

## Welcome to eMR

We are excited to welcome you to use the eMR portal and all the services provided to your Surgery for processing SARs (copy patient record) and AMRA (Insurance/DWP/DVLA) medical reports.

### SOME OF THE BASICS:

We are...	MediData Exchange Limited Ty Derw, Lime Tree Court Mulberry Drive, Cardiff Gate Business Park Pontprennau, Cardiff Wales CF23 8AB
How to contact us	By phone: +3333055774 By email: <a href="mailto:emr@medi2data.com">emr@medi2data.com</a>
How we will contact you	By telephone or email to the number or email address you most recently provided to us
Governed by the law of	England and Wales

### Surgery fees and payment

Fee for using the eMR	<b>We offer the eMR free of charge to GP Surgeries.</b>
Payment of Surgery Fees	The fees payable to you for completing an instruction will be agreed on a case by case basis, which will depend on the time it takes to complete and return the medical report.
Payment terms	Once we have received the surgery fee payable from the client who requested the instruction, we will pay the surgery fees due to you for the previous month by the 7 <sup>th</sup> business day of the following month.  You must ensure you tell us the bank account the surgery fees should be paid to.

### Availability of the eMR Portal

Suspending availability of eMR	We may have to suspend the availability of eMR to deal with technical problems, make minor technical changes or to update it to reflect changes in laws and regulatory requirements.
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### When the agreement ends

How can you end the agreement	We hope that we can work together and the eMR portal will be of value to you however if you want to terminate the agreement, you can do so by giving us 14 days' written notice by emailing us at <a href="mailto:emr@medi2data.com">emr@medi2data.com</a> , letting us know you wish to end the agreement. If you wish to end the agreement, you will still be required to complete any instructions which were sent to you prior to the date you terminated the agreement.
Ending the agreement due to a breach	If something goes wrong, we will be able to terminate the agreement early upon a material breach of the contract by you. We will give you 14 days to put any material breach right and if you do not put it right in this time, the agreement would be terminated immediately.
If the agreement ends...	We will use reasonable endeavours to write to you to let you know we are going to withdraw the availability of the eMR in advance of doing so.

Our full Standard Terms and Conditions are set out below.

BY CLICKING ON THE "ACCEPT" BUTTON BELOW YOU AGREE TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS DO NOT USE THE eMR.

We look forward to working with you.

## END USER LICENCE AGREEMENT AND STANDARD TERMS AND CONDITIONS

### PLEASE READ THESE LICENCE TERMS CAREFULLY

#### Who we are and what this agreement does

We, Medidata Exchange Limited (**MediData**), of Ty Derw, Lime Tree Court, Cardiff Business Gate, Cardiff, CF23 8AB, United Kingdom license you to use:

- a) the Electronic Medical Report portal (**eMR**) and any updates or supplements to it;
- b) the related electronic documentation made available in the eMR (**Documentation**); and
- c) the service you connect to via the eMR and the content we provide to you through it (**Service**), as permitted in these terms.

#### Your privacy

Under data protection legislation applicable in England and Wales, we are required to provide you with certain information about who we are, how we process your personal data and for what purposes and your rights in relation to your personal data and how to exercise them. This information is provided in MediData's privacy policy which can be accessed [here](#). It is important that you read that information.

Please be aware that internet transmissions are never completely private or secure and that any message or information you send using the eMR or any Service may be read or intercepted by others, even if there is a special notice that a particular transmission is encrypted.

#### Operating system requirements

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The eMR requires a computer, mobile or handheld device.

### **Support for eMR and how to tell us about problems**

**Support.** If you want to learn more about the eMR or the Service or have any problems using them, please take a look at our support resources at [www.medi2data.com](http://www.medi2data.com) or in the eMR, or contact us for further information.

**Contacting us (including with complaints).** If you think the eMR or the Service is faulty or misdescribed or wish to contact us for any other reason, please email us at [emr@medi2data.com](mailto:emr@medi2data.com) on +3333055774.

**How we will communicate with you.** If we have to contact you, we will do so by email or telephone using the most recent contact details you have provided to us.

