

Terms and Conditions

Version 9

Terms and Conditions of Business

1. Definitions and Interpretations

1.1 The following definitions and rules of interpretation apply in these Conditions:

Affiliate	each member of your Group to whom Engage Health Systems agrees to provide access to the Services in accordance with these Conditions;
Applicable Data Protection Laws	means: (a) if and to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; (b) if and to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which Engage Health Systems is subject, which relates to the protection of personal data;
Applicable Laws	means: (a) if and to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom;



	(b) if and to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which Engage Health Systems is subject;
Service	the services and capabilities of the Engage Suite of products and the accompanying Management Console (including any updates or supplements to them);
Service Commencement Date	is the date that the Service reaches Technical Go Live
Service Fees, Fees	the fees payable by you to Engage Health Systems for the Service in accordance with clause 10 of these Conditions and in accordance with the Subscription you are on from time to time (as varied in accordance with these Conditions);
Authorised Users	those employees, agents and independent contractors who are authorised by you to use the Services and as further described in clause 8.1;
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
Conditions	these terms and conditions as amended from time to time in accordance with clause 20.8 and/or clause 20.10;

Confidential Information	information that is proprietary or confidential in nature or is either clearly labelled as confidential information, covered by separate DPIA or identified as Confidential Information in clause 13.7 or clause 13.8;
Contract	the order by you and the supply of the Services by Engage Health Systems in accordance with these Conditions;
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) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party;
EU GDPR	the General Data Protection Regulation ((EU) 2016/679);
Group	in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company;
Heightened Cybersecurity Requirements	any laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to either you or an Authorised User (but not Engage Health Systems) relating to security of network and information systems and security breach and incident reporting requirements, which may include the

	Cybersecurity Directive ((EU) 2016/1148)), Commission Implementing Regulation ((EU) 2018/151), the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time;
Hosting Provider	the third party providing the Hosting for the Services, being Amazon Web Services as at the Service Commencement Date or such other hosting provider engaged for the hosting of the Service in the future;
Hosting Services	the internet hosting service chosen by Engage Health Systems;
Intellectual Property Rights	patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world;
Engage Health Systems	Engage Health Systems Limited registered number 11668338 whose registered office is at 1a St. Nicholas Court, North Walsham, Norfolk NR28 9BY;

Management Console	the portal to be used by your administrator(s) to configure and manage your Service ;
Mobile Application	the mobile device application used to run the Service for Service Users and any updates and/or supplements to it;
Purpose	the purposes for which Your Personal Data is processed, as set out in clause 12.3;
Services	the services to be provided by Engage Health Systems to you under the Contract and Engage Health Systems' obligations under the Contract including the provision of the Application;
Service Users	the users of the service who are not part of your Authorised Users; typically patients, relatives and carers
Subscription	means the payment plans for the Service which outline: (a) the particular products/services to be provided by Engage Health Systems to you in respect of the Application; (b) the Service Fees payable and the frequency with which they must be paid,

	as applicable, references to your Subscription will mean the Subscription to which you initially sign up and any other Subscription you agree to sign up to;
Subscription Term	has the meaning given to it in clause 4.2;
Support Ticket	a request for support issued by you in accordance with clause 9.2;
Trial Period	an evaluation period in respect of the Service commencing on and including the Service Commencement Date;
UK GDPR	has the meaning given to it in the Data Protection Act 2018;
Vulnerability	a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly;
Your Data	the data inputted by you, the Authorised Users or Engage Health Systems on your behalf for the purpose of using the Services or facilitating your use of the Services;
Your Personal Data	any of Your Data which is personal data;

Your System	the desktop and/or mobile devices used by you and/or the Authorised Users for downloading and using the Application.
--------------------	--

1.2 Clause headings shall not affect the interpretation of the Contract.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires:

1.5.1 words in the singular shall include the plural and in the plural shall include the singular;

1.5.2 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;

1.5.3 a reference to writing or written includes e-mail but not fax; and

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

1.6 References to clauses are to the clauses of these Conditions.

1.7 The terms controller, processor, data subject, personal data, personal data breach and processing shall have the meaning given to them in the UK GDPR.

