

Rembrace Standard Terms and Conditions

These terms and conditions ("**Rembrace Ltd Standard Terms**") are the standard terms of business of Rembrace Ltd (or an affiliate as specified in the Licence Order Form), Rembrace Ltd, a company incorporated in England and Wales having its registered office at 18 St. Christophers Way, Pride Park, Derby, England, DE248JY ("**Rembrace Ltd**") for the provision of software and/or services to clients who have entered into an agreement ("**Client**") with Rembrace Ltd (whether by signing a Licence Order Form or otherwise) that incorporates these Rembrace Ltd Standard Terms by reference ("**Agreement**").

1. INTERPRETATION

In these Rembrace Ltd Standard Terms, save where the context requires otherwise:

"Affiliate" means any subordinate entity, organisation, individual or legal entity connected in any way with Rembrace Ltd;

"Client Sites" A specified geographic location residing in a single building or contiguous set of buildings sharing the same physical address and under common management who access and/or use the Services and/or Software;

"Commencement Date" means the date the Agreement shall commence, as identified in the Licence Order Form;

"Fees" means those amounts payable for the licence under the Agreement to use the Software and/or Services, as set out in the Licence Order Form;

"Confidential Information" means all reports, specifications, technical information and documentation comprised in or relating to the Services and/or Software, research and trading data, marketing and sales information, lists of clients or customers, plans, know-how and all other data that is either marked confidential or ought reasonably to be considered confidential given the nature of the material or the manner in which it is provided, in each case furnished by one of the parties to the other pursuant to or in connection with the Agreement;

"Intellectual Property Rights" means (i) patents, trade marks, service marks, registered designs, applications and the rights to make such applications for any of the aforesaid rights; trade and business names (including Internet domain names), unregistered trade marks, unregistered trade and business names, database rights, copyright, moral rights, rights in designs and inventions, trade secrets and know-how; and (ii) rights of the same or similar effect to the aforesaid: in each case, in any jurisdiction worldwide;

"Licence Order Form" means an order form executed by Rembrace Ltd and Client setting out the details of the licence being granted to Client pursuant to these Rembrace Ltd Standard Terms;

"Service" means the service to be provided by Rembrace Ltd to the Client under the Agreement, as identified in the Licence Order Form and includes the provision of the Software, where relevant, that enables access to the Services;

"Software" means Rembrace Ltd's relevant proprietary software program, in object code, to be licensed by Rembrace Ltd to Client under the Agreement, as expressly identified in the Licence Order Form or (if not so identified) being the program known as "Clinishare".

"Permitted Use" means the use that Client may make of the Services and Software, as identified in the Licence Order Form;

"Site Subscription" means a subscription by Client to the Software and/or Services pursuant to the Agreement, entitling Client to authorise one physical site to be a permitted Client Site.

2. TERM

2.1 The Agreement shall commence on the Commencement Date and shall continue for an initial term of 1 month, thereafter renewing automatically for successive 1 month renewal terms unless otherwise terminated in accordance herewith (such initial term and any such renewal terms being together the "**Term**" hereof).

3. LICENCE

- 3.1 For each Site Subscription specified in a Licence Order Form, Rembrace Ltd grants Client a non-exclusive, non-transferable worldwide royalty free licence to enable one Client site to use the Software and to access and use the Services during the Term for the Permitted Purpose.
- 3.2 Client must ensure:
 - (a) the number of Client Sites never exceeds the number of Site Subscriptions;
 - (b) each Client Site keeps their password for the Services secure;
 - (c) passwords for the Services are not shared between Client Sites;
 - (d) it maintains a current written list of Client Sites at all times, and must provide such list to Rembrace Ltd promptly upon request;
- 3.3 Client shall ensure each Client Site complies with the provisions of the Agreement, including Client's obligations and restrictions hereunder.
- 3.4 Client may transfer a Site Subscription from one Client Site to another by notifying Rembrace Ltd, following which Rembrace Ltd shall de-authorise the account of the Client Site for whom access is to cease, and create a new account for the replacement Client Site, provided always that this must not at any time amount to Client swapping Site Subscriptions back and forth between Client Sites as a substitute for entering into an agreement for further Site Subscriptions that Client reasonably requires in all the circumstances.
- 3.5 Client must only use the Software and Services for Client's own internal business operations. The rights granted to Client hereunder are for the benefit of Client only, and shall not be considered granted to any Affiliate of Client or to any other connected or unconnected third party.

