

## MASTER SUBSCRIPTION TERMS

Version 1.1 Last updated May 2026

### 1 About these Terms

1.1 **These Terms:** The terms and conditions ('**Terms**') apply to the use of and/or subscription to HeartLab's multi-tenanted software-as-a-service product which allows viewing, reporting and analysis of medical data and information, being the HeartLab Cardiology Imaging Platform and relevant application programming interfaces, and any add-on or optional functionality that we make available in connection with the Platform, as contemplated by an Order Form ('**Platform**').

1.2 **Who we are:** The Platform is made available to each subscriber of the Platform with whom we agree an Order Form (referred to as '**Customer**', '**you**', '**your**') by:

For Customers located in	The following HeartLab entity
The USA (including all unincorporated territories of the USA) or Canada	HeartLab, Inc., a company incorporated in the state of Delaware
Australia	HeartLab Australia Pty Ltd, a company incorporated in the state of New South Wales, Australia (ABN 20 675 520 448)
The United Kingdom	HeartLab UK Ltd, a company incorporated in England and Wales with a company number of 16905949 of 86-90 Paul Street, London, Greater London, England, EC2A 4NE
New Zealand and the Rest of the World	HeartLab Limited, a company incorporated in New Zealand (NZBN 9429046990761)

1.3 **References to us:** In these Terms, references to '**HeartLab**', '**we**', '**us**', and '**our**' are references to the HeartLab entity that makes the Platform available to you, as contemplated by clause 1.2.

1.4 **No other terms apply:** These Terms apply to the exclusion of any terms which you purport to apply between you and us relating to your use of the Platform.

1.5 **How we may update these Terms:** We may update these Terms by giving notice to you and/or posting the updated Terms on our website at [www.heartlab.com/legal](http://www.heartlab.com/legal).

1.6 **Effective date of updates:** Any updates we make to these Terms in accordance with clause 1.5 will take effect:

- a immediately, in the case of non-material updates such as:
  - i grammatical changes;
  - ii the inclusion of changes to accommodate the introduction of new services, features or functionality;  
or
  - iii changes which a reasonable person would consider are beneficial to you; and
- b in the case of all other updates, upon the next renewal of your subscription to the Platform.

1.7 **Definitions and interpretation:** Defined terms and rules of interpretation for this agreement are set out in clause 18.

- 1.8 **Inconsistency:** If there is any inconsistency between the documents that form part of these Terms, the following descending order of precedence applies (in that provisions or documents will prevail over provisions or documents listed below them, to the extent of any inconsistency):
- a the relevant Order Form or SOW;
  - b clauses 1 to 18; and
  - c the schedules to these Terms.
- 2 Subscription to the Platform**
- 2.1 **How to subscribe:** To subscribe to the Platform, you must submit a valid Order Form to us, which:
- a is an offer by you to subscribe to the Platform; and
  - b if accepted by us will form a contract between you and us, on these Terms and those in the Order Form, which will apply to your subscription and access to the Platform.
- 2.2 **Pricing:** The Charges payable by you in connection with your access to the Platform will be as set out in the Order Form.
- 2.3 **Commencement of subscription:** Your subscription term commences:
- a if we have offered you a trial subscription, commences on the 'Trial Start Date' specified in the Order Form; and
  - b otherwise commences.
- 2.4 **Duration of subscription:** Unless earlier terminated in accordance with clause 12 and subject to clause 2.6:
- a your subscription commences on the 'Subscription Start Date' specified in the Order Form; and
  - b your subscription continues for the Initial Subscription Period specified in the Order Form, at the expiry of which, your subscription continues on a quarterly basis ('**Rollover Term**') unless:
    - i either you or we terminate your subscription to the Platform by giving the other no fewer than 10 Business Days' notice to terminate, such notice to take effect at the expiry of the Initial Subscription Period or the expiry of the next Rollover Term (as the case may be); or
    - ii you and we enter into a new Order Form in the manner contemplated by clause 2.1b.
- 2.5 **Increase in Charges:** Without limiting clause 2.4b, we may increase the Charges payable by you by giving you no fewer than 20 Business Days' notice, and the increased Charges will apply with effect from the expiry of the Initial Subscription Period or the expiry of the next Rollover Term (as the case may be).
- 2.6 **Trial subscription:** If we have offered you a trial subscription (as indicated in the relevant Order Form):
- a you will have access to a trial subscription (in respect of which no Charges are payable), from the 'Trial Start Date' specified in the Order Form, for the 'Trial Period' specified in the Order Form;
  - b you may terminate your trial subscription at any time during the Trial Period by giving us no fewer than three Business Days' notice to terminate with effect from the expiry of the Trial Period;
  - c subject to clause 2.6d, if you do not terminate your trial subscription in accordance with clause 2.6b, your full subscription will take effect in accordance with clause 2.4;

- d if the relevant Order Form does not specify an Initial Subscription Period and/or Charges applicable to your full subscription, your access to the Platform will automatically cease at the expiry of your trial subscription unless you and we enter into a new Order Form in the manner contemplated by clause 2.1b.

### 3 Your access to the Platform

- 3.1 **Availability:** We will use reasonable endeavours to make the Platform available to you to use, on a non-exclusive basis, in accordance with:
  - a these Terms; and
  - b the Availability Service Levels.
- 3.2 **New features, etc.:** When we make any new features, functionality or add-ins available through the Platform, we may, in our discretion offer them to you:
  - a at no additional cost to you; or
  - b subject to payment of additional Charges (in which case, we will enter into a further Order Form with you to record those Charges and other matters necessary to record the basis on which we will provide them to you).
- 3.3 **No other warranties:** Other than the warranties and representations expressly set out in these Terms (including the Service Levels), we give no warranties and make no representations (including any statutory warranties other than those we are not permitted to exclude under Applicable Law) in connection with:
  - a the availability or performance of the Platform (including any of its outputs), including that the Platform will operate without error; or
  - b your use of the Platform.
- 3.4 **Revocation or suspension:** We may revoke or suspend your access to the Platform, without notice and without incurring liability to you:
  - a where we reasonably consider that:
    - i your access is being misused or has been compromised;
    - ii to do so is desirable to protect the security and integrity of the Platform generally, and/or any systems underpinning the delivery of the Platform;
  - b to undertake maintenance (schedule or otherwise) of the Platform generally, and/or any systems underpinning the delivery of the Platform;
  - c if required to do so by a third party on whom we rely for the provision of the Platform.