1.8 A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.

1.9 In these Conditions, termination shall mean termination or expiry as appropriate.

2. OUR CONTRACT WITH YOU

2.1 These Conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 Any demos, descriptive matter or advertising issued by Engage Health Systems are

issued or published for the sole purpose of giving an approximate idea of the Services described in it. They shall not form part of the Contract or have any contractual force.

2.3 You should print a copy of these Conditions or save them to your computer for future reference.

3. PLACING AN ORDER

3.1 Orders may be made through an approved buying portal, in writing, by email or by acceptance of an issued quotation. Verbal orders are not acceptable.

3.2 Signing up for the Services (in accordance with clause 3.1) is an offer by you to sign up for the Services subject to these Conditions.

3.3 You may only sign up to use the Services using the methods set out in these Conditions.

3.4 If Engage Health Systems is unable to supply you with the Services for any reason, Engage Health Systems will inform you of this by email and Engage Health Systems will not process your order.

4. COMMENCEMENT AND TERM

4.1 The Contract shall commence on the Service Commencement Date.

4.2 Unless terminated earlier in accordance with clause 18 or this clause 4, the Contract shall automatically extend for a default period of 12 months (Subscription Term) at the end of each Subscription Term on the same terms.

4.3 You may terminate the Contract at the end of any Trial Period or the relevant Subscription Term on providing Engage Health Systems with written notice to this effect or cancelling your Subscription via the Management Console.

4.4 At the end of any Trial Period or Subscription Term, Engage Health Systems will deactivate your subscription and you and the Authorised Users and Service Users will not be able to use or access the Service

5. APPLICATION LICENCE

5.1 Engage Health Systems grants to you, your Service Users and the Authorised Users (and, as appropriate, each of your Affiliates) a non-exclusive licence, subject to clause 14.3 and any rules and policies applied by any app store provider or operator whose sites are located at Google Play or the App Store for the Trial Period (if applicable) or Subscription Term to use the Service solely on Your System.

5.2 You shall in all circumstances:

5.2.1 procure that each Authorised User and/or Affiliate complies with these Conditions

as if it were you;

5.2.2 be liable for the acts and omission of each Authorised User and/or Affiliate as though they were your acts and omissions; and

5.2.3 be liable for the acts and omissions of each Authorised User and/or Affiliate that would cause you to breach your obligations under these Conditions.

5.3 In relation to scope of use:

5.3.1 for the purposes of clause 5.1, use of the Service shall be restricted to use of the Service in object code form for your (and, as appropriate, each Affiliate's) internal business operations;

5.3.3 you (and, as appropriate, each Affiliate) and Authorised Users may not use the Service other than as specified in clause 5.3.1 without the prior written consent of Engage Health Systems, and you acknowledge that additional fees may be payable on any change of use approved by Engage Health Systems;

5.3.4 no person other than an Authorised User may use the Application;

5.3.5 only your administrators may access the Management Console and you should not attempt to access the Management Console for any other customer;

5.3.6 except as expressly set out in these Conditions, you and the Authorised Users have no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Service in whole or in part.

6. THE SERVICE

6.1 From time to time Engage Health Systems may automatically update the Service to improve performance, enhance functionality, reflect changes to the operating system or address security issues. Alternatively, Engage Health Systems may ask you to update the Service for these reasons.

6.2 If you do not accept the notified changes you may continue to use the Service in accordance with these Conditions but certain new features or improvements may not be available to you.

6.3 The Service will work with the current or previous version of the operating system (as it may be updated from time to time) but your use of the Service on a previous version will be at your own risk and Engage Health Systems will not offer support in accordance with clause 9 where you run the Service on a previous version of the operating system.

7. MOBILE APPLICATIONS

7.1 The ways in which your Service Users can use the Mobile Application may be controlled by Google Play rules and policies and the App Store's terms.

