



The following are the terms of a legal agreement (the “**Master Subscription and Services Agreement**” or “**MSSA**”) between the Customer whose legal name is set out on the associated Order Form to this MSSA entered into on behalf of itself and its subsidiaries, affiliates and franchisees (collectively, “**Customer**”) and **AlayaCare ANZ Pty Ltd.** ABN 69 116 576 517 of 2/261 George Street, Sydney NSW 2000 (“**AlayaCare**”) governing Customer’s use of and access to AlayaCare’s electronic health record and related cloud-based services.

1. **AlayaCare’s Service Commitments**

1.1. **Software Subscription, Support and Professional Services.** AlayaCare will:

- (i) make its cloud-based electronic health record software platform and its clinical and financial management software available to Customer and Customer’s Users on a subscription basis (collectively, the “**Services**”), as specified under one or more Quotes/Orders (each an “**Order Form**”) entered into by AlayaCare and Customer from time to time;
- (ii) make software support available to Customers via AlayaCare’s Support/Help Desk which form part of the Services, all in accordance with AlayaCare’s SLA set out at <http://www.AlayaCare.com/SLA> (“**SLA**”);
- (iii) provide the Services and protect all Confidential Information and Client Data in accordance with the AlayaCare Privacy Policy available at <https://alayacare.com/privacy-policy/> (“**PP**”); and
- (iv) make available “for fee” professional, educational, implementation, configuration, training, operational and/or technical services in connection with the Subscription Services as set out in Order Forms (supplemented by Statements of Work governed by Section 3 of this MSSA).

1.2. **AlayaCare’s Protection of Client Data.** AlayaCare acknowledges and agrees that it will:

- (i) provide the Services in compliance with all applicable laws and government regulations;
- (ii) be bound by the health information privacy rules set out in the Privacy Act 2020 (New Zealand), including the information privacy principles set out in that Act, and the Health Information Privacy Code 2020 (New Zealand), including the health information privacy rules set out in that Code (together, “**Privacy Obligations**”) for the purposes of the Services carried out under this Agreement, in the same way and to the same extent as those Privacy Obligations would have applied to Customer in respect of that act or practice had it been directly done or engaged in by the Customer;
- (iii) notify Customer promptly, but in no event later than ten (10) business days upon becoming aware of any breach of the Privacy Obligations and comply with all reasonable directions of Customer in respect of the breach;
- (iv) obtain third-party audits which indicate whether the protection and security of Client Data meets established industry standards for the provision of services comparable to the Services; and
- (v) host and manage all Client Data in Australia. Details of AlayaCare’s data access rights and obligations are set out in the PP and AlayaCare’s Data Processing Addendum available at <https://alayacare.com/dpa/>. For clarity, use of the word “host” in this MSSA shall refer to storage on a permanent electronic medium at rest. Customer acknowledges and agrees that Client Data may be transmitted through, accessed from, or processed using infrastructure located outside of Australia (including in the United States) solely as necessary to provide, secure, monitor, and support the Services. AlayaCare will not intentionally store Client Data outside of Australia on a persistent basis. Any temporary or transient processing or storage occurring outside Australia that is incidental to transmission, routing, security, caching, or service operations shall not be considered hosting or storage for the purposes of this MSSA.

“**Client Data**” means the electronic health records of Customer’s clients and other information which would be considered personal information within the meaning of the Privacy Act 2020 (New Zealand) and the Health Information Privacy Code (New Zealand).



"**Customer's Users**" means individuals who are authorized by Customer to use and access the Services and who have been supplied identifications and passwords by Customer to access the Services and associated software modules. Customer's Users may include, but are not limited to, Customer's employees, consultants, franchisees, contractors, agents, clients and their family members, including qualified medical and care professionals, as determined and monitored by Customer.

