



Healthcare Services from Piksel Limited

Carelink Hosted Services Service Level Agreement and Terms and Conditions

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1. Introduction

Carelink is the brand name of Piksel Limited's UK healthcare business, which provides hosting for NHS, government and private sector organisations, on both TN/HSCN and Internet environments.

This document details the service levels and processes provided by Carelink to Carelink Hosting Services customers who have dedicated servers. It specifies the scope of the service, covers customer support and service availability, as well as providing an overview of restrictions on the service, and the responsibilities of both Carelink and the customer.

Appendix A provides a Glossary of Terms.

Appendix B includes details of the Terms & Conditions of Carelink Hosted Services.

This document together with all appendices constitutes the service level agreement (the "Service Level Agreement").

2. Service Levels

2.1 Carelink Service Desk

The service desk is common to all the support services within this Service Level Agreement.

2.1.1 Service Hours

Description	Responsibility	Agreed Service Hours
Carelink Service Desk	Carelink	24 x 7 x 365

2.1.2 Service Levels

Description	Minimum Service Level	
Service Desk Availability	99.5%	

2.1.3 Key Performance Indicators

Description	Target
Provide an initial assessment and the timescales to provide a full assessment of a request for an application enhancement	3 working days
Number of pending problems	<3
% rolled back changes	<5%

2.2 Production Environment

The production environment consists of the service infrastructure that provides user access to the customer's site.

2.2.1 Service Hours

The individual service management activities service hours are as follows.

Description	Responsibility	Agreed Service Hours
Carelink Service Desk	Carelink	24 x 7 x 365
HSCN Incident Management (critical and high priority)	Carelink	24 x 7 x 365
Incident Management	Carelink	Carelink Business Hours
Problem Management	Carelink	Carelink Business Hours
Infrastructure administration	Carelink	Carelink Business Hours
Change Management	Carelink	Carelink Business Hours
Emergency Change Management	Carelink	Carelink Business Hours
System Maintenance (note: may require downtime)	Carelink	3 rd Tuesday, Wednesday or Thursday of every calendar month between 06:00 – 08:00 or 20.00 – 22.00

2.2.2 Service Levels

Description	Minimum Service Level	
Service Availability of the Production Environment	99.95%	
HSCN Availability - resilient connectivity	99.99%	
HSCN Availability – non-resilient connectivity	99.95%	
Internet availability	99.95%	

Service Availability is the percentage of time for which the service is available to the users and a formula used to calculate the service availability can be found in the glossary of terms (Appendix A)

Where:

Availability targets are to be calculated on a calendar month basis.

Availability calculations will exclude outages due to:

- The failure of components not supported by Carelink where Carelink is unable to negotiate underpinning contracts.
- The failure of components which occur as part of known scheduled maintenance activity

2.2.3 Hosted Service Support Request Resolution Targets

Priority	Target response time	Target resolution time	Level 1 escalation	Level 2 escalation	Level 3 escalation
High	30 minutes	4 hours	3 hours	5 hours	6 hours
Medium	30 minutes	8 hours	1 day	2 days	3 days
Low	1 hour	24 hours	2 days	3 days	4 days
RFI	2 days	10 days	8 days	9 days	10 days

2.2.4 HSCN Support Request Resolution Targets

Priority	Target response time	Target resolution time	Level 1 escalation	Level 2 escalation	Level 3 escalation
Critical	30 minutes	5 hours	3 hours	5 hours	6 hours
High	30 minutes	8 hours	1 day	2 days	3 days
Medium	As per above table in section 2.2.3				
Low	As per above table in section 2.2.3				
RFI	As per above table in section 2.2.3				

Where:

- Critical – loss of connectivity for one or more HSCN consumers
- High – a hosted service is not available (no sites can be accessed) or loss of all resilience for the HSCN consumer
- Medium – an important part of the service is unavailable. For example, secure remote access is not working.
- Low – the incident has a minimal impact on the business, or there is an acceptable work-around
- RFI – the service is not affected and there is no business impact. For example, a request for information (RFI)

Escalation of incidents is handled automatically by the Service Desk system.

Status updates are available 24 x7 x 365 from the Carelink Service Desk.

2.2.5 Definitions of Support Request Priorities

Priority	Name	Description	Examples
Critical	HSCN Service Down	Critical Business Impact	<p>Loss of connectivity for one or more HSCN consumers</p> <p>Loss of interconnect between a CN-SP and a Peering Exchange Network Provider resulting in a loss of connectivity for one or more HSCN consumers</p> <p>Any network security incident as defined by CAS(T) or within a CN-SPs service boundary</p>
High	Hosted Service Down	High Business Impact	<p>Hosted Service is down</p> <p>High business impact</p> <p>Highly negative impact on the customer's reputation</p> <p>Severe impact on end users</p> <p>Major security breach</p> <p>Web site defaced / unauthorised alteration of the web site content</p> <p>High priority alerts from our vulnerability scanning system</p> <p>Denial of Service attack</p> <p>Data Centre failure</p>
Medium	Service Degraded	Medium Business Impact	<p>Degraded performance</p> <p>Attempted security breach</p> <p>Medium priority alerts from our vulnerability scanning system</p>
Low	Service Impaired	Low Business Impact	<p>Web site available although some functionality may be impaired</p> <p>Low priority alerts from our vulnerability scanning system</p>
RFI	Service not affected	No Business Impact	<p>Request for Information</p> <p>Non-urgent new content or functionality addition request</p>

3. Support Services

Support services cover both incident handling and service requests. Incidents relate to events that are not part of the standard service provided by Carelink; change requests are changes to the service environment or configuration.

3.1 Incident Support

Incidents must be notified by phone or can be emailed to the Service Desk. Only nominated individuals will be able to log calls. The names of these individuals are held on the Carelink Service Desk. Calls will be logged by the Service Desk and a ticket number given to the caller. Tickets will then be assigned to the Carelink support team.

A support call is more likely to be resolved quickly when the report contains a detailed description of the incident and how to reproduce it.

Contact Method	
Telephone	+44 (0) 844 8633640
E-Mail	support@carelink.co.uk

3.2 Incident Management Process

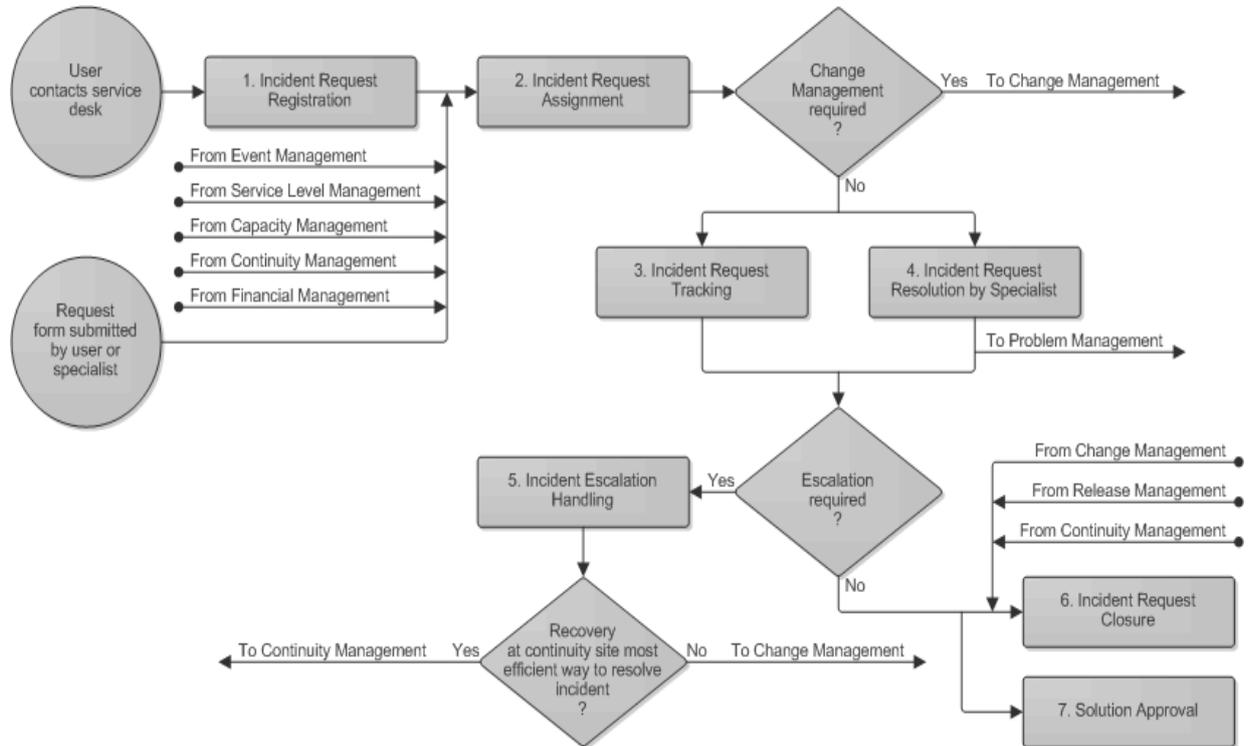


Figure 1 Support Management Process

Carelink will be responsible for end to end management of support requests that effect service availability and performance of services.

