

MASTER SUBSCRIPTION AGREEMENT - TERMS AND CONDITIONS

This Master Subscription Agreement is between Tympa Health Technologies Limited a limited liability company having its registered office at Landmark, 33 Cavendish Square, London W1G 0PW and the customer named in the Order Form.

References to "we", "us", "our", or "TympaHealth" means Tympa Health Technologies Limited.

References to "you", "your", or "the Customer" means the customer referenced in the Order Form.

RECITALS

- A. TympaHealth provides communities with accessible and affordable ear and hearing healthcare. To achieve this, it has relationships with health professionals including pharmacies, GP clinics, audiologists and opticians to support them providing ear and hearing healthcare to the public.
- B. TympaHealth have 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 take and pay for TympaHealth's services subject to the terms and conditions of this Master Subscription Agreement.

1. DEFINITIONS

Applicable Laws: means all applicable laws, statutes, regulations and codes from time to time in force.

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

Captured Data: means data and information entered into the Services by you or captured via the Hardware including all images and procedure results generated by the Software or otherwise produced through use of the Services.

Confidential Information: information of commercial value which has been kept confidential by the party from whom the information originates and which has not come into the public domain during the term of this Agreement in breach of any obligation of confidentiality.

Commencement Date: The earlier of when you attend a training event or 30 days from the Effective Date.

Contract Year: a period of 12 months (or such a shorter period if the Agreement is terminated earlier) commencing on the Commencement Date and/or each anniversary of the Commencement Date.

Defect: an error in the Hardware 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.

Derived Data: means data and information created by TympaHealth using all or part of the pseudonymised Captured Data.

Documentation: the operating manuals, user instructions, 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.

Effective Date: the date on when the Order Form is signed by the Customer.

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Hardware: the equipment provided by TympaHealth to the Customer and on which the Software is loaded or through which it is accessed and via which the Services are accessed.

Initial Subscription Term: 36 months from the Commencement Date.

Intellectual Property Rights: all vested contingent and future intellectual property rights including but not limited to copyright, trademarks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, get-up, database rights and any applications for the protection or registration of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created to which TympaHealth may be entitled.

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

Order Form: means an ordering document or online order specifying the Services to be provided.

Normal Business Hours: 9.30 am to 5.30 pm local UK time, each Business Day.

Renewal Period: has the meaning given in clause 10.1.

Services: means all services TympaHealth provides as set out in the product and services specification from time to time including but not limited to the provision of the Hardware and Software (including access to the online database where Captured Data is stored) to the Customer to provide ear and hearing healthcare services to its customers, and any other additional services TympaHealth agrees to be provide from time to time in writing.

Software: means the software applications specified in the Order Form and all operating software which 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 given by clause 10.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

2. PROVISION OF SERVICES

2.1 Prior to the Commencement Date, we may require you to undertake training sessions prior to receiving the Services.

2.2 We shall, during the Subscription Term, provide the Services to you in accordance with the terms of this Agreement.

2.3 We shall provide you with the Hardware and Software for the purposes of accessing 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.

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- 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 subject to separate terms and conditions.
- 2.7 You acknowledge that any Services provided by TympaHealth may only be received and used in the United Kingdom and European Union.

3. SUPPORT SERVICES

- 3.1 We shall ensure that standard customer support services are available to you free of charge by e-mail via support@tympahealth.com during our Normal Business Hours in respect of the following:
 - (a) remedying Defects in the Hardware;
 - (b) provision of bug fixes and patches and online troubleshooting for the Software; and
 - (c) providing advice and technical support on the use of the Services.
- 3.2 Where we are required to attend to faults or fix the Hardware and, in our reasonable opinion, there is no Defect, or due to your fault or negligence, including but not limited to breach by you of any of your obligations under this Agreement, we shall charge you on a time and materials basis at our standard rates 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.
- 3.3 The provision of the standard customer support services under this clause 3 does not imply that we shall be successful in correcting any Defects, bug fixes or errors.

