

End User Software license agreement (EULA)

CAREFULLY READ THIS SOFTWARE LICENSE AGREEMENT ("AGREEMENT"). BY OPERATING AND/OR DOWNLOADING THE SOFTWARE AND/OR CLICKING THE APPLICABLE BUTTON TO COMPLETE THE INSTALLATION PROCESS, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT WISH TO BECOME A PARTY TO THIS AGREEMENT AND BE BOUND BY ITS TERMS AND CONDITIONS, DO NOT INSTALL OR USE THE SOFTWARE, AND RETURN THE SOFTWARE (WITH ALL ACCOMPANYING WRITTEN MATERIALS) WITHIN THIRTY (30) DAYS OF RECEIPT. ALL RETURNS TO **LICENSOR (MEDICAL BANKS LIMITED)** WILL BE SUBJECT TO LICENSOR'S CURRENT RETURN POLICY. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF AN ENTITY, YOU AGREE THAT YOU HAVE AUTHORITY TO BIND THE ENTITY TO THESE TERMS.

THE TERMS OF THIS AGREEMENT APPLY TO THE COMPUTER SOFTWARE PROVIDED WITH THIS AGREEMENT, ALL UPDATES OR UPGRADES TO THE SOFTWARE THAT MAY BE PROVIDED LATER BY **LICENSOR (MEDICAL BANKS LIMITED)** AS PART OF ANY MAINTENANCE, TECHNICAL SUPPORT, OR OTHER SERVICES PROGRAM FOR THE SOFTWARE FORM PARTY OF THIS AGREEMENT, UNLESS SUCH UPDATE OR UPGRADE COMES WITH SEPARATE SOFTWARE LICENSE.

This agreement is entered into this date: _____ day of _____ 2020, by and between Licensor and licensee.

PARTIES

1. **Medical Banks Limited T/A Medibanks**, a company incorporated in Ireland, registration number 498414) having its registered office at 32 Ranelagh Road, Ranelagh, Dublin 6 (the "**Licensor**"); and
2. _____, a company incorporated in _____, registration number _____ and having its registered office at _____

(the "**Licensee**")

BACKGROUND

‘Licensor’ are the providers of a Staff Bank and Vendor Management platform for end-to-end management of healthcare workforces.

‘Licensee’ operates as a Managed Staff Bank Service Provider or Agency in the healthcare / social care sector and wishes to be able to offer the platform to its customers and/or stakeholders to enable them to better manage their workforce.

‘Market’ This agreement is designed to cover relations between the Licensor and the Licensee in order to be able to respond effectively to business opportunities developing from the Crown Commercial Services framework – contract number: RM6158 - Flexible Resource Pool – Staff bank and/or any other similar business opportunities identified by the Licensee and agreed with the Licensor from time to time

‘Exclusivity’ It is agreed between both parties that the Licensor is the exclusive staff bank system technology provider to the Licensee in bids for business on the Crown Commercial Services framework contract number: RM6158. The Licensor reserves the right to sub-contract to other main contractors on the framework.

This agreement sets out the terms and conditions by which the Licensor appoints the Licensee as an operator/user of its platform, goods and services within agreed territories. This agreement between Licensor (Medibanks) and Licensee or its affiliates, governs the Licensee use of Licensor’s software.

AGREEMENT

1. Definitions

1.1 In this Agreement, except to the extent expressly provided otherwise the following words have the following meaning:

- **‘Acceptance of Terms’** By using the software, the Licensee agrees to be bound by the terms of the EULA. If the Licensee intends entering into this EULA on behalf of an entity, the Licensee represent that they have authority to bind that entity. If the Licensee does not have such authority or the Licensee does not agree to the terms of the EULA, neither the Licensee nor the entity may use the Software and it must be returned to Licensor within 7 days of the date acquired.

- **“You” and “Your”** means the individual or legal entity licensing the software under this EULA.
- **“Use” or “Using”** means to download, install, activate, access or otherwise use the software.
- **“Software”** means the Licensor (Medical Banks Limited) computer programs and any upgrades made available to the Licensee by the Licensor or a Licensor’s approved body licensed to the Licensee by the Licensor.
- **“Agreement”** means this agreement including any Schedules, and any amendments to this Agreement from time to time.
- **“Approved Source”** means (i) Licensor (Medical Banks Limited) or (ii) the Licensor’s authorized reseller, distributor or systems integrator from whom you acquired the software.
- **“Documentation”** is the Licensor user or technical manuals, training materials, specifications or other documentation applicable to the software and made available to Licensee by an approved source.
- **“Entitlement”** means the license detail; including license metric, duration, and quantity provided in a product ID published on Licensor’s price list, claim certificate or right to use notification.
- **“Upgrades”** means all updates, upgrades, bug fixes, error corrections, enhancements and other modifications to the software and backup copies thereof.
- **“Applicable Laws”** means the laws of the jurisdiction of the Republic of Ireland.
- **“Application”** means the release of the Licensor’s workforce management cloud-based application software with the functionality on the Commencement Date more particularly described in Schedule 1.
- **“Authorised User(s)”** means those employees, agents and contractors of the Licensee and those employees, agents and contractors of the Client Users who are authorised by the Licensee to access and use the Software.
- **“Business Day”** means any weekday other than a bank or public holiday in either Republic of Ireland, Northern Ireland, England, Wales or Scotland
- **“Business Hours”** means the hours of 09:00 to 17:00 GMT on a Business Day;

