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Whzan© Telehealth Terms and Conditions of Service

This document tells you the terms and conditions on which we will supply the Whzan services to you. Please read these terms and conditions carefully. If you refuse to accept these terms and conditions, you must not use the Whzan services.

1   INTERPRETATION

1.1.   Definitions In these Terms and Conditions unless otherwise stated: -

- **"Act"** means the Telecommunications Act 1984;

- **"Alarm"** means notifications sent by the Service to the Customer based on Customer set threshold values of measured parameters and "Alarms" shall be construed accordingly;

- **"Company"** means Solcom Limited, a company registered in England and Wales under number 3525534 whose registered office is currently situated at Solcom Limited, Solcom House, 79 George Street, Ryde, Isle of Wight, PO33 2JF, United Kingdom;

- **"Commencement Date"** means the date upon which the Contract is formed in accordance with Clause 2;

- **"Contract"** means the contract between the Company and the Customer for the supply of the services in accordance with these Terms and Conditions;

- **"Customer"** means the person or organisation who registers for the Service;

- **"Data"** refers to the health and personal data collected and stored by the system;

- **"The GDPR"** means the EU General Data Protection Regulation 2016/679;

- **"Data Controller" and "Data Processor"** have the meanings as set out in Article 4(7) and (8) respectively of the GDPR;

- **"Force Majeure Event"** has the meaning given to it in Clause 10.1;

- **"Intellectual Property Rights"** means all or any registered or unregistered intellectual property rights in any part of the world, including but not limited to patents, trademarks, design rights, copyrights, topographical rights, know-how, rights in databases, rights in inventions and ideas and rights to confidence together with any right to apply for any such intellectual property rights and the benefit of any applications for any such intellectual property rights and any similar intellectual property rights anywhere in the world;

- **"Service" and "services"** means the provision of the Whzan© data collection, data display and data storage services as applicable at any one time;

- **"Service Package"** means the services purchased by the Customer and provided with the Service and can comprise of the collection of data from a telehealth equipment and/or manual entry of health data, display of such data with the help of the Service and the storage of historical values of the data for which data is collected using the Service and/or provision of Alarms;

- **"Software"** has the meaning given to it in Clause 4.6;

- **"Termination Date"** means the date of termination of the Contract;

- **"third party"** means a party which is neither the Company nor the Customer;

- **"Whzan"** means the Whzan software and related hardware infrastructure accessible via the www.Whzan.com website and the telehealth software used on tablets, phones and other data collecting devices;

- **"Working Day"** means a day other than a Saturday or Sunday on which the Clearing Banks in the United Kingdom are open to the public for the transaction of business.

1.2.   References In these Terms and Conditions,

- **"Clauses"** are references to clauses in these Terms and Conditions;

- **"Persons"** include a reference to anybody corporate, unincorporated association or partnership; the singular shall include the plural and vice versa; and references to a statute, statutory instrument, regulation, order or licence is a reference to that statute, statutory instrument, regulation, order or licence as substituted, varied or re-enacted from time to time, unless the context otherwise requires;

- **"Include"** The words "include" and "including" are to be construed without limitation;

- **"Headings"** The headings in these Terms and Conditions are for convenience only and shall not affect the interpretation of these Terms and Conditions;

2 FORMATION OF CONTRACT AND ACCEPTANCE OF THE TERMS AND CONDITIONS

2.1.1. The Company shall provide the services to the Customer in accordance with these Terms and Conditions.

2.1.2. In the event that the Customer does not accept these Terms and Conditions the Company shall not provide the services.

3   SUPPLY OF THE SERVICES

3.1.   Timing

3.1.1.   The Company shall supply the services to the Customer as soon as reasonably practicable except in the case of non-payment of charges or additional charges by the Customer or where the Company is prevented from providing the services by a Force Majeure Event.

3.1.2.   The Company shall inform the Customer of any delay in the delivery of the services as soon as reasonably practicable.