3.3 Change Requests

Service requests are used to make changes to the configuration or set-up of sites or applications. This includes creating new sites, setting up database DSNs, assisting with upload of files, setting directory passwords and so on. Change requests are intended as a method for the implementation of minor changes and not as a means of executing medium or large-scale projects. Carelink reserve the right to approach the customer, or their representatives, to negotiate a time and materials basis for the work, should Carelink deem the scale or number of change requests to have reached an unacceptable level.

3.4 Change Request Targets

The following response times apply to routine or non-emergency change requests.

	Target Response Time	Implementation Time *)
Standard Change Request	16 Carelink business hours	40 Carelink business hours

*) The implementation time is measured from when the support team have received and validated the Request for Change.

3.5 Change Management

We will use our standard Change Request process for service requests, which will require nominated individuals to submit the request to the Service Desk.

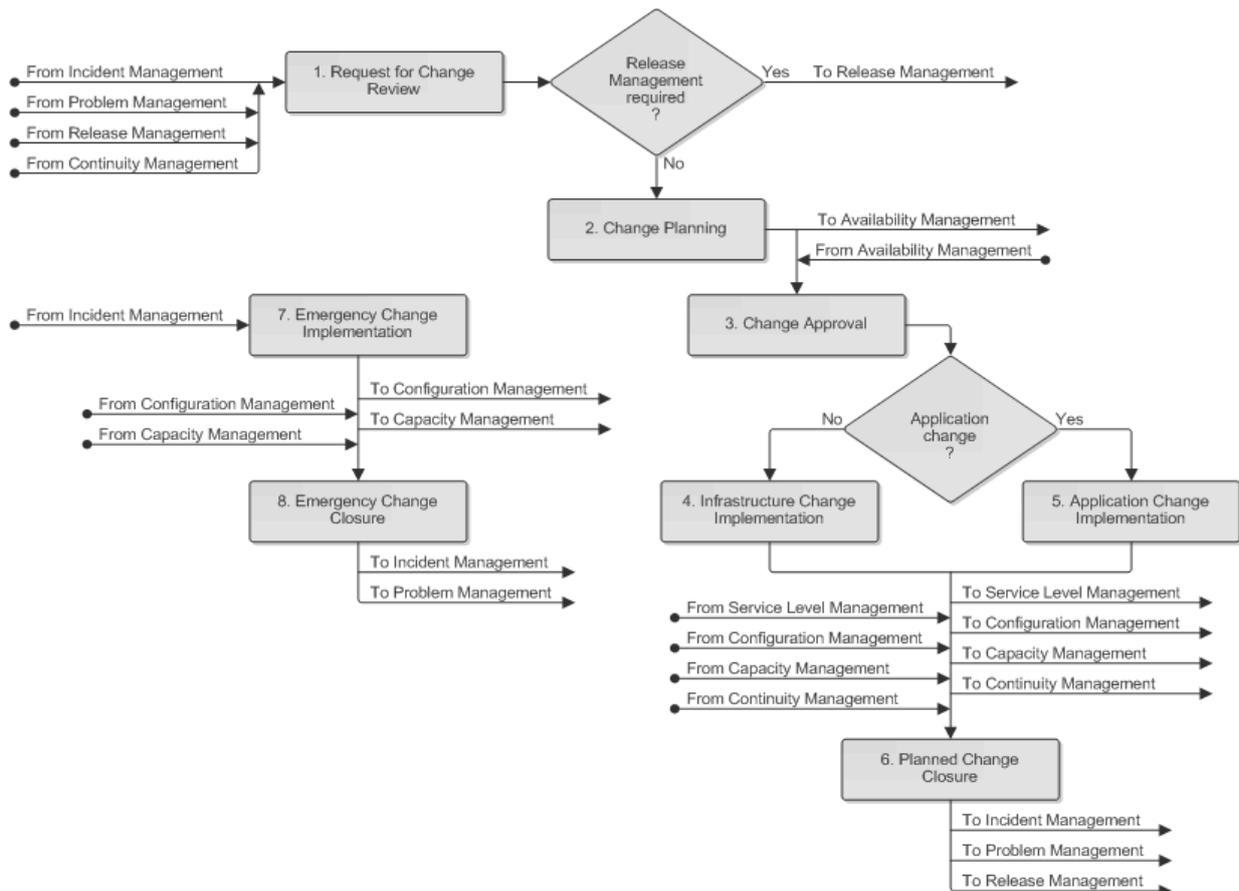


Figure 2 Change Management Process

3.6 Support Responsibility

Carelink undertake to provide monitoring, management and incident resolution for the server hardware, operating system, web services and Internet and TN/HSCN services from Carelink Data centres.

Monitoring of hardware, specific processes and agreed applications are managed via Carelink's Nagios monitoring solution.

3.7 Escalation

The Carelink Incident Management process includes the escalation of tickets at critical points. However, if at any time a customer is not satisfied with the progress of an incident, they can initiate an escalation using the information contained in this Service Level Agreement. Security issues or concerns would also be covered under this process.

3.7.1 Escalation Levels

There are 5 escalation levels starting at Level 0 up to Level 5. A summary of the levels is given below:

- **Level 0** This is the level at which all escalations should be initiated & is always the Service Desk.
- **Level 1** This is the Service Desk Assistant Manager.
- **Level 2** This is the Service Desk Manager.
- **Level 3** This is the Service Delivery Manager (SDM) for Carelink.
- **Level 4** This is the Operations Director.

Level 0 Escalation is available 24 x 7 x 365. Level 1 to 4 is available 9:00am to 5:30pm Carelink Business Hours.

3.7.2 Responsibilities

Initiating the escalation process commits both the customer and Carelink to a defined set of responsibilities.

Customer Responsibilities

Escalation will only be initiated in the following instances:

- Substantial risk to the customer's service;
- A breach in the agreed service level for a production incident;
- An unsatisfactory response to a production incident.

The customer must contact the Service Desk and provide the ticket reference for the incident they wish

to escalate. The customer must make their requirements clear, including the reason for the escalation, contact information and the frequency of updates required.

Carelink Escalation Responsibilities

Once an incident has been escalated, the owner of that level (“Level Owner”) should own the escalation to resolution and carry out the following:

The Service Desk analyst will check the status of the ticket & determine if the escalation process has already been initiated:

- If no – they will alert Level 0 to initiate the escalation;
- If yes – they will alert the current Level Owner or the next Level Owner if there has been unsatisfactory progress.

The escalation contact must assess the status of the incident & contact the customer to confirm the resolution requirements including:

- agreement with the customer who should be updated and when;
- management of the escalation to closure always communicating with the customer within the agreed timelines;
- Initiate the next Level Owner if they feel it is necessary to do so.

4. Carelink Responsibilities

As provider of Carelink hosting and network services, Carelink has the following responsibilities.

4.1 Data Backup

The data backup for hosting services is provided by Carelink's centralised data back-up service. Backup services provide managed backups of data on the server and are only used within England. The standard service offering consists of the following fixed elements:

- Installation of the backup client and licence
- Initial full backup and subsequent daily delta incremental backups of:
 - the file system
 - the registry
 - identified server databases, via dump to file system
- Backup data is encrypted and can be held off site
- One customer-initiated restore from vault per annum (additional instances at T&M)
- Patching of backup software for security
- Hot backups, i.e. routine backups performed without the system being placed in downtime

Backup services are charged as quoted.

Backup of the servers can be scheduled for almost any time, but by default this is completed early in the morning via a fully automated process. Backup does not handle "open" files such as databases directly. As part of the platform support service, Carelink will put in place scripts to export database data to files, which are in turn backed up each night.

4.2 Data Security

As described in Section 5, the customer is responsible for data security including the handling and control of that data where logical access is used via user codes and passwords. However, Carelink is responsible for security of individual customer areas within the Carelink infrastructure and for controlling access to these areas by Carelink staff. That is, Carelink is responsible for ensuring that a customer cannot access data or web sites relating to other customers.

4.3 Maintenance Services

Server support and management items:

- Power and data connectivity will be provided.
- Backups will be performed on a nightly basis (see section 4.1).
- Backups will only be made through companies within England who have binding information sharing agreements with, and are responsible to, the primary Data Controller
- The server will be monitored for availability
- Availability of web server application to the network (where this is feasible)
- Availability of database server application to the network
- System health monitoring (disk space, memory usage etc.)
- Application of Operating System and database server patches.
- Notification of patch scheduling and outcome
- Notification of any Antivirus detected threats
- Minimising service disruption due to patching

In the event of a Carelink managed software or firmware critical security threat being identified, Carelink will distribute a critical security vulnerability notification to the customer service owner. The notification will highlight the risk, mitigating action and seek customer confirmation for scheduling the remedial action.