- **“Candidates”** means individuals who are included on the System for the purpose of their being placed by the Licensee in the course of performing the Managed Services;
- **“Change Control”** means the process set out in Clause 13
- **“Client Onboarding Plan”** means the plan pursuant to which the Licensee and the Licensee Group Companies will migrate Client Users onto the System, to be agreed between the parties in writing;
- **“Client User”** means a Licensee Group Company, Licensee Client, Licensee Supplier or Candidate that accesses the System with the permission of the Licensee and the Candidates;
- **“Client User Content”** means all material, data, documentation and other information provided by Client Users or uploaded onto the System by a Client User;
- **“Confidential Information”** means information in any form (including trade secrets, models, software programs, computer outputs, personal data relating to the, Licensor. To include confidential information relating to Licensee’s Client Users or potential Client Users) whether written or oral, of a business, financial or technical nature which is or ought reasonably to be, known to be confidential and which is disclosed by one party (the “Disclosing Party”) or any member of its Group to the other party (the “Receiving Party”) or any member of its Group and in the case of the Licensee shall include without limitation the Licensee Data, the Licensee Materials, the Deliverables and Client User Content;
- **“Data Controller”** bears the meaning given under the GDPR Legislation;
- **“Data Subject”** bears the meaning given under the GDPR Legislation;
- **“Documentation”** means the documentation for the Software produced by the Licensor and delivered or made available by the Licensor to the Licensee.
- **“Effective Date”** means the date of execution of this Agreement;
- **“Exclusivity”** means the licensee can not conduct business with any other Staff Bank technology platform or platform provider in relation to bids for business on the Crown Commercial Services framework – contract number: RM6158 - Flexible Resource Pool – Staff bank without requesting and receiving the written consent from the Licensor.
- **“Force Majeure Event”** means any event which, in respect of either party, affects or may affect the performance of any of its respective obligations under this Agreement and which is outside the reasonable control of such party including fire, war or civil

unrest, Act of God, revolution, act of terrorism, flood or other adverse weather conditions, nation-wide industrial action.

- **"GDPR"** means the General Data Protection Regulation ((EU) 2016/679) (as amended from time to time);
- **Intellectual Property Rights**" means patents, registered designs, rights in design, copyright, database rights, rights in databases, trademarks, service marks, trade or business names, domain names, logos, inventions, secret processes, workflows, formulae, know-how and all rights or forms of protection of a similar nature or effect subsisting anywhere in the world, including applications or registrations for any such right, whether now known or created in the future
- **"Licensee Data"** means the data inputted or uploaded by the Licensee, Client Users and Authorised Users on the System;
- **"Minimum Term"** means, in respect of this Agreement, the period of 48 months beginning on the effective date and thereafter shall be renewed for a period of 12 months, save that on the renewal date either of the parties may serve notice of intention to resend agreement by mutual consent.

2. Grant of Licence: Restrictions.

This agreement represents the entirety of the agreement between the parties.

- A.** In consideration of, and conditioned upon, the Licensee payment of any/all applicable fees to the Licensor, and subject to the terms set forth in this Agreement, the Licensor, hereby grants the Licensee a limited, revocable, non-exclusive right and license to use the software only in the specific configuration allowed by the license type identified in the applicable documentation provided by the Licensor to the Licensee. Unless otherwise provided in this Agreement or in the applicable documentation provided by Licensor.
- B. Restrictions.** the Licensee must not violate any applicable laws in the use of the Software. Unless and only to the extent that this Agreement expressly permits.

Licensee must not:

- I. modify or create derivatives of the Software;
- II. install or use the Software in a floating, concurrent, or any other shared context;

- III. distribute or otherwise make the Software or any password, key, or other access code for the Software available to any third party;
 - IV. reverse engineer, decompile, or disassemble the Software, unless and only to the extent that applicable law expressly prohibits this restriction;
 - V. defeat or work around any access restrictions or encryption in the Software, unless and only to the extent that applicable law expressly prohibits this restriction;
 - VI. sublicense, lease, lend, or rent the Software;
 - VII. remove, minimize, block, or modify any titles, logos, trademarks, copyright and patent notices, digital watermarks, disclaimers, or other legal notices that are included in the Software.
 - VIII. use any Software scripting functionality to create an application that performs the functionality of an editor for a graphical programming environment.
- C. **Licensee** use of the Software must also be in accordance with the applicable documentation that accompanies the Software and not in any manner that circumvents or is intended to circumvent such documentation or the intent of this Agreement.
- D. **Licensee** may make a reasonable number of copies of the Software (only if required) and solely for backup or archival purposes and a reasonable number of copies of the documentation that accompanies the Software (only if required) and solely for internal use in connection with your use of the Software.

3. Term

- 3.1 This Agreement shall come into force upon the Effective Date.
- 3.2 This Agreement shall continue in force indefinitely, subject to termination in accordance with Clause 15 or any other provision of this Agreement.