### **How you may use the eMR, including how many devices you may use it on**

In return for your agreeing to comply with these terms you may:

- d) download or stream a copy of the eMR onto a handheld or mobile device and view, use and display the eMR and the Service on such devices for your purposes only;
- e) use any Documentation to support your permitted use of the eMR and the Service;
- f) provided you comply with the Licence Restrictions (as defined below), print off a copy of the Documentation for back-up purposes; and
- g) receive and use any free supplementary software code or update of the eMR incorporating "patches" and corrections of errors as we may provide to you.

You must be 18 or over to accept these terms, download and use the eMR.

You are not permitted to transfer the eMR to someone else.

We are giving you personally the right to use the eMR and the Service as set out above. You may not otherwise transfer the eMR or the Service to anyone else. If you sell any device on which the eMR is installed, you must remove the eMR from it.

### **Changes to these terms**

We may need to change these terms to reflect changes in law or best practice or to deal with additional features which we introduce. We will give you notice of any change by notifying you of a change when you next start the eMR.

If you do not accept the notified changes you will not be permitted to continue to use the eMR and the Service.

### **Update to the eMR and changes to the Service**

From time to time we may automatically update the eMR and change the Service to improve performance, enhance functionality, reflect changes to the operating system or address security issues. We may ask you to update the eMR for these reasons.

If you choose not to install such updates or if you opt out of automatic updates you may not be able to continue using the eMR and the Service.

### **If someone else owns the device you are using**

If you download the eMR onto any phone or other device not owned by you, you must have the owner's permission to do so. You will be responsible for complying with these terms, whether or not you own the phone or other device.

### **We may collect technical data about your device**

By using the eMR or the Service, you agree to us collecting and using technical information about the devices you use the eMR on and related software, hardware and peripherals to improve our products and to provide the Service to you.

### **We are not responsible for other websites you link to**

The eMR or any Service may contain links to other independent websites which are not provided by us. Such independent sites are not under our control, and we are not responsible for and have not checked and approved their content or their privacy policies (if any).

You will need to make your own independent judgement about whether to use any such independent sites, including whether to buy any products or services offered by them.

### **Licence restrictions**

You agree that you will:

- h) not sub-license, rent, lease, loan, provide, or otherwise make available, the eMR or the Service in any form, in whole or in part to any person without prior written consent from us;
- i) not copy the eMR, Documentation or Service, except as part of the normal use of the eMR or where it is necessary for the purpose of back-up or operational security;
- j) not translate, merge, adapt, vary, alter or modify the whole or any part of the eMR, Documentation or Service nor permit the eMR or the Service or any part of them to be combined with, or become incorporated in, any other programs;
- k) not disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the eMR or the Service nor attempt to do any such things, except to the extent that (by virtue of sections 50B and 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are necessary to decompile the eMR to obtain the information necessary to create an independent program that can be operated with the eMR or with another program, and provided that the information obtained by you during such activities:

is only used only for the purpose of achieving inter-operability of the eMR with another software programme;

is not disclosed or communicated without MediData's prior written consent to any third party;

is not used to create any software that is substantially similar in its expression to the eMR;

is kept secure;

- l) keep all copies of the eMR secure and to maintain accurate and up-to-date records of the number and locations of all copies of the eMR;
- m) not to provide or otherwise make available the eMR in whole or in part, in any form to any person without prior written consent from MediData; and
- n) comply with all applicable technology control or export laws and regulations that apply to the technology used or supported by the eMR or any Service;

together the "**Licence Restrictions**".

### **Acceptable use restrictions**

You must:

- o) not use the eMR or any Service in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these terms, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, such as viruses, or harmful data, into the eMR, any Service or any operating system;
- p) not infringe our intellectual property rights or those of any third party in relation to your use of the eMR or any Service, including by the submission of any material (to the extent that such use is not licensed by these terms);
- q) not transmit any material that is defamatory, offensive or otherwise objectionable in relation to your use of the eMR or any Service;

- r) not use the eMR or any Service in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users; and
- s) not collect or harvest any information or data from any Service or our systems or attempt to decipher any transmissions to or from the servers running any Service;

together the “**Acceptable Use Restrictions**”.

### **Intellectual property rights**

All intellectual property rights in the eMR, the Documentation and the Service throughout the world belong to us and the rights in the eMR and the Service are licensed (not sold) to you. You have no intellectual property rights in, or to, the eMR, the Documentation or the Service other than the right to use them in accordance with these terms.