3.2.   Warranty

3.2.1.   The Company warrants to the Customer that the services will be provided using reasonable care and skill.

3.2.2.   The Company provides no warranties in relation to:

   a   The suitability of the services for any particular purpose;

   b   The functionality of the software underlying the provision of the services;

   c   The functionality of any third-party software, components or hardware used for the provision of the services including without limitation any provision of broadband, computer clouds or mobile phone systems and computer or mobile phone networks.

3.2.3.   The Company shall not, if applicable, assign to the Customer the benefit of any licence, warranty, guarantee or indemnity given by a third party supplying any goods or services to the Company unless agreed with the Customer in writing and with the third party's prior written consent.

3.2.4.   The Company reserves the right to make any changes to the services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the services, from time to time by giving reasonable notice to the Customer.

3.2.5.   The provision of the services will at all times be subject to any downtime and/or interruptions caused by computer or software failure or routine or emergency maintenance by the Company, the Customer or by third parties.

3.3.   Limitation of Liability

3.3.1.   Nothing in these Terms and Conditions shall limit or exclude the Company's liability for:

   a   Death or personal injury caused by its own negligence;

   b   Fraud or fraudulent misrepresentation;

   c   Any matter for which it would be illegal for the Company to exclude, or attempt to exclude, its liability.

3.3.2.   Subject to Clause 3.2.1, the Company shall not be liable to the Customer for:

    a   The loss of any material or data uploaded onto the Service and the servers used to provide the services;

    b   The incompatibility of the Service with any of the Customer's equipment, software or telecommunications links;

    c   Any technical problems including errors or interruptions of the services which are outside of the Company's control;

    d   Any failure of third party software including without limitation the Azure product supplied by Microsoft, Inc.;

    e   Any failure of third party hardware including platforms, computer cloud or kit.

3.3.3.   Subject to Clause 3.2.1, the Company's total liability to the Customer in respect of all other losses arising under or in connection with the provision of the services, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, is strictly limited to the total of one-month charges paid by the Customer in the month prior to the breach and any losses which are a foreseeable consequence of the Company breaking the Contract. Losses are foreseeable where they could be contemplated by the Customer at the time the Contract is made.

3.3.4.   The Company shall not be liable to the Customer or to any third party for any failure by the Customer to comply with its obligations under these Terms and Conditions.

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4 CUSTOMER OBLIGATIONS

4.1.   The Customer warrants that it has the capacity to adhere to these Terms and Conditions.

4.2.   The Customer warrants that they are at least eighteen (18) years old.

4.3.   The Customer shall: -

4.3.1.   Keep full security copies of the Customer's computer programs, database and computer records on a regular basis and be responsible for the security of his computer and telecommunications systems and networks at all times including the transmission of any data across such systems and networks;

4.3.2.   Obtain the consent of individuals whose personal data are to be held on the user registration pages or data history store of each Whzan account. The Customer must promptly notify the Company of any changes to the Customer's registered details including (but not limited to):-

   a   Name and address of the Customer;

   b   Name, postal address, e-mail address, telephone number of the technical contact and administrative contact and in any event, provide such information within fifteen (15) Working Days of a request for such information from the Company.

4.3.3.   Notwithstanding Clause 15.5, keep confidential all passwords received from the Company for the purpose of the services and notify the Company immediately upon becoming aware that a password has become known to a third party;

4.3.4.   Only make use of the services for a legitimate and lawful purpose;

4.3.5.   Allow the Company to access the Customer's Whzan account and data contained within to check for any infringements of the Customer's obligations under these Terms and Conditions;

4.3.6.   Ensure that it/he complies at all times with all relevant laws and obligations including but not limited to any licence under the Act which is applicable to the Customer and all related laws in any territory in which the Customer is situated or in which the Customer's data and mimics may be accessed or made available. The Customer must also obtain any relevant consents and approvals for the installation and use of the data collected by Whzan;

4.3.7.   Ensure that all hardware, devices and equipment from which data is collected using the Whzan or is used to connect to Whzan is:

   a   Correctly installed and connected according to the manufacturer's instructions or as regulated by relevant laws of the territory where the hardware, devices and equipment reside;

b   Correctly maintained as recommended by its manufacturer or as regulated by relevant laws of the territory where the hardware, devices and equipment reside;

c   Correctly, appropriately and adequately operated and monitored when in use using appropriate skill and care in such operation and monitoring of the hardware, devices and equipment and always according to manufacturer's instructions and the laws of the territory where such operation and monitoring takes place.