4. Appointment

- 4.1 This Agreement sets out the terms and conditions, which will govern the supply by the Licensor of Services and provision of the system to the Licensee. The Licensee may only sub-licence the client users to use the system to the same extent and subject to the

same restrictions as the Licensee. The Licensee shall remain responsible to the Licensor for all use made of the System by the Licensee Group Companies.

- 4.2 Except as is otherwise expressly specified in this Agreement, the Licensor shall, at the Licensor's own cost, be solely responsible for providing, or procuring the provision of, all information, rights, technology, software, hardware, data, databases, facilities, premises, management, staff, expertise, accommodation, equipment, and other resources necessary to provide, and shall provide, the Services and System in accordance with this Agreement.

5. Supply of Software, Services and System

- 5.1 The Licensor shall supply the services and the system and otherwise perform its obligations under this Agreement during service hours and at all times.
- 5.2 The Licensor shall provide the Licensee with the Support Service as set out in Schedule 2 and in accordance with this agreement, applicable law and proper standard.
- 5.3 The Licensor will supply (and if required, install) the Software, Services and Deliverables:
- (a) at the Site(s) identified;
 - (b) on or before the Delivery Date;
 - (c) in accordance with agreed Specifications;
 - (d) in accordance with all applicable Laws and standards; and
 - (e) using any identified Key Personnel.
- 5.4 The Licensor will supply the Documentation or information required to enable the Licensee to Use the Software and Services.
- 5.5 The Licensee may not sub-license and must not purport to sub-license any of its rights granted under this agreement without the express written consent of Licensor.
- 5.6 Save to the extent expressly permitted by this Agreement or required by applicable law on a non-excludable basis, any licence granted under this Clause 5 shall be subject to the following prohibitions:
- a) the Licensee must not sell, resell, rent, lease, loan, supply, publish, distribute or redistribute the Software without the prior express and written agreement of the Licensor;

- (b) the Licensee must not alter, edit or adapt the Software;
- (c) the Licensee must not decompile, de-obfuscate or reverse engineer, or attempt to decompile, de-obfuscate or reverse engineer, the Software.

5.7 The Licensee shall be responsible for the security of copies of the Software supplied to the Licensee under this Agreement (or created from such copies) and shall use all reasonable endeavours (including all reasonable security measures) to ensure that access to such copies is restricted to persons authorised to use them under this Agreement.

6 Maintenance

- 6.1 Any software development, upgrades and/or maintenance updates required by Licensee shall be contracted under a separate agreement as between the Parties and must include detailed Statement of Works.
- 6.2 In the event of a change in Applicable Law that necessitates a change to the Services or System, then the Licensor shall promptly, and in any event in good time to ensure that the Services and System remain compliant with Applicable Law, make the necessary changes and the costs of the change shall be borne by the Licensor.

7. Intellectual Property Rights

- 7.1 Except as expressly provided for in this Agreement, the Licensor and/or its agents retain any and all right, title and interest in and to the Software and the System. This Agreement grants no additional express or implied license, right or interest in any Intellectual Property Right of Licensor to the Licensee. The Licensee receives no rights to and will not sell, assign, lease, market, transfer, encumber or suffer to exist any lien or security interest in the Software or the System.
- 7.2 All the Intellectual Property Rights and other rights subsisting or capable of subsisting in the licensee materials and the licensee data (and all modifications made thereto) shall belong to the Licensor.
- 7.3 The Licensee shall permit the Licensor to use certain of the Licensee' trade marks and the Licensee Materials on the System provided that the Licensor complies with any licence for use of the Licensee Intellectual Property and/or any guidelines relating to the use of the Licensee Intellectual Property provided by the Licensee in writing from time to time. If the Licensee does not provide any such licence or guidelines to the Licensor, the Licensor shall have a non-exclusive and non-transferable licence to use

such the Licensee Intellectual Property but only to the extent necessary to perform its obligations under this Agreement.

- 7.4 The Licensors agrees and acknowledges that all right, title and interest in the Licensee Intellectual Property is owned by or licensed to and shall remain vested in or licensed to the Licensee, that all use of the same shall ensure to the benefit of the Licensee and that nothing contained in or undertaken pursuant to this agreement shall give the Licensors any right, title or interest in or to the same. The Licensors shall not use any the Licensee Intellectual Property without the prior written consent of the Licensee, and then solely for the purposes of performing its obligations under this agreement.
- 7.5 If any IP Claim is made against the Licensors, the Licensee or a client user, then the Licensors may, at its option and expense:
 - 7.5.1 modify or amend the Software, System and/or Services or the infringing part thereof in order to avoid any infringement;
 - 7.5.2 procure for the Licensee and its client users the right to continue using, developing, modifying or maintaining the Software, System and/or the Services or infringing part thereof in accordance with the terms of this Agreement;
 - 7.5.3 substitute the Software or infringing part of the Software with other software applications suitable for the Licensee's and its Client Users' purposes
provided that, if the Licensors modifies or replaces the Software, System and/or Services, the modified or replacement Services must comply in full with the requirements of this Agreement, including being of equivalent quality and functionality to the original Software, System and/or Services and the Licensee shall have the same rights in respect thereof as it has under this Agreement in respect of the original Software, System and/or Services.
- 7.6 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Licensors to the Licensee, or from the Licensee to the Licensors or to grant any rights to either party in the other's Intellectual Property Rights.

