



## MASTER SUBSCRIPTION AGREEMENT - TERMS AND CONDITIONS

This Master Subscription Agreement (this "**Agreement**") is between Tympa Health Technologies Inc. ("**we**", "**us**", "**our**", or "**TympaHealth**"), a Delaware corporation having its registered office at 777 Brickell Avenue, Suite 582, Miami, FL 33131, and the customer named in the Order Form (defined below) ("**you**", "**your**", or the "**Customer**").

### RECITALS

- A. TympaHealth provides communities with accessible and affordable ear and hearing healthcare by providing a technology platform that allows customers to interact with third-party ear and hearing specialists. To achieve this, it has relationships with health professionals including pharmacies, general practitioner clinics, primary and urgent care clinics, hospitals, audiologists and opticians to support them providing ear and hearing healthcare to the public.
- B. TympaHealth has developed certain hardware, software and service channels which it makes available for the purpose of providing ear and hearing healthcare, and the Customer wishes to use TympaHealth's services in its provision of healthcare.
- C. TympaHealth agrees to provide, and the Customer has agreed to receive and pay for, TympaHealth's services subject to the terms and conditions of this Master Subscription Agreement.

### 1. DEFINITIONS

"**Affiliate**" means any entity that a party hereto is in common control with, controlled by, or controls.

"**Applicable Laws**" means all applicable laws, statutes, regulations and codes.

"**Business Day**" means a day other than a Saturday, Sunday on which commercial banks in New York, New York are open for the general transaction of business, provided that banks shall be deemed to be generally open for the general transaction of business in the event of a "shelter in place" or similar closure of physical branch locations at the direction of any governmental authority if such banks' electronic funds transfer system (including for wire transfers) are open for use by customers on such day.

"**Captured Data**" means data and information entered into the Services by you, captured via the Services as a result of your use, or made available to TympaHealth in connection with your receipt of Services, including all images and procedure results generated by the Software or otherwise produced through your use of the Services.

"**Commencement Date**" means the earlier of when you attend a training event or 30 days from the Effective Date.

"**Confidential Information**" means all information disclosed by or otherwise obtained from a party ("**Disclosing Party**") to or by the other party ("**Receiving Party**"), whether orally, visually, or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.

"**Consumables**" means the separately purchased, one-time or otherwise limited use accessories, add-ons or other consumables, purchased by Customer pursuant to an Order Form or another method designated by TympaHealth. Consumables does not include Hardware.

"**Defect**" means an error in the Hardware or Consumables that causes it to fail to operate substantially in accordance with the relevant Documentation and not caused due to any fault or negligence of the Customer.

777 Brickell Avenue, Suite 582  
Miami FL 33131

[tympahealth.com](http://tympahealth.com)





**"Derived Data"** means Captured Data that has been deidentified, or aggregated with other data, such that the resulting data no longer reasonably identifies a specific individual.

**"Documentation"** means the operating manuals, user instructions, product specifications, technical literature and all other related materials in human-readable and/or machine-readable form supplied to the Customer by TympaHealth for aiding the use and application of the Services or Consumables, as applicable.

**"Effective Date"** means the date on when the Order Form is signed by the Customer.

**"Hardware"** means the equipment provided by TympaHealth to the Customer pursuant to an Order Form, including all hardware on which the Software is loaded or through which the Software is accessed or via which the Services are accessed. Hardware excludes Consumables.

**"Initial Subscription Term"** means the initial subscription term set forth on the applicable Order Form. If no initial term is specified on an Order Form, the initial subscription term shall be 36 months from the Commencement Date.

**"Intellectual Property Rights"** means all rights in or to any of the following: (a) patents; (b) trademarks, service marks, trade dress, trade names, logos; (c) copyrights, mask works and data and databases; (d) trade secrets, know-how and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and all similar or equivalent rights or forms of protection provided by Applicable Laws in any jurisdiction throughout the world.

**"Location"** means the location(s) at which the Hardware is to be installed as specified in the relevant Order Form.

**"Normal Business Hours"** means 9.00 am to 5.00 pm Eastern Standard Time, each Business Day.

**"Order Form"** means an ordering document or online order referencing this Agreement and specifying the Services or Consumables to be provided.

**"Remote Review"** means a reading and analysis of the imaging and other Information transmitted by the Software and/or Hardware from a Customer's patient to a Remote Reviewer (or a licensed third-party specialist), as described in Schedule D, for the purposes screening for auditory conditions.

**"Renewal Period"** has the meaning given in Section 13.1.

**"Services"** means all products and services provided by TympaHealth pursuant to an Order Form, including but not limited to all Hardware and Software (including access to the online database where Captured Data is stored) delivered to the Customer, Remote Review Services, and any other additional products and services TympaHealth agrees to provide to the Customer from time to time in writing. Services excludes Consumables.

**"Software"** means the software applications specified in an Order Form and all operating software provided by TympaHealth that is loaded onto or accessed from the Hardware, and shall include all modifications, updates and extensions to those services from time to time.

**"Subscription Term"** has the meaning set forth in Section 13.1.

**"Usage Data"** means Captured Data generated from the use of the Services, which does not identify individual users, any other natural human persons, or Customer, such as technical logs, data, metadata, and learnings about Customer's use of the Services or Consumables.



## **2. PROVISION OF SERVICES**

- 2.1 Users are required to undertake the training set forth in the Training Addendum (attached as Schedule B) prior to receiving the Services. If we require such training, then only Customer employees trained to use the Services by TympaHealth are permitted to use the Services.
- 2.2 We shall, during the Subscription Term, provide the Services to you in accordance with the terms of this Agreement and the applicable Order Form.
- 2.3 We shall provide you with the Hardware and Software for the purposes of accessing and using the Services.
- 2.4 We shall use commercially reasonable endeavours to make the Services available during Normal Business Hours, except for:
  - (a) planned maintenance carried out with at least forty-eight (48) hours' notice; and
  - (b) unscheduled maintenance performed outside of Normal Business Hours, provided that we have used reasonable endeavours to give you at least twenty-four (24) hours' notice in advance;
  - (c) any unavailability caused by circumstances beyond our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labour problem (other than one involving our employees), Internet service provider failure or delay, denial of service attack, or any third-party application.
- 2.5 We shall provide training to you on the Services if, and as, specified in the Order Form.
- 2.6 We may from time to time offer you other services in addition to the Services. Such additional services will be provided at our discretion and may be subject to separate terms and conditions.
- 2.7 All Hardware is provided on an "as-a-service" basis, and TympaHealth retains title to all Hardware.