4. CUSTOMER OBLIGATIONS

- 4.1 You shall:
 - (a) use the Services only in accordance with this Agreement, the Documentation, Order Forms and Applicable Laws with respect to its activities under this Agreement;
 - (b) use commercially reasonable efforts to prevent unauthorised access to or use of the Services, and shall notify us promptly of any such unauthorised 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 which you input into the Services including compliance with all Applicable Laws;
 - (d) inspect the Hardware on delivery and notify us immediately in writing of any Defects in the Hardware;
 - (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 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;
 - (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-licence, pledge or otherwise dispose of, encumber or suffer a lien or encumbrance upon or against any interest in the Hardware;
 - (i) insure the Hardware for the duration of the Subscription Term;

- (j) notify us in writing immediately of any loss of or damage to the Hardware and you shall indemnify us against any loss or damage to the Hardware while your possession, excluding damage which in our opinion constitutes fair wear and tear;
 - (k) remove all Captured Data from the Hardware before returning the Hardware to us;
 - (l) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Software and our data centres, and 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;
 - (m) provide us with all necessary co-operation in relation to the Services and all necessary access to such information as may be required by us in order to provide the Services.
- 4.2 You shall not access, store, distribute or transmit any harmful software or material including but not limited to Viruses, or any other material during the course of its use of the Services 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.
- 4.3 You shall not:
- (a) except as may be allowed by Applicable Law which is incapable of exclusion by Agreement between the parties:
 - (i) 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 and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Hardware or Software;
 - (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation;
 - (c) use the Services and/or Documentation to provide services to third parties, except as otherwise provided for in this Agreement;
 - (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party; or
 - (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this Agreement or any Order Form.
- 4.4 In the event that your use of any of the Services is in breach of this clause 4 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.

4.5 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.

4.6 You shall defend, indemnify and hold us 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 or in connection with:

- (a) your use of the Services, Hardware and/or Documentation; and
- (b) for actual or alleged infringement of a third party's Intellectual Property Rights, Data Protection Laws or other obligations through the processing of Captured Data by TympaHealth through provision of the Services.

5. CHARGES AND PAYMENT

5.1 The charges for the Services are as set out the Order Form and you are responsible for paying all charges as set out in the applicable Order Form. Quantities purchased cannot be decreased during the relevant Subscription Term.

5.2 Charges will be invoiced in advance and are due thirty (30) days from the date of invoice, unless otherwise specified in the applicable Order Form.

5.3 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.

5.4 You are responsible for providing complete and accurate billing and contact information to us and for notifying us of any changes to such information.

5.5 All amounts and fees stated or referred to in this Agreement:

- (a) shall be payable in the currency that has been agreed and detailed on the Order Form;
- (b) are, subject to clause 10.5(d), non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to our invoice(s) at the appropriate rate.

5.6 We shall be entitled to increase the charges for the Services at the start of each Renewal Period upon 90 days' notice to you.

5.7 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.

6. PROPRIETARY RIGHTS

6.1 You acknowledge and agree that we and/or our licensors own all Intellectual Property Rights in the Services 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 licences in respect of the Services or the Documentation.

- 6.2 You shall own all rights, title and interest in and to all of the Captured Data. You hereby grant us a non-exclusive, royalty-free licence to use, modify and copy the Captured Data for the purpose of providing you with the Services.
- 6.3 We shall own all rights, title and interest in and to all the Derived Data..
- 6.4 We will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Captured Data. Those safeguards will include, but will not be limited to, measures for preventing 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, and for backing-up Captured Data in accordance with our data retention policy (available on request).
- 6.5 To the extent that Personal Data is included in Captured Data and we process any Personal Data contained in Captured Data, on the Customer's behalf, within the scope of rendering the Services, any such processing shall be in accordance with the terms of the data processing addendum (**DPA**) attached to this Agreement as Schedule A.
- 6.6 All Captured Data shall be stored on TympaHealth's cloud platform only where Hardware is synchronised with the cloud platform. 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.

7. WARRANTIES

- 7.1 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 clause 10.2(b) and a refund in accordance with clause 10.4(c).
- 7.2 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; or
 - (b) termination in accordance with clause 10.2(b) and refund in accordance with clause 10.4(c).
- 7.3 The warranty in clause 7.1 and 8.2 shall not apply to the extent of any non-conformance which is caused by use of the Hardware, Software and/or Services contrary to our instructions, or modification or alteration of the Hardware, Software and/or Services by any party other than us or our duly authorised contractors or agents.
- 7.4 We:

- (a) do not warrant that your use of the Hardware, Software and/or Services will be uninterrupted or error-free; nor that the Services, Documentation and/or the information obtained by you through the Services will meet your requirements; and
 - (b) are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and you acknowledge that the Hardware, Software, Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.5 In no event shall we be liable for unavailability, inaccuracies, incompleteness or errors in the data captured or input by you or its customers using the Services or results provided through the Services.
- 7.6 Except as expressly provided herein, each party excludes all warranties, representations, terms, conditions or other commitments of any kind, whether express or implied, statutory or otherwise, and each party specifically disclaims all implied warranties, including (without limitation) any warranties, representations, terms, conditions or other commitments of merchantability or fitness for a particular purpose or of satisfactory quality or of reasonable skill and care, in each case, to the maximum extent permitted by Applicable Laws.
- 7.7 Each party disclaims all liability and indemnification obligations for any harm, damages or other liability caused by any third-party hosting providers.

8. LIMITATION OF LIABILITY

- 8.1 This clause 8 sets out our entire financial liability (including any liability for the acts or omissions of its employees, agents and sub-contractors) to you in respect of: (a) any breach of this Agreement; (b) any use made by you of the Services and Documentation or any part of them; and (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 8.2 Nothing in this Agreement excludes our liability for: (a) death or personal injury caused by our negligence; or (b) fraud or fraudulent misrepresentation.
- 8.3 Subject to clause 8.2:
- (a) we shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for (i) loss of profits; (ii) loss of business, (iii) depletion of goodwill and/or similar losses; (iv) loss or corruption of data or information; (v) pure economic loss, or (vi) for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
 - (b) our total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited in any Contract Year to the fees paid or payable in the Contract Year in which the breach occurs.
- 8.4 Except as expressly and specifically provided in this Agreement:
- (a) you assume sole responsibility for results obtained from your use of the Services 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;

- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by Applicable Law, excluded from this Agreement; and
- (c) the Services and the Documentation are provided to you on an “as is” basis.

9. CONFIDENTIALITY

- 9.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 9.2 Each 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 of the other party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorised by the other party in writing, limit access to Confidential Information of the other party to those of its employees and contractors who need that access 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.
- 9.3 A party may disclose Confidential Information of the other party to the extent compelled by law to do so, provided the party called on to make the compelled disclosure gives the other party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure.
- 9.4 This clause 9 shall survive termination of this Agreement, however arising.

10. TERM AND TERMINATION

- 10.1 This Agreement commences on the Effective Date and the Services shall commence on the Commencement Date. The Agreement shall continue for the Initial Subscription Term, and, thereafter, this Agreement shall be automatically renewed for successive periods of 36 months (each a **Renewal Period**), unless:
- (a) each party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
 - (b) otherwise terminated in accordance with the provisions of this Agreement;
- and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.
- 10.2 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, this Agreement shall terminate upon expiry of the 12 month period of the Initial Subscription Term

or Renewal Period and you shall only be liable for payment for the 12 month period, and not payment for the full Initial Subscription Term or Renewal Period.

- 10.3 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other:
- (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.
- 10.4 Without prejudice to any other rights or remedies to which the parties may be entitled, TympaHealth may terminate this Agreement by written notice with immediate effect where:
- (a) you materially breach any of your obligations under clause 4;
 - (b) you use our brand names, logos and/or trade marks without our consent or your use our brand names, logos and/or trade marks which is likely, in our reasonable opinion, to cause harm to our reputation and goodwill in any jurisdiction.
- 10.5 On termination of this Agreement for any reason:
- (a) all licences granted by us under this Agreement and the right to use the Services shall immediately terminate;
 - (b) each party shall return and make no further use of any equipment (including Hardware), property, Documentation and other items (and all copies of them) belonging to the other party;
 - (c) you shall immediately pay to us any sums due under this Agreement.
 - (d) we will refund you any prepaid fees 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 clause 10.2;
 - (e) you will return all Hardware after having removed all Captured Data from the Hardware;
 - (f) you shall not be entitled to any payments that may accrue and be due to you after the date of termination; and
 - (g) 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.
- 10.6 Unless we receive, no later than 25 days after the expiry or termination of this Agreement for any reason, a written request from you for the delivery to you of the then most recent back-up of the Captured Data, all Captured Data shall be deleted. Upon such request, we shall deliver, to a secure location provided by you (for example SFTP server or cloud repository), a copy of such back-up within 60 days of our receipt of such request 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.
- 10.7 Subject to clause 10.6, 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.

11. GENERAL

11.1 Assignment. Neither party shall, without the prior written consent of the other, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement; provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its affiliate (that is majority owned or controller or under common control) 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 favour of, a direct competitor of TympaHealth then we may terminate this Agreement upon written notice.

