



Software as a service agreement  
(SaaS)

June 2020

M-SAAS-001

# SOFTWARE AS A SERVICE AGREEMENT

## PARTIES

1. **AAH Software Limited** incorporated and registered in England and Wales with company number 10120941 whose registered office is at Centrum, Norwich Research Park, Norwich, United Kingdom, NR4 7UG (“**AAH Software**” and/or “**Mantal**”).
2. You are the customer who has engaged AAH Software to provide you with the Services (“**Customer**”).

## BACKGROUND

- a. AAH Software Limited has developed the Mantal software application (available online or via an application programming interface (API)) which it makes available to customers to enable End Users to undertake the setup and management of studies and participants from any location. The Software allows the use of external cognitive and psychometric testing provided by NeurOn.
- b. The Customer wishes to use the Software pursuant to its commercial operations and/or for research purposes.
- c. AAH Software has agreed to provide, and the Customer has agreed to use, the Software subject to the terms and conditions of this Agreement.

## AGREED TERMS

### 1. INTERPRETATION

- 1.1. The definitions and rules of interpretation in this clause apply in this Agreement.

**Authorised Users:** those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England.

**End User Data:** the data inputted by End Users into the Software in order to fulfil the study and software requirements.

**Documentation:** any documents and materials made available to the Customer by AAH Software from time to time which sets out a description of the Services and/or any user instructions for the Services.

**Effective Date:** the date that this Agreement is deemed to be agreed by the parties pursuant to clause 2.2 or as otherwise agreed by the parties in writing.

**End Users:** clinical clients, research participants and other individuals who use the Software.

**Intellectual Property Rights:** any patents, trade marks, service marks, copyright, database rights, moral rights, design rights, unregistered design rights, domain names, rights in get-up, topography rights, know-how, confidential information and any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in England or any other part of the world together with any goodwill relating or attached to such rights;

**Normal Business Hours:** 9.00 am to 5.00 pm Monday to Thursday, 9.00 am to 4.00 pm Friday local UK time, each Business Day.

**Data:** the data provided through the Software based on the End User Data provided by the applicable End Users.

**Renewal Period:** the period described in clause 11.2.

**Services:** the services provided by AAH Software to the Customer under this Agreement for the use of the Software during the Subscription Period.

**Software:** the software application provided by AAH Software via <https://mantal.co.uk> or the software as determined by AAH Software from time to time, as more particularly described in the Documentation.

**Subscription Fees:** the subscription fees payable by the Customer to AAH Software for the Services.

**Subscription Period:** the period of time for the provision of the Services (which may be on a pay-per use basis, fixed costs or on a monthly or annual basis).

**Support Services Policy:** AAH Software's policy for providing support in relation to the Services, as updated from time to time.

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or

any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2. References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.
- 1.3. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular. The terms 'including', 'include', 'in particular' or any similar expression shall be illustrative only and are not intended to limit the sense of the words preceding those terms.
- 1.4. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.5. Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.6. A reference to 'writing' or 'written' includes email unless stated otherwise.

## 2. ENGAGEMENT

- 2.1. This Agreement shall:
  - a. apply to and be incorporated into the relationship between AAH Software and the Customer in relation to the provision of the Services; and
  - b. prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
  - c. This Agreement will be deemed to be accepted by the Customer upon the Customer using the Services after its receipt of this Agreement, or its express acceptance of the terms of this Agreement (whichever occurs earliest).

## 3. CUSTOMER OBLIGATIONS

- 3.1. In relation to the Authorised Users, the Customer undertakes that each Authorised User shall keep a secure password for their use of

the Services and that each Authorised User shall keep their password confidential.

- 3.2. The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its 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; is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or in a manner that is otherwise illegal or causes damage or injury to any person or property, and AAH Software reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 3.3. The Customer shall not:
  - a. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
    - i. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
    - ii. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
  - b. access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation;
  - c. use the Services and/or Documentation to provide services to third parties;
  - d. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
  - e. attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as permitted by this Agreement.
- 3.4. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify AAH Software.

