

NOTED STANDARD TERMS OF USE

1. INTRODUCTION

- 1.1 Noted Limited (referred to in this Agreement as **we, us, our** and **Noted**) has developed the Noted Platform. The Noted Platform is a software platform for health and social care. The Noted Platform is made available to users as a service via the internet, called the **Service** in this Agreement.
- 1.2 Your agreement with us incorporates these Terms (including the schedules), our Privacy Statement and any Letter of Agreement that you have entered into (together the **Agreement**). The Agreement sets out the basis on which we will provide and support, and you (and your Users) may access, use and pay for the Service.
- 1.3 By accessing the Service, you consent to be bound by the terms of this Agreement. If you do not agree with all of the terms and conditions of this Agreement, do not access the Service.
- 1.4 You confirm that the individual approving or entering into this Agreement on your behalf has the necessary authority to act on your behalf and ensure a legally binding agreement between you and us.
- 1.5 Defined terms used in this Agreement are defined in clause 22.

2. TERM

- 2.1 This Agreement shall be in effect from the earlier of: (i) the date you first access the Service; or (ii) the date you execute a Letter of Agreement, and shall remain in effect until expired or otherwise terminated in accordance with this Agreement.

3. SERVICE

- 3.1 Subject to this Agreement and your compliance with its terms, we grant you a non-exclusive, non-transferable, non-sub-licensable (unless agreed otherwise by us) right to use the Service during the Subscription Period solely for your lawful internal business purposes (**Permitted Purpose**). You acknowledge that:
- (a) we do not provide you with internet access or any computer equipment or software required to access the Service; and
 - (b) we may change the Service from time to time to provide bug fixes and/or new, replacement or improved features or functionality.
- 3.2 We may also from time to time offer optional services relating to the Service, such as special purpose software applications or reports. You may request any such services by contacting us. We will be under no obligation to provide such services until we have provided written notice to you confirming our acceptance of your request.
- 3.3 Terminal equipment, communications links and systems compatibility (and all costs associated with such items) are your (or your Users, as applicable) sole responsibility. We accept no responsibility for any unavailability of, or defects in, the Website or the Service to the extent such unavailability or defects arise out of or in connection with terminal equipment, communications links or systems compatibility, or your (or your Users) failure to make payment of the costs for such items.
- 3.4 You agree to work collaboratively with us to, among other things, provide us with data and feedback about the Service and the Noted Platform in a timely manner.

4. USERS

- 4.1 You are responsible for keeping all access information, including email addresses and log-on credentials, secret and secure. You also agree:
- (a) not to disclose and to ensure that Users do not disclose their user name or log-on credentials to any other person;
 - (b) that each User login is personal to the individual User and must not be shared with or otherwise used by any other User;

- (c) to ensure that none of your Users (or any other person under your control) attempts to gain unauthorised access to the Service or Subscriber Data, including but without limitation, through hacking or password mining; and
 - (d) to inform us immediately of any known or suspected unauthorised access to and use of the Service or any Subscriber Data.
- 4.2 You shall be responsible (and liable) for any failure of a User to comply with the terms of this Agreement (as if it were a breach by you of this Agreement).

5. YOUR RESPONSIBILITIES

- 5.1 In respect of your (and your Users) access to and use of the Website and Service you will comply (and will ensure your Users comply) with, all user documentation, applicable laws, rules and regulations, together with all instructions, guidelines, procedures and policies notified by us from time to time.
- 5.2 You will:
- (a) not use the Noted Platform or the Service for any purpose other than the Permitted Purpose;
 - (b) not resell or make available the Service to any third party, or otherwise commercially exploit the Service, without our prior written consent;
 - (c) ensure you have included such statements in your privacy policy as may be required in connection with your (or your Users) access to or use of the Service or any data made available to you via the Service, and ensure you have obtained any necessary consents and authorisations from individuals for the collection, storage, disclosure and use of all data and other information (including Subscriber Data) obtained from and/or relating to them which you store, access or use in connection with the Service;
 - (d) not permit anyone other than you or your Users to access or use the Service without our prior written consent;
 - (e) not attempt to undermine the security or integrity of our computing systems or networks (including the Noted Platform) or, where the Service is hosted by a third party, that third party's computing systems and networks;
 - (f) not use, or misuse, the Noted Platform or the Service in any way which may impair the functionality of the Noted Platform or the Service, or other systems used to deliver the Service or impair the ability of any other user to use the Service;
 - (g) not attempt to gain unauthorised access to any data or materials other than those to which you have been given express permission to access;
 - (h) not input into or transmit through the Service or otherwise use or share in connection with the Service, any:
 - (i) files that may damage any other person's computing devices or software;
 - (ii) content that may be offensive or unlawful; or
 - (iii) material or Subscriber Data in violation of any law (including Data Privacy Laws and codes or copyright or trade secret laws);
 - (i) not, except as and to the extent permitted by law, copy, reproduce, translate, adapt, modify or create derivative works of the Noted Platform or Service or any computer programs used to deliver the Service by any means or in any form without our prior written consent; and
 - (j) not reverse assemble or decompile the whole or any part of the Noted Platform or the Service or any computer programs used to deliver the Service.
- 5.3 You may not access the Service if you are a direct competitor of ours, except with our prior written consent. In addition, you may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