11.2 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, 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.

11.3 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 this Agreement, 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).

11.4 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.

11.5 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.

11.6 Publicity.

(a) You agree that we may publicise 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 trade marks in the advertisement of you as a customer for the duration of this Agreement.

- (c) You shall not have the right to use any of TympaHealth's names, logos or trade marks without our prior written consent.

11.7 **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.

11.8 **Entire Agreement.**

- (a) This Agreement constitutes the entire agreement between TympaHealth and the Customer.
- (b) Each party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

11.9 **Conflict.** In the event of any conflict between this Agreement and an Order Form, the Order Form shall prevail.

11.10 **Governing law.** This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England and Wales.

11.11 **Jurisdiction.** The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) that arises out of, or in connection with, this Agreement or its subject matter or formation.

Signed by each party's authorised representative:

TYMPA HEALTH TECHNOLOGIES LIMITED

CUSTOMER

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**SCHEDULE A
DATA PROCESSING ADDENDUM**

The purpose of this Data Processing Addendum (“DPA”) is to set out each party's obligations relating to the personal data processed by the parties pursuant to the Agreement.

1. DEFINITIONS

Defined terms in this DPA shall have the same meaning as set out in the Agreement unless otherwise defined below.

Appropriate Safeguards: means such legally enforceable mechanism(s) for the international transfer of Personal Data as may be permitted under Data Protection Laws from time to time.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach and Processing: have the meanings given to them in the Data Protection Laws.

Data Protection Laws: means all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) (DPA 2018); and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications);

Data Protection Losses: means all losses and liabilities, including all:

- (a) costs (including legal costs), claims, demands, actions, settlements, interest, charges, expenses, losses and damages; and
- (b) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority; and
- (c) compensation which is ordered by a Supervisory Authority to be paid to a Data Subject; and
- (d) the reasonable costs of compliance with investigations by a Supervisory Authority;
- (e) costs of investigation including forensic investigation;
- (f) cost of breach notification including notifications to the Data Subjects; and
- (g) cost of complaints handling including providing Data Subjects with credit reference checks, setting up contact centres (e.g. call centres), producing end customer communication materials, provision of insurance to end customers (e.g. identity theft), and reimbursement of costs incurred by end customers (e.g. changing locks).

Derived Data: means data and information created by TympaHealth using all or part of the pseudonymised Captured Data.

EU GDPR: means the General Data Protection Regulation (EU) 2016/679.

Processing Instructions: has the meaning given to that term in paragraph 3.2.

Protected Data: means Personal Data in Captured Data provided to TympaHealth by the Customer, or otherwise received by TympaHealth in connection with the Services, pursuant to the Agreement.

Services: means the services provided to the Customer by TympaHealth pursuant to the Agreement.

Sub-Processor: means another Processor engaged by TympaHealth for carrying out processing activities in respect of the Protected Data on behalf of TympaHealth.

Supervisory Authority: means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

2. ROLES AND OBLIGATIONS

- 2.1 The parties have determined that, for the purposes of Data Protection Laws:
- (a) for the Protected Data, the Customer shall act as Controller and TympaHealth shall act as Processor on behalf of the Customer.
 - (b) for the Derived Data, the parties acknowledge that whilst TympaHealth is entitled to the Derived Data for its own purposes, it cannot access the Protected Data for the purposes of de-anonymising the Derived Data and the Derived Data is therefore not Personal Data for the purposes of Data Protection Laws.
- 2.2 Should the determination in paragraph 2.1 change, then each party shall work together in good faith to make any changes which are necessary to this DPA.
- 2.3 Exhibit 1 describes the subject matter, duration, nature and purpose of processing and the Personal Data categories, and Data Subject types In respect of which TympaHealth may process the Personal Data to fulfil its obligations under the Agreement.
- 2.4 TympaHealth shall process the Protected Data in compliance with:
- (a) the obligations of Processors under Data Protection Laws and so as always not to place the Customer in breach of the Customer's obligations as a Controller of that Protected Data (subject to Customer complying with Data Protection Laws); and
 - (b) the terms of this DPA.
- 2.5 The Customer shall ensure all data it provides to TympaHealth for use in connection with the Services shall be collected and transferred to TympaHealth in accordance with Data Protection Laws. For the avoidance of doubt, it shall be the Customer's responsibility to:
- (a) ensure the privacy notice it supplies to the Data Subjects of the Protected Data comply with Data Protection Laws, including in particular any fair processing information requirements relating to the processing of the Protected Data by TympaHealth;
 - (b) allow TympaHealth to review and provide input into any relevant privacy notices provided by the Customer to Data Subjects; and
 - (c) ensure it has a legal basis for the processing of the Protected Data by TympaHealth.
- 2.6 The Customer shall have sole responsibility for the accuracy, quality, and legality of Protected Data and the means by which the Customer acquired Personal Data.