In the event that CLIENT Service owners wish to accept any risk contrary to Carelink recommendations, then any future remedial work required to correct any defect or service issue that relates directly to this risk is considered out of scope of this Service Level Agreement. As such any remedial work, other than implementing the originally recommended change, will incur additional project charges and work will be performed under best endeavours with available resources.

4.4 Customer-requested Maintenance

Carelink undertake to provide reasonable maintenance functions for the customer's server. This includes changes such as adding and changing user code access for file transfer of data. Such changes will be made on a best endeavours basis and elapsed time would not normally exceed 5 working days.

Carelink Hosting Services charges do not cover assistance with loading files, or other maintenance of the content of a site. Content is the sole responsibility of the customer.

4.5 Health and Social Care Network

The Carelink HSCN is an MPLS based solution using BGP to, by default, route all network traffic via the Peering Exchange Network service and is offered via a range of connectivity options including broadband adsl/fibre, Ethernet/leased line and/or direct connectivity to public cloud services.

The Carelink HSCN service includes:

- The capability to carry all types of network traffic including but not limited to data, voice and video.
- Provision for Quality of Service (QoS) traffic prioritization measures on the WAN interfaces of the Provider Edge (PE) and Customer Edge (CE) routers
- The capability of supporting the traffic of individual Classes of Service (CoS), excluding EF, to burst into available bandwidth within a logical connection.
- The capable of supporting secure, encrypted network services via the use of VPN
- An average round trip latency which is no greater than 30ms (RTT, 100 Byte Packet, average)
- An average network jitter of <20ms and does not exceed 30ms
- Packet loss average of <0.5%

The service levels as detailed in section 2.2.2 encompass the access connectivity and the WAN service to other HSCN endpoints including the Point of Connectivity at each of the Peering Exchange Network service locations.

5. Customer Responsibilities

The customer has the following responsibilities as a user of Carelink hosted services.

5.1 Change of Use

The customer is responsible for informing Carelink of any change of use, or intended change of use of a Carelink hosted server. For example, if the server is to be made available to a different audience or a significant change of content is to be planned, then Carelink should be informed.

If such a change results in a change to the charge, we will advise you of this prior to its implementation. However, even if this is not so, we may still need to change allocation of infrastructure within Carelink.

5.2 Data Security

The customer is responsible for all data security issues, ensuring user codes and passwords are managed in a secure way and data is not made publicly available where inappropriate. This excludes those pertaining to the control of access by Carelink's own staff

The customer (or Carelink's customer's customer) is the Data Controller of information for Data Protection Act 1998 purposes and is responsible for ensuring they hold all intellectual property rights to the content of the data. Carelink forms the Data Processor in this contract and will only use, control, interact or view the data in line with the Controller's requests or through any reasonable method amongst the requirement of normal duties to fulfil the services outlined in this contract.

The customer has ultimate responsibility for the data itself. Carelink perform regular data backups for internal purposes (see Section 4), but we are not responsible for the safety or integrity of any customer data. However, Carelink is responsible for the safety of the data once uploaded to the server with the exception and exclusion of user error or technical error by the client.

5.3 Health and Social Care Network

To enable HSCN connectivity, the customer must hold a signed copy of the HSCN Connection Agreement committing the customer organisation to the agreements obligations and as detailed in clause 8 of the Appendix B of the Contract.

5.4 Service Integrity

The customer is responsible for ensuring that any data uploaded to Carelink servers does not cause disruption to the Carelink infrastructure, or connected systems. This includes issues such as errant code and viruses. If Carelink expects such an issue exists then Carelink may remove the data from the Carelink servers until the issue is remedied.

Carelink reserve the right to charge for time to rectify problems with the service, if the cause is found to be customer code or data.

5.5 Payment

The Customer is responsible for ensuring prompt payment of all invoices. This service will be invoiced in advance at a frequency agreed with the customer.

Renewal invoices will be issued quoting the original Customer purchase order ID. Carelink expect such invoices to be paid without the need for a new purchase order to be sought. Renewal invoices will reflect the current charge for the service at that time.

Additional work, outside of that covered by the service, can be carried out by Carelink on a time and materials basis at a day rate ranging from £700.00 to £1000.00, dependent upon the resource required. This excludes off-site expenses which would also be recoverable where applicable.

5.6 Period of Operational Service

Initial term is one year, service will be reviewed annually and rolling renewal applied thereafter.

6. Service Restrictions

This section provides an overview of the restrictions in the use of Carelink services.

6.1 Content

Carelink hosted sites must not be used to store or deliver unsuitable content unless expressly permitted in writing. Unsuitable content includes, but is not limited to:

- Objectionable, or offensive material
- Illegal material
- Any material in contravention of government or NHS Digital rules and regulations

6.2 Patient Data

The use of such data is controlled by law and by regulations and guidelines from NHS Digital and other statutory bodies. It remains the customer's responsibility to ensure that all data and its use fall within laws and guidelines. It remains the responsibility of Carelink and Piksel to ensure that the data is not viewed or processed in anyway outside any request of the customer or Data Controller.

When removable media or devices that may have contained sensitive data are no longer required, Piksel will ensure secure certified destruction on site before removal. It will be done to the highest Communications Electronic Security Group ("CESG") standards

7. Key Contact Schedule

Organisation	Contact	Name	Telephone	Contact Scenario	Email
Carelink	Service Desk	Carelink Service Desk	0844 8633640	BAU	support@carelink.co.uk
Carelink	Service Delivery Manager	Darren Parker		BAU	
Carelink	Sales & General Manager	Darren Turner		Commercial	

Appendix A – Glossary of Terms

7.1.1 Schedules

Documents not included in, but forming part of the Service Level Agreement produced by Carelink. Schedules typically contain information that may require frequent updating. All schedules are maintained under change and version control.

7.1.2 Documentation

All multimedia, audio visual material and all documentation, flow charts, drawings, specifications, manuals and other data or material of any nature relating to the Supported Infrastructure.

7.1.3 Supported Infrastructures

The customer's service configuration items and their logical deployment stored in the Carelink CMDB; the support of which are Carelink's responsibility.

7.1.4 Service

One or more configuration items that enables the customer's business process.

7.1.5 Carelink Business Hours

Unless otherwise stated, Carelink business hours cover 9:00 to 17:30 GMT, Monday to Friday excluding UK bank holidays.

7.1.6 Service Hours

The hours during which Carelink will provide support to the customer for each service.

7.1.7 Scheduled Maintenance Windows

The pre-agreed scheduled maintenance windows during which Carelink may make essential maintenance, under change control to the customer's infrastructure.

7.1.8 Normal Service Operation

The level of service operation agreed within the Service Level Agreement.

7.1.9 Incident

As defined by the OGC (Office of Government Commerce): “any event which is not part of the standard operation of a service and which causes, or may cause, an interruption to, or a reduction in, the quality of that service”.

7.1.10 Incident Management

Carelink’s process to manage the detection of incidents and re-establish normal service operations as quickly as possible.

7.1.11 Problem

OGC definition: A problem is defined as “an unknown underlying cause of one or more incidents and a “known error” is a problem that is successfully diagnosed and for which a workaround had been identified”.

7.1.12 Problem Management

Carelink’s process to investigate the root cause of incidents, resolve known errors and pro-actively identify potential problems within the service infrastructure.

7.1.13 Change Management

Carelink’s process to manage changes to the supported infrastructure.

7.1.14 Service Availability

The percentage of time for which the service is available to the users.

$$\text{Service Availability} = \frac{\text{Service Hours} - \text{Service Downtime}}{\text{Service Hours}} \times 100 \%$$

Appendix B – Terms & Conditions

This Appendix contains the Terms and Conditions that are agreed between Piksel Limited's Carelink service and their customers. These Terms and Conditions form part of the Service Level Agreement entered into between the parties. Customers with dedicated Carelink servers are deemed to be bound by these Terms & Conditions, even if a signed copy does not exist.

Supply of Hosted Services (“Service”) by Piksel Limited (“We”, “Us”, “Our”, “Piksel” or “Carelink”) to its customer (“You” or “Your”)

Your continued use of Our Services constitutes Your acceptance of these Terms and Conditions and any subsequent updates and or amendments to these Terms and Conditions that are made by Us from time to time.

1 YOUR OBLIGATIONS

- 1.1 Our Service Fees will be invoiced to You annually in advance (or such other frequency as agreed between the parties) and are payable by You within 30 days of the invoice date without any set off or any other deduction.
- 1.2 If You fail to pay any of Our invoices on or before their due dates, We may notify You that We intend to suspend the provision of the Service after 7 days. If You fail to make payment in cleared funds within the 7 days after that notice, We may suspend the Service without incurring any liability to You until a reasonable time after You have paid all sums then due plus Our reasonable estimate of the further sums that will become due to us in performing the balance of the Services.
- 1.3 You will not use the Service for any activity other than as defined by Us. You will not use the Service in any way which may cause You or Us to be in breach of:
 - 1.3.1 the Laws of England; or
 - 1.3.2 the DSPT and CA between Us and NHS Digital; or
 - 1.3.3 privacy and patient confidentiality guidelines.