4.4.   The Customer shall NOT:-

4.4.1.   Send, transmit, make available, copy, retransmit, broadcast or publish (whether directly or indirectly) in whatever form any data, information or contractual rights, material or statement which infringes the Intellectual Property Rights or contractual or statutory rights or common law rights of any person or legal entity or the laws or statutory regulations or common law rights relating to defamation, contempt, blasphemy, infringement of privacy or personal data rights and any equivalent or related laws in any territory in which they are or may be accessed or made available;

4.4.2.   Make use of the services to send or cause to be sent or forwarded electronic mail without the express or assumed agreement of the respective recipient and the consent of the owner of such mail or data contained in such mail.

4.4.3.   Use the Whzan account to store data other than that collected within the terms of the Service Package under these Terms and Conditions;

4.4.4.   Use the services to obtain or offer or permit to be offered for profit or otherwise any material, images, displays which are offensive, illegal or immoral or which are in breach of any legal obligation;

4.4.5.   Use the services in a manner which infringes a third party's copyright or other Intellectual Property Rights;

4.4.6.   Try to damage or enter the Service or servers used to provide the Service in any manner which could be construed as "hacking" into the services, Whzan software or servers used to provide the services.

4.5.   Without prejudice to any other rights of the Company arising from these Terms and Conditions or otherwise, the Customer will indemnify the Company against all claims, losses, liabilities, expenses, fines and penalties of whatsoever nature made, incurred or imposed as a result of a breach by the Customer of the terms of this Clause 4.

4.6.   Software ('Software') is provided for online use as part of the services, and the use of such Software may be subject to Additional Charges in accordance with these Terms and Conditions. The Customer shall not download, install, store or make any copies of the Software for any other use, nor shall the Customer sublicense the Software. The Customer shall not in any way translate, decompile, reverse engineer, disassemble, modify, reproduce, rent, lease, lend, licence, distribute,

market or otherwise dispose of any portion of the Software or any copies thereof and shall not assist any third party in doing so. The Software is designed to be used through the Company's Whzan user interface and, as such, may be utilized by any authorized user from any computer or workstation. This right is automatically revoked upon termination of the services. The Company reserves the right to modify or discontinue the Software at any time without notice.

5 TERMINATION

5.1.   By the Company and the Customer

5.1.1.   Without limiting its other rights or remedies, each of the Company and the Customer may terminate the Contract with immediate effect by giving written notice to the other party if:

> a   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 (being a company) other than for the sole purpose of a scheme for solvent amalgamation of that other party with one or more companies or the solvent reconstruction of that other party;

> b   The other party (being an individual) is the subject of a bankruptcy petition or order;

> c   An application is made to court, or an order is made, for the appointment of an administrator over the other party (being a company);

> d   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;

> e   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 listed in Clauses 5.1.1 (a) to (d) inclusive; or

> f   The other party suspends or ceases to carry on all or a substantial part of its business.

5.1.2.   Each of the Company and the Customer may terminate the Contract at their sole discretion by giving the other not less than thirty (30) Working Days' written notice.

5.2.   By the Customer

5.2.1.   The Customer may terminate the Contract with immediate effect by giving written notice to the Company in accordance with Clause 5.1.1.

5.3.   By the Company

5.3.1.   Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer in accordance with Clause 5.1.1 and if:

> a   The Customer fails to pay the Charges and/or Additional Charges by the due date for payment;

> b   The Customer is in breach of any of their obligations under Clause 4 and fails to remedy such breach (where capable of remedy) within ten (10) Working Days of being notified by the Company to do so;

> c   A Force Majeure Event prevents the Company from providing the services for more than two (2) weeks in accordance with Clause 10.3.