4. RESTRICTIONS

- 4.1 The Client shall not upload, store, distribute or transmit any material during the course of its use of the Service that comprises a virus or other malicious code, or that is unlawful, harmful, threatening, defamatory, obscene, infringing, facilitates illegal activity, relates to the unlawful use of patient data or causes damage or injury to any person or property. Rembrace Ltd may disable Client's access to any such material at any time without notice, liability or compensation to Client.
- 4.2 Client warrants that it shall only use the Services and the Software for lawful purposes, and shall not use them in a manner that breaches any applicable laws or regulations in any jurisdiction. Client shall indemnify Rembrace Ltd against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of business opportunity, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Rembrace Ltd arising out of or in connection with a breach of this warranty.
- 4.3 Except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties, and except to the extent expressly permitted under this agreement, Client shall not and shall not attempt to:
 - (a) copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software or Services in any form or media or by any means; or
 - (b) reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
 - (c) access all or any part of the Services in order to build a product or service which competes with the Service; or

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- (d) use the Service to provide services to third parties in a manner that competes with the Services; or
 - (e) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Service available to any third party except as expressly permitted hereunder; or
 - (f) obtain, or assist third parties in obtaining, access to the Service, other than as expressly permitted under the Agreement; or
- 4.4 Client shall use all reasonable efforts to prevent any unauthorised access to, or use of, the Service and, in the event it becomes aware of any such unauthorised access or use, promptly notify Rembrace Ltd.
- 5. SERVICE**
- 5.1 Rembrace Ltd shall provide the Service to the Client on and subject to the terms of the Agreement.
- 5.2 Rembrace Ltd will make all commercially reasonable efforts to: (i) ensure continuity of the Service; and (ii) promptly rectify issues as they arise.
- 6. SOFTWARE**
- 6.1 Client may download the Software from a location to be provided by Rembrace Ltd and install copies thereof at the Client Site subject to the terms of the Agreement during the Term.
- 6.2 Rembrace Ltd may from time to time during the Term at its sole option make available to Client patches, updates or new releases of the Software.
- 7. CLIENT'S OBLIGATIONS**
- 7.1 The Client shall provide Rembrace Ltd with all necessary co-operation in relation to this agreement and all necessary access to such information as may be required by Rembrace Ltd in order to render the Service.
- 7.2 The Client shall comply with all applicable laws and regulations with respect to its activities under this agreement.
- 7.3 The Client shall take reasonable measures to ensure that the Client Sites use the Service in accordance with the terms and conditions of this agreement.
- 7.4 The Client shall ensure that its network and systems comply with the relevant specifications provided by Rembrace Ltd.
- 7.5 The Client shall be solely responsible for procuring and maintaining its network connections, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet.
- 7.6 Rembrace Ltd may supply compulsory Software updates for security or other reasons that the Client must permit to be installed. Failure to install such updates may result in unavailability of the service until the update has been installed.
- 7.7 The Client will ensure that any software and systems developers or other individuals, whether employees of the Client or not, who may be exposed to the Software design are made aware of their obligation to avoid infringing Rembrace Ltd intellectual property by copying design elements, intentionally or inadvertently, in their own work.
- 8. LIABILITY**
- 8.1 Nothing in the Agreement shall limit or exclude either party's liability to the other for fraud, fraudulent misrepresentation, or for death or personal injury caused by the negligence of such party or by that of its employees or agents.
- 8.2 Subject to clause 8.1:
- (a) neither party shall have any liability to the other for any consequential or indirect loss or damages, even if advised of the possibility thereof, or (without limiting the generality of the foregoing) for any loss of profit, business opportunity or data.
