilla Firefox, Google Chrome or Apple Safari, or any other web browser that the Provider agrees in writing shall be supported;

**"Term"** means the term of the Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

**"Terms and Conditions"** means all the documentation containing the provisions of the Agreement, namely the main body of these Terms and Conditions and the Schedules, including any amendments to that documentation from time to time;

**"Update"** means a hotfix, patch or minor version update to any Platform software; and

**"Upgrade"** means a major version upgrade of any Platform software.

## **2. Term**

- 2.1 The Agreement shall come into force upon the Effective Date.
- 2.2 The Agreement shall continue in force indefinitely, subject to termination in accordance with Clause 19.
- 2.3 Unless the parties expressly agree otherwise in writing, each Services Order Form shall create a distinct contract under these Terms and Conditions.

## **3. Set Up Services**

- 3.1 The Provider shall provide the Set Up Services to the Customer.
- 3.2 The Provider shall use all reasonable endeavours to ensure that the Set Up Services are provided upon or promptly following the Effective Date.
- 3.3 The Customer acknowledges that a delay in the Customer performing its obligations in the Agreement may result in a delay in the performance of the Set Up Services; and subject to Clause 17.1 the Provider will not be liable to the Customer in respect of any failure to meet the Set Up Services timetable to the extent that that failure arises out of a delay in the Customer performing its obligations under these Terms and Conditions.
- 3.4 Subject to any written agreement of the parties to the contrary, any Intellectual Property Rights that may arise out of the performance of the Set Up Services by the Provider shall be the exclusive property of the Provider.

## **4. Hosted Services**

- 4.1 The Provider shall create an Account for the Customer and shall provide to the Customer login details for that Account on or promptly following the Effective Date.
- 4.2 The Provider hereby grants to the Customer a worldwide, non-exclusive licence to use the Hosted Services by means of a Supported Web Browser in accordance with the Documentation during the Term.

- 4.3 The licence granted by the Provider to the Customer under Clause 4.2 is subject to the following limitations:
- (a) the Hosted Services may only be used by the officers, employees, agents and subcontractors of either the Customer or an Affiliate of the Customer.
- 4.4 Except to the extent expressly permitted in these Terms and Conditions or required by law on a non-excludable basis, the licence granted by the Provider to the Customer under Clause 4.2 is subject to the following prohibitions:
- (a) the Customer must not sub-license its right to access and use the Hosted Services;
  - (b) the Customer must not permit any unauthorised person to access or use the Hosted Services;
  - (c) the Customer must not use the Hosted Services to provide services to third parties;
  - (d) the Customer must not republish or redistribute any content or material from the Hosted Services; and
  - (e) the Customer must not make any alteration to the Platform, except as permitted by the Documentation.
- 4.5 The Customer shall use reasonable endeavours, including reasonable security measures relating to administrator Account access details, to ensure that no unauthorised person may gain access to the Hosted Services using an Account.
- 4.6 The parties acknowledge and agree that Schedule 2 (Availability SLA) shall govern the availability of the Hosted Services.
- 4.7 The Customer must comply with Schedule 1 (Acceptable Use Policy), and must ensure that all persons using the Hosted Services with the authority of the Customer or by means of an Account comply with Schedule 1 (Acceptable Use Policy).
- 4.8 The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.
- 4.9 The Customer must not use the Hosted Services:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
  - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 4.10 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.

- 4.11 The Provider may suspend the provision of the Hosted Services if any amount due to be paid by the Customer to the Provider under the Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Hosted Services on this basis.

## **5. Maintenance Services**

- 5.1 The Provider shall provide the Maintenance Services to the Customer during the Term.
- 5.2 The Provider shall provide the Maintenance Services in accordance with the standards of skill and care reasonably expected from a leading service provider in the Provider's industry.
- 5.3 The Provider shall provide the Maintenance Services in accordance with Schedule 3 (Maintenance SLA).
- 5.4 The Provider may suspend the provision of the Maintenance Services if any amount due to be paid by the Customer to the Provider under the Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Maintenance Services on this basis.

## **6. Support Services**

- 6.1 The Provider shall provide the Support Services to the Customer during the Term.
- 6.2 The Provider shall provide the Support Services in accordance with the standards of skill and care reasonably expected from a leading service provider in the Provider's industry.
- 6.3 The Provider shall provide the Support Services in accordance with Schedule 4 (Support SLA).
- 6.4 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under the Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

## **7. Customer obligations**

- 7.1 Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to the Provider, or procure for the Provider, such:
- (a) co-operation, support and advice;
  - (b) information and documentation; and
  - (c) governmental, legal and regulatory licences, consents and permits,

as are reasonably necessary to enable the Provider to perform its obligations under the Agreement.

- 7.2 The Customer must provide to the Provider, or procure for the Provider, such access to the Customer's computer hardware, software, networks and systems as may be reasonably required by the Provider to enable the Provider to perform its obligations under the Agreement.