## **3. SUPPORT SERVICES**

- 3.1 We shall use commercially reasonable efforts to provide the support and make the Service available in accordance with the Support Terms and Service Levels Addendum set forth in **Schedule C ("SLA")**. You may contact the appropriate TympaHealth resource during Normal Business Hours at the contact information set forth in **Schedule C**. The provision of support services does not guarantee that we shall be successful in correcting any Defects, bug fixes or errors.
  - 3.2 Notwithstanding the foregoing, if there is any issue with the Hardware or Software that is not, in our reasonable opinion, a Defect, including due to your fault or negligence, or breach by you of any of your obligations under this Agreement, we may charge you on a time and materials basis at our standard rates to remedy such issues, and you shall be liable for all associated costs and expenses, such as travel, cost of replacement parts or spares, installation costs, which shall be invoiced to you separately.
- 4. CONSUMABLES.** TympaHealth shall deliver the Consumables FOB Origin (Uniform Commercial Code) for the delivery location specified in the applicable Order Form, at which time risk of loss and title will pass to the Customer. TympaHealth will use commercially reasonable efforts to provide the Customer with an estimated delivery date for each unit of Consumables. However, such delivery date is a good-faith estimate only and is not binding on TympaHealth. The prices for Consumables will be reviewed every quarter and any changes will be communicated to the Customer

## **5. CUSTOMER OBLIGATIONS**

- 5.1 You shall:



- (a) use the Services and Consumables only in accordance with this Agreement, the Documentation, Order Forms and Applicable Laws;
  - (b) prevent unauthorized access to or use of the Services and Consumables, and shall notify us promptly of any such unauthorized access or use;
  - (c) be responsible for the accuracy, quality and legality of Captured Data, and the means by which you acquired the Captured Data, that you input into the Services, including compliance with all Applicable Laws;
  - (d) inspect the Hardware and Consumables on delivery and notify us immediately in writing of any Defects in the Hardware or Consumables;
  - (e) be responsible for installing the Hardware at the Location in accordance with our instructions, unless otherwise agreed in writing with us;
  - (f) use the Hardware and Consumables in a proper manner and in accordance with any operating instructions issued for it, and shall ensure that your staff are properly trained to use and/or supervise the use of the Hardware or Consumables;
  - (g) not, allow any person other than a representative of TympaHealth to modify, repair or maintain any part of the Hardware;
  - (h) not transfer, sell, assign, sub-license, pledge or otherwise dispose of, encumber or suffer a lien or encumbrance upon or against any interest in the Hardware;
  - (i) not lend or hire the Services to any third party without our prior written consent;
  - (j) insure the Hardware for so long as it is in your possession;
  - (k) notify us in writing immediately of any loss of or damage to the Hardware, and you shall make us whole against any loss or damage to the Hardware while your possession, excluding damage which in our opinion constitutes wear and tear in the ordinary course of use;
  - (l) remove all Captured Data from the Hardware before returning the Hardware to us;
  - (m) be solely responsible for procuring and maintaining the network connections and telecommunications links from your systems to the Software and our data centres, and for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet;
  - (n) provide us with all necessary cooperation in relation to our provision of the Services, including all necessary access to such information as may be required by us in order to provide the Services; and
  - (o) only use Consumables in connection with utilizing the Services.
- 5.2 You shall not use the Services to access, store, distribute or transmit any harmful software or material, including but not limited to viruses, or any other material that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - (b) facilitates illegal activity;
  - (c) depicts sexually explicit images;
  - (d) promotes unlawful violence;
  - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or
  - (f) causes damage or injury to any person or property.



5.3 You shall not, except as may be required to be allowed by Applicable Law:

- (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Hardware, Software, Consumables and/or Documentation (as applicable) in any form or media or by any means;
- (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Hardware, Consumables, or Software;
- (c) access all or any part of the Services, Consumables, or Documentation in order to build a product or service which competes with the Services and/or the Documentation;
- (d) use the Services, Consumables, and/or Documentation to provide services to third parties, except as otherwise provided for in this Agreement;
- (e) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services, Consumables, and/or Documentation available to any third party; or
- (f) attempt to obtain, or assist third parties in obtaining, access to the Services, Consumables, and/or Documentation, other than as provided under this Agreement or any Order Form.

5.4 In the event your use of any of the Services or Consumables is in breach of this Section 5 or any other provision of this Agreement, the Documentation or applicable Order Form, without prejudice to any other rights and remedies including the right to terminate, we may suspend the Services until you remedy the breach.

5.5 Subject to us complying with your reasonable applicable policies, as notified to us by you from time to time, you shall allow our personnel such access to your premises as is reasonably necessary for us to carry out its obligations to you pursuant to this Agreement. You shall provide to us all permissions necessary to obtain such access.

## 6. INDEMNITY

6.1 You shall defend, indemnify and hold us and our Affiliates harmless against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with any third-party claim brought against us arising out of, based upon, or in connection with your breach of any of the provisions of this Agreement, your use of the Services, Consumables, and Captured Data (other than our use of Captured Data in breach of this Agreement), including any actual or alleged infringement of a third party's Intellectual Property Rights, Data Protection Laws (as defined in Schedule A) or other obligations through the processing of Captured Data by TympaHealth.

## 7. CHARGES AND PAYMENT

7.1 Customer will pay TympaHealth the fees and any other amounts owing under this Agreement as specified in the applicable Order Form (including the specified currency). Unless otherwise specified in such Order Form, Customer will pay all amounts due within 30 days of the date of the applicable invoice. Customer will reimburse any costs or expenses (including, but not limited to, reasonable attorneys' fees) incurred by TympaHealth to collect any amount that is not paid when due.

7.2 Other than net income taxes imposed on TympaHealth, Customer will bear all taxes, duties, and other governmental charges (collectively, "**Taxes**") resulting from this Agreement, including withholding Taxes. Customer will pay any additional amounts as are necessary to ensure that the net amounts received by TympaHealth after all such withholding Taxes are paid are equal to the amounts to which TympaHealth would have been entitled in accordance with this Agreement if such additional withholding Taxes were not payable.



7.3 If we have not received payment within 30 days after the due date, unless you are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute, without prejudice to any other rights and remedies it may have, we may, without liability to you, suspend access to the Services while the invoice(s) concerned remain unpaid or terminate this Agreement.

7.4 You are responsible for providing complete and accurate billing and contact information to us and for notifying us of any changes to such information. We shall be entitled to increase the charges for the Services at the start of each Renewal Period upon 90 days' notice to you. The prices for the Services set forth in the Order Form do not include any upgrades to the Services or new product features that TympaHealth may make available to its other customers. Should you be entitled to receive payment through any Services we provide, the specific terms for payment shall be set out in TympaHealth's product and service specification or communicated to you in writing from time to time.

## **8. PROPRIETARY RIGHTS**

8.1 You acknowledge and agree that, as between the parties, we and/or our licensors own all Intellectual Property Rights in and to the Services, Consumables and the Documentation. Except as expressly stated herein, this Agreement does not grant you any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licenses in respect of the Services, Consumables, or the Documentation.

8.2 You shall own all rights, title and interest in and to all of the Captured Data. You hereby grant us a non-exclusive, worldwide, royalty-free, fully paid, sublicensable, fully transferable, irrevocable license to use, process, transmit, store, disclose, and otherwise exploit in full: (a) the Captured Data during the Term for the purpose of exercising TympaHealth's rights and performing its obligations under this Agreement, including to develop and improve its and its Affiliates' products and services and to generate Derived Data; and (b) Derived Data and Usage Data in perpetuity for TympaHealth's and its Affiliates' business purposes. Notwithstanding the foregoing, we may continue to generate Derived Data from Captured Data for so long as such Captured Data is in our possession pursuant to Section 13.

