

PLEASE READ CAREFULLY BEFORE DOWNLOADING OR ACCESSING ANY SOFTWARE FROM THIS WEBSITE:

This licence agreement (Licence) is a legal agreement between you (Licensee or you) and BARNARD HEALTH RESEARCH LIMITED of 42 Kilmiston Drive, Portchester, Fareham, PO16 8EG (Licensor, us or we) for:

- SPOTLIGHT computer software, the data supplied with the software, (**Software**); and
- online user guide (**Documents**).

We license use of the Software and Document to you on the basis of this Licence. We do not sell the Software or Documents to you. We remain the owners of the Software and Documents at all times.

OPERATING SYSTEM REQUIREMENTS: THIS SOFTWARE REQUIRES A TYPE OF COMPUTER COMPUTER WITH A MINIMUM OF AMOUNT OF MEMORY AND THE TYPE OF OPERATING SYSTEM AS SET OUT IN THE DOCUMENTS.

IMPORTANT NOTICE TO ALL USERS:

- **BY CLICKING ON THE "ACCEPT" BUTTON BELOW YOU AGREE TO THE TERMS OF THIS LICENCE WHICH WILL BIND YOU AND YOUR EMPLOYEES AND PATIENTS. THE TERMS OF THIS LICENCE INCLUDE, IN PARTICULAR, LIMITATIONS ON LIABILITY IN CLAUSE 5 AND CLAUSE 6 AND THE DATA PROTECTION OBLIGATIONS IN CLAUSE 11.**
- IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENCE, WE WILL NOT LICENSE THE SOFTWARE AND DOCUMENTS TO YOU AND YOU MUST DISCONTINUE USING THE SOFTWARE NOW. IN THIS CASE YOUR ACCESS TO THE SOFTWARE WILL TERMINATE.

You should print a copy of this Licence for future reference.

1 GRANT AND SCOPE OF LICENCE

- 1.1 In consideration of payment by you of the agreed licence fee and you agreeing to abide by the terms of this Licence, we hereby grant to you a non-exclusive, non-transferable licence to use the Software and the Documents on the terms of this Licence.
- 1.2 You may:
- 1.2.1 download, install and use the Software for your personal purposes (if you are a consumer) or your internal business purposes (if you are a business) only:
 - 1.2.1.1 on one central processing unit (CPU) if the Licence is a single-user licence or the Software is for single use; or
 - 1.2.1.2 if the Licence is a multi-user or network licence, by the number of concurrent users agreed between you and us;
 - 1.2.2 provided you comply with the provisions in clause 2, make up to ONE copy of the Software for back-up purposes only; and
 - 1.2.3 use any Documents in support of the use permitted under clause 1.2 and make up to one copy of the Documents as are reasonably necessary for its lawful use.
- 1.3 It is your obligation to back up your data and to keep contemporaneous records of it. We accept no liability in respect of loss of data (see clause 5 and 6 below).

2 RESTRICTIONS

- 2.1 Except as expressly set out in this Licence or as permitted by any local law, you undertake:
- 2.1.1 not to copy the Software or Documents except where such copying is incidental to normal use of the Software, or where it is necessary for the purpose of back-up or operational security;
 - 2.1.2 not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Software or Documents;

- 2.1.3 not to make alterations to, or modifications of, the whole or any part of the Software, nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs;
- 2.1.4 not to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the Software nor attempt to do any such thing except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Software with another software program, and provided that the information obtained by you during such activities:
 - 2.1.4.1 is used only for the purpose of achieving inter-operability of the Software with another software program; and
 - 2.1.4.2 is not unnecessarily disclosed or communicated without our prior written consent to any third party; and
 - 2.1.4.3 is not used to create any software which is substantially similar to the Software;
- 2.1.5 to keep all copies of the Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software;
- 2.1.6 to supervise and control use of the Software and ensure that the Software is used by your employees and patients in accordance with the terms of this Licence;
- 2.1.7 to include our copyright notice on all entire and partial copies you make of the Software on any medium;
- 2.1.8 not to provide or otherwise make available the Software in whole or in part (including but not limited to program listings, object and source program listings, object code and source code), in any form to any person without prior written consent from us;
- 2.1.9 not to use the Software via any communications network or by means of remote access; and
- 2.1.10 to comply with all applicable technology control or export laws and regulations.

3 INTELLECTUAL PROPERTY RIGHTS

- 3.1 You acknowledge that all intellectual property rights in the Software and the Documents anywhere in the world belong to us, that rights in the Software are licensed (not sold) to you, and that you have no rights in, or to, the Software or the Documents other than the right to use them in accordance with the terms of this Licence.
- 3.2 You acknowledge that you have no right to have access to the Software in source code form.

