

## TERMS AND CONDITIONS

### 1. INTERPRETATION

#### 1.1 Definitions.

**Authorised Users** means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 3.2.

**AMBA Super User** means an Authorised User who has been nominated by the Customer to be a super user required to provide first-line support to Authorised Users, as further described in AMBA's Support Services Policy.

**Billing Period** means the period covered by each payment of the Subscription Fees under clause 12, which may be monthly or such other time period as is set out in the Agreement Details, with the first Billing Period beginning on the Service Commencement Date.

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

**Charges** means all fees and other amounts payable by the Customer to AMBA under this Agreement.

**Confidential Information** means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 14.5 or clause 14.6

**Consent** means the consent given by or on behalf of a VIP in relation to the processing of that VIP's personal data, as provided for in the DPA.

**Customer Data** means the data inputted by the Customer, Authorised Users, or AMBA on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services (but excluding personal data relating to VIPs, the processing of which is governed by the DPA).

**Customer Service Provision** means the provision of social care, health-related care, assisted-living support, supported self-care or other support or services by the Customer to VIPs.

**Delivery** means the transfer of physical possession of the Sensors to the Customer at the VIP Location.

**Delivery Date** means the estimated date of Delivery as set out in the Agreement Details or Order, as applicable.

**DPA** means the agreement entered into (or to be entered into) between AMBA and the Customer governing the sharing and processing of personal data by and between the parties, including any exhibits or schedules contained in that agreement.

**Documentation** means the description of the Services set out in the Platform Agreement.

**Effective Date** means the date of this Agreement.

**Family Member** means a member of a VIP's family or other nominated person connected to the VIP who is authorised, under the terms of this Agreement, to have access to the relevant VIP Dashboard.

**Initial Subscription Term** means the initial term of this Agreement as set out in the Agreement Details.

**Normal Business Hours** means 9.00 am to 5.00 pm local UK time, each Business Day.

**OEM** means a third-party manufacturer or supplier of Sensors which provides, in addition to the sensor device itself, online services to track and process data reported by that sensor.

**Order** means the Customer's written acceptance of AMBA's quotation.

**Platform** means the platform provided by AMBA through which AMBA provides the Services, and which (as at the Effective Date) is accessed via <https://www.amba.app/>

**Proposal** means AMBA's written proposal to the Customer setting out the scope of the Services and other relevant matters.

**Renewal Period** means the period described in clause 17.1.

**Sensor** means a monitoring device (or other smart equipment capable of transmitting data) hired from AMBA, sold by AMBA (acting as a reseller for the relevant OEM), or sold by an OEM, as applicable, and used (for the purposes of this Agreement) in a relevant VIP Location for, variously, the measurement of a person's sleep, nutrition, medication compliance, activity, certain physiological metrics, safety, household activity or other matters relevant to the care of the VIP.

**Sensor Account** means the account linked to a given Sensor and data deriving from it on any platform or app provided by the relevant OEM to users of the Sensor, which may require the user or other authorised person to accept certain OEM terms governing the operation of that account.

**Service Commencement Date** is the date so described in the Agreement Details.

**Services** means the subscription services provided by AMBA to the Customer under this Agreement via the Platform, as more particularly described in the Documentation.

**Software** means the online software applications provided by AMBA as part of the Services.

**Subscription Fees** means the subscription fees payable by the Customer to AMBA for the VIP Subscriptions, as set out in the Agreement Details.

**Subscription Term** has the meaning given in clause 17.1 (being either the Initial Subscription Term or a subsequent Renewal Period, as applicable at the relevant time).

**Support Services Policy** means AMBA's policy for providing support in relation to the Services as made available at <https://www.amba.co/en-gb/trust-centre> or such other website address as may be notified to the Customer from time to time.

**Transition Period** means the period between the Effective Date and the Service Commencement Date.

**VIP Dashboard** means the sub-account within the Platform that contains data relating to one single relevant VIP, whether presented by means of graphs, reports, alerts or otherwise.

**VIP Location** means the residence of the VIP, and which may be the VIP's own home, a retirement community, assisted-living community or other residential or care setting.

**VIP Subscriptions** means the VIP Subscriptions purchased by the Customer pursuant to clause 12.1 which entitle the Customer to access and use the Services in respect of a relevant VIP in accordance with this Agreement.

**VIP** means a "vulnerable independent person", being an individual living in a VIP Location and who receives Customer Service Provision from the Customer.

**Virus** means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by rearranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

## 1.2

### **Interpretation:**

- (a) Clause and paragraph headings shall not affect the interpretation of this Agreement.
- (b) A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- (c) A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- (d) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- (e) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- (f) A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- (g) A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- (h) A reference to writing or written includes e-mail but not fax.
- (i) References to clauses are to the clauses and schedules of these Terms and Conditions; references to paragraphs are to paragraphs of the Sensor Hire Terms and Conditions, the Sensor Purchase Terms and Conditions or the OEM Purchase Terms, as applicable.
- (j) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

## **2. VIP SUBSCRIPTIONS**

- 2.1 The number of VIP Subscriptions allotted for the Initial Subscription Term is set out in the Agreement Details (and, regarding the number of VIP Subscriptions allotted for any Renewal Term under clause 17.1, shall be as agreed in writing for that Renewal Term).
- 2.2 Subject to clause 2.3 and clause 2.4, the Customer may, from time to time during any Subscription Term, purchase additional VIP Subscriptions in excess of the number set out in the Agreement Details for that Subscription Term and AMBA shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this Agreement.
- 2.3 If the Customer wishes to purchase additional VIP Subscriptions, the Customer shall notify AMBA in writing. AMBA shall evaluate such request for additional VIP Subscriptions and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld). Where AMBA approves the request, AMBA shall activate the additional VIP Subscriptions (including the provision of Services in relation to those additional VIP Subscriptions) within 10 days of confirmation that those actions set out in clause 4.2 relevant to the new VIP Subscriptions have been completed.
- 2.4 If AMBA approves the Customer's request to purchase additional VIP Subscriptions, the Customer shall, within 30 days of the date of AMBA's invoice, pay to AMBA the relevant fees for such additional VIP Subscriptions as set out in the Agreement Details and, if such additional VIP Subscriptions are purchased by the Customer part way through a Billing Period, such fees shall be pro-rated from the date of activation by AMBA for the remainder of that Billing Period.
- 2.5 The Customer may from time to time reallocate a VIP Subscription from one VIP to another VIP. In that case, AMBA will discontinue the provision of Services in relation to the first VIP and provide relevant Services in respect of the second VIP. Before such reallocation takes place, all relevant matters under clause 4.2 (as applicable to the second VIP) must have been completed. Both parties shall co-operate, as

reasonably necessary, in the reallocation of VIP Subscriptions under this clause 2.5. Regarding Subscription Fees for VIP Subscriptions under this clause 2.5, any part-month relating to the provision of Services to the first VIP and/or the second VIP shall be chargeable as if it was a full month (provided that only one month's fee shall be charged in respect of the same VIP Subscription for the same month). AMBA may charge the Customer an administration fee for the reallocation of VIP Subscriptions, as set out in the Agreement Details.

2.6 The Customer acknowledges that a VIP Subscription can only operate in relation to a single VIP at any one time, and accordingly the Customer undertakes that:

- (a) it will not allow or suffer any VIP Subscription to be used concurrently in relation to more than one individual VIP under any circumstances, nor to be used sequentially in relation to different VIPs unless it has been reallocated in its entirety to another individual VIP in accordance with this Agreement, in which case AMBA will no longer provide the Services in relation to the first VIP from the date of reallocation (except for any archiving or legacy services comprised within the Services);
- (b) it will not allow any Sensors linked to a given VIP to be used for another VIP, without AMBA's prior written consent; and
- (c) it shall maintain a written, up-to-date list of current VIPs covered by a VIP Subscription and provide such list to AMBA within 5 Business Days of AMBA's written request at any time or times.

### **3. AUTHORISED USERS AND USE OF THE PLATFORM**

3.1 Subject to the Customer purchasing the VIP Subscriptions in accordance with clause 2.4 and clause 12.1, the restrictions set out in this clause 3 and the other terms and conditions of this Agreement, AMBA hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the purposes of Customer Service Provision by the Customer and as necessary for the operation of this Agreement.

3.2 The Customer may set up any number of Authorised Users (without impact on the Subscription Fees, which are governed by the number of VIP Subscriptions), provided however that the Customer shall only set up as Authorised Users those persons who reasonably have a need to access the Platform for the purposes of Customer Service Provision to relevant VIPs or in connection with the operation of this Agreement.