### 4 Your use of the Platform

- 4.1 **Your responsibility:** When using the Platform, you:
  - a remain solely responsible and liable for:
    - i all clinical decisions, diagnoses, treatments, and health services provided by you;
    - ii patient care and clinical outcomes;
    - iii ensuring that, if you use any of our recompression features, the resulting data loss is clinically acceptable; and

- b remain responsible for any obligations imposed on you by Applicable Law to maintain medical and other records, including any records created as a result of your use of the Platform.

4.2 **Manner of use:** You must:

- a ensure the accuracy, completeness, and quality of all inputs provided to the Platform by you;
- b never rely on the outputs created by your use of the Platform (including those created using the Platform's AI functionality) as the sole basis for any decision, including clinical decisions; and
- c ensure that your and any Authorised Person's use of the Platform (including the use of any AI functionality offered with the Platform) complies with all Applicable Law, including healthcare regulations, Data Protection Laws, and any AI governance frameworks that may apply to your jurisdiction or industry;
- d ensure that the outputs created by your use of the Platform (including those created using the Platform's AI functionality) are reviewed, validated, and verified by an appropriately qualified human before being relied upon for any purpose.

4.3 **Storage limits:** You may store the amount of data using the Platform as is indicated as the 'Storage Limit' in the relevant Order Form ('**Storage Limit**').

4.4 **How storage usage is measured:** The way in which we measure your storage of data using the Platform is based on the ingested file size of that data, as measured by us.

4.5 **Additional storage:** If you store any data using the Platform beyond the Storage Limit:

- a we may impose additional Charges on you, based on our then-current rates for additional storage; and/or
- b we may invite you to increase in your Storage Limit (in which case we will enter into a further Order Form with you to record the applicable Charges and other matters necessary to record the basis on which we will make the additional storage available to you).

4.6 **Minimum Study Allocation:** We will charge you the applicable per Study Charge for the minimum number of Studies as indicated in the relevant Order Form ('**Minimum Study Allocation**'), regardless of how many Studies you undertake during the relevant period to which the Minimum Study Allocation applies.

4.7 **Additional Charges:** For each Study you undertake that exceeds the Minimum Study Allocation, we will charge you the applicable per Study Charge for additional Studies as indicated in the relevant Order Form.

4.8 **Increase of Minimum Study Allocation:** We may invite you to increase in your Minimum Study Allocation (in which case we will enter into a further Order Form with you to record the applicable Charges and other matters necessary to record the basis on which we will make the additional storage available to you).

4.9 **Beta services:** Where we invite you to access 'beta services' of new technology or beta functionality in relation to the Platform (which may not have received regulatory approval in the jurisdiction in which you operate), you must only use those beta services or functionality for non-clinical purposes.

4.10 **Data protection compliance:** You must comply with all Data Protection Laws applicable to your collection, use, disclosure and processing of Customer Personal Data.

4.11 **Notices and consents from patients:** You must:

- a ensure that all notices and/or consents required by Data Protection Laws are in place or obtained by you (as the case may be) to enable us to:
  - i process Customer Personal Data for the purposes of providing the Platform to you;
  - ii where you have granted us permission to do so (whether contemplated in the Order Form or otherwise), use Customer Personal Data to generate anonymised and/or aggregated (non-

identifying) statistical data ('**Anonymised Data**') for our own internal research and product development purposes, and to conduct statistical analysis and identify trends and insights;

- iii where you have granted us permission to do so (whether contemplated in the Order Form or otherwise), use and disclose Anonymised Data (including to third parties) for the purposes of:
  - A statistical analysis;
  - B identifying trends and deriving insights; and
  - C research and development, including the training, testing, validation, and refinement of algorithms and models (such as machine learning, generative, predictive, supervised, unsupervised, or reinforcement learning methods); and
- b without limiting clause 4.11, give notices or seek consents from such persons and in such form and manner as we reasonably request.

#### 4.12 **UK GDPR Compliance:**

- a Where any Customer Personal Data is subject to the UK GDPR:
  - i both parties will comply with all applicable obligations imposed on them respectively under the UK GDPR in connection with the processing of that Customer Personal Data;
  - ii the parties acknowledge that for the purposes of the UK GDPR, the Customer is the controller and HeartLab is the processor in respect of Customer Personal Data;
  - iii HeartLab will only process Customer Personal Data:
    - A on the documented instructions of the Customer, as set out in Schedule 1 and any applicable Order Form; and/or
    - B as required by Applicable Law; and
  - iv HeartLab will maintain a record of processing activities in respect of Customer Personal Data as required by Article 30 of the UK GDPR (as applicable); and
  - v the parties each agree to comply with Schedule 1 of these Terms.

4.13 **Notice:** You must promptly notify us if you become aware of any breach of any Data Protection Laws in connection with Customer Personal Data and/or any complaint, request, or other matter which may adversely affect our reputation arising from or in connection with your use of the Platform or our processing of Customer Personal Data (regardless of whether such use complies with Data Protection Laws).

#### 4.14 **Restrictions on use:** You must not:

- a reverse engineer, disassemble, modify, decompile, decode, translate, or make any derivative works from the Platform, or attempt to do so;
- b attempt to learn the source code, structure, algorithms, or internal ideas underlying the Platform;
- c use the Platform to store or transmit any viruses, software routines, or other code designed to permit unauthorised access, to disable, erase, or otherwise harm software, hardware, or data, or to perform any other harmful actions;
- d gain access to the Platform or any of its functionality (including any data or other information made available through the Platform) which you do not have our authority to access, or attempt to do so;

- e copy, frame, mirror, alter, modify, transmit or reproduce the Platform or any of its functionality, or attempt to do so;
- f use the Platform in a way that:
  - i breaches, or causes us to breach, Applicable Law; or
  - ii infringes any person's Intellectual Property Rights; and
- g remove, alter, or obscure the HeartLab Brand, or any proprietary or copyright notices which we have configured the Platform to display.

4.15 **Indemnity:** You must indemnify us on demand for all Liability we incur arising out of or in connection with any third party Claim brought against us arising from or in connection with:

- a any matter which remains your sole responsibility under clause 4.1; and/or
- b your breach of the remainder of this clause 4.

## 5 Access Accounts and Authorised Persons

5.1 **Access Accounts and Authorised Persons:** We may provide you with login details and passwords ('Access Account'), and administration privileges for the purposes of you establishing individual logins and passwords for the persons nominated by you ('Authorised Persons') (which logins and passwords will be 'Access Accounts' for the purposes of this Agreement), to enable you access, and to grant Authorised Persons access, to the Platform.

5.2 **Responsibilities for actions:** You will be solely liable for any actions undertaken on or in respect of the Platform using an Access Account that is provided to or established by you under clause 5.1.