8. Fees and Payment Terms

- 8.1 **Invoicing and Payment.** Licensors offers the Products for the Fees, as set out in **Schedule 1** and which may be made by Licensors against
 - (a) an invoice or an Order form
 - (b) through use of an authorized electronic payment or, if agreed to by Licensors, by another method of payment.

- 8.2 Licensee undertake to make payment of invoices, in the currency stated on the invoice, into the account stated on the invoice.
- 8.3 The Products provided by the Licensor are billed in advance or by otherwise agreed terms
- 8.4 Payment must reach Licensor in full upon the due date as indicated in the invoice or if not specified in the invoice within thirty (30) days of receiving of the invoice. If any amount is not paid upon the due date, Licensor shall be entitled to receive the amount due plus late payment charge at the rate of 1% per month or part of on the past due balance (or such lower rate as shall be the highest permissible contract rate under applicable law) on all amounts that are not paid on or before the date due. If any amount owing by Licensee under this Agreement for the Products is thirty (30) or more days overdue Licensor may, without limiting other rights and remedies suspend the Products to Licensee until such amounts are paid in full. If the Product is licensed under Subscription License, Licensor will give Licensee at least 7 days' prior notice that the payment is overdue before suspending the Product. In addition, Licensor may terminate a Subscription License and terminate this Agreement in the event of overdue payments in excess of thirty (60) days.
- 8.5 The Licensor may charge the Licensee an invoicing charge for paper invoices. The Licensor shall be entitled to charge a fee for any payment reminders and reserves the right to send the same via e-mail to an invoice reference provided by the Licensee. The Licensee shall be responsible for the reasonable costs incurred by the Licensor when collecting overdue fees.
- 8.6 Notwithstanding the above, the Licensor may for each renewal term of a Subscription License increase its fees upon thirty (30) days prior notice to Licensee (which may be sent by email to the address Licensee have most recently provided to Licensor).
- 8.7 Except as otherwise specified herein or in the invoicing terms,
- (i) fees are based on Products purchased and not actual usage,
 - (ii) payment obligations are non-cancelable, and fees paid are non-refundable, and
 - (iii) quantities purchased cannot be decreased during the relevant Subscription Term.

9. **Warranties**

The Licensor warrants, represents and undertakes to the Licensee that, as at the date of this Agreement:

- it has full capacity, the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
- this Agreement is executed by a duly authorised representative of the Licensor; and

- there are no actions, suits or proceedings or regulatory investigations pending or, to the Licensor's knowledge, threatened against or affecting the Licensor's before any court or administrative body or arbitration tribunal that might affect the ability of the Licensor agrees to meet and carry out its obligations under this Agreement and warrants, represents and undertakes on an on-going basis to the Licensee that:
 - (a) the System, Services, Deliverables and/or Software as provided during the Term will at all times conform in all material respects with the Software Specification, Applicable Laws and the terms of this Agreement;
 - (b) the Software will be supplied free from Software Defects and the Licensor will take measures to ensure that software remains free from Defects during the Term. It is accepted by Licensee that should a defect occur which is outside the control of the Licensor, the Licensor will take all appropriate steps to rectify defect in the shortest time possible.
 - (c) the System Services, Deliverables and/or Software, and any data or materials uploaded thereto, are checked for Disabling Devices using up to date virus detection software compliant with current industry standards and will be supplied free from such Disabling Devices at all times during the Term;
 - (d) the Software shall incorporate security features reflecting the requirements of good industry practice; and
 - (e) the System, Services, Deliverables and/or Software supplied will at all times be supplied in accordance with all applicable Data Protection Legislation and Proper Standard.

9.1 The Licensor warrants to the the Licensee that the Software, when used by the Licensee in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under European law.

9.2 The Licensor warrants, represents and undertakes on an on-going basis that:

- (a) the Documentation is sufficient to enable a reasonably skilled user to access and use the System, including the Custom Development contained therein, without third party assistance.
- (b) the Licensor Personnel will in all cases be appropriately experienced, qualified, competent, trained and efficient and shall provide the Services and/or Deliverables to a Proper Standard;
- (c) the Licensee Data will not be accessible or accessed by or otherwise disclosed to any person who is not either Licensor Personnel who specifically needs to

access it in order to perform the Services or the personnel of the Licensee or any Client User, or any other third party that the Licensee permits to access the System, including without limitation that the data of any Licensee Client shall not be accessible by any other Licensee Client;

- (d) all Services, Deliverables, the Licensee Data, the Licensee Materials and any Confidential Information of the Licensee are kept under secure conditions separately to any data, materials or confidential information of any other client or Group Company of the Licensor,
- (e) it has obtained and will continue to hold and comply with all consents, approvals from an Authority, licences, permissions, permits and authorisations (including giving, or procuring the giving of, notices and obtaining any of these) necessary to perform the Services and the Licensor's obligations under this Agreement (including doing nothing to prejudice the renewal of any of the foregoing where such renewal is required), which shall be obtained and maintained at the Licensor's own cost; and

9.3 The Licensor warrants to the Licensee that the Software, Services, System and Deliverables, when used by the Licensee in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person.