8.3 You represent and warrant that you have all rights necessary to grant the rights set forth in Section 8.2 without violation or infringement of the rights of any third party.

8.4 If Customer provides any feedback to TympaHealth or its Affiliates concerning the functionality and performance of the Services, Consumables, or any Documentation (including identifying potential errors and improvements), Customer hereby agrees that TympaHealth (and its Affiliates and successors) exercise all rights in the feedback without payment or restriction.

## **9. DATA PRIVACY AND SECURITY**

9.1 We will maintain administrative, physical, and technical safeguards designed to protect the security, confidentiality and integrity of Captured Data. Those safeguards will include, but will not be limited to, measures designed to prevent access, use, modification or disclosure of Captured Data by our personnel except (a) to provide the Services and prevent or address service or technical problems, (b) as compelled by law in accordance with the "Confidentiality" Section below, or (c) as expressly permitted in writing by you (including as set forth in this Agreement), and for backing-up Captured Data in accordance with our data retention policy (available on request).

9.2 To the extent that Personal Data (as defined in schedule A) is included in Captured Data and is subject to Data Protection Law (as defined in Schedule A), we process such Personal Data in accordance with the terms of the data processing addendum (**DPA**) attached to this Agreement as Schedule A.



9.3 The parties acknowledge and agree that TympaHealth is a "health care provider" and that Customer is a "covered entity," as such terms are defined by the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder (collectively, "HIPAA"). The parties further acknowledge and agree that Customer, as a "covered entity," may disclose protected health information ("PHI") to TympaHealth, as a "health care provider," without a business associate agreement between the parties for the purposes provided at 45 C.F.R. 164.506(c), including but not limited to: (i) Customer's own treatment, payment, or health care operations and (ii) for TympaHealth's own treatment or payment activities. Terms used but not otherwise defined in this Section 9.3 shall have the meaning given to such terms under HIPAA.

9.4 We shall not be responsible for:

- (a) any loss, destruction, alteration or disclosure of the Captured Data, where the Hardware is not synchronised with TympaHealth's cloud platform;
- (b) any delays, delivery failures, or any other loss or damage resulting from the transfer of Captured Data and any other data over communication networks and facilities, including the internet.

## 10. WARRANTIES AND DISCLAIMERS

10.1 We warrant that during an applicable Subscription Term the Hardware and the Software will perform materially in accordance with the applicable Documentation. For any breach of this warranty, your exclusive remedies are:

- (a) repair of Defects or replacement of defective Hardware and/or Software; or
- (b) termination in accordance with Section 13.3(a) and a refund of prepaid fees corresponding to Services not provided.

10.2 We warrant that during an applicable Subscription Term the Services will perform materially in accordance with the applicable Documentation. For breach of this warranty, your exclusive remedies are:

- (a) our use of reasonable endeavours to remedy any such failure pursuant to the SLA; or
- (b) termination in accordance with Section 13.3(a) and a refund of prepaid fees corresponding to Services not provided.

10.3 We warrant that, for a period of 90 days from the date of shipment, the Consumables as delivered will conform in all material respects to the applicable Documentation. You may notify us in writing of any material Defects during the warranty period, in which case, upon our reasonable determination that the Defect was due to defective materials or workmanship, we shall, at our option, either (a) replace non-conforming Consumables, at our cost, and deliver the conforming Consumables to you, or (b) credit you for any non-conforming Consumables. Any such replacement provided to you will not extend the original warranty period. The foregoing sets forth our exclusive obligation and your sole and exclusive remedy for any breach of the foregoing warranty. You may be required to return to us any allegedly defective Consumables.

10.4 The limited warranties in Section 10.1, 10.2, and 10.3 shall not apply to the extent any non-conformance is caused by use of the Hardware, Consumables, Software and/or Services contrary to our instructions, or modification or alteration of the Hardware, Consumables, Software and/or Services by any party other than us or our duly authorised contractors or agents.

10.5 Each party represents and warrants to the other that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms and (b) no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of this Agreement.





- 10.6 In no event shall we be liable for unavailability, inaccuracies, incompleteness or errors in the data captured or input by you or your customers using the Services or results provided through the Services.
- 10.7 TymphaHealth and its employees and staff do not provide medical advice or services within the scope of the practice of medicine. TymphaHealth's services under this Agreement are limited to the provision technology, including Hardware and Software products, product-related services, and access to licensed Remote Reviewers who are employed for this purpose and the additional independent contractors supporting them who agree to render ear and hearing related services through the technology platform. TymphaHealth does not independently verify the information provided by third parties and is not liable or responsible for any services, information, or content provided by third-party independent contractors. Use of our Hardware or Software products does not create a doctor-patient relationship between you and TymphaHealth. Healthcare professionals who use our products and services should exercise their own professional judgment when using our products and services, including services provided by third parties. We assume no responsibility for any consequences relating directly or indirectly to any action or inaction you may take based upon the information or services provided by third parties.
- 10.8 EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS SECTION 10 OR AN ORDER FORM, WE MAKE NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. WE EXPRESSLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. WE DO NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OR USE OF THE SERVICES. WE DO NOT WARRANT THAT THE SERVICES, CONSUMABLES, DOCUMENTATION ARE ERROR-FREE OR THAT OPERATION OF THE SERVICES WILL BE SECURE OR UNINTERRUPTED. WE DO NOT WARRANT THAT ANY INFORMATION PROVIDED BY THE SERVICES OR DOCUMENTATION, IS ACCURATE OR COMPLETE OR THAT ANY SUCH INFORMATION WILL ALWAYS BE AVAILABLE. WE EXERCISE NO CONTROL OVER, AND EXPRESSLY DISCLAIM ANY LIABILITY ARISING OUT OF OR BASED UPON THE RESULTS OF, CUSTOMER'S USE OF THE SERVICES, CONSUMABLES, OR DOCUMENTATION, OR ANY THIRD PARTY TECHNOLOGY USED TO RECEIVE OR PROVIDE THE SERVICES.

## **11. LIMITATION OF LIABILITY**

- 11.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, TYMPAHEALTH AND ITS AFFILIATES WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, ARISING OUT OF OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, EVEN IF TYMPAHEALTH OR ITS AFFILIATES ARE APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. WITHOUT LIMITING THE FOREGOING, UNDER NO CIRCUMSTANCES WILL TYMPAHEALTH AND ITS AFFILIATES BE LIABLE FOR ANY LOSS OF DATA STORED IN, OR IN CONNECTION WITH, THE SERVICES.
- 11.2 UNDER NO CIRCUMSTANCES WILL TYMPAHEALTH'S AND ITS AFFILIATES' TOTAL LIABILITY OF ALL KINDS, IN AGGREGATE, ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO TYMPAHEALTH UNDER THE ORDER FORM WITH RESPECT TO WHICH THE LIABILITY AROSE DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE CLAIM.
- 11.3 EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED IN THIS AGREEMENT, YOU ASSUME SOLE RESPONSIBILITY FOR RESULTS OBTAINED FROM YOUR USE OF THE SERVICES, CONSUMABLES, AND THE DOCUMENTATION, AND FOR CONCLUSIONS DRAWN FROM SUCH USE. WE SHALL HAVE NO LIABILITY FOR ANY DAMAGE CAUSED BY ERRORS OR OMISSIONS IN ANY INFORMATION, INSTRUCTIONS OR SCRIPTS PROVIDED TO US BY YOU IN CONNECTION WITH THE SERVICES, OR ANY ACTIONS TAKEN BY US AT YOUR DIRECTION.





