

# **Pin.Health: Terms and Conditions**

for G-Cloud 11

Date: May 2019

This Pin.Health Customer Agreement and any documents referred to in it (this “Agreement”) contains the terms and conditions that govern Your access to and Use of the Services (as defined below) and is an agreement between Newderm Clinic Limited (company number: 622092) whose registered office is at 16 Stillorgan Park Avenue, Blackrock, Co. Dublin A94 AF38, Ireland (“Pin.Health”, “We,” “Us,” and “Our”) and You or the entity You represent (“You”, “Your” and “Customer”).

## 1. Definitions and Interpretation

1.1. The definitions and rules of interpretation in this clause apply in this Agreement.

**“Authorised Users”** mean Your employees, agents and independent contractors who You authorise to Use the Services.

**“Content”** means software, data, documents, text, video, audio or other content.

**“Intellectual Property Rights”** or “IPR” means all patents, copyrights, database rights, design rights, domain names, trademarks, service marks, trade names, and other proprietary rights, and all applications and registrations therefore, wherever in the world arising or available.

**“Intellectual Property Infringement”** means an infringement of a third party’s IPR as defined in Clause 12.1 of the contract.

**“Designated Equipment”** the system servers and/or machine used or owned by the Customer and identified by type and serial number (if applicable);

**“Software Programs”** the software programs in object code form identified by title.

**“Software Program Materials”** the Software Programs and the program documentation;

**“Order Form”** has the meaning given in clause 2.1.

**“Parties”** means You and Us collectively, each being a “Party”.

**“Pin.Health Content”** means any Content We (or Our sub-contractors) make available to You in connection with the Services.

**“Service Credits”** means the sums attributable to Our failure to deliver any part of the Services in accordance with the service levels, as specified in the applicable Service Description.

**“Service Definition”** means the documents setting out the descriptions of the applicable Services, any terms and conditions specific to such Services, and the

applicable service levels offered in respect of such services, as set out at as set out on the Service Description document on G-Cloud.

**“Services”** means the services made available by Us (including those described in the Service Definition), any associated application program interfaces, the Pin.Health Content, any Websites made available by Us, and any other product or service provided by Us under this Agreement, excluding any Third Party Content.

**“Service Fee”**, the fee for the Services as the same may be varied in accordance with clause 3 below;

**“Third Party Content”** means Content made available to You by any third party in conjunction with the Services.

**“User Subscriptions”** means the User subscriptions purchased by You which entitle Authorised Users to access and Use the Services in accordance with this Agreement.

**“Your Content”** means Content that You or any Authorised User run on, cause to interface with, or upload to, the Services, under Your account.

- 1.2. Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality). Words in the singular shall include the plural and vice versa, and a reference to one gender shall include a reference to the other genders. Any phrase introduced by the words “including”, “includes”, “in particular” or “for example” or similar shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.4. In the event of any inconsistency between the provisions of this Pin.Health Customer Agreement and the Service Definition then this Pin.Health Service Definition shall prevail.

## **2. Use of the Services**

- 2.1. You will submit a paper or electronic order form (“Order Form”) to Us in accordance with Our standard ordering procedure, specifying which of Our Services You require and Your choice of any other options We may make available to You.
- 2.2. We grant You a limited, non-exclusive, non-sub-licensable and non-transferrable license to access and use the Services during the term of this Agreement to:

- (a) access and use the Services You've ordered solely in accordance with this Agreement; and
  - (b) Use the Pin.Health Content solely to the extent reasonably required for Your permitted Use of the Services.
- 2.3. You may access and Use the Services You have ordered in accordance with this Agreement, and We will provide such Services in accordance with the applicable Service Definition.
  - 2.4. You will comply with all laws, rules, and regulations applicable to Your Use of the Services, including those specified in the Service Definition.
  - 2.5. Third party Content may be made available directly to You by other companies or individuals under separate terms and conditions, including separate fees and charges, and Your Use of Third Party Content is at Your sole risk.
  - 2.6. The rights provided by Us under this Agreement are granted to You only, and shall not be considered granted to any subsidiary or holding company of Yours, unless agreed by Us in writing.

### **3. Service Fee**

- 3.1. The Service Fee shall only include the services and as stipulated in the Service Definition document. Additional professional services relating to the Software Program Materials may be required. These additional services are available as GCloud - Specialist Cloud Services.
- 3.2. All charges shall be payable by the Customer within 30 days of the Company issuing its invoice to the Customer.
- 3.3. For each renewal of the services, prior to the execution of this Agreement, the Service Fee may be subject to annual review upon sixty (60) days prior written notice from the Company.
- 3.4. The Company shall review the use of the Service annually to ensure You are on the appropriate pricing level. You agree to comply with all reasonable information requests to complete this review.
- 3.5. There is no charge for upgrades.

- 3.6. All charges hereinbefore referred to in the Service Definition are exclusive of and net of any taxes, duties or such other additional sums including, but without prejudice to value added tax.
- 3.7. The Company reserves the right to charge the Customer interest for the late payment of any sum due under this Agreement at the rate of 2 per cent per annum above the base rate of the Bank of England from the due date therefor until payment.

#### **4. Delivery**

- 4.1. Subject to the Customer's integration and configuration requirements, the Company shall use all reasonable endeavours to deliver the Software Programs Materials one week after You have subscribed for the service.
- 4.2. If the Company shall fail to deliver the Software Program Materials within 30 days of the Delivery Date, the Customer shall be entitled to either:
- (a) without prejudice to terminate this Agreement upon 30 days written notice to the Company; or
  - (b) after consultation with the Company specify by notice to the Company such revised delivery date as it shall in its reasonable opinion think fit.
- 4.3. The Company shall make the Software Programs available via the Cloud.

#### **5. Changes**

- 5.1. We may change or discontinue any of the Services (or any part thereof), change the service levels or change or remove functionality of the Services, and We will notify You of any material changes or discontinuation.

#### **6. Your Content and Data**

- 6.1. You shall own all rights, title and interest in and to all of Your Content and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of Your Content.
- 6.2. Where Our Software Programme processes any personal data on Your behalf when performing Our obligations under this Agreement, You shall be the data controller and:
- (a) You shall ensure that You are entitled to transfer the relevant personal data to Us so that We may lawfully Use, process and transfer such personal data in accordance with this Agreement on Your behalf;

(b) You shall ensure that the relevant third parties have been informed of, and have given their consent to, such Use, processing, and transfer as required by all applicable data protection legislation;

(c) We shall process the personal data only in accordance with the terms of this Agreement, the Data Protection Act and any lawful instructions reasonably given by You from time to time; and

(d) each Party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

6.3. The Software Programme receives and processes data that You supply including without limitation name, age, postal address, phone and professional registration number, e-mail details, and those of Authorised Users.

6.4. We (or third party data processors acting on Our behalf) may collect, store and Use Your personal data for the following purposes:

(a) to provide You with Services that You request and to fulfil Our contractual obligations to You;

(b) to notify You about changes to Our Services; and

(b) to contact You (including by SMS and e-mail) with information, products or services which We think may interest You.

## **7. Authorised Users**

7.1. In relation to the Authorised Users, You are responsible for issuing Authorised Users access to the Software Program. It is Your responsibility to check that each Authorised User is qualified to access the level of information contained in the Software Programme.

7.2. Each Authorised User shall keep a secure password for his Use of the Services, which shall be kept confidential. You or the Authorised Users can change passwords as frequently as required.

7.3. You shall Use all reasonable endeavors to prevent any unauthorised access to, or Use of, the Services and, in the event of any such unauthorised access or Use, promptly notify Us by email to [support@newderm.com](mailto:support@newderm.com)

7.4. You are responsible for all activities that occur under Your account, regardless of whether the activities are undertaken by You, Your employees or a third party

(including Your contractors or agents) and, except to the extent caused by Our breach of this Agreement, We are not responsible for unauthorised access to Your account. You will ensure that all Authorised Users comply with Your obligations under this Agreement. If You become aware of any violation of Your obligations under this Agreement by an Authorised User, You will immediately terminate such Authorised User's access to the Services.

## **8. Your Obligations**

### **8.1. You shall:**

(a) not access, store, distribute or transmit any viruses, or any material during the course of Your Use of the Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence; or is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity, and We reserve the right, without liability to You, to disable Your access to any material that breaches the provisions of this clause.

(b) not access all or any part of the Services in order to build a product or service which competes with the Services (or any part of them) or attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this Agreement.

(c) provide Us with all necessary co-operation in relation to this Agreement and all necessary access to such information as We may require in order to render the Services, including but not limited to Your content, security access information and configuration services;

(d) ensure that Your network and systems comply with the relevant specifications provided by Us from time to time, including promptly complying with any reasonable requests from Us in connection with the same; and

(e) be solely responsible for procuring and maintaining Your network connections and telecommunications links from Your systems, 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.

## **9. Payment**

9.1. You will pay Us the applicable fees and charges for use of the Services as described in the Service Definition without setoff or counterclaim, and without any deduction or withholding. If any deduction or withholding is required by law, You will notify Us and will pay Us any additional amounts necessary to ensure that the net amount that We receive after any deduction and withholding equals the amount We would have

received if no deduction or withholding had been required. All fees and charges shall be payable in pounds sterling, are non-cancellable and non-refundable, and are exclusive of value added tax, which shall be added to Our invoices at the appropriate rate.

- 9.2. We calculate and invoice Our fees for the Services on a monthly basis (as agreed pursuant to an Order Form), and You will pay Our invoices for such fees within 10 days after the date of such invoices. We may also require payment in advance (or on different terms) for ad hoc services or irregular purchases, in which case We shall inform You prior to Your agreeing to receive these services/purchases.
- 9.3. Interest shall accrue on any overdue amounts at an annual rate equal to 5% over the then current base lending rate of Barclays Bank plc at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 9.4. We may increase or add new fees and charges for any existing Services by giving You at least 30 days' advance notice.

## **10. Suspension**

- 10.1. We may suspend Your or any Authorised User's right to access or Use all or any part of the Services immediately upon notice to You if We determine that:
- (a) You are, or any Authorised User is, in breach of this Agreement, including if You are late in making any payments hereunder by more than 7 days; or
  - (b) Your or an Authorised User's Use of the Services:
    - (i) creates a security risk to the Services or any third party; or
    - (ii) may adversely impact the Services or the systems or Content.
- 10.2. If We suspend Your right to Use or access all or part of the Services:
- 10.3. You remain responsible for any applicable fees and charges for any Services to which You continue to have access and for in-process tasks completed after suspension.
- 10.4. You will not be entitled to any Service Credits under the Service Definition for any period of suspension.

## **11. Term and Termination**



11.1. This Agreement will commence when You sign the Call Off Order Form or, if earlier, when You Use any of the Services (the "Effective Date"), and shall remain in force until terminated by You or Us in accordance with this clause 11.

11.2. The minimum contract term is 12 months. Termination before this time is not possible. There are no termination fees.

11.3. Either Party may terminate this Agreement for convenience by providing the other Party with not less than 30 days' advance notice in writing.

(a) Without prejudice to any other rights or remedies to which the Parties may be entitled, either Party may terminate this Agreement without liability to the other if:

(b) forthwith if the other commits any material breach of any term of this Agreement and which has not been remedied within 30 days of a request;

(c) forthwith if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary winding up or a proposal for any other composition scheme or arrangement with its creditors or if the other shall be unable to pay its debts as they fall due or if a trustee, administrator, receiver, examiner or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an examination order (otherwise than for the purpose of an amalgamation or reconstruction).

11.4. Any termination of this Agreement shall be without prejudice and shall not affect any accrued rights or liabilities of either party.

11.5. Upon termination of this Agreement the Company shall terminate access to the Software Program. Within 15 days of the termination of this Agreement the Customer shall either return or destroy all copies of the Software Program Materials and associated Intellectual Property as defined under this agreement. An authorised officer of the Customer shall certify in writing to the Company that the Customer has complied with its obligation as aforesaid.

11.6. On termination of this Agreement for any reason:

(a) all rights granted to You under this Agreement shall immediately terminate;

## **12. Intellectual Property Rights**

12.1. As between You and Us, You own all right, title, and interest in and to Your Content. Save as expressly provided in this Agreement, We shall obtain no rights from You or Your licensors to Your Content. We may disclose Your Content and any

confidential information You provide Us with to the extent required to comply with any request of a governmental or regulatory body (including without limitation, any court orders).

12.2. You represent and warrant to Us that You or Your licensors own all right, title, and interest in and to Your Content, and that You have all rights in Your Content necessary to grant the rights contemplated by this Agreement.

12.3. The Software Program Materials contain confidential information of the Company and all copyright, trade marks, patents and other Intellectual Property Rights created, developed, subsisting or used in or in connection with the Software Program Materials are the exclusive property of the Company. The Customer shall have no rights in or to the Software Programs other than the right to use them in accordance with the terms of this Agreement.

12.4. This Agreement does not grant You any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services.

12.5. In the event that new inventions, designs or processes evolve in performance of or as a result of this Agreement, the Customer acknowledges that the same shall be the property of the Company unless otherwise agreed in writing by the Company.

12.6. The Customer shall not:

(a) reverse compile, copy, duplicate, create derivatives from, frame, mirror, republish, download, display, transmit, distribute or adapt the whole or any part of the Software Program Materials;

(b) save solely for the purposes expressly permitted by and in accordance with any applicable laws, copy, adapt or reverse compile the whole or any part of the Software Program Materials;

(c) assign, transfer, sell, lease, rent, charge or otherwise deal in or encumber the Software Program Materials or use the Software Program Materials on behalf of any third party or make available the same to any third party; or

(d) remove or alter any copyright or other proprietary notice on any of the Software Program Materials.

12.7. The Customer shall:

(a) keep confidential the Software Program Materials and limit access to the same to those of its employees, agents and sub-contractors who either have a need to know or

who are engaged in the Use of the Software Programs (including where appropriate the Program Documentation);

(b) reproduce on any copy (whether in machine readable or human readable form) of the Software Program Materials the Company's copyright and trade mark notices;

(c) notify the Company immediately if the Customer becomes aware of any unauthorised use of the whole or any part of the Software Program Materials by any third party; and

(d) without prejudice to the foregoing take all such other steps as shall from time to time be necessary to protect the confidential information and intellectual property rights of the Company in the Software Program Materials.

12.8. The Customer shall inform all relevant employees, agents and sub-contractors that the Software Program Materials constitute confidential information of the Company and that all intellectual property rights therein are the property of the Company and the Customer shall take all such steps as shall be necessary to ensure compliance by its employees, agents and sub-contractors with the provisions of this clause 12.

### **13. Indemnities**

13.1. You shall, at all times during and after the term of this Agreement, indemnify Us and keep Us indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by Us arising from or in connection with:

(a) Your breach of this Agreement or violation of applicable law by You or any Authorised User;

(b) Your or any Authorised Users' Use of the Services (including any activities under Your Pin.Health account and Use by Your personnel); or

(c) Your Content or the combination of Your Content with other applications or content, including any claim involving alleged infringement of third-party rights by Your Content or Use thereof.

13.2. We shall notify You of any such third-party claim, allow You to conduct all negotiations and proceedings and provide You with such reasonable assistance as is required by You (at Your cost), and not, without prior consultation with You, make any admission relating to such claim or attempt to settle it, provided that You consider and defend the claim diligently, Using competent counsel and in such a way as not to bring Our reputation into disrepute.

## 14. Limitation of Liability

14.1. The following provisions set out Our entire financial liability (including any liability for the acts or omissions of Our employees, agents, sub-contractors and licensors) to You in respect of:

(a) any breach of this Agreement howsoever arising;

(b) any Use made by You of the Services or any part of them; and

(b) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

14.2. We do not warrant that the Services will be uninterrupted or error free or that the Services will meet Your requirements.

14.3. We are 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.

14.4. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

14.5. Nothing in this Agreement excludes Our liability for:

(a) death or personal injury caused by Our negligence; or

(b) fraud or fraudulent misrepresentation; or (c) any other act or omission, liability for which may not be limited under applicable law.

14.6. Subject to clause 14.5, We shall not in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:

(a) loss of profits of business; or

(b) depletion of goodwill or similar losses; or

(c) loss of anticipated savings; or

(d) loss or corruption of data or information; or (e) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

- 14.7. Subject to clause 14.5, Our total liability in contract, tort (including negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the amount You have paid Us under this Agreement for the Service which gave rise to the claim during the preceding 12 months.

## **15. Intellectual property rights indemnity**

- 15.1. The Company will indemnify the Customer against any damages that may be awarded or agreed to be paid to any third party in respect of any claim that the normal operation, possession or use of the Software Program Materials by the Customer infringes the patent, copyright, registered design or trade mark rights of said third party ("Intellectual Property Infringement") provided that the Customer:
- (a) gives notice to the Company of any Intellectual Property Infringement forthwith upon becoming aware of the same;
  - (b) gives the Company the sole conduct of the defence to any claim or action in respect of an Intellectual Property Infringement and does not at any time admit liability or attempt to settle or compromise the said claim; and
  - (c) acts in accordance with the reasonable instructions of the Company and gives to the Company such assistance as it shall reasonably require
- 15.2. The Company shall reimburse the Customer its reasonable costs incurred in complying with the provisions of clause 15.1 above.
- 15.3. The Company shall have no liability to the Customer in respect of an Intellectual Property Infringement if the same results from any breach of the Customer's obligations under this Agreement.
- 15.4. In the event of an Intellectual Property Infringement the Company shall be entitled at its own expense and option either to:
- (a) procure the right for the Customer to continue using the Software Program Materials; or
  - (b) make such alterations, modifications or adjustments to the Software Program Materials so that they become non-infringing; or
  - (c) replace the Software Program Materials with non-infringing substitutes.

15.5. If the Company in its reasonable judgement is not able to exercise any of the options set out at clauses 15.4 (a), 15.4 (b) or 15.4 (c) above within 60 days of the date it received notice of the Intellectual Property Infringement then the Customer shall be entitled to terminate this Agreement by 30 days' notice upon the Company.

15.6. The provisions of clause 14 above shall apply to this clause 15.

## **16. Technical Support**

16.1. With effect from the Delivery Date and for the duration of the Agreement the Company shall provide in respect of each of the Software Programs, such category of Technical Support within such Response Time and to the agreed service levels set out in the Service Definition document.

16.2. Technical Support shall not include the diagnosis and rectification of any fault resulting from:

(a) the improper use, operation or neglect of the Software Program Materials;

(b) the modification of the Software Program Materials or their merger (in whole or in part) with any other software;

(c) any interruption due to mobile operator latency, operator system outages, Wi-Fi network outage or other issues that are under the control of the Customer and outside the control of the Company;

(d) the failure by the Customer to implement recommendations in respect of or solutions to faults previously advised by the Company;

(e) any repair, adjustment, alteration or modification of the Software Programs by any person other than the Company without the Company's prior written consent;

(f) the use of the Software Program Materials for a purpose for which they were not designed.

16.3. In some circumstances the Customer requires Onsite support but this must be charged based on Pin.Health SFIA Day Rate Card.

16.4. Without prejudice to clause 16.2 above, the Customer must purchase professional services over Pin.Health SFIA Day Rate Card if Technical Support is provided in circumstances where any reasonably skilled and competent data processing operator would have judged the Customer's request to have been unnecessary

## **17. Training**

- 17.1. Detailed on-line help are provided with the Software Programs. We offer either instructor led training or train-the-trainer training as a Training Services over Pin.Health SFIA Day Rate Card.

## **18. Confidentiality**

- 18.1. You shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to You by Us or Our agents, and any other confidential information concerning Our business or Our products and services which You may obtain. You shall restrict disclosure of such confidential material to such of Your employees, agents or contractors as need to know it for the purpose of discharging Your obligations to Us, and shall ensure that such employees, agents or contractors are subject to obligations of confidentiality corresponding to those which bind You.
- 18.2. We may refer to You in Our marketing materials and on Our Websites as being one of Our customers, and You grant Us a non-exclusive licence to Use Your trademarks solely to the extent reasonably necessary for such purposes.

## **19. Force Majeure**

- 19.1. We shall not in any circumstances have any liability to You under this Agreement if We are prevented from, or delayed in, performing Our obligations under this Agreement or from carrying on Our business by acts, events, omissions or accidents beyond Our reasonable control, including strikes, lock-outs or other industrial disputes (whether involving Our workforce or that of any third party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

## **20. Bribery and Corruption**

- 20.1. You shall:
- (a) comply with all applicable laws, statutes, regulations, codes and guidance relating to anti-bribery and anti-corruption ("Anti-bribery Laws"), including without limitation the Bribery Act 2010;
  - (b) not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in

the United Kingdom; and (c) not do, or omit to do, any act that will cause Us to be in breach of the Antibribery Laws.

## **21. Warranty**

- 21.1. Subject to the exceptions set out in clause 21.4 below and the limitations upon its liability in clause 14 above the Company warrants that: (a) its title to and property in the Software Program Materials is free and unencumbered and that it has the right, power and authority to license the same upon the terms and conditions of this Agreement; (b) there are no disabling programs or devices in the Software Programs; and (c) it will perform the Services with reasonable care and skill.
- 21.2. The Customer shall give notice to the Company immediately upon becoming aware of a breach of warranty.
- 21.3. Subject to clause 21.4 below, the Company shall have the option to remedy any breach of warranty by the provision of Technical Support on high priority, free of charge.
- 21.4. The Company shall have no liability to remedy a breach of warranty where such breach arises as a result of any of the circumstances described in clauses 16.2 above.
- 21.5. Without prejudice to the foregoing the Company does not warrant that the Use of the Software Programs will meet the Customer's data processing requirements or that the operation of the Software Programs (including where in machine-readable form the Program Documentation) will be uninterrupted or error free.
- 21.6. Although the Company does not warrant that the Software Programs supplied hereunder shall be free from all known viruses it has used commercially reasonable efforts to check for the most commonly known viruses prior but the Customer is solely responsible for virus scanning the Software Programs.
- 21.7. Subject to the foregoing all conditions warranties terms and undertakings express or implied statutory or otherwise in respect of the Software Program Materials and the provision of the Services are hereby excluded.

## **22. Entire Agreement**

- 22.1. This Agreement is made for the benefit of the Parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.
- 22.2. All amounts stated in the Service Definition are expressed exclusive of value added tax (VAT)



22.3. This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England.

22.4. The Parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## **23. General**

### **23.1. Notices**

(a) We may provide any notice to You under this Agreement by sending a message to the email address then associated with Your account, or by personal delivery, pre-paid first-class post or recorded delivery post to Your address notified to Us.

(b) Other than where notifying Us about unauthorised access to the Services, in order to give Us notice under this Agreement, You must contact Us by personal delivery, pre-paid first-class post or recorded delivery post to Newderm Clinic Limited, 16 Stillorgan Park Avenue, Blackrock, Co. Dublin A94 AF38, Ireland (or any other address We notify You of for such purposes from time to time).

23.2. We may modify this Agreement (including the Service Definition) at any time by notifying You in accordance with clause 23.1. The modified terms will become effective upon notifying You, as stated in such notification. By continuing to Use the Services after the effective date of any modifications to this Agreement, You agree to be bound by the modified terms.

23.3. A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the Party to whom the waiver is addressed and the circumstances for which it is given. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

23.4. If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

23.5. Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on any statement, representation (whether innocent or negligent), assurance or warranty ("Representation") (whether in writing or not) of any person (whether party to this Agreement or not) other than as expressly set out in this

Agreement. Each Party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract. Nothing in this clause shall limit or exclude any liability for fraud.

- 23.6. You shall not, without Our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of Your rights or obligations under this Agreement. We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of Our rights or obligations under this Agreement.
- 23.7. Nothing in this Agreement shall operate to create a partnership between the Parties, or to authorise either Party to act as agent for the other, and neither Party shall have 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).
- 23.8. The Customer shall communicate to the Company the identity of the person(s) who shall act as the sole contact point and channel of communication during the currency of this Agreement. The Customer shall forthwith inform the Company of any change in the identity of any such person(s) or department.