9.4 If the Licensor reasonably determines, or any third party alleges, that the use of the Software, Services, System and Deliverables by the Licensee in accordance with this Agreement infringes any person's Intellectual Property Rights, the Licensor may at its own cost and expense:

- (a) modify the Software in such a way that it no longer infringes the relevant Intellectual Property Rights provided that this shall not affect the quality or functionality of the Software; or
- (b) procure for the Licensee the right to use the Software in accordance with this Agreement.

9.5 The Licensee warrants, represents and undertakes on an on-going basis to the Licensor that it has all rights, consents, licences and authority necessary to enter into this Agreement and to perform its obligations and grant any licences as set out in or required under this Agreement.

9.6 All of the parties' warranties, representations and undertakings in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations

concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

- 9.7 Without prejudice to any other rights and remedies of the Licensee, Licensor shall promptly and free of charge correct any failure of the Software, Deliverables, System or Services to conform with the warranties set out in this Clause 9.

10 Limitation of Liability

In no event will the **Licensor** (including but not limited to any negligence issues related to third party licensors), its affiliates or third party licensors be liable to the **Licensee** for any special, indirect, incidental, punitive, exemplary, or consequential damages of any kind, including but not limited to compensation, reimbursement or damages in connection with, arising out of or relating to this EULA on account of the use or loss of use of the product, software or accompanying documentation, downtime or time loss of present or prospective profits, loss of data, information of any kind, business profits, or other commercial loss, or for any other reason whatsoever, whether based on theories of contract or tort (including but not limited to negligence or strict liability), even if **Licensor**, its affiliates or third party licensors have been advised of the possibility of such damages. The product, software and accompanying documentation are furnished to **Licensee** for use at your own risk. **Licensor**, its affiliates, and third party licensors will not be liable for damages for breach of any express (except to the extent expressly provided otherwise by this EULA or accompanying documentation) or implied warranty, duty or condition, under breach of contract, negligence, strict liability or any other legal theory related to the product, software, accompanying documentation, or this EULA. **Licensor**, its affiliates, and third-party licensors cannot ensure that the product, the software, or other data Licensee access or download from or through the product or software will be free of viruses or contamination or destructive features, and **Licensor**, its affiliates, and third party licensors disclaim any liability related thereto. **Licensor**, its affiliates and third-party licensors further disclaim any and all liability for the acts, omissions and conduct of any third parties in connection with or related to your use of the product or software. if, notwithstanding the terms of this EULA, **Licensor**, its affiliates and third party licensors are found to be liable to you for any damage or loss which arises under or in connection with this EULA, including but not limited to your use of the product, the software, or accompanying documentation, their collective total aggregate liability to Licensee shall in no event exceed the value of one months management fee for the specific instance/installation.

11 Use of Software with Copyrighted Materials

The Software may be used by the **Licensee** to store, process and use content created by the Licensee and third parties. Such content may be protected by copyright, other intellectual property laws, and/or agreements. The **Licensee** agree to use the Software only in compliance with all such laws and agreements that apply to such content. The

Licensee agree that the **Licensor (Medical Banks Limited)** may take appropriate measures to protect copyright of content stored, processed or used by the Software.

12 Indemnification.

Licensee will, at their own expense, indemnify and hold **Licensor**, and its affiliates and suppliers, and all officers, directors, and employees thereof, harmless from and against any and all claims, actions, liabilities, losses, damages, judgments, grants, costs, and expenses, including legal fees arising out of any use of the Product by **Licensee**, any party related to **Licensee**, or any party acting upon Licensee's authorization in a manner that is not expressly authorized by this Agreement. In addition, **Licensee** agrees to indemnify **licensor** against any third-party claim against the **Licensee** and/or any of its client users against any claim alleging that the Software, Services, System and/or deliverables may be infringing the Intellectual property rights of a third party. **Licensee** will, at their own expense, indemnify and hold **Licensor**, and its affiliates and suppliers, and all officers, directors, and employees thereof, harmless from and against any and all claims, actions, liabilities, losses, damages, judgments, grants, costs, and expenses, including legal fees arising out of any fraudulent acts or omissions or fraudulent misrepresentation by the Licensee or its agents, officers, directors or employees.

13 Change Control

13.1 If either The **Licensee** or the **Licensor** wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other party by using the Change Control Template set out in Schedule 3 (a "**Change Request**"). Upon receipt of a Change Request or when submitting a Change Request itself, the **Licensor** shall, within a reasonable time (and in any event not more than 10 Business Days after receipt of the Licensee's request or issue of its own such request), using the Change Control Template, provide a written estimate to the Licensee of:

- the likely time required to implement the change;
- any proposed necessary variations to the Charges and/or the Service Levels arising from the change (subject to Clause 0 and Clause 0 below);
- any other impact of the change on this Agreement; and
- where the change which has been requested impacts on Intellectual Property Rights belonging to a third party used to provide the Services, the Licensor shall

provide the Licensee with details as to the additional costs impact of any such use (if any).

13.2 If both parties consent to a proposed Change Request, the change shall only be effective after:

13.2.1 agreement of the necessary variations to the Charges and/or any other relevant terms of this Agreement to take account of the change that has been reached, either in the form suggested by the Licensors or as negotiated between the parties; and

13.2.2 both parties have given written consent to such change being implemented.