5.3 **Cease involvement:** You must immediately terminate the Access Account of any Authorised Person if:

- a that Authorised Person is no longer engaged by or otherwise associated with you; or
- b at our request.

5.4 **Security:** You must:

- a undertake all security checks necessary and appropriate to minimise the risk of unauthorised access, or as otherwise reasonably required by us, prior to nominating an Authorised Person under clause 5.1 or otherwise granting an Authorised Person access to the Platform; and
- b keep secure and confidential and must procure that each Authorised Person keeps secure and confidential, in each case in accordance with best practice, the details of each Access Account and in particular the Access Account passwords or any other personal password or code that is assigned to you or Authorised Person.

5.5 **General obligations:** You must ensure each of the Authorised Persons comply with clause 4, as if references to 'you' in that clause were to an Authorised Person.

## 6 Updates and New Releases

6.1 **Updates and New Releases to be made available:** We may make Updates or deploy a New Release at any time, in which case:

- a Updates and certain New Releases may be automatically applied to the Platform and without any additional Charges or notice to you; and

- b your access to other New Releases may require you and us to enter into a new Order Form, and payment by you of additional Charges.

6.2 **Notice:** We will use reasonable endeavours to give you reasonable notice of upcoming Updates and New Releases including:

- a the impact such Updates or New Releases will have on the Platform;
- b any additional Charges that apply to Updates or New Releases; and
- c likely downtime for the Platform required to implement the Updates or New Releases.

6.3 **Deploying New Releases and Updates:** You must implement, at our request all Updates and New Releases (to the extent such Updates and New Releases are not automatically deployed by us), and we may by notice to you, cease to provide Support Services in respect of where you have failed to implement an Update or New Release.

## 7 Support Services

We will:

- a only provide Support Services in respect of the most current and previous versions of the Platform at any time; and
- b not be liable to you in respect of any errors, defects or other performance issues that would not have occurred had you implemented an Update or New Release (to the extent such Updates and New Releases are not automatically deployed by us).

## 8 Additional Services

8.1 **Entry into SOWs:** We may during the Term agree to enter into a SOW with you in connection with our provision of any Additional Services (such as consulting services) to you.

8.2 **Scope of Additional Services:** The scope of the Additional Services will be as set out in the SOW.

8.3 **Fee for Additional Services:** The fee for the Additional Services will be as set out in the SOW.

8.4 **Status of negotiations:** No SOW, nor any obligation to perform any Additional Services contemplated by an SOW, will be binding on us until the earlier of:

- a signing of the SOW by both parties; or
- b us starting to perform the Additional Services contemplated by the SOW.

8.5 **SOWs incorporated into these Terms:** Each SOW, once signed by both parties, will be governed by these Terms and the terms of the SOW.

8.6 **Reasonable care:** We will use reasonable care and skill when carrying out the Additional Services.

8.7 **No other warranties:** Other than the warranties and representations expressly set out in these Terms, we give no warranties and make no representations (including any statutory warranties other than those we are not permitted to exclude under Applicable Law) in connection with our performance of the Additional Services (including with respect to the results or outcomes of the Additional Services).

8.8 All variations to an SOW must be agreed in writing between the parties and any variations to the Fees and/or scope of the Additional Services shall be mutually agreed between the parties. If we consider that any instructions or directions from you constitute a variation to the scope of the SOW, the Additional Services or

our obligations under these Terms, then we will not be obliged to comply with such instructions or directions unless agreed in accordance with this clause

## 9 Invoicing and payment

9.1 **Invoicing and payment:** Unless otherwise set out in an Order Form or SOW:

- a we will invoice you:
  - i for the Charges quarterly in advance; and
  - ii for any Service Fees monthly in arrears; and
- b you must pay each invoice issued by us by no later than 15 days after the date of invoice.

9.2 **Failure to pay:** If you do not pay the full amount of an invoice when due, without limiting our rights under clause 12.1b:

- a we may charge late payment interest on the outstanding amount:
  - i at a rate of 1.5% per month; and
  - ii for a period, which starts on the date the amount falls due for payment and ends on the date you pay the amount outstanding in full; and
- b we may recover from you all costs of recovery we incur in connection with your late payment.

9.3 **Sales Tax:** Unless otherwise stated in the relevant Order Form or SOW, the Charges and Fees exclude Sales Tax, which if applicable, will be payable by you at the rate applicable at the time of supply.

## 10 Customer Data

10.1 **Prior notification of large export of Customer Data:** You must provide us with reasonable notice of your intention to export Customer Data from the Platform beyond that contemplated by Reasonable Data Use.

10.2 **Reasonable Data Use:** Without limiting clause 10.1, we may impose additional Charges on you to reflect our reasonable costs if:

- a you export Customer Data from the Platform beyond that contemplated by Reasonable Data Use; and/or
- b your use of the Platform otherwise exceeds the data use limits of Reasonable Data Use.

10.3 **Charges for additional assistance:** We may impose additional Charges on you for all reasonable out-of-pocket expenses that we incur in connection with, and (on a time and attendance basis) for any of our internal resources which we deploy to respond to, any extraction of Customer Data:

- a which requires our manual intervention; and/or
- b following termination of this agreement, for any reason.

10.4 **Deletion of Customer Data:** We may delete any Customer Data that we hold on your behalf at any time after the date that is 90 days after expiry or termination of your subscription to the Platform.

10.5 **Data processing terms:** Schedule 1 applies to your access to and use of the Platform in addition to these Terms.