4 LIMITED WARRANTY

- 4.1 We warrant that:
 - 4.1.1 the Software will, when properly used and on an operating system for which it was designed, perform substantially in accordance with the functions described in the Documents; and
 - 4.1.2 that the Documents correctly describe the operation of the Software in all material respects, for a period of 90 days from the date of installation of the Software (Warranty Period).
- 4.2 If, within the Warranty Period, you notify us in writing of any defect or fault in the Software as a result of which it fails to perform substantially in accordance with the Documents, we will, at our sole option, either repair or replace the Software, provided that you make available all the information that may be necessary to help us to remedy the defect or fault, including sufficient information to enable us to recreate the defect or fault.
- 4.3 The warranty does not apply:
 - 4.3.1 if the defect or fault in the Software results from you having altered or modified the Software;

4.3.2 if the defect or fault in the Software results from you having used the Software in breach of the terms of this Licence or otherwise in accordance with the Documentation.

4.4 We do not warrant that the use of the Software will be uninterrupted or virus- or error-free.

4.5 You accept responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet your individual requirements.

4.6 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

4.7 If you are a consumer, this warranty is in addition to your legal rights in relation to Software that is faulty or not as described. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office.

5 LIMITATION OF LIABILITY IF YOU ARE A BUSINESS USER

5.1 You acknowledge that the Software has not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the Software as described in the Documents meet your requirements.

5.2 If you are a business customer, we only supply the Software and Documents for internal use by your business, and you agree not to use the Software or Documents for any re-sale purposes.

5.3 We shall not in any circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Licence for:

5.3.1 loss of profits, sales, business, or revenue;

5.3.2 business interruption;

5.3.3 loss of anticipated savings;

5.3.4 loss or corruption of data or information;

5.3.5 loss of business opportunity, goodwill or reputation; or

5.3.6 any indirect or consequential loss or damage.

5.4 Other than the losses set out in clause 5.3 (for which we are not liable), our maximum aggregate liability under or in connection with this Licence whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to 100% of the Licence Fee paid in the previous 12 months. This maximum cap does not apply to clause 5.5.

5.5 Nothing in this Licence shall limit or exclude our liability for:

5.5.1 death or personal injury resulting from our negligence;

5.5.2 fraud or fraudulent misrepresentation;

5.5.3 any other liability that cannot be excluded or limited by English law.

5.6 This Licence sets out the full extent of our obligations and liabilities in respect of the supply of the Software and Documents. Except as expressly stated in this Licence, there are no clauses, warranties, representations or other terms, express or implied, that are binding on us. Any clause, warranty, representation or other term concerning the supply of the Software and Documents which might otherwise be implied into, or incorporated in, this Licence whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

6 LIMITATION OF LIABILITY IF YOU ARE A CONSUMER USER

6.1 You acknowledge that the Software has not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the Software as described in the Documents meet your requirements.

- 6.2 If you are a consumer, we only supply the Software and Documents for domestic and private use. You agree not to use the Software and Documents for any commercial, business or re-sale purposes, and we have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.
- 6.3 We are only responsible for loss or damage you suffer that is a foreseeable result of our breach of this Licence or our negligence up to the amount specified in clause 6.4, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if they were an obvious consequence of our breach or if they were contemplated by you and us at the time we granted you the Licence.
- 6.4 Our maximum aggregate liability under or in connection with this Licence whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to 100% of the Licence Fee paid in the previous 12 months. This does not apply to the types of loss set out in clause 6.5.
- 6.5 Nothing in this Licence shall limit or exclude our liability for:
- 6.5.1 death or personal injury resulting from our negligence;
 - 6.5.2 fraud or fraudulent misrepresentation; or
 - 6.5.3 any other liability that cannot be excluded or limited by English law.

7 TERMINATION

- 7.1 We may terminate this Licence for our convenience, without incurring any liability, by giving you 30 days notice of our intention to do so.
- 7.2 We may terminate this Licence immediately by written notice to you if you commit a material or persistent breach of this Licence which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so.
- 7.3 Upon termination for any reason:
- 7.3.1 all rights granted to you under this Licence shall cease;
 - 7.3.2 you must immediately cease all activities authorised by this Licence;
 - 7.3.3 you must immediately pay to us any sums due to us under this Licence; and
 - 7.3.4 you must immediately delete or remove the Software from all computer equipment in your possession, and immediately destroy or return to us (at our option) all copies of the Software and Documents then in your possession, custody or control and, in the case of destruction, certify to us that you have done so.
 - 7.3.5 You must ensure that your employees and patients carry out the obligations imposed by this clause.
- 7.4 On termination of this Licence, you must remove all data stored therein within 30 days. Thereafter, all data will be deleted.