6. OUR RESPONSIBILITIES

- 6.1 We will, in providing the Service and any other services under this Agreement, act with reasonable care, skill and diligence.
- 6.2 We will use reasonable endeavours to ensure that the Service is available and providing (in all material respects) the functionality described in the Specifications, other than when we need to suspend access to the Service in order to carry out software upgrades or other maintenance, for any reason specified in this Agreement, or otherwise in circumstances beyond our reasonable control. If for any reason we have to interrupt the Service, we will use reasonable endeavours to publish in advance details of such activity. We do not guarantee that your access to, or use of, the Service will be uninterrupted, error or virus free.
- 6.3 We provide support for your use of the Service from the Help page in the Noted app, via support@noted.com or via our support number.

7. FEES AND PAYMENT

- 7.1 In consideration of your use of the Service, you will pay us the Fees (together with any other costs and expenses payable by you in respect of the Service).
- 7.2 Our Fees are exclusive of all taxes, levies, duties or fees imposed by a taxing authority or credit card providers or payment processors, and you shall be responsible for payment of all such taxes, levies, duties or fees, excluding only taxes based solely on our income.
- 7.3 We may increase the Fees from time to time, but any change will be notified to you no less than 90 days prior to the date on which the change is to become effective.
- 7.4 We may charge additional Fees if:
- (a) as part of the ordinary development of our product, we add further functionality to the Noted Platform; or
 - (b) at your request, we develop additional functionality that is outside our planned product development and is not applicable to our other clients.

Where we intend to charge an additional fee under clause 7.4(b), Noted and the Subscriber will enter into good faith negotiations to determine a reasonable price for the additional functionality.

8. PAYMENT

- 8.1 The:
- (a) subscription Fees are payable on a monthly basis, in advance; and
 - (b) all other Fees are payable by the 20th of the month following the date of the relevant invoice.
- Continuation of the Service is strictly subject to payment by you of the Fees in accordance with this clause 8.1.
- 8.2 Fees shall be payable by you in full (without set-off or deduction, withholding or counterclaim).
- 8.3 If you default in payment of any amount payable under this Agreement we will notify you and, if you have not rectified the relevant default within a further 30 days, we may:
- (a) suspend your access to the Service until such time as you have made payment in full of all amounts due and owing under this Agreement;
 - (b) charge interest on the unpaid amount from the due date until the date of actual payment (in full) at 10% per annum, compounded monthly; and
 - (c) charge you all costs incurred by us in connection with the recovery of the unpaid amounts, including the charges from debt recovery services and legal fees on a solicitor and own client basis.

9. INTELLECTUAL PROPERTY

- 9.1 Subject only to your rights in the Subscriber Data, we (or our licensors) own all Intellectual Property Rights in or relating to the Website, Service and the Noted Platform. We will also own any new Intellectual Property Rights in anything developed by or on behalf of us in the course of providing, supporting or maintaining the Service as such rights arise.
- 9.2 All Intellectual Property Rights owned (or licensed) by you prior to the date of this Agreement or otherwise created (or licensed) by you outside the scope of this Agreement will remain your sole and exclusive property.
- 9.3 Beyond the rights expressly granted in this Agreement, nothing contained in this Agreement confers on you any right or interest in, or licence or permit to use, any of the intellectual property rights in the Service, Website or Noted Platform or any outputs of them.
- 9.4 In the course of your use, you may make feedback, contributions or suggestions relating to the Service. To the extent that any such feedback, contributions or suggestions result in the creation of new Intellectual Property Rights relating to the Service, such Intellectual Property Rights will be owned by us. If requested, you agree to sign such documents as might be requested to assign such Intellectual Property Rights to us.