- 11.4 EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY TYMPAHEALTH TO CUSTOMER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT. THE LIMITATIONS IN THIS SECTION 11 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS AGREEMENT.

## 12. CONFIDENTIALITY

- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the Receiving Party;
  - (b) was rightfully in the Receiving Party's possession before the disclosure;
  - (c) is rightfully disclosed to the Receiving Party by a third party without restriction on disclosure; or
  - (d) is independently developed by the Receiving Party without use of or reference to Confidential Information, which independent development can be shown by written evidence.
- 12.2 Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information for any purpose outside the scope of this Agreement and (ii) except as otherwise authorised by the Disclosing Party in writing, limit access to Confidential Information to those of Receiving Party's employees and contractors who need to access such Confidential Information for purposes consistent with this Agreement and who have signed confidentiality agreements containing protections not materially less protective of the Confidential Information than those herein.
- 12.3 Notwithstanding the foregoing, Receiving Party may disclose Confidential Information to the extent compelled by law to do so, provided Receiving Party gives Disclosing Party prior written notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if Disclosing Party wishes to contest the disclosure.
- 12.4 This Section 12 shall survive termination or expiration of this Agreement, however arising. Nothing in this Section 12 shall limit other rights expressly granted in this Agreement to Captured Data or Derived Data.

## 13. TERM AND TERMINATION

- 13.1 This Agreement commences on the Effective Date and will remain in effect until terminated in accordance with this Section 13 (the "**Term**"). Each Order Form shall continue for the Initial Subscription Term set forth therein, and thereafter except as may be set forth on the Order Form, shall be automatically renew for successive periods equalling the Initial Subscription Term (each a "**Renewal Period**" and, together with the Initial Subscription Term, the "**Subscription Term**") unless either party notifies the other party of its intent not to renew such Order Form in writing at least 30 days before the end of the Initial Subscription Term or any Renewal Period or the Order Form is otherwise terminated in accordance with the provisions of this Agreement.
- 13.2 If either party notifies the other party of termination in writing at least 30 days before the end of the first 12-month period of the Initial Subscription Term or any Renewal Period, the Order Form shall terminate upon expiry of such 12-month period of the Initial Subscription Term or Renewal Period, and you shall only be liable for payment for such 12-month period and not for the full Initial Subscription Term or Renewal Period.



- 13.3 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement or one or more Order Forms:
- (a) upon thirty (30) days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period; or
  - (b) immediately on written notice if the other party becomes the subject of a petition in bankruptcy or any other proceeding (whether voluntary or involuntary), relating to insolvency, administration, receivership, administrative receivership, liquidation or assignment for the benefit of creditors or takes or suffers any similar or analogous procedure, action or event in consequence of debt in any jurisdiction.
- 13.4 Without prejudice to any other rights or remedies to which the parties may be entitled, TymphaHealth may terminate this Agreement by written notice with immediate effect where:
- (a) you materially breach any of your obligations under Section 5;
  - (b) you use our brand names, logos and/or trademarks without our consent or your use our brand names, logos and/or trademarks which is likely, in our reasonable opinion, to cause harm to our reputation and goodwill in any jurisdiction.
- 13.5 On expiration or termination of this Agreement for any reason:
- (a) all licenses granted by us under this Agreement, your right to use the Services shall immediately terminate;
  - (b) you shall remove all Captured Data from the Hardware and return (at your expense) and make no further use of the Hardware, Software, Documentation and other items (and all copies of them) belonging to us;
  - (c) you shall immediately pay to us any sums due under this Agreement.
  - (d) we will refund you within a reasonable amount of time any prepaid fees for the Services covering the remainder of the Subscription Term of all Order Forms after the effective date of termination where you have terminated the Agreement pursuant to our material breach of this Agreement;
  - (e) you shall not be entitled to any payments that may accrue and be due to you after the date of termination; and
  - (f) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced. In no event will termination relieve your obligation to pay any fees payable to us for the period prior to the effective date of termination.
- 13.6 Within 90 days after the expiry or termination of this Agreement for any reason, we shall deliver, to a secure location provided by you (for example SFTP server or cloud repository), a copy of the most recent back up of the Captured Data and thereafter delete our copy of Captured Data, provided you have, at that time, paid all fees and charges outstanding at and resulting from expiry or termination. You acknowledge that such data may be in an unstructured format.
- 13.7 Subject to Section 13.6, all Captured Data will be deleted 60 days after expiry or termination of the Agreement. Prior to expiry or termination, you will be able to extract Captured Data in accordance with this Agreement.

#### 14. GENERAL

- 14.1 **Assignment.** Neither party may assign its right, duties, or obligations under this Agreement without the other party's prior written consent, which consent will not be unreasonably withheld or delayed; provided, however, either party may assign this Agreement in its entirety (including all Order Forms),



without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganisation, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if the Customer is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of TympaHealth, then we may terminate this Agreement upon written notice. TympaHealth may utilize subcontractors or other third parties to perform its duties under this Agreement so long as TympaHealth remains responsible for all of its obligations under this Agreement.

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

**14.3 Notices.**

- (a) Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the applicable Order Form, or such other address as may have been notified by that party for such purposes, or sent by email save that formal legal notices will also be sent by post. Invoices and billing notices shall be sent by email to the address given in the Order Form.
- (b) A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of transmission (as shown by the copy of the sent email obtained by the sender).

**14.4 Waiver.** A waiver of any right under this Agreement is only effective if it is in writing and signed by the waiving party, and it applies only to the person to whom the waiver is addressed and the circumstances for which it is given. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

**14.5 Severance.** If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

**14.6 Publicity.**

- (a) You agree that we may publicize that you are a customer of TympaHealth and you agree to provide us, on our reasonable request, with testimonials, statements for press releases and to participate in case studies.
- (b) You grant us a non-exclusive right to use your name, brand, or logo solely for the purpose of identifying Customer as a licensee or customer of TympaHealth in a 'customer' section of our website, brochures, or other promotional materials, or as part of a list of our customers in a press release or other public relations materials.
- (c) You shall not have the right to use any of TympaHealth's names, logos or trademarks without our prior written consent.