 - (b) each party's total aggregate liability to the other, whether arising in contract, tort (including negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, under or in connection with the Agreement or any collateral contract thereto, shall be limited to the total annual Fees received by Rembrace Ltd from the Client upon the date the relevant alleged cause of action first arose.
- 8.3 The Software and the Services are provided on an "as is" basis, and Rembrace Ltd makes no representation or warranty that the Software or Services are complete, accurate or error-free, and expressly disclaims any implied and/or statutory warranties that are not expressly set out herein including as to merchantability or fitness for purpose. Furthermore, each party acknowledges that in entering into the Agreement, it has not relied upon any representation, warranty or other term that has not been expressly set out in the Agreement.
- 8.4 Client accepts sole responsibility for its selection of the Services and the Software to achieve Client's intended results. Therefore any decisions Client makes, even if wholly or partially based on its use of the Software or the Services or the information available in connection with or through the Software or Services, shall be deemed to be at Client's sole risk, and Rembrace Ltd shall not have any liability to Client or any third party.
- 8.5 Neither party shall have any liability to the other for delay or failure to carry out an obligation under the agreement in consequence of a force majeure event, being an event or circumstance beyond its reasonable control and not contemplated by it at the time of the agreement being entered into. Without limiting the generality of the foregoing, Rembrace Ltd is not responsible for any delays, delivery failures or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the services and/or software may be subject to limitations, interruptions, delays or other problems inherent in the use of such communications facilities.
- 9. THIRD PARTY IP INDEMNITY**
- 9.1 Rembrace Ltd shall indemnify and hold harmless Client and its employees, officers and retained contractors and agents ("**Indemnified Persons**") from each loss, liability and cost that such Indemnified Persons incur or become liable for arising out of a claim of infringement by a third party of such third party's Intellectual Property Rights as a result of such Indemnified Person using the Software and Services in accordance with this Agreement.
- 9.2 If Client becomes aware of a matter that may give rise to an indemnified claim as described in clause 9.1 ("**Indemnified Claim**"), Client shall promptly inform Rembrace Ltd and provide all reasonable assistance, information and details to Rembrace Ltd as may be reasonably necessary in assessing and defending the Indemnified Claim. If Rembrace Ltd so requests, Rembrace Ltd shall have sole conduct of the Indemnified Claim.
- 9.3 Client must take reasonable commercial steps to mitigate its loss (if any) in connection with any Indemnified Claim.
- 10. CONFIDENTIALITY**
- 10.1 Each party agrees not to communicate or otherwise make available the other's Confidential Information to any third party without the prior written consent of the other party, nor use the Confidential Information for any purpose that is not expressly permitted hereunder, except in either case to the extent that such party can show that the Confidential Information:
- (a) has become public knowledge other than through any breach of the Agreement; or
 - (b) is received by the disclosing party from a third party who did not acquire it in confidence from the other party, or

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from someone owing a duty of confidence in relation to such Confidential Information; or

- (c) is required to be disclosed to a court, tribunal or regulatory authority that is entitled by law to compel such disclosure.

10.2 Notwithstanding the preceding clause, either party may make the other's Confidential Information available strictly on a need to know basis to such party's and its Affiliates':

- (a) legal advisors in connection with obtaining legal advice;
- (b) accountants in connection with auditing processes and
- (c) employees, officers and retained contractors and agents (provided always in the case of Client that this shall be subject to the scope of the licence to access the Services hereunder).

11. INTELLECTUAL PROPERTY RIGHTS

11.1 As between the parties, all Intellectual Property Rights in the Services, data comprising or contained in the Services and all derivatives thereof shall vest solely and absolutely *ab initio* in Rembrace Ltd or its licensors.