10. SUBSCRIBER DATA

- 10.1 We acknowledge and agree that, between you and Noted, all of your Subscriber Data (including any data: (i) uploaded, submitted, posted, transferred, transmitted, or otherwise provided or made available by or on behalf of you or any of your Users for processing by or through the Service; or (ii) collected, downloaded, or otherwise received by you or the Service specifically for you or any of your Users) will be owned by you.
- 10.2 You:
- (a) acknowledge and agree that we may (but are not under any obligation) to remove from the Service, any content or data that may expose us to potential liability;
 - (b) consent to the collection, storage, transfer, manipulation, disclosure and use of your Subscriber Data for the purposes of delivering the Service, as provided for in this Agreement and as otherwise approved or consented to by you in a separate data sharing agreement;
 - (c) subject to your rights under applicable laws, acknowledge and agree that your right to edit the Subscriber Data is contingent on full payment of any Fees when due. Your right to read-only access to the Subscriber Data will be unaffected, subject to deletion of the Subscriber Data under this Agreement;
 - (d) acknowledge and agree that Subscriber Data input into or otherwise stored in the Service during a Trial Subscription will be deleted if you fail to upgrade to a Paid Subscription within 90 days of the date on which your Trial Period ends.
- 10.3 You grant a non-exclusive licence to us in respect of all Subscriber Data to the extent necessary to provide the Service and perform our obligations and exercise our rights under this Agreement and at law.
- 10.4 You also grant to us a non-exclusive royalty free world-wide and irrevocable licence permitting us to copy, anonymise, aggregate, process and display data relating to your (and your Users') use of the Noted Platform to derive anonymous statistical and usage data, and data about the Service and your use of it, provided such data cannot be used to identify your Users or any other individual (**Anonymous Data**). We may combine or incorporate such Anonymous Data with or into other similar data and information available, derived or obtained from other clients, licensees, users, or otherwise (when so combined or incorporated, referred to as **Aggregate Data**). We will be the owners of all rights, title and interest in and to the Anonymous Data and Aggregate Data.
- 10.5 You warrant and represent that:
- (a) you have the right to grant the rights in clauses 10.3 and 10.4 in respect of all Subscriber Data, and to input and share the Subscriber Data in the manner anticipated by the Agreement and the Service; and

- (b) use of the Subscriber Data by us, our third party service providers, suppliers and partners (as applicable), and by you or any User in connection with the Services, will not breach any laws or the rights of any person (including the privacy or intellectual property rights of any person).
- 10.6 You indemnify us against any liability, claims and costs (including the actual legal fees charged by our solicitors) arising from any claim by any person that our possession, disclosure or use of any Subscriber Data in accordance with our rights under this Agreement and any data sharing agreement you have entered into with us:
 - (a) infringes a third party's Intellectual Property Rights or privacy rights;
 - (b) is defamatory, objectionable, obscene or harassing;
 - (c) is unlawful in any way (including under any Data Privacy Law); or
 - (d) will otherwise result in us being in breach of this Agreement.
- 10.7 We have in place for our own purposes policies and procedures to prevent data loss (and recovery) but do not make any guarantee around loss or corruption of any Subscriber Data and, as such, we expressly exclude any liability for any loss or corruption of any Subscriber Data, other than when such loss or corruption results from our negligence.

11. DATA SECURITY

- 11.1 We are committed to protecting the security of your Subscriber Data. We:
 - (a) will not use or disclose Subscriber Data for any purpose other than as specified in (or otherwise anticipated by) this Agreement, and otherwise as required to comply with our obligations under this Agreement and applicable laws, and if applicable, any other data sharing agreement we have entered into with you;
 - (b) have implemented and will maintain and follow appropriate technical and organisational measures intended to protect Subscriber Data in the Noted Platform against accidental, unauthorised or unlawful access, disclosure, alteration, loss, or destruction. Our data security measures are summarised in schedule 1 to these Terms.
- 11.2 If you request, upon reasonable notice to us, we will provide you with the latest list of your personnel that have access to Subscriber Data.
- 11.3 You acknowledge that we may store Subscriber Data in servers of our service providers, which may be located in a different country to us, and may access that Subscriber Data in either New Zealand, Australia, or the location of any of our affiliate entities, service providers, suppliers or partners from time to time.

