



The Clinician Ltd

TERMS OF USE FOR SAAS SERVICES

These Terms of Use govern your access to and use of the Services. By making an Order and using the Services you agree to be bound by these Terms of Use.

1 INTERPRETATION

1.1 **Definitions:** In these Terms, the following terms have the stated meaning below:

Term	Meaning
Agreement	the Order, these Terms and, to the extent specified in an Order or these Terms, any related policy of other documents described in the Order or these Terms, including any Annex.
Annex	any document which Clinician identifies as an annex to this Agreement from time to time, (including the applicable Regional Data Management annex).
Applicable Law	New Zealand law, except to the extent that the laws of the Client's jurisdiction or the jurisdiction where the Services are hosted must be complied with, in which case those laws will apply to that extent only.
Business Day	a day other than a Saturday, Sunday or a public holiday in either New Zealand or the location of the Client.
Client	the person or organisation who subscribes to the Services by making an Order which is accepted by Clinician.
Clinician	The Clinician Limited (New Zealand company number 5692079)
Confidential Information	all documents comprising the Agreement and any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, the Agreement. Clinician's Confidential Information includes Intellectual Property owned by Clinician (or its licensors), including the ZEDOC Platform. The Client's Confidential Information includes the Data.
Customers	patients and any other customers of the Client who make use of, or benefit from, the Services or provide Data.
Data	all data, content, and information (including Personal Information) owned, held, used or created by or on behalf of the Client (including

	Customer information) that is stored using, or inputted into, the Services.
Derived Data	has the meaning given in clause 4.3a.
End Date	the date the Agreement is terminated in accordance with these Terms.
Fees	all fees set out in the Order, including the monthly subscription Fees and SMS Fees, as modified from time to time in accordance with clause 5.4.
Force Majeure	<p>an event that is beyond the reasonable control of a party, excluding:</p> <ul style="list-style-type: none"> • an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or • a lack of funds for any reason.
Intellectual Property Rights	includes copyright and all rights existing anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. Intellectual Property has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.
Intermediary	an intermediary authorised by Clinician to resell the Services, including Amazon (through the AWS Marketplace) as at the date of these Terms.
Notifications	SMS or email notifications [sent][initiated] by the Client through the ZEDOC Platform to [end users][Customers].
Order	<p>any order for Services made through any channel, process or medium offered by Clinician (either directly or through an authorised Intermediary) in a form which meets all requirements stipulated by Clinician including:</p> <ul style="list-style-type: none"> • acceptance of these Terms; • payment of the first months' subscription Fee and an acceptable payment authority for future payments of Fees (whether through an approved Payment Gateway or other acceptable payment method).
Objectionable	includes being objectionable, defamatory, obscene, harassing, threatening, harmful, or unlawful in any way.
Payment Gateway	a payment gateway approved by Clinician for payment of Fees).
Payment Terms	the payment terms set out in the Order.
Permitted Users	those personnel of the Client who are authorised to access and use the Services on the Client's behalf in accordance with clause 3.3.
Personal Information	has the meaning given in the applicable Privacy Legislation.

Privacy Legislation	the applicable privacy legislation in the domicile of the Client and the Customers and any regulations enacted under those statutes.
PREMs	patient reported experience measures
PROMs	patient reported outcome measures
Questionnaires	sets of questions supplied by or through Clinician, including PROMs, PREMs and clinical assessments.
Related Services	any related services described in an Order and any additional services that Clinician agrees to provide to the Client under the Agreement.
SaaS Service	the services having the core functionality described in the Order.
Services	the SaaS Service and any Related Services.
Start Date	the date Clinician makes the Services available to the Client pursuant to an Order.
Subscription Period	the period commencing on the Start Date and ending on the End Date.
Terms or Terms of Use	these Terms of Use as may be amended from time to time in accordance with these Terms.
Third Party Materials	Questionnaires and any other materials, intellectual property or information sourced from third parties and provided by Clinician in the course of providing Services.
Underlying Systems	the ZEDOC Software, IT solutions, systems and networks (including software and hardware) used to provide the Services, including any third party solutions, systems and networks.
Website	the internet site at the domain set out in the Order, or such other site notified to the Client by Clinician in the future.
ZEDOC Platform	the software owned by Clinician (and its licensors) that is used to provide the SaaS Service.

