

Silicon Practice Healthcare Apps Terms & Conditions for G-Cloud 15

Silicon Practice: Digital Front Door for Patients

SCHAPPIT LIMITED - GENERAL TERMS

1 General Terms

These are the General Terms of Schappit. Together with a signed Deal Sheet, these General Terms form a contract between the parties for the provision of the Silicon Practice Healthcare Apps Web App. The terms of the Deal Sheet take precedence over the terms of these General Terms. Any Special Terms in Part 5 of the Deal Sheet shall take precedence over both these General Terms and the rest of the Deal Sheet.

2 Schappit Obligations

2.1 Schappit shall make the Silicon Practice Healthcare App Web App available as a service to the Client for the Term subject to the terms of the Agreement.

2.2 Schappit shall use its reasonable endeavours, and such time and resources as Schappit deems adequate, to develop the Silicon Practice Healthcare App Phone App, based on Schappit's existing template. Once the Silicon Practice Healthcare App Phone App has been approved (such approval not to be unreasonably withheld), Schappit shall make applications to smartphone app platform providers (for example, Apple's Appstore and Google Play) to register the Silicon Practice Healthcare App Phone App. The Client acknowledges that the Silicon Practice Healthcare App Phone App may take up to 3 months to register with such platform providers and that Schappit has no control or liability in respect of any delay (or refusal) in registering the Silicon Practice Healthcare App Phone App. Schappit shall notify the Client of the availability of the Silicon Practice Healthcare App Phone App for download.

2.3 Schappit shall use its reasonable endeavours to support and maintain the Silicon Practice Healthcare App Web App and the Silicon Practice Healthcare App Phone App during the Term through the provision of a telephone helpline and email helpdesk.

3 Licenses

3.1 Schappit hereby grants to the Client a nonexclusive, revocable, non transferrable licence to use the Silicon Practice Healthcare App Web App as a service during the Term. For the purposes of this licence 'use' means use by the Client internally to process information generated by the use of the Silicon Practice Healthcare App Phone App by End Users. For the avoidance of doubt, the licence only covers a single entity and not other sites operated by the same operator, management, local authority or under common ownership for which a separate licence is required (unless otherwise agreed in the Special Terms). For the avoidance of doubt a primary and secondary school on the same site would require two licences.

3.2 Schappit hereby grants to the Client a nonexclusive, revocable, non transferrable licence to use the Silicon Practice Healthcare App Brand solely to promote the Silicon Practice Healthcare App Web App and the Silicon Practice Healthcare App Phone App to End Users.

4 Use of Silicon Practice Healthcare App

4.1 The Client shall promptly provide all instructions, information and materials required by Schappit to develop the Silicon Practice Healthcare App Phone App. The Client acknowledges that any delay in providing such instructions, information or materials shall delay the application for the Silicon Practice Healthcare App Phone App described in paragraph 2.2.

4.2 The Client shall, during the Term: (a) ensure it has suitable computer hardware, software and internet connection in order to use the Silicon Practice Healthcare App Web App as a service; (b) effect and maintain adequate security measures to safeguard the Silicon Practice Healthcare App from access or use by any unauthorised person; and (c) immediately notify Schappit if it becomes aware of any unauthorised use of the Silicon Practice Healthcare App Materials by any person.

- 4.3 The Client agrees that in relation to the Silicon Practice Healthcare App Materials the Client shall not: (a) sublicense, lease, transfer, sell, charge, assign, rent or otherwise use the Silicon Practice Healthcare App Materials, other than for the Silicon Practice Healthcare App Materials' intended purpose; (b) unless otherwise permitted by applicable law, alter, modify, adapt, translate or otherwise change the whole or any part of Silicon Practice Healthcare App Materials in any way whatsoever, nor permit the whole or any part of Silicon Practice Healthcare App Web App or Silicon Practice Healthcare App Phone App to be combined with or become incorporated in any other software nor decompile, disassemble or reverse engineer the same nor attempt to do any such things; (c) access, transmit, create or store any virus, worm, trojan horse, bot or other destructive or contaminating program using the Silicon Practice Healthcare App Materials; (d) instruct, assist or advise any other person to perform the acts prohibited in (a) to (c) above.

- 4.4 The Client acknowledges that: (a) the Silicon Practice Healthcare App Materials have not been prepared to meet the Client's individual requirements and that it is therefore the responsibility of the Client to ensure that the facilities and functions of the Silicon Practice Healthcare App Materials meet its requirements. Schappit shall not be liable for any failure of the Silicon Practice Healthcare App Materials to provide any facility or function not specified in the Deal Sheet; (b) Schappit gives no warranty or guarantee as to the use and uptake of the Silicon Practice Healthcare App Phone App by End Users; (c) it has had the opportunity to evaluate and assess Silicon Practice Healthcare App Web App before entering into the Agreement either through reviewing the description in the Deal Sheet or through a 'live' demonstration; (d) Schappit is constantly developing and refining its technology, therefore the Silicon Practice Healthcare App Materials are provided to Clients as a service on an 'as is' basis.

- 4.5 Subject to Schappit's data protection obligations under paragraph 8, the Client acknowledges that it is liable for all content which it sends or uploads using the Silicon Practice Healthcare App Web App which includes liability for defamation, in relation to data protection legislation, infringement of third party intellectual property rights or which otherwise breaches any law. The Client is also liable for the security and use of all information which is collected from End Users via the Silicon Practice Healthcare App Phone App.

- 4.6 Schappit reserves the right to remove any content which is sent, received, downloaded or uploaded using the Silicon Practice Healthcare App Web App or Silicon Practice Healthcare App Phone App.

5 Fees

- 5.1 The Client shall pay the Fees to Schappit in accordance with this paragraph 5.

- 5.2 Schappit shall invoice the Client on the Start Date and, if applicable and if the Agreement continues, on other occasions during the Term. Fees under the Agreement are: (a) due to be paid within 30 days after the receipt by the Client of Schappit's invoice; (b) payable in pounds sterling; (c) non cancellable and nonrefundable; (d) exclusive of Value Added Tax and any other applicable local sales or other taxes; and (e) exclusive of any bank charges or fees levied on a bank transfer, card transaction or other payment method.

- 5.3 If any sum payable under the Agreement is not paid within 7 days after the due date then, without prejudice to Schappit's other rights and remedies, Schappit reserves the right to suspend access to the Silicon Practice Healthcare App Web App and/or terminate the Agreement under paragraph 9.2(a) as a material breach.

6 Warranties and undertakings

Each party warrants and undertakes to the other that: (a) it has the necessary authority to enter into the Agreement; (b) the performance of the Agreement by that party will not breach any contractual or other obligation owed by that party to any other person, nor any rights of any other person or any other legal provision; and (c) it is acting on its own behalf and not for the benefit of any other person.

7 Intellectual Property and Third Party Claims

7.1 The Silicon Practice Healthcare App Materials (and the copyright, and other intellectual property rights of whatever nature in Silicon Practice Healthcare App, including any modifications made thereto) are and shall remain the property of Schappit and its licensors.

7.2 The Data shall be the property of Schappit. Schappit grants the Client a licence to use the Data during th

7.3 The Client shall immediately notify Schappit if any claim or demand is made or action brought against the Client for infringement or alleged infringement of any third party intellectual property rights (a "Third Party Claim") as a result of its use of the Silicon Practice Healthcare App Materials. Schappit shall at its own expense conduct any litigation or negotiation arising out of or in connection with Third Party Claims and the Client hereby agrees to grant to Schappit exclusive control of any such litigation and such negotiations.

7.4 The Client shall, at the request of Schappit, give Schappit all reasonable assistance for the purpose of contesting any Third Party Claim. The Client shall not make any admissions (save where required by court order or governmental regulations) which may be prejudicial to the defence or settlement of any Third Party Claim without Schappit's approval.

7.5 As a result of a Third Party Claim, Schappit may: (a) modify Silicon Practice Healthcare App; or (b) procure a licence to use and provide Silicon Practice Healthcare App.

7.6 This paragraph 7 shall not apply to any Third Party Claim in respect of: (a) any use by or on behalf of the Client of Silicon Practice Healthcare App in a manner not reasonably to be inferred from the specification or requirements of Licensee; or (b) the Client's unreasonable refusal to accept modified Silicon Practice Healthcare App Materials pursuant to paragraph 7.4(a).

8 Data Protection

8.1 For the purposes of this paragraph 8, the terms 'Data Controller', 'Data Processor', 'Data Subject', 'Personal Data' and 'Processing' shall have the meanings given to them in the Data Protection Legislation.

8.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This paragraph 8 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

8.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Data Controller and Schappit is the Data Processor. The Deal Sheet sets out the scope, nature and purpose of processing by Schappit, the duration of the processing and the types of Personal Data and categories of Data Subject.

8.4 Without prejudice to paragraph 8.2, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Schappit for the duration and purposes of this Agreement.

8.5 Without prejudice to paragraph 8.2, Schappit shall, in relation to any Personal Data processed in connection with the performance by Schappit of its obligations under the Agreement:

(a) process that Personal Data only on the written instructions of the Client unless Schappit is required by the laws of any member of the European Union or by the laws of the European Union applicable to Schappit to process Personal Data ("Applicable Laws"). Where Schappit is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Schappit shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Schappit from so notifying the Client;

- ensure that it has 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);
- (b)
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained (and it is hereby acknowledged that by signing the Deal Sheet the Client has consented to any such transfer outside the EEA as a result of Schappit appointing those third party-processors set out in paragraph 8.6 below). And, in respect of which the parties hereby acknowledge that the following conditions are fulfilled:
- (d)
- (i) the Client or Schappit has provided appropriate safeguards in relation to the transfer;
- the Data Subject has enforceable rights and effective legal remedies;(iii) Schappit complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and(iv) Schappit complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;(e) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;(f) notify the Client without undue delay on becoming aware of a Personal Data breach;(g) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and(h) maintain complete and accurate records and information to demonstrate its compliance with this paragraph 8.
- (ii)

8.6 The Client consents to Schappit appointing certain third party-processors (a list of which is available on request) of Personal Data under the Agreement. Schappit confirms that it has entered or (as the case may be) will enter with each third-party processor into a written agreement substantially on that third party's standard terms of business. As between the Client and Schappit, Schappit shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this paragraph 8.

8.7 Either party may, at any time on not less than 30 days' written notice to the other, revise this paragraph 8 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

9 Term and Termination

9.1 The Agreement shall, unless terminated early in accordance with this paragraph 9 continue for the period of time set out in Part 3.3 of the Deal Sheet.

9.2 Schappit may terminate the Agreement at any time immediately on giving notice in writing to the Client if: (a) the Client commits a material breach of any term of the Agreement and (in the case of a breach capable of being remedied) shall have failed, within 14 days after the receipt of a request in writing from Schappit so to do, to remedy the breach; or (b) the Client challenges the validity of, or infringes any of Schappit's intellectual property rights in the Silicon Practice Healthcare App Materials.

9.3 Immediately upon the termination or expiry of the Agreement: (a) all rights granted to the Client under the Agreement shall cease; (b) the Client shall cease all activities authorised under the Agreement; (c) the Client shall cause the Silicon Practice Healthcare App Materials to be erased from all of its hardware and software and shall certify to Schappit it has done so; and (d) the Client shall immediately pay to Schappit all Fees due.

9.4 Any termination or expiry of the Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination. There shall be no refund of any element of the Fees by reason of any termination by the Client.

10 Limitations and Exclusions of Liability

- 10.1 Nothing in the Agreement shall operate to exclude or limit the parties' liability for: (a) death or personal injury caused by their negligence; (b) their fraud or fraudulent misrepresentation; or (c) any other matter for which liability cannot be excluded or limit under law.

Except as expressly stated in paragraph 10.1:

- 10.2 (a) Schappit shall not in any circumstances have any liability for any losses or damages which may be suffered by the Client (or any person claiming under or through the Client), whether directly, indirect, immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories: (i) special damage even if Schappit was aware of the circumstances in which such special damage could arise; (ii) loss of profits; (iii) loss of anticipated savings; (iv) loss of business opportunity; (v) wasted management time; (vi) loss of goodwill; or (vi) loss or corruption of content or data, or losses or damage to any computer software, hardware or system; (vii) the failure of the Client's software, hardware or connection to the Internet; or (viii) the act or omission of the Client, its staff or any Parent in relation to the Silicon Practice Healthcare App Materials; and

(b) to the fullest extent permitted by law Schappit excludes all representations, warranties, conditions, terms, undertakings, and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise that are not expressly set out in the Agreement; and

(c) the total aggregate liability of Schappit to the Client is limited to the amount of fees Schappit has received from the Client in the 12 month period prior to the action giving rise to liability.

- 10.3 Schappit shall not be responsible for any breach of the Agreement caused by circumstances beyond Schappit's reasonable control.

- 10.4 The Client acknowledges that the Silicon Practice Healthcare App Materials will not be error free and uninterrupted, nor shall Schappit correct all errors in the Silicon Practice Healthcare App Materials and the Silicon Practice Healthcare App Materials may contain viruses, bugs, worms, trojan horses, bots and other harmful and destructive components, although Schappit shall use its reasonable endeavours to correct any such errors.

- (a) **Dealings in Rights and Obligations:** Schappit may at any time assign, novate, charge or deal in any other manner with any or all of its rights and obligations under the Agreement. The Client may not at any time sub licence, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under the Agreement;
- (b) **Waiver of remedies:** No failure by either party to exercise, and no delay in exercising, any right or remedy under the Agreement, shall operate as a waiver of such right or remedy
- (c) **Entire agreement:** The Agreement sets out the entire agreement between Schappit and the Client in relation to its subject matter;
- (d) **No Partnership or Agency:** Nothing in the Agreement establishes any partnership or joint venture between any of the parties, constitutes any party the agent of another party;
- (e) **Notices:** All notices which are required to be given under the Agreement shall be given by email to the addresses provided in the parties' Contact Details in Part 2 of the Deal Sheet and shall be deemed to have been served 48 hours after dispatch;
- (f) **Severability:** Notwithstanding that the whole or any part of any provision of the Agreement may prove to be illegal or unenforceable the other provisions of the Agreement and the remainder of the provision in question shall remain in full force and effect;
- (g) **Third Parties:** The parties confirm their intent not to confer any rights on any third parties by virtue of the Agreement and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement;
- (h) **Governing Law and Jurisdiction:** The Agreement, and any dispute arising out of or in connection with the Agreement, shall be governed by and construed in accordance with the laws of England and Wales. Any dispute or claim arising out of or in connection with the Agreement shall be subject to the jurisdiction of the courts of England and Wales.

In the Agreement the following words shall have the following meanings: “Agreement” means the Deal Sheet and these General Terms; “Data” means all information generated by use of the Silicon Practice Healthcare App Materials which is not Personal Data for the purposes of the Data Protection Legislation; “Data Protection Legislation” means: depending on the particulars of each Client and unless and until they are no longer directly applicable in the UK, one or more of (i) the Data Protection Act 2018 and (ii) the UK General Data Protection Regulation (“UK GDPR”) and (iii) the EU General Data Protection Regulation ((EU) 2016/679) (“EU GDPR”) and (iv) any national implementing laws, regulations and secondary legislation, as amended or updated from time to time in the UK and (v) any successor legislation to the Data Protection Act 1998 or the UK GDPR or the EU GDPR; “Deal Sheet” means the document to which these General Terms are appended; “End Users” means the persons intended by the Client who shall be users of the Silicon Practice Healthcare App Phone App, for example in the case of a Client which is a school its pupils, parents or guardians of pupils, teachers, governor, alumni and sponsors; or in the case of a Client which is a hospital its staff, patients and their families and carers, and the wider public; or in the case of Client which is a charity its staff, volunteers, donors, supporters, service users and wider network; “Fees” means the fees payable by the Client to Schappit as specified in part 3.2 of the Deal Sheet; “General Terms” means this document; “Client” means the party identified in part 1 of the Deal Sheet; “Silicon Practice Healthcare AppBrand” means the name ‘Silicon Practice Healthcare App’ and any trade mark rights (whether registered or unregistered) relating thereto and any materials relating to the promotion of the Silicon Practice Healthcare App Web App or Silicon Practice Healthcare App Phone App; “Silicon Practice Healthcare App Materials” means the Silicon Practice Healthcare App Web App, the Silicon Practice Healthcare App Phone App and the Silicon Practice Healthcare App Brand; “Silicon Practice Healthcare App Phone App” means a downloadable smartphone application which generates information for the Silicon Practice Healthcare App Web App for the Client and whose name and branding is customised to the Client; “Silicon Practice Healthcare App Web App” means the online software application of Schappit which is further described in Part 3.1 of the Deal Sheet; “Schappit” means Schappit Limited a company incorporated and registered in England and Wales with company number 09084187 whose registered office is at Unit 26, 79-93 Ratcliffe Road, Sileby, Loughborough, Leicestershire, England, LE12 7PU;; “Start Date” means the date on which the Deal Sheet is signed by both parties; and “Term ” means the duration of the Agreement as described in part 3.3 of the Deal Sheet.

12.1

12.2

Interpretation: In the Agreement: (a) reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended extended or reenacted; (b) any reference to a party to the Agreement includes a reference to his successors in title and permitted assigns; and (c) any words following the terms “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.