3. INSTRUCTIONS

- 3.1 The Customer's instructions for the Processing of Protected Data shall comply with Data Protection Law.
- 3.2 Insofar as TympaHealth processes Protected Data, TympaHealth:
- (a) shall (and shall ensure each person acting under its authority shall) process the Protected Data only on and in accordance with the Customer's documented instructions from time to time and in accordance with Exhibit 1 (Data Processing Particulars), as updated from time to time by written agreement of the parties or as otherwise detailed in the Agreement ("**Processing Instructions**");
 - (b) shall inform the Customer if TympaHealth is aware of a Processing Instruction that, in its opinion, infringes Data Protection Laws.

4. TECHNICAL AND ORGANISATIONAL MEASURES

- 4.1 TympaHealth shall implement and maintain, at its cost and expense:
- (a) the technical and organisational measures prescribed by Data Protection Laws to protect against unauthorised or unlawful processing of Protected Data and against its accidental loss, damage or destruction, including inter alia as appropriate:

- (i) the pseudonymisation and encryption of Protected Data;
 - (ii) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - (iii) the ability to restore the availability and access to Protected Data in a timely manner in the event of a physical or technical incident; and
 - (b) taking into account the nature of the processing, the technical and organisational measures necessary to assist the Customer insofar as is reasonably possible in the fulfilment of the Customer's obligations to respond to Data Subject requests relating to Protected Data.
- 4.2 Current data flows and security for the Protected Data are set out in TympaHealth's product and service specification.
- 5. SUB PROCESSORS AND STAFF**
- 5.1 TympaHealth has appointed those Sub-Processor(s) listed in Exhibit 1 to this DPA under a written contract containing materially equivalent obligations to those in this DPA. TympaHealth shall provide the Customer with a copy of the agreements with Sub-Processors if requested to do so by the Customer. TympaHealth may redact commercial terms from such agreements before disclosing them to the Customer.
- 5.2 TympaHealth shall ensure that all of its personnel and contractors processing Protected Data are subject to a binding written contractual obligation with TympaHealth or under professional obligation to keep the Protected Data confidential (except where disclosure is required in accordance with Applicable Law, in which case TympaHealth shall, where practicable and not prohibited by Applicable Law, notify the Customer of any such requirement before such disclosure).
- 5.3 TympaHealth may not change or add new Sub-Processors without first notifying the Customer and giving the Customer ten days (from date of receipt of the notice) to object to the change or addition in Sub-Processor on reasonable and objectively justifiable grounds.
- 6. DATA SUBJECT REQUEST ASSISTANCE**
- 6.1 TympaHealth shall promptly refer all Data Subject requests it receives to the Customer (wherever practicable within two working days of receipt of the request).
- 6.2 TympaHealth shall provide such assistance to the Customer as the Customer reasonably requires (taking into account the nature of processing and the information available to TympaHealth) to ensure compliance with each party's obligations under Data Protection Laws with respect to:
- (a) Data Subject requests;
 - (b) security of processing;
 - (c) data protection impact assessments (as such term is defined in Data Protection Laws);
 - (d) prior consultation with a Supervisory Authority regarding high risk processing; and
 - (e) notifications to the Supervisory Authority and/or communications to Data Subjects by Customer in response to any Personal Data Breach and for the avoidance of doubt TympaHealth must promptly notify the Customer in writing of any communications received by it from Data Subjects or Supervisory Authorities relating to the Protected Data without responding to either of the same unless it has been expressly authorised to do so by the Customer.
- 7. OVERSEAS TRANSFERS**
- 7.1 To the extent required under Data Protection Laws, TympaHealth shall ensure that any transfers (and any onward transfers) of Protected Data under this DPA from the European Union, the European Economic Area and/or their member states, Switzerland and the United Kingdom to countries which do not ensure an adequate level of data protection within the

meaning of Data Protection Laws of the foregoing territories, are effected by way of Appropriate Safeguards and in accordance with such Data Protection Laws.