2. Customer's Use of the Services

2.1. Customer's Responsibilities. Customer is responsible for:

- (i) Customer's and Customer's Users' compliance with this MSSA and all of its schedules and addenda;
- (ii) maintaining appropriate administrative, physical, and technical safeguards for protecting the security, confidentiality, and integrity of all electronic data or information belonging to or created by Customer, including Client Data, text messages or other materials uploaded, posted, or stored through Customer's and Customers' Users' use of the Services which Customer or Customer's Users may access;
- (iii) the accuracy, quality, and legality of Client Data and how Customer and Customer's Users acquire Client Data;
- (iv) managing Customer's Users' identity and password combinations for use of and access to the Services;
- (v) using commercially reasonable efforts to prevent password theft or loss, or unauthorized access to or use of the Services and notifying AlayaCare promptly of any password theft, security breach, or other unauthorized access to or use of the Services; and
- (vi) using the Services only in accordance with AlayaCare's documentation and all applicable local, state or provincial, federal, and/or international laws, rules and government regulations relating to Customer's and Customers' Users' use of the Services and Customer's provision of home care, home healthcare or residential care services to Customer's clients.

2.2. Prohibited Actions. Customer shall not:

- (i) make the Services available to anyone other than Customer's Users or use the Services other than in connection with Customer's healthcare business;
- (ii) sell, resell, lease, timeshare or transfer (except as set forth in Section and 13.6, below) the Services;
- (iii) use the Services to upload, post, distribute, link to, publish, reproduce, engage in, disseminate, or transmit any of the following: (a) malicious code, (b) illegal, fraudulent, libelous, defamatory, obscene, pornographic, profane or objectionable information or communications, (c) content or data which would falsely represent Customer's or any User's identity or qualifications, (d) content or data which constitutes a breach of any individual's privacy, or (e) any information or content which is not legally Customer's without permission from the copyright owner or intellectual property rights owner;
- (iv) interfere with or disrupt the integrity or performance of the Services or included third-party data;
- (v) attempt to gain access to any other entity's implementation of the Services or any related systems, networks, or data related thereto, which Customer does not have a legal right to access; or
- (vi) copy, duplicate, reproduce, deconstruct or reverse engineer any AlayaCare or third-party software;
- (vii) take any action that imposes or may impose (as determined by AlayaCare in its sole discretion) an unreasonable or disproportionately large load on AlayaCare's (or its third-party providers') infrastructures used to provide the Services;

2.3. Remedies. In the event Customer breaches any of the provisions of Sections 2.1 or 2.2, AlayaCare retains the right, in its sole discretion, to: (i) throttle Customer's usage of any of the Services; (ii) restrict access to any of the Services; (iii) suspend Customer's access to the Services; (iv) recover from Customer any reasonable costs incurred by AlayaCare as a result of such breach; or (v) terminate this MSSA, subject to the notice provisions of Section 11.3 (Termination for Cause).



2.4. **Audit and Compliance.** Without limiting the remedies set forth in Section 2.3:

- (i) AlayaCare reserves the right, no more than once per calendar year (unless non-compliance is suspected), to audit Customer's use of the Services to verify compliance with the terms of this MSSA, including but not limited to the number of authorized users, usage limits, and licensed features. Such audit may be conducted remotely or on-site during normal business hours and upon reasonable prior notice. Customer agrees to cooperate with any such audit; and
- (ii) if the audit reveals that Customer has exceeded the agreed-upon usage parameters (such as the number of authorized users, licensed software modules, or other limitations set forth in an Order Form), AlayaCare may invoice Customer for the additional usage at AlayaCare's then-current pricing. Payment for such excess usage shall be due in accordance with the payment terms of this MSSA.

3. **AlayaCare Professional Services**

3.1. **Scope of Services.** AlayaCare will provide Customer with Professional Services as described in statements of work, project plans and other project artifacts to be agreed to by the parties from time to time (generally referred to as "**Statements of Work**" or "**SOWs**"). Each Statement of Work shall set out terms related to the Professional Services including scope, schedule, responsibilities, fees and labor rates and shall govern each individual engagement. AlayaCare will bear its own costs in completing the Professional Services, including labor, overhead, and supplies, except that if performance of the Services requires AlayaCare resources to be on site at Customer then, upon AlayaCare's submission of proper documentation and receipts, AlayaCare may invoice Customer for reasonable travel-related expenses.

3.2. **Customer Responsibilities**

3.2.1. AlayaCare's ability to provide the Professional Services requires the co-operation of Customer in the form of the provision of timely responses to requests for information, and the prompt and timely performance by Customer of its obligations as set out in the SOW and related project documentation. If Customer fails to perform its responsibilities in a timely manner, AlayaCare may be delayed in its fulfillment of its obligations and additional costs or expenses incurred by AlayaCare may be billed to Customer.