### **Limitation of liability**

We do not exclude or limit in any way our liability to you where it would be unlawful to do so. This means we do not exclude liability for death or personal injury caused by our negligence, fraud or fraudulent misrepresentation or for any other liability that cannot be excluded or limited by English and Welsh Law.

We exclude our liability for losses that:

1. were not foreseeable to you and us when the contract was formed;
2. that were not caused by a breach on our part;
3. loss of profit, loss of business, business interruption, or loss of business opportunity; and
4. damage that you could have avoided by following our advice to apply an update offered to you or for damage that was caused by you failing to correctly follow installation instructions or to have in place the minimum system requirements advised by us.

MediData’s maximum aggregate liability under or in connection with these terms (including your use of the eMR and the Service) whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to £1,000,000.

**Limitations to the eMR and the Service.** Although we make reasonable efforts to update the information provided by the eMR and the Service, we make no representations, warranties or guarantees, whether express or implied, that such information is accurate, complete or up to date.

**Please back-up content and data used with the eMR.** We recommend that you back up any content and data used in connection with the eMR to protect yourself in case of problems with the eMR or the Service.

**Check that the eMR and the Services are suitable for you.** You acknowledge and agree that the eMR has not been developed to meet your individual requirements. It is your responsibility to ensure that the facilities and functions of the eMR and the Services meet your requirements.

**We are not responsible for events outside our control.** If our provision of the Service or support for the eMR or the Service is delayed by an event outside our control, then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. We will not be liable for delays caused by the event.

### **We may end your rights to use the eMR and the Service if you break these terms.**

We may end your rights to use the eMR and the Service at any time by contacting you if you have broken these terms in a material way, or if you have breached the Acceptable Use Restrictions or Licence Restrictions (as above). If what you have done can be put right, we may give you the right to remedy such breach within 14 days after the service of written notice from us requiring you to do so.

If we end your rights to use the eMR and the Service:

- t) all rights granted to you in these terms shall cease;
- u) you must stop all activities authorised by these terms, including your use of the eMR and the Service;

you must delete or remove the eMR from all devices in your possession and immediately destroy all copies of the eMR which you have and confirm to us that you have done this.

## **Transfer of this agreement to someone else**

We may transfer our rights and obligations under these terms to another organisation. We will always tell you in writing if this happens and we will ensure that the transfer will not affect your rights under the contract.

You need our consent to transfer your rights to someone else. You may only transfer your rights or your obligations under these terms to another person if MediData agree in writing.

## **Communication between us**

If you wish to contact us in writing, or if any condition in this licence requires you to give us notice in writing, you can send this to us by e-mail at [emr@medi2data.org](mailto:emr@medi2data.org).

## **No rights for third parties**

This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

Each of the paragraphs of these terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.

## **Delay in enforcing the contract**

Even if we delay in enforcing this contract, we can still enforce it later. If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaking this contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.

## **Which laws apply to this contract and where you may bring legal proceedings**

These terms are governed by the laws of England and Wales and you can bring legal proceedings in respect of the products in the English and Welsh Courts.

## **STANDARD TERMS AND CONDITIONS**

### **(A) Interpretation**

The following definitions and rules of interpretation apply in these Terms.

#### **App**

means the Electronic Medical Report application, version EMR2018.1.

#### **Client**

means a client of ours who requests an Instruction.

#### **Commencement Date**

has the meaning given in clause 4.

#### **Contract**

means the contract between us and you for your use of the App, in accordance with these Terms.

#### **Controller, Consent, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate, technical and organisational measures**

as defined in the Data Protection Legislation.

#### **Data Protection Legislation**

means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party to the Contract relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

#### **Deliverables**

means each medical report and any data contained in each such report, created by you, your agents or employees through the App.

### **Intellectual Property Rights**

patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

### **Instruction**

means a new instruction to provide the Deliverables through the App, as set out in an email from us to you from time to time.

### **Privacy Policy**

means the privacy policy of MediData Exchange Limited, as amended from time to time.

### **Services**

means the service you connect to via the App and the content we provide to you through it.

### **Surgery Fees**

the charges payable by us to you for completing an Instruction.

### **Terms**

means these terms and conditions, as amended from time to time.

### **UK Data Protection Legislation**

means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), as amended.