## **8. Customer Data**

- 8.1 The Customer hereby grants to the Provider a non-exclusive licence to store the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under the Agreement.
- 8.2 The Customer warrants to the Provider that the Customer Data when used by the Provider in accordance with the Agreement will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.
- 8.3 The Provider shall create a back-up copy of the Customer Data at least daily, shall ensure that each such copy is sufficient to enable the Provider to restore the Hosted Services to the state they were in at the time the back-up was taken, and shall retain and securely store each such copy for a minimum period of 30 days.
- 8.4 Within the period of 1 Business Day following receipt of a written request from the Customer, the Provider shall use all reasonable endeavours to restore to the Platform the Customer Data stored in any back-up copy created and stored by the Provider in accordance with Clause 8.3. The Customer acknowledges that this process will overwrite the Customer Data stored on the Platform prior to the restoration.

## **9. No assignment of Intellectual Property Rights**

- 9.1 Nothing in these Terms and Conditions shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

## **10. Charges**

- 10.1 The Customer shall pay the Charges to the Provider in accordance with these Terms and Conditions.
- 10.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this Clause 10.2.

- 10.3 All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider.
- 10.4 The Provider may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation, providing that no such variation shall result in an aggregate percentage increase in the relevant element of the Charges during the Term that exceeds 2% per annum over the percentage increase, during the same period, in the Retail Prices Index (all items) published by the UK Office for National Statistics.

## **11. Payments**

- 11.1 The Provider shall issue invoices for the Charges to the Customer on or after the effective date and 30 days prior to the renewal term.
- 11.2 The Customer must pay the Charges to the Provider within the period of 30 days following the issue of an invoice in accordance with this Clause 11.
- 11.3 The Customer must pay the Charges by bank transfer or cheque (using such payment details as are notified by the Provider to the Customer from time to time).

## **12. Provider's confidentiality obligations**

- 12.1 The Provider must:
- (a) keep the Customer Confidential Information strictly confidential;
  - (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent, and then only under conditions of confidentiality approved in writing by the Customer;
  - (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care;
  - (d) act in good faith at all times in relation to the Customer Confidential Information; and
  - (e) not use any of the Customer Confidential Information for any purpose other than to manage the Customer's Medical Tracker account.
- 12.2 Notwithstanding Clause 12.1, the Provider may disclose the Customer Confidential Information to the Provider's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Customer Confidential Information for the performance of their work with respect to the Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Customer Confidential Information.



- 12.3 This Clause 12 imposes no obligations upon the Provider with respect to Customer Confidential Information that:
- (a) is known to the Provider before disclosure under these Terms and Conditions and is not subject to any other obligation of confidentiality; or
  - (b) is or becomes publicly known through no act or default of the Provider.
- 12.4 The restrictions in this Clause 12 do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Provider on any recognised stock exchange.
- 12.5 The provisions of this Clause 12 shall continue in force indefinitely following the termination of the Agreement.

### **13. Data protection**

- 13.1 The Provider shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.
- 13.2 The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with the Agreement.
- 13.3 The Customer shall only supply to the Provider, and the Provider shall only process, in each case under or in relation to the Agreement, the Personal Data of data subjects and types falling within the categories specified in Part 1 of Schedule 5 (Data processing information) and the Provider shall only process the Customer Personal Data for the purposes specified in Part 3 of Schedule 5 (Data processing information).
- 13.4 The Provider shall only process the Customer Personal Data during the Term and for not more than 30 days following the end of the Term, subject to the other provisions of this Clause 13.
- 13.5 The Provider shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to any place outside the European Economic Area), as set out in these Terms and Conditions or any other document agreed by the parties in writing.
- 13.6 The Provider shall promptly inform the Customer if, in the opinion of the Provider, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.
- 13.7 Notwithstanding any other provision of these Terms and Conditions, the Provider may process the Customer Personal Data if and to the extent that the Provider is required to do so by applicable law. In such a case, the Provider shall inform the Customer of the legal requirement before

processing, unless that law prohibits such information on important grounds of public interest.

- 13.8 The Provider shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 13.9 The Provider and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data (in accordance with Article 32 of the General Data Protection Regulation 2016/679).
- 13.10 The Provider must not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer. The Provider shall ensure that each third party processor is subject to equivalent legal obligations as those imposed on the Provider by this Clause 13.
- 13.11 As at the Effective Date, the Provider is hereby authorised by the Customer to engage, as sub-processors with respect to Customer Personal Data. In the event the Provider uses another processor under clause 13.10, it shall ensure such other processor is subject to a contract which imposes equivalent obligations to those contained in these Terms and which meets the requirements of Data Protection Law. In the event that another processor appointed by the Provider breaches (or causes Provider to breach) any of its data protection obligations, Provider shall be fully liable to Customer for such breach.
- 13.12 The Provider shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.
- 13.13 The Provider shall assist the Customer in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. The Provider shall report any Personal Data breach relating to the Customer Personal Data to the Customer within 24 hours following the Provider becoming aware of the breach.
- 13.14 The Provider shall make available to the Customer all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause 13 and the Data Protection Laws.
- 13.15 The Provider shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data.