3.2.2. Customer agrees to appoint a representative who shall provide professional and prompt liaison with AlayaCare, have the necessary expertise and authority to commit Customer, be available during AlayaCare's business hours when requested by AlayaCare and meet with AlayaCare's representatives at regular, agreed-upon intervals to review progress and resolve any issues related to each Project Plan.

3.2.3. Customer agrees to provide management direction and decisions as reasonably requested by AlayaCare and make available for reference and use by AlayaCare such data, documentation, and other materials and information as are reasonably requested by AlayaCare to perform the Professional Services.

3.3. **Project Materials**

3.3.1. **Customer Property.** Customer shall own all right, title and interest in and to all of its property, including its technology, business processes, or other proprietary elements that form part of the deliverables and are set out in an SOW ("**Customer Property**"). AlayaCare shall have the right to use any such Customer Property solely for the purpose of providing the Professional Services to Customer.

3.3.2. **Deliverables.** AlayaCare shall own all right, title and interest in and to the deliverables (excluding any Customer Property) that are derived from and relating to the AlayaCare Software. Subject to terms and conditions of the MSSA, AlayaCare provides Customer with a limited, non-exclusive, non-transferable license to use the deliverables solely for Customer's internal operations in connection with its subscription to the Software.

3.3.3. **Tools.** Nothing in this MSSA shall be construed to assign or transfer any intellectual property rights in the proprietary tools, libraries, know-how, techniques and expertise used by AlayaCare to develop the deliverables.



3.4. **Change Management Process.** If Customer requests a change in any of the specifications, requirements, deliverables, or scope of the Professional Services described in any SOW, then provided that such changes do not materially change the nature of the Project or exceed AlayaCare's capacity to perform, AlayaCare will promptly prepare and submit a draft change order reflecting Customer's requested changes and proposing reasonable adjustments, if any, to the work schedule and delivery dates for each deliverable and/or the estimate or fixed price for the Statement of Work, (each, a "**Change Order**"). Change Orders may be submitted by AlayaCare based on delays or failure to perform on the part of Customer, or (ii) the failure of any of the assumptions and conditions described in the SOW. Change Orders are not binding unless and until they are executed by both parties. Executed Change Orders shall be deemed part of, and subject to this MSSA.

4. **Third-Party Product and Service Providers**

4.1. **Third Party Providers.** AlayaCare allows Customer to connect to, and integrate the Services with, certain approved third-party software developers and information system providers to make software, services and features accessible via, and interoperable with, the AlayaCare platform. AlayaCare may provide Customer with the ability to access these third-party systems via API or other specific interfaces, the details of which will be set out in Customer's Order Form.

5. **Fees and Payments**

5.1. **Fees.** Customer shall pay all fees specified in Order Forms and their associated Invoices, commencing on the dates shown in each Order Form. Any additional terms and conditions with respect to the fees found in an Order Form shall be considered integral to this MSSA.

5.2. **Invoicing and Payment.** AlayaCare shall invoice Customer in advance or otherwise in accordance with the terms set out in an Order Form. Unless otherwise stated in the Order Form, invoiced charges are due 30 days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information and notifying AlayaCare of any changes to such information.

5.3. **Overdue Charges.**

5.3.1. **Interest.** AlayaCare may charge simple interest daily on undisputed fees, to be calculated daily at a rate of 2 percentage points over the cash rate published by the Reserve Bank of New Zealand.

5.3.2. **Suspension of Services.** If any amount is overdue by 30 days or more (except for those disputes set out in Section 5.3.5), AlayaCare may, upon 10 days' notice, suspend AlayaCare's provision of the Services to Customer, including Support services. Customer may reactivate the Services by paying in full: (i) the balance of Customer's outstanding fees.

5.3.3. **Collections.** Without prejudice to any other rights or remedies it may have under this MSSA or at law, if any amount is overdue by 30 days or more, AlayaCare may refer the overdue account to a collection agency. The Customer shall be liable for all costs incurred by AlayaCare in collecting overdue amounts, including reasonable collection agency fees, legal fees, court costs and enforcement expenses actually incurred by AlayaCare, to the extent permitted by applicable law. Such costs may be added to the outstanding balance and are immediately due and payable.