13.3 The costs of any change to the Licensors services and operations which are necessary to comply with changes in or the introduction of Applicable Laws shall be borne solely by the Licensors and, as such, a Change Request in relation to the same shall be raised solely to document the changes being made (which shall be at no cost to the Licensee).

13.4 The parties shall bear their own respective costs incurred in proposing or processing any Change Request.

14. Acknowledgements and warranty limitations

14.1 The Licensee acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Licensors gives no warranty or representation that the Software will be wholly free from defects, errors and bugs.

14.2 The Licensee acknowledges that the Software is only designed to be compatible with that software specified as compatible in the Software Specification and/or Statement of Work; and the Licensors does not warrant or represent that the Software will be compatible with any other software.

(a) limit or exclude either party's liability to the other party for any death or personal injury resulting from negligence by that party or its agents, officers, directors or employees;

(b) The Licensee acknowledges that the Licensors will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the

Software; and, except to the extent expressly provided otherwise in this Agreement, the Licensor does not warrant or represent that the Software or the use of the Software by the Licensee will not give rise to any legal liability on the part of the Licensee or any other person.

- (c) The Licensee acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Licensor gives no warranty or representation that the Software will be entirely secure.

15. Termination

15.1 The Licensor may terminate this Agreement by giving to the Licensee not less than 90 days' written notice of termination, expiring after the end of the Minimum Term.

15.2 The Licensee may terminate this Agreement by giving to the Licensor not less than 90 days' written notice of termination, expiring after the end of the Minimum Term.

15.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

- (a) the other party commits any material breach of this Agreement, and the breach is not remediable;
- (b) the other party commits a material breach of this Agreement, and the breach is remediable, but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied; or
- (c) the other party persistently breaches this Agreement (irrespective of whether such breaches collectively constitute a material breach).

15.4 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

- (a) the other party:
 - (i) is dissolved;
 - (ii) suspends or ceases, or threatens to suspend or cease to conduct all (or substantially all) of its business;

- (iii) suspends, or threatens to suspend, payment of its debts, or is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party where the resulting entity will assume all the obligations of the other party under this Agreement;
- (b) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
 - (c) 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 the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement);
 - (d) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - (e) 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;
 - (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
 - (g) any event occurs, or proceeding are taken, with respect to the other party in any jurisdiction to which it is subject, which has an effect equivalent or similar to any of the events mentioned in this Clause.

16. Effects of termination

The Licensee shall within 30 days send to the Licensor or otherwise dispose of in accordance with the directions of the Licensor copies of all Products and Documentation and all

advertising, promotional, sales material and Restricted Information relating to the Products then in the possession of the Licensee;

the Licensee shall cease to promote, market, advertise or solicit any:

Licensee clients for the products;

the Licensee shall have no claim against the Licensor for compensation for loss of Licensee rights, loss of goodwill or any similar loss;

clauses that are necessary for the enforcement or interpretation of this Agreement shall survive, which shall include clauses relating to confidentiality and protection of Intellectual Property Rights;

subject as otherwise provided in this Agreement and to any rights or obligations which have accrued prior to termination, neither Party shall have any further obligation to the other under this Agreement.

17. Confidentiality

Each party shall:

- 17.1 keep the other's Confidential Information strictly confidential;
- 17.2 not use, reproduce or record in any medium or form any of the other's Confidential Information except to the extent that it is strictly necessary for the proper purposes of (including to exercise any rights granted by) this Agreement; and
- 17.3 not disclose the other's Confidential Information to any third party.
- 17.4 Each party shall limit access to the Confidential Information of the other party to those of its directors, employees and professional advisers (and, in the case of the Licensor, to those of its permitted contractors, sub-contractors and agents) who reasonably require the information for the purposes of performing obligations under this Agreement. Each party shall ensure that its directors, employees and professional advisers (and, in the case of the Licensor, any contractors, sub-contractors and agents that it is permitted to use to provide the Services) keep the other party's Confidential Information strictly confidential.
- 17.5 The Licensor shall keep in strict confidence all the Licensee Data, the Licensee Materials, Client User Content, Deliverables and all technical or commercial

know-how, specifications, processes or initiatives which are of a confidential nature.

18. Data Protection

Both Parties warrants that they shall:

comply with the Data Protection Acts 1988 and 2003, where applicable, as amended from time to time and any regulations or enactments thereunder, Directive 95/46/EU, Regulation (EU) 2016/679 known as the General Data Protection Regulation (GDPR) (when applicable) and any other EU Regulations, Directives, Decisions or Guidelines on data protection or data privacy and guidance issued by the Data Protection Commissioner (the “**Legislation**”) in relation to any personal data (as defined in the Legislation) provided to the Supplier by or on behalf of, or originating from, the Customers or the Customers' clients or companies communicating with the Customers pursuant to or in connection with this Agreement (“**Personal Data**”);

19. General

This Agreement constitutes the complete agreement between the parties regarding use of the Software and supersedes any oral or written proposals, prior agreements, purchase orders, or any other communication between the parties relating to the subject matter of this Agreement. No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.

- 19.1 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 19.2 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 19.3 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.

- 19.4 This Agreement is made for the benefit of the parties and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.
- 19.5 This Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 19.6 Licensee is advised to seek independent legal advice regarding the terms and conditions of this agreement.
- 19.7 **Brexit Protection** - Should any Brexit factors impact the operation of the contract, Medibanks reserves the right to transfer this agreement to a wholly owned UK subsidiary.