3.3 In relation to the Authorised Users, the Customer undertakes that:

- (a) it will not allow or suffer any account linked to an Authorised User to be used other than by the individual to which that account was allocated;
- (b) each Authorised User shall keep a secure password for their use of the Services and Documentation, that such password shall be changed no less frequently than every six months or as and when the Authorised User receives a password change prompt from the Platform (as well as on notification from

the Customer's IT security systems advising a password change) and that each Authorised User shall keep their password confidential; and

- (c) it shall maintain a written, up-to-date list of current Authorised Users and provide such list to AMBA within 5 Business Days of AMBA's written request at any time or times.
- 3.4 AMBA may, at the request of the Customer, permit Family Members to access the VIP Dashboard of a relevant VIP. In that case, any such access is conditional on such conditions as AMBA may impose, including as applicable appropriate evidence of identity, VIP consent and/or authority of a Family Member to act on behalf of the VIP, and the acceptance by Family Members of terms of use applicable to access to the VIP Dashboard.
- 3.5 The Customer shall permit AMBA or AMBA's designated auditor to audit the Services, or use AMBA's requested software reporting, to verify that the Customer's use of the Services does not exceed the number of VIP Subscriptions purchased by the Customer. Each such audit may be conducted no more than once per year, at AMBA's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business. If any such audit reveals that the Customer has underpaid Subscription Fees to AMBA, then without prejudice to AMBA's other rights, the Customer shall pay to AMBA an amount equal to such underpayment as calculated in accordance with the prices set out in the Agreement Details within 10 Business Days of the date of the relevant audit.
- 3.6 During the course of its use of the Services the Customer shall not access, store, distribute or transmit any Viruses, or any material that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - (b) facilitates illegal activity;
  - (c) depicts sexually explicit images;
  - (d) promotes unlawful violence;
  - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - (f) is otherwise illegal or causes damage or injury to any person or property;
- and AMBA reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 3.7 The Customer shall not:
- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:

- (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
    - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
  - (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
  - (c) use the Services and/or Documentation to provide services to third parties (other than Customer Service Provision to VIPs); or
  - (d) subject to clause 24.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
  - (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 3; or
  - (f) introduce, or permit the introduction of, any Virus into AMBA's network and information systems.
- 3.8 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify AMBA.
- 3.9 The rights provided under this clause 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.
- 4. TRANSITION PERIOD AND SET-UP**
- 4.1 Promptly after the Effective Date, the Parties will meet to discuss the implementation of the Services, including:
- (a) the execution of the DPA (if still outstanding after the Effective Date);
  - (b) subject to the execution of the DPA:
    - (i) the requirements of the VIPs and the characteristics of relevant VIP Locations, and the nature and number of Sensors to be used for each VIP;
    - (ii) the selection, supply by AMBA or the procurement from an OEM, as applicable, and installation of, Sensors;
    - (iii) the securing of relevant Consents;
    - (iv) the administration of Sensor Accounts; and
  - (c) any other preparatory matters set out in the Proposal.
- 4.2 The Customer acknowledges that the Services cannot commence (in whole or in part) until:

- (a) the DPA has been executed by both Parties;
- (b) all applicable Consents (and any ancillary documents or policies) have been secured or provided in accordance with the DPA;
- (c) Sensors have either been hired or purchased from AMBA, or procured by the Customer from an OEM, and installed by AMBA and relevant Sensor Accounts have been set up, in accordance with clause 5 below;
- (d) any mandatory training provided by AMBA has been completed by the Customer and its Authorised Users; and
- (e) any other set-up actions set out in the Proposal have been implemented.

## **5. SENSORS AND SENSOR ACCOUNTS**

5.1 The Customer is responsible, at its own cost, for:

- (a) the securing and documentation of all relevant Consents;
- (b) the procurement of Sensors if the Customer has chosen to purchase the Sensors from the relevant OEM as set out in the Agreement Details;
- (c) providing AMBA or its authorised representative access to the VIP Location to enable AMBA to comply with its obligations under clause 5.2;
- (d) the setting up of Sensor Accounts where the Customer has purchased the Sensors from an OEM (which may, as applicable, be by the Customer on its own account, by a VIP or by a person authorised to act on the VIP's behalf), including the agreement of any terms between the Customer and/or the VIP and the relevant OEM relating to such Sensor Accounts; and
- (e) the giving or securing of any consents, permissions or information necessary to allow AMBA to link data from the relevant Sensor Account to the Platform.

5.2 AMBA shall:

- (a) procure Sensors if the Customer has chosen to hire or purchase Sensors from AMBA as indicated in the Agreement Details in which case the Sensor Hire Terms and Conditions or the Sensor Purchase Terms and Conditions shall apply;
- (b) provide configuration services to the Customer, as set out in the Proposal;
- (c) unless otherwise agreed by the Parties or indicated in the Agreement Details or an Order, install the Sensors in the relevant VIP Location using reasonable care and skill; and
- (d) provide the Customer with training services, as set out in the Proposal.

## **6. SERVICES**

6.1 AMBA shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.



- 6.2 AMBA shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during the maintenance window set out in the Documentation; and
  - (b) unscheduled maintenance, provided that AMBA has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.
- 6.3 The Customer acknowledges that its AMBA Super Users are solely responsible for providing first-line support to the Authorised Users and the Customer shall comply with, and shall procure that each AMBA Super User complies with, AMBA's Support Services Policy when providing such first-line support. AMBA will, as part of the Services and at no additional cost to the Customer, provide the Customer with AMBA's standard (second-line) support to the AMBA Super Users during Normal Business Hours in accordance with AMBA's Support Services Policy in effect at the time that the Services are provided. AMBA may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at AMBA's then current rates.

## **7. NATURE OF THE SERVICES**

- 7.1 The Services provided by AMBA are intended to assist a care provider through the collection and reporting of certain health-related, wellbeing, activity and safety data in relation to a VIP. The Services are not intended to replace or reduce any care services provided by the Customer (where applicable), nor are the Services intended to be used by any person to prevent, treat, monitor, alleviate or diagnose disease, injury or handicap or similar functions, notwithstanding that the Customer may, on receipt of data provided by the Services, elect to investigate the health of a VIP or to modify its approach towards the care of that VIP. The Customer acknowledges and agrees that:
- (a) AMBA does not provide health, medical or social care advice or services and that the Customer is, and remains at all times, fully responsible towards the VIP for any care services provided by it to the VIP; and
  - (b) notwithstanding any marketing material or other communications provided to the Customer (whether by AMBA or a third party), the Services provided by AMBA are not a medical device as defined by the Medical Devices Regulations 2002 (as amended).

## **8. DATA PROTECTION**

Each party will comply with all laws (whether of the UK or any other relevant jurisdiction) relating to the use, protection and privacy of personal data (including the privacy of electronic communications) from time to time applicable. This general obligation is without prejudice to the parties' rights and obligations under the DPA.

## **9. THIRD PARTY PROVIDERS**

- 9.1 The Customer acknowledges that the Services will enable or assist it to access the content of, correspond with, and purchase products and services from, third parties (including OEMs) via third-party websites and/or platforms and that it does so solely at its own risk. AMBA makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website and/or platform, or any transactions completed, and any contract entered into by the Customer (or by or on behalf of a VIP), with any such third party. Any contract entered into and any transaction completed via any third-party website and/or platform is between the Customer (or VIP) and the relevant third party, and not AMBA. AMBA recommends that the Customer refers to (and advises a VIP to refer to) the third party's website and/or platform terms and conditions and privacy policy prior to using the relevant third-party website and/or platform. AMBA does not endorse or approve any third-party website and/or platform nor the content of any of the third-party websites and/or platform made available via the Services.
- 9.2 Notwithstanding the above, AMBA will provide to the Customer reasonable information and assistance concerning Sensors that are compatible with the Platform and information about the use of Sensor Accounts.

## **10. AMBA'S OBLIGATIONS**

- 10.1 AMBA undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 10.2 The undertaking at clause 10.1 shall not apply to the extent of any non-conformance which is caused by:
- (a) use of the Services contrary to AMBA's instructions;
  - (b) modification or alteration of the Services by any party other than AMBA or AMBA's duly authorised contractors or agents;
  - (c) the failure of Sensors if the Sensors have been purchased from an OEM, the failure of Sensors if the Sensors have been hired or purchased from AMBA where such failure is caused by the Customer or a VIP, or their removal or disabling in a VIP Location;
  - (d) the failure of any OEM platform responsible to managing Sensor data under a Sensor Account, or the disabling of a Sensor Account;
  - (e) failure of third-party services relevant to the Services, including data services, hardware failures and infrastructure provider failures; or
  - (f) power outages or network connectivity failures.

If the Services do not conform with the foregoing undertaking, AMBA will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes

the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 10.1.

10.3 AMBA:

- (a) does not warrant that:
  - (i) the Customer's use of the Services will be uninterrupted or error-free; or
  - (ii) that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements.
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

10.4 This Agreement shall not prevent AMBA from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

10.5 AMBA warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

10.6 AMBA shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy available at <https://www.amba.co/en-gb/trust-centre>, as such document may be amended by AMBA in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against AMBA shall be for AMBA to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by AMBA in accordance with the archiving procedure described in its Back-Up Policy. AMBA shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by AMBA to perform services related to Customer Data maintenance and back-up, for which it shall remain fully liable).