5.3.4. **Termination for Cause.** If any amount is overdue by 60 days or more (except for those disputes set out in Section 5.3.5), AlayaCare may, terminate this MSSA for cause, by providing the Customer with 30 days' final written notice of the cessation of AlayaCare's provision of the Services and the return of Client Data. The termination notice will set out the processes, procedures and formats by which Client Data will be made available to Customer, provided that AlayaCare will have no obligation to print or otherwise convert Client Data to a Customer-preferred format. Client Data will, following its return to Customer, be retained where specifically required by law and will otherwise be deleted from AlayaCare systems.

5.3.5. **Fee Disputes.** If Customer reasonably and in good faith dispute any fees, Customer must provide AlayaCare with written notice of such dispute within 60 days of the applicable invoice date, after which period Customer's right of dispute expires. Customer must cooperate diligently with AlayaCare to resolve the dispute and pay all undisputed fees when due.



5.4. **Taxes.** Prices set out in Quotes/Order Forms do not include applicable taxes, specifically the Goods and Services Tax (GST) as required by the Goods and Services Tax Act 1985 of New Zealand. Customer is responsible for payment of all applicable taxes associated with this MSSA including, but not limited to, personal property taxes, sales taxes, use taxes, import taxes, taxes on telecommunication services, information services, data processing services or similar governmental fees which may be assessed by any jurisdiction, whether based on gross revenue, the delivery of products, or the provision of services.

6. **Data and Proprietary Rights**

6.1. **License by AlayaCare to Use and Access the Services.** AlayaCare grants Customer a limited, non-exclusive, nontransferable (except pursuant to Section 13.6 (Assignment) below) right to access and use, and permit Customer's Users to access and use, the Services during the Term. Subject to the limited rights granted to Customer under this MSSA, AlayaCare reserves all rights, title and interest in and to the Services, including all related intellectual property rights to the underlying software and integrated services.

6.2. **License by Customer to Host and Collect Client Data.** Customer grants AlayaCare a worldwide, limited-term license to host, copy, transmit and display Client Data as necessary for AlayaCare to provide the Services in accordance with this MSSA, including the provision of secure backups and in connection with data recovery activities. Subject to the rights granted by Customer under this MSSA, the DPA and the Privacy Policy, AlayaCare acquires no other right, title, or interest from Customer in or to Client Data, including any intellectual property rights in such data.

7. **Confidentiality and Non-Disclosure**

7.1. **Confidential and Technical Information.** Subject to the limitations set out in Section 7.2, "**Confidential Information**" comprises information of a confidential or proprietary nature disclosed by one party to the other party, expressly including such information as financial information including budgets, forecasts, projections and estimates and related analyses; customer information and related customer data including personal information and protected health information contracts, practices, services and support, procedures; and all Technical Information. "**Technical Information**" includes product information and product plans, technical designs and specifications, software, algorithms, know-how, techniques, reports, methods, strategies, plans, documents, drawings, designs, tools, models, inventions and patent disclosures. Confidential and Technical Information may be disclosed in written, oral, electronic, website-based or other form and whether or not specifically identified as confidential at the time of disclosure. Confidential Information shall also include all information which either party has received from others and which it is obligated to treat as confidential. Confidential Information includes information acquired during any facilities tours or otherwise by inspection and also includes any review, summary or analysis based on any Confidential Information.

7.2. **Exceptions.** Confidential Information expressly excludes information which: (a) is or becomes generally known or available through no act or failure to act on the part of a recipient; (b) is known by a recipient without any obligation to keep such information confidential at the time of receiving such information as evidenced by its written records; (c) is furnished to a recipient by a third party as a matter of right and without restriction on disclosure; (d) is independently developed by a recipient without any breach of this Agreement, as evidenced by its written records; or (e) is disclosed in response to a valid order of a court or other governmental body (provided that the responding party shall first have given notice to the other party hereto and shall have made a reasonable effort to obtain a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued) or is otherwise required by law.

7.3. **Non-Disclosure.** Each party to this MSSA shall maintain the other party's Confidential Information in trust and confidence and shall not disclose to any third party nor use any Confidential Information except to the extent required to provide Services, Professional Services or otherwise in fulfillment of each party's obligations under this MSSA ("**Purpose**"). Confidential Information shall also not be used by the recipient for any reason other than the Purpose nor in any manner that would constitute a violation of any laws or regulations.