## 11 Liability

- 11.1 **Exclusion:** Subject to 11.3 and to the maximum extent permitted by law, we will not be liable to you whether in contract, tort (including negligence), breach of statutory duty or otherwise, under or in connection with these Terms, your use of the Platform (including any inability to use the Platform), and/or the performance of any Additional Services for any of the following:
- a any losses arising from your breach of these Terms;
  - b any losses arising from any failure of systems, hardware, software, communications equipment, networks or other equipment used by you to access the Platform;
  - c any loss caused by or arising from a distributed denial-of-service attack, viruses, or other technologically harmful material that may infect or corrupt your computer hardware, software, data or devices arising from your use of the Platform;
  - d any loss of the use of money, loss of anticipated savings, loss of bargain, loss of revenue, loss of opportunity, loss of business, loss of profit, loss of goodwill or loss of reputation (in each case, whether direct or indirect);
  - e loss or corruption of Customer Data;
  - f indirect or consequential loss;
  - g exemplary or punitive damages;
  - h any losses arising in connection with:
    - i your use of a Third Party Feature; or
    - ii the acts or omissions of a Third Party Supplier; and/or
  - i any losses arising as a result of any third party bringing a claim in respect of any of the above types of loss.
- 11.2 **Limitation:** Our aggregate liability to you due to, under and/or arising out of or in connection with these Terms, your use of the Platform (including any inability to use the Platform) and/or the performance of any Additional Services in contract, tort (including negligence), breach of statutory duty or otherwise, in respect of any and all claims, will not exceed the aggregate amount of the Charges actually paid by you in the 12-month period prior to the date on which the event giving rise to our liability occurs.
- 11.3 **Where exclusions and limitation do not apply:** Nothing in these Terms excludes or limits our liability:
- a to indemnify you under clause 13.3; and
  - b for any matter for which it would be illegal to exclude or attempt to exclude our liability.
- 11.4 **Approval and/or Consent:** You hereby indemnify and hold us harmless against all losses, damages, costs, claims, and expenses (including reasonable legal fees) arising out of or in connection with your failure to comply with your obligation to obtain the necessary, consent, or approval for our processing of data (including, without limitation, Customer Personal Data) pursuant to these Terms, the Data Processing Addendum and/or an Order Form.
- ## 12 Early termination
- 12.1 **Our rights of early termination:** Without limiting our rights under clause 3.4, we may terminate your access to the Platform immediately:

- a if you breach any of your material obligations under these Terms, including your obligations under clause 4.14 and fail to remedy such breach within 30 days of our notice;
- b if you fail to pay any Charges payable to us when due; or
- c if you suffer an Insolvency Event.

12.2 **Your right to terminate:** You may terminate your subscription by giving us 20 Business Days' notice if we fail to achieve the same Service Level in three consecutive calendar months.

12.3 **Termination is sole remedy:** Your sole remedy arising from or in connection with our failure to meet the Service Levels is to terminate your subscription in accordance with clause 12.2.

12.4 **Manner of termination:** If we terminate your access to the Platform under clause 12.1, we may do so by suspending or revoking your account, without notice to you.

12.5 **Effect of termination:** If we terminate your access to the Platform under clause 12.1 or you terminate your subscription under clause 12.2, you will immediately cease to have the right to use the Platform. We will provide you with access to retrieve your data upon reasonable request from you.

### 13 Intellectual Property Rights

13.1 **Ownership:** As between you and us, all right, title, and interest in the Platform IPR will remain in the ownership of, or will vest in (upon its creation), us (or our licensors).

13.2 **Licence:** Without limiting clause 13.1, we hereby grant to you a non-exclusive, royalty-free licence of the Platform IPR solely to the extent necessary to enable you to use the Platform in accordance with these Terms.

13.3 **Indemnity by us:** We must indemnify you on demand for all Liability you incur arising out of or in connection with any Third Party Claim that the Platform and/or your use of the Platform in accordance with these Terms does or may infringe another person's Intellectual Property Rights, other than any Liability that you would not have incurred but for your failure to comply with clause 13.4.

13.4 **Control of claims:** If any person makes a Third Party Claim or notifies an intention to make a Third Party Claim against you which may reasonably be considered likely to give rise to our obligation to indemnify you under clause 13.3 ('**Indemnified Claim**')

- a you:
  - i must as soon as reasonably practicable, give us notice of the Indemnified Claim, specifying the nature of the Indemnified Claim;
  - ii must not make any admission of liability, agreement, or compromise in relation to the Indemnified Claim without our prior approval; and
  - iii must take all reasonable steps to assist us in respect of the Indemnified Claim, including providing all information and assistance we reasonably require, at your own expense; and
- b we:
  - i may take over the defence or settlement of the Indemnified Claim at our sole discretion and cost; and
  - ii without limiting clause 13.4bi and our duties to the court, must not make statements or submit evidence about you without your prior approval.

13.5 **Modification of the Platform:** Without limiting our obligations under clause 13.3, if we reasonably consider that you are or may become the subject of an Indemnified Claim, we may, at our option:

- a obtain such rights as we reasonably consider necessary to ensure that you may continue to use the Platform without infringing that person's Intellectual Property Rights; or
- b replace or modify the Platform (or any of its functionality) in such a way as to not substantially compromise the primary functionality of the Platform.

13.6 **Licence to use your Intellectual Property Rights:** You hereby grant us a non-exclusive, royalty-free licence of your Intellectual Property Rights to the extent necessary or desirable to enable us to:

- a make the Platform available to you, carry out any Additional Services, and otherwise perform our obligations under these Terms;
- b make improvements to, update, or otherwise modify the Platform;
- c grant sub-licences to Third Party Suppliers, under which Third Party Suppliers may use your Intellectual Property Rights to make any Third Party Features available to you through the Platform; and
- d use your logo and branding for the purposes of publicising that we are working with you.

## 14 Confidentiality

14.1 **Obligation of confidentiality:** Subject to clause 14.3, each party ('**Recipient**')

- a must keep secret; and
- b subject to clause 14.2, must not disclose to any other person,

the Confidential Information of or relating to the other party ('**Discloser**').

14.2 **Disclosure:** The Recipient may disclose the Confidential Information to:

- a its legal and professional advisors for the purposes of obtaining advice; and
- b its subcontractors, if such subcontractors need to know the Confidential Information for the purposes of carrying out the obligations of the Recipient which are subcontracted to them, and on the basis that the subcontractor is also subject to confidentiality obligations not less protective of Confidential Information than this clause 14.

14.3 **Exclusions:** The obligations under clause 14.1 do not apply to the extent that any Confidential Information:

- a is in, or has become part of, the public domain other than as a result of:
  - i a breach of the Recipient's obligations of confidentiality arising under clause 14.1; or
  - ii a breach of confidence owing to the Discloser by any other person which the Recipient knew or ought to have known was a breach of confidence;
- b is in the Recipient's possession other than by reason of disclosure from the Discloser, or your access to the Platform; or
- c must be disclosed by the Discloser under a specific requirement of Applicable Law, subject to clause 14.4.

14.4 **Permitted disclosures:** If the Discloser is required to make a disclosure under clause 14.3c, such disclosure may only be made:

- a to the extent necessary;
- b to the proper recipient; and

- c unless prevented by Applicable Law, if the Recipient has used reasonable endeavours to give prior notice to the Discloser of the requirement, setting out the nature of the information to be disclosed,

but if the Recipient is prevented by Applicable Law from giving prior notice to the Discloser, the Recipient must provide notice of the nature of the information disclosed as soon as permissible under Applicable Law after making such disclosure.

- 14.5 **Restrictions on representations and public comment:** You must not make any representations or public comment regarding the Platform without our prior approval.