20. Force Majeure

If either of the parties collectively or the Licensor are prevented, hindered or delayed from or in performing any of their obligations under this Agreement by a Force Majeure Event then

- (a) that party's or parties' obligations under this Agreement shall be suspended for so long as the Force Majeure Event continues and to the extent that that party or parties is so prevented, hindered or delayed;
- (b) as soon as reasonably possible after commencement of the Force Majeure Event that party or parties shall notify the other party or parties in writing of the occurrence of the Force Majeure Event, the date of commencement of the Force Majeure Event and the effect of the Force Majeure Event on its ability to perform its obligations under this Agreement;
- (c) that party or parties shall use all reasonable efforts to mitigate the effect of the Force Majeure Event upon the performance of its/their obligations under this Agreement;
- (d) the Supplier shall take reasonable steps to find a solution by which the Supplier's obligation under this Agreement can be performed despite the Force Majeure Event; and
- (e) as soon as reasonably possible after the cessation of the Force Majeure Event that party or parties shall notify the other party or parties in writing of the cessation of the Force Majeure Event and shall resume performance of its obligations under this Agreement.

If the Force Majeure Event continues for more than twenty-eight (28) days after the commencement of the Force Majeure Event either the parties collectively, either licensor or the licensee may terminate this Agreement by giving not less than seven (7) days' notice in writing to the other party or parties.

The Licensor shall maintain and provide the Licensee with a copy of a contingency plan to ensure performance of its obligations under this Agreement.

21. Applicable Laws

This Agreement is governed by the laws of the Republic of Ireland, exclusive of any provisions of the United Nations Convention on the International Sale of Goods and services, and without regard to principles of conflicts of law. The non-exclusive venue for all actions under this Agreement will be in the courts located in Dublin, the Republic of Ireland, and the parties agree to submit to the jurisdiction of such courts.

This agreement has been drafted to comply with the laws of Ireland. Use of this agreement is subject to the laws of Ireland (excluding Northern Ireland), which shall exclusively govern the interpretation, application, and effect of these TERMS AND CONDITIONS OF USE. The courts of Ireland shall have exclusive jurisdiction over all claims or disputes arising in relation to, out of, or in connection with this agreement and its use. If any provision of these TERMS AND CONDITIONS OF USE shall be held unlawful, void or unenforceable for any reason then such provision shall be deemed severed and shall not affect the validity and enforceability of the remaining provisions.

22. Dispute Resolution

Mediation

The parties should attempt to resolve by mediation in the first instance any dispute, controversy or claim arising out of or relating to this agreement, including any question regarding its breach, existence, validity or termination or the legal relationships established by this agreement.

Both parties need to agree to appoint a suitable independent mediator.

Arbitration clause

In order to take on a dispute resolution request, all involved parties must already have tried to solve the dispute, controversy or claim directly with the other party, without going to court.

After an unsuccessful mediation procedure, any dispute, controversy or claim arising out of or relating to this agreement, including any question regarding its breach, existence, validity or termination or the legal relationships established by this agreement, shall be resolved by arbitration, in particular by using the Arbitration body in Ireland which deals with software license disputes, Chartered Institute of Arbitrators (CI Arb) Ireland.

23. EXECUTION

The parties have indicated their acceptance of this Agreement by executing it below.

SIGNED BY **Rod Mc Govern** on _____ Day of _____ 2020, duly authorised for and on behalf of the Licensor:

Signed:.....

SIGNED BY _____ on _____ Day of _____ 2020, duly authorised for and on behalf of the Licensee:

Signed:.....

SCHEDULE 1 (SOFTWARE LICENCE PARTICULARS)

1. Specification of Software (Medibanks Staff Bank Platform)

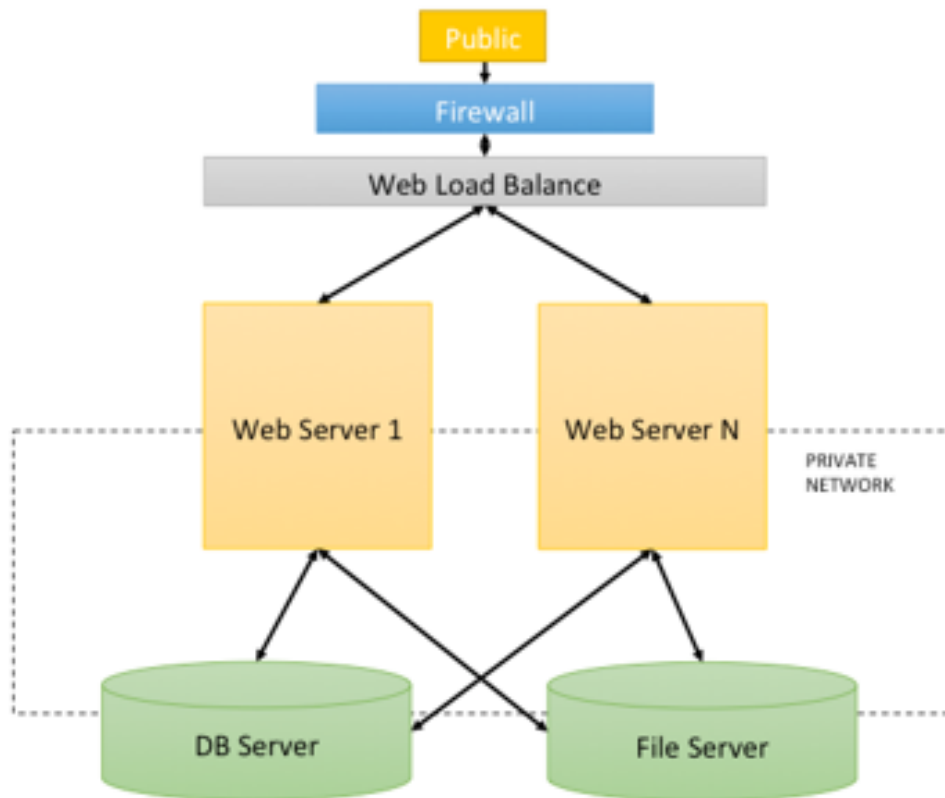
Provision of a cloud-based platform for the Licensee and its Client Users with functionality including that set out in the Documentation and High-Level Description attached hereto. The MediBanks platform will allow Client Users to self-manage their bank or enable the Licensee and/or its Group Companies to provide a low touch managed service.