2 OUR OBLIGATIONS

2.1 Notwithstanding anything to the contrary in this contract Our liability to You for:

2.1.1 death or personal injury caused by the negligence of Us, the Consultants or any of Our other employees, agents or sub-contractors; and

2.1.2 damage suffered by You as a result of Us breaching the condition as to title or the warranty as to quiet possession implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; and

2.1.3 fraud

is not limited but nothing in paragraph 2.1 to 2.4 (inclusive) will confer a remedy upon You to which You would not otherwise be entitled.

2.2 Paragraphs 2.1 to 2.4 (inclusive) sets out Our entire liability (including any liability for the acts and omissions of Our employees, agents or subcontractors) to You in respect of:

2.2.1 any breach of Our contractual obligations arising under or in connection with this contract;

2.2.2 any representation, statement, negligence, breach of statutory duty or other tortuous act or omission arising under or in connection with this contract; and

2.2.3 any damage to property.

2.3 Our total liability under or in connection with this contract in any calendar year will not in aggregate exceed the higher of:

2.3.1 £5,000; and

2.3.2 an amount equal to one and a half times the charges payable to Us under this letter in the calendar year concerned.

2.4 We will not be liable to You for any damage, loss of or costs in respect of;

2.4.1 anticipated profits, revenues, anticipated savings, goodwill or business opportunities (in each case, whether direct or indirect); or

2.4.2 your employees' or consultants' time in relation to using or managing the Services (in each case whether direct or indirect); or

2.4.3 any consequential or indirect loss; or

2.4.4 loss or corruption of data, software or database configuration held by You (whether before or after termination of this contract) which could have been avoided by You keeping full back up copies of Your data, software or database configuration in accordance with good data processing practice.

and in each case whether or not We have been advised of the likelihood of such damage, loss or costs

2.5 We will take all reasonable measures to ensure the Service is available. However, We do not guarantee any specific level of Service availability; nor do We guarantee any maximum time the Service may be unavailable.

2.6 We may, from time to time, make changes to the Services (including the introduction or withdrawal of any service features and/or the replacement of any of the Services with a materially equivalent service) in order to reflect any changes made to the Services supplied by our Provider(s) and/or to ensure that the Services continue to comply with applicable statutory requirements.

2.7 We may, upon giving five (5) business day's written notice to you, vary the Service to exclude from this Contract any part of the Services as We think fit if for any reason the supply of Services by our third-party Provider are discontinued.

2.8 We may restrict or suspend any affected Services:

2.8.1 to conduct maintenance, or to otherwise implement a change to maintain the provision of the Services in accordance with applicable laws;

2.8.2 upon payment default, pursuant to clause 1.2;

2.8.3 if You fail to comply with any applicable Provider End User License Terms.

2.9 Where We exercise our rights to restrict or suspend any Services under sub-clauses 2.8.2 or 2.8.3 You will continue to be liable to pay all applicable Service Fees for the Services.

2.10 You acknowledge and accept that the Services are provided on an "as is" basis and that, except to the extent prohibited by law, all other representations or warranties of any kind, whether express, implied, statutory or otherwise regarding the Services (including any warranties as to fitness for a particular purpose, or that the Services will be provided uninterrupted and error free) are hereby excluded.

3. THIRD PARTY CONTENT AND/OR SERVICES

3.1 Where, as part of the Services Carelink is required to procure third party software, content or services (such as for example, but without limitation, contracting for aspects of maintenance from a third party), Carelink will, on the Customer's behalf, obtain the relevant software, content or services at the Customer's expense. If Carelink agrees with the Customer pursuant to the terms to procure any third-party services (e.g. vendor licenses or cloud hosting services) in order to provide the Services, the parties shall agree on a rate card to be applied for such third party services, and Carelink shall be entitled to pass through the charges, including any subsequent uplift applied by the third party, for such third party services to the Customer.

3.2 Where, in order to receive the Services, the Customer is required to procure third party software, content or services (such as for example, but without limitation contracting for aspects of maintenance from a third party), the Customer (on its own behalf and on behalf of its Affiliates) acknowledges and agrees that Carelink will not be liable for the provision or quality of or any failure of any supplier of such third party software, content or services, or for any Intellectual Property Rights claims in respect of such third party software, content or services, except to the extent Carelink has failed to use its reasonable endeavours (short of litigation or expenditure of additional money) to require the third party concerned to perform or improve the item concerned.

3.3 The Services may also require Carelink to work with, co-ordinate or supervise third parties who are bound to provide software, content or services to the Customer pursuant to clause 3.2. If Carelink is required to do anything of this type as part of the Services, the following provisions will apply:

3.3.1 the Customer will procure that the relevant third parties co-operate fully and promptly with Carelink and treat Carelink as if it were the Customer;

3.3.2 the Customer acknowledges and agrees that Carelink will not be liable for the provision or quality of, or any failure on the part of any supplier of, such third party software, content or services which is contracted by the Customer, or for any shortcomings in such software, content or services, except to the extent that Carelink has failed to use its reasonable endeavours (short of litigation or expenditure of additional money) to require the third party concerned to perform or improve the item concerned; and

3.3.3 the Customer acknowledges (on its own behalf and on behalf of its Affiliates) that any software, content or services supplied in the course of the Services will be subject to rights and

the terms of the relevant third party's terms and conditions. If the Customer fails to enter into any such required third party terms and conditions, Carelink may, at its option, either: (i) delay the deployment date for the Customer Dedicated Systems that was to include such third party software, content or services until the Customer has entered into the required terms and conditions; or (ii) suspend or terminate this Contract.

- 3.4 The Customer shall not copy any software that Carelink provides for the Customer's use unless expressly permitted by this Contract. The Customer shall not remove, modify or obscure any copyright, trademark, or other proprietary rights notices that appear on any software that Carelink provides for the Customer's use. In addition to the terms of this Contract, the Customer's use of any Microsoft® software is governed by the relevant Microsoft licence terms, and any relevant use restrictions.
- 3.5 If the Customer uses any non-Carelink-provided software on its Hosted System, the Customer warrants to Carelink that it has the legal right to use the software in that manner. At Carelink's request the Customer shall certify in writing that it strictly adheres to the requirements of this **clause 3.1** and any other software licence restrictions that are part of this Contract, and will provide evidence of its compliance as Carelink may reasonably request. The Customer shall indemnify Carelink against all costs and damages awarded, fines, penalties or other amounts imposed on Carelink in respect of any third-party claim brought against Carelink in respect of any matter that constitutes a breach of the warranty set out in this clause.
- 3.6 If Carelink has agreed to install, patch or otherwise manage software in reliance on the Customer's licence with a third-party software vendor (rather than Carelink's licence with the third-party software vendor), then the Customer warrants to Carelink that it has a written licence agreement with such third party software vendor that permits Carelink to perform these activities. The Customer agrees that it shall provide Carelink with evidence of licencing as Carelink may reasonably require prior to the scheduled deployment date for the Customer Dedicated Systems that was to include such software, and from time to time as necessary to update the status of the licence. If the Customer fails to provide the required evidence of licencing, Carelink may, at its option, either: (i) delay the deployment date for the Customer Dedicated Systems that was to include such third party software until the evidence is provided; (ii) deploy the Customer Dedicated Systems in reliance on Carelink's licencing agreement with the vendor, and charge the Customer Carelink's standard fee for the use of the software until such time as the required evidence is provided; or (iii) suspend or terminate this Contract.
- 3.7 If We lease any equipment, including hardware, on Your behalf and for Your benefit in connection with the Service, You acknowledge and agree that, in the event of any termination of

this Service Level Agreement, You will be liable for any outstanding lease payments until the expiry of any such lease agreement. We will be entitled to continue invoicing You for such lease payments in accordance with the payment terms specified in this Service Level Agreement.

- 3.8 If Carelink rents any equipment to the Customer in order to provide the Services, the Customer acknowledges (on its own behalf and on behalf of its Affiliates) that, as between the parties, any such equipment is and upon termination shall remain the property of Carelink unless otherwise specifically agreed between the parties.
- 3.9 The provisions of clauses 3.1 to 3.9 (inclusive) shall survive any termination of this Contract and shall continue in full force and effect.