12. PRIVACY

- 12.1 We collect and process the Personal Information of your Users and as otherwise contained in your Subscriber Data, when you (or your Users, as applicable) access or use the Website and/or the Service, we may also collect certain information about the performance of the Website and the Service and your (and your Users') use of the Website and/or the Service.
- 12.2 Our access to and use of all such Personal Information is governed by our Privacy Statement. By agreeing to this Agreement, you agree to the way we handle your (and your Users') Personal Information and any other Personal Information contained in your Subscriber Data, as specified in (and anticipated by) this Agreement. You can access our Privacy Statement on the Website.
- 12.3 You must comply with all applicable Data Privacy Laws in connection with your collection, storage, use and disclosure of any Personal Information of any person. You will not (and will ensure your Users do not) use the Website or Service: (i) to collect Personal Information about third parties other than as anticipated by the Service; or (ii) in a way that violates (or may be considered inconsistent with) the privacy, rights or civil liberties of any person (including in a way that prevents the exercise of them).
- 12.4 You warrant that you have obtained all necessary consents and approvals from all Users and other individuals whose Personal Information is included in the Subscriber Data or otherwise made available by you (or your Users) to Noted, to ensure that we are able to lawfully process all Personal

Information of such persons in the manner specified in (and anticipated by) this Agreement and any data sharing agreement we have entered into with you (if applicable).

12.5 You:

- (a) are responsible for your secure use of the Service, including securing (and ensuring your Users keep secure) your account authentication credentials, protecting the security of Personal Information when in storage or transit to and from the Service and taking any appropriate steps to securely encrypt or backup any Personal Information uploaded to the Service; and
- (b) will, upon becoming aware of a Security incident, or any other breach, or suspected breach, of your security safeguards, notify us without undue delay and shall provide timely information relating to the Security Incident as it becomes known or as is reasonably requested by us.

13. CONFIDENTIALITY

13.1 **Confidentiality:** Each party must, unless it has the prior written consent of the other party:

- (a) keep confidential at all times the Confidential Information of the other party;
- (b) effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and
- (c) disclose the other party's Confidential Information to its personnel or professional advisors on a need to know basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, clauses 13.1(a) and 13.1(b).

13.2 **Exclusions:** The obligation of confidentiality in clause 13.1(a) does not apply to any disclosure or use of Confidential Information:

- (a) for the purpose of performing a party's obligations, or exercising a party's rights, under this Agreement;
- (b) as required by law (including under the rules of any stock exchange);
- (c) which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
- (d) which was rightfully received by a party from a third party without restriction and without breach of any obligation of confidentiality; or
- (e) by us if required as part of a bona fide sale of our business (assets or shares, whether in whole or in part) to a third party, provided that we enter into a confidentiality agreement with the third party on terms no less restrictive than this clause 13.

14. TRIAL SUBSCRIPTION

14.1 Any Trial Subscription is supplied on an "as is – where is" basis, and as such the warranty given by us in clause 16.2 does not apply. Trial Services are for evaluation purposes only.

14.2 Your Trial Subscription will automatically end at the expiry of your Trial Period.

15. THIRD PARTY WEBSITES

15.1 The Website and the Service may contain links to other websites or resources over which Noted does not have control (**External Websites**). Such links do not constitute an endorsement by Noted of those External Websites. You acknowledge that we are providing these links to you as a convenience, and you further agree that we are not responsible for the content of any External Websites. Your (and your Users') use of the External Websites is entirely at your own risk and is subject to the terms and conditions of use and privacy policies located on the External Websites.

16. WARRANTIES

- 16.1 You warrant that all Subscriber Data and any other information supplied by you or your Users to Noted for the purposes of registration for and use of the Service is true, correct and up to date.
- 16.2 We will use our commercially reasonable efforts to ensure that, except as otherwise provided for in this Agreement, the Service complies (in all material respects) with the Specifications.
- 16.3 In the event of any breach of clause 16.2 or any other term, condition or warranty that we are unable to exclude by law, your sole remedy will be (at our option) the resupply of the non-conforming Service within a commercially reasonable time or a refund of the Fees paid by you for such non-conforming Service.
- 16.4 Noted does not represent that the Service, the Website or any outputs from them are error-free or will satisfy your requirements. Nor does Noted provide any warranties in respect of the accuracy, completeness, timeliness or supply of information via the Service or Website. The obligation of Noted in clause 16.2 is in lieu of all other warranties in respect of the Website or the Service. To the maximum extent permitted under applicable law, all other warranties, condition and representations, whether express, implied or verbal, statutory or otherwise, and whether arising under this Agreement or otherwise, are excluded (including, without limitation, the implied warranties of merchantability, non-infringement and fitness for a particular purpose).
- 16.5 You agree the Service is acquired for the purposes of a business, and as such, the guarantees and conditions provided under the New Zealand Consumer Guarantees Act 1993 do not apply.
- 16.6 You acknowledge and agree that no obligation, warranty, undertaking or promise is made by us in this Agreement shall apply in respect of any Trial Subscription or any third party software, data or service accessed and used by you (or us for the purposes of providing the Service or otherwise fulfilling our obligations under this Agreement or any data sharing agreement between you and us).
- 16.7 We use commercially available anti-virus software in the provision of the Service, but we cannot guarantee that the Website or the Service will be free from viruses, trojan horses, worms, time bombs, or similar harmful programming routines.