8. **Warranties, Acknowledgments and Disclaimers**

8.1. **Customer's Warranties.** Customer warrants that: (i) it has validly entered into this MSSA and the associated schedules and has the legal power to do so; and (ii) its subscription for the Services or any Professional Services is neither contingent upon the delivery of any future



functionality or features nor dependent on any oral or written comments made by AlayaCare regarding any future functionality or features.

8.2. Customer's Acknowledgments. Customer understands, acknowledges and agrees that, other than as set out in this MSSA: (i) AlayaCare has made no representations or warranties that use of the Services will ensure Customer's compliance with all applicable laws, rules, and regulations; (ii) Customer assumes all risks associated with Customer's use of the Services in relation to the provision of health care and medical services and applicable laws, rules, and regulations; (iii) Customer is prohibited from accessing materials from countries or states where the contents of such materials are illegal; (iv) the Services are cloud-based services intended to deliver non-critical, nonemergency messages between Customer's Users; (v) the Services are dependent on a number of factors beyond AlayaCare's control, including but not limited to, the operation of hardware and network services provided by third parties; (vi) the Services are not a substitute for any medical practitioner's current systems of administering and safeguarding medical treatment and/or medicine; and (vii) Customer does not expect the Services to perform at the same level of performance and/or reliability reasonably expected from medical devices used in the delivery of critical medical care.

8.3. AlayaCare's Warranties. AlayaCare warrants, subject to any other limiting or modifying terms in this MSSA, that: (i) it has validly entered into this MSSA and has the legal power to do so; (ii) the Services do not infringe or misappropriate the intellectual rights of any third party; (iii) it is the owner of the Services and has procured the appropriate licenses so that Customer has the right to use any embedded third-party software; (iv) to AlayaCare's knowledge, there is no claim or proceeding, pending or threatened, alleging that any of AlayaCare's software or equipment infringes or misappropriates the intellectual property rights of any third party; (v) the Services are duly protected with "up-to-date" and commercially reasonable anti-virus and anti-intrusion security software to prevent bugs, viruses, interruptions, errors, theft, destruction, and corruption which would affect the Services; and (vi) the functionality of the Services shall not be decreased materially during the Term. AlayaCare shall use commercially reasonable efforts to achieve, in all material respects, the functionality described in any documentation AlayaCare may provide Customer and, if AlayaCare is unable to achieve such functionality, Customer's sole and exclusive remedy shall be to terminate such Services and this MSSA.

8.4. Professional Services Warranty. AlayaCare warrants that: (a) it and each of its employees, consultants and subcontractors, if any, that it uses to provide and perform Professional Services, has the necessary knowledge, skills, experience, qualifications, and resources to provide and perform the Professional Services in accordance with the SOW; and (b) the Professional Services will be performed for and delivered to Customer in a good, diligent, workmanlike manner in accordance with industry standards, laws and governmental regulations applicable to the performance of such services. AlayaCare's ability to successfully perform such services is dependent on Customer's provision of timely information, access to resources, and participation. If, through no fault or delay of Customer, the Professional Services do not conform to the foregoing warranty, and Customer notifies AlayaCare within 60 days of AlayaCare's delivery of the Professional Services, Customer may require AlayaCare to re-perform the nonconforming portions of the Professional Services.

8.5. ALAYACARE'S DISCLAIMER OF REPRESENTATIONS AND WARRANTIES. EXCEPT AS DESCRIBED IN THIS MSSA, THE SUBSCRIPTION SOFTWARE, CUSTOMER SUPPORT AND PROFESSIONAL SERVICES ARE PROVIDED "AS IS." TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALAYACARE, ALAYACARE'S AFFILIATES AND ALAYACARE'S THIRD-PARTY SERVICE OR DATA PROVIDERS, LICENSORS, DISTRIBUTORS OR SUPPLIERS (COLLECTIVELY REFERRED TO AS, "SUPPLIERS") DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY THAT THE SERVICES ARE FIT FOR A PARTICULAR PURPOSE AND ANY WARRANTIES RELATED TO TITLE, MERCHANTABILITY, DATA LOSS, NON-INTERFERENCE WITH OR NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS, OR THE ACCURACY, RELIABILITY, QUALITY OR CONTENT IN OR LINKED TO THE SERVICES. ALAYACARE DOES NOT WARRANT ACCESS TO THE INTERNET OR TO ANY OTHER SERVICE, CONTENT, OR DATA TRANSMITTED THROUGH THE SUBSCRIPTION SOFTWARE SERVICES. EXCEPT AS EXPRESSLY SET OUT IN THIS MSSA, ALAYACARE AND ITS SUPPLIERS DISCLAIM ANY REPRESENTATIONS OR WARRANTIES THAT CUSTOMER'S USE OF THE SERVICES SHALL SATISFY OR ENSURE COMPLIANCE WITH ANY LEGAL OBLIGATIONS, INCLUDING, BUT NOT LIMITED TO, STATUTES OR REGULATIONS.

8.6. Artificial Intelligence Disclaimer. Without limiting the generality of the Disclaimer in Section 8.5 above, AlayaCare makes no representations or warranties regarding any Artificial Intelligence that forms part of the Services. Customer acknowledges and agrees that: (i) AlayaCare makes use of certain third-party Artificial Intelligence (AI) and Large Language Model (LLM) systems (collectively, the "Third-Party AI"), in order to respond to queries to give "AI Responses"; (ii) AlayaCare makes use of the Third-Party AI in connection with all AI functionality made available through the Services including, but not limited to, Layla; AlayaFlow and its associated agents (collectively the "Agentic AI"); and (iii) the nature of this type of service and the use of the Third-Party AI means that the AI Response or



Agentic AI cannot in any way be guaranteed. AI Responses and decisions made by Agentic AI should always be verified by Customer's Users through other means. AlayaCare shall not be responsible for any losses or damages, pecuniary or otherwise, to Customer, Customer's Users or any third party resulting from reliance upon any AI Response or Agentic AI from AlayaCare, and AlayaCare disclaims any responsibility thereto. Customer's use of AlayaCare's Artificial Intelligence is at its sole risk.

9. **Indemnities**

9.1. **Indemnification by AlayaCare.** AlayaCare shall indemnify and defend Customer against any claims, liabilities, demands, suits, actions, proceedings, fines, expenses, penalties, judgments, or costs ("**Claims**") made or brought against Customer by a third party alleging that Customer's use of the Services as permitted under this MSSA infringes or misappropriates the intellectual property rights of a third party (a "**Claim Against Customer**"), and shall indemnify Customer for any direct damages, attorneys' fees, and costs finally awarded against Customer as a result of, and for amounts paid by Customer under, a court-approved settlement of a Claim Against Customer, provided that Customer: (a) promptly gives AlayaCare written notice of the Claim Against Customer; (b) gives AlayaCare sole control of the defense and settlement of the Claim Against Customer (provided that AlayaCare may not settle any Claim Against Customer unless the settlement unconditionally releases Customer of all liability); and (c) provides to AlayaCare all reasonable assistance, at AlayaCare's expense. In the event of a Claim Against Customer, or if AlayaCare reasonably believes the Services may infringe or misappropriate the rights of any third party, AlayaCare may in its discretion and at no cost to Customer: (i) modify the Services so that they no longer infringe or misappropriate, without breaching AlayaCare's warranties; (ii) obtain a license for Customer's continued use of the Services in accordance with this MSSA; or (iii) terminate this MSSA in accordance with its termination provisions. This Section 9.1 sets forth the Customer's exclusive remedy against AlayaCare for any Claim Against Customer.

9.2. **Indemnity Exclusions.** The indemnification obligations set forth in Section 9.1 do not apply to Claims to the extent that they arise from: (a) Customer's use of the Services in violation of this MSSA or applicable law; (b) Customer's negligent acts or omissions; (c) Customer's use of the Services after AlayaCare notifies Customer to discontinue use because of an infringement claim; or (d) modifications to the Services or use of the Services in combination with any software, application, or service not made or provided by AlayaCare.

9.3. **Indemnification by Customer.** Customer shall indemnify, defend and hold harmless AlayaCare or its affiliates, against any Claims made or brought against AlayaCare by a third party alleging, without limitation, personal injury, tort, medical malpractice, or other acts, errors, or omissions in the delivery of medical care or medical information or which otherwise arise out of, or are in any way connected with, Client Data, Customer's and Customer's Users' access to or use of the Services in breach of this MSSA or in breach of the intellectual property rights of any third party, Customer's or Customer's Users' negligent or wrongful act(s), and/or Customer's or Customer's Users' violation of relevant and/or applicable law (a "**Claim Against AlayaCare**"), and Customer shall indemnify, defend, and hold harmless AlayaCare from and against any and all losses, damages, expenses (including reasonable attorneys' and expert fees) resulting therefrom, whether or not such Claims Against AlayaCare are foreseeable as of the Effective Date unless such Claims result from AlayaCare's grossly negligent acts or omissions; provided that AlayaCare must: (a) promptly give Customer written notice of the Claim Against AlayaCare; (b) give Customer sole control of the defense and settlement of the Claim Against AlayaCare (provided that Customer may not settle any Claim Against AlayaCare unless the settlement unconditionally releases AlayaCare of all liability); and (c) provide to Customer at Customer's expense all reasonable assistance.

10. **Limitation of Liability**

10.1. **No Responsibility.** AlayaCare shall not assume responsibility for: (i) any compromise, loss, delay, alteration, or interception of Customer's Data during the transmission of any data across computer networks or telecommunication facilities (including but not limited to the internet) which are not owned or operated by AlayaCare; or (ii) the reliability or performance of any connections, computer networks, or telecommunications facilities (including but not limited to the internet) which are not owned or operated by AlayaCare; or (iii) third parties who are not subcontractors of AlayaCare.

10.2. **EXCLUSION OF INDIRECT DAMAGES.** TO THE EXTENT SUCH EXCLUSIONS ARE PERMITTED BY APPLICABLE LAW, NEITHER CUSTOMER NOR ALAYACARE SHALL BE LIABLE FOR, NOR SHALL THE MEASURE OF DAMAGES UNDER THIS SERVICE AGREEMENT INCLUDE, ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO CUSTOMER'S OR ALAYACARE'S PERFORMANCE OR FAILURE TO PERFORM UNDER THIS MSSA OR ANY SCHEDULE / ADDENDUM FORMING PART OF THIS MSSA.



10.3. **AMOUNT LIMITATION.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE LIABILITY OF EITHER PARTY ARISING FROM THIS MSSA EXCEED THE TOTAL OF: (A) THE SUBSCRIPTION FEES PAID BY THE CUSTOMER FOR THE SOFTWARE SUBSCRIPTION AND (B) THE AMOUNT PAID FOR THE PROFESSIONAL SERVICES (IF ANY), IN EACH CASE OF (A) AND (B) IN THE TWELVE (12) MONTH PERIOD LEADING UP TO THE DATE ANY SUCH LIABILITY ARISES.

10.4. **EXCEPTIONS.** THE LIMITATIONS AND EXCLUSION OF LIABILITY SET FORTH IN SECTIONS 10.2 (EXCLUSION OF INDIRECT DAMAGES) AND 10.3 (AMOUNT LIMITATION) DO NOT APPLY TO: (A) INDEMNIFICATION OBLIGATIONS OF SECTION 9; OR (B) LIABILITY RESULTING FROM THE GROSS NEGLIGENCE, FRAUD, OR CRIMINAL MISCONDUCT OF A PARTY.

11. **Term and Termination**

11.1. **Term of the MSSA.** This MSSA shall be effective as of the Effective Date as defined in the associated Order Form and continue for the period as outlined in the Order Form (the "Initial Term").

11.2. **Automatic Renewal.** Following the Initial Term, this MSSA and any applicable Order Form in effect shall automatically renew for successive 1-year periods (each, a "Renewal Term" and collectively with the Initial Term, the "Term"), unless either party provides written notice to the other party that it does not wish to renew this Agreement at least 60 days prior to the end of the then-current Term. Prior to the commencement of any Renewal Term, AlayaCare may contact Customer to initiate renewal negotiations or termination.

11.3. **Termination for Cause.** Either party may terminate this MSSA for cause: (i) upon 30 days' prior written notice to the other party of a material **breach**, if such breach remains uncured at the expiration of such notice period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.