## 15 Disputes

- 15.1 **First-level resolution:** If a Dispute arises, either party may by notice to the other party ('**Dispute Notice**') refer the Dispute to the other party with a view to resolving the Dispute by way of good faith negotiations.

- 15.2 **Second-level escalation:** If the Dispute cannot be resolved within 20 Business Days after the date of the Dispute Notice, either party may by notice to the other party ('**Escalation Notice**') refer the Dispute to the chief executives of the parties to resolve the Dispute by way of good faith negotiations.

- 15.3 **Arbitration:** If the Dispute cannot be resolved within three months after the date of the Escalation Notice, either party may by notice to the other party refer the Dispute to arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce ('**Arbitration Rules**'), conducted in English by one or more arbitrators appointed in accordance with the Arbitration Rules, in which case, without limiting the ability to conduct the arbitration remotely through audio/visual link, if:

Customer is located in	The law applicable to the arbitral proceedings will be the laws of	The arbitration will take place in
The USA (including all unincorporated territories of the USA) or Canada	The state of Delaware	Delaware, USA
Australia	New South Wales	Sydney, Australia
United Kingdom	England and Wales	London, England
New Zealand and the Rest of the World	New Zealand	Auckland, New Zealand

- 15.4 **Urgent or equitable relief:** Nothing in this clause 15 will prevent a party from commencing court proceedings in a court of competent jurisdiction for the purposes of:

- a enforcing an arbitration award; or
- b seeking urgent injunctive relief or any other equitable remedy.

## 16 Notices

- 16.1 **How to give:** Any notice given under or in connection with these Terms:

- a must be in writing; and
- b will only be validly given if personally delivered, posted, or sent by email to that party's address for service as set out below (or such other address as that party subsequently notifies to the other party):

**HeartLab:**

HeartLab entity	Address	Email
HeartLab, Inc.	I/C/O Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808 USA	<a href="mailto:legal@heartlab.com">legal@heartlab.com</a>
HeartLab Australia Pty Ltd	45 Watt Street Newcastle NSW 2300 Australia	<a href="mailto:legal@heartlab.com">legal@heartlab.com</a>
HeartLab UK Ltd	86-90 Paul Street London England EC2A 4NE	<a href="mailto:legal@heartlab.com">legal@heartlab.com</a>
HeartLab Limited	Suite 305, 150 Karangahape Road Auckland Central Auckland 1010 New Zealand	<a href="mailto:legal@heartlab.com">legal@heartlab.com</a>

**You:** The contact details set out in the relevant Order Form.

16.2 **Time of service:** Any notice given under these Terms will be deemed to have been received:

- a in the case of personal delivery, at the time of delivery;
- b in the case of posting, on the fifth Business Day following the date of posting; and
- c in the case of email, at the time of transmission by the sender, unless the sender was put on notice that the transmission was unsuccessful,

but if any notice is personally delivered or sent by email either after 5pm on a Business Day, or on any day that is not a Business Day, it will be deemed to have been received at 9am on the next Business Day.

## 17 General

17.1 **Force Majeure Events:** We will not be liable to you for our inability to perform, or delay in performing, any of our obligations under this agreement caused by a Force Majeure Event.

17.2 **Entire agreement:** These Terms (including all documents incorporated by reference):

- a contain the entire agreement between you and us;
- b set out the only conduct relied on by you; and
- c supersede all earlier conduct and prior agreements, representations and understandings between you and us,

in connection with your access to the Platform.

17.3 **Rights of third parties:** Nothing in these Terms is intended to confer a benefit upon any person other than you or us.

- 17.4 **No partnership or agency, etc.:** Nothing in these Terms or arising out of the relationship established under these Terms will:
- a constitute you as our agent or grant you any authority to make any commitments on our behalf; or
  - b create any trust, joint venture or commercial partnership between you and us.
- 17.5 **Waiver:** No exercise or failure to exercise or delay in exercising any right or remedy by us will constitute a waiver by us of that or any other right or remedy available to us.
- 17.6 **No assignment:** You may not assign, charge, encumber, or otherwise deal with any rights and obligations under these Terms or in respect of the Platform, or purport to do so.
- 17.7 **Partial invalidity:** If any provision of these Terms or their application to you or to any circumstance is or becomes invalid or unenforceable to any extent, the remainder of these Terms and their application will not be affected and will remain enforceable to the greatest extent permitted by law.
- 17.8 **Rights cumulative:** Our rights under these Terms are cumulative and are not exclusive of any other rights and remedies available to us.
- 17.9 **Governing law and jurisdiction:** Without limiting clause 15.3, if:

Customer is located in	This agreement is governed by the laws of	The parties submit to the non-exclusive jurisdiction of the courts of
The USA (including any unincorporated territory of the USA) or Canada	The state of Delaware	Delaware, USA
Australia	New South Wales	Sydney, Australia
United Kingdom	England and Wales	England and Wales
New Zealand and the Rest of the World	New Zealand	Auckland, New Zealand

## 18 Definitions and interpretation

- 18.1 **Definitions:** In these Terms, unless the context otherwise requires:
- 'Access Account'** has the meaning given to it in clause 5.1.
- 'Additional Services'** means any services and works contemplated by a SOW.
- 'Anonymised Data'** has the meaning given to it in clause 4.11a.ii.
- 'Applicable Law'** means any legislation or regulation which is binding on a party.
- 'Arbitration Rules'** has the meaning given to it in clause 15.3.
- 'Authorised Person'** has the meaning given to it in clause 5.1.
- 'Availability Service Levels'** means the availability service levels set out in paragraph 2 of Schedule 2.
- 'Business Day'** means a day (other than Saturday or Sunday) on which registered banks are open for in-person business in Auckland, New Zealand, but excludes any day in the period from 24 December in any year to 5 January in the following year (both inclusive).

**'Charges'** means the charges payable by you to us (if any) for your access to the Platform and any other charges that we may charge in connection with the Platform, including:

- a the charges set out in an Order Form;
- b any charges payable by you under clauses 6, and 10; and
- c any charges payable by you for under a SOW.

**'Claim'** means any proceeding, demand, action or other claim.

**'Confidential Information'** means:

- a all commercial, financial, and/or technical information, trade secrets, products, operations, processes, and unpublished information relating to a party's operations, business, or prospective business;
- b any other information imparted to a party by or on behalf of the other party or otherwise obtained under or in connection with the Platform and which is of a confidential nature (whether or not expressly designated as imparted in confidence).

**'Customer Data'** means:

- a all data inputted to or created in the Platform by you or an Authorised Person;
- b any other data created or provided by you or an Authorised Person in connection with use of the Platform which is derived from the data referred to in paragraph a above.