- 3.5. The rights provided under this clause 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.
- 3.6. The Customer shall:
- a. provide AAH Software with:
    - i. all necessary co-operation in relation to this Agreement;  
and
    - ii. all necessary access to such information as may be required by AAH Software; in order to provide the Services, including but not limited to security access information and configuration services;
  - b. comply with all applicable laws and regulations with respect to its activities under this Agreement;
  - c. carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner;
  - d. ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
  - e. obtain and shall maintain all necessary licences, consents, and permissions necessary for AAH Software, its contractors and agents to perform their obligations under this Agreement;
  - f. ensure that its network and systems comply with the relevant specifications provided by AAH Software from time to time;  
and
  - g. be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to AAH Software's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

## 4. SERVICES

- 4.1. AAH Software shall, during the Subscription Period, make the Software available to the Customer's End Users and provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.
- 4.2. AAH Software shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

- a. planned maintenance carried out outside of Normal Business Hours; and
  - b. unscheduled maintenance performed during Normal Business Hours, provided that AAH Software has used reasonable endeavours to give the Customer at least two Normal Business Hours' notice in advance.
- 4.3. The Software will generate Data which will be available to the Customer and End Users within the Software dashboard, or via secure download.

## 5. AAH SOFTWARE'S OBLIGATIONS

- 5.1. Subject to the terms and conditions of this Agreement, AAH Software hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Period solely for the Customer's internal business operations.
- 5.2. Subject to the terms and conditions of this Agreement, AAH Software hereby grants to the Customer a non-exclusive, non-transferable right to permit the End Users to use the Software during the Subscription Period to enable them to create the Data.
- 5.3. Subject to clause 5.5, AAH Software warrants that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 5.4. Clause 5.3 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to AAH Software's instructions, or modification or alteration of the Services by any party other than AAH Software or AAH Software's duly authorised contractors or agents. If the Services do not conform with clause 5.3, AAH Software will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the warranty set out in clause 5.3.
- 5.5. Notwithstanding the foregoing, AAH Software:
  - a. shall ensure that the Data will be the same provided by the applicable End User, however any Data is indicative only and is subject to interpretation;
  - b. does not warrant that the use of the Services will be uninterrupted or error-free;

- c. does not warrant that the Services, Documentation and/or the Data obtained by the Customer through the Services will meet the Customer's requirements; and
  - d. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 5.6. AAH Software warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of the Services under this Agreement.

## 6. CHARGES AND PAYMENT

- 6.1. The Subscription Fees payable by the Customer during the Subscription Period shall be as displayed through the software or as quoted by AAH Software.
- 6.2. The Customer shall pay the Subscription Fees in arrears for the Subscription Period. For the avoidance of doubt, in the event of the termination of this Agreement for any reason, all Subscription Fees from the effective date of termination until the end of the then current Renewal Period will become immediately due and payable by the Customer, together with any outstanding Subscription Fees due at the effective date of termination.
- 6.3. The Customer must pay each invoice within 30 days after the date of the invoice.
- 6.4. If AAH Software has not received payment of an invoice by the applicable due date, and without prejudice to any other rights and remedies of AAH Software:
- a. AAH Software may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and AAH Software shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
  - b. interest shall accrue on a daily basis on such due amounts at an annual rate equal to 8% over the then current base lending rate of Barclays Bank from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 6.5. All amounts and fees stated or referred to in this Agreement:
- a. shall be payable in pounds sterling;



- b. are non-cancellable and non-refundable;
  - c. are exclusive of value added tax, which shall be added to AAH Software's invoices (where applicable).
- 6.6. AAH Software shall be entitled to increase the Subscription Fees and/or the excess storage fees payable at the start of each Renewal Period.