4. PROVIDER TERMS

- 4.1 We will, at all times, have an agreement in place with any third party Provider(s) covering Your use of, and access to, the Services.
- 4.2 You acknowledge that the relationship between Us and the Provider is one of buyer and seller in respect of the wider Contract. We have no right or authority to assume any obligation of any kind whether express or implied on behalf of the Provider and are acting as reseller of the Services and not as agent of the Provider.
- 4.3 By entering into this Contract You acknowledge that your use of the Services is also subject to any applicable Provider End User License Terms (in addition to the terms of this Contract).
- 4.4 You will indemnify, keep indemnified and hold harmless Piksel against any claims, losses, costs and liabilities arising out of or in connection with any loss or misuse of the Services that is contrary to the Provider End User License Terms.
- 4.5 We will promptly forward to you any notice We receives from any Provider(s) regarding the Services that may affect You, including notices of any service interruption or service suspension, termination of a Provider account or any notice of violation of the Provider(s) acceptable use restrictions contained within the Provider End User Licence Terms.
- 4.6 In respect of the Services, and the wider Contract You agree to comply with the Provider's interconnect security Policy ("SISP") and that you have read, understand and agree to comply with the Provider's SISP policy.
- 4.7 We may, from time to time, vary the terms of this Contract to the extent necessary to reflect any changes made to: (i) the service's supplied by its Provider(s); and/or (iii) the Provider End User License Terms.
- 4.8 Upon request from any Provider, We may assist the Provider in removing or disabling Your access to the Services in the event that your use of the Services is in violation of any acceptable use restrictions contracted within the Provider End User Licence Terms (and Piksel shall have no liability to you in such event).

5. UNDERTAKINGS

5.1 You agree to:

5.1.1 inform Us immediately of any changes in ownership or Control and of any change in Your organisation or method of doing business which might affect the performance of Your duties in this Contract;

5.1.2 promptly inform Us of any claims or proceedings made or brought against You that might affect the rights or interests of Us and/or the Provider under this Contract.

5.2 You agree not to appoint any sub-reseller or agent to sell or market the Services;

5.3 You shall not access, store, distribute or transmit any viruses, or any material or Content during the course of use of the Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive, facilitates illegal activity, depicts sexually explicit images, promotes unlawful violence or is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability or any other illegal activity. You acknowledge that Piksel and the Provider reserves the right, without liability to disable access to any material that breaches the provisions of this clause 5.3;

5.4 You shall be responsible for any third-party licenses and license costs which are not included in the relevant Services and will be wholly liable to Us for any unlicensed software in connection with the Provider's Services in the event that an audit is undertaken by a third-party software provider and that unlicensed software has been installed by You.

5.5 You undertake that where applicable You shall throughout the Term, where specifically requested in writing by the PSN team acting on advice from the Infrastructure SIRO, immediately disconnect Your GCN Services, PSN Services or customer environment (as the case may be) from such PSN Services (including any Direct Network services (DNS), GCN services and customer environments as the PSN team instructs where there is an event affecting national security, or the security of the GCN or PSN.

5.6 You acknowledge that the PSN team shall not be liable to You or any other Party for any claims, proceedings, actions, damages, costs, expenses and any other liabilities of any kind which may arise out of, or in consequence of any notification, pursuant to clause 5.5.

5.7 You acknowledge and agree that this clause 5.4 and 5.7 are for the benefits of and may be enforced by the PSN team, notwithstanding the fact that the PSN team is not a Party to this Contract, pursuant to the Contracts (Right of Third Parties) Act 1999.

6. WARRANTIES

6.1 Each Party warrants that:

6.1.1 It has full capacity and authority and all necessary consents to enter into and to perform this Contract and to grant the rights and licenses referred to in this Contract and that this Contract is executed by its duly authorised representatives and represents a binding commitment on it; and

6.1.2 it shall comply with all applicable laws in the performance of its obligations under this Contract.

6.2 You warrant that all data imported by You into the Providers live production services pursuant to this Contract is being processed on behalf of a UK Public Sector entity, or supports the delivery of Services to the UK Public Sector.

7. ADDITIONAL MICROSOFT REQUIREMENTS

7.1 In respect of the Services and the wider Contract You acknowledges that:

7.1.1 You have valid Microsoft Licensing using the Microsoft Mobility Programme;

7.1.2 Existing Licensing, or SQL can be purchased through the Provider, but Microsoft Operating System licensing may only be provided by the Provider;

7.1.3 You may provide your own application licensing, but in such case, You must complete and provide a Microsoft Mobility Agreement to the Provider;

7.1.4 You shall not remove, alter, cover or obscure any trademarks, trade names, service marks, logos or brands, copyright notices, patent numbers or any other statements or symbols of ownership from software or do so in respect of any media supplied by the Provider on which any software is loaded;

7.1.5 You shall not copy, alter, modify, adapt, translate, create, derivate works or distribute, rent, lease, sublicense, transmit, sell all or part of the software or do so in respect of any media on which the software is loaded.

7.2 To the extent permitted by Law, You acknowledge and agree that Piksel and the Provider make no representations or express or implied warranties in relation to the Services, and disclaim all express and implied warranties, including without limitation:

7.2.1 any implied warranties of merchantability, and fitness of the Services for a particular purpose;

7.2.2 any liability on the part of Microsoft, the Provider or the it's supplier's, for any direct, indirect or consequential damage arising from the Services.

7.3 The Provider or a third party on the Provider's behalf, will provide technical support for the Services. You acknowledge that Microsoft will not provide direct support for the Services in accordance with this Contract and/or the applicable Service Order Form.

7.4 You agree that Piksel and the Provider may be obliged to pass limited details about You to Microsoft in the event that Piksel and/or your Service Software consumption exceeds the £GB

Sterling equivalent of US \$100 per month, or if Microsoft elects to undertake an audit of software service consumption.

- 7.5 You agree that in the event you have failed to pay for the correct number of licenses, You will promptly obtain the correct amount, and hold Piksel harmless against any consequential liabilities.
- 7.6 You acknowledge that the Services are not fault tolerant and are not guaranteed to be error free or to operate uninterrupted. You acknowledge that no rights are granted to You to use the Services in any application or situation where failure of the Services could lead to death or serious injury of any person, or to severe physical or environmental damage.
- 7.7 You acknowledge and agree that Microsoft is an intended third-party beneficiary of this clause 7 “Additional Microsoft Requirements” only and that Microsoft holds the right to enforce this clause 7, and to verify your compliance with this clause 7.

8. ADDITIONAL HSCN REQUIREMENTS

8.1 In respect of the Services and the wider Contract both parties agree that in respect of the HSCN Connectivity Services:

8.1.1 We shall ensure that any HSCN Connectivity Services that it supplies pursuant to this Contract shall have been awarded HSCN Compliance and shall retain at all times HSCN Compliance.

8.1.2 We shall ensure that any HSCN Connectivity Services that it supplies pursuant to this Contract are delivered in accordance with the HSCN Obligations Framework.

8.1.3 You shall ensure that any HSCN service consumer environment used to consume HSCN Connectivity Services supplied pursuant to this Contract, shall be provided and maintained in accordance with the Connection Agreement.

8.1.4 Each of the parties warrants and undertakes that they shall throughout the term, immediately disconnect their HSCN Connectivity Services and consumer environments where specifically requested in writing by the NHS Digital careCERT (or the HSCN Authority acting on behalf of NHS Digital CareCERT) where there is an event affecting national security, or the security of the HSCN.

8.1.5 The parties acknowledge and agree that the HSCN Authority shall not be liable to them or any other party for any claims, proceedings, actions, damages, costs, expenses and any other liabilities of any kind which may arise out of, or in consequence of any notifications pursuant to clause 8.1.4 above.

8.1.6 Each of the parties acknowledges and agrees that clauses 8.1.4 and 8.1.5 are for the benefit of any may be enforced by the HSCN Authority, notwithstanding the fact that the HSCN Authority is not a party to this Contract, pursuant to the Contracts (Rights of Third Parties) Act 1999. For the avoidance of doubt such appointment shall not increase any liability of Piksel beyond the scope of their existing liabilities under this Contract, the CN-SP Deed or the HSCN Obligations Framework.

8.1.7 Piksel shall procure that any Material Sub-contractor shall comply with the terms of this Contract in relation to their provisions of HSCN Connectivity Services.

8.1.8 Where any level of standard, practice, or requirement associated with any Piksel obligation referenced in this Contract, the HSCN Obligations Framework, the HSCN CN-SP Service Management Requirement Addendum or the HSCN Consumer Contract conflicts with another level of standard, practice or requirement associated with any Piksel obligation or with Good Industry Practice, then the higher standard or requirement or best practice shall be adopted by Piksel. In the event that Piksel cannot determine which represents the higher standard or requirement or best practice, Piksel shall seek guidance from the HSCN Authority which shall reasonably determine which is the level of standard, practice or requirement that is the most favourable from a HSCN Consumer perspective, and thus with which standard or best practice to comply.

8.1.9 If Piksel fails to provide any part of the HSCN Connectivity Service as required under this HSCN Consumer Contract, it shall, in accordance with the guidance documentation published at <https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers>, be directly liable to the HSCN Consumer in respect of such HSCN Connectivity Services.

8.1.10 You shall share all records and information with the HSCN Authority as are reasonably requested by the HSCN Authority in connection with the monitoring and operation of the HSCN network described in the HSCN Solution Overview Document.