1.2 Interpretation: In these Terms:

- a clause and other headings are for ease of reference only and do not affect the interpretation of these Terms;
- b words in the singular include the plural and vice versa;
- c a reference to:
 - i a **party** to the Agreement includes that party's permitted assigns;
 - ii **personnel** includes officers, employees, contractors and agents, but a reference to the Client's personnel does not include Clinician;
 - iii a **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity;
 - iv **including** and similar words do not imply any limit; and

- v a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them;
- d no term of these Terms is to be read against Clinician because the term was drafted by Clinician; and
- e if there is any conflict between an Order or any documents referred to in an Order and these Terms, these Terms will prevail unless the Order or that other document expressly states that it is amending these Terms.

2 SERVICES

2.1 General: Clinician must use all reasonable efforts to provide the Services:

- a in accordance with the documents comprising the Agreement and Applicable Law;
- b exercising reasonable care, skill and diligence; and
- c using suitably skilled, experienced and qualified personnel.

2.2 Non-exclusive: Clinician's provision of the Services to the Client is non-exclusive. Nothing in the Agreement prevents Clinician from providing the same or similar services to any other person in the Client's jurisdiction.

2.3 Availability:

Subject to clause 2.5 and other terms of the Agreement, Clinician will use reasonable efforts to ensure the SaaS Service is available at all times. However, it is possible that on occasion the SaaS Service may be unavailable from time to time, including:

- a due to outages or other issues affecting the third-party cloud hosting, the SMS gateway or the Client's own infrastructure;
- b due to outages in Client's integrated information systems and the electronic connectivity;
- c as required to permit maintenance or other development activity to take place; or
- d in the event of Force Majeure.

Clinician will use reasonable efforts to notify the Client by email (in advance where practical) with details of any unavailability.

2.4 Additional Related Services:

- a Clinician may, from time to time, make available additional services to supplement the SaaS Service.
- b At the request of the Client and subject to the Client paying the applicable Fees, Clinician may agree to provide to the Client an additional Related Service on the terms of the Agreement.

2.5 **Reasonable Use:**

Clinician has made the Services available to the Client based on certain reasonable expectations as to the number of Permitted Users and Customers who may use the Services from time to time and the uses to which the Services will be put (including any such expectations communicated by Clinician from time to time in offering collateral or elsewhere). Clinician may terminate the Agreement or withdraw Services (partially or fully) in its discretion if those reasonable expectations are exceeded.

3 CLIENT OBLIGATIONS

3.1 **General use:** The Client must:

- a use the Services in accordance with the Agreement solely for:
 - i the Client's own internal business purposes in the provision of routine clinical care and not for other commercial or research purposes; and
 - ii lawful purposes (complying with all Applicable Laws);
- b not resell or make available the Services to any third party, or otherwise commercially exploit the Services other than for the Client's own permitted use contemplated by the Order; and
- c ensure that any Permitted Users comply with the Agreement.

3.2 **Access conditions:** When accessing the SaaS Service and sending Notifications, the Client must:

- a not impersonate another person or misrepresent authorisation to act on behalf of others or Clinician;
- b correctly identify the sender of all electronic transmissions;
- c not attempt to undermine the security or integrity of the Underlying Systems;
- d not use, or misuse, the SaaS Service in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the SaaS Service;
- e not attempt to view, access, reverse engineer or copy any material or data other than:
 - i that which the Client is authorised to access; and
 - ii to the extent necessary for the Client to use the SaaS Service in accordance with the Agreement;
- f neither use the SaaS Service or send Notifications in a manner, nor transmit, input or store any Data, that breaches any third party right (including Intellectual Property Rights and privacy rights) or is Objectionable, incorrect or misleading or for a purpose not reasonably contemplated by the Agreement; and
- g comply with any terms of use on the Website, as updated from time to time by Clinician.

3.3 **Users**

- a Without limiting clause 2.2, no individual other than a Permitted User may access or use the SaaS Service.
- b The Client may authorise any of its personnel to be a Permitted User (subject to clause 2.5).