**'Customer Personal Data'** means Customer Data that is Personal Data.

**'Data Protection Laws'** means all Applicable Laws relating to data protection and privacy that are binding on a party in relation to Customer Personal Data, including:

- a in the United States, the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (**'HIPAA'**), the Standards for Privacy of Individually Identifiable Health Information promulgated thereunder by the U.S. Department of Health and Human Services at 45 CFR Part 160 and Part 164, the Standards for the Security of Electronic Protected Health Information promulgated thereunder by the U.S. Department of Health and Human Services at 45 CFR Part 160, Part 162 and Part 164;
- b in Australia, the Privacy Act 1988 (Cth); and
- c in New Zealand, the Privacy Act 2020 and the codes of practice issued under it, including the Health Information Privacy Code 2020.
- d in England and Wales, the UK GDPR and the Data Protection Act 2018.

**'Discloser'** has the meaning given to it in clause 14.1.

**'Dispute'** means any dispute or difference which may arise between any parties concerning the interpretation or application of these Terms or otherwise concerning your use of and/or access to the Platform.

**'Dispute Notice'** has the meaning given to it in clause 15.1.

**'Escalation Notice'** has the meaning given to it in clause 15.2.

**'Force Majeure Event'** means an event or circumstance beyond our reasonable control, including:

- a fire, flood, explosion, earthquake, storm or other natural disaster;
- b civil commotion, hostilities (whether war is declared or not), sabotage, an act of terrorism, chemical or biological contamination;

- c the acts of any public authority or imposition of any government sanction, embargo or similar action;
- d strikes, industrial action and other labour disputes, excluding those in respect of the work force of Customer;
- e disruptions in internet connectivity, telecommunications, cloud infrastructure, or the services provided by Third Party Suppliers including data centre outages, equipment failures, or power outages, which affect the accessibility of the Platform; or
- f pandemics, epidemics, infectious disease outbreaks or other multinational health issues preventing or impeding the free carriage of goods and/or the free movement of people.

**'HeartLab Brand'** means any trade marks or service marks used by us, including those used to identify any component of the Platform, in whatever form and however stylised.

**'Indemnified Claim'** has the meaning given to it in clause 13.4.

**'Initial Subscription Period'** means the 'Initial Subscription Period' as specified in the relevant Order Form.

**'Intellectual Property Rights'** means:

- a all intellectual property rights throughout the world, including rights in respect of copyright, patents, trade marks, designs, trade secrets, know-how, and circuit layouts (in each case, whether registered or unregistered); and
- b any application or right to apply for registration of any of the foregoing rights.

**'Insolvency Event'** means:

- a an order is made, or resolution is passed for your liquidation;
- b a receiver is appointed in respect of your or any of your assets;
- c you enter into voluntary administration;
- d you enter into a compromise with any of your creditors;
- e you enter into statutory management; or
- f any analogous demand, appointment or procedure is instituted or occurs in relation to you, in any jurisdiction.

**'Liability'** means, in respect of a Third Party Claim:

- a costs, expenses, damages, liabilities, judgments, fines, penalties (whether civil, criminal or otherwise) incurred in defending or settling the Third Party Claim;
- b amounts paid or payable in settlement of the Third Party Claim, including all interest, assessments and other charges paid or payable in connection with or in respect of any of the foregoing; and
- c all legal costs and expenses incurred (including solicitor-client costs) in connection with the defence or settlement of the Third Party Claim.

**'Minimum Study Allocation'** has the meaning given to it in clause 4.6.

**'New Release'** means a substantially new version of the Platform or any element of the Platform incorporating new, or additional, major functionality.

**'Order Form'** has the meaning given to it in clause 2.1.

**'Personal Data'** has the meaning given to it, or to the term 'personal information', by applicable Data Protection Laws.

**'Platform'** has the meaning given to it in clause 1.1.

**'Platform IPR'** means all Intellectual Property Rights incorporated in the Platform and/or any materials we provide you in connection with your use of the Platform.

**'Reasonable Data Use'** means the data use limits that are reasonable for access and retrieval of data via the Platform for general clinical use, including accessing and retrieving new and historical patient scans and other access required during the provision of ordinary clinical services, but excluding large or mass exports of data, including medical imagery, for any purpose, including clinical trials, data research, or in connection with a coroner's inquiry.

**'Recipient'** has the meaning given to it in clause 14.1.

**'Rest of the World'** means any country or territory of the World other than the USA (including any unincorporated territory of the USA), Canada, Australia, the United Kingdom or New Zealand.

**'Rollover Term'** has the meaning given to it in clause 2.4b.

**'Sales Tax'** means any sales tax, value added tax, consumption tax, or goods and services tax in any jurisdiction.

**'Service Fee'** means the fee payable by you for any Additional Services as specified in the relevant SOW.

**'Service Level Failure'** means each occasion on which a Service Level is not met in respect of a calendar month.

**'Service Levels'** means the Availability Service Levels.

**'SOW'** means each statement of work we enter into with you in accordance with clause 8.

**'Storage Limit'** has the meaning given to it in clause 4.3.

**'Study'** means a complete set of images and/or related data that are acquired during a single diagnostic session for a specific clinical purpose.

**'Support Services'** means technical support to assist you to the use of the Platform or to identify and manage issues with respect to your access to the Platform which you raise using the support portal we provide in connection with the Platform.

**'Terms'** has the meaning given to it in clause 1.1.

**'Third Party Feature'** means any feature or functionality of the Platform that is provided by a Third Party Supplier, whether made available through an application programming interface or otherwise.

**'Third Party IP Claim'** means a Claim against you alleging that your use of the Platform as permitted under these Terms infringes another person's Intellectual Property Rights.

**'Third Party Supplier'** means any person other than us who provides any feature or functionality of the Platform, including the providers of AI features available in the Platform.

**'UK GDPR'** means the Data Protection Act 2018, the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (**'Data Protection Regulations'**), and the UK GDPR (as defined in the Data Protection Regulations).

**'Updates'** means all corrections for defects, patches, fixes, enhancements, refinements, changes, extensions, alterations, variations or additional minor functionality, made to the Platform.