## 7. CUSTOMER DATA AND INTELLECTUAL PROPERTY RIGHTS

- 7.1. AAH Software hereby assigns the Intellectual Property Rights in the Data to the Customer.
- 7.2. In the event of any loss or damage to End User Data or Data, the Customer's sole and exclusive remedy shall be for AAH Software to use reasonable commercial endeavours to restore the lost or damaged End User Data or Data from the latest back-up of such data maintained by AAH Software in accordance with its archiving procedure in effect from time to time. AAH Software shall not be responsible for any loss, destruction, alteration or disclosure of End User Data and/or Data caused by any third party (except those third parties sub-contracted by AAH Software to perform services related to End User Data and/or Data maintenance and back-up).
- 7.3. The Customer hereby grants to AAH Software a non-exclusive, perpetual, irrevocable, transferable, royalty-free, worldwide licence to use the or Data in relation to any AAH Software services from time to time, provided that it is anonymised and/or aggregated in a manner so that it ceases to be personally identifiable data.
- 7.4. The Customer acknowledges and agrees that AAH Software and/or its licensors own all Intellectual Property Rights in the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any Intellectual Property Rights, or any other rights or licences in respect of the Services or the Documentation.
- 7.5. AAH Software warrants that it has all Intellectual Property Rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.
- 7.6. The Customer will indemnify and keep AAH Software indemnified against all losses, costs and liabilities and all expenses, including reasonable legal or other professional expenses, suffered or incurred by AAH Software arising out of or in connection with any claim in relation to:

- a. any content, information or materials provided by the Customer to AAH Software directly or indirectly pursuant to the Services which are of a defamatory, offensive or illegal nature or that infringe data protection or privacy rights; and
- b. actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with any content, information or materials provided by the Customer to AAH Software pursuant to the Services.

## 8. CONFIDENTIALITY

- 8.1. A party ("**Receiving Party**") will keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed (either orally, in writing or by demonstration) to the Receiving Party by the other party ("**Disclosing Party**") or its employees, agents or sub-contractors and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain ("**Confidential Information**").
- 8.2. In relation to any Confidential Information received from the Disclosing Party or from a third party on behalf of the Disclosing Party, the Disclosing Party and the Receiving Party agree:
  - a. to treat the Confidential Information in confidence and to use it only for the purpose of discharging the Receiving Party's obligations under this Agreement;
  - b. not to disclose the Confidential Information to any third party without the express written permission of the Disclosing Party (except that the Receiving Party may disclose the Confidential Information to its officers, employees, consultants, agents and sub-contractors who need access to the Confidential Information in connection with discharging the Receiving Party's obligations under this Agreement and provided that such officers, employees, consultants, agents and sub-contractors are made aware of the confidential nature of the Confidential Information and are subject to confidentiality obligations at least as onerous as those set out in this Agreement); and
  - c. to treat the Confidential Information with the same degree of care and with sufficient protection from unauthorised disclosure as the Receiving Party uses to maintain its own confidential or proprietary information.

- 8.3. Nothing in this Agreement will prevent the Receiving Party from using or disclosing any Confidential Information which:
- a. is in or comes into the public domain in any way without breach of this Agreement by the Receiving Party or any person or entity to whom it makes disclosure;
  - b. the Receiving Party can show was:
    - i. in its possession or known to it by being in its use or being recorded in its files prior to receipt from the Disclosing Party and was not acquired by the Receiving Party from the Disclosing Party under an obligation of confidence; or
    - ii. to have been independently developed by the Receiving Party without reference to the Confidential Information;
  - c. the Receiving Party obtains or has available from a source other than the Disclosing Party without breach by the Receiving Party or such source of any obligation of confidentiality or non-use;
  - d. is disclosed by the Receiving Party with the prior written approval of the Disclosing Party; or
  - e. is required by law to be released (e.g. by a court order), provided that, when permitted by the applicable law, the Disclosing Party is given as much prior written notice as possible of such request.
- 8.4. This clause 8 shall survive termination of this Agreement, however arising.

## 9. DATA PROTECTION

- 9.1. The parties acknowledge and agree that the processing of any Personal Data will be governed by the terms of a Data Processing Agreement which the parties will agree to enter in good faith as a condition of entering into this Agreement.

## 10. LIMITATION OF LIABILITY

- 10.1. This clause 10 sets out the entire financial liability of each party (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the other party:
- a. arising under or in connection with this Agreement;
  - b. in respect of any use made by the Customer of the Services, the Documentation, the Data or any part of them; and
  - c. in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

- 10.2. Except as expressly and specifically provided in this Agreement:
- a. the Customer assumes sole responsibility for results obtained from the use of the Services, the Documentation and the Data by the Customer, and for conclusions drawn from such use. AAH Software shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to AAH Software by the Customer in connection with the Services;
  - b. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
  - c. the Services, the Documentation and the Data are provided to the Customer on an “as is” basis.
- 10.3. Nothing in this Agreement limits or excludes the liability of either party for death or personal injury resulting from negligence or for any damage or liability incurred by a party as a result of fraud or fraudulent misrepresentation by the other party.
- 10.4. Subject to clause 10.3 and excluding any provisions in this Agreement where an indemnity is provided by either party:
- a. neither party will be liable for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss or corruption of data or information or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
  - b. each party’s total liability to each other party in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising under or in connection with this Agreement will be limited to:
    - i. a sum of £1,000 during any free trial of the Software; and
    - ii. the Subscription Fees paid or payable for the Services giving rise to such liability during the then current Renewal Period.