13.16 If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under these Terms and Conditions, then the parties shall use their best endeavours promptly to agree such variations to these Terms and Conditions as may be necessary to remedy such non-compliance.

#### **14. Warranties**

14.1 The Provider warrants to the Customer that:

- (a) the Provider has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions;
- (b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under these Terms and Conditions; and
- (c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under these Terms and Conditions.

14.2 The Provider warrants to the Customer that:

- (a) the Platform and Hosted Services will conform in all respects with the Hosted Services Specification;
- (b) the Hosted Services will be free from Hosted Services Defects;
- (c) the application of Updates and Upgrades to the Platform by the Provider will not introduce any Hosted Services Defects into the Hosted Services;
- (d) the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and
- (e) the Platform will incorporate security features reflecting the requirements of good industry practice.

14.3 The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with these Terms and Conditions, will not breach any laws, statutes or regulations applicable under English law.

14.4 The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with these Terms and Conditions, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

14.5 If the Provider reasonably determines, or any third party alleges, that the use of the Hosted Services by the Customer in accordance with these Terms and Conditions infringes any person's Intellectual Property Rights, the Provider may at its own cost and expense:

- (a) modify the Hosted Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or
- (b) procure for the Customer the right to use the Hosted Services in accordance with these Terms and Conditions.

14.6 The Customer warrants to the Provider that it has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions.

14.7 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in these Terms and Conditions. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

## **15. Acknowledgements and warranty limitations**

15.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of these Terms and Conditions, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.

15.2 The Customer acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified as compatible in the Hosted Services Specification; and the Provider does not warrant or represent that the Hosted Services will be compatible with any other software or systems.

15.3 The Customer acknowledges that the Provider will not provide any legal advice under these Terms and Conditions or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in these Terms and Conditions, the Provider does not warrant or represent that the Hosted Services or the use of the Hosted Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

## **16. Indemnities**

16.1 The Provider shall indemnify and shall keep indemnified the Customer against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Customer and arising directly or indirectly as a result of any breach by the Provider of these Terms and Conditions (a "**Provider Indemnity Event**").

16.2 The Customer must:

- (a) upon becoming aware of an actual or potential Provider Indemnity Event, notify the Provider;
- (b) provide to the Provider all such assistance as may be reasonably requested by the Provider in relation to the Provider Indemnity Event;

- (c) allow the Provider the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Provider Indemnity Event; and
- (d) not admit liability to any third party in connection with the Provider Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Provider Indemnity Event without the prior written consent of the Provider,

and the Provider's obligation to indemnify the Customer under Clause 16.1 shall not apply unless the Customer complies with the requirements of this Clause 16.2.

16.3 The Customer shall indemnify and shall keep indemnified the Provider against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Provider and arising directly or indirectly as a result of any breach by the Customer of these Terms and Conditions (a "**Customer Indemnity Event**").

16.4 The indemnity protection set out in this Clause 16 shall be subject to the limitations and exclusions of liability set out in the Agreement.

## **17. Limitations and exclusions of liability**

17.1 Nothing in these Terms and Conditions will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

17.2 The limitations and exclusions of liability set out in this Clause 17 and elsewhere in these Terms and Conditions:

- (a) are subject to Clause 17.1; and
- (b) govern all liabilities arising under these Terms and Conditions or relating to the subject matter of these Terms and Conditions, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these Terms and Conditions.

17.3 The Provider shall not be liable to the Customer in respect of any losses arising out of a Force Majeure Event.

17.4 The Provider shall not be liable to the Customer in respect of any loss of profits or anticipated savings.

- 17.5 The Provider shall not be liable to the Customer in respect of any loss of business, contracts or opportunities.
- 17.6 The Provider shall not be liable to the Customer in respect of any loss or corruption of any data, database or software; providing that this Clause 17.6 shall not protect the Provider unless the Provider has fully complied with its obligations under Clause 8.3 and Clause 8.4.
- 17.7 The Provider shall not be liable to the Customer in respect of any special, indirect or consequential loss or damage.
- 17.8 The liability of the Provider to the Customer under the Agreement in respect of any event or series of related events shall not exceed the greater of:
- (a) Fifteen hundred pounds (£1500.00); and
  - (b) the total amount paid and payable by the Customer to the Provider under the Agreement in the 12 month period preceding the commencement of the event or events.
- 17.9 The aggregate liability of the Provider to the Customer under the Agreement shall not exceed the greater of:
- (a) Fifteen hundred pounds (£1500.00); and
  - (b) the total amount paid and payable by the Customer to the Provider under the Agreement.