- 14.7 **Third Party Rights.** This Agreement, and the documents referred to in it, are made for the benefit of the parties to them and their successors and permitted assigns and are not intended to benefit, or be enforceable by, anyone else.
- 14.8 **Entire Agreement.** This Agreement, including all exhibits and Order Forms, is the final and complete expression of the agreement between these parties regarding the subject matter hereof. This Agreement supersedes, and the terms of this Agreement govern, all previous oral and written communications regarding these matters, all of which are merged into this Agreement, except that this Agreement does not supersede any prior nondisclosure or comparable agreement between the parties executed prior to this Agreement being executed, nor does it affect the validity of any agreements between the parties relating to other products or services of TympaHealth that are not described in an Order Form and with respect to which Customer has executed a separate agreement with TympaHealth that remains in effect. No employee, agent, or other representative of TympaHealth has any authority to bind TympaHealth with respect to any statement, representation, warranty, or other expression unless the same is specifically set forth in this Agreement. No usage of trade or other regular practice or method of dealing between the parties will be used to modify, interpret, supplement, or alter the terms of this Agreement. This Agreement may be changed only by a written agreement signed by an authorized agent of the party against whom enforcement is sought. TympaHealth will not be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to this Agreement (whether or not it would materially alter this Agreement) that is proffered by Customer in any receipt, acceptance, confirmation, correspondence, purchase order, business form, or otherwise, unless TympaHealth specifically provides a written acceptance of such provision signed by an authorized agent of TympaHealth.
- 14.9 **Export.** Customer will comply with all applicable export and import laws, rules, and regulations in connection with Customer's activities under this Agreement. Customer acknowledges that it is Customer's responsibility to obtain any required licenses to export and re-export the Services. The Services, including technical data, are subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Customer represents and warrants that the Services are not being and will not be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals and persons on the Table of Denial Orders, the Entity List or the List of Specifically Designated Nationals, unless specifically authorized by the U.S. Government for those purposes.
- 14.10 **Conflict.** In the event of any conflict between this Agreement and an Order Form, the Order Form shall prevail.
- 14.11 **Governing Law and Jurisdiction.** This Agreement will be interpreted, construed, and enforced in all respects in accordance with the local laws of the State of New York, and not including the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. Each party hereby irrevocably consents to the exclusive jurisdiction and venue of the federal, state, and local courts in New York, New York in connection with any action arising out of or in connection with this Agreement.



Signed by each party's authorised representative:

**TYMPA HEALTH TECHNOLOGIES INC**

**CUSTOMER**

By (Signature): \_\_\_\_\_

By (Signature): \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## SCHEDULE A

### DATA PROCESSING ADDENDUM

This Data Processing Addendum (“**DPA**”) amends and forms part of the written agreement between TympaHealth, as defined above (“**Company**”) and Customer, as defined above (“**Customer**”) titled Master Subscription Agreement and dated [Complete] (the “**Agreement**”). This DPA prevails over any conflicting term of the Agreement but does not otherwise modify the Agreement.

#### 1. DEFINITIONS

##### 1.1. In this DPA:

- a) “**Controller**”, “**Data Subject**”, “**Personal Data**”, “**Personal Data Breach**”, “**Processing**”, “**Processor**”, and “**Supervisory Authority**” have the meaning given to them in Data Protection Law;
- b) “**Customer Personal Data**” means Personal Data Processed by Company as a Processor on behalf of Customer or Third Party Controller;
- c) “**Data Protection Law**” means the General Data Protection Regulation (EU) 2016/679 (“**GDPR**”) and the e-Privacy Directive 2002/58/EC (as amended by Directive 2009/136/EC), their national implementations in the European Economic Area (“**EEA**”), including the European Union, and all other data protection laws of the EEA, Switzerland, the United Kingdom General Data Protection Regulation (“**UK GDPR**”), and the UK Data Protection Act 2018 (and regulations made thereunder), each as applicable, and as may be amended or replaced from time to time;
- d) “**Data Subject Rights**” means Data Subjects’ rights to information, access, rectification, erasure, restriction, portability, objection, the right to withdraw consent, and the right not to be subject to automated individual decision-making in accordance with Data Protection Law;
- e) “**International Data Transfer**” means any disclosure of Customer Personal Data by an organization subject to Data Protection Law to another organization located outside the EEA, the UK, or Switzerland;
- f) “**Services**” means the services provided by Company to Customer under the Agreement;
- g) “**Subprocessor**” means a Processor engaged by Company to Process Customer Personal Data;
- h) “**SCCs**” means the clauses annexed to the EU Commission Implementing Decision 2021/914 of June 4, 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council as amended or replaced from time to time;
- i) “**Third-Party Controller**” means a Controller for which Customer is a Processor; and
- j) “**UK Addendum**” means the addendum to the SCCs issued by the UK Information Commissioner under Section 119A(1) of the UK Data Protection Act 2018 (version B1.0, in force March 21, 2022).

##### 1.2. Capitalized terms used but not defined herein have the meaning given to them in the Agreement.



## 2. **SCOPE**

- 2.1. This DPA applies to the Processing of Customer Personal Data by Company subject to Data Protection Law to provide the Services. For the avoidance of doubt, this DPA does not apply to the Processing of Customer Personal Data by Company that is not subject to Data Protection Law.
- 2.2. The subject matter, nature and purpose of the Processing, the types of Customer Personal Data and categories of Data Subjects are set out in **Annex I**, which is an integral part of this DPA.
- 2.3. Customer is a Controller and appoints Company as a Processor on behalf of Customer. Customer is responsible for compliance with the requirements of Data Protection Law applicable to Controllers.
- 2.4. If Customer is a Processor on behalf of a Third-Party Controller, then Customer: is the single point of contact for Company; must obtain all necessary authorizations from such Third-Party Controller; and undertakes to issue all instructions and exercise all rights on behalf of such other Third-Party Controller.
- 2.5. Customer acknowledges that Company may Process Personal Data relating to the operation, support, or use of the Services for its own business purposes, such as billing, account management, data analysis, benchmarking, technical support, product development, and compliance with law. Company is the Controller for such Processing and will Process such data in accordance with Data Protection Law. Also, the Company may anonymize Personal Data and use It for Its own business purposes. When the Company Is Processing anonymized data, this DPA does not apply.

## 3. **INSTRUCTIONS**

- 3.1. Company will Process Customer Personal Data to provide the Services and in accordance with Customer's documented instructions.
- 3.2. The Controller's instructions are documented in this DPA, the Agreement, and any applicable statement of work.
- 3.3. Customer may reasonably issue additional instructions as necessary to comply with Data Protection Law. Company may charge a reasonable fee to comply with any additional instructions.
- 3.4. Unless prohibited by applicable law, Company will inform Customer if Company is subject to a legal obligation that requires Company to Process Customer Personal Data in contravention of Customer's documented instructions.

## 4. **PERSONNEL**

- 4.1. Company will ensure that all personnel authorized to Process Customer Personal Data are subject to an obligation of confidentiality.





## 5. **SECURITY AND PERSONAL DATA BREACHES**

- 5.1. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Company will implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk, including the measures listed in **Annex II**.
- 5.2. Customer acknowledges that the security measures in **Annex II** are appropriate in relation to the risks associated with Customer's intended Processing and will notify Company prior to any intended Processing for which Company's security measures may not be appropriate.
- 5.3. Company will notify Customer without undue delay after becoming aware of a Personal Data Breach involving Customer Personal Data. If Company's notification is delayed, it will be accompanied by reasons for the delay.