9. TERM AND TERMINATION

- 9.1 We may terminate the provision of Services under this Contract immediately by giving 7 days' notice, if you fail to pay Our invoices on or before their due date.
- 9.2 Either You or Us may terminate this Contract by giving thirty (30) days written notice to the other party.
- 9.3 Either You or Us may terminate this Contract immediately by written notice to the other party, if the other party commits a material breach of any term of this Contract (and in the case of a remediable breach fails to remedy the breach within twenty-eight (28) days of being required to do so by written notice), or upon the continuation of a Force Majeure Event.
- 9.4 We may terminate this Contract with immediate effect on written notice in the event that any specific Service is discontinued by a Provider, or a Provider stops providing its services or making its services available to Piksel in any way.
- 9.5 On termination of this contract in accordance with paragraph 9.1, We will stop supplying the Service and be entitled to invoice You for all charges relating to the supply of the Service and for all materials purchased or ordered in respect of it on the basis set out in paragraph 1.1; if termination is as a result of a notice issued by Us, You will also pay for any work you had contracted to take but which has not been provided at our full charge rates.
- 9.6 Notwithstanding any termination rights contained in this clause 9, if You terminate the Contract at any point, You remain liable to Piksel for the full costs of any third party and/or Provider services that Piksel have taken out on your behalf in order to provide the Services.
- 9.7 Subject to earlier termination in accordance with paragraph 9.1, this Agreement shall take effect from the Commencement Date and will continue indefinitely.
- 9.8 Expiry or termination of this Contract, however caused, shall be without prejudice to any rights or liabilities accrued at the date of termination. Each party's rights and obligations, the nature of which are intended to continue beyond termination of this Contract, will survive termination of this Contract.
- 9.9 This contract will be governed by and construed in accordance with English law and that the English Courts will have exclusive jurisdiction.

- 9.10 Any confidentiality obligations imposed on either or both of You and Us in respect of the provision of the Service (or discussions in relation to these) prior to this contract will end and that the confidentiality obligations in paragraph 9 of this letter will apply in their place; and
- 9.11 All intellectual property rights arising from Our work under this contract will remain vested in Us. You acknowledge that other than as expressly set out in this Contract, Piksel or the Provider does not grant to you any license of, right in, or make any assignment of any of its Intellectual Property Rights. You will also use the software in the manner and form stated in this clause 9.11 and in accordance with the provider's branding guidelines shall not use the software or Services in any other manner or form without Our prior written approval and, where applicable, the Provider.
- 9.12 All sums payable by You under this contract are expressed exclusive of Value Added Tax which will also be payable by You at the prevailing rate subject to Us providing You with a valid VAT invoice.
- 9.13 If You fail to pay any of Our invoices on or before its due date, We may (without prejudice to Our other rights and remedies) charge interest on the overdue sum from the due date of the invoice until the date of actual payment at the rate of 5% above the prevailing rate of HSBC Bank Plc; and/or restrict or suspend provision of any part of a Services relating directly to unpaid amounts until payment has been made in full.

10. CONFIDENTIALITY

Each of You and Us agrees with the other that:

- 10.1 all information disclosed by or on behalf of one organisation (the “Discloser”) to the other organisation (the “Recipient”) in connection with the provision of the Service or negotiations concerning them (including, without limit, during informal meetings and whether disclosed verbally, by demonstration, in writing or in any other medium) will be treated as strictly confidential by the Recipient and:
- 10.1.1 it will only be used by the Recipient in the course of providing or receiving the Service under this letter;
 - 10.1.2 it will be kept confidential and the Recipient will take all reasonable steps to prevent its disclosure or discovery; and
 - 10.1.3 it will not be disclosed to any third party except to those employees and Consultants of the Recipient who need to know it, have been told of the confidential nature of the information concerned;
- 10.2 the obligations set out in paragraph 9.1 will only cease to apply to all (or the relevant part) of the information:
- 10.2.1 once it enters the public domain (unless this occurs as a result of Recipient (or its employee’s) breach of any obligation of confidentiality); or
 - 10.2.2 to the extent that the information was known to the Recipient before its disclosure by the Discloser (but only if this can be shown from the Recipient’s written records); or
 - 10.2.3 to the extent that the Recipient receives the information from a third party who has disclosed it without imposing any obligation of confidentiality upon the Recipient (but only if the Recipient is not aware that the information has been disclosed in breach of an obligation of confidentiality); or
 - 10.2.4 to the extent that it is necessary for the Recipient to disclose it pursuant to a statutory obligation or by order of a competent court or tribunal or regulator;

- 10.3 the Recipient will promptly return any and all documents, papers, software, electronic devices, disks and other items (and all copies of them) which contain any information (whether or not these were supplied to or created by the Recipient) and cease using all such information, on termination of the arrangement set out in this contract;
- 10.4 the information (and the constituent parts of it) disclosed under this letter may be valuable property of the Discloser and the Recipient agrees that damages may not be an adequate remedy for any breach of the terms of this contract in respect of the Discloser's information;
- 10.5 the disclosure of information relating to the Service does not confer a right to use the information other than for the purpose set out in paragraph 10.1.1.

11. DATA PROTECTION

11.1 For the purposes of providing the Services, the Customer authorises Carelink to process the Personal Data on its behalf and the parties agree that the Customer (and/or relevant Customer Affiliate) is the Data Controller and Carelink shall be the Data Processor in relation to the Personal Data, and Carelink shall (and will ensure that all authorised Sub-Processors shall) at all times process Personal Data in accordance with its obligations under the Data Protection Laws and:

11.1.1 process Personal Data only to the extent necessary to provide the Services and only in accordance with documented instructions from the Customer (including with regard to transfers to a third country or an international organisation). This section shall apply unless Carelink is required to process Personal Data otherwise than as instructed, in accordance with European Union or Member State Law to which Carelink is subject; in such case, Carelink shall inform the Customer of that legal requirement before processing, unless that law also prohibits such information on important grounds of public interest;

11.1.2 immediately inform the Customer if, in its reasonable opinion, an instruction received in accordance with this clause 11.1 infringes any Data Protection Laws;

11.1.3 ensure that persons authorized to process the Personal Data access such Personal Data strictly on a need to know basis as necessary to perform their roles in the provision of the Services, have received training in relation to their obligations regarding the handling of Personal Data, pursuant to this Contract and the Data Protection Laws, and have either committed themselves to confidentiality obligations imposed on the Processor under the Agreement or under an appropriate statutory obligation of confidentiality;

11.1.4 subject to clauses 11.1.4 and 11.1.5, not use subcontractors, Affiliates of Carelink or any third party to process Personal Data (“Sub-processors”) unless it has obtained the prior, written consent from Customer to do so and provided at all times that in the case of all Sub-processors, Carelink has entered into a written contract with them, which imposes the same obligations on the Sub-processor as are imposed on Carelink by the Customer under this clause 11, prior to any processing of Personal Data by the Sub-processor , taking place;

11.1.5 subject to clauses 11.1.4 and 11.1.6, not process Personal Data (and shall ensure that no third-party processes Personal Data) outside of the European Economic Area (“EEA”) without having first obtained Customer’s prior written consent, which may be given at the discretion of the Customer and only provided that either:

11.1.5.1 Standard Contractual Clauses have already been entered into between the relevant parties pursuant to the Contract, which apply to the transfer of Personal Data;

11.1. 5.2 where Standard Contractual Clauses do not already apply to the transfer of Personal Data pursuant to the Contract, Standard Contractual Clauses are entered into between the Customer (and/or relevant Customer Affiliate) and “*data exporter*” and the relevant recipient of the Personal Data as “*data importer*” prior to such transfer taking place; or

11.1.5.3 the transfer is to a recipient located within an Adequate Jurisdiction (subject to any applicable restrictions); or

11.1.5.4 such other valid and adequate transfer mechanisms as approved by the European Commission, have been or will be put in place, as agreed between the Customer and Carelink, prior to the transfer taking place, and

11.1.5.5 In the event that any of the above transfer mechanisms should be held to be invalid by the European Commission or applicable Regulator, Carelink shall (at the discretion of the Customer) , either put in place, within the transition period prescribed by the relevant Regulator, such alternative valid adequate transfer mechanisms as approved by the Customer or if unable to do so, cease the transfer of affected Personal Data at the end of the aforementioned transition period.