17. LIABILITY

- 17.1 To the extent we do become liable to you in connection with this Agreement or the Service, then all claims by you against us in any year of the term of this Agreement are limited in aggregate to the Subscription Fees paid by you in the previous year of the term of this Agreement (or, in respect of the first year of the term, the Subscription Fees paid prior to the date of the relevant event giving rise to the claim), unless such liability has arisen as a sole and direct result of our gross negligence, wilful misconduct or fraud.
- 17.2 Under no circumstances will either you or we (or any of our third party licensors, suppliers or resellers), or any of their directors, officers or employees, be liable, whether in contract, equity, tort (including negligence, breach of statutory duty or otherwise) or any other theory of liability for any direct or indirect: loss of profits, loss of revenue, loss of anticipated savings; or for any indirect, special or consequential loss whatsoever.
- 17.3 Despite any other provision to the contrary in this Agreement, we will not under any circumstances be liable to you, any User or any third party in respect of your use or reliance on any output created by or derived from the Service, including any decisions you make in respect of your business or clients arising from the use of the Service, which remains your sole responsibility.

18. TERMINATION AND SUSPENSION

- 18.1 You may cancel your Subscription at any time by giving us notice in accordance with the process outlined via the Service. If you cancel your Subscription before the end of a month for which you have already paid, the Service will continue to be available to you (pursuant to the terms of this Agreement) for the remainder of the month that you have paid for, but will end immediately thereafter.
- 18.2 Subject to your rights to access Subscriber Data under applicable laws and these Terms, we may terminate your use of the Service on written notice to you, for any of the following reasons:

- (a) your Trial Period has expired, and you have not upgraded to a Paid Subscription, unless otherwise agreed in writing by us;
- (b) you have cancelled your Subscription under clause 18.1;
- (c) any Fees or charges payable by or on your behalf under this Agreement are 10 Business Days or more overdue for payment;
- (d) you have committed a breach of this Agreement and have failed to remedy the breach within 10 Business Days of us notifying you of the breach;
- (e) you (or any of your Users or personnel) breach, or attempt to breach, any of our security protocols or systems on the Website or Service, or access (or attempt to access) data or another account that does not belong to you;
- (f) there is an appointment of any type of insolvency administrator in respect of your affairs;
- (g) if required by law; or
- (h) we reasonably consider it necessary or desirable to do so to protect our interests or reputation or the interests of the Service or any other person.

18.3 We may also suspend access to the Service at any time:

- (a) for any of the reasons specified in 18.2(a) to 18.2(h);
- (b) for such time as is necessary to carry out maintenance determined by us to be necessary or prudent;
- (c) to reduce or prevent interference with the Website or the Service;
- (d) if required to do so as a result of a direction by any government, law enforcement or other authority.

During the suspension of the Service, you will not have editable access to your Subscriber Data, but we will export your Subscriber Data in a common electronic form, such as JSON. We do not warrant that the format of the Subscriber Data will be compatible with any software. You may reactivate your subscription upon notice in writing by Noted that the suspension has ended. If you have not reactivated your Subscription within 90 days from the suspension of the Service, your Subscriber Data will be deleted and will not be able to be recovered, unless otherwise mutually agreed in writing.

18.4 On termination or expiry of this Agreement:

- (a) you must immediately cease (and ensure all Users cease) to access the Service;
- (b) you must pay all Fees incurred prior to termination or expiry of this Agreement;
- (c) you acknowledge and agree no Fees paid in advance and which relate to the period following termination, if any, will be refunded to you;
- (d) we will delete all your Subscriber Data that has not already been deleted within 90 days of the date of termination or expiry, unless mutually agreed in writing;
- (e) any provision of this Agreement intended to survive termination shall survive (including clauses 9 (Intellectual Property), 12 (Privacy), 13 (Confidentiality) and 17 (Liability)).

18.5 Termination or expiry of this Agreement does not affect either party's rights or obligations that accrued before that termination.

19. FORCE MAJEURE

19.1 Neither party shall be liable for any delay or failure to fulfil its obligations under this Agreement (excluding any obligation to make payment) arising directly or indirectly from any circumstance beyond the reasonable control of the affected party (including, without limitation, acts of God, flood, earthquake, storm, fire, epidemic, pandemic, war, embargoes, riot or civil disturbance), provided that the affected party shall notify the other party as soon as practicable of the events and use its reasonable endeavours to continue to perform its obligations and mitigate the effects of the event.