## 6. **SUBPROCESSING**

- 6.1. Customer hereby authorizes Company to engage Subprocessors. A list of Company's current Subprocessors is included in **Annex III**.
- 6.2. Company will enter into a written agreement with Subprocessors which imposes the same obligations as required by Data Protection Law.
- 6.3. Company will notify Customer prior to any intended change to Subprocessors. Customer may object to the addition of a Subprocessor based on reasonable grounds relating to a potential or actual violation of Data Protection Law by providing written notice detailing the grounds of such objection within thirty (30) days following Company's notification of the intended change. Customer and Company will work together in good faith to address Customer's objection. If Company chooses to retain the Subprocessor, Company will inform Customer at least thirty (30) days before authorizing the Subprocessor to Process Customer Personal Data, and either party may immediately discontinue providing or using the relevant parts of the Services, as applicable, and may terminate the relevant parts of the Services within thirty (30) days.

## 7. **ASSISTANCE**

- 7.1. Taking into account the nature of the Processing, and the information available to Company, Company will assist Customer, including, as appropriate, by implementing technical and organizational measures, with the fulfilment of Customer's own obligations under Data Protection Law to: comply with requests to exercise Data Subject Rights; conduct data protection impact assessments, and prior consultations with Supervisory Authorities; and notify a Personal Data Breach.



- 7.2. Company may charge a reasonable fee for assistance under this **Section 7**. If Company is at fault, Company and Customer shall each bear their own costs related to assistance.

## 8. **AUDIT**

- 8.1. Upon reasonable request, Company must make available to Customer all information necessary to demonstrate compliance with the obligations of this DPA and allow for and contribute to audits, including inspections, as mandated by a Supervisory Authority or reasonably requested no more than once per year by Customer, and performed by an independent auditor as agreed upon by Customer and Company. The foregoing shall only extend to those documents and facilities relevant and material to the Processing of Customer Personal Data and shall be conducted during normal business hours and in a manner that causes minimal disruption.
- 8.2. Company will inform Customer if Company believes that Customer's instruction under **Section 8.1** infringes Data Protection Law. Company may suspend the audit or inspection or withhold requested information until Customer has modified or confirmed the lawfulness of the instructions in writing.
- 8.3. Company and Customer each bear their own costs related to an audit.

## 9. **INTERNATIONAL DATA TRANSFERS**

- 14.12 Customer hereby authorizes Company to perform International Data Transfers to any country deemed to have an adequate level of data protection by the European Commission or the competent authorities, as appropriate; on the basis of adequate safeguards in accordance with Data Protection Law; or pursuant to the SCCs and the UK Addendum referred to in **Sections 9.2** and **9.3**.
- 9.1. By signing this DPA, Company and Customer conclude Module 4 (processor-to-controller) of the SCCs, which are hereby incorporated and completed as follows: the "data exporter" is Company; the "data importer" is Customer; the optional docking clause in Clause 7 is implemented; the optional redress clause in Clause 11(a) is struck; Option 1 in Clause 17 is implemented and the governing law is the law of Ireland; the courts in Clause 18(b) are the Courts of Dublin, Ireland; Annex I of the SCCs is **Annex I** to this DPA respectively.
- 9.2. By signing this DPA, Company and Customer conclude the UK Addendum, which is hereby incorporated and applies to International Data Transfers outside the UK. Part 1 of the UK Addendum is completed as follows: (i) in Table 1, the "Exporter" is Company and the "Importer" is Customer, their details are set forth in this DPA, and the Agreement; (ii) in Table 2, the first option is selected and the "Approved EU SCCs" are the SCCs referred to in **Section 9.2** of this DPA; (iii) in Table 3, Annexes 1 (A and B) to the "Approved EU SCCs" are **Annex I** respectively; and (iv) in Table 4, both the "Importer" and the "Exporter" can terminate the UK Addendum.



- 9.3. If Company's compliance with Data Protection Law applicable to International Data Transfers is affected by circumstances outside of Company's control, including if a legal instrument for International Data Transfers is invalidated, amended, or replaced, then Customer and Company will work together in good faith to reasonably resolve such non-compliance. In the event that additional, replacement or alternative standard contractual clauses or UK standard contractual clauses are approved by Supervisory Authorities, Company reserves the right to amend the Agreement and this DPA by adding to or replacing, the standard contractual clauses or UK standard contractual clauses that form part of it at the date of signature in order to ensure continued compliance with Data Protection Law.

## 10. NOTIFICATIONS

- 10.1. Customer will send all notifications, requests and instructions under this DPA to Company's DPO via email to [DPO@tymphahealth.com](mailto:DPO@tymphahealth.com).
- 10.2. Company will send all notifications under this DPA to Customer's contact at [email].

## 11. LIABILITY

- 11.1. Where Company has paid compensation, damages or fines, Company is entitled to claim back from Customer that part of the compensation, damages or fines, corresponding to Customer's part of responsibility for the compensation, damages or fines.

## 12. TERMINATION AND RETURN OR DELETION

- 12.1. This DPA is terminated upon the termination of the Agreement.
- 12.2. Customer may request return of Customer Personal Data up to ninety (90) days after termination of the Agreement. Unless required or permitted by applicable law, Company will delete all remaining copies of Customer Personal Data within one hundred eighty (180) days after returning Customer Personal Data to Customer.

## 13. APPLICABLE LAW AND JURISDICTION

- 13.1. This DPA will be interpreted, construed, and enforced in all respects in accordance with the local laws of the State of New York. Each party hereby irrevocably consents to the exclusive jurisdiction and venue of the federal, state, and local courts in New York, New York in connection with any action arising out of or in connection with this DPA.

## 14. MODIFICATION OF THIS DPA

- 14.1. This DPA may only be modified by a written amendment signed by both Company and Customer.



**15. INVALIDITY AND SEVERABILITY**

- 15.1. If any provision of this DPA is found by any court or administrative body of a competent jurisdiction to be invalid or unenforceable, then the invalidity or unenforceability of such provision does not affect any other provision of this DPA and all provisions not affected by such invalidity or unenforceability will remain in full force and effect.