- c The Client must procure each Permitted User's compliance with clauses 3.1 and 3.2 and any other reasonable condition notified by Clinician to the Client.
 - d A breach of any term of the Agreement by any of the Client's users (including, to avoid doubt, a Permitted User) is deemed to be a breach of the Agreement by the Client.
 - e To avoid doubt, Permitted Users do not include patients or any other Customers who may receive medical or other services from the Client. Clinician does not provide services to, and is not a party to, any agreement with, any person other than the Client.
- 3.4 **Authorisations:** The Client is responsible for procuring all licences, authorisations and consents required for it and its users (including Permitted Users and Customers) to use the Services, including (if required) to use, store and input Data into, and process and distribute Data through the Services.
- 3.5 **Insurances:** During the Subscription Period, the Client must maintain all insurances which are appropriate for the Client's business, including without limitation workers compensation insurance, public liability insurance and professional indemnity insurance which is adequate to cover any breaches of this Agreement. The Client must provide Clinician evidence of all insurances within 5 days of a request by Clinician to do so.
- 3.6 **Third Party Materials Acknowledgement:** The Client acknowledges that this Agreement does not confer any IP or other rights to the Third Party Materials, which the Client acknowledges are sourced from third parties and contain third party IP. Clinician has procured certain rights to Third Party Materials and will continue to use its reasonable endeavours to facilitate the Client obtaining all required additional rights to use the Third Party Materials (as required to enjoy the full benefit of the Services), but the obligations to obtain any rights not already covered by existing licences and to pay any associated royalties rests with the Client. The Client indemnifies Clinician in respect of any loss or costs arising from any unauthorised use of Third Party Materials.

4 DATA

4.1 Clinician access to Data:

- a The Client acknowledges that:
 - i Clinician may access, hold and use the Data to exercise its rights and perform its obligations under the Agreement; and
 - ii to the extent that this is necessary, but subject to clauses 6 and 7, Clinician may authorise a member or members of its affiliates to access the Data for this purpose.
- b The Client represents and warrants that it has obtained all rights, permissions, and consents (including from Patients) that are necessary for Clinician to access, hold and use the Data as described in clause 3.1a and clause 3.3 (including any consents required to use and transfer the Data outside of the Client's jurisdiction).

4.2 Data Processing and Privacy: Without limiting clause 2.1 and clause 4.8, Clinician must handle all Data in accordance with the Applicable Laws (including the Privacy Legislation and any laws relating to health records in the jurisdiction of the Client).

- 4.3 **Data use:** The Client acknowledges and agrees that:
- a Clinician may use all Data and information derived from the Client and the Client's end users' use of the Services (in combination with similar data and information obtained from other Clinician clients):
 - i to generate anonymised and aggregated statistical and analytical data for Clinician's internal research, to conduct statistical analysis and identify trends and insights; and
 - ii for benchmarking, product improvement, product development and any other lawful purpose;provided in all cases that Data and information is de-identified and aggregated so that the identity of the Client or any Customer cannot be ascertained from any disclosure by any third party (**Derived Data**), and
 - b Clinician's rights under clause 4.3a above will survive termination or expiry of the Agreement; and
 - c title to, and all Intellectual Property Rights in, all **Derived Data** is and remains Clinician's property.
- 4.4 **Agent:** The Client acknowledges and agrees that to the extent Data contains Personal Information, in collecting, holding and processing that information through the Services, Clinician is acting as an agent of the Client for the purposes of the Privacy Legislation and any other applicable privacy law.
- 4.5 **Backups of Data:** While Clinician will implement standard industry measures to back up all Data stored using the Services, the Client agrees to keep a separate back-up copy of all Data uploaded by it onto the SaaS Service. Clinician does not guarantee that there will be no loss of Data and will not be liable for any loss of Data except to the extent that such loss is caused by a wilful act or omission by, or the gross negligence of, Clinician (and then subject to the limitations on liability in the Agreement).
- 4.6 **Data Security Practices:** Clinician is committed to maintaining the security of all Data and will take all reasonable steps to maintain appropriate organisational and technical processes and procedures to safeguard against unauthorised access, accidental loss, destruction, theft, use or disclosure of the Data, (aligned with the ISO/IEC 27001:2005 standard as at the date of these Terms).
- 4.7 **Notification of Security Incident:** A party must immediately notify the other party if it becomes aware of any security incident (such as a data breach or theft or computer virus) that affects, or that may affect the other party.
- 4.8 **International storage of Data:** The Client agrees that:
- a Clinician shall store the Data in secure servers (within hosting providers outlined in any applicable Annex).
 - b Those servers may be outside of the jurisdiction of the Client; and
 - c Clinician may access that Data (including any Personal Information) from outside the Client's jurisdiction in order to provide the Services.
- 4.9 **Indemnity:** The Client indemnifies Clinician against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by Clinician's solicitors) and loss of any kind arising from:

- a a breach of the Client's warranty in clause 4.1b; or
- b otherwise arising from any claim by a third party that any Data infringes the rights of that third party (including Intellectual Property Rights and privacy rights) or that the Data is Objectionable, incorrect or misleading.

5 FEES

5.1 **Fees:** The Client must pay to Clinician the Fees in the manner set out in the Order.

5.2 **Invoicing and payment:**

- a The Fees exclude any GST or other value added taxes, which the Client must pay on taxable supplies under the Agreement (subject to receiving a compliant tax invoice where required by law).
- b The Client must pay the Fees:
 - i on the dates set out in the Payment Terms (being monthly in advance for the monthly subscription Fees and monthly in arrears for SMS Fees based on usage over the previous month unless otherwise specified), or where not specified, within 30 days following the date of invoice; and
 - ii electronically in cleared funds without any set off or deduction.

5.3 **Overdue amounts:** Without prejudice to its other remedies, Clinician may charge interest on overdue amounts together with any external collection costs incurred by Clinician if Clinician engages any third party to seek recovery of an overdue payment. Interest will be calculated from the due date to the date of payment (both inclusive) at the rate of 12% per annum (calculated on a daily basis).

5.4 **Price Review:** Clinician may change the Fees charged to the Client for the Services at any time by giving the Client 30 days prior written notice.

5.5 **Preferential pricing:** If the Client has been offered preferential pricing subject to specific conditions as specified in the Order and any accompanying promotional material and does not then comply with the terms of that preferential pricing, Clinician may immediately amend the Fees to the Fees which apply without that preferential pricing and may require the Client to repay any preferential discount that has been credited to the Client in advance.

5.6 **Payment Gateway:** Clinician may accept payment of the Fees through an approved Payment Gateway. As at the date of the Agreement, Stripe is the approved Payment Gateway but Clinician may change a Payment Gateway at any time by giving 30 days prior written notice to the Client. By making an Order and using the Services, the Client warrants that the Client has familiarised itself with, and agrees to be bound by, the terms of service of the applicable Payment Gateway. The Client must immediately notify Clinician if any details the Client has given to enable Clinician to use the Payment Gateway have changed.

5.7 **Expenses:** Unless otherwise specified in an Order, the Client will reimburse Clinician for all pre-approved, out-of-pocket travel and related expenses incurred in performing any Related Services. Clinician will include reasonably detailed documentation of all such expenses with each invoice for Related Services.

6 INTELLECTUAL PROPERTY

6.1 Ownership:

- a Subject to clause 6.1b, title to, and all Intellectual Property Rights in, the Services, the Website, and all Underlying Systems is and remain the property of Clinician (and its licensors). The Client must not contest or dispute that ownership, or the validity of those Intellectual Property Rights.
- b Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains the property of the Client (subject to clause 4.3c in respect of Derived Data). The Client grants Clinician a worldwide, non-exclusive, fully paid up, transferable, sublicensable, irrevocable licence to use, store, copy, modify, make available and communicate the Data for any purpose in connection with the exercise of its rights and performance of its obligations in accordance with the Agreement and as permitted by clause 4.

6.2 Feedback: If the Client provides Clinician with ideas, comments or suggestions relating to the Services or Underlying Systems (together **feedback**):

- a all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications or derivative works), are owned solely by Clinician; and
- b Clinician may use or disclose the feedback for any purpose.

6.3 Use of Client Name and Marks: Clinician may include the Client's name and logo in its client lists, including on its Website if applicable. To the extent the Client provides standard trademark usage guidelines, Clinician shall use the Client's name and logo in accordance with such guidelines.