7.2 If and to the extent that any conflict or inconsistency between these Conditions and Google Play's rules and/or the App Store's terms arises, such conflict or inconsistency shall be resolved according to the following order of priority:

7.2.1 Google Play's rules or the App Store's terms (as appropriate); and

7.2.2 these Conditions.

8. YOUR OBLIGATIONS

8.1 You shall:

8.1.1 only use the Service at pre-agreed sites under the same organisational identity;

8.1.2 provide Engage Health Systems with all necessary co-operation in relation to the Contract and all necessary access to such information as may be required by Engage Health Systems in order to provide the Services, including but not limited to Your Data, security access information and configuration services in order for Engage Health Systems to provide the Application;

8.1.3 without affecting your other obligations under these Conditions, comply with all applicable laws and regulations with respect to your activities under these Conditions;

8.1.4 carry out all of your other responsibilities set out in these Conditions in a timely and efficient manner and in the event of any delays in your provision of such assistance as agreed by the parties, Engage Health Systems may adjust any agreed timetable or delivery schedule as reasonably necessary;

8.1.5 obtain and maintain all necessary licences, consents, and permissions necessary for Engage Health Systems, its contractors and agents to perform their obligations under these Conditions;

8.1.6 use all reasonable endeavours to prevent any unauthorised access to or use of the Service and notify Engage Health Systems as soon as it becomes aware of any unauthorised use of the Service by any person;

8.1.7 be responsible for ensuring that your computer, device and/or Your System has the requisite hardware and software requirements;

8.1.8 ensure that Your System has a suitable internet connection to download and run the Application;

8.1.9 ensure that the Authorised Users use the Services in accordance with these

Conditions and shall be responsible for any Authorised User's breach of these Conditions; and

8.1.10 be, if and to the extent permitted by law and except as otherwise expressly provided in these Conditions, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Engage Health Systems' data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet.

8.2 You shall not:

8.2.1 attempt to access any other customer's Management Console;

8.2.2 use the Services to build a product or service which competes with the Services in any way;

8.2.3 use the Services to provide services to third parties except the Authorised Users and your Service Users;

8.2.4 licence, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users and Service Users;

8.2.5 not use the Services in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these terms, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, such as viruses, or harmful data, into the Service or any operating system;

8.2.6 not infringe Engage Health Systems' Intellectual Property Rights or those of any third party in relation to your use of the Services, including by the submission of any material (if and to the extent that such use is not licensed by these terms);

8.2.7 not transmit any material that is defamatory, offensive or otherwise objectionable in relation to your use of the Services;

8.2.8 not use the Services in a way that could damage, disable, overburden, impair or compromise Engage Health Systems' systems or security or interfere with other users; and

8.2.9 not collect or harvest any information or data from the Services or any of Engage Health Systems' systems or attempt to decipher any transmissions to or from the servers running the Services.

9. SUPPORT SERVICES

9.1 If you and/or the Authorised Users experience technical difficulties with the Services, before raising a Support Ticket, you and/or the Authorised Users shall seek to resolve the issue:

9.1.1 internally and with your IT provider; and

9.1.2 by consulting Engage Health Systems' support webpage (or by visiting such other URL and/or support guide as notified by Engage Health Systems to you from time to time).

9.2 If you are still experiencing technical difficulties, provided that you have complied with clause 9.1, you and/or the Authorised Users may:

9.2.1 raise a Support Ticket (or by visiting such other URL and/or ticket system operated by Engage Health Systems as notified by Engage Health Systems to you from time to time); and

9.2.2 if the Support Ticket does not resolve the technical difficulties, call Engage Health Systems on such number as provided on the support webpage from time to time to raise the issue.

9.3 You will provide Engage Health Systems with remote access to Your System for Engage Health Systems to deal with Support Tickets.

9.4 Engage Health Systems will provide you with support in accordance with its service levels as notified to you from time to time. Engage Health Systems shall be entitled to amend these service levels from time to time provided that such amendments do not result in a materially worse level of support being provided or conflict with the terms of any overarching procurement framework.