6   EFFECT OF TERMINATION

6.1.   Termination or expiry of the Contract for whatever reason shall not prejudice or affect any right of action or remedy which shall have occurred or shall accrue thereafter to either of the parties.

6.2.   On termination or expiry of the Contract for whatever reason:

a   The licence to use any software product and thereby granted to the Customer in respect of the Service by the Company shall be revoked with immediate effect;

b   The Customer shall pay immediately all Charges and/or Additional Charges outstanding under these Terms and Conditions to the Company within (fourteen) 14 Working Days;

7 LIMITATION OF SERVICE

7.1. From time to time, the volume of data transfer between the Customer's devices and the services may be limited either because of any limitations placed on the service capacity by third party suppliers. The Company reserves the right to limit the data transfer volume thus available to the Customer according to any volume limitations imposed by third party suppliers.

7.2. The Company shall be entitled to suspend access to the services if the Customer is in breach of any of its obligations under Clause 4 and fails to remedy such breach (where capable of remedy) within five (5) Working Days of being notified by the Company to do so. This Clause shall not be construed in any way as limiting the termination rights of the Company.

7.3. If access to the services is suspended as a result of downtime caused by routine or emergency maintenance by the Company, the services shall be reconnected as quickly as practicable after, in the opinion of the Company, such circumstances giving rise to the need to suspend have ceased to exist.

7.4. The Customer may be required at the Company's discretion to remove all software downloaded from the Whzan servers provided the Customer is not legally obliged to keep the programs for a longer period. This Clause shall not prejudice or affect any other right of action or remedy or obligation which shall have occurred or shall accrue thereafter to either of the parties.

7.5. Any third-party Software is subject to separate terms and conditions of the supplier of such third-party Software. The Customer is urged to carefully study such terms and conditions.

8   INTELLECTUAL PROPERTY RIGHTS

8.1.   All Intellectual Property Rights of the Company in any Service and ancillary documentation including these Terms and Conditions shall at all times remain vested in the Company.

8.2.   In consideration of and subject to payment of the Charges by the Customer upon the Commencement Date, and the compliance by the Customer with these Terms and Conditions, the Company grants to the Customer on and from the Commencement Date until the termination of the Contract in accordance with Clause 5 of these Terms and Conditions, a revocable non-exclusive licence to use the Service and ancillary documentation in accordance with this Clause 8.

8.3.   Should the Customer be authorised by the Company to have the use of multiple service accounts for Whzan, the following user conditions shall apply to each account.

8.4.   The Customer shall undertake to ensure that everyone who uses the Service shall observe these Terms and Conditions.

8.5.   The Customer may take such back-up copies of any software installations as is necessary in accordance with best computing practice. Help pages from the Whzan website may be printed out on paper for use in the Customer's security or quality procedures only.

8.6.   The Customer shall not be entitled to use, copy, process or transfer any part of Whzan in a way other than that described herein to convert it into another form (Reverse-Assemble-Reverse-Compile) or in any other way translate any part of Whzan, if such conversion is not indispensably provided for by express legal regulations. The Customer shall not be entitled to rent out or lease the Service or assign or sub-licence the Service except as expressly agreed under these Terms and Conditions.

9   DATA PROTECTION

9.1.   All information, mail messages and other data stored on the Company's computer systems or servers operated by the Company or caused to be operated by the Company including any computer clouds which may be used to provide the Service will be treated as private and solely the property of the Customer at all times. It will be used as directed by the Data Controller solely for the purpose of providing the service to the Customer. Data will not be duplicated, copied, reproduced or viewed publicly in any way except where express permission of the Customer has been obtained in advance.

9.2.   The processor will only act on the controller's documented instructions, unless required by law to act without such instructions.

9.3.   The processor will immediately inform the controller if, in its opinion, an instruction is unlawful.

9.4.   The processor will ensure that people processing the data are subject to a duty of confidence.

9.5.   The processor, taking into account the state of the art, will implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk.