## ANNEX I

### DESCRIPTION OF THE TRANSFER

#### A. LIST OF PARTIES

Data exporter:

- Name: Company (as defined above)
- Address: See signature page in the Agreement.
- Contact person's name, position and contact details: See signature page in the Agreement.
- Activities relevant to the data transferred under these Clauses: Company provides its services to Customer as described in the Agreement and Processes Personal Data on behalf of Customer in that context.
- Signature and date: See signature page in the Agreement.
- Role (controller/processor): Processor

Data importer:

- Name: Customer (as defined above)
- Address: See signature page in the Agreement.
- Contact person's name, position and contact details: See signature page in the Agreement.
- Activities relevant to the data transferred under these Clauses: Customer receives Company's services as described in the Agreement and Customer provides Personal Data to Company in that context.
- Signature and date: See signature page in the Agreement
- Role (controller/processor): Controller

#### B. DESCRIPTION OF INTERNATIONAL DATA TRANSFER

- Categories of Data Subjects whose Personal Data is transferred:

#	Category of Data Subjects
1.	
2.	
3.	

- Categories of Personal Data transferred:

#	Category of Personal Data
1.	
2.	



3.	
----	--

- Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialized training), keeping a record of access to the data, restrictions for onward transfers or additional security measures:

#	Category of Sensitive Data	Applied restrictions or safeguards
1.		
2.		
3.		

- The frequency of the transfer (e.g., whether the data is transferred on a one-off or continuous basis):  
*On a continuous basis.*
- Nature of the processing: *The Personal Data will be processed and transferred as described in the Agreement.*
- Purpose(s) of the data transfer and further processing: *The Personal Data will be transferred and further processed for the provision of the Services as described in the Agreement.*
- The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period: *Personal Data will be retained for as long as necessary taking into account the purpose of the Processing, and in compliance with applicable laws, including laws on the statute of limitations and Data Protection Law.*
- For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing: *For the subject matter and nature of the Processing, reference is made to the Agreement and this DPA. The Processing will take place for the duration of the Agreement.*

#### C. COMPETENT SUPERVISORY AUTHORITY

- The competent authority for the Processing of Personal Data relating to Data Subjects located in the EEA is the Supervisory Authority of Ireland.
- The competent authority for the Processing of Personal Data relating to Data Subjects located in the UK is the UK Information Commissioner.
- The competent authority for the Processing of Personal Data relating to Data Subjects located in Switzerland is the Swiss Federal Data Protection and Information Commissioner.
- The competent authority for the Processing of Personal Data relating to Data Subjects located in the United States is the Federal Trade Commission and the US Department of Health and Human Services Office for Civil Rights.



## ANNEX II

### TECHNICAL AND ORGANIZATIONAL MEASURES INCLUDING TECHNICAL AND ORGANIZATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA

Company will, at a minimum, implement the following types of security measures:

#### 1. PHYSICAL ACCESS CONTROL

Technical and organizational measures to prevent unauthorized persons from gaining access to the data processing systems available in premises and facilities (including databases, application servers and related hardware), where Customer Personal Data are Processed, include:

- ☒ Establishing security areas, restriction of access paths;
- ☒ Establishing access authorizations for employees and third parties;
- ☒ Access control system (ID reader, magnetic card, chip card);
- ☒ Key management, card-keys procedures;
- ☒ Door locking (electric door openers etc.);
- ☒ Security staff;
- ☒ Surveillance facilities, video/CCTV monitor, alarm system; and
- ☒ Securing decentralized data processing equipment and personal computers.

#### 2. VIRTUAL ACCESS CONTROL

Technical and organizational measures to prevent data processing systems from being used by unauthorized persons include:

- ☒ Access control is granted on the principle of least privilege; Strong ID/password security procedures (special characters, minimum length and complexity requirements, change of password);
- ☒ Users are positively identified and authenticated before gaining access to systems, services or information; Leaver's process in place to ensure user accounts are disabled;  
Several failed login attempts results in locking of device.

#### 3. DATA ACCESS CONTROL

Technical and organizational measures to ensure that persons entitled to use a data processing system gain access only to such Customer Personal Data in accordance with their access rights, and that Customer Personal Data cannot be read, copied, modified or deleted without authorization, include:

- ☒ Internal policies and procedures;
- ☒ Control authorization schemes;
- ☒ Differentiated access rights (profiles, roles, transactions and objects);
- ☒ Monitoring and logging of accesses;
- ☒ Disciplinary action against employees who access Customer Personal Data without authorization;
- ☒ Reports of access;
- ☒ Access procedure;
- ☒ Change procedure;
- ☒ Deletion procedure; and





- ☒ Encryption.

#### **4. DISCLOSURE CONTROL**

Technical and organizational measures to ensure that Customer Personal Data cannot be read, copied, modified or deleted without authorization during electronic transmission, transport or storage on storage media (manual or electronic), and that it can be verified to which companies or other legal entities Customer Personal Data are disclosed, include:

- ☒ Encryption and;
- ☒ Logging.

#### **5. ENTRY CONTROL**

Technical and organizational measures to monitor whether Customer Personal Data have been entered, changed or removed (deleted), and by whom, from data processing systems, include:

- ☒ Logging and reporting systems; and
- ☒ Audit trails and documentation.

#### **6. CONTROL OF INSTRUCTIONS**

Technical and organizational measures to ensure that Customer Personal Data are Processed solely in accordance with the instructions of the Controller include:

- ☒ Unambiguous wording of the contract;
- ☒ Criteria for selecting the Processor.

#### **7. AVAILABILITY CONTROL**

Technical and organizational measures to ensure that Customer Personal Data are protected against accidental destruction or loss (physical/logical) include:

- ☒ Backup procedures;
- ☒ Remote storage;
- ☒ Anti-virus/firewall systems; and
- ☒ Disaster recovery plan.

#### **8. SEPARATION CONTROL**

Technical and organizational measures to ensure that Customer Personal Data collected for different purposes can be Processed separately include:

- ☒ Segregation of functions (production/testing); and
- ☒ Procedures for storage, amendment, deletion, transmission of data for different purposes.

#### **9. Testing controls**

Technical and organizational measures to test, assess and evaluate the effectiveness of the technical and organizational measures implemented in order to ensure the security of the processing include:



- ☒ Testing and evaluation of software updates before they are installed;
- ☒ Authenticated (with elevated rights) vulnerability scanning; and
- ☒ Regular penetration testing.

## 10. IT governance

Technical and organizational measures to improve the overall management of IT and ensure that the activities associated with information and technology are aligned with the compliance efforts include:

- ☒ Certification/assurance of processes and products; and
- ☒ Data subject rights policies.



**ANNEX III**  
**LIST OF SUBPROCESSORS**

Customer authorizes Company to engage the following Subprocessors:

#	Name	Address	Contact person's name, position and contact details	Description of the processing (including a clear delimitation of responsibilities in case several sub-processors are authorized)
1.	Google Inc (Google Cloud Platform)	Los Angeles, USA	Simon Parker simonparker@google.com Account manager, Digital Natives, Google Cloud	Cloud hosting provider (with no logical access to data)
2.	Twilio SendGrid	Denver, Colorado, USA	N/A	Customer communication platform
3.	Cloudflare	San Francisco, USA	N/A	Connectivity cloud
4.	Amazon Web Services Inc	N Seattle, USA	N/A	Cloud hosting provider (with no logical access to data)



## SCHEDULE B

### TRAINING ADDENDUM

#### TympaHealth Technologies, Inc. Training Overview

TympaHealth Technologies, Inc. provides a blended learning program with a one-time hands-on, interactive, in-person training workshop ("**Training**"). Participants will learn the importance of ear and hearing health, Tympa candidacy, case history, ear anatomy including identifying normal/abnormal ears, how to perform otoscopy, micro-suction wax removal, hearing check, how to use the Tympa Cloud device (collectively, "**Tympa Products**"), how to escalate for Remote Review, and onward referral criteria.