A reference to a statute or statutory provision is a reference to it as amended or re-enacted from time to time. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

Annex A Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

#### **(B) These terms**

- (i) These Terms apply to us making the App available to you and your use of the App, including but not limited to when providing the Deliverables.
- (ii) Please read these Terms carefully before you download the App. These Terms tell you who we are, how we will provide the App to you, your obligations, how you and we may change or end the Contract, what to do if there is a problem and other important information.
- (iii) These Terms constitute the entire agreement between us in relation to your use of the App. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of us which is not set out in these Terms and that you shall have no claim for innocent or negligent misrepresentation based on any statement in these Terms.

#### **(C) Information about us and how to contact us**

- (i) We are MediData Exchange Limited a company limited by shares registered in England and Wales. Our company registration number is 09481183 and our registered office is at Ty Derw, Lime Tree Court Mulberry Drive, Cardiff Gate Business Park, Pontprennau, Cardiff, Wales, CF23 8AB, United Kingdom. Our registered VAT number is 272368684.
- (ii) **How to contact us.** You can contact us by telephoning us at +3333055774 or by sending us an email to [emr@medi2data.org](mailto:emr@medi2data.org).

- (iii) **How we may contact you.** If we have to contact you we will do so by telephone or sending you an email to the email address or by writing to you at the postal address you most recently provided to us.

(D) **Our contract with you**

The Contract will come into existence between you and us upon you indicating your acceptance to the Terms by selecting the tick box below ("**Commencement Date**").

(E) **Providing the App**

- (i) We will make the App available for download by you as soon as you have accepted the Terms and, subject to these Terms, we will make the App available to you until the Contract ends in accordance with clause 8 of these Terms.
- (ii) We reserve the right to amend the specification of the App if required by any applicable statutory or regulatory requirement or if the amendment will not materially affect the nature or quality of the App. We may update or require you to update the App, provided that the App shall always match the specification of it that we provided to you before you downloaded it.
- (iii) We may have to suspend the App to:
  - (i) deal with technical problems or make minor technical changes to the App;
  - (ii) update the App to reflect changes in relevant laws and regulatory requirements.
- (iv) If the App is unavailable due to an event outside our control, then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. Provided we do this we will not be liable for delays caused by the event.
- (v) We are not obliged to continue to provide the App or the Services. We may withdraw access to and use of the App and the Services at any time by notice in writing to you without liability or fault on our part.

(F) **Your obligations**

- (i) From the Commencement Date and for the duration of the Contract, you shall, complete any Instruction you receive through the App in accordance with the terms of the Contract.
- (ii) You shall meet any performance dates for completing the Instruction as specified in the Instruction and time is of the essence in relation to any of these performance dates.
- (iii) It is your responsibility to ensure that:
  - (i) you co-operate with us in all matters relating to the App,
  - (ii) you comply with all Instructions;
  - (iii) you complete any Instruction with all reasonable care, skill and diligence in accordance with best practice in your industry, profession or trade;
  - (iv) the Deliverables shall be fit for the purpose for which they are created;
  - (v) you provide us with such information we may reasonably require in order to make the App available to you, and ensure that such information is complete and accurate in all material respects at all times;
  - (vi) you obtain and maintain all necessary licences, permissions and consents which may be required to use the App and to provide the Deliverables;
  - (vii) you shall comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply from time to time to the use of the App and to producing the Deliverables; and
  - (viii) you shall not do or omit to do anything which may cause us to lose any licence, authority, consent or permission on which we rely for the purpose of conducting our business.



- (iv) If our ability to make the App available to you is prevented or delayed by any failure by you to fulfil any obligation listed in clause 6.3 (**Your Default**):
  - (i) in this unlikely event, we will be entitled to withdraw the availability of the App until you remedy Your Default; and
  - (ii) we will not be responsible for any costs or losses you or others sustain or incur arising directly or indirectly from our failure to make the App available.