6.4 Third party sites and material: Client acknowledges that the SaaS Service may link to third party websites or feeds that are connected or relevant to the SaaS Service. Any link from the SaaS Service does not imply any endorsement, approval or recommendation of, or responsibility for, those websites or feeds or their content or operators, by Clinician. To the maximum extent permitted by law, Clinician excludes all responsibility or liability for those websites or feeds.

6.5 Third party Intellectual Property Rights indemnity:

- a Clinician indemnifies the Client against any claim or proceeding brought against the Client to the extent that claim or proceeding alleges that the Client's use of the SaaS Service in accordance with the Agreement constitutes an infringement of a third party's Intellectual Property Rights (**IP Claim**). The indemnity is subject to the Client:
 - i promptly notifying Clinician in writing of the IP Claim;
 - ii making no admission of liability and not otherwise prejudicing or settling the IP Claim, without Clinician's prior written consent; and
 - iii giving Clinician complete authority and information required for Clinician to conduct and/or settle the negotiations and litigation relating to the IP Claim. The costs incurred or recovered are for Clinician's account.
- b The indemnity in clause 6.5a does not apply to the extent that an IP Claim arises from or in connection with:
 - i the Client's breach of the Agreement;

- ii use of the SaaS Service in a manner or for a purpose not reasonably contemplated by the Agreement or otherwise not authorised in writing by Clinician; or
 - iii any third party data or any Data.
- c If at any time an IP Claim is made, or in Clinician's reasonable opinion is likely to be made, then in defence or settlement of the IP Claim, Clinician may (at Clinician's option):
 - i obtain for the Client the right to continue using the items which are the subject of the IP Claim; or
 - ii modify, re-perform or replace the items which are the subject of the IP Claim so they become non-infringing.

7 CONFIDENTIALITY

7.1 **Security:** Each party must, unless it has the prior written consent of the other party:

- a keep confidential at all times the Confidential Information of the other party;
- b effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and
- c disclose the other party's Confidential Information to its personnel or professional advisors on a *need to know* basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, the provisions of clauses 7.1a and 7.1b.

7.2 **Permitted disclosure:** The obligation of confidentiality in clause 7.1 does not apply to any disclosure or use of Confidential Information:

- a for the purpose of performing the Agreement or exercising a party's rights under the Agreement;
- b required by law (including under the rules of any stock exchange);
- c which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
- d which was rightfully received by a party to the Agreement from a third party without restriction and without breach of any obligation of confidentiality; or
- e by Clinician if required as part of a *bona fide* sale of its business (assets or shares, whether in whole or in part) to a third party, provided that Clinician enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 6.

8 WARRANTIES

8.1 **Mutual warranties:** Each party warrants that it has full power and authority to enter into and perform its obligations under the Agreement which, when signed, will constitute binding obligations on the warranting party.

- 8.2 **No implied warranties:** To the maximum extent permitted by law, Clinician's warranties are limited to those set out in the Agreement, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise are expressly excluded to the extent permitted by law.
- 8.3 **Consumer Protection Legislation:** The Client agrees and represents that it is acquiring the Services, and entering the Agreement, for the purposes of trade. The parties agree that:
- a to the maximum extent permissible by law, any consumer protection legislation which would otherwise apply under Applicable Law does not apply to the supply of the Services or the Agreement; and
 - b it is fair and reasonable that the parties are bound by this clause 8.3.
- 8.4 **Limitation of remedies:** Where legislation or rule of law implies into the Agreement a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in the Agreement. However, the liability of Clinician for any breach of that condition or warranty is limited, at Clinician's option, to:
- a supplying the Services again or paying the costs of having the Services supplied again; or
 - b an amount equivalent to the total Fees paid by the Client over the preceding 6 months.
- 8.5 **Specific Client Acknowledgements:** Without limiting the exclusions and limitations in clauses 8.2, 8.3 and 8.4, the Client further acknowledges that:
- a none of the Data which is collected by the ZEDOC Platform constitute medical records (not being health related information about a patient which is created by qualified healthcare professionals or interpreted by them);
 - b accordingly, the ZEDOC Platform does not fall within any category of medical device under applicable US Food and Drug Administration (FDA) or European Union Medical Device Regulation (EU MDR) definitions and has not been approved by any regulatory body;
 - c the Services do not constitute or substitute for medical care in any sense, but instead solely provide supplemental support information which may be helpful to the medical professionals providing that care.

9 LIABILITY

- 9.1 **Maximum liability:** The maximum aggregate liability of Clinician under or in connection with the Agreement or relating to the Services, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not in any 6 month period exceed an amount equal to the Fees paid by the Client under the Agreement over the previous 6 months (which in the first 6 months from the Start Date is deemed to be the total Fees paid by the Client from the Start Date to the date of the first event giving rise to liability).
- 9.2 **Unrecoverable loss:** Neither party is liable to the other under or in connection with the Agreement the Services for any:
- a loss of profit, revenue, savings, business, use, data (including Data), and/or goodwill; or
 - b consequential, indirect, incidental or special damage or loss of any kind.

9.3 Unlimited liability:

a Clauses 9.1 and 9.2 do not apply to limit Clinician's liability:

- i under the indemnity in clause 6.5a; or
- ii under or in connection with the Agreement for:
 - personal injury or death;
 - fraud or wilful misconduct; or
 - a breach of clause 7.

b Clause 9.2 does not apply to limit the Client's liability:

- i to pay the Fees;
- ii under the indemnity in clause 4.9; or
- iii for those matters stated in clause 9.3aii.

9.4 No liability for another's failure: Neither party will be responsible, liable, or held to be in breach of the Agreement for any failure to perform its obligations under the Agreement or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under the Agreement, or by the negligence or misconduct of the other party or its personnel.

9.5 Mitigation: Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with the Agreement.

10 TERM, TERMINATION AND SUSPENSION

10.1 Duration: The Agreement starts on the Start Date and ends on the End Date.

10.2 No fault termination: Either party may terminate the Agreement at any time by giving at least 30 days prior written notice to the other party provided that such notice does not expire during any Minimum Term (where applicable).

10.3 Other Termination rights:

a Either party may, by notice to the other party, immediately terminate the Agreement if the other party:

- i breaches any material provision of the Agreement and the breach is not:
 - remedied within 10 days of the receipt of a notice from the first party requiring it to remedy the breach; or
 - capable of being remedied;
- ii becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason; or
- iii is unable to perform a material obligation under the Agreement for 30 days or more due to Force Majeure.

b If the remedies in clause 6.5c are exhausted without remedying or settling the IP Claim, Clinician may, by notice to the Client, immediately terminate the Agreement.

- c If an Intermediary notifies Clinician that it is terminating or suspending any Services purchased by the Client through that Intermediary pursuant to its rights under the Client's agreement with that Intermediary, Clinician may suspend or terminate the Services identified by the Intermediary. Subsequently, if the Intermediary notifies Clinician that the Client is entitled to reinstatement of the relevant Services and the Client is otherwise in compliance with the Agreement, Clinician may reinstate such Services.

10.4 Consequences of termination or expiry:

- a Termination or expiry of the Agreement does not affect either party's rights and obligations that accrued before that termination or expiry.
- b On termination or expiry of the Agreement, the Client must pay all Fees for Services provided prior to that termination or expiry.
- c Except to the extent that a party has ongoing rights to use Confidential Information, at the other party's request following termination or expiry of the Agreement and subject to clause 10.4d, a party must promptly return to the other party or destroy all Confidential Information of the other party that is in the first party's possession or control.
- d Subject to any reasonable stipulations imposed by Clinician (including payment of any outstanding Fees), Clinician will allow the Client at least 12 months from the End Date to retrieve its Data from Clinician, during which time it is the Client's sole responsibility to recover and store its Data independently. After that 12 month period, Clinician will have no obligation to retain the Data and may remove and delete its copies of that Data at its discretion.

10.5 Obligations continuing: Clauses which, by their nature, are intended to survive termination or expiry of the Agreement, including clauses 4, 6, 8, 10.4, 10.5 and 11 where applicable, continue in force.