11.1.6 where permitted to use Sub-processors and/or (respectively) transfer Personal Data outside the EEA under the preceding subsections 11.1.4 and/or 11.1.8 below) of the relevant Sub-processors and/or (respectively) countries and entities to which Personal Data has been transferred and it shall remain fully liable for any act(s) and/or omission(s) of any Sub-Processors engaged pursuant to this Contract that constitute breach of the data protection requirements imposed on Carelink under this Contract as if these acts and/or omissions were Carelink’s own acts and/or omissions;

11.1.7 implement appropriate technical and organisational measures to ensure **a level of security appropriate to the risk** presented by processing the Personal Data, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed in accordance with the Data Protection Laws, and as appropriate:

11.1.7.1 the pseudonymisation and encryption of Personal Data;

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

11.1.7.3 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

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

11.1.8 maintain a written record, 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, which shall contain the following details:

11.1.8.1 the name and the contact details of the Carelink and (where applicable) its Sub-processors acting on its behalf and details of their respective data protection officer (as applicable);

11.1.8.2 the categories of Personal Data, data subject and processing activities carried out on behalf of the Customer;

11.1.8.3 where applicable, transfers of Personal Data to a third country (i.e non EU Member State) or an international organisation, including identification of that third country or international organisation and documentation evidencing implementation of appropriate safeguards; and

11.1.8.4 a general description on the technical and organisational security measures referred to Article 32 (1) of the GDPR.

11.1.9 notify the Customer immediately after becoming aware of a reasonably suspected, “near miss” or actual breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed by Carelink (or any Sub-processor) under this Agreement (a “**Data Security Incident**”), including the nature of the Data Security Incident, the categories and approximate number of data subjects and Personal Data records concerned and any measure proposed to be taken to address the Data Security Incident and to mitigate its possible adverse effects, and

where, and in so far as, it is not possible to provide all the relevant information at the same time, the information may be provided in phases without undue delay, but Carelink (and Sub-processor, as applicable) may not delay notification under this clause 11.1.9 on the basis that an investigation is incomplete or ongoing

11.1.10 will not, and will procure that Sub-processors will not, make or permit any announcement, public disclosure or regulator notification in respect of the Data Security Incident to any person without the Customer's prior written consent, which may be given, withheld or made subject to conditions at the Customer's sole discretion;

11.1.11 provide, upon request from the Customer or a supervisory authority, all reasonable cooperation and assistance to Customer in order to facilitate the Customer in complying with its obligations under Data Protection Laws and/or for the purposes of cooperating and/or liaising with the supervisory authorities;

11.1.12 provide reasonable assistance to the Customer in:

11.1.12.1 responding to requests from exercising data subjects' rights under the Data Protection Laws, including by notifying the Customer without delay of any such request Carelink may receive from a data subject in respect of the processing of their Personal Data;

11.1.12.2 responding to communications received from regulators or supervisory authorities (including the Information Commissioner's Office) in respect of the processing of Personal Data under this Contract, including by notifying the Customer without delay of any such communication Carelink may receive from a Regulator, unless Carelink is prohibited from notifying the Customer pursuant to applicable laws;

11.1.12.3 documenting any Data Security incidents and reporting any Data Security Incidents to any Regulator or supervisory authority and/or data subjects;

11.1.12.4 taking measures to address Data Security Incidents, including, where appropriate, measures to mitigate their possible adverse effects;

11.1.12.5 conducting data privacy impact assessments of any new processing operations in relation to the Personal Data, and consulting with any applicable regulator or supervisory authority or appropriate persons, accordingly; and

11.1.12.6 promptly upon request of the Customer, transferring Personal Data to a third party in compliance with a request from a data subject to exercise their right to data portability; and

11.1.12.7 make available to the Customer all information necessary to demonstrate compliance with the obligations set out in this clause 11, and allow for and contribute to audits, including inspections of its and/or (where applicable) its Sub-processors' data processing facilities, procedures and documentation, conducted by the Customer or another auditor mandated by the Customer.

- 11.2 Subject to clause 11.4, following a request from the Customer, Carelink shall (at the Customer's discretion) promptly return, delete or destroy all Personal Data held by Carelink (or Sub-Processor) and certify (within 14 days of such request) that this clause 11.2 has been complied with.
- 11.3 Where no specific request has been placed by the Customer under clause 11.2 above and subject to clause 11.4, within a period of six (6) months following termination of this Contract, Carelink will (and will ensure that all Sub-processors will) securely delete or destroy all copies of Personal Data held by Carelink (or Sub-Processor) provided that it gives at least 30 days' notice to the Customer of when such deletion or destruction is to occur, giving the Customer opportunity to object or provide alternative instructions in accordance with clause 11.2
- 11.4 Where Carelink (or Sub-Processor) is required to retain Personal Data in order to comply with applicable laws, Carelink must notify the Customer and shall retain such Personal Data only in its capacity as a data controller and shall comply with its obligations as a data controller pursuant to the Data Protection Laws.

12. ETHICAL BEHAVIOUR

12.1 The Parties shall comply with all applicable laws and regulations relating to anti-corruption, including without limitation, the UK Bribery Act 2010 when performing it's obligations under the Contract.

12.2 In carrying out their responsibilities under this Contract, both Parties agree that:-

12.2.1 They have not paid, offered, promised to pay or authorised and will not pay, offer promise to pay, or authorise the payment directly or indirectly of any monies or anything of value (in the form of entertainment, gifts, gratuities, or otherwise) for the purpose of obtaining or rewarding favourable treatment;

12.2.2 They have not paid, offered, promised to pay or authorised and will not pay, offer, promise to pay or authorise the payment directly or indirectly of any monies or anything of value to (i) any person or firm employed by or acting for or on behalf of any other Partner or End-User, whether private or governmental, or (ii) any government official or employee or any political party or candidate for political office for the purpose of influencing any act or decision or inducing or rewarding any action by the Partner or End User in any commercial transaction or in any governmental matter or securing any improper advantage to assist in obtaining or retaining business or directing business to any person.

12.2.3 That You have not made and will not make, either directly or indirectly, any improper payments, including but not limited to facilitation payments, gratuities or kickbacks.

12.2.4 That You have established and will maintain an effective business ethics and compliance program and procedures to prevent corruption and ensure compliance with the Bribery Act, and that Your program and procedures shall implement guidance published by the United Ministry of Justice relative to compliance with the Bribery Act.

12.3 Each Party will promptly disclose to the other party together with all pertinent facts any violation, or alleged violation, of the Bribery Act in connection with the performance of this Contract.

13. DISPUTE RESOLUTION

13.1 Any Services Complaints, disputes or problems (each an “**Issue**”) relating to this Contract will be escalated as set out in this clause 13.

13.2 Any Issue will be referred in the first instance to Carelink’s Finance Manager or Client Director and the Customer’s Finance Director or in their absence to their duly appointed deputies as notified from time to time. The parties will procure that their respective representatives discuss in good faith any Issue with a view to resolving it. If an Issue is not resolved to the satisfaction of either party within fourteen (14) days of Carelink’s Finance Manager or the Customer’s Finance Director having first been aware of it, then either party may refer it to be dealt with under **clause 13.3**.

13.3 Where an issue is to be dealt with under this **clause 13.3**, Carelink will ensure that a C-Level officer and the Customer and the Customer will ensure that its Chief executive officer (or equivalent) will meet together with a view to resolving the Issue. Each party will allow twenty-one (21) days from the date of escalation of the matter for such consultation or discussions to take place before referring the Issue to mediation (in accordance with **clause 13.4**) , or initiating any legal proceedings.

13.4 If the parties fail to resolve an Issue in accordance with **clause 13.3** , then the parties may attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure, in which case:

13.4.1 unless otherwise agreed between the parties, the mediator will be nominated by CEDR;

13.4.2 both parties agree to co-operate fully with such mediator, provide such assistance as reasonably necessary to enable the mediator to discharge his or her duties and to bear equally between them the fees and expenses of the mediator; and

13.4.3 the commencement of a mediation will not prevent the parties commencing or continuing court proceedings.

13.5 Nothing in this clause 13 shall prevent any party seeking an injunction or applying for an injunction without recourse to the procedures laid out in this **clause 13**.

14. FORCE MAJEURE

14.1 Neither Party shall be liable to the other Party in any manner whatsoever to the extent that it is unable to perform any of its obligations under this Contract due to any cause beyond its reasonable control, as described more fully in the following clause 11.2 (a Force Majeure Event);

14.2 For the purposes of this clause 14, a Force Majeure Event shall include acts of God, events of terrorism, war or national emergency, riots, civil commotion, fire, explosion, flood, epidemic, telecommunications network operators (to the extent that such act or omission causes a general outage affecting the surrounding geographical area, which is beyond either party's reasonable control) or of other component authorities, but shall exclude any delay or failure caused by any supplier or sub-contractor of the other Party, unless such Supplier or sub-contractor is itself affected by an event beyond its reasonable control and which that supplier or sub contractor cannot reasonably prevent or overcome, and provided also that the other party cannot claim relief if the cause is attributable to a failure by the other party to comply with the provisions of its disaster recovery and business continuity procedures.

14.3 If either Party wishes to rely on clause 14 such Party shall (a) promptly notify the other Party stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration, (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under the Contract; and (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

14.4 As soon as reasonably practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract.

15. WAIVER

15.1 Failure of either party to exercise or enforce any right conferred by this Contract shall not be deemed to be a waiver of any such right, nor operate as to bar the exercise or enforcement thereof, or of any right on any later occasion.