## 11. CUSTOMER'S OBLIGATIONS

11.1 The Customer shall:

- (a) provide AMBA with:
  - (i) all necessary co-operation in relation to this Agreement; and
  - (ii) all necessary access to such information as may be required by AMBA; in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;

- (c) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, AMBA may adjust any agreed timetable or delivery schedule as reasonably necessary;
  - (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
  - (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for AMBA, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
  - (f) ensure that its network and systems comply with the relevant specifications provided by AMBA from time to time; and
  - (g) be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to AMBA's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 11.2 The Customer agrees that AMBA may use the Customer Data for statistical and analytical purposes, machine learning and algorithm training purposes, and to improve and develop the Services and Software, as well as new services and software.

## **12. CHARGES AND PAYMENT**

- 12.1 The Customer shall pay the Subscription Fees to AMBA for the VIP Subscriptions in accordance with this clause 12 and the Agreement Details and where applicable the support fees in accordance with clause 6.3 and the Agreement Details.
- 12.2 The Customer shall before the Service Commencement Date provide to AMBA valid, up-to-date and complete credit card details or approved purchase order information acceptable to AMBA and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:
- (a) its credit card details to AMBA, the Customer hereby authorises AMBA to bill such credit card:
    - (i) on the Service Commencement Date for the Subscription Fees payable in respect of the first Billing Period of the Initial Subscription Term and thereafter in advance on or around the first day of the relevant Billing Period, in respect of the Subscription Fees due for that Billing Period; and
    - (ii) subject to clause 17.1, on each anniversary of the Service Commencement Date for the Subscription Fees payable in respect of the first Billing Period of the next Renewal Period and thereafter on or around the first day of the relevant Billing Period, in respect of the Subscription Fees due for that Billing Period;

- (b) its approved purchase order information to AMBA, AMBA shall invoice the Customer:
  - (i) on the Service Commencement Date for the Subscription Fees payable in respect of the first Billing Period of the Initial Subscription Term and thereafter in advance on or around the first day of the relevant Billing Period, in respect of the Subscription Fees due for that Billing Period; and
  - (ii) subject to clause 17.1, on each anniversary of the Service Commencement Date for the Subscription Fees payable in respect of the first Billing Period of the next Renewal Period and thereafter in advance on or around the first day of the relevant Billing Period, in respect of the Subscription Fees due for that Billing Period,and the Customer shall pay each invoice within 30 days after the date of such invoice.
- 12.3 All other Charges payable under this Agreement (not including the Subscription Fees payable under clause 12.2) shall be invoiced by AMBA as set out in the Agreement Details as incurred by the Customer from time to time.
- 12.4 If AMBA has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of AMBA:
  - (a) AMBA may (provided it gives the Customer written notice of its right to do so in the case of late payment, and the Customer has not made the relevant payment within 10 Business Days of the date of that notice), without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and AMBA shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
  - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of Barclays Bank plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgement.
- 12.5 All amounts and fees stated or referred to in this Agreement:
  - (a) shall be payable in pounds sterling;
  - (b) are, subject to clause 16.4(b), non-cancellable and non-refundable; and
  - (c) are exclusive of value added tax, which shall be added to AMBA's invoice(s) at the appropriate rate.
- 12.6 The Subscription Fees become payable from the Service Commencement Date even if the necessary Customer actions to enable Service delivery (including those under clauses 4.2 and 5.1) have not been completed before that date such that Service delivery is restricted or delayed (provided that, to the extent that the delivery of the Services from the Service Commencement Date is limited or delayed as a result of delays caused by AMBA, AMBA shall reduce the Subscription Fees pro

rata according to the extent of the delay, and such reduction shall be the Customer's sole remedy for such delay).

- 12.7 AMBA shall be entitled to increase the Charges at the start of each Renewal Period upon 30 days' prior notice to the Customer and the Agreement Details shall be deemed to have been amended accordingly. Where the Customer does not accept an increase to the Charges under this clause 12.7, the Customer may (notwithstanding clause 17.1(a)) give notice to AMBA to terminate the Agreement at the end of the current Subscription Term.

### **13. PROPRIETARY RIGHTS**

- 13.1 The Customer acknowledges and agrees that AMBA and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
- 13.2 AMBA confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

### **14. CONFIDENTIALITY**

- 14.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
  - (b) was in the other party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 14.2 Subject to clause 14.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 14.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 14.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as

much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 14.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

- 14.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute AMBA's Confidential Information.
- 14.6 AMBA acknowledges that the Customer Data is the Confidential Information of the Customer.
- 14.7 AMBA may (unless the Customer requests otherwise in writing) refer to the Customer by name as being a customer of AMBA, on AMBA's website or in other materials. Except for such reference by AMBA, neither party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 14.8 The above provisions of this clause 14 shall survive termination of this Agreement, however arising.
- 14.9 The provisions of this clause 14 are without prejudice to the rights and obligations of the parties under the DPA in relation to personal data (as defined therein).

## **15. INDEMNITY**

- 15.1 The Customer shall defend, indemnify and hold harmless AMBA against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
- (a) the Customer is given prompt notice of any such claim;
  - (b) AMBA provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - (c) the Customer is given sole authority to defend or settle the claim.
- 15.2 AMBA shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services or Documentation in accordance with this Agreement infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgement or settlement of such claims, provided that:
- (a) AMBA is given prompt notice of any such claim;
  - (b) the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to AMBA in the defence and settlement of such claim, at AMBA's expense; and
  - (c) AMBA is given sole authority to defend or settle the claim.

- 15.3 In the defence or settlement of any claim, AMBA may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 30 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 15.4 In no event shall AMBA, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than AMBA; or
  - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by AMBA; or
  - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from AMBA or any appropriate authority.
- 15.5 The foregoing and clause 16.4(b) states the Customer's sole and exclusive rights and remedies, and AMBA's (including AMBA's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## **16. LIMITATION OF LIABILITY**

- 16.1 Except as expressly and specifically provided in this Agreement:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use (including where the results obtained from the use of the Services and the Documentation by the Customer were incorrect due irrespective of whether a Sensor is malfunctioning or not). AMBA shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to AMBA by the Customer or by any OEM (through a Sensor Account) in connection with the Services, or any actions taken by AMBA at the Customer's direction;
  - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement;
  - (c) AMBA shall not be liable for any loss or damage to the extent caused by any of the circumstances stated in clause 10.2; and
  - (d) the Services and the Documentation are provided to the Customer on an "as is" basis.
- 16.2 Nothing in this Agreement excludes the liability of either party:
- (a) for death or personal injury resulting from negligence; or
  - (b) for fraud or fraudulent misrepresentation.



- 16.3 The liability of each party to the other party for breach of the Data Protection Legislation (as defined in the DPA) (whether such breach occurs in relation to this Agreement including clause 8 of these Terms and Conditions or the DPA) or the DPA itself (each being a **DP Breach**) shall be subject to the provisions of the DPA, including any limitations of liability set out in the DPA. Neither party shall attempt to claim against the other party for a DP Breach under this Agreement (including where so doing would circumvent any limitations of liability agreed in the DPA), but shall only claim against the other in respect of a DP Breach under DPA. Each party (**First Party**) shall indemnify the other party (**Second Party**) against any costs or losses arising out of the First Party's breach of the foregoing obligations in this clause 16.3.
- 16.4 Subject to clause 16.1 and clause 16.2:
- (a) AMBA shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement;
  - (b) AMBA's total aggregate liability in contract (including in respect of the indemnity at clause 15.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement (other than the Sensor Hire Terms and Conditions and the Sensor Purchase Terms and Conditions) shall be limited to 100% of the total Subscription Fees paid for the VIP Subscriptions during the 12 months immediately preceding the date on which the claim arose or, where such claim arose during the first 12 months of this Agreement, an amount calculated as 12 months' Subscription Fees based on the number of VIP Subscriptions active at that time;
  - (c) AMBA's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of:
    - (i) the Sensor Hire Terms and Conditions shall be limited to 100% of the Rental Payments paid for the Sensors during the 12 months immediately preceding the date on which the claim arose or, where such claim arose during the first 12 months of this Agreement, an amount calculated as 12 months' Rental Payments based on the number of Sensors active at that time; or
    - (ii) the Sensor Purchase Terms and Conditions shall be limited to 100% of the purchase price paid for the Sensors during the 12 months immediately preceding the date on which the claim arose.
  - (d) Nothing in this Agreement excludes the liability of the Customer for any breach, infringement or misappropriation of AMBA's Intellectual Property Rights.