20. DISPUTES

- 20.1 Neither you nor we will commence any court or arbitration proceedings relating to a question, difference or dispute relating to this Agreement or the Service (Dispute) without first having complied with this clause 20.
- 20.2 Where any Dispute arises, you (or your representative) and Noted will negotiate in good faith in an attempt to resolve the Dispute amicably.
- 20.3 Where the Dispute cannot be resolved by way of good faith negotiations within 14 days (or such longer period agreed by you and us) of negotiations commencing, either you or we can elect to mediate any dispute in Wellington, New Zealand in terms of the New Zealand Resolution Institute standard mediation agreement.
- 20.4 If the Dispute cannot be resolved by way of mediation then either party may initiate arbitration or litigation.
- 20.5 Nothing in this section will preclude a party from taking immediate steps to seek urgent injunctive relief before an appropriate court.

21. GENERAL

- 21.1 Any problems that occur whilst accessing the Website or the Service (or any other correspondence with us) should be notified in writing through the help function or the enquiry page on the Website or Service (as applicable) at your earliest convenience.
- 21.2 Any notices to be provided by us to you pursuant to this Agreement shall be made by either posting such notice on the Website or emailing you at the email address you supplied to us for the purposes of registering an account on the Service.
- 21.3 The relationship between the parties under this Agreement is that of customer and service provider and nothing expressed or implied in this Agreement constitutes either party or their personnel as the partner, employee or officer of, or as a joint venturer with, the other party.
- 21.4 This Agreement is personal to you and you will not licence, assign, resell, share, pledge, rent or transfer any of your rights under this Agreement or any part of them without our prior written consent (which will not be unreasonably withheld). If you are not a natural person, any change of control in your corporate entity will be deemed an assignment. We may assign this Agreement at any time by notice in writing to you.
- 21.5 We may from time to time request that you accept certain amendments to this Agreement when you or your Users log-in to use the Service. Any such amendments will be effective if you accept them in the manner provided for acceptance. If you do not accept any such amendments, you will not be able to use the Service for the time being and you must contact us, in which case we will discuss the amendments with you and, if you will not agree to the amendments, either withdraw the amendments, agree revised amendments with you, or allow you to terminate this Agreement.
- 21.6 If any provision of this Agreement is determined to be illegal, invalid or otherwise unenforceable, then to that extent, it shall be severed and deleted from these terms and the remaining terms shall survive and continue to be binding and enforceable.
- 21.7 No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by either party will in any way affect, limit or waive that party's right to subsequently require strict compliance with this Agreement.
- 21.8 This Agreement records the entire understanding and agreement of the parties relating to the matters dealt with in this Agreement.
- 21.9 This Agreement is governed by the laws of New Zealand. You and we submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to them.

22. DEFINITIONS

- 22.1 **Definitions:** In this Agreement, unless the context indicates otherwise:

Agreement means these Terms, the Privacy Statement and any Letter of Agreement executed by you, and any schedules or appendices to any of them.

Business Day means Monday to Friday (New Zealand time) other than any public holiday observed in Wellington, New Zealand.

Confidential information means all written and oral information provided by either party to the other (and, in the case of Noted, to any User) or to which the other party (including in the case of the Subscriber, its Users) gain access. It is acknowledged and agreed that all information regarding the Service and the Noted Platform is Confidential Information of Noted.

Data Privacy Laws means privacy laws that either you or we are legally obliged to comply with, including the New Zealand Privacy Act 2020.

Fees means the fees set out on our Website or in the applicable Letter of Agreement, and includes the subscription fees and any additional fees incurred under clause 7.4.

Force Majeure means an event that is beyond the reasonable control of a party, excluding an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care or a lack of funds for any reason.

including means “including, without limitation”.

Intellectual Property Rights means trade marks, rights in domain names, copyright, patents, registered designs, circuit layouts, rights in computer software, databases and lists, rights in inventions, confidential information, know-how and trade secrets, and operating manuals and training manuals.

Letter of Agreement means any quote, Letter of Agreement, order form or services agreement to which these Terms are attached or incorporated by reference.

Noted Platform means our health and social care platform called Noted.

Paid Subscription means a subscription to the Service for a monthly Fee.

Permitted Purpose has the meaning given to it in clause 3.1.

Personal Information has the meaning given to that term in the Privacy Act 2020.

Privacy Statement means our privacy statement which can be accessed at <https://www.noted.com/privacy-statement>, as updated by us from time to time.

Security Incident means any unauthorised or unlawful breach of security that leads to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to Personal Information.