8. RECORDS AND AUDITS

8.1 TympaHealth shall maintain written records of all categories of processing activities carried out on behalf of the Customer.

8.2 TympaHealth shall make available to the Customer such information as is reasonably necessary to demonstrate its compliance with the obligations of Processors under Data Protection Laws, and shall allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose, subject to the Customer:

- (a) giving TympaHealth at least 30 days' advance notice of such information request, audit and/or inspection being required; and
- (b) the Customer and TympaHealth mutually agreeing the scope, timing, and duration of the audit; and
- (c) ensuring that all information obtained or generated by the Customer or its auditor(s) in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to the Supervisory Authority or as otherwise required by Applicable Law). The Customer shall provide a copy of such information and audit reports to TympaHealth following an inspection or audit pursuant to this paragraph 8.

9. BREACH NOTIFICATION

9.1 In respect of any Personal Data Breach involving Protected Data, TympaHealth shall without undue delay and within 24 hours of becoming aware of the Personal Data Breach:

- (a) notify the Customer of the Personal Data Breach; and
- (b) so far as possible without prejudicing the continued security of the Protected Data or any investigation into the Personal Data Breach, provide the Customer with details of the Personal Data Breach.

10. DELETION OR RETURN OF DATA

10.1 TympaHealth shall return all the Protected Data to the Customer in accordance with clause 10.6 and clause 10.7 of the Agreement.

10.2 Following termination, the Customer acknowledges and agrees that the Supplier may anonymise a copy of Protected Data (to the extent it has not already been anonymised prior to termination) and TympaHealth may continue to use such anonymised Protected Data for its own business purposes.

11. LIABILITY

11.1 If TympaHealth receives a compensation claim from a person (including but not limited to a Data Subject) relating to processing of Protected Data processed by TympaHealth under this Agreement, it shall promptly provide the Customer with notice and full details of such claim. TympaHealth shall make no admission of liability nor agree to any settlement or compromise of the relevant claim in relation to its processing activity without the prior written consent of the Customer.

11.2 This paragraph 11 does not affect the liability of TympaHealth to any Data Subject or Supervisory Authority pursuant to a claim made directly against TympaHealth by either of them.

11.3 As between TympaHealth and the Customer liability for all Data Protection Losses arising out of any breach of this Data Processing Addendum including for any loss or damage arising out of a Personal Data Breach, shall be subject to the same caps and exclusions on liability as set out in the Agreement.

12. CHANGE IN LAW

Notwithstanding anything to the contrary in this DPA, in the event: (i) of a change in any law or regulation or (ii) a regulator issues a binding instruction, order or requirement which changes the basis on which the Protected Data can be processed, transferred or stored pursuant to this DPA, the parties agree to negotiate in good faith to agree an amendment to this DPA and that Agreement (to the extent necessary) to address change in law or regulation or to comply a binding instruction, order or requirement as applicable.

EXHIBIT 1
DATA PROCESSING PARTICULARS

1. Subject-matter of processing:

Data of customers of the Customer and electronic images and media of Tympanic Membrane (ear drum) and ear canal for analysis of hearing health.

2. Duration of the processing:

Subject to paragraph 10 of this DPA, TympaHealth will Process Personal Data for so long as necessary to perform the Services, unless otherwise agreed upon in writing.

3. Nature and purpose of the processing:

To use the Protected Data for the purpose of providing the Services and as otherwise detailed in the Agreement, and as further instructed by the Customer in its use of the Services.

4. Categories of Personal Data:

- Name or unique patient reference number
- Date of birth
- NHS number/hospital number
- Tympa System Generated ID Number

Special Category Data:

- Health Information
- current medication
- health status
- medical history
- video and images of ear, including audiograms.

5. Categories of Data Subjects:

- Patients

6. Processing Instructions

(a) To use the Protected Data for the purpose of providing the Services and as otherwise detailed in the Agreement.

(b) To pseudonymise and encrypt Protected Data when processed by TympaHealth. and

(c) To provide a copy of the Derived Data to TympaHealth for its own purposes.

7. Sub-Processors

Name	Location	Processing Activity
Google Inc (Google Cloud)	London, United Kingdom	Cloud hosting provider (with no logical access to data)