11.2 Client acknowledges that the design and presentation of the Software and all associated content, reports, graphs, tables and iconography, the look and feel of the application, infographics, the application navigation scheme and all other user-visible elements of the Software are protected by copyright and must not be duplicated, copied or otherwise replicated in whole or part.

12. PAYMENT OF FEES

12.1 Client shall pay the Fees as set out in and in accordance with the terms of the Licence Order Form. Invoices shall be payable within 21 days of the date thereof.

12.2 The Fees payable under the Agreement shall be subject to applicable taxes (such as VAT) where applicable. Client shall pay any such taxes to Rembrace Ltd at the prevailing rate at the same time as payment of such sums. Rembrace Ltd shall show any applicable tax separately on its invoices.

12.3 Payment of Fees may be made by direct bank transfer or cheque.

12.4 If Rembrace Ltd has not received payment of an invoice hereunder within 14 days after the due date, then without prejudice to any other rights and remedies available to Rembrace Ltd in such circumstances, Rembrace Ltd may:

- (a) charge interest on such overdue amounts at an annual rate equal to 3% over the then current base lending rate of Barclays Bank plc at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment; and
- (b) at its option and without notice to Client, suspend supply of the Services while any invoice relating to such Services remains overdue and unpaid.

13. TERMINATION

13.1 The Agreement may be terminated immediately by either party in the event of:

- (a) a material breach of the Agreement by the other and, in cases where such breach is capable of remedy, the other has failed to remedy such breach within 20 business days of a notice requiring such remedy;
- (b) the other party ceasing to pay its debts as they fall due or being adjudicated as being unable to do so pursuant to insolvency legislation, being adjudicated bankrupt or insolvent, making any arrangement with creditors pursuant to insolvency or bankruptcy legislation of any kind, entering administration or receivership or where a petition or application is made in respect of any of the foregoing.

13.2 Rembrace Ltd may terminate the Agreement at any time by giving Client at least 30 days' prior written notice.

13.3 Client may elect for the Agreement not to renew by written notice at least 30 days prior to the 1 month automatic renewal date.

14. POST TERMINATION

14.1 Rembrace Ltd shall provide a copy of all Client data (if any) it stores as part of providing the Service if such a copy is requested at the time notice of termination or non-renewal is given by the Client.

14.2 Upon termination or non-renewal, Rembrace Ltd shall disable all Client Site accounts.

14.3 Upon termination or (where Client is electing to not renew the Agreement) upon Client's giving notice of non-renewal, Client must cease to use the Services and the Software and shall delete or otherwise put beyond reasonable usage all electronic copies of all or any part of the Services and/or Software, or any information obtained through the Services and/or Software, in each case within its possession or control, whether in its systems or elsewhere.

15. NO WAIVER

Neither party shall be deemed to have waived any of its rights under the Agreement by reason of having delayed enforcement thereof or having waived a similar right previously or the same right under similar previous circumstances.

16. NO ASSIGNMENT WITHOUT CONSENT

The licence contained in the Agreement is personal and specific to the parties thereto and neither party may assign any of its licensed rights under the Agreement without the other's prior written consent.

17. RIGHTS OF THIRD PARTIES

No third party may enforce any rights hereunder.

18. AMENDMENTS

Any amendment, waiver or variation of the Agreement shall not be binding on the parties unless set out in writing and signed by or on behalf of each of the parties. However notwithstanding the foregoing these Rembrace Ltd Standard Terms may be amended in a manner that is no less beneficial or more detrimental to Client by uploading a revised version to the web page upon which these Rembrace Ltd Standard Terms appear and notifying Client.

19. GOVERNING LAW AND JURISDICTION

The Agreement shall be governed by and construed in accordance with English Law and shall be subject to the non-exclusive jurisdiction of the courts of England.

Ashley Waterman

Authorised Signatory for Rembrace Ltd