Service means the service involving the provision of access to the Noted Platform via the internet and all related activities performed by us as described in the applicable Letter of Agreement (or if no Letter of Agreement exists, as described on the Website).

Specifications means the specifications set out in the Letter of Agreement (or if no Letter of Agreement exists, as published by us or made available on our Website), describing the features and functionality of the Service, as updated by us from time to time.

Subscriber, you or your means the person or entity that has subscribed for the Service and is the holder of a customer account within the Service.

Subscriber Data means any data entered into the Service directly by you (or any of your Users) or indirectly as a result of the application of the Noted Platform or the Service, and any information or data the Service generates for you based solely on the input of such data.

Subscription Commencement Date means the first day of your first Subscription Period under this Agreement.

Subscription Period means the period of your subscription for the Service, as specified in your Letter of Agreement, or as otherwise agreed in writing by you and Noted.

Terms means these standard terms of use, and includes any schedules to them.

Trial Period means 60 days from the Subscription Commencement Date, unless a different period has been agreed in writing by us.

Trial Subscription means a free subscription to the Service for the Trial Period.

User means, if you are a corporate entity, each person registered by you to use the Service and notified to us.

We, us, our or **Noted** means Noted Limited.

Website means <https://noted.com> or such other site as notified by us from time to time.

22.2 **Terms:** If these Terms are inconsistent in any respect with the applicable Letter of Agreement, the Letter of Agreement prevails.

SCHEDULE 1 – DATA SECURITY

<p>Organisation of Data security</p>	<p>Security appointments Noted has appointed one or more security officers responsible for coordinating and monitoring its security rules and procedures.</p> <p>Roles and responsibilities Noted personnel with access to Subscriber Data are subject to confidentiality obligations.</p>
<p>Asset management</p>	<p>Inventory</p> <ul style="list-style-type: none"> ▪ Noted maintains an inventory of all locations where Subscriber Data is stored. Access to these locations is restricted exclusively to authorised Noted personnel. <p>Handling</p> <ul style="list-style-type: none"> ▪ Noted staff are restricted from printing Subscriber Data. Subscriber Data exists only in the locations described in the inventory. ▪ Subscriber Data in transit is held temporarily in secure locations and disposed of once it is no longer in transition. These locations are only accessible by authorised Noted personnel and selected individuals you have nominated. ▪ Noted personnel are prohibited from storing or processing Subscriber Data outside Noted’s facilities, unless authorisation is received from you to do so.
<p>Personnel</p>	<p>Checks Noted undertakes criminal and employment background checks on each of its employees.</p> <p>Training Noted informs its personnel about relevant security procedures and their respective roles. Noted also informs its personnel of possible consequences of breaching the security rules and procedures. Noted only uses anonymous data in training.</p>
<p>Physical and environmental security</p>	<p>Encryption Noted diligently selects modern encryption methods when designing its applications.</p> <p>Facilities</p> <ul style="list-style-type: none"> ▪ Dedicated, cloud-based hosting environment. No systems are shared with other parties. ▪ Subscriber Data is stored using highly available, fault tolerant technology, distributed across multiple availability zones. ▪ Encrypted and secure offsite backups for disaster recovery are constantly maintained in a separate region. ▪ Daily database snapshots are retained over the past 7 days for near-term data recovery. These snapshots are not retained for longer than 7 days. ▪ Point in time restoration available within 10 minute windows for the past 7 days. ▪ Noted uses protocols and technologies that protect against DDoS attacks.
<p>Communications and operations management</p>	<p>Operational Policy Noted maintains security documents describing its security measures and the relevant procedures and responsibilities of its personnel who have access to Subscriber Data.</p>