(G) **Data Protection**

- (i) Both you and us will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 7, **Applicable Laws** means (for so long as and to the extent that they apply) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.
- (ii) We will only use your Personal Data in accordance with our Privacy Policy which can be accessed here.
- (iii) Both you and we acknowledge that for the purposes of the Data Protection Legislation, you are the Controller and we are the Processor of any Personal Data processed as a result of your use of the App and you providing the Deliverables.
- (iv) Without prejudice to the generality of clause 7.1, you will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to us and/or lawful collection of the Personal Data by us or on your behalf for the duration of and for the purposes of this Contract.
- (v) Without prejudice to the generality of clause 7.1, we shall, in relation to any Personal Data processed by us in connection with your use of the App and providing the Deliverables under this Contract:
  - (i) process that Personal Data only on the documented instructions of you unless we are required by Applicable Laws to otherwise process such Personal Data. Where we are relying on Applicable Laws as the basis for processing Personal Data, we shall promptly notify you of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit us from notifying you;
  - (ii) ensure we have in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - (iii) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
  - (iv) not transfer any Personal Data outside of the European Economic Area unless we obtain your prior written consent and the following conditions are fulfilled:
    - (A) we or you have provided appropriate safeguards in relation to the transfer;
    - (B) the Data Subject has enforceable rights and effective legal remedies;
    - (C) we comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

- (D) we comply with reasonable instructions notified to it in advance by you with respect to the processing of the Personal Data;
  - (v) assist you, at your cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (vi) notify you without undue delay on becoming aware of a Personal Data Breach;
  - (vii) at your written direction, delete or return Personal Data and copies thereof to you on termination of the Contract unless required by Applicable Law to store the Personal Data; and
  - (viii) maintain complete and accurate records and information to demonstrate its compliance with this clause 7.
- (vi) Without prejudice to the generality of clause 7.1 and subject always to this clause 7, we shall, in relation to any Personal Data processed by us in connection with your use of the App and providing the Deliverables, process that Personal Data for a period of six (6) months from the date the Personal Data is first processed by us, after which time we shall delete the Personal Data unless required by Applicable Law to store the Personal Data or the Data Subject has given Consent for us to continue processing such Personal Data.
- (vii) You consent to us appointing a third-party processor of Personal Data under this Contract. We confirm that we have entered, or (as the case may be), will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 7 and in either case reflect and will continue to reflect the requirements of the Data Protection Legislation. As between us and you, we shall remain fully liable for all acts or omissions of any third-party processor appointed by us pursuant to this clause 7.6.
- (viii) You acknowledge that we are reliant on you for direction as to the extent we are entitled to use and process the Personal Data processed as a result of your use of the App and you providing the Deliverables. Consequently, you shall indemnify us against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by us arising out of or in connection with the breach of the Data Protection Legislation by you, your employees or agents to the extent that such liabilities, costs, expenses, damages and losses arise as a result of instructions received from you or your use of the App.

#### (H) Termination

- (i) If you wish to end the Contract for any reason set out below the Contract will end immediately. The reasons are:
  - (i) we have told you about an upcoming change to the App or these terms which you do not agree to; or
  - (ii) we have told you about an error in the specification of the App and have failed to rectify the error within 30 days of notifying you as such and you do not wish to proceed following this 30 day period.
- (ii) To end the Contract with us at any time, please let us know by emailing us at [emr@medi2data.org](mailto:emr@medi2data.org).
- (iii) Without affecting any other right to remedy available to us, we may end the Contract at any time by notice in writing to you:
  - (i) if you commit a material breach of any term of this Contract and (if such breach is remediable) fail to remedy that breach within 14 days of you being notified in writing to do so; or
  - (ii) because of Your Default;
  - (iii) we suspend or cease carrying on all or a substantial part of our business;

- (iv) if we suffer an insolvency event including but not limited to us suspending payment of our debts or being unable to pay our debts as they fall due or are deemed unable to pay our debts within the meaning of section 123 of the Insolvency Act 1986; a petition is filed, a notice is given, a resolution is passed or an order is made, for or in connection with our winding up; or a receiver is appointed over all or any of our assets; or
- (v) if we wish to stop providing the Services and/or the App for any reason.
- (iv) If we end the Contract pursuant to this clause 8, we will use our reasonable endeavours (wherever possible) to write to you to let you know that we are going to withdraw the availability of the App in advance of doing so but we accept no liability to you for failing to do so.
- (v) Termination of the Contract will not affect your or our rights and remedies that have accrued as at termination.
- (vi) Any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination will remain in full force and effect.

**(I) Intellectual Property**

- (i) All Intellectual Property Rights in the App shall be owned by us.
- (ii) We agree to grant you a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of this Contract to use the App. You may not sub-licence, assign or otherwise transfer the rights granted in this clause 9.2.
- (iii) You agree to grant us a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by you to us for the term of this Contract for the purpose of providing the App to you.