16. RIGHTS AND REMEDIES

16.1 The rights and remedies under this Contract are in addition to, and not exclusive of, any rights or remedies provided by Law.

17. ENTIRE AGREEMENT

17.1 This Contract and any applicable Statement of Work constitutes the entire agreement between the parties and supersedes all prior negotiations, representations (save for any fraudulent representations), proposals, understandings and agreements whether written or oral. This Contract shall only be modified if such modification is in writing, whereupon such modifications or changes shall automatically take effect and shall prevail (in the event of conflict) over the other provisions in the Contract.

18. NOTICES

18.1 Any notice or other communication required or permitted under this Contract shall be in writing addressed to the recipient at its address stated in this Contract and/or any applicable Statement of Work and shall be deemed to have been duly given: (1) if delivered personally, upon delivery; or (2) if properly addressed and posted by recorded delivery mail, three Business Days after posting.

19. COUNTERPARTS

19.1 This Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Contract.

20. SEVERABILITY

20.1 The invalidity or unenforceability of any term of, or any right arising pursuant to this Contract shall not in any way affect the remaining terms and rights which shall be construed as if such invalid or unenforceable term or right did not exist.

21. NO PARTNERSHIP

21.1 Nothing in this Contract (i) establishes any partnership, exclusive arrangement or joint venture between the Parties, (ii) construes any Party the agent of the other Party; or (ii) authorises any Party to make or enter into any commitments for or on behalf of any other Party.

22. ASSIGNMENT

22.1 You grant Piksel the right to assign, novate, or transfer this contract to an Affiliate or any other entity provided that the Affiliate or other entity guarantees that the performance under this Contract remains unchanged.

23. THIRD PARTY RIGHTS

23.1 The Contracts (Right of Third Parties) Act 1999 shall not apply to this Contract, and no other person other than a Party shall have any rights under it (unless specifically stated in this Contract). The terms of this Contract may be varied, amended or modified, or this Contract may be suspended, cancelled, terminated or rescinded, in each case by mutual agreement in writing between the Parties without the consent of any third party.

24. DEFINITIONS AND INTERPRETATION

The following expressions have the following meanings in this Contract.

Adequate Jurisdiction: means a jurisdiction outside the European Economic Area that has been determined to have in place adequate data protection laws, pursuant to a valid Decision Notice issued by the European Commission.

Affiliate: any company which is, from time to time in relation to either party: (i) its parent undertaking; or (ii) its subsidiary undertaking; or (iii) a subsidiary undertaking of its parent undertaking or any other person controlled by or under the same control, either directly or indirectly, (and for these purposes “parent undertaking” and “subsidiary undertaking” will have the meanings attributed to them in section 1159 Companies Act 2006.

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

CN-SP Deed: means the deed required by the HSCN Authority to be signed by any CN-SP in order for it or its subcontractor to deliver HSCN Connectivity Services;

Commencement Date: the date stated at the beginning of this Contract;

Connection Agreement: means the agreement setting out the obligations and requirements for organisations wanting to connect to the HSCN, together with all documents annexed to it and referenced within it;

Consumer Network Service Providers or CN-SP: means an organisation that is supplying or is approved to supply HSCN Connectivity Services having achieved the appropriate HSCN Compliance.

Confidential Information: all information of a confidential nature in respect of the business of either party or its Affiliates, or the Provider(s) (each a “**disclosing party**”) , including any ideas, business methods, customer lists or details; computer systems software and software specifications, products or services, including know-how or other matters connected with the products or services manufactured, marketed, provided or obtained by a disclosing party, and information concerning the relationships of a disclosing party with actual or potential clients, customers or suppliers, and any other information which, if disclosed, will be liable to cause harm to a disclosing party.

Contract: this agreement between the Parties concerning the provision of the Services, comprised of the applicable Service Order Form(s), Service Level Agreement, and these Service Terms;

Control: means the ability to direct the affairs of another whether by virtue or contract, ownership or shares or otherwise howsoever;

Customer Dedicated Systems: means a combination of hardware, software and networking elements that comprise an information technology system, operated by Piksel solely for a single customer.

Data Protection Laws: shall mean the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC (and all applicable Laws which replace the above, including the GDPR), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (and all applicable laws) which replace it, including the e-Privacy Regulation) and all applicable Laws and regulations relating to processing and personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner (or the data protection authority which replaces it)

Any reference to this Agreement to “**data controller**” “**data processor**” “**data subjects**”, “**personal data**”, “**process**” “**processed**” “**processing**” and “**supervisory authority**” shall have the meaning set out in, and will be interpreted in accordance with:

- (a) In respect of processing undertaken on or before 24 May 2018, the Data Protection Act 1998;
- (b) in respect of processing undertaken on or after 25 May 2018, the GDPR, and
- (c) in respect of processing undertaken on or after the date on which legislation comes into force that, in respect of the United Kingdom, replaces the General Data Protection Regulation (EU) 2016/679, that legislation.

GCN Service Provider or GCNSP: a component, product or service that enables PSN- connected organisations to enjoy intra and inter-organisation IP data transmission and for which a PSN compliance certificate has been awarded by the PSN Team.

Good Industry Practice: means the standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;

Government Conveyance Network or GCN: The total network of all GCN Services provided by all GCN Service Providers.

Health and Social Care Network or HSCN: means the government's network for health and social care, which helps all organisations involved in health and social care delivery to work together and interoperate.

HSCN Authority: means NHS Digital (the Health and Social Care Information Centre)

HSCN Compliance or HSCN Compliant: means a status as detailed in the document "HSCN Compliance operating Model" , as set out at <https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers>, and as updated by the HSCN Authority from time to time.

HSCN Connectivity Services: means any service which is offered by a CN-SP to provide access to and routing over the HSCN.

HSCN Consumer: means a recipient of HSCN Connectivity Services.

HSCN Consumer Contract: means any agreement pursuant to which a CN-SP (or Sub-Contractor of a CN-SP) agrees to supply HSCN Connectivity Services to a HSCN Consumer.

HSCN Obligations Framework: means the obligations as available at <https://www.digital.nhs.uk/health-social-care-network/connectivity-supplier> which may be updated from time to time by the HSCN Authority.

HSCN Solution Overview: means the document containing the architecture and technical solution for HSCN (the latest version can be accessed at <https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers>).

Intellectual Property Rights: any and all patents, trademarks, trade names, moral rights, rights in design, rights in databases, knowhow and all other intellectual property rights, whether or not registered or capable of registration and whether subsisting in the UK or any other part of the world together with all or any goodwill relating to them;

Material Sub-Contractor: means a sub-contractor (including any affiliate or group company) of a CNSP in relation to HSCN Connectivity Services which, in the reasonable opinion of the HSCN Authority, performs (or would perform if appointed) a substantive role in the provision of all or part of the HSCN Connectivity Services.

NHS Digital CareCERT: means the NHS Digital care Computing Emergency Response Team, that provide cyber security intelligence and advice to the Health and Care System using links across the public sector and with partners in industry.

Party: either Piksel or You (collectively “the **parties**”)

Provider(s): Our contracted provider(s) of cloud based services, as identified in the Service Order Form (s);

Provider End User License Terms: a separate agreement entered into between you and the Provider(s) concerning your use of the Services.

PSN Compliance Certificate: The certificate awarded to the individual infrastructures, GCN Services, PSN Services and PSN connectivity Services that make up the PSN;

PSN Service Provide or PSNSP: An organization that is supplying or is approved to supply PSN Services in accordance with a CoP.

PSN Service: A functional service available to PSN-connected organisations from a PSN-connected infrastructure in order to enable the fulfilment of a specific business activity, which is offered by a PSN service Provider in accordance with a CoP and for which a PSN Compliance Certification has been awarded by the Public Services Network Team.

Public Services Network or PSN The government’s high performance network which helps public sector organisations work together, reduce duplication and share resources.

Regulator: means (as the case may be) the Financial Conduct Authority, the Prudential Regulation Authority, the Bank of England, the Information Commissioner Office and/or such other governmental, regulatory or self-regulatory bodies as Carelink or Customer may from time to time be subject.

Services Complaint: means an expression of dissatisfaction whether written or oral made by a Customer to Carelink related to either:

- (a) Carelink’s provision of the Services to that Customer; or
- (b) The compliant handling process itself, and where a response or resolution is explicitly or implicitly expected.

Service Fees: the price payable in consideration for the provision of the Services;

Standard Contractual Clauses: means the EU standard contractual clauses for Data processors established in third countries pursuant to European Commission Decision (2010/87/EU) of 5 February 2010 under the EU Directive (95/46/EC)

UK Public Sector: public authorities or entities controlled or supported by government as defined by the Freedom of Information Act 2000, the Public Contract Regulations Act 2015, and the Utilities Contract Regulations Act 2006.