- 18.2 **Interpretation:** In interpreting these Terms, the following rules must be applied unless the context otherwise requires:
- a **Headings:** Clause and other headings are for reference only and are not an aid in interpretation.
  - b **Statutes:** References to statutory provisions include references to all regulations, orders, rules or notices made under that statute, and references to a statute or regulation are references to those statutes or regulations as they may be amended or re-enacted or as their application is modified by other provisions from time to time.
  - c **Clauses and schedules:** References to clauses or schedules are to clauses of or schedules to this agreement, and the schedules referred to form part of this agreement and (without limiting clause 1.4) have the same effect as if set out in the Terms.
  - d **Periods of time:** All periods of time include the day on which the period commences and also the day on which the period ends.
  - e **Number and gender:** Words importing the plural include the singular and vice versa and words importing one gender include the other genders.
  - f **Person:** A reference to a 'person' includes a natural person, company, corporation, partnership, firm, joint venture, association of persons (whether corporate or unincorporated), trust, organisation, Government department, Minister of the Crown, state or agency of a state (in each case, whether or not having separate legal personality).
  - g **Includes:** The word 'includes' in any form is not a word of limitation.
  - h **Interpretation:** To the fullest extent permitted by Applicable Law, nothing in this agreement is to be interpreted against us solely on the ground that we proposed these Terms.
- 18.3 **Form of approval:** If these Terms contemplate that a matter is subject to our prior approval, that approval:
- a is only valid if given in writing; and
  - b may be withheld, delayed, or made subject to such conditions as we see fit.
- 18.4 **Relevant Order Form and SOW:** References in these Terms to the 'relevant Order Form' and 'relevant SOW' are references to the Order Form or SOW under or in connection with which the Platform or Additional Services are being provided.

## Schedule 1 Data processing

### 1 Additional definitions

In this Data Processing Schedule:

'**Data Subject**' means a natural person to whom Customer Personal Data relates.

'**Data Subject Request**' has the meaning given to it in paragraph 6.

'**Personal Data Breach**' has the meaning given to it by applicable Data Protection Laws.

### 2 Our use of Customer Data

You instruct us to process Customer Personal Data (including by retaining copies of that Customer Personal Data) for the following purposes:

- a providing the Platform to you;
- b undertaking maintenance, support, upgrades and revisions of the Platform and its functionality, and detecting, investigating and protecting against security incidents and fraudulent, malicious and illegal activity;
- c the purposes contemplated by clause 4.11a;
- d exercising our rights and complying with our obligations under these Terms; and
- e where we are required and/or permitted to do so in accordance with Applicable Law.

### 3 Our obligations

We will:

- a when providing the Platform to you and/or otherwise processing any Customer Personal Data, comply with all obligations imposed directly on us under Data Protection Laws; and
- b implement and maintain appropriate technical and organisational measures for the protection of the security, confidentiality, and integrity of the Customer Data (including the Customer Personal Data).

### 4 Third Party Supplier

We may engage a Third Party Supplier to process or hold the Customer Personal Data on our behalf, on terms that are consistent with the terms set out in this Schedule 1.

### 5 Personal Data Breach

We will:

- a notify you within 48 hours after becoming aware of a Personal Data Breach or suspected Personal Data Breach in relation to any Customer Personal Data; and
- b give you reasonable assistance to respond to and/or notify any person in connection with such a Personal Data Breach or suspected Data Breach.

## 6 Requests and assistance

We:

- a will promptly notify you if we receive a request from a Data Subject to exercise any rights in connection with the Customer Personal Data we hold ('**Data Subject Request**'); and
- b will, on request by you or on your behalf, provide assistance to you to respond to any Data Subject Request;
- c may charge you for all reasonable out-of-pocket expenses that we incur in connection with, and (on a time and attendance basis) for any of our internal resources which we deploy to respond to, any request made under this paragraph 6.

## 7 Customers located in the United States

If you are located in the United States, our processing of Protected Health Information on your behalf will be governed by this Schedule 1 and the HIPAA Business Associate Agreement set out in Appendix A.

## 8 Customers located in England and Wales

If you are located in the United Kingdom, the terms of our Data Processing Addendum (available at <https://www.heartlab.com/legal>) form a part of these Terms and shall apply.

## Appendix A HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement ("Addendum") is entered into by and between Customer (as defined in the Agreement, defined below) ("Covered Entity") and HeartLab, Inc. ("Business Associate"). This Addendum is entered into as part of and incorporated into the Master Subscription Terms entered into between Covered Entity and Business Associate to which this Addendum forms an Appendix to Schedule 1 (the "Agreement"). Capitalized terms used but not defined in this Addendum have the meanings ascribed to such terms in the Agreement.

WHEREAS, the parties have entered into the Agreement, whereby Business Associate will provide certain services to, for, or on behalf of Covered Entity involving the use or disclosure of Protected Health Information (as defined below), and pursuant to such Agreement, Business Associate may be considered a "Business Associate" of Covered Entity (as defined below);

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Standards for Privacy of Individually Identifiable Health Information promulgated thereunder by the U.S. Department of Health and Human Services at 45 CFR Part 160 and Part 164 (the "Privacy Rule"), the Standards for the Security of Electronic Protected Health Information promulgated thereunder by the U.S. Department of Health and Human Services at 45 CFR Part 160, Part 162 and Part 164 (the "Security Rule"), and other applicable laws;

WHEREAS, the purpose of this Addendum is to satisfy certain standards and requirements of HIPAA, the Privacy Rule, and the Security Rule, including, but not limited to, Title 45, Sections 164.504(e) and 164.308(b) of the Code of Federal Regulations ("CFR"), as the same may be amended from time to time;

NOW, THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

### 1 Definitions

- a "Business Associate", in addition to identifying one of the parties to this Addendum as set forth above, has the meaning given to such term under 45 CFR § 160.103.
- b "Covered Entity", in addition to identifying one of the parties to this Addendum as set forth above, has the meaning given to such term under 45 CFR § 160.103.
- c "Electronic Protected Health Information" or "EPHI" means PHI transmitted by, or maintained in, electronic media, as defined in 45 CFR § 160.103.
- d "Individual" has the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502 (g).
- e "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium, including paper record, audio recording, or electronic format:
  - i that relates to the past, present or future physical or mental condition of an individual; the provision of health care (which includes care, services, or supplies related to the health of an individual) to an individual; or the past, present or future payment for the provision of health care to an individual; and
  - ii that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and
  - iii that has the meaning given to such term under 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- f "Required by Law" has the same meaning as the term "required by law" in 45 CFR § 164.103.

- g "Secretary" means the Secretary of the Department of Health and Human Services or his, her, or their designee.
- h "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, as defined in 45 CFR § 164.304.