Area	Category	Features
Candidate Management	Candidate Profile	• Online web-based registration • Ability to tag as substantive or bank worker • Ability to tag candidate to trust in respect to compliance passport
	Candidate Preferences	• Ability to record post preferences • Ability to set availability

		• Ability to record preferred employers
	Candidate approvals	• Ability to mark a candidate preferred • Ability to restrict candidates
Vacancy Management	Advertising Vacancy	• Shift templates • Cascading vacancies • SMS notifications • Email notifications • View real-time available candidates
	Candidate Submission	• Auto Apply • Compliance checks
	Candidate Confirmation	• Auto Confirm • Real-time acknowledgements
	Cascade to Agency (VMS)	• Email notification to unfilled vacancy (End of VMS Process)
Timesheet Management	Timesheet Submission	• Electronic timesheets • Paper timesheets • Break allocation • Reminder process
	Timesheet approval	• Electronic approval • Variance checks
Finance	Invoices creation	• Automatic creation of invoices • Automatic sending of invoices
	Statements	• Automatic statements
		• Statement reminders
Reports	MI Reports	• Booking reports • Timesheet reports • Invoice reports • Login reports • Usage reports

System Architecture

Physical Architecture



- Dedicated private cloud infrastructure
- VMWare Enterprise implementation with dedicated high availability devices providing packet filtering and load balancing services
- Servers
 - All run on CentOS
 - Web servers use Apache HTTP server
 - Web servers use MySQL (version to be agreed)

The current server infrastructure will be based in a Sungard AS facility in Dublin, Ireland.

SCHEDULE 2 (SUPPORT AND SERVICE LEVELS)

1. Support Services

The Licensor will provide second and third level support to the Licensee' Authorised Users. The Licensee will provide first line to support to the Licensee Group Companies and Client Users.

2. Support Tiers and Related Services

The Licensor will respond, update and resolve Incidents (as defined below) in accordance with the timeframes set out in the below table.

The Licensee will designate the Priority of any support issue at the point of reporting the Incident to the Licensor.

An **Incident** means any event, which is not part of the standard operation of the Services and which causes or may cause disruption to or a reduction in the quality of Services.

Priority	Definition	Licensor Initial Response Time Response to the Licensee	Licensor Follow-up Response to the Licensee	Licensor will within the time set out below Follow-up with the Licensee	Fix Time
1 – Critical	Work Stoppage or systemic issue	1 Hour	Hourly until resolved.	No later than 24hrs	72 hours
2 – High	Very disruptive but has a workaround or less disruptive but has multiple users impacted.	4 hours 30 minutes.	Every 4 hours (9:00am to 5:00pm UK time) until resolved.	No later than 72 hours	1 week
3 – Normal	Can wait without disrupting biz processes. Usually single user impact or feature request.	24 hours.	At the time of resolution.	Within 5 Working Days	Next Update

The Licensor shall provide reports on performance against the Service Levels on request from the Licensee.

SCHEDULE 3 (CHANGE CONTROL TEMPLATE)

AMENDMENT TO AGREEMENT - CHANGE CONTROL NOTE	
AGREEMENT NAME / NUMBER	
PURCHASE ORDER NUMBER	
CHANGE CONTROL NUMBER	
Title of Change:	
Date:	
Description of Change	
Reasons for Change:	
Impact of Change:	Details of the proposed change (include payment profile, terms of the Contract, operational impact etc., as appropriate)
Overall Timetable:	
Effective Date:	
Charges:	<i>(net cost, or saving, as a result of this change)</i>
The Originator:	Name: Title: Signed: Date:
Date of expiry of validity of	<i>(Date the change control notice expires if it has not</i>

change control notice	<i>been accepted by the other party)</i>
Response:	ACCEPT/REJECT (<i>delete as appropriate</i>)
The Licensee Signatory	Name: Title: Signed: Date:
The Licensor Signatory	Name: Title: Signed: Date: