

TERMS AND CONDITIONS FOR THE PROVISION OF ECONSULT SERVICES

1. Application Of Terms

- 1.1 These terms ("Terms") together with the Order Form(s) and any other documents referred to in these Terms and any such Order Form(s) signed (electronically or otherwise or as stated in clause 1.2 below) by eConsult Health Limited ("eConsult", "we", "us" "our") constitutes a binding agreement ("Contract") made between us and the Customer whose details are also stated in the Order Form ("Customer"). All terms and conditions offered by the Customer are hereby excluded from the Contract.
- 1.2 Each Order Form shall describe the actual Services provided by eConsult and once signed and/or accepted by eConsult shall be a binding Contract by the Customer to receive the Services described in that Order Form subject to these Terms. An Order Form shall be accepted on the earlier of eConsult: (i) expressly giving notice of acceptance by its signature or otherwise; or (ii) taking steps to start fulfilling the Order Form in whole or in part. In the event of any inconsistency between these Terms and anything appearing on the face of the Order Form, the Order Form shall prevail over these Terms.
- 1.3 Each Order Form shall represent a separate Contract. These Terms shall continue to apply for all Order Forms made under these Terms and each Order Form shall have a [minimum duration of 12 months] unless otherwise stated on that Order Form, such minimum period commencing as from the start of the earlier of the Services provided under that Order Form or from such other period if stated in that Order Form. After the foregoing 12-month period (or other period stated in the Order Form), the applicable Order Form shall remain in full force and effect unless one party gives to the other 90 days prior notice to terminate that Order Form with effect from a period after the end of that first stated minimum period. None of the foregoing prevents any or all Order Forms being terminated under Clause 6 of these Terms. If the Customer terminates an Order Form for a breach by eConsult under Clause 6, then unless that breach applies to all Order Forms under these Terms, only that Order Form may be terminated.

2. eConsult's Obligations

2.1 eConsult shall provide the Services upon the Terms of the Contract applicable for each Order Form. eConsult shall also:

- 2.1.1 provide the Services to the Customer as from its own Platform as a competent and professional provider of technology services in accordance with the Services Description;
- 2.1.2 use reasonable endeavours to provide the Services to the standards set out in the Order Form and any document referred to in it, but the Customer and eConsult both acknowledge that any time for delivery shall be an estimate only and time shall not be of the essence under this Contract;
- 2.1.3 in its provision of the Services, provide them in accordance with the legal and regulatory obligations applicable to eConsult as well as any others set out in the Order Form. In consideration of the Customer paying the Charges under an Order Form, eConsult hereby grants pursuant to that Order Form a licence to access the Platform to use the Services under the Order Form and for the duration of that Order Form.

3. Customer Licence And Related Obligations

3.1 The Customer shall:

- 3.1.1 have a personal non exclusive limited licence for the duration of the applicable Order Form only to access the Platform and to use the Services and receive any information (including Know How and Templates) therein provided for its own internal use through its Authorised Users and shall not resell them, provide any bureau service or otherwise seek to reverse engineer the Services for any use outside of this Contract or otherwise and only use the Services in the United Kingdom and for the purposes stated in the Order Form and comply with the licence grant as set out at this clause 3;
- 3.1.2 ensure and validate that the Services meets its own needs and shall be responsible for assessing whether the Services are suitable for the Customer's needs and also ensure that it can access the Platform and the Customer acknowledges that eConsult is not responsible for the availability of any telecommunications services or lines which it does not provide to the Customer to facilitate that access;
- 3.1.3 make payment of the Charges as provided for in the Order Form without any withholding, offset or deduction whatsoever;

- 3.1.4 only allow the number of Authorised Users to access the Platform and use the Services as stated in the Order Form and for such purposes ensure that a password used by an Authorised User is personal to that Authorised User and not shared with any other person for use by that person as though they are the Authorised User and only allow any patient User of the Customer to access the Platform for the purposes of accessing the Know How and Templates (as applicable) which concern only that patient User and to download, print and copy, or otherwise have access to them;
- 3.1.5 hereby grant a licence to eConsult for the duration of each Order Form to use the tradename and branding of the Customer and create links from the eConsult Platform to the Customer's website and to refer to the Customer as a Customer of eConsult on its website and in its marketing materials.
- 3.2 The Customer shall ensure that the limitations of any licence granted hereunder shall be applied by the Customer to its Authorised Users and Users. In its use of the Services and the Platform the Customer for itself and its Authorised Users shall ensure that it does not cause eConsult to be in breach of any third party licence.

4. Charges And Payment

- 4.1 In consideration of the provision of the Services, the Customer shall pay the Charges as set out in the Order Form and such Charges may be increased by eConsult effective 1st January each year commencing in the year following the first 12 months of the first Order Form (but applicable thereafter for all subsequent Order Form(s) under this Contract) by an amount not to exceed 5% above the average of the retail price index published by the office for national statistics in the UK in the prior 12 month period. None of the foregoing shall prevent the Customer being charged an overage charge if the parameters of the Charges and Services stated in an Order Form are exceeded by the Customer. Some of those Charges shall be stated as payable in advance for the Services and some in arrears calculated by reference to usage or time elapse, all as shown in the Order Form. All Charges are due and payable by the Customer to eConsult within 30 days of the date of invoice unless otherwise stated in an Order Form. The Charges are stated net of Value Added Tax (or other sales tax or impost, duty or tariff) which if lawfully due, shall be charged in addition at the applicable rate ruling on the date of eConsult's invoice to Customer. In the event that any Services are not paid for by the due date, in addition to any other rights that eConsult has, it shall have the right to suspend, without notice, all Services under all Order Form(s) with the Customer. No dispute on an invoice can be raised (and for such purposes the Customer waives any right to raise one) 90 days following the date of the applicable invoice.

5. Audit

5.1 eConsult reserves the right to audit the use by the Customer of the Services by reasonable prior written notice to the Customer, including as to the use of them by the Authorised Users and/or Users. In such circumstances, the Customer shall provide all reasonable assistance and cooperation with eConsult in that audit.

6. Termination

6.1 Either party may terminate the Order Form and the Contract relating to that Order Form, or in the event that the Customer fails to pay eConsult even on one Order Form, eConsult solely has the right to terminate all Order Form(s) and all the Contracts for all Order Forms, in the event that a party is in breach of the terms of an Order Form, immediately on written notice to the other if the other party:

6.1.1 commits a material breach of its obligations hereunder (or under an Order Form) and, if the failure is remediable, fails to remedy it within 14 days of a notice requiring it to do so; or

6.1.2 becomes insolvent or bankrupt, or has a receiver, administrative receiver or administrator appointed in respect of the whole or any part of its undertaking or assets, or passes a resolution for its liquidation or winding up (other than for the purposes of a bona fide solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, or if the other party enters into any voluntary arrangement with its creditors or becomes subject to an administration order, or if any comparable event occurs in any jurisdiction.

6.2 To the extent that the Customer has committed to a minimum term in an Order Form (or otherwise in these Terms for each Order Form) then other than where the Customer is terminating under clause 6.1 and the Customer is not at that time in breach of the Contract, if there is a minimum monthly spending commitment with eConsult, eConsult shall only consent to that early termination upon the payment by the Customer of the remainder of all that minimum monthly spend commitment as at the date of that earlier termination.

6.3 All obligations and liabilities intended to survive the termination of the Contract will remain in full force and effect after termination.

7. Liability And Warranty

- 7.1 Neither party shall limit or exclude its liability for death or personal injury, fraud or any other liability which it would be unlawful to exclude or limit. Subject to the foregoing the total liability that each party shall have to the other under an Order Form for all claims in each consecutive 12 month period commencing from the date of that Order Form shall not exceed the Charges paid or payable under the Order Form in that same consecutive 12 month period. None of the foregoing shall limit the liability of the Customer to pay the Charges nor limit the liability of the Customer for any breach of Clauses 3 and 8. Subject to the foregoing, neither party shall be liable to the other whether in contract, tort or otherwise (including negligence) for any indirect or consequential loss or damage whatsoever including any loss of revenues, business, contracts or anticipated savings (being savings that a party anticipated making by entering into this Contract). No warranty not expressly provided in these Terms shall apply to the provision of the Services and the Customer must satisfy itself that its systems are compatible with the Platform to access it and maintain access to it.
- 7.2 It is expressly understood that eConsult does not provide medical advice which is the entire and sole responsibility of the Customer and any Know How or Templates are provided “as is” and the Customer shall ensure they are suitable for the purposes that they are to be used.

8. INTELLECTUAL PROPERTY RIGHTS AND STATISTICS

- 8.1 All Intellectual Property Rights in the Services and Platform are owned or licensed to eConsult and the Customer acknowledges that any development or enhancement of the Services and the Platform shall remain vested in eConsult including any materials created by eConsult from the Platform and the provision of the Services and no Intellectual Property Rights relating thereto shall be assigned to the Customer. The provision of the Services and the Platform may create performance data which is also the Intellectual Property Rights of eConsult (excluding any Customer Personal Data which remains owned by the Customer).
- 8.2 All data produced by the Platform (except data provided to eConsult by the Customer) shall remain owned by eConsult and it is expressly agreed that any data that the Platform itself creates (as long as it does not contain Customer Personal Data) can be used by eConsult for the purposes of creating derivative data and it is further agreed that eConsult is authorised by the Customer to process Customer Personal Data to pseudonymised it such that the results of that pseudonymised Customer Personal Data may be used for analysis and further enhancements to the products and services that eConsult shall develop from time to time.

9. CONFIDENTIALITY

9.1 The parties agree to treat confidential information of the other in strict confidence and other than allowing the recipient party's directors, employees, contractors and professional advisors access to such confidential information, the recipient party shall not disclose it to any third party without the express prior written consent of the disclosing party. Confidential information shall not include any information which is in the public domain other than as a breach by the recipient party of its confidentiality obligations hereunder. In the event that the recipient party is ordered by a court of competent jurisdiction to disclose any confidential information of the disclosing party, it shall to the extent legally permissible, notify the disclosing party of that fact and thereby allow the disclosing party to seek such protective measures as it can in order to limit the extent of any such disclosure. The foregoing confidentiality obligations shall survive the termination or expiry of all the Order Forms under the Contract and for three years thereafter.

10. DATA PROTECTION

10.1 eConsult may collect and keep personal data concerning the Customer's employees, consultants and workers and in doing so pursuant to the provision of the Services, is a data controller of that personal data ("eConsult Personal Data") during the course of the Contract. In respect of the eConsult Personal Data, eConsult shall comply with its obligations under applicable data protection laws. Where eConsult is acting as a data processor for the Customer by processing personal data of the Customer's own patients or customers ("Customer Personal Data") eConsult shall only process and store that Customer Personal Data (a) in compliance with applicable data protection laws having regard to the state of art; (b) in accordance with the instructions of the Customer; (c) in accordance with the provisions of the data processing agreement which the parties shall enter into to reflect any data processing activities of eConsult for the Customer, and the Product requirements for processing and storing of information. It is expressly agreed that such data processing agreement shall provide that eConsult may process Customer Personal Data to pseudonymise it.

11. GENERAL

- 11.1 The Contract (and the Order Form(s) and any document referred to in it or other agreement (such as the data processing agreement) also hereby referenced, constitutes the entire agreement between the parties and cancels and supersedes any and all previous agreements (whether oral or written, express or implied) between the parties relating to the subject matter of the Contract. Except for the express written terms of the Contract, the parties acknowledge and agree that in entering into the Contract they have not relied on or been induced by any warranty, statement or representation of the other or any other person relating to the Contract. Nothing in the Contract shall affect any liability of a party for fraud or fraudulent misrepresentation.
- 11.2 No provision of the Contract is intended for the benefit of any third party (except eConsult's Affiliates) and none of these Terms shall be enforceable by a third party (except eConsult's Affiliates).
- 11.3 No failure or delay by a party in exercising or enforcing any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of such right, power or privilege.
- 11.4 The Contract shall be governed by and construed in accordance with the laws of England and Wales. The Parties submit to the exclusive jurisdiction of the courts of England and Wales Governing over any claim or matter arising under or in connection with this Contract.
- 11.5 eConsult shall not be responsible for any event outside of its direct control including any act of god, strike, lock-out, interruption to communication services or facilities, terrorism, pandemic, epidemic, disease or the consequences of it, weather, flood or other natural disaster.
- 11.6 Any notice to be sent by one party to the other shall be sent to their last known address and shall be deemed delivered within 3 days of posting if sent by first class post, or if sent by email, the day following the email being sent if the email is not returned stated as undelivered.
- 11.7 eConsult may assign this Contract and any and all Order Forms to a third party (including to an eConsult Affiliate) upon written notice to the Customer.

12. DEFINITIONS AND INTERPRETATION

12.1 In the Contract, unless the context otherwise requires:

Affiliates means a party under the control of, subsidiary to, or under the common control of another company in the same group of companies as provided for under the Companies Act 2006.

Authorised Users means the number of authorised users (being personnel of the Customer) that are authorised to access the Services from the Platform according to the terms of the Order and the Charges that the Customer has agreed to pay in an Order Form.

Charges means such charges as are payable by Customer to eConsult in respect of the provision of the Services and/or Consulting or Advisory Services as set out in the Order Form.

Contract means the contract between the Customer and eConsult.

Customer means the customer named in the Order Form.

eConsult means eConsult Health Limited an English company with registered number 07628675 with registered office at 3rd Floor, Moorfoot House, 221 Marsh Wall, London E14 9FJ (or such other address notified to the Customer for such purposes) or any eConsult Affiliate named on an Order Form(s) if that Affiliate is stated as a provider of the Services (or Consulting or Advisory Services) in an Order Form.

Know-How means that information which we make available to the Authorised Users to access (and download if applicable) from the Platform.

Intellectual Property Rights means all patents, rights to inventions, utility models, copyright and related rights, trade-marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, source code, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Order Form means the written order placed with eConsult by the Customer on eConsult Order Form paper.

Platform means eConsult's platform which the Customer shall access to use the Services.

Services means eConsult’s Platform enabled services (including all data, Know How and Templates and all other information provided to Customer including any analytical data provided by eConsult to the Customer from information provided to eConsult hereunder) and also as described in an Order Form.

Templates means templates provided to patient Users.

Terms means these terms and conditions of purchase.

Users means a patient (or other user if stated in an Order Form) to access the Platform and the Templates only.

12.2 In these Terms, references to:

12.2.1 the “parties” or “party” are references to eConsult and the Customer or one of them as applicable;

12.2.2 a third party are references to a person who is not a party to the Contract;

12.2.3 the singular shall include the plural and vice versa;

12.2.4 a statute, statutory instrument, regulation, order or licence are references to that statute, statutory instrument, regulation, order or licence as substituted, varied or re-enacted from time to time.

12.3 The headings in these Terms are for convenience only and shall not affect the construction of these Terms.

12.4 The words “include” and “including” shall be construed without limitation.

12.5 A reference to writing or written includes fax and email.