8 EXPORT AND COMPLIANCE WITH POLICIES

- 8.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (Export Control Laws), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 8.2 Each party undertakes:
- 8.2.1 contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
 - 8.2.2 if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent

government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

- 8.3 In performing its obligations under this agreement, you shall comply with all regulatory requirements governing the use of the software.

9 COMMUNICATIONS BETWEEN US

- 9.1 If you are a consumer, if you wish to contact us in writing, or if any clause in this Licence requires you to give us notice in writing, you can send this to us by e-mail [E-MAIL ADDRESS]. We will confirm receipt of this by contacting you in writing, normally by e-mail.
- 9.2 If we have to contact you or give you notice in writing, we will do so by e-mail or by pre-paid post to the address you provide to us in your order for the Software.
- 9.3 If you are a business customer, please note that any notice given by you to us, or by us to you, will be deemed received and properly served immediately when posted on our website, 24 hours after an e-mail is sent, or three days after the date of posting of any letter. 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 e-mail, that such e-mail was sent to the specified e-mail address of the addressee.

10 EVENTS OUTSIDE OUR CONTROL

- 10.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this Licence that is caused by an Event Outside Our Control. An Event Outside Our Control is defined below in clause 10.2.
- 10.2 An Event Outside Our Control means any act or event beyond our reasonable control, including but not limited to failure of public or private telecommunications networks.
- 10.3 If an Event Outside Our Control takes place that affects the performance of our obligations under this Licence:
- 10.3.1 our obligations under this Licence will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control; and
 - 10.3.2 we will use our reasonable endeavours to find a solution by which our obligations under this Licence may be performed despite the Event Outside Our Control.

11 PERSONAL DATA AND HOW WE MAY USE IT

Controller, 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: 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 relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

UK Data Protection Legislation: 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.

- 11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 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 **Error! Reference source not found.1, Applicable Laws** means (for so long as and to the extent that they apply to the Provider) 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.
- 11.2 **It is a condition precedent that all data uploaded to the platform is anonymised.** Anonymised data is data which does not identify a living individual and therefore falls outside of Data Protection

Legislation. Your non-compliance with this clause shall be deemed a material breach of this agreement.

In the event that any Data Protection authority declares that Personal Data *is* processed under this agreement the following clauses will apply:

- 11.3 The parties acknowledge that for the purposes of the Data Protection Legislation, you are the Controller and we are the Processor. Without prejudice to the generality of clause 11.1, 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 processing of the Personal Data by us on your behalf for the duration and purposes of this agreement.
- 11.4 Without prejudice to the generality of clause 11.1, we shall, in relation to any Personal Data processed in connection with the performance by us of our obligations under this agreement:
 - 11.4.1 process that Personal Data only in compliance with this agreement unless we are required by Applicable Laws to otherwise process that 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 so notifying you;
 - 11.4.2 ensure that 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);
 - 11.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - 11.4.4 not transfer any Personal Data outside of the European Economic Area unless the following conditions are fulfilled:
 - 11.4.4.1 you have provided appropriate safeguards in relation to the transfer;
 - 11.4.4.2 the data subject has enforceable rights and effective legal remedies;
 - 11.4.4.3 you and we comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
 - 11.4.5 assist you, at your cost, in responding to any request from a Data Subject and in ensuring compliance with your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 11.4.6 notify you without undue delay on becoming aware of a Personal Data Breach;
 - 11.4.7 at your written direction, delete or return Personal Data and copies thereof to you on termination of the agreement unless required by Applicable Law to store the Personal Data; and
 - 11.4.8 maintain complete and accurate records and information to demonstrate our compliance with this clause.
- 11.5 Either party may, at any time on not less than 30 days' notice, revise this clause 11 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

12 OTHER IMPORTANT TERMS

- 12.1 We may transfer our rights and obligations under this Licence to another organisation, but this will not affect your rights or our obligations under this Licence.
- 12.2 You may only transfer your rights or your obligations under this Licence to another person if we agree in writing.
- 12.3 If you are a business customer, this Licence and any document expressly referred to in it constitutes the entire agreement between us and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter. You agree that you shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Licence or any document expressly referred to in it. You agree that you shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this in this Licence or any document expressly referred to in it.
- 12.4 If we fail to insist that you perform any of your obligations under this Licence, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.
- 12.5 Each of the clauses of this Licence operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining clauses will remain in full force and effect.
- 12.6 If you are a consumer, please note that this Licence, its subject matter and its formation, are governed by English law. You and we both agree to that the courts of England and Wales will have non-exclusive jurisdiction. However, if you are a resident of Northern Ireland you may also bring proceedings in Northern Ireland, and if you are resident of Scotland, you may also bring proceedings in Scotland.
- 12.7 If you are a business customer, this Licence, its subject matter and its formation (and any non-contractual disputes or claims) are governed by English law. We both irrevocably agree to the exclusive jurisdiction of the courts of England and Wales.