## **18. Force Majeure Event**

- 18.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under the Agreement, that obligation will be suspended for the duration of the Force Majeure Event.
- 18.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under the Agreement, must:
- (a) promptly notify the other; and
  - (b) inform the other of the period for which it is estimated that such failure or delay will continue.
- 18.3 A party whose performance of its obligations under the Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

## **19. Termination**

- 19.1 The Provider may terminate the Agreement by giving to the Customer not less than 30 days' written notice of termination, expiring after the end of the Minimum Term. The Customer may terminate the Agreement by giving to the Provider not less than 30 days' written notice of termination, expiring after the end of the Minimum Term.

19.2 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:

- (a) the other party commits any breach of the Agreement, and the breach is not remediable;
- (b) the other party commits a breach of the Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied; or
- (c) the other party persistently breaches the Agreement (irrespective of whether such breaches collectively constitute a material breach).

19.3 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:

- (a) the other party:
  - (i) is dissolved;
  - (ii) ceases to conduct all (or substantially all) of its business;
  - (iii) is or becomes unable to pay its debts as they fall due;
  - (iv) is or becomes insolvent or is declared insolvent; or
  - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party; or
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up.

19.4 The Provider may terminate the Agreement immediately by giving written notice to the Customer if:

- (a) any amount due to be paid by the Customer to the Provider under the Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
- (b) the Provider has given to the Customer at least 30 days' written notice, following the failure to pay, of its intention to terminate the Agreement in accordance with this Clause 19.4.

19.5 The rights of termination set out in the Agreement shall not exclude any rights of termination available at law.

## **20. Effects of termination**

20.1 Upon the termination of the Agreement, all of the provisions of these Terms and Conditions shall cease to have effect, save that the following provisions

of these Terms and Conditions shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 4.10, 11.2, 12, 13.1, 13.3, 13.4, 13.5, 13.6, 13.7, 13.8, 13.9, 13.10, 13.11, 13.12, 13.13, 13.14, 13.15, 13.16, 16, 17, 20, 23, 24, 25, 26, 27.1, 27.2, 28, 29 and 30.

20.2 Except to the extent that these Terms and Conditions expressly provides otherwise, the termination of the Agreement shall not affect the accrued rights of either party.

20.3 Within 30 days following the termination of the Agreement for any reason:

- (a) the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of the Agreement; and
- (b) the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Services that were to be provided to the Customer after the termination of the Agreement,

without prejudice to the parties' other legal rights.

## **21. Notices**

21.1 Any notice from one party to the other party under these Terms and Conditions must be given by one of the following methods (using the relevant contact details set out in Clause 21.2):

- (a) sent by recorded signed-for post, in which case the notice shall be deemed to be received 2 Business Days following posting,

providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

21.2 The Provider's contact details for notices under this Clause 21 are as follows: Medical Tracker, 41 Corsham St, Hoxton, London N1 6DR.

21.3 The addressee and contact details set out in Clause 21.2 may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 21.

## **22. Subcontracting**

22.1 The Provider must not subcontract any of its obligations under the Agreement without the prior written consent of the Customer.

## **23. Assignment**

23.1 The Provider must not assign, transfer or otherwise deal with the Provider's contractual rights and/or obligations under these Terms and Conditions without the prior written consent of the Customer.



23.2 The Customer must not assign, transfer or otherwise deal with the Customer's contractual rights and/or obligations under these Terms and Conditions without the prior written consent of the Provider.

#### **24. No waivers**

24.1 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.

24.2 No waiver of any breach of any provision of the Agreement shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of the Agreement.

#### **25. Severability**

25.1 If a provision of these Terms and Conditions is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.

25.2 If any unlawful and/or unenforceable provision of these Terms and Conditions would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

#### **26. Third party rights**

26.1 The Agreement is for the benefit of the parties, and is not intended to benefit or be enforceable by any third party.

26.2 The exercise of the parties' rights under the Agreement is not subject to the consent of any third party.

#### **27. Variation**

27.1 The Agreement may not be varied except in accordance with this Clause 27.

27.2 The Agreement may be varied by means of a written document signed by or on behalf of each party.

27.3 The Provider may vary the Agreement by giving to the Customer at least 30 days' written notice of the proposed variation, providing that if the Provider gives to the Customer a notice under this Clause 27.3, the Customer shall have the right to terminate the Agreement by giving written notice of termination to the Provider at any time during the period of 14 days following receipt of the Provider's notice.

#### **28. Entire agreement**

28.1 The main body of these Terms and Conditions and the Schedules shall constitute the entire agreement between the parties in relation to the subject matter of the Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

28.2 Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement.

28.3 The provisions of this Clause 28 are subject to Clause 17.1.

## **29. Law and jurisdiction**

29.1 These Terms and Conditions shall be governed by and construed in accordance with English law.

29.2 Any disputes relating to the Agreement shall be subject to the exclusive jurisdiction of the courts of England.

## **30. Interpretation**

30.1 In these Terms and Conditions, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

30.2 The Clause headings do not affect the interpretation of these Terms and Conditions.

30.3 References in these Terms and Conditions to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.

30.4 In these Terms and Conditions, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

## **SCHEDULE 1 (ACCEPTABLE USE POLICY)**

### **1. Introduction**

- 1.1 This acceptable use policy (the "**Policy**") sets out the rules governing:
- (a) the use of the website at <https://school.medicaltracker.co.uk>, any successor website, and the services available on that website or any successor website (the "**Services**"); and
  - (b) the transmission, storage and processing of content by you, or by any person on your behalf, using the Services ("**Content**").
- 1.2 References in this Policy to "you" are to any customer for the Services and any individual user of the Services (and "your" should be construed accordingly); and references in this Policy to "us" are to Conkaa Limited (and "we" and "our" should be construed accordingly).
- 1.3 By using the Services, you agree to the rules set out in this Policy.
- 1.4 We will ask for your express agreement to the terms of this Policy before you upload or submit any Content or otherwise use the Services.

### **2. General usage rules**

- 2.1 You must not use the Services in any way that causes, or may cause, damage to the Services or impairment of the availability or accessibility of the Services.
- 2.2 You must not use the Services:
- (a) in any way that is unlawful, illegal, fraudulent, deceptive or harmful; or
  - (b) in connection with any unlawful, illegal, fraudulent, deceptive or harmful purpose or activity.
- 2.3 You must ensure that all Content complies with the provisions of this Policy.

### **3. Unlawful Content**

- 3.1 Content must not be illegal or unlawful, must not infringe any person's legal rights, and must not be capable of giving rise to legal action against any person (in each case in any jurisdiction and under any applicable law).
- 3.2 Content, and the use of Content by us in any manner licensed or otherwise authorised by you, must not:
- (a) be libellous or maliciously false;
  - (b) be obscene or indecent;
  - (c) infringe any copyright, moral right, database right, trade mark right, design right, right in passing off, or other intellectual property right;

- (d) infringe any right of confidence, right of privacy or right under data protection legislation;
- (e) constitute negligent advice or contain any negligent statement;
- (f) constitute an incitement to commit a crime, instructions for the commission of a crime or the promotion of criminal activity;
- (g) be in contempt of any court, or in breach of any court order;
- (h) constitute a breach of racial or religious hatred or discrimination legislation;
- (i) be blasphemous;
- (j) constitute a breach of official secrets legislation; or
- (k) constitute a breach of any contractual obligation owed to any person.

3.3 You must ensure that Content is not and has never been the subject of any threatened or actual legal proceedings or other similar complaint.

## **SCHEDULE 2 (AVAILABILITY SLA)**

### **1. Introduction to availability SLA**

- 1.1 This Schedule 2 sets out the Provider's availability commitments relating to the Hosted Services.
- 1.2 In this Schedule 2, "uptime" means the percentage of time during a given period when the Hosted Services are available at the gateway between public internet and the network of the hosting services provider for the Hosted Services.

### **2. Availability**

- 2.1 The Provider shall use reasonable endeavours to ensure that the uptime for the Hosted Services is at least 99% during each calendar month.

## **SCHEDULE 3 (MAINTENANCE SLA)**

### **1. Introduction**

- 1.1 This Schedule 3 sets out the service levels applicable to the Maintenance Services.

### **2. Scheduled Maintenance Services**

- 2.1 The Provider shall where practicable give to the Customer at least 10 Business Days' prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Hosted Services or are likely to have a material negative impact upon the Hosted Services, without prejudice to the Provider's other notice obligations under this Schedule 3.
- 2.2 The Provider shall provide all scheduled Maintenance Services outside Business Hours.

### **3. Updates**

- 3.1 The Provider shall give to the Customer written notice of the application of any security Update to the Platform and prior written notice of the application of any non-security Update to the Platform.
- 3.2 The Provider shall apply Updates to the Platform as follows:
  - (a) third party security Updates shall be applied to the Platform promptly following release by the relevant third party, providing that the Provider may acting reasonably decide not to apply any particular third party security Update;
  - (b) the Provider's security Updates shall be applied to the Platform promptly following the identification of the relevant security risk and the completion of the testing of the relevant Update; and
  - (c) other Updates shall be applied to the Platform in accordance with any timetable notified by the Provider to the Customer or agreed by the parties from time to time.

### **4. Upgrades**

- 4.1 The Provider shall produce Upgrades at least once in each calendar year during the Term.
- 4.2 The Provider shall give to the Customer prior written notice of the application of an Upgrade to the Platform.

## **SCHEDULE 4 (SUPPORT SLA)**

### **1. Introduction**

1.1 This Schedule 4 sets out the service levels applicable to the Support Services.

### **2. Helpdesk**

- 2.1 The Provider shall make available to the Customer a helpdesk in accordance with the provisions of this Schedule 4.
- 2.2 The Customer may use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services; and the Customer must not use the helpdesk for any other purpose.
- 2.3 The Provider shall ensure that the helpdesk is accessible by telephone, email and using the Provider's web-based ticketing system.
- 2.4 The Provider shall ensure that the helpdesk is operational and adequately staffed during Business Hours during the Term.
- 2.5 The Customer shall ensure that all requests for Support Services that it may make from time to time shall be made through the helpdesk.

### **3. Response and resolution**

- 3.1 Issues raised through the Support Services shall be categorised as follows:
- (a) critical: the Hosted Services are inoperable or a core function of the Hosted Services is unavailable;
  - (b) serious: a core function of the Hosted Services is significantly impaired;
  - (c) moderate: a core function of the Hosted Services is impaired, where the impairment does not constitute a serious issue; or a non-core function of the Hosted Services is significantly impaired; and
  - (d) minor: any impairment of the Hosted Services not falling into the above categories; and any cosmetic issue affecting the Hosted Services.
- 3.2 The Provider shall determine, acting reasonably, into which severity category an issue falls.
- 3.3 The Provider shall respond to requests for Support Services promptly, and in any case in accordance with the following time periods:
- (a) critical: 2 Business Hour;
  - (b) serious: 8 Business Hours;
  - (c) moderate: 3 Business Days; and
  - (d) minor: 10 Business Days.
- 3.4 The Provider shall ensure that its response to a request for Support Services shall include the following information (to the extent such information is

relevant to the request): an acknowledgement of receipt of the request, where practicable an initial diagnosis in relation to any reported error, and an anticipated timetable for action in relation to the request.

3.5 The Provider shall use reasonable endeavours to resolve issues raised through the Support Services promptly, and in any case in accordance with the following time periods:

- (a) critical: 2 Business Hours;
- (b) serious: 8 Business Hours;
- (c) moderate: 4 Business Days; and
- (d) minor: 10 Business Days.

#### **4. Provision of Support Services**

4.1 The Support Services shall be provided remotely, save to the extent that the parties agree otherwise in writing.

#### **5. Limitations on Support Services**

5.1 The Provider shall have no obligation to provide Support Services in respect of any issue caused by:

- (a) the improper use of the Hosted Services by the Customer; or
- (b) any alteration to the Hosted Services made without the prior consent of the Provider.



## SCHEDULE 5 (DATA PROCESSING INFORMATION)

### 1. Data Elements, categories of Data Subjects

Please see Schedule 5 Point 2. Categories of Data Subjects: Student, Parent/ Carer, Staff

### 2. Types of Personal Data

Element ID	Data Element Name	Purpose of Collection
1	Student- Name	Identification
2	Student- Gender	Identification
3	Student- DOB	Identification
4	Student- Year Group	Identification
5	Student- Class	Identification
6	Student-Address	Communication
7	Parent/ Carer- Name(s)	Communication
8	Parent/ Carer- Relationship(s)	Identification
9	Parent/ Carer- Contact level(s)	Identification
10	Parent/ Carer- Phone Number(s)	Communication
11	Parent/ Carer- Email(s)	Communication
12	Parent/ Carer- Address(s)	Communication
13	Medication administration- student name	Identification/ DfE Required
14	Medication administration- DOB	Identification/ DfE Required
15	Medication administration- Date	Record Keeping/ DfE Required
16	Medication administration- Time	Record Keeping/ DfE Required
17	Medication administration- Name of medication	Record Keeping/ DfE Required
18	Medication administration- Dosage administered	Record Keeping/ DfE Required
19	Medication administration- Administed by	Record Keeping/ DfE Required
20	Medication administration- Staff name	Record Keeping/ DfE Required
21	Medication administration- Second staff name	Record Keeping
22	Medication administration- Side effects	Record Keeping/ DfE Required
23	Medication administration- Notes	Record Keeping
24	Medication expiry- Student name	Identification/ DfE Required

25	Medication expiry- DOB	Identification/ DfE Required
26	Medication expiry- Name of medication expiring	Record Keeping
27	Medication expiry- Expiry Date	Record Keeping
28	School health care plan- Student name	Identification/ DfE Required
29	School health care plan- DOB	Identification/ DfE Required
30	School health care plan- Medical Condition	Record Keeping/ DfE Required
31	School health care plan- Is condition ongoing	Record Keeping/ DfE Required
32	School health care plan- Medicaiton name	Record Keeping/ DfE Required
33	School health care plan- Dosage of medication	Record Keeping/ DfE Required
34	School health care plan- Side effects of medication	Record Keeping/ DfE Required
35	School health care plan- Times medication needs to be taken	Record Keeping
36	School health care plan- Date medication dispensed	Record Keeping
37	School health care plan- Expiry date of medication	Record Keeping
38	School health care plan- Self administered	Record Keeping/ DfE Required
39	School health care plan- Special precautions	Record Keeping
40	School health care plan- Student's condition(s) and individual symptoms	Record Keeping/ DfE Required
41	School health care plan- Daily care requirements	Record Keeping/ DfE Required
42	School health care plan- Procedures to take in an emergency	Record Keeping/ DfE Required
43	School health care plan- Follow up care	Record Keeping/ DfE Required
44	School health care plan- Who is responsible	Record Keeping/ DfE Required
45	School health care plan- GP Details	Record Keeping
46	School health care plan- Notes	Record Keeping
47	Medication consent- Student name	Identification/ DfE Required
48	Medication consent- DOB	Identification/ DfE Required
49	Medication consent- Medical condition	Record Keeping/ DfE Required
50	Medication consent- Medicaftion name	Record Keeping/ DfE Required

51	Medication consent- Last date medication needs to be taken	Record Keeping/ DfE Required
52	Medication consent- Time medication needs to be taken	Record Keeping/ DfE Required
53	Medication consent- Date medication dispensed	Record Keeping
54	Medication consent- Self administered	Record Keeping/ DfE Required
55	Medication consent- Special precautions	Record Keeping
56	Medication consent- Notes	Record Keeping
57	Injury incident- Student name	Identification/ DfE Required
58	Injury incident- DOB	Identification/ DfE Required
59	Injury incident- Name of first aider	Record Keeping/ DfE Required
60	Injury incident- Date of incident	Record Keeping/ DfE Required
61	Injury incident- Time of incident	Record Keeping/ DfE Required
62	Injury incident- Location of incident	Record Keeping/ DfE Required
63	Injury incident- Injured area	Record Keeping/ DfE Required
64	Injury incident- Injury/ Symptoms	Record Keeping/ DfE Required
65	Injury incident- Injury description	Record Keeping
66	Injury incident- How it happened	Record Keeping/ DfE Required
67	Injury incident- How it happened (more information)	Record Keeping
68	Injury incident- Treatment administered	Record Keeping/ DfE Required
69	Injury incident- What happened next	Record Keeping/ DfE Required
70	Injury incident- Notes	Record Keeping
71	Illness incident- Student name	Identification/ DfE Required
72	Illness incident- DOB	Identification/ DfE Required
73	Illness incident- Date of illness	Record Keeping
74	Illness incident- Time of illness	Record Keeping
75	Illness incident- Name of first aider	Record Keeping
76	Illness incident- Symptoms	Record Keeping
77	Illness incident- Location of illness	Record Keeping
78	Illness incident- Feeling ill description	Record Keeping
79	Illness incident- Treatment administered	Record Keeping

80	Illness incident- What happened next	Record Keeping
81	Illness incident- Notes	Record Keeping
82	Staff/ Visitor incident- Name of first aider	Record Keeping
83	Staff/ Visitor incident- Location of incident	Record Keeping
84	Staff/ Visitor incident- Date of incident	Record Keeping
85	Staff/ Visitor incident- Time of incident	Record Keeping
86	Staff/ Visitor incident- Injury description	Record Keeping
87	Staff/ Visitor incident- How it happened	Record Keeping
88	Staff/ Visitor incident- Title of injured person	Identification
89	Staff/ Visitor incident- Forename of injured person	Identification
90	Staff/ Visitor incident- Last name of injured person	Identification
91	Staff/ Visitor incident- Address of injured person	Identification/ Communication
92	Staff/ Visitor incident- Phone number of injured person	Identification/ Communication
93	Staff/ Visitor incident- Gender of injured person	Identification
94	Staff/ Visitor incident- Kind of accident	Record Keeping
95	Staff/ Visitor incident- Work process involved in the incident?	Record Keeping
96	Staff/ Visitor incident- Main factor involved in the incident?	Record Keeping
97	Staff/ Visitor incident- About the severity of the person's injuries	Record Keeping
98	Staff/ Visitor incident- Notes	Record Keeping
99	Near miss incident- Assessor/Reporter	Identification
100	Near miss incident- Location of near miss	Record Keeping
101	Near miss incident- Witness Name	Identification
102	Near miss incident- Position/Department	Record Keeping
103	Near miss incident- What activity were they engaged in at the time of the incident?	Record Keeping
104	Near miss incident- Date of near miss	Record Keeping
105	Near miss incident- Time of near miss	Record Keeping
106	Near miss incident- What happened?	Record Keeping
107	Near miss incident- Give an account of the incident, including any relevant events leading to the incident	Record Keeping
108	Near miss incident- What was the outcome? Any damage?	Record Keeping
109	Near miss incident- Give an account of the incident outcome and if any damage.	Record Keeping
110	Near miss incident- Details of action taken	Record Keeping
111	Near miss incident- Any other relevant information	Record Keeping
112	Near miss incident- Is the incident RIDDOR reportable?	Record Keeping
113	Near miss incident- Have risk assessments and safe systems been reviewed following the incident?	Record Keeping

114	Member of staff- Title	Identification
115	Member of staff- First name	Identification
116	Member of staff- Last name	Identification
117	Member of staff- Phone number	Communication
118	Member of staff- Email address	Communication
119	Member of staff- Job title	Identification
120	Member of staff- Are you a qualified first aider?	Record Keeping
121	Member of staff- Room location	Record Keeping
122	Member of staff- Qualification	Record Keeping
123	Member of staff- Qualification obtained on?	Record Keeping
124	Member of staff- Qualification expires on?	Record Keeping
125	Main First Aider's Details- Name	Identification
126	Main First Aider- Email	Communication
127	Health and Safety Officer- Name	Identification
128	Health and Safety Officer- Email	Communication
129	Head Teacher- Name	Identification
130	Head Teacher- Email	Communication
131	School Business Manager/Finance Officer- Name	Identification
132	School Business Manager/Finance Officer- Email	Communication
133	School Nurse's Details- Name	Identification
134	School Nurse's Details- Email	Communication
135	Daily medication use reminders- Name	Identification
136	Daily medication use reminders- Email	Communication
137	Medication expiry reminders contact- Name	Identification
138	Medication expiry reminders contact- Email	Communication
139	First aid qualification expiry reminders- Name	Identification
140	First aid qualification expiry reminders- Email	Communication
141	Main email address for parents to reply- Email	Communication

Duration: Personal Data will be processed as stated in 13.4 of the agreement.

### **3. Nature and Purposes of processing**

To provide first aid and medication management information systems and services for the education market in the form of Medical Tracker Products and Services. Making Customer data available via a cloud application in the form of the Medical Tracker Products and Services.

### **4. Security measures for Personal Data**

As of the Effective Date of this DP Agreement, when Processing Personal Data on behalf of the Customer in connection with the Service, Data Processor shall implement and maintain the following technical and organisational security measures for the Processing of such Personal Data ("Security Measures"):

- **Physical Access Controls:** Data Processor shall take reasonable measures to prevent physical access, such as security personnel and secured buildings and factory premises, to prevent unauthorised persons from gaining access to Personal Data, or ensure Third Parties operating data centres on its behalf are adhering to such controls.
- **System Access Controls:** Data Processor shall take reasonable measures to prevent Personal Data from being used without authorisation. These controls shall vary based on the nature of the Processing undertaken and may include, among other controls: authentication via passwords; two-factor authentication; documented authorisation processes; documented change management processes; and/or, logging of access on several levels.
- **Data Access Controls:** Data Processor shall take reasonable measures to provide that: Personal Data is accessible and manageable only by properly authorised staff; direct database query access is restricted; application access rights are established and enforced to ensure that persons entitled to use a data processing system only have access to the Personal Data to which they have privilege of access; and, that Personal Data cannot be read, copied, modified or removed without authorisation in the course of Processing.
- **Transmission Controls:** Data Processor shall take reasonable measures to ensure that it is possible to check and establish to which entities the transfer of Personal Data by means of data transmission facilities is envisaged so Data cannot be read, copied, modified or removed without authorisation during electronic transmission or transport.
- **Input Controls:** Data Processor shall take reasonable measures to provide that it is possible to check and establish whether and by whom Data has been entered into, modified or removed from data processing systems. Data Processor shall take reasonable measures to ensure that (i) the Personal Data source is under the control of the Customer; and (ii) Personal Data integrated into the Service is managed by secured transmission from the Customer.
- **Data Backup:** Back-ups of the databases in the Service are taken on a regular basis, are secured, and encrypted to ensure that Personal Data is protected against accidental destruction or loss when hosted by Data Processor.
- **Data Security:** Where appropriate and reasonable, Data Processor should make use of accepted Data Security controls including but not limited to encryption, pseudonymisation and anonymisation.
- **Logical Separation:** Data from different Data Processor's Customers is logically segregated on Data Processor's systems to ensure that Personal Data that is collected for different purposes may be Processed separately.
- **Network Security Controls:** Data Processor shall implement appropriate network security controls based on risk assessment as it relates to Data Protection; commonly including Firewalls, Anti-Malware and system logging.

- Security Testing and Assurance: Data processor shall establish mechanisms for testing and assessing the effectiveness of technical or organisational measures used for establishing Information Security.