9.6.   The processor will only engage a sub-processor with the controller's prior authorisation and under a written contract imposing the same data protection obligations as set out in the contract or other legal act between the controller and the processor.

9.7.   The processor will take appropriate technical and organisational measures to help the controller respond to requests from individuals to exercise their rights.

9.8.   Taking into account the nature of processing and the information available, the processor will assist the controller in meeting its GDPR obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments.

9.9.   The processor will delete or return all personal data to the controller (at the controller's choice) at the end of the contract, and the processor will also delete existing personal data unless the law requires its storage.

9.10.   Upon reasonable request of the controller, the processor , and/or as appropriate its sub-processors, will submit data processing facilities, data files and documentation used for processing, reviewing, auditing and/or certifying by the controller (or any independent or impartial inspection agents or auditors, selected by the controller and not reasonably objected to by the processor) to ascertain compliance with the warranties and undertakings in this Agreement, with reasonable notice and during regular business hours. The request will be subject to any necessary consent or approval from a regulatory or supervisory authority within the country of the controller.

9.11.   The personal data processed concerns the clients of the controller such as patients, residents etc.

9.12.   Data processed will include sensitive data including, but not limited to, name, date of birth, health data and NHS number.

9.13.   All data is stored on cloud servers within the UK and will only be transferred to another country upon documented instructions of the data controller, unless required by law to act without such instructions.

10   FORCE MAJEURE

10.1.   For the purposes of these Terms and Conditions, "Force Majeure Event" means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, fire, flood or storm.

10.2.   The Company shall not be liable to the Customer as a result of any delay failure in performing its obligations under this Contract as a result of a Force Majeure Event. The Company shall use its reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which its obligations under the Contract may be performed despite the Force Majeure Event.

10.3.   If the Force Majeure Event prevents the Company from providing the services for more than two (2) weeks, the Company shall, without limiting its other rights and remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

11   COMPLAINTS

11.1.   The Customer should address any complaints concerning the provision of the services to the Company.

12   ASSIGNMENT

12.1.   The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

12.2.   The Customer shall not, without the prior written consent of the Company which shall not be unreasonably withheld, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

13 THIRD PARTY RIGHTS

13.1. Nothing in these Terms and Conditions shall be taken as granting any rights expressly or impliedly whether contractual or statutory to persons other than the Company and the Customer, whether by virtue of the Contracts (Rights of third parties) Act 1999 or otherwise.

14   Ownership

14.1.   The www.Whzan.com website is owned and operated by Solcom Limited, a company registered in England and Wales under company number 3525534, whose registered office is situated at Solcom House, 79 George Street, Ryde, Isle of Wight, PO33 2JF, United Kingdom. Our main trading address is Solcom House, 79 George Street, Ryde, Isle of Wight, PO33 2JF. Our VAT number is GB 717 5059 31. The Company may be contacted by post at its registered office address, through the www.Whzan.com website, by email at one of the addresses set out in Clause 14.1 or by telephone on +44 (0) 1983 817000.

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15 GENERAL

15.1.   No delay, neglect or forbearance on the part of either party in enforcing against the other party any of these Terms and Conditions shall either be or be deemed to be a waiver in or in any way prejudice any right of that party under these Terms and Conditions, unless such waiver shall be in writing.

15.2.   If a court or any other competent authority finds that any provision of these Terms and Conditions (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity or enforceability of the other provisions of these Terms and Conditions shall not be affected.

15.3.   The Customer is the only person having the right to access the Whzan services and is therefore considered to be the Data Controller.

15.4.   This Contract, 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, English law, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales.

15.5.   Each party shall treat as confidential all information received by it from the other party relating to the other party's business, customers, strategies and plans, and such information may only be used for the purpose of these Terms and Conditions and may only be disclosed in strict confidence to its professional advisers or any person to whom disclosure is required by law, to its employees or subcontractors where reasonably necessary for the purposes envisaged by these Terms and Conditions, and where otherwise specifically permitted by these Terms and Conditions.