## 17. TERM AND TERMINATION

17.1 This Agreement shall, unless otherwise terminated as provided in this clause 17, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**) with such number of VIP Subscriptions as the parties may agree for that Renewal Period, unless:

(a) either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

(b) otherwise terminated in accordance with the provisions of this Agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall (as at any relevant time) constitute the Subscription Term.

17.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

(a) the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;

(b) the other party commits a material breach of any other term of this Agreement or the DPA and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

(c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

(d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(e) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

(f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);

- (h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
  - (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
  - (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.2(c) to clause 17.2(j) (inclusive);
  - (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
  - (m) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.
- 17.3 Either party may suspend or terminate this Agreement, if entitled to do so under the DPA, in accordance with the relevant terms of the DPA.
- 17.4 On termination of this Agreement for any reason:
- (a) all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
  - (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
  - (c) AMBA may destroy or otherwise dispose of any of the Customer Data in its possession unless AMBA receives, no later than 30 days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. AMBA shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by AMBA in returning or disposing of Customer Data;
  - (d) the retention or deletion of personal data (as defined in the DPA) shall be as set out in the DPA; and
  - (e) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect

of any breach of this Agreement which existed at or before the date of termination shall not be affected or prejudiced.

**18. FORCE MAJEURE**

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

**19. VARIATION**

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**20. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**21. RIGHTS AND REMEDIES**

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**22. SEVERANCE**

22.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

22.2 If any provision or part-provision of this Agreement is deemed deleted under clause 22.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**23. ENTIRE AGREEMENT**

23.1 This Agreement (including these Terms and Conditions, the Sensor Hire Terms and Conditions, the Sensor Purchase Terms and Conditions, the PEM Purchase Terms (as applicable) and any Orders made under it) constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between

them, whether written or oral, relating to its subject matter. This clause 23.1 is without prejudice to the operation of the DPA (whether the DPA is entered into before, on or after the Effective Date), nor to the operation of any confidentiality agreement between the parties that is expressed to continue in force after the Effective Date.

23.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

23.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

23.4 Nothing in this clause shall limit or exclude any liability for fraud.

## **24. ASSIGNMENT**

24.1 The Customer shall not, without the prior written consent of AMBA, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

24.2 AMBA may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

## **25. NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **26. THIRD PARTY RIGHTS**

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **27. COUNTERPARTS**

27.1 This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

27.2 Transmission of the executed signature page of a counterpart of this Agreement by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this Agreement. If this method of transmission is adopted, without prejudice to the validity of the agreement thus made, each party shall on request provide the other with the "wet ink" hard copy original of their counterpart.

27.3 No counterpart shall be effective until each party has provided to the other at least one executed counterpart.

## **28. NOTICES**

28.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand, sent by pre-paid first-class post or recorded delivery post or email to the other party at its address set out in the Agreement Details, or such other address as may have been notified by that party for such purposes.:

28.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9:00 a.m. on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at 9.00 am on the next Business Day after transmission.

## **29. GOVERNING LAW**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

## **30. JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## **SENSOR HIRE TERMS AND CONDITIONS**

### **1. INTERPRETATION**

1.1 The following definitions apply in these Sensor Hire Terms and Conditions:

**Deposit** means the deposit amount set out in the Agreement Details or Order, as applicable.

**Rental Payments** means the payments made by or on behalf of the Customer for hire of the Sensors, as specified in the Agreement Details or Order, as applicable.

**Rental Period** means the rental period specified in the Agreement Details or Order, as applicable.

**Risk Period** means the period during which the Sensors are at the sole risk of the Customer as set out in paragraph 6.2.

**Total Loss** means due to the Customer's default the Sensors are, in AMBA's reasonable opinion, damaged beyond repair, lost, stolen, seized or confiscated.

1.2 Any terms defined in the Agreement Details and the Terms and Conditions shall have the same meaning in these Sensor Hire Terms and Conditions unless the context requires otherwise and the rules of interpretation set out in the Terms and Conditions shall apply to these Sensor Hire Terms and Conditions.

### **2. SENSOR HIRE**

2.1 AMBA shall hire the Sensors as specified in:

(a) the Agreement Details; or

(b) following written acceptance by AMBA, any Order placed by the Customer,

to the Customer for use at the VIP Location (in accordance with the Agreement Details and the Terms and Conditions) subject to these Hire Terms and Conditions.

2.2 AMBA shall not, other than in the exercise of its rights under these Sensor Hire Terms and Conditions or applicable law, interfere with the Customer's quiet possession of the Sensors.

2.3 In the event that, during the Rental Period, the Sensors are no longer supported by the relevant OEM, or otherwise become unsuitable for use with the Platform, AMBA will promptly, at its own cost, replace those Sensors (in which case the Customer shall complete any related actions under clause 5.1 of the Terms and Conditions and AMBA shall complete any related actions under clause 5.2 of the Terms and Conditions).

### **3. RENTAL PERIOD**

3.1 The Rental Period starts on the Delivery Date and shall continue for such period unless this Agreement is terminated earlier in accordance with its terms.

#### **4. RENTAL PAYMENTS AND DEPOSIT**

- 4.1 The Customer shall pay the Rental Payments to AMBA in accordance with the Agreement Details or Order, as applicable.
- 4.2 The Rental Payments are exclusive of value added tax and any other applicable taxes and duties or similar charges which shall be payable by the Customer at the rate and in the manner from time to time prescribed by law.
- 4.3 The Deposit is a deposit against default by the Customer of payment of any Rental Payments or any loss of or damage caused to the Sensors. The Customer shall, prior to the Delivery Date, pay the Deposit to AMBA. If the Customer fails to make any Rental Payments, or causes any loss or damage to the Sensors (in whole or in part), AMBA shall be entitled to apply the Deposit against such default, loss or damage. The Customer shall pay to AMBA any sums deducted from the Deposit within 10 Business Days of a demand for the same. The Deposit (or balance of the Deposit) shall be refundable within 5 Business Days after the end of the Rental Period.

#### **5. DELIVERY**

- 5.1 Delivery shall be made by AMBA. AMBA shall use all reasonable endeavours to effect Delivery by the Delivery Date.
- 5.2 AMBA shall ensure that each Delivery of the Sensors is accompanied by a delivery note that shows the date on which the Sensors were ordered (such as the date of this Agreement or any Order), the type and quantity of the Sensors (including the code number of the Sensors, where applicable), special storage instructions (if any) and, if the Sensors are being delivered by instalments, the outstanding balance of Sensors remaining to be delivered.
- 5.3 The Customer shall procure that a duly authorised representative of the Customer shall be present at the Delivery of the Sensors. Acceptance of Delivery by such representative shall constitute conclusive evidence that the Customer has examined the Sensors and has found them to be in good condition, complete and fit in every way for the purpose for which they are intended (save as regards any latent defects not reasonably apparent on inspection). If required by AMBA, the Customer's duly authorised representative shall sign a receipt confirming such acceptance.
- 5.4 If the Customer fails to accept delivery of the Sensors on the Delivery Date, then, except where such failure is caused by AMBA's failure to comply with its obligations under this Agreement:
- (a) the Sensors shall be deemed to have been delivered at 9.00 am on the Delivery Date; and
  - (b) AMBA shall store the Sensors until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 5.5 AMBA shall install the Sensors in accordance with clause 5.2(c) of the Terms and Conditions.



## **6. TITLE, RISK AND INSURANCE**

6.1 The Sensors shall at all times remain the property of AMBA, and the Customer shall have no right, title or interest in or to the Sensors (save the right to possession and use of the Sensors subject to the terms and conditions of this Agreement).

6.2 The risk of loss, theft, damage or destruction of the Sensors shall pass to the Customer on Delivery. The Sensors shall remain at the sole risk of the Customer during the Rental Period and any further term during which the Sensors are in the possession, custody or control of the Customer (**Risk Period**) until such time as the Sensors are redelivered to AMBA. During the Rental Period and the Risk Period the Customer shall, at its own expense, obtain and maintain the following insurances:

- (a) insurance of the Sensors to a value not less than their full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as AMBA may from time to time nominate in writing;
- (b) insurance for such amounts as a prudent owner or operator of the Sensors would insure for, or such amounts as AMBA may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Sensors; and
- (c) insurance against such other or further risks relating to the Sensors as may be required by law, together with such other insurance as AMBA may from time to time consider reasonably necessary and advise to the Customer in writing.

6.3 If the Customer fails to effect or maintain any of the insurances required under these Sensor Hire Terms and Conditions, AMBA shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.

6.4 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to AMBA and proof of premium payment to AMBA to confirm the insurance arrangements.

6.5 The Customer shall give immediate written notice to AMBA in the event of any loss, accident or damage to the Sensors arising out of or in connection with the Customer's possession or use of the Sensors.