**(J) Surgery Fees and payment**

- (i) Subject to clause 10.2, we will provide the App to you free of charge.
- (ii) We reserve the right to charge for the use of the App at any time during the Contract, upon written notification to you of the fee payable.
- (iii) The Surgery Fees payable to you for completing an Instruction shall be set out in the Instruction within the App and will be based on the time it takes for you to complete the Instruction. The Surgery Fees shall be the full and exclusive remuneration of you for completing an Instruction. The Surgery Fees shall include every cost and expense you incur in connection with completing an Instruction.
- (iv) The Surgery Fees payable to you exclude amounts in respect of value added tax (**VAT**), which we shall pay at the prevailing rate (if applicable).
- (v) In consideration of the supply of the Deliverables by you, we shall pay the sum due plus VAT (if applicable) for each of the Instructions completed in the previous month on the 7<sup>th</sup> business day of the following month to a bank account nominated in writing by you to us. For the avoidance of doubt, we shall not be obliged to pay the Surgery Fees until we have received notification from you of the bank account to which the Surgery Fees shall be paid.
- (vi) The Surgery Fees payable to you are subject to, and conditional on, payment to us from the Client who requested the Instruction.
- (vii) You and we agree that the App shall maintain complete and accurate records of the Instructions completed by you.

**(K) Limitation of liability**

- (i) Nothing in these terms shall limit or exclude yours and our liability for:
  - (i) death or personal injury caused by our negligence;
  - (ii) fraud or fraudulent misrepresentation; or

- (iii) any matter in respect of which it would be unlawful for us to exclude or restrict liability.
- (ii) Subject to clause (i):
  - (i) we shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise arising under or in connection with the Contract or any other contract between us for:
    - (A) loss of profit;
    - (B) loss of agreements or contracts;
    - (C) loss of use or corruption of software, data or information; and
    - (D) any indirect or consequential loss.
  - (ii) our total liability to you for all other losses arising under or in connection with this Contract and any other contract between us, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to £1,000,000.
- (iii) This clause 11 will survive termination of the Contract.

**(L) Indemnity**

- (i) You shall indemnify us against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by us arising out of or in connection with:
  - (i) your breach or negligent performance or non-performance of this Contract;
  - (ii) any claim made against us by a Client or such other third party arising out of, or in connection with, your use of the App and the Deliverables, to the extent such claim arises out of the breach, negligent performance or failure or delay in providing the Deliverables and your use of the App in accordance with the terms of this Contract.
- (ii) This clause 12 shall survive termination of the Contract.

**(M) Confidentiality**

- (i) You undertake that you will not at any time, disclose to any person any confidential information concerning our business, affairs, customers, Clients or supplier, except as permitted by clause 13.2.
- (ii) You may disclose the confidential information:
  - (i) to such of your employees, officers and representatives who need to know such information for the purpose of carrying out your respective obligations under the Contract or to use the App. You will ensure that such employees, officers and representatives comply with this clause 13;
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (iii) You may only use the confidential information for the purpose of using the App and for fulfilling your respective obligations under the Contract.

**(N) Communication between us**

- (i) When we use the words "writing" or "written" in these terms, this includes emails.
- (ii) Any notice or other communication given by one of us to the other under or in connection with the Contract must be in writing and sent by pre-paid first-class post or other next working day delivery service, or by email.
- (iii) A notice or other communication is deemed to have been received:

- (i) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting; or
- (ii) if sent by email, at 9.00 am the next working day after transmission.
- (iv) In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email, that such email was sent to the specified email address of the addressee last notified to us by you.

**(O) Other important terms**

- (i) Neither of you or us shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for one month, you or us (as the non-affected party) may terminate the Contract by giving 14 days' written notice to the other.
- (ii) We may transfer our rights and obligations under these terms to another organisation. We will always tell you in writing if this happens and we will ensure that the transfer will not affect your rights under the Contract.
- (iii) You may only transfer your rights or your obligations under these terms to another person if we agree to this in writing.
- (iv) Any variation of these Terms only has effect if in writing and signed by you and us (or our respective authorised representatives).
- (v) This Contract is between you and us. This Contract does not give rise to any rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Contract.
- (vi) Each of the paragraphs of the Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- (vii) If we do not insist immediately that you do anything you are required to do under the Terms, or if we delay in taking steps against you in respect of your breaching this Contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.
- (viii) Any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.