11.4. **Effect of Termination.** Upon termination of this MSSA, all rights and obligations of the parties will automatically terminate except for those set forth in this Section 11.4 and Section 11.5 and AlayaCare shall not have any liability for the cessation of the Services or the discontinuation of Customer's access to or use of the Services. Upon written request provided by Customer within ninety (90) days following the termination or expiration of this MSSA, AlayaCare shall provide Customer with, self-service access to retrieve and export its Client Data stored on the AlayaCare platform. AlayaCare shall, within a reasonable time following such request, provide Customer with written instructions setting forth how to export its Client Data, the standard format available for export, and the access period during which Customer may retrieve and export its Client Data (the "Access Period"). Customer acknowledges and agrees that it is solely responsible for retrieving and exporting its Client Data during the Access Period. Upon the expiration of the Access Period, and unless otherwise agreed in writing by the Parties, AlayaCare reserves the right to permanently delete all Client Data in accordance with its internal data retention and deletion policies.

11.5. **Surviving Provisions.** The provisions of the Agreement which should by their very nature survive termination shall survive termination, including without limitation intellectual property, confidentiality, indemnification and limitation of liability provisions.

12. **Insurance**

12.1. **AlayaCare's Insurance.** AlayaCare shall maintain, at no cost to Customer, insurance coverage (including cyber liability coverage) with limits commercially reasonable for the provision of the Services. AlayaCare shall upon request provide to Customer a certificate setting forth AlayaCare's insurance coverage and providing for Customer to be an additional insured under such policies, if requested by Customer.

12.2. **Customer's Insurance.** Customer shall maintain, at no cost to AlayaCare, insurance coverage (including medical malpractice coverage) with limits commercially reasonable in connection with Customer's facilities, Data, and provision of health care services to Customer's clients, so that such coverage shall be available in the event of a claim by any of Customer's Users or client(s) against AlayaCare.



13. General Provisions

- 13.1. **Governing Law and Jurisdiction.** This MSSA shall be governed by and interpreted in accordance with the laws of New Zealand, without regard to rules of private international law or the conflicts of laws that would lead to the application of any other laws. To resolve any legal dispute arising from this MSSA, Customer agrees to the nonexclusive jurisdiction of the courts of New Zealand.
- 13.2. **Notices.** Except as otherwise specified in this MSSA, all notices, permissions, and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the tenth business day after mailing; (iii) the second business day after sending by confirmed facsimile; or (iv) the first business day after sending by email (provided email shall not be sufficient for notice of an indemnifiable claim)
- 13.3. **Anti-Corruption.** Customer has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of AlayaCare's employees or agents in connection with this MSSA, except for any reasonable gifts and entertainment provided in the ordinary course of business. If Customer learns of any violation of the above restriction, Customer shall use reasonable efforts to notify AlayaCare promptly.
- 13.4. **Force Majeure.** In no event shall either party be responsible or liable for any failure or delay in the performance of its obligations hereunder (except for any payment obligations) arising out of or caused by, directly or indirectly, any circumstances beyond a party's reasonable control, including but not limited to natural disasters, acts of government, floods, fires, earthquakes, pandemics, epidemics, government-mandated quarantines, publicly declared states of emergency, civil unrest, terrorism, strikes or other labour problems (other than those involving such party's employees), internet service provider or other technical infrastructure failures or delays (subject to the Service Level Agreement in the case of AlayaCare), or denial of service attacks (a "Force Majeure Event"). It is understood that the party subject to a Force Majeure Event shall use reasonable efforts which are consistent with accepted practices to resume performance as soon as practicable under the circumstances.
- 13.5. **Entire Agreement.** This MSSA, including all Order Forms, exhibits, and addenda attached hereto or incorporated by reference herein, constitutes the entire agreement between Customer and AlayaCare and supersedes all prior and contemporaneous agreements, proposals, or representations, whether written or oral, concerning its subject matter. However, to the extent of any conflict or inconsistency between the provisions in the body of this MSSA and any exhibit, addendum, or Order Form attached hereto, the order of precedence shall be: (1) the applicable Order Form, (2) this MSSA, and (3) the applicable exhibit or addendum (in the order of preference of the exhibits and addenda as specified in the Order Form). Notwithstanding any language to the contrary therein, no terms or conditions stated in any document provided by Customer shall be incorporated into or form any part of this MSSA, and all such terms or conditions shall be null and void.
- 13.6. **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). However, either Party may assign this MSSA in its entirety (including all Order Forms) without the consent of the other party to its affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all its assets not involving a competitor of the other party. This MSSA shall bind and inure to the benefit of the Parties, their respective successors, and permitted assigns.