## **7. CUSTOMER'S RESPONSIBILITIES**

7.1 The Customer shall during the Rental Period and Risk Period:

- (a) ensure that the Sensors are kept and operated in a suitable environment, used only for the purposes for which they are designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions provided by AMBA or the OEM;
- (b) take such steps (including compliance with all safety and usage instructions provided by AMBA or the OEM) as may be necessary to ensure, so far as is

reasonably practicable, that the Sensors are at all times safe and without risk to health when they are being set, used, cleaned or maintained by a person at work;

- (c) maintain at its own expense the Sensors in good and substantial repair in order to keep them in as good an operating condition as they were on the Delivery Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Sensors;
- (d) make no alteration to the Sensors and shall not remove any existing component (or components) from the Sensors other than to comply with any mandatory modifications required by law or any regulatory authority;
- (e) keep AMBA fully informed of all material matters relating to the Sensors;
- (f) keep the Sensors at all times at the VIP Location and not move or attempt to move the Sensors to any other location without AMBA's prior written consent;
- (g) permit AMBA or its duly authorised representatives to inspect the Sensors at all reasonable times and for such purpose to enter on the VIP Location or any premises at which the Sensors may be located, and shall grant reasonable access and facilities for such inspection;
- (h) maintain operating and maintenance records of the Sensors and make copies of such records readily available to AMBA, together with such additional information as AMBA may reasonably require;
- (i) not, without the prior written consent of AMBA, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Sensors or allow the creation of any mortgage, charge, lien or other security interest in respect of them;
- (j) not without the prior written consent of AMBA, attach the Sensors to any land or building so as to cause the Sensors to become a permanent or immovable fixture on such land or building. If the Sensors do become affixed to any land or building then the Sensors must be capable of being removed without material injury to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the Sensors from any land or building and indemnify AMBA against all losses, costs or expenses incurred as a result of such affixation or removal;
- (k) not do or permit to be done any act or thing which will or may jeopardise the right, title or interest of AMBA in the Sensors and, where the Sensors have become affixed to any land or building, the Customer must take all necessary steps to ensure that AMBA may enter such land or building and recover the Sensors both during the term of this Agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of AMBA of any rights such person may have or acquire in the Sensors and a right for AMBA to enter onto such land or building to remove the Sensors;

- (l) not suffer or permit the Sensors to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Sensors are so confiscated, seized or taken, the Customer shall notify AMBA and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Sensors and shall indemnify AMBA on demand against all losses, costs, charges, damages and expenses reasonably incurred as a result of such confiscation;
- (m) not use the Sensors for any unlawful purpose;
- (n) ensure that at all times the Sensors remain identifiable as being AMBA's property and wherever possible shall ensure that a visible sign to that effect is attached to the Sensors;
- (o) deliver up the Sensors at the end of the Rental Period at such address as AMBA requires, or if necessary allow AMBA or its representatives access to the VIP Location or any premises where the Sensors are located for the purpose of removing the Sensors; and
- (p) not do or permit to be done anything which could invalidate the insurances referred to in paragraph 6.2.

## **8. WARRANTY**

- 8.1 As the Sensors are not manufactured or produced by AMBA, the Customer shall be entitled only to such warranty or other benefit as AMBA has received from the manufacturer.
- 8.2 AMBA warrants that the Sensors shall substantially conform to their specification (as made available to AMBA by the relevant OEM) and be of satisfactory quality. AMBA shall, at its option, repair or replace, any defective Sensors if such defect manifests itself during the Rental Period, and provided that:
  - (a) the Customer notifies AMBA of any defect in writing within 10 Business Days of the defect occurring or of becoming aware of the defect;
  - (b) AMBA is permitted to make a full examination of the alleged defect; and
  - (c) the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than AMBA's authorised personnel.
- 8.3 The repair or replacement of any defective Sensor by AMBA shall be the Customer's sole and exclusive remedy for AMBA's failure to comply with the warranty in paragraph 8.2.
- 8.4 These Sensor Hire Terms and Conditions shall apply to any repaired or replacement Sensors supplied by the AMBA.

**9. CONSEQUENCES OF EXPIRY OF THE RENTAL PERIOD OR TERMINATION OF THIS AGREEMENT**

9.1 On expiry of the Rental Period, termination of this Agreement or Total Loss of the Sensors, however caused:

- (a) AMBA's consent to the Customer's possession of the Sensors shall terminate;
- (b) AMBA may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Sensors and for this purpose may enter the VIP Location or any premises at which the Sensors are located;
- (c) the Customer shall ensure the safe and proper storage of the Sensors until they have been collected by AMBA; and
- (d) without prejudice to any rights or remedies of the Customer, the Customer shall pay to AMBA on demand:
  - (i) all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 12.4 of the Terms and Conditions; and
  - (ii) any costs and expenses incurred by AMBA in recovering the Sensors or in collecting any sums due under these Sensor Hire Terms and Conditions (including any storage, insurance, repair, transport and legal costs).

9.2 On termination of this Agreement prior to the expiry of the Rental Period, without prejudice to any other rights or remedies of AMBA, the Customer shall pay to AMBA on demand a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if this Agreement had continued from the date of such demand to the end of the Rental Period, less a discount for accelerated payment at the percentage rate set out in the Agreement Details.

9.3 The sums payable pursuant to paragraph 9.2 shall be agreed compensation for AMBA's loss and shall be payable in addition to the sums payable pursuant to paragraph 9.1(d). Such sums may be partly or wholly recovered from any Deposit.

## **SENSOR PURCHASE TERMS AND CONDITIONS**

### **1. INTERPRETATION**

- 1.1 Any terms defined in the Agreement Details and the Terms and Conditions shall have the same meaning in these Sensor Purchase Terms and Conditions unless the context requires otherwise and the rules of interpretation set out in the Terms and Conditions shall apply to these Sensor Purchase Terms and Conditions.

### **2. PURCHASE OF SENSORS**

- 2.1 These Sensor Purchase Terms and Conditions apply to the purchase of Sensors from AMBA to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 AMBA shall sell the Sensors as specified in:
- (a) the Agreement Details; or
  - (b) following written acceptance by AMBA, any Order placed by the Customer. For the avoidance of doubt, any Order placed by the Customer constitutes an offer by the Customer to purchase the Sensors in accordance with these Sensor Purchase Terms and Conditions.
- 2.3 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Sensor Purchase Terms and Conditions.
- 2.4 Any samples, descriptive matter or advertising produced by AMBA are produced for the sole purpose of giving an approximate idea of the Sensors referred to in them. They shall not form part of this Agreement nor have any contractual force.
- 2.5 A quotation for Sensors given by AMBA shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.
- 2.6 In the event that, during a Subscription Term, any Sensors are no longer supported by the relevant OEM, or otherwise become unsuitable for use with the Platform, the Customer will promptly replace those Sensors (in which case the Customer shall complete any related actions under clause 5.1 of the Terms and Conditions and AMBA shall complete any related actions under clause 5.2 of the Terms and Conditions).

### **3. DELIVERY**

- 3.1 Delivery shall be made by AMBA. AMBA shall use all reasonable endeavours to effect Delivery by the Delivery Date.
- 3.2 AMBA shall ensure that each Delivery of the Sensors is accompanied by a delivery note that shows the date on which the Sensors were ordered (such as the date of this Agreement or any Order), the type and quantity of the Sensors (including the code number of the Sensors, where applicable), special storage instructions (if any)

- and, if the Sensors are being delivered by instalments, the outstanding balance of Sensors remaining to be delivered.
- 3.3 Any dates quoted for Delivery are approximate only, and the time of delivery is not of the essence. AMBA shall not be liable for any delay in delivery of or failure to deliver the Sensors that is caused by a force majeure event (as covered by clause 18 of the Terms and Conditions) or the Customer's failure to provide AMBA with adequate delivery instructions or any other instructions that are relevant to the supply of the Sensors.
- 3.4 If AMBA fails to deliver the Sensors, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement products of similar description and quality in the cheapest market available, less the price of the Sensors.
- 3.5 If the Customer fails to accept Delivery of the Sensors, then, except where such failure or delay is caused by a force majeure event or AMBA's failure to comply with its obligations under this Agreement in respect of the Sensors:
- (a) delivery of the Sensors shall be deemed to have been completed at the time AMBA attempted Delivery of such Sensors; and
  - (b) AMBA shall store the Sensors until actual Delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 3.6 If 10 Business Days after the day on which AMBA attempted Delivery of the Sensors the Customer has not accepted actual Delivery of them, AMBA may resell or otherwise dispose of part or all of the Sensors and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Sensors or charge the Customer for any shortfall below the price of the Sensors.
- 3.7 AMBA may deliver the Sensors by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