10. FEES

10.1 You shall pay the Fees to Engage Health Systems in accordance with this clause 10.

10.2 You hereby authorise Engage Health Systems to bill on the first day of the Subscription Term for the Service Fees payable in respect of the Subscription you are on and subject to clause 4.2, on each yearly anniversary of that date for the Service Fees payable in respect of your Subscription;

10.3 If you elect to provide your bank details to set up a direct debit, your designated bank account will be charged automatically within 7 days of the end of your subscription and on each yearly anniversary of that date for the Service Fees payable in respect of

your Subscription.

10.4 Engage Health Systems shall invoice you at least 30 days prior to each yearly anniversary of the date of the Subscription Term for the Service Fees payable in respect of your Subscription for each Subscription Term and you will pay each invoice within 30 days after the date of such invoice.

10.5 For any failed or cancelled payments of the Fees, Engage Health Systems may charge a £20.00 administration fee.

10.6 Engage Health Systems shall be entitled to increase the Fees, at the start of each Subscription Term upon 30 days' prior notice to you.

10.7 If Engage Health Systems has not received payment within 30 days of the due date for payment, and without prejudice to any other rights and remedies of Engage Health Systems:

10.7.1 Engage Health Systems may, without liability to you, disable your access to all or part of the Services and Engage Health Systems shall be under no obligation to reactivate the Services while the invoice concerned remains unpaid; and

10.7.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current Bank of England base rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

10.9 All amounts and fees stated or referred to in these Conditions:

10.9.1 are, subject to clause 17.4, non-cancellable and non-refundable; and

10.9.2 are exclusive of value added tax, which shall be added to Engage Health Systems' invoice(s) at the appropriate rate.

11. YOUR DATA

11.1 You shall own all right, title and interest in and to all of Your Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all of Your Data.

11.2 Engage Health Systems shall follow its archiving procedures for Your Data as set out in its back-up policy as may be notified to you from time to time and as such document may be amended from time to time by Engage Health Systems in its sole discretion. In the event of any loss or damage to Your Data, your sole and exclusive remedy against Engage Health Systems shall be for Engage Health Systems to use reasonable endeavours to restore Your Data that is lost or damaged from the latest

back-up of Your Data maintained by Engage Health Systems in accordance with the archiving procedure described in its back-up policy. Engage Health Systems shall not be responsible for any loss, destruction, alteration or disclosure of Your Data caused by any third party.

11.3 Engage Health Systems shall, in supplying the Services, comply with its privacy and security policy relating to the privacy and security of Your Data (as may be notified to you from time to time). Such privacy and security policy may be amended from time to time by Engage Health Systems in its sole discretion.

12. DATA PROTECTION

12.1 Both parties will comply with all applicable requirements of the Applicable Data Protection Laws. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Applicable Data Protection Laws.

12.2 The parties have determined that, for the purposes of the Applicable Data Protection Laws, Engage Health Systems shall process the personal data set out in clause 12.3 as a processor on your behalf.

12.3 The following provisions set out the base line scope, nature and purpose of processing by Engage Health Systems, the duration of the processing and the types of personal data and categories of data subject:

Description	Details
Subject matter of the processing	For the provision of the Services under these Conditions.
Duration of the processing	For so long as Your Data is held by Engage Health Systems pursuant to clause 12.7.6 of these Conditions.

Nature and purposes of the processing	Your Data shall be collected, stored, used and deleted as necessary in the course of the delivery of the Services under these Conditions.
Type of personal data	The names, addresses, telephone numbers and email addresses of the Authorised Users and technical data in relation to the Authorised Users and Service Users such as IP address, login data, location, browser type and version and type of device and operating system an Authorised User uses to access the Services.
Categories of data subject	Authorised Users being employees, agents and your independent contractors. Service Users being all users of the service who are not Authorised Users.

12.4 Clause 12.3 sets out the Minimum scope, nature and purpose of processing by Engage Health Systems, the duration of the processing and the types of personal data and categories of data subject.

12.5 Where a separate Data Processing Agreement exists, the scope, nature and purpose of processing, duration of the processing and the types of personal data and categories of data subject defined in that document shall have precedence; excepting where the elements in clause 12.3 are at a higher level than in the separate Data Processing Agreement.

12.6 Without prejudice to the generality of clause 12.1, you will ensure that you have all

necessary appropriate consents and notices in place to enable lawful transfer of Your Personal Data to Engage Health Systems and lawful collection of the same by Engage Health Systems for the duration and purposes of the Contract.

12.7 Without prejudice to the generality of clause 12.1, Engage Health Systems shall, in relation to Your Personal Data:

12.7.1 process Your Personal Data only on your documented instructions, which shall be to process Your Personal Data for the Purpose, unless Engage Health Systems is required by Applicable Laws to otherwise process Your Personal Data and where Engage Health Systems is relying on Applicable Laws as the basis for processing Your Personal Data, Engage Health Systems shall notify you of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Engage Health Systems from so notifying you on important grounds of public interest (Engage Health Systems shall inform you if, in the opinion of Engage Health Systems, your instructions infringe Applicable Data Protection Laws);

12.7.2 implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Your Personal Data and against accidental loss or destruction of, or damage to, Your Personal Data;

12.7.3 ensure that any personnel engaged and authorised by Engage Health Systems to process Your Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;

12.7.4 assist you insofar as this is possible (taking into account the nature of the processing and the information available to Engage Health Systems), and at your cost and written request, in responding to any request from a data subject and in ensuring your compliance with your obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

12.7.5 notify you without undue delay on becoming aware of a personal data breach involving Your Personal Data;

12.7.6 at your written direction, delete or return Your Personal Data and copies thereof to

you on termination of the Contract unless Engage Health Systems is required by Applicable Laws to continue to process Your Personal Data and for the purposes of this clause 12.7.6, Your Personal Data shall be considered deleted where it is put beyond further use by Engage Health Systems; and

12.7.7 maintain records to demonstrate its compliance with this clause 12.

12.8 You hereby provide your prior, general authorisation for Engage Health Systems to transfer Your Personal Data outside of the UK strictly as required for the Purpose, provided that Engage Health Systems shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, you shall promptly comply with any reasonable request of Engage Health Systems, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the UK Information Commissioner from time to time (where the UK GDPR applies to the transfer).

12.9 Engage Health Systems uses a Hosting Provider and you consent to the use of the Hosting Provider as a third-party processor.

12.10 Engage Health Systems may use CoCardless Ltd to process payments from you under the Contract and you consent to the use of CoCardless Ltd as a third-party processor.

12.11 Engage Health Systems uses Freshdesk (provided by Freshworks Inc.) for dealing with Support Tickets and you consent to the use of Freshworks Inc. as a third-party processor.

12.12 Engage Health Systems confirms that it has entered or (as the case may be) will enter into a written agreement with any 3rd party providers substantially on their standard terms of business and Engage Health Systems confirms that those standard terms and conditions reflect and will continue to reflect the requirements of the Data Protection Legislation.

12.13 If Engage Health Systems wishes to appoint any third party processor of personal data other than those listed above, it must first obtain your written consent (such consent not to be unreasonably withheld or delayed). Where consent is provided, Engage Health

Systems will enter into a written agreement with each third party processor which shall reflect and will continue to reflect the requirements of the Data Protection Legislation.

12.14 Either party may, at any time on not less than 30 days' notice, revise this clause 12 by replacing it (in whole or part) with any applicable standard clauses approved by the EU Commission or the UK Information Commissioner's Office or forming part of an applicable certification scheme or code of conduct (Amended Terms). Such Amended Terms shall apply when replaced by attachment to the Contract, but only in respect of such matters which are within the scope of the Amended Terms.

13. CONFIDENTIALITY

13.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract.

13.2 A party's Confidential Information shall not be deemed to include information that:

13.2.1 is or becomes publicly known other than through any act or omission of the receiving party;

13.2.2 was in the other party's lawful possession before the disclosure;

13.2.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

13.2.4 is independently developed by the receiving party, which independent development can be shown by written evidence.

13.3 Subject to clause 13.5 and clause 13.6, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Contract.

13.4 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Contract.

13.5 It is acknowledged and agreed that to receive the full benefit of the Services, Engage Health Systems may, with your consent, disclose your Confidential Information to third parties.

13.6 A party may disclose Confidential Information if and to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory

authority or by a court or other authority of competent jurisdiction, provided that, if and to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 13.6, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

13.7 You acknowledge that details of the Services and the results of any performance tests on the Service constitute Engage Health Systems' Confidential Information.

13.8 Engage Health Systems acknowledges that Your Data is your Confidential Information.

13.9 No party shall make, or permit any person to make, any public announcement concerning the Contract without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

13.10 The provisions of this clause 13 shall survive termination of the Contract, however arising.

14. INTELLECTUAL PROPERTY RIGHTS

14.1 You acknowledge that all Intellectual Property Rights in the Service belong and shall belong to Engage Health Systems or the relevant third-party owners (as the case may be).

14.2 You shall have no rights in or to the Services other than as set out in these Conditions.

14.3 The Service includes open-source software (as defined by the Open Source Initiative ([Open Source Initiative](#)) or the Free Software Foundation ([Front Page — Free Software Foundation — working together for free software](#))) in its code in the form of the MIT License and the licence granted to you pursuant to clause 5.1 is subject to such terms.

15. DISCLAIMERS

15.1 Engage Health Systems does not warrant that the use of the Service will be uninterrupted or error-free or that the Service will meet any Heightened Cybersecurity Requirements.

15.2 You acknowledge that the Service is provided by Engage Health Systems on an “as is” basis.

15.3 You accept responsibility for the selection of the Services to achieve your intended results and acknowledge that the Services have not been developed to meet your individual requirements.

15.4 Engage Health Systems:

15.4.1 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 you acknowledge that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and

15.4.2 shall not be prevented from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to the Services.

15.5 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the Contract 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.

15.6 Engage Health Systems has the right to amend the specification of the Services at any time.

16. INDEMNITY

16.1 You will indemnify Engage Health Systems against an amount equal to:

16.1.1 all losses (including but not limited to all direct, indirect and consequential losses), liabilities, costs, damages and expenses that Engage Health Systems does or will incur or suffer; and

16.1.2 all claims or proceedings made or brought or threatened against Engage Health Systems by any person and all losses, liabilities or costs (on a full indemnity basis), damages and expenses Engage Health Systems does or will incur or suffer as a result of defending or settling any such actual or threatened claims or proceedings, in each case arising out of or in connection with your use of the Services.

16.2 Engage Health Systems will be under an obligation to mitigate, or procure the mitigation of, any of the losses, liabilities, costs, damages and expenses to which the indemnity in clause 16.1 applies.

17. LIMITATION OF LIABILITY

17.1 You acknowledge that Engage Health Systems shall not be liable for the accuracy of

any content on the Application.

17.2 For the avoidance of doubt, Engage Health Systems does not owe you, any Authorised User and/or Affiliate any duty of care in respect of the Services.

17.3 Except as expressly stated in clause 17.5, Engage Health Systems shall not be liable to you whether in contract, tort (including negligence), for breach of statutory duty or otherwise arising under or in connection with the Contract for:

17.3.1 loss of anticipated savings;

17.3.2 loss of profits;

17.3.3 loss of sales or business;

17.3.4 loss of agreements or contracts;

17.3.5 loss of business opportunity;

17.3.6 loss of or damage to goodwill;

17.3.7 loss or corruption of data, software or information; and/or

17.3.8 any indirect or consequential loss.

17.4 Except as expressly stated in clause 17.5, the total liability of Engage Health Systems, whether in contract, tort (including negligence) or otherwise and whether in connection with the Contract or any collateral contract, shall in no circumstances exceed a sum equal to the amounts paid or payable by you under the Contract.

17.5 The exclusions in clause 17.1 and clause 17.3 shall apply to the fullest extent permissible at law, but Engage Health Systems does not limit or exclude liability for:

17.5.1 death or personal injury caused by the negligence of Engage Health Systems, its officers, employees, contractors or agents;

17.5.2 fraud or fraudulent misrepresentation; or

17.5.3 any other liability which cannot be limited or excluded by applicable law.

18. TERMINATION

18.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

18.1.1 the other party fails to pay any amount due under these Conditions on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;

18.1.2 the other party commits a material breach of any other term of these Conditions which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

18.1.3 the other party takes any step or action in connection with it entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

18.1.4 the other party takes any step or action in connection with it applying to court for, or, obtaining a moratorium under Part A1 of the Insolvency Act 1986;

18.1.5 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

18.1.6 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract have been placed in jeopardy.

18.2 Without affecting any other right or remedy available to it, Engage Health Systems may terminate the Contract on giving you not less than 14 days' written notice.

18.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

18.4 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

18.5 On termination for any reason:

18.5.1 all rights granted to you and the Authorised Users under the Contract shall cease;

18.5.2 Engage Health Systems will deactivate your Subscription and you and the Authorised Users will not be able to use or run the Service;

18.5.3 you shall cease all activities authorised by the Contract; you must remove the service from your website and close down any unactioned requests. Engage Health Systems is not responsible for consequences of failure to do so.

18.5.4 you shall immediately pay to Engage Health Systems any sums due to Engage Health Systems under the Contract;

19. **FORCE MAJEURE**

19.1 Force Majeure Event means any circumstance not within Engage Health Systems' reasonable control including, without limitation:

19.1.1 acts of God, flood, drought, earthquake or other natural disaster;

19.1.2 epidemic or pandemic (including COVID-19);

19.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

19.1.4 nuclear, chemical or biological contamination or sonic boom;

19.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;

19.1.6 collapse of buildings, fire, explosion or accident;

19.1.7 any labour or trade dispute, strikes, industrial action or lockouts;

19.1.8 general unavailability of the internet;

19.1.9 non-performance by suppliers or subcontractors; and

19.1.10 interruption or failure of utility service.

19.2 If Engage Health Systems is prevented, impeded, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event, Engage Health Systems shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

19.3 The provisions of this clause 19 shall apply whether or not a Force Majeure Event was foreseeable.

20. **GENERAL**

20.1 Engage Health Systems may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

20.2 You shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Engage Health Systems.

20.3 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous contracts, agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its

subject matter.

20.4 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

20.5 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

20.6 Nothing in the Contract seeks to limit or exclude either party's liability for fraud or fraudulent misrepresentation.

20.7 Engage Health Systems may need to change these Conditions to reflect changes in law or best practice or to deal with additional features which Engage Health Systems introduces.

20.8 Engage Health Systems will give you at least 30 days' notice of any change by sending you an email with details of the change or notifying you of a change when you next start the Application.

20.9 Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20.10 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

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

20.12 The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

20.13 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

20.14 Except as expressly provided in this Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

20.15 Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

14. NOTICES

21.1 Notice given under the Contract shall be in writing, sent to such addresses as specified in the Contract (or to such other addresses as may be notified by the parties from time to time) and shall be delivered personally, sent by email or sent by pre-paid, first-class post or recorded delivery.

21.2 A notice is deemed to have been received:

21.2.1 if delivered personally, at the time of the delivery;

21.2.2 in the case of email, 9.00 am the Business Day following transmission;

21.2.3 in the case of airmail, five Business Days following posting; or

21.2.4 in the case of pre-paid first class post or recorded delivery two Business Days from the date of posting.

21.3 To prove service, it is sufficient to prove that the notice was transmitted by email, to the email address of the party or, in the case of post, that the envelope containing the notice was properly addressed.

21.4 You agree it is your responsibility to update Engage Health Systems promptly if the nominated contact as specified in the Contract changes.

21.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

22. GOVERNING LAW AND JURISDICTION

22.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

22.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive

jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).