## 2 Rights and Obligations of Business Associate

- a **Permitted Uses and Disclosures.** Except as otherwise limited in this Addendum or the Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services to, for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if made by Covered Entity. In addition, Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502 (j)(1).
- b **Use for Management and Administration.** Except as otherwise limited in this Addendum or the Agreement, Business Associate may use PHI received by Business Associate in its capacity as a Business Associate of Covered Entity for the proper management and administration of Business Associate, if such use is necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- c **Disclosure for Management and Administration.** Except as otherwise limited in this Addendum or the Agreement, Business Associate may disclose PHI received by Business Associate in its capacity as a Business Associate of Covered Entity for the proper management and administration of Business Associate if:
  - i the disclosure is Required by Law; or
  - ii Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and
  - iii the person notifies Business Associate of any instances of which it becomes aware in which the confidentiality of the PHI has been breached.
- d **Nondisclosure.** Business Associate shall not use or further disclose PHI other than as permitted or required by this Addendum or as Required by Law.
- e **Safeguards.** Business Associate shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Addendum. In addition, Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it creates, receives, maintains, or transmits on behalf of Covered Entity.
- f **Reporting of Disclosures.** Business Associate shall report to Covered Entity any use or disclosure of PHI not provided for by this Addendum of which Business Associate becomes aware. In addition, Business Associate shall report to Covered Entity any Security Incident of which it becomes aware, in the form and manner required by 45 CFR § 164.410.
- g **Business Associate's Agents.** Business Associate shall ensure that any agents, including subcontractors, to whom it provides PHI received from (or created or received by Business Associate on behalf of) Covered Entity agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI. In addition, Business Associate shall ensure that any agent, including a subcontractor, to whom it provides EPHI agrees to implement reasonable and appropriate safeguards to protect it.

- h **Access to PHI.** At the request of Covered Entity, and in a reasonable manner designated by Covered Entity, Business Associate agrees to provide access to PHI to Covered Entity for Covered Entity to meet the requirements under 45 CFR § 164.524.
- i **Amendment of PHI.** Business Associate shall make PHI available for amendment and shall incorporate any amendments to PHI as directed by Covered Entity in accordance with 45 CFR § 164.526.
- j **Access to Documentation for Accounting.** Business Associate shall make available the information required to provide an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- k **Internal Practices.** Subject to any applicable legal privilege, and to the extent consistent with professional ethical obligations, Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from Covered Entity (or created or received by Business Associate on behalf of Covered Entity) available to the Secretary, for purposes of the Secretary determining Covered Entity's compliance with HIPAA and the Privacy Rule.

### 3 Obligations of Covered Entity

- a Upon request, Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.
- b Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses or disclosures.
- c Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, if such restriction affects Business Associate's permitted or required uses or disclosures.
- d Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA and the Privacy Rule if done by Covered Entity.

### 4 Term and Termination

- a **Term.** The Term of this Addendum shall become effective as of the effective date of the Agreement and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions of this Section. The provisions of this Addendum shall survive termination of the Agreement to the extent necessary for compliance with HIPAA and the Privacy Rule.
- b **Material Breach.** A breach by Business Associate of any provision of this Addendum, as determined by Covered Entity, shall constitute a material breach of the Agreement.
- c **Reasonable Steps to Cure Breach; Termination.** If Covered Entity learns of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of the Business Associate's obligations under the provisions of this Addendum, then Covered Entity shall notify Business Associate of the breach and Business Associate shall take reasonable steps to cure such breach or end such violation, as applicable, within a period of time which shall in no event exceed thirty (30) days. If Business Associate's efforts to cure such breach or end such violation are unsuccessful, Covered Entity may terminate the Agreement by notice in writing to Business Associate.
- d **Effect of Termination.**
  - i Except as provided in paragraph ii of this Section 4(d), upon termination of the Agreement for any reason, Business Associate shall return or destroy all PHI received from Covered Entity (or created

or received by Business Associate on behalf of Covered Entity) that Business Associate still maintains in any form and shall retain no copies of such PHI. This provision shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate.

- ii In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible, and shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. The obligations of Business Associate under this Section 4(d)(ii) shall survive the termination of the Agreement.

## **5 Amendment to Comply with Law**

The parties acknowledge that amendment of the Addendum may be required to ensure compliance with any new standards and requirements of HIPAA, the Privacy Rule, the Security Rule, and other applicable laws relating to the security or confidentiality of PHI. Upon Covered Entity's request, Business Associate agrees to promptly enter into negotiations with Covered Entity concerning the terms of an amendment to the Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the Privacy Rule, the Security Rule or other applicable laws relating to security and privacy of PHI.

## **6 No Third Party Beneficiaries**

Nothing in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.

## **7 Effect on Agreement**

Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Agreement shall remain in full force and effect.

## **8 Interpretation**

This Addendum and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the Privacy Rule, the Security Rule, and any other applicable law relating to security and privacy of PHI. Any ambiguity in this Addendum shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule and the Security Rule.

## **9 Regulatory References**

A reference in this Addendum to a section in the Privacy Rule or Security Rule means the section as in effect or as amended, and for which compliance is required.

## Schedule 2 Service Levels

### 1 Definitions

In this Schedule 2:

**'Downtime'** means any time during which a P1 Event or P2 Event is occurring.

**'Excluded Event'** means any failure of systems, hardware, software, communications equipment, networks or other equipment used to access the Platform other than those for which we are responsible for delivering or otherwise making available under this agreement.

**'Monthly Uptime Percentage'** means:

- a the total number of minutes during Normal Business Hours in a calendar month; minus
- b the number of minutes of Downtime suffered in a calendar month, excluding any Downtime which is:
  - i Scheduled Downtime;
  - ii caused by an Excluded Event or a Force Majeure Event;

divided by the total number of minutes during Normal Business Hours in a calendar month, and expressed as a percentage.

**'Normal Business Hours'** means the hours of 8.30am to 5.00pm on each Business Day.

**'P1 Event'**, **'P2 Event'**, **'P3 Event'** and **'P4 Event'** have the meanings given to them below:

Priority Level	Definition
P1 Event	The Platform is completely unavailable
P2 Event	Platform is available but an issue prevents the use of critical Platform features
P3 Event	Platform is available and critical Platform features work, but issues prevent the use of certain Platform features that you regularly use
P4 Event	A minor issue affecting Platform performance, but all Platform features are functional

**'Scheduled Downtime'** means Downtime arising from scheduled maintenance of the Platform for the purposes of undertaking a change, bug fix, infrastructure upgrades, or other essential maintenance as notified to you in advance.

### 2 Availability Service Levels

2.1 The Availability Service Levels are as follows:

Capability	Monthly Uptime percentage
Platform Availability	99.9%

2.2 The source of truth for assessing the Monthly Uptime Percentage is our monitoring and logging infrastructure.