#### **4. WARRANTY**

- 4.1 As the Sensors are not manufactured or produced by AMBA, the Customer shall be entitled only to such warranty or other benefit as AMBA has received from the manufacturer.
- 4.2 Notwithstanding the aforementioned, AMBA warrants that the Sensors shall substantially conform to their specification (as made available to AMBA by the relevant OEM) and be of satisfactory quality. AMBA shall, at its option, repair or replace, any defective Sensors if such defect manifests itself during the Rental Period, and provided that:
- (a) the Customer notifies AMBA of any defect in writing within 10 Business Days of the defect occurring or of becoming aware of the defect;
  - (b) AMBA is permitted to make a full examination of the alleged defect; and

- (c) the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than AMBA's authorised personnel.
- 4.3 The repair or replacement of any defective Sensor by AMBA shall be the Customer's sole and exclusive remedy for AMBA's failure to comply with the warranty in paragraph 4.2.
- 4.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from these Sensor Purchase Terms and Conditions.
- 4.5 These Sensor Purchase Terms and Conditions shall apply to any repaired or replacement Sensors supplied by the AMBA.
- 5. TITLE AND RISK**
- 5.1 The risk in the Sensors shall pass to the Customer on Delivery.
- 5.2 Title to the Sensors shall not pass to the Customer until AMBA receives payment in full (in cash or cleared funds) for the Sensors in respect of which payment has become due, in which case title to the Sensors shall pass at the time of payment of all such sums.
- 5.3 Until the Sensors are installed at the VIP Location, the Customer shall:
  - (a) store the Sensors separately from all other goods held by the Customer so that they remain readily identifiable as AMBA's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Sensors;
  - (c) maintain the Sensors in satisfactory condition and keep them insured against all risks for their full price from the date of Delivery;
  - (d) notify AMBA immediately if it becomes subject to any of the events listed in clause 17.2(c) to clause 17.2(l) of the Terms and Conditions; and
  - (e) give AMBA such information as AMBA may reasonably require from time to time relating to:
    - (i) the Sensors; and
    - (ii) the ongoing financial position of the Customer.
- 5.4 Subject to paragraph 5.5 of these Sensor Purchase Terms and Conditions, the Customer may use the Sensors in the ordinary course of its business (but not otherwise) before AMBA receives payment for the Services.
- 5.5 At any time before title to the Sensors passes to the Customer, AMBA may:
  - (a) by notice in writing, terminate the Customer's right under paragraph 5.4 of these Sensor Purchase Terms and Conditions to use them in the ordinary course of its business; and

- (b) require the Customer to deliver up all Sensors in its possession that have not been irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Sensors are stored or installed in order to recover them.

## **6. PURCHASE PRICE**

- 6.1 The purchase price of the Sensors shall be the price set out in the Agreement Details or Order.
- 6.2 AMBA may, by giving notice to the Customer at any time up to 10 Business Days before Delivery, increase the price of the Sensors to reflect any increase in the cost of the Sensors that is due to:
  - (a) any factor beyond AMBA's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (b) any request by the Customer to change the date of Delivery, the quantities or types of Sensors ordered; or
  - (c) any delay caused by any instructions of the Customer or failure of the Customer to give AMBA adequate or accurate information or instructions.
- 6.3 The price of the Sensors excludes amounts in respect of value added tax, which the Customer shall additionally be liable to pay to AMBA at the prevailing rate, subject to the receipt of a valid value added tax invoice.



## OEM PURCHASE TERMS

- 1 Any terms defined in the Agreement Details and the Terms and Conditions shall have the same meaning in these OEM Purchase Terms unless the context requires otherwise and the rules of interpretation set out in the Terms and Conditions shall apply to these OEM Purchase Terms.
- 2 Where the Customer purchases the Sensors from the OEM, the Customer acknowledges that AMBA is not responsible for the performance or maintenance of the Sensors, nor for any injury, loss or damage caused by defective Sensors nor for any non- or mal-functioning or inaccuracy of any Sensors.
- 3 The Customer is advised to ensure that any registrations required to activate any OEM warranty or guarantee for the Sensors are completed.
- 4 In the event that, during a Subscription Term, any Sensors become defective, the Customer will promptly replace those Sensors (and the Customer shall complete any related actions under clause 5.1 of the Terms and Conditions) and AMBA shall provide the configuration and installation services in accordance with clause 5.2(b) and 5.2(c) of the Terms and Conditions to the Customer. The same applies where the Customer purchases additional Sensors from the OEM (if so required by AMBA, acting reasonably, AMBA shall provide the training services to the Customer in accordance with clause 5.2(d) of the Terms and Conditions).
- 5 In the event that, during a Subscription Term, any Sensors are no longer supported by the relevant OEM, or otherwise become unsuitable for use with the Platform, the Customer will promptly replace those Sensors (in which case the Customer shall complete any related actions under clause 5.1 of the Terms and Conditions and AMBA shall complete any related actions under clause 5.2 of the Terms and Conditions).
- 6 AMBA may charge the Customer the Configuration Fees and Installation Fees for the services referred to in paragraph 4 of these OEM Purchase Terms.

## Data Processing Agreement

This Processing Agreement is incorporated in Amba Health and Care Limited's Terms and Conditions.

By

- (1) The "**Customer**", as defined in the Platform Agreement.
- (2) **Amba Health and Care Limited** (company number 12608913 whose registered office is at 71-75 Shelton Street, London, WC2H 9JQ) (the "**Provider**")

### 1. DEFINITIONS AND INTERPRETATION

1.1 In this Supplemental Agreement all defined terms shall have the meaning given in the Agreement, save in respect of the following words, expressions and abbreviations, which shall have the following meanings:

**"Agreement"** means the agreement entered into between the Customer and Amba, as outlined in the Platform Agreement. This includes the Terms and Conditions and this Data Processing Agreement, as varied, novated, supplemented, amended or replaced from time to time;

**"Appropriate Safeguards"** means such legally enforceable mechanism(s) for transfers of Personal Data as may be permitted under Data Protection Laws from time to time;

**"Authorised Sub-Processor"** means any third party appointed by Amba in accordance with the Agreement or this Supplemental Agreement (as applicable), to process Personal Data;

**"Amba"** means, in respect of Amba, its Parent Undertakings, its Subsidiary Undertakings and the Subsidiary Undertakings of any of its Parent Undertakings from time to time ("**Parent Undertaking**" and "**Subsidiary Undertaking**" having the meanings set out in section 1162 Companies Act 2006);

**"Customer Group"** means, in respect of the Customer, its Parent Undertakings, its Subsidiary Undertakings and the Subsidiary Undertakings of any of its Parent Undertakings from time to time;

**"Customer Data"** means any Personal Data that Amba processes on behalf of a Controller as a Processor in the course of providing Products or Services, as described in this Agreement.

**"Data Protection Laws"** means all applicable laws and rules, policies, guidance or recommendations issued by any governmental, statutory or regulatory body and any industry code of conduct or guideline, in each case relating to data protection, the processing of personal data and privacy and in force from

time to time; and references to “**controller**”, “**processor**”, “**data subjects**”, “**personal data**”, “**process**”, “**processed**”, and “**processing**” have the meanings set out in, and will be interpreted in accordance with, such laws, rules, policies, guidance, recommendations, codes of conduct and guidelines;

“ <b>EEA</b> ”	means the European Economic Area (as it is made up from time to time);
“ <b>European Union</b> ”	means the European Union as it is made up from time to time;
“ <b>GDPR</b> ”	means the General Data Protection Regulation (EU and UK GDPR)
“ <b>Indemnified Costs</b> ”	means all costs (on a full indemnity basis) including legal and other professional costs and costs of enforcement;
“ <b>Parties</b> ”	means the parties to the Agreement and this Supplemental Agreement;
“ <b>Personal Data</b> ”	means the personal data (as such term is defined under the Data Protection Laws) processed by Amba pursuant to the Agreement, as more particularly defined in <b>Appendix 1</b> of this Processing Agreement;
“ <b>Personal Data Breach</b> ”	has the meaning set out in, and will be interpreted in accordance with the Data Protection Laws;
“ <b>Purpose</b> ”	means the processing of Personal Data by Amba pursuant to the terms of the Agreement;
“ <b>Processor Model Clauses</b> ”	means the standard contractual clauses for Processors, issued by the European Commission pursuant to Decision 2021/915/EU of 4 June 2021 as set out at: <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021D0915&amp;locale=en">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021D0915&amp;locale=en</a> , as varied, supplemented, amended or replaced by the European Commission from time to time;
“ <b>Safe Country</b> ”	means any country outside the EU and/or the United Kingdom which the relevant authority (or relevant authorities) under the Data Protection Laws determines offers an adequate level of data protection;
“ <b>Security Measures</b> ”	means the minimum security measures set out in <b>Appendix 2</b> to this Processing Agreement;

<b>“Services”</b>	means any product or service provided by Amba to a customer pursuant to the Terms and Conditions;
<b>“Standard Contractual Clauses”</b>	means contractual clauses annexed to the European Commission's Implementing Decision 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of Personal Data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council.
<b>"Sub-processor"</b>	means any Processor engaged by Amba to assist in fulfilling its obligations with respect to providing the Services pursuant to the Agreement or this DPA.
<b>“Supervisory Authority”</b>	means any governmental or regulatory authority responsible for enforcing any Data Protection Laws and any replacement or successor body or person for any such authority from time to time.
<b>"UK Addendum"</b>	means the International Data Transfer Addendum (Version B1.0) issued by the Information Commissioner's Office under s.119(A) of the UK Data Protection Act 2018, as updated or amended from time to time.

1.2 In this Processing Agreement (except where the context otherwise requires):

- 1.2.1 headings are inserted for ease of reference only and shall not affect construction;
- 1.2.2 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of state or joint venture;
- 1.2.3 the Appendices form part of this Processing Agreement and will have the same force and effect as if expressly set out in the body of this Processing Agreement and any reference to this Processing Agreement will include a reference to the Appendices;
- 1.2.4 references to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time;
- 1.2.5 where the context requires, words denoting the singular include the plural and vice versa and words denoting any gender include all genders; and
- 1.2.6 any words following the words “include”, “includes”, “including”, “in particular” or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them.

## 2. **RELATIONSHIP WITH THE TERMS AND CONDITIONS**

- 2.1 The Parties acknowledge and agree that from the date of this Supplemental Agreement the processing of Personal Data pursuant to the Agreement shall be governed by the terms of this Supplemental Agreement and in the event of any conflict between the terms of this Supplemental Agreement Shall prevail.
- 2.2 Except for the changes made by this DPA, the Agreement remains unchanged and in full force and effect. If there is any conflict between this DPA and the Agreement, this DPA shall prevail to the extent of that conflict.
- 2.3 Any claims brought under or in connection with this DPA shall be subject to the Agreement, including but not limited to, the exclusions and limitations set forth in the DPA.
- 2.4 Any claims against Amba or its Subsidiaries under this DPA shall be brought solely against the entity that is a party to the Agreement. In no event, shall any party limit its liability with respect to any individual's data protection rights under this DPA or otherwise.
- 2.5 No one other than a party to this DPA, its successors and permitted assigns shall have any right to enforce any of its terms.
- 2.6 This DPA shall be governed by and construed in accordance with governing law and jurisdiction provisions in the Agreement, unless required otherwise by applicable Data Protection Laws.
- 2.7 This DPA will automatically terminate upon expiration or termination of the Agreement. The parties agree that certain obligations might extend beyond the termination of this DPA in order to comply with legal requirements, such as Anti-Money Laundering requirements.

## 3. **RELATIONSHIP OF THE PARTIES**

- 3.1 Amba as a Processor. The Parties acknowledge and agree that with regards to the Processing of Customer Data, Customer may act as a controller or processor and Amba is a processor. Amba will process Customer Data in accordance with Customer's instructions as outlined in Section 5 of this DPA.

## 4. **ROLES OF THE PARTIES**

- 4.1 As between Amba and Customer, Customer is the Controller of Customer Data, and Amba shall process Customer Data only as a Processor acting on behalf of Customer.

## 5. **SCOPE OF PROCESSING**

- 5.1 **Customer Processing of Customer Data.** Customer agrees that (i) it shall comply with its obligations as a Controller under Data Protection Laws in respect of its processing of Customer Data and any processing instructions it issues to Amba, and (ii) it has provided notice and obtained (or shall obtain) all consents and rights necessary under Data Protection Laws for Amba to process Customer Data and provide the Services pursuant to the Agreement and this DPA.
- 5.2 **Customer Instructions.** Amba shall process Customer Data in accordance with Customer's instructions. By entering into the Agreement, Customer instructs Amba to Process Customer Data to provide the Services, and pursuant to any other written instructions given by Customer, and acknowledged in writing by Amba as constituting instructions for purposes of this Agreement. Customer acknowledges and agrees that such instruction authorizes Amba to Process Customer Data (a) to perform its obligations and exercise its rights under the Agreement; (b) to perform its legal obligations and to establish, exercise or defend legal claims in respect of the Agreement; and (c) to provide

the service as described in the Agreement, including but not limited to billing, account management, technical support and product development.

- 5.3 **Amba Processing of Customer Data.** Amba shall process Customer Data for the purposes described in this DPA and only in accordance with Customer's documented lawful instructions. The parties agree that this DPA and the Agreement set out the Customer's complete and final instructions to Amba in relation to the processing of Customer Data and processing outside the scope of these instructions (if any) shall require prior written agreement between Customer and Amba.

## 6. PROCESSING OF PERSONAL DATA

- 6.1 The Customer and each member of the Customer Group, acting as Controller, authorises Amba to process the Personal Data during the term of the Agreement as a processor solely for the purpose and to the extent described in **Appendix 1**.

- 6.2 To the extent that Amba is acting in its capacity as a processor for and on behalf of the Customer, Amba agrees and warrants that it will:

6.2.1 only process the Personal Data for the Purposes specified and, in any event, only pursuant to any documented lawful instructions received from the Customer (including, for the avoidance of doubt, this Supplemental Agreement), unless required by law to act without such instructions. In which case, Amba will notify the Customer of any such legal requirement prior to such processing unless such law prohibits notice to the Customer on public interest grounds;

6.2.2 immediately inform the Customer if, in its reasonable opinion, any instruction received in connection with this **Clause 6 - 13** infringes any Data Protection Laws;

6.2.3 at all times comply with its obligations under the Data Protection Laws, in relation to the processing of the Personal Data;

6.2.4 immediately notify the Customer in writing of any changes to the Services and/or the processing details set out in Appendix 1.

## 7. SECURITY

- 7.1 Implement and maintain appropriate technical and organisational measures at a minimum to the standard of the Security Measures outlined in **Appendix 2** to ensure a level of security appropriate to the risk presented by processing the Personal Data, including as appropriate:

7.1.1 the pseudonymisation and encryption of Personal Data;

7.1.2 the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;

7.1.3 the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and

7.1.4 a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of processing;

## 8. COOPERATION AND SUPPORT

- 8.1 Maintain a written Record of Processing Activity (RoPA) in accordance with the Data Protection Laws, including in electronic form (the “**Data Record**”), of all categories of processing activities carried out on behalf of the Customer on Personal Data and promptly upon request provide a copy of the Data Record to the Customer.
- 8.2 Promptly notify the Customer of any request that it receives for exercise of a data subject’s rights under the Data Protection Laws or communication or complaint that it receives from a data subject or Supervisory Authority or other third party in connection with Customer Data;
- 8.3 Provide reasonable assistance to the Customer in responding to requests for exercising data subjects’ rights under the Data Protection Laws and communications and complaints from data subjects and Supervisory Authorities and other third parties in connection with Customer Data, including by appropriate technical and organisational measures, insofar as this is possible;
- 8.4 Provide reasonable assistance to the Customer in:
  - 8.4.1 documenting any Personal Data Breaches to the standard required in order to meet notification requirements under Data Protection Laws;
  - 8.4.2 taking measures to address Personal Data Breaches, including, where appropriate, measures to mitigate their possible adverse effects; and
  - 8.4.3 conducting data protection impact assessments of any processing operations and consulting with Supervisory Authorities, data subjects and their representatives accordingly.
- 8.5 Comply with instructions from the Customer regarding the rectification, deletion, blocking and making available of Personal Data, during and after the term of the Agreement. The Customer shall be responsible for any costs arising from Amba’s provision of such assistance;
- 8.6 Not, without the Customer’s prior written consent, respond to any request for exercise of a data subject’s rights under the Data Protection Laws or communication or complaint from a data subject or Supervisory Authority in connection with Personal Data. The Customer shall be responsible for any costs arising from Amba’s provision of such assistance;
- 8.7 Amba shall reasonably cooperate with Customer, in relation to any audit of Amba necessary to enable Customer to comply with its obligations under applicable Data Protection Laws and shall seek the equivalent cooperation from relevant Sub-processors. Except where prohibited by law, any such audit shall be subject to the confidentiality obligations set forth in the Agreement.
- 8.8 Any audit shall be conducted either by Customer or by a third party auditor mandated by Customer, provided that such third-party auditor has signed a confidentiality agreement with Amba and is not a competitor of Amba or any Amba Affiliate and provided that such audit is limited to the legally required scope. Customer shall use reasonable endeavours to minimise any disruption caused to the Amba’s business activities as a result of such audit. No audit shall last more than two (2) business days each time unless a longer period is required to fulfil any requirement under Data Protection Laws. Audits shall take place no more than once in any calendar year unless and to the extent that Customer (acting reasonably and in good faith) has reasonable grounds to suspect any material breach of this DPA by Amba and/or is required to perform by a court or Supervisory Authority. Costs of the audit, including appointment of the auditor, will be borne by Customer.