	<p>Data Recovery Procedures</p> <ul style="list-style-type: none"> ▪ Noted has specific procedures in place governing access to copies of Subscriber Data. ▪ Noted reviews Subscriber Data recovery procedures at least every six months. ▪ Noted has change management procedures in place governing change to Subscriber Data on your behalf. This only happens based on your request. <p>Event Logging</p> <p>Noted logs access and use of information systems containing Subscriber Data, registering the access ID, time, authorisation granted or denied, and relevant activity.</p>
<p>Deletion of Data</p>	<ul style="list-style-type: none"> ▪ Noted ensures that all Subscriber Data is deleted from the Service and its systems once it is no longer necessary to retain it. ▪ Unless otherwise agreed in writing, on termination of this Agreement, Noted will delete all Subscriber Data that has not already been deleted within 90 days of the date of termination or expiry.
<p>Access Control</p>	<p>Policy</p> <p>Noted maintains a record of security privileges of its personnel having access to Subscriber Data.</p> <p>Authorisation</p> <ul style="list-style-type: none"> ▪ Noted maintains and updates a record of personnel authorised to access Noted Platforms that contain Subscriber Data. ▪ Noted deactivates authentication credentials that have not been used for a period of time not to exceed six months. ▪ Noted identifies those personnel who may grant, alter or cancel authorised access to data and resources. ▪ Noted ensures that where more than one individual has access to systems containing Subscriber Data, the individuals have separate identifiers/log-ins. ▪ Technical support personnel are only permitted to have access to Subscriber Data when needed. ▪ Noted restricts access to Subscriber Data to only those individuals who require such access to perform their job function. <p>Confidentiality</p> <ul style="list-style-type: none"> ▪ Noted instructs Noted personnel to disable administrative sessions when leaving premises Noted controls or when computers are otherwise left unattended. ▪ Noted stores passwords in a way that makes them unintelligible while they are in force. <p>Authentication</p> <ul style="list-style-type: none"> ▪ Noted uses industry standard practices to identify and authenticate users who attempt to access information systems. ▪ Authentication mechanisms require suitably complex passwords, in addition to multi-factor authentication controls. ▪ Noted monitors repeated attempts to gain access to the information system using an invalid password. ▪ Noted uses industry standard password protection practices, including practices designed to maintain the confidentiality and integrity of passwords when they are assigned and distributed, and during storage. <p>Network design</p> <p>Noted has controls to avoid individuals assuming access rights they have not been assigned to gain access to Subscriber Data they are not authorised to access.</p>

<p>Access Auditing</p>	<ul style="list-style-type: none"> ▪ Noted maintains a full history of individual elements of Subscriber Data for as long as we hold that Subscriber Data. This includes the previous versions, as well as who and when the change occurred. ▪ All actions of Noted personnel when interacting with databases containing Subscriber Data are fully logged for audit purposes.
<p>Incident Management</p>	<p>Incident response process</p> <ul style="list-style-type: none"> ▪ Noted maintains a record of security breaches with a description of the breach, the time period, the consequences of the breach, the name of the reporter, and to whom the breach was reported, and the procedure for recovering data. ▪ For each security breach that is a “Security Incident” notification issued by Noted, as described in the “Security Incident Notification” section below.
<p>Security & Penetration testing</p>	<ul style="list-style-type: none"> ▪ Noted uses automated scanning to regularly monitor and assess security vulnerabilities at all times. ▪ Noted regularly has its code, network and systems tested and checked for vulnerabilities using a trusted third party.
<p>Business continuity management</p>	<ul style="list-style-type: none"> ▪ Noted maintains emergency and contingency plans for the facilities in which Noted information systems that process Subscriber Data are located. ▪ Noted’s redundant storage and its procedures for recovering data are designed to attempt to reconstruct Subscriber Data in its original or last-replicated state from before the time it was lost or destroyed.
<p>Business continuity testing</p>	<p>Your testing</p> <p>We will, at your cost, participate in your Business Continuity Management plan testing annually upon your request.</p> <p>Our testing</p> <p>We will test our Business Continuity Management plan(s) in accordance with our current practices on the date of this Agreement and will promptly provide to you a copy of a summary of the test results, as such test results apply to you and the Service. We will reasonably cooperate to address any of your input regarding the test.</p> <p>Audit right</p> <p>You may (at your own cost and on reasonable notice to us) audit our Business Continuity Management plan(s) testing annually.</p>
<p>Security incident notification</p>	<p>Noted will monitor the Service and systems under its control for any actual or potential security incidents/vulnerabilities or performance issues.</p> <p>If Noted becomes aware of any unlawful access to any Subscriber Data stored on the Noted Platform, or unauthorised access to such equipment or facilities resulting in loss, disclosure, or alteration of Data (each a “Security Incident”), Noted will:</p> <ul style="list-style-type: none"> ▪ within 72 hours or less, notify you (in writing) of the Security Incident; ▪ promptly investigate the Security Incident and provide you with detailed information about the Security Incident; and ▪ promptly take reasonable steps to mitigate the effects and to minimise any damage resulting from the Security Incident. <p>Notification(s) of Security Incidents will be delivered to one or more of your administrators by any means Noted selects, including via email. It is your sole responsibility to ensure your administrators maintain accurate contact information on their Noted account profile. Noted’s obligation to report or respond to a Security Incident under this section is not an acknowledgement by Noted of any fault or liability with respect to the Security Incident.</p> <p>You must notify Noted promptly about any possible misuse of its accounts or authentication credentials or any security incident related to Noted.</p>