"**Tympa Users**" are all healthcare professionals who will be using the Tympa Health system with the scope of their practice. Typically, Customers will have two individuals trained on the Tympa Health system Products per Location.

Tympa User responsibilities include completing Training, including attending all trainings and completing all requirements, following provider orders, utilizing clinical judgement within scope of practice throughout, and reporting outcomes back to provider (when indicated) or triaging appropriately.. Upon completion of Training, each Tympa User must be able to conduct an ear and hearing check confidently, safely, and effectively from beginning to end, including ear wax removal using micro suction.



## SCHEDULE C

### SUPPORT TERMS AND SERVICE LEVELS ADDENDUM

This Support Terms and Service Levels Addendum ("SLA") is a policy governing Customer's use of the Service under the terms of the Agreement referencing this SLA. Any capitalized terms that are used but not defined in this SLA have the meanings given to them in the Agreement.

#### 1. Service Commitment

TympaHealth will use commercially reasonable efforts to make the Service available to Customer with a Monthly Uptime Percentage (defined below) of 99.5%, in each case during any monthly billing cycle ("**Service Commitment**").

#### 2. Definitions

- "**Monthly Uptime Percentage**" is calculated by subtracting from the total number of minutes in a month the number of contiguous, minute-long periods during such month that the Service was Unavailable. The Monthly Uptime Percentage does not include Unavailability resulting directly or indirectly from any SLA Exclusion (as defined below).
- "**Unavailable**" and "Unavailability" means that the Service is not accessible by Customer other than due to an SLA Exclusion.

#### 3. SLA Exclusions

The Service Commitment does not apply to any unavailability, suspension, or termination of provision of the Service, or any other performance issues: (i) caused by factors outside of TympaHealth's reasonable control, including, without limitation, any force majeure event or problems related to Internet or network access beyond the demarcation point of the Service (i.e., beyond the point in the network at which TympaHealth controls access to the Service); (ii) that result from any actions or inactions of Customer or any third party (other than TympaHealth's subcontractors and suppliers); (iii) that result from Customer's equipment, software, or other technology and/or third-party equipment, software, or other technology (other than third-party equipment within TympaHealth's or its suppliers' or subcontractors' direct control); (iv) that result from any scheduled maintenance; or (v) arising from TympaHealth's suspension and termination of Customer's right to use the Service in accordance with the Agreement (collectively, the "**SLA Exclusions**").

#### 4. Response & Resolution Times

TympaHealth will use commercially reasonable efforts to (i) respond to disruptions to the Service within the applicable response window as set forth below from the time TympaHealth receives written notice of the disruption, and (ii) resolve the issues resulting in the disruptions to the Service within the applicable response window as set forth below, in both cases of (i) and (ii) 90% of the time:

Severity Level	Description	Targeted Response Time (Mon-Fri 9-5pm ET)	Target Resolution Time (Mon-Fri 9-5pm ET)
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High	Customer is unable to access the Service.	2 hours	4 hours
Medium	Some loss of functionality; customer can still access the Service with a workaround.	4 hours	8 hours
Low	No functionality is lost; may cause customer dissatisfaction / inconvenience. Simple workaround available. Clinical queries.	8 hours	3 business days

## 5. Support Resources

Resource	Description	Contact
Customer Service Team	Contact for questions regarding the Software. Issues will be classified in order of priority (high, medium, low) in accordance with the above table.	support.us@tympahealth.com
Replacement Hardware	Contact for replacement Hardware. TympaHealth will use commercially reasonable efforts to ship replacement Hardware for next business day delivery (other than holidays). Cut off for next day business delivery is 3pm ET (normal working hours Mon-Fri 9-5pm). Delivery to remote areas may take additional time.	support.us@tympahealth.com
Clinical Queries	Contact for questions regarding clinical services. Target response time 24 hours (normal working hours Mon-Fri 9-5pm ET).	support.us@tympahealth.com
Remote Review requests	Contact for Remote Review Services. A Remote Review requested through the Service will initially be reviewed by an Audiologist. Target response time for advice and guidance is 48 hours (normal working hours Mon-Fri 9-5pm ET). If the Remote Review is escalated to ENT, target response time is 5 working days (normal working hours Mon-Fri 9-5pm ET).	All Remote Reviews must be requested through the Service with a 20-30 second video and full case history completed. Summary of the reason for Remote Review is always required. Hearing check result is advantageous but not essential.



		<p>High-quality media focused on the area of concern is a required.</p> <p>A hearing check should be included when indicated.</p>
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**SCHEDULE D****REMOTE REVIEW SERVICES ADDENDUM**

1. Remote Review Services. TympaHealth, through its technology platform, shall transmit orders from Customer for the provision of Remote Reviews to be performed by audiologists who are employed for this purpose and other third-party licensed audiologists (the “**Remote Reviewers**”), as indicated in the applicable Order Form (the “**Remote Review Services**”). Customer shall ensure that its patients receiving Remote Reviews execute the necessary notice and consent forms as provided by TympaHealth from time to time. TympaHealth will not provide a diagnosis, plan of care, or treatment as part of any Remote Review, but an opinion based on the information provided, with recommendations around care or treatment advice provided by the Remote Reviewer pursuant to Remote Reviewer's independent professional judgment.
2. Licensure. As between the parties, TympaHealth shall ensure that all Remote Reviewers are duly licensed and/or certified to provide Remote Review and related services as contemplated under this Agreement in accordance with applicable State laws, either individually or under supervision of a medical director (as applicable), and shall comply with and be governed by the ethics and standards of care of such profession.
15. Insurance. During the Term, all ENT Remote Reviewers shall secure and maintain continuously, at their expense, without interruption, an “occurrence based” medical malpractice insurance policy as may be required by law, to cover the acts performed by the Remote Reviewer in relation to this Agreement.
3. Use of Information. Information exchanged under this Agreement as part of the Remote Review Services are for treatment, payment, or health care operations, which is permitted by and in compliance with 45 C.F.R. § 164.506 (a). The parties may use this patient information to the full extent allowed by law, including but not limited to pursuant to 45 C.F.R. § 164.502 (a)(1)(ii).
4. Protection of Information. Customer acknowledges and agrees that TympaHealth shall direct Remote Reviewers not to divulge or deliver any information disclosed in connection with a Remote Review (“**Remote Review Content**”) to any person or entity other than TympaHealth or Customer unless such disclosure is required by law, the rules of TympaHealth, or this Agreement, without TympaHealth's prior written consent. For clarity, Customer acknowledges and agrees that Remote Reviewers may disclose Remote Review Content to their vendors for purposes of the provision of the Remote Review Services. Upon termination or expiration of this Agreement, Customer acknowledges and agrees that the Remote Reviewer is entitled to a copy of any Remote Review Content if required by law or in the event of a medical malpractice or other claim against the Remote Reviewer related to the Remote Review Services.