8.9 For the avoidance of doubt, Customer shall reimburse Amba for any and all reasonable expenses incurred by Amba in compliance with the obligations under **Clause 8**.

## 9. **BREACH MANAGEMENT**

9.1 Amba shall take reasonable efforts to notify the Customer within 48 hours after becoming aware of a Personal Data Breach and provide (save where, and in so far as, it is not possible to provide the following information at the same time, in which case the information may be provided in phases without undue further delay) all relevant information in relation to the Personal Data Breach affecting the Customer, including:

9.1.1 the nature of the Personal Data Breach and details of the likely consequences of the Personal Data Breach;

9.1.2 the categories and approximate number of data subjects and Personal Data records concerned; and

9.1.3 any measure proposed to be taken to address the Personal Data Breach and to mitigate its possible adverse effects;

9.1.4 Take steps deemed necessary and reasonable in order to remediate the cause of such Personal Data Breach to the extent the remediation is within Amba's reasonable control.

9.2 In relation to the provision of information, Amba will not delay notification under **Clause 9** on the basis that an investigation is incomplete or ongoing;

9.3 Not make, or permit any announcement, in respect of any Personal Data Breach to any person relevant to the Customer without the Customer's prior written consent;

## 10. **SUB-PROCESSORS**

10.1 Subject to **Clauses 10.2**, Customer agrees that Amba's subsidiaries may act as sub-processors and that Amba may engage sub-processors to process Customer Data on the Customer's behalf. Amba will not transfer or otherwise permit the disclosure of the Personal Data to any third party, permit any third party to process Personal Data or engage or use any third party for the processing of Personal Data, including new sub-processors, without the prior written authorisation of the Customer;

10.2 To the extent Amba appoints an Authorised Sub-Processor, Amba will:

10.2.1 before the Authorised Sub-Processor first processes Personal Data, carry out adequate due diligence to ensure that the Authorised Sub-Processor is capable of providing a substantially similar level of protection for Personal Data required by this Supplemental Agreement;

10.2.2 prior to the processing taking place, ensure that there is a written contract in place between Amba and the Authorised Sub-Processor that specifies the Authorised Sub-Processor's activities and imposes on the Authorised Sub-Processor substantially similar level of protection for Personal Data as those imposed on Amba in this Agreement;

10.2.3 provide to the Customer for review such copies of the contract between Amba and the Authorised Sub-Processor as may be requested from time to time;

10.2.4 remain responsible for all acts and omissions of Authorised Sub-Processors as if they were its own; and



- 10.2.5 promptly notify the Customer of any changes, additions or replacements of sub-processors.
- 10.2.6 if, within ten (10) business days of receipt of that notice, Customer notifies Amba in writing of any objections (on reasonable grounds) to the proposed appointment, Amba and the Customer shall negotiate in mutual good faith to address Customer's objections. In the event Amba and Customer reasonably conclude that Customer's objections cannot be resolved, then Customer shall have the right to terminate the Services in accordance with Section 10.2 of the Agreement. If, within ten (10) business days of receipt of that notice, Customer does not notify Amba of any objections, then the appointment of the new Sub-Processor shall be deemed accepted.

## 11. CONFIDENTIALITY

- 11.1 Amba shall ensure that its personnel engaged in the Processing of Customer Data are informed of the confidential nature of the Customer Data, have received appropriate training on their responsibilities related to the protection and security of Personal Data and have executed written confidentiality agreements.
- 11.2 Amba shall ensure that Amba's access to Customer Personal Data is limited to those personnel who require access in connection with the Purpose detailed in **Appendix 1** of this Agreement.

## 12. RETURN OR DELETION OF DATA

- 12.1 At the option of the Customer, securely delete or return to the Customer (in the format required by the Customer) all Personal Data promptly after the end of the provision of Services relating to processing (or at any time upon request), and securely delete any remaining copies and promptly certify (via a director) when this exercise has been completed.

## 13. INTERNATIONAL TRANSFERS

- 13.1 Amba will only make a transfer of Personal Data to a country or territory, to which such transfer is prohibited or subject to any requirement to take additional steps, to adequately protect the Personal Data for the transfer to be lawful under the Data Protection Laws, if:
- 13.1.1 the country or territory to which the Personal Data will be transferred is a Safe Country;
- 13.1.2 the transfer is pursuant to a written contract in the form of the Processor Model Clauses prior to any transfer taking place, or, with the prior consent of the Customer, Amba puts in place an alternative agreed transfer mechanism that is completed in accordance with the Data Protection Laws;
- 13.1.3 the transfer is effected by way of Appropriate Safeguards (and the Customer's prior written approval of the form of such Appropriate Safeguards must be obtained); in relation to the transfer (whether in accordance with UK or EU GDPR Article 46 or section 75 of the DPA 2018) as determined by the Controller which could include relevant parties entering into the International Data Transfer Agreement (the "IDTA"), or International Data Transfer Agreement Addendum to the European Commission's SCCs (the "Addendum"), as published by the Information Commissioner's Office from time to time, as well as any additional measures determined by the Controller
- 13.1.4 Amba or the relevant Authorised Sub-Processor is required to make the transfer to comply with:

- 13.1.4.1 European Union law or European Union member state law, to which Amba is subject; or
- 13.1.4.2 United Kingdom law to which Amba is subject, in which case Amba will notify the Customer of such legal requirement prior to such transfer unless such law prohibits notice to the Customer on public interest grounds.

**14. ENTIRE AGREEMENT**

- 14.1 To the extent that there is any conflict between the terms of the Agreement and this Supplemental Agreement as it relates to the processing of Personal Data (including the appointment of Authorised Sub-Processors), this Supplemental Agreement shall prevail.
- 14.2 This Supplemental Agreement, together with the Agreement, constitutes the entire agreement between the Parties as it relates to the processing of Personal Data and supersedes any previous agreements, arrangements, undertakings or proposals, written or oral, between the Parties in relation to its subject matter.
- 14.3 The Parties agree that this Processing Agreement (and, in particular, the Appendices included hereto) may be updated from time to time by written agreement between the Parties, so as to reflect the factual position of the Personal Data processing at the relevant time and/or future changes in the legislation applicable to processing of personal data.
- 14.4 Where, under this Supplemental Agreement, Amba is required to notify the Customer of any matter or thing, such notification will be marked for the attention of the Customer's Data Protection Officer and sent by e-mail to the contact details on the Platform Agreement.

## APPENDIX 1

### Personal Data

<b>Subject matter of processing</b>	Collating the output of various health, wellbeing, activity and safety sensors for VIPs in the care of the Customer, to provide the Services outlined in the Platform Agreement and Terms and Conditions.
<b>Duration of processing</b>	From the signing of the agreement until 60 days post client contract termination.
<b>Nature of processing</b>	Amba will collect, store, use, record, structure, consult, modify, transmit, organise and carry out any necessary operation with the purpose of providing its Services and managing the Customer's account with Amba. The Services provided by Amba are intended to assist a care provider through the collection and reporting of certain health-related, wellbeing, activity and safety data in relation to a VIP.
<b>Purpose of processing</b>	To provide the Customer with an overview of the wellbeing of individuals in its care.
<b>Type of personal data</b>	For Customers: Name, contact details, employment information and signature. For VIPs: Name, room/suite number, health, wellbeing, activity and safety data (produced by the sensors).
<b>Categories of data subject</b>	Customers, VIPs

## **APPENDIX 2**

### **Technical and Organisational Measures**

Measures implemented by Amba to ensure confidentiality, integrity and availability of Customer Data includes:

- Measures of pseudonymisation and encryption of personal data
- Measures for ensuring ongoing confidentiality, integrity, availability and resilience of processing systems and services
- Measures for ensuring the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident
- Processes for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures in order to ensure the security of the processing
- Measures for user identification and authorisation
- Measures for the protection of data during transmission
- Measures for the protection of data during storage
- Measures for ensuring physical security of locations at which personal data are processed
- Measures for ensuring events logging
- Measures for ensuring system configuration, including default configuration
- Measures for internal IT and IT security governance and management
- Measures for certification/assurance of processes and products
- Measures for ensuring data minimisation
- Measures for ensuring data quality
- Measures for ensuring limited data retention
- Measures for ensuring accountability
- Measures for allowing data portability and ensuring erasure

### APPENDIX 3

#### Sub Processors

For the purposes of this processing agreement, below is a list of pre-approved sub processors acting on behalf of Amba:

<b>Sub Processor Name</b>	<b>Location of Data Processing</b>	<b>Purpose of Sub Processor</b>
Heroku	Europe	Platform used for hosting client's and end user's data for the Amba app
Google	Europe	Internal Cloud storage and file sharing platform
Slack	United Kingdom	Used as an internal channel of communication
HubSpot	Germany	Customer Relationship Management system