## 11. TERM AND TERMINATION

- 11.1. Where the Subscription Period is on a one-off basis or for a fixed fee, this Agreement shall, unless otherwise terminated as provided in this clause 11, commence on the Effective Date and shall continue for the duration of the Subscription Period. Subject to clause 11.2,

this Agreement will automatically terminate at the end of the Subscription Period.

- 11.2. Where the Subscription Period is on a monthly or annual basis, this Agreement shall be automatically renewed for successive periods equal to the initial Subscription Period (each a “**Renewal Period**”), unless:
- a. either party notifies the other party of termination, in writing, at least 30 days before the end of the then current Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Renewal Period; or
  - b. otherwise terminated in accordance with the provisions of this Agreement;
- 11.3. Without limiting any other rights or remedies, either party (“**Terminating Party**”) may terminate this Agreement with immediate effect by providing written notice to the other party (“**Defaulting Party**”) on or at any time after the occurrence of any of the events specified below:
- a. a breach by the Defaulting Party of its obligations under this Agreement which (if the breach is capable of remedy) the Defaulting Party has failed to remedy within 14 days after receipt of notice in writing from the Terminating Party requiring the Defaulting Party to do so;
  - b. an event, including (or similar in nature to) the following:
    - i. the Defaulting Party is unable to pay its debts as they fall due;
    - ii. the Defaulting Party goes into liquidation either compulsorily (except for the purpose of reconstruction or amalgamation) or voluntarily;
    - iii. a receiver is appointed in respect of the whole or any part of the Defaulting Party;
    - iv. a provisional liquidator is appointed to the Defaulting Party or the Defaulting Party enters into a voluntary arrangement or any other composition or compromise with the majority by value of its creditors or has a winding-up order or passes a resolution for the voluntary winding-up or has an administrative receiver appointed or takes steps towards any such event; or
    - v. the Defaulting Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 11.4. On termination of this Agreement for any reason:

- a. all licences for the Customer and any Authorised Users to use the Services and the Documentation shall immediately terminate;
  - b. AAH Software will have no obligation to repay any charges paid by the Customer;
  - c. excluding any End User Data and Data, each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party; and
  - d. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.
- 11.5. Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

## 12. FORCE MAJEURE

Neither party shall in any circumstances have any liability to the other party under this Agreement if it is prevented from, or delayed in, performing its obligations under this Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes or illness involving the workforce of AAH Software, failure of a utility service or transport network, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, earthquake or other natural event or default of suppliers or sub-contractors. If the force majeure event continues for a period of four weeks or more, the unaffected party may terminate this Agreement with immediate effect by providing the other party with written notice.

## 13. VARIATION

- 13.1. Subject to clause 6.6, AAH Software reserves the right at any time to update this Agreement and to impose new or additional terms. If the Customer continues to use the Services after being notified of any such modification or additional terms, the Customer will be deemed to have accepted these changes and they will be incorporated into this Agreement.

13.2. Subject to clause 13.1, no variation of this Agreement will be effective unless it is in writing, or agreed electronically, by the authorised representatives of the parties.

## 14. MISCELLANEOUS

- 14.1. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that are not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 14.2. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy. The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 14.3. The Customer shall not, without the prior written consent of AAH Software, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. AAH Software may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 14.4. Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 14.5. No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 14.6. If any provision or part-provision of this Agreement are or become invalid, illegal or unenforceable, it shall be deemed modified to the

minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

- 14.7. All notices must be in writing and are deemed given when mailed by registered or certified mail, return receipt requested, to the other party's address detailed at the beginning of this Agreement. It is agreed that serving notice by email or fax will not be an effective method of providing notice of a claim under this Agreement.

## 15. LAW AND JURISDICTION

This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts.