

Terms and Conditions of Business

1) DEFINITIONS

In this agreement, unless otherwise specified, the following definitions are to be used:

“Licensor” Engage Health Systems Limited as defined in Clause 3

“Licensee”, “You” You or the organisation that you are authorised to represent

“Agreement” These Terms and Conditions and any applicable Appendices

“Product” Any product of the Licensor, including, but not limited to:

EnCompass LT

Engage Consult

Engage Video

Engage Touch and Engage Touch Plus

Engage Web

Friends and Family Test

Licensed software

Bespoke software development

2) INTRODUCTION

The Licensor provides goods and services only in strict accordance with these terms and conditions. Dependent on the goods and/or services provided, specific sections of these terms and conditions apply. The Licensor may modify any of the terms and conditions contained in this Agreement at any time at its sole discretion, and determine whether and when any such changes apply to both existing or future customers.

The Licensor may make changes or modifications to referenced policies and guidelines without notice to you. Your continued use of the Services following being made aware of the posting of any changes or modifications constitutes your acceptance of such changes or modifications.

3) ENGAGE HEALTH SYSTEMS LIMITED

1A St Nicholas Court 01263 834648

North Walsham

Norfolk info@engagehealth.uk

NR28 9BY

United Kingdom

Company number 11668237

4) RESTRICTIONS ON USE

You shall not without the express written consent of the Licensor:

- a) remove or obscure any copyright or trademark notice or other proprietary notice relating to the product.
- b) reverse engineer, de-compile or disassemble the product.
- c) distribute any portions of the product to a third party.

d) display the product on a public bulletin board, newsgroup, website, chat room or by any other unauthorised means.

e) rent or lease any part of a product to a third party.

If the product integrates with any products produced by EMIS, Appendix F will apply.

5) INTELLECTUAL PROPERTY RIGHTS

The copyright, patents, trademarks and all other intellectual property rights in the product and its associated documentation are protected by National and International treaties and remain the property of the Licensor and/or its suppliers. You do not obtain any rights in the product other than those expressly granted in this Agreement.

Both parties agree that, unless they have the prior written consent of the other party, they will not use or disclose to any third party any information which is confidential to the other party. The obligations of this Clause shall survive termination or cancellation of this Agreement.

The Licensee agrees that, unless they have the prior written consent of the Licensor, no access will be granted to the product, either by direct access or by the use of a remote connection of any kind, to any person or persons other than those professionals directly employed by the Licensee.

6) UPDATE POLICY

The Licensor reserves the right, from time to time, to revise and/or improve the product. These updates will be made available to Licensees according to a schedule defined by the Licensor. If you acquire an updated version of a software product, then all copies of the previous version must be destroyed, except for one copy, which may be retained solely for archive purposes.

7) LIMIT OF LIABILITY

The liability of the Licensor is limited to the cost of replacement of the defective product. Nothing in this Agreement shall limit the Licensor's liability for:

- a) fraud or other criminal act.
- b) personal injury or death caused by our negligence.
- c) any other liability that cannot be excluded by law.
- d) Subject to Clause 7 (a-c), the Licensor accepts no liability for any indirect or consequential loss or damage, or for any loss of data, profit, revenue, anticipated savings or business, however caused and even if foreseeable or made known to the Licensor.

8) ASSIGNMENT/SUB-CONTRACTING

You may not assign the Agreement or any of its rights or obligations hereunder nor sub-license the use (in whole or in part) of the product without prior written consent from the Licensor.

9) SECURITY

The nature of the Licensor's business requires, under certain circumstances, the disclosure of personal and confidential information. The Licensor confirms that any such information disclosed will only be used for the purposes made available. Strict adherence to the current prevailing privacy and data protection laws will be observed by the Licensor and copies of employee's confidentiality agreements will be made available on request.

The nature of the Licensee's business may require them to hold Person-Identifiable Information. The Licensee agrees that they will not use the Product to transmit any Person-Identifiable Information. This may include, but is not restricted to, anything that contains the means to identify a person e.g. name, address, postcode, date of birth, NHS number, National Insurance Number etc. Any data or combination of data and other information, which can indirectly identify the person, will also fall into this definition.

10) PAYMENT

Payment for all goods and services provided is on a strict Net Cash Monthly Account basis.

Licences, where provided, are for a period of one calendar year unless other time periods are agreed in writing.

The Licensor reserves the right to charge interest on overdue balances as per the late payment of commercial debts (Interest) Act 1998.

11) CONFIRMATION OF ORDER (INSTRUCTION TO PROCEED)

Order confirmation shall be given in accordance with Clause 12 below except where a software product is downloaded on-line; then the act of accepting these conditions and downloading the product shall form the contract between the parties.

12) NOTICES/COMMUNICATION

All communication between the parties shall be given:

a) to the Licensor in writing at the address given in Clause 3 above, via e-mail to an employee of the Licensor or via e-mail to the generic address of info@engagehealth.uk

b) to the Licensee at either the e-mail or postal address provided during any operating or registration process. It is the responsibility of the Licensee to keep the Licensor informed of changes to contact and billing details. Notice will be deemed received when an e-mail is received (or else on the next business day if it is received after 5pm, on a weekend or a public holiday). Alternatively, 3 days after posting if to a UK Mainland address.

13) WARRANTY

The Licensor warrants the performance of their products according to their type:

Software Software developed by the Licensor will be replaced when defective. The Licensee's remedy for breach of the warranties set out in this clause:

a) shall be limited to replacement of the defective materials and shall not encompass any other damages.

b) save as stated herein, the Licensor expressly disclaims all other conditions, warranties, terms and undertakings, expressed or implied, statutory or otherwise, relating to the Software and related documentation or technical support including (but not limited to) warranties of quality, performance, satisfactory quality or fitness for a particular purpose.

c) it is the responsibility of the Licensee to periodically test the satisfactory operation of the software to ensure local configuration

changes have not adversely affected the Software.

Hardware The Licensor warrants hardware as detailed in the Appendices of this document. Where there is no specific mention, the item is guaranteed for a period of one year from delivery.

All warranties specifically exclude any misuse or mistreatment of the materials, and are only valid if the materials are used solely for the purpose provided within normal office/domestic environmental conditions. Examples of misuse include, but are not limited to:

a) turning off mains supply to the unit without following published shut down procedure.

b) modifications to the enclosure other than those detailed in the product documentation.

c) abnormal environmental damage. (Liquid, excessive heat, overloading, mishandling etc.).

d) failure due to out of limits voltages to the power and/or network connectors.

e) any attempt to access the internal components.

f) any modifications to the configuration of the software, operating system or installed components (other than the installation of approved software) without the express permission of the Licensor.

In the event that the Licensor deems the warranty to have been invalidated, the Licensor may elect to charge for repair or replacement. The Licensee will be notified prior to the repair being undertaken and, in these circumstances only, will be charged for the cost of repair and transport.

14) SUPPORT

To provide effective support, the Licensor must be able to access your PCs to investigate any problems. If this is necessary the Licensor will ask the Licensee or their agent to download an application which will grant secure, point to point access to that PC alone on a temporary basis. This application is completely uninstalled when the remote session is terminated and it is impossible for the Licensor to reconnect without the co-operation of the Licensee. If network security policies do not allow the software to be downloaded, run or connect back to the Licensor, the ability to provide timely support will be degraded and a degree of technical literacy will be required from the Licensee.

Where products have a dependency on 3rd party systems, the Licensor is unable to warrant the availability and performance of the dependency. The Licensee should ensure that their service level agreements with their 3rd party are sufficient to meet their business requirements.

15) ENTIRE AGREEMENT

This Agreement and any documents specifically identified by this Agreement constitute the entire agreement between the parties.

This Agreement has a number of appendices, depending on the particular product being provided:

EnCompass LT Appendix A

Engage Touch and Engage Touch Plus Appendix B

Engage Consult Appendix C

Engage Web Appendix D

Friends and Family Questionnaire Appendix E

Additional licence terms: EMIS Appendix F

Bespoke Software Development Appendix G

16) TERMINATION

Termination by either party may be given in general accordance with Clause 12 (a). Such termination will not absolve either party of payment for service received or the provision of services contractually entered into and paid for prior to the date of termination. Upon termination, the Licensee shall destroy all documentation and copies of software products, and cease using any leased hardware, pending its collection. Termination can be carried out:

a) at the end of the contracted period.

b) under the terms of any applicable Acceptable Use Policy.

c) if either party defaults on the terms of this agreement and:

the default is capable of being remedied but, within 30 days of notice by the non defaulting party specifying the default, is not remedied; or

the default is not capable of being remedied. The non-defaulting party may immediately terminate, or temporarily suspend the operation of this agreement until the default is remedied, at its sole discretion.

17) FORCE MAJEURE

Neither party is liable for failure to perform if such failure is as a result of Acts of God (including Flooding, Fire Storm or other Natural Disaster), War, Invasion, Act of Foreign Power, Terrorist Activities, Government Sanction, integrated third-party or failure of electricity, network or Telephone Service. However, neither party is entitled to terminate this agreement under Clause 16 in such circumstances.

18) GOVERNING LAW

This Agreement is governed by and interpreted in accordance with United Kingdom Law. Any disputes or claims relating to this agreement shall be subject to the exclusive jurisdiction of the English Courts.

19) DISPUTES AND REMEDIES

The parties agree to use their best efforts to resolve any dispute which may arise under the Agreement through good faith negotiations. No party shall commence any litigation in relation to this Agreement unless it has first invited the chief executive of the other party to meet with its own chief executive for the purpose of endeavouring to resolve the dispute on mutually acceptable terms.

Any dispute arising under this Agreement which cannot be settled by negotiation between the parties or their respective representatives shall be submitted to mediation before commencing any litigation. Either party may initiate mediation by giving written notice to the other party.

The parties shall continue to perform their obligations under the Agreement as far as possible as if no dispute had arisen pending the final settlement of any matter referred to mediation.

Nothing in this clause shall preclude either party from taking immediate steps to seek urgent, equitable relief before a United Kingdom Court.

APPENDIX A - EnCompass LT

1) LICENCE FEES

The Licensor will invoice the Licensee for the appropriate Annual Support Fees 30 days prior to the anniversary of the renewal date. Should the Licensor not receive payment, the Licensor reserves the right to relegate the Licensee's access to the single-user "Archive" mode, pending resolution.

The Annual licence fees include:

- a) licensing the use of the EnCompass LT system, including bug fixes and enhancements.
- b) telephone and remote support from the Licensor.
- c) maintenance of the integration with the Licensee's clinical system.

Although the Licensor may carry out the following at their discretion, the Annual licence fees do not cover:

- a) network Support, including IP conflicts, cabling and capacity issues.
- b) client software installation and application of operating system and application updates.
- c) rectification of issues with the EnCompass LT system caused by third party software installations.

2) CLIENT COMPUTERS

There is no minimum specification for the EnCompass LT system, other than the requirement of an operating system of Windows 7 or higher. The Licensor expects client computers to be up to date with operating system and application updates as recommended by the applicable vendor.

3) NETWORK

To operate satisfactorily, EnCompass LT requires a healthy network environment. Other network applications can adversely affect the speed of EnCompass LT by reducing the available bandwidth. Additionally, actions involving communication with off site or hosted clinical systems may be degraded or unavailable due to circumstances outside of the Licensor's control.

APPENDIX B - Engage Touch and Engage Touch Plus

1) LICENCE FEES

The Licensor will invoice the Licensee the support fee 30 days prior to the anniversary of the renewal date. Failure to pay the support fee will inhibit the integration of the system, causing the Software to cease to function and void the Hardware warranty. Resumption of support in such cases will be at the discretion of the Licensor and may incur additional charges.

2) SUPPORT

The support package for a Touchscreen is designed to restore service as fast as possible. The support covers all failures that can be described as fair wear and tear. If a Touchscreen fails, the Licensor will aim to despatch a replacement screen for delivery on the next working day. In the event of a problem with the Touchscreen, the Licensee will be asked to thoroughly check various aspects of the network and power supply. This is to prevent a serviceable Touchscreen being returned and the associated disruption and cost of delivery being incurred.

The Agreement does not cover;
problems with your mains power supply,
problems with site network,
Operating System end of life e.g modification or replacement

It is the responsibility of the Licensee to ensure that the screen has power and a network connection and that the IP address of the screen has not been allocated to another computer.

The Licensor records the network settings and clinical settings of the deployed site in order to dispatch the screens pre-configured. It is the responsibility of the Licensee to notify the Licensor if there are any changes, otherwise any replacement screens will not function immediately on arrival.

The Engage hardware has its software pre-installed to run optimally under a locked down security account with anti-virus. As stated in clause 13, software configuration of the Engage hardware is not to be modified without express permission of the Licensor. This includes:

- a) Modifying the BIOS settings
- b) Installation of smart card agents
- c) Installation of anti-virus software
- d) Installation of remote Management software
- e) Changing of the computer name
- f) Changing the user account credentials or joining to a domain
- g) Installation of any other applications (e.g. Java, Flash, Acrobat etc.)

The Licensor reserves the right to charge for time spent resolving issues caused by violation of this clause in accordance with its published rates.

3) TRANSIT PACKAGING

The Licensor where required will use non-disposable Touchscreen packaging. The Licensee agrees to return (at the Licensor's expense) the packaging (consisting of container, foam inserts and combination locks) within one week of delivery. The Licensee will be liable for any packaging not returned in accordance with the above. The Licensor reserves the right to charge for late return at the rate of £5.00 per day and charge for any materials not returned.

The Licensor will confirm that the packaging is ready for collection and arrange a time and date before booking the shipment. The Licensee will ensure that the staff are aware of the pending pick-up as the Licensor will charge for any failed collection.

4) SOFTWARE ONLY INSTALLATIONS

Where the Licensee has provided their own third-party hardware to run the Engage touchscreen software, the Licensor will not be liable for any loss of service that is due to failure or under-performance of the provided system. Additionally, the Licensor cannot warrant the performance of all features of the software on third-party hardware, including, but not limited to, remote power on functionality.

Installation of software is included in the initial purchase price of the package. If it is required to re-install the software following work on the third-party screen, the Licensor will charge for this service.

5) HARDWARE WARRANTIES

For touchscreen hardware, clause 13 (Warranty) is valid subject to the Installation, maintenance and operating instructions being strictly followed. The installation guide will be e-mailed on dispatch of the Touchscreen; operating instructions are available from the “Help” button on the Console application.

Where the Licensor has supplied 3rd party hardware for use with the Engage Plus touchscreen system, the following warranties apply:

Blood Pressure Monitor This device is provided with a 12month back to base warranty from the manufacturer. It is the responsibility of the Licensee to maintain the calibration of this device.

Clinical Weighing Scale This device is provided with a 12 month warranty. It is the responsibility of the Licensee to maintain the calibration of this device.

APPENDIX C - Engage Consult

1) LICENCE FEES

The Licensor will invoice the Licensee a fee according to the agreed schedule. Failure to pay the fee will inhibit the service. Resumption of service in such cases will be at the discretion of the Licensor and may incur additional charges.

2) USE OF SERVICE

The Licensee acknowledges that the service is intended to involve competent intervention before any impact on health occurs. A clinician's judgement and experience must be used to check and interpret the service's output.

APPENDIX D - Engage Web

1) SETUP SERVICE AND FREE TRIAL

The Licensor offers a no-obligation initial set up/migration service to bring a new site up to provisional go-live (PGL). The Licensor reserves the right to set a limit on the effort expended to bring a site to PGL and will inform the licensee at the earliest possible opportunity if the scope looks abnormally large. Once the trial site has reached an agreed level of functionality and achieved PGL, the Licensee accepts that the responsibility for ongoing management of the site will transfer to themselves. The duration of the trial is a maximum of 4 weeks after PGL. The Licensor reserves the right to delete any expired trials after due notice to the Licensee has been given.

2) DOMAIN TRANSFERS

Whilst the Licensor will not charge for a routine inbound domain transfer, any charges levied by the outgoing hosts will be passed on to the licensee. The Licensor will not be liable for any problems or delays encountered when transferring domains from a 3rd party, and may charge the Licensee for any additional support activities to facilitate the transfer. Where the Licensee retains control of their domain and/or DNS, the Licensor will be unable to provide support in the event of any associated problems.

3) SUPPORT

The Website package is designed to be self-managed by the Licensee. The Licensor will provide reasonable assistance to the Licensee to help them manage their site after PGL. If the work required by the Licensee is deemed excessive, the Licensor will provide a quotation for the development required.

4) RIGHTS TO THE WEBSITE AND CONTENTS

With the exception of any Third-Party Materials and Background Technology as set forth in Section 5, the Licensor owns the Licensor Content. "Licensor Content" means all content or information (including, without limitation, any text, music, sound, photographs, video, graphics,

data, documents or software), in any medium, provided by the Licensor. "Third-Party Materials" means any content, software, or other computer programming material that is owned by an entity other than the Licensor, and licensed by the Licensor or generally available to the public, under published licensing terms. The Licensor owns the rights to the design of the Website and its underlying content management system. Upon termination, the Licensee is not entitled to use the Website for any purposes whatsoever.

5) LIMITED LICENCE TO BACKGROUND TECHNOLOGY

"Background Technology" means computer programming/formatting code or operating instructions developed by or for the Licensor and used to host or operate the Website or a Web server in connection with a Website. Background Technology includes, but is not limited to, any files necessary to make forms, buttons, check boxes, and similar functions and underlying technology or components, such as style sheets, animation templates, interface programs that link multimedia and other programs, customized graphics manipulation engines, and menu utilities, whether in database form or dynamically driven. Background Technology does not include any Licensor Content. The Licensee may not duplicate or distribute any Background Technology to any third party without the prior written consent of the Licensor. All rights to the Background Technology not expressly granted to the Licensee hereunder are retained by the Licensor.

6) LIMITED LICENCE TO CONTENT

The Licensee hereby grants the Licensor the limited, non-exclusive right and license to copy, distribute, transmit, display, perform, create derivative works from, modify, and otherwise use and exploit on the Website, any Licensor Content, or Marks provided to the Licensor, solely for the purpose of rendering their services under this Agreement. Such limited right and license shall extend to no other materials or for any other purpose and will terminate automatically upon termination of this Agreement for any reason.

7) CONTENT

The Licensee agrees not to provide the Licensor content, and the Licensor will not intentionally provide to the Licensee any content, that:

- a) infringes on any third party's intellectual property or publicity/privacy rights.
- b) violates any applicable law or regulation.
- c) is defamatory, violent, clearly harmful, or obscene or pornographic or infringes on an individual's rights.
- d) contains any viruses, Trojan horses, worms, time bombs, cancel bots, or other computer programming routines that are intended to damage or interfere with any system, data, or personal information.

The Licensor reserves the right to refuse any other subject matter it deems inappropriate.

8) ACCEPTABLE USE POLICY

The Licensor provides a service with expected levels of system utilisation (Including, but not limited to network, processor, memory and storage). If the Licensee's use of the Service results in usage in excess of these established levels, the Licensor may, at its sole discretion, take actions to mitigate this, including but not limited to billing for excess resources used, temporarily restricting resources, or terminating the agreement in accordance with clause 16.

9) ASSOCIATED PRODUCTS

The Licensee agrees that the Licensor will, on their behalf, automatically renew any associated domains or security certificates managed by the Licensor and associated with their website unless explicitly instructed not to. You acknowledge that in some cases, the lifetime of these associated products may extend beyond the website licence period and will not be eligible for any refund if the service is terminated.

10) TERMINATION

On cessation of service the Licensor will not charge for any outbound domain transfers, but may pass through any costs levied by the new hosts. Completion of the transfer will be deemed to be when the name records for all domains are no longer directed to the Licensor's platform. At this time, all content and resources will be deleted.

APPENDIX E - Friends and Family Test

1) PROVISION OF SERVICES

This service is provided free of charge to new and existing customers and will function as an extension of existing services from the Licensor and/or as a stand-alone service. The Licensor reserves the right to change the terms of provision of this service with not less than 6 months notice as detailed in Clause 12.

The Licensee understands and agrees that the Licensor will host and provide the services “as is”, and that changes to the services will be in accordance with changes made to the Friends and Family test by the relevant NHS authority.

2) RIGHTS TO WEBSITE AND CONTENTS

With the exception of any data created by use of the system, the Licensor owns the Licensor Content. "Licensor Content" means all content or information (including, without limitation, any text, music, sound, photographs, video, graphics, data, documents or software), in any medium, provided by the Licensor.

3) CONTENT

The Licensee agrees not to provide the Licensor content, and the Licensor will not intentionally provide to the Licensee any content, that:

a) infringes on any third party's intellectual property or publicity/privacy rights.

b) violates any applicable law or regulation.

c) is defamatory, violent, clearly harmful, or obscene or pornographic or infringes on an individual's rights.

d) contains any viruses, Trojan horses, worms, time bombs, cancel bots, or other computer programming routines that are intended to damage or interfere with any system, data, or personal information.

4) ACCEPTABLE USE POLICY

The Licensor provides a service with expected levels of system utilisation (Including, but not limited to network, processor, memory and storage). If the Licensee's use of the Service results in usage in excess of these established levels, the Licensor may, at its sole discretion, take actions to mitigate this, including but not limited to billing for excess resources used, temporarily restricting resources, or terminating the agreement in accordance with clause 16.

APPENDIX F - Additional licence terms: EMIS

1) The Licensee acknowledges that the software includes third party software which is the intellectual property of Egton Medical Information Systems Limited (“EMIS”). The software is NOT free or shareware.

2) Upon accepting this Licence you undertake:

a) not to copy the Software (other than for normal operation) nor (subject to applicable law rights) to disassemble, decompile or reverse engineer the software;

b) not to translate, modify, lease, rent, loan, redistribute, sub-lease, sub-license or create derivative works from the software;

c) to maintain accurate and up-to-date records of the number and location of all copies of the software;

d) to supervise and control Use of the Software in accordance with the terms of this Licence;

e) to reproduce and include the copyright notice as it appears in or on the software on all copies; and

f) not to use the software for any immoral, illegal or for any other purpose which may be determined threatening, abusive or harmful.

3) The EMIS software is provided "as is" without any warranty of any kind either express or implied including but not limited to the implied warranties of merchantability, fitness for a particular purpose, title and non-infringement except to the extent that by statute liability may not lawfully be excluded in an agreement of this nature.

4) All copyright, trade marks and other intellectual property rights subsisting in or used in connection with the EMIS software (including but not limited to all images, animations, audio and other identifiable material relating to the software) are and remain the sole property of the EMIS.

5) The software is intended to aid and supplement, not substitute for, the expertise and judgement of physicians, pharmacists or other healthcare professionals. All information is provided on the basis that the healthcare practitioners responsible for patient care will retain full and sole responsibility for deciding any treatment to prescribe or dispense for all patients and, in particular whether the use of information provided by the software is safe, appropriate, or effective for any particular patient or in any particular circumstances.

APPENDIX G - Bespoke software development

{This Annex is completed as required}