10.6 Rights to restrict: Without limiting any other right or remedy available to Clinician, Clinician may restrict or suspend the Client's access to the SaaS Service and/or delete, edit or remove the relevant Data if Clinician considers that the Client has:

- a undermined, or attempted to undermine, the security or integrity of the SaaS Service or any Underlying Systems;
- b used, or attempted to use, the SaaS Service:
 - i for improper purposes; or
 - ii in a manner, other than for normal operational purposes, that materially reduces the operational performance of the SaaS Service;
- c transmitted, inputted or stored any Data that breaches or may breach the Agreement or any third party right (including Intellectual Property Rights and privacy rights), or that is or may be Objectionable, incorrect or misleading; or
- d otherwise materially breached the Agreement.

10.7 Process:

- a Clinician must notify the Client where it restricts or suspends the Client's access, or deletes, edits or removes Data, under clause 10.6.
- b Clause 10.4d will not apply to the extent that it relates to Data deleted or removed under clause 10.6.

11 DISPUTES

- 11.1 **Good faith negotiations:** Before taking any court action, a party must use reasonable efforts to resolve any dispute under, or in connection with, the Agreement through good faith negotiations.
- 11.2 **Obligations continue:** Each party must, to the extent possible, continue to perform its obligations under the Agreement even if there is a dispute.
- 11.3 **Right to seek relief:** This clause 11 does not affect either party's right to seek urgent interlocutory and/or injunctive relief or to exercise termination rights.

12 GENERAL

- 12.1 **Force Majeure:** Neither party is liable to the other for any failure to perform its obligations under the Agreement to the extent caused by Force Majeure, provided that the affected party:
- a immediately notifies the other party and provides full information about the Force Majeure;
 - b uses best efforts to overcome the Force Majeure; and
 - c continues to perform its obligations to the extent practicable.
- 12.2 **Rights of third parties:** No person other than Clinician and the Client has any right to a benefit under, or to enforce, the Agreement.
- 12.3 **Waiver:** To waive a right under the Agreement, that waiver must be in writing and signed by the waiving party.
- 12.4 **Independent contractor:** Subject to clause 4.4, Clinician is an independent contractor of the Client, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under the Agreement.
- 12.5 **Notices:** A notice given by a party under the Agreement must be delivered to the other party by email to the email address specified in the Order or otherwise notified by the other party for this purpose.
- 12.6 **Severability:**
- a If any provision of the Agreement is, or becomes, illegal, unenforceable or invalid, the relevant provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity.
 - b If modification under clause 12.6a is not possible, the provision must be treated for all purposes as severed from the Agreement without affecting the legality, enforceability or validity of the remaining provisions of the Agreement.
- 12.7 **Variation:** Subject to clause 5.4, any variation to the Agreement must be in writing and signed by both parties.

- 12.8 **Entire agreement:** The Agreement sets out everything agreed by the parties relating to the Services, and supersedes and cancels anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation, warranty or agreement relating to the subject matter of the Agreement that is not expressly set out in the Agreement, and no such representation, warranty or agreement has any effect from the Start Date.
- 12.9 **Subcontracting and assignment:**
- a The Client may not assign, novate, subcontract or transfer any right or obligation under the Agreement without the prior written consent of Clinician, that consent not to be unreasonably withheld. The Client remains liable for its obligations under the Agreement despite any approved assignment, subcontracting or transfer. Any assignment, novation, subcontracting or transfer must be in writing.
 - b Any change of control of the Client is deemed to be an assignment for which Clinician's prior written consent is required under clause 12.9a. In this clause, **change of control** means any transfer of shares or other arrangement affecting the Client or any member of its group which results in a change in the effective control of the Client.
- 12.10 **Law:** The Agreement is governed by, and must be interpreted in accordance with, the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the New Zealand courts in relation to any dispute connected with the Agreement.

REGIONAL DATA MANAGEMENT ANNEX

1 ABOUT THIS ANNEX

In accordance with clause 8 (Data) of the Agreement, this Regional Data Management Annex applies to and is incorporated into the Agreement to the extent that Clinician manages any Data from Clients located in New Zealand, Singapore or Australia, when performing its obligations under the Agreement.

2 DEFINITIONS

Term	Definition
Agreement	the Order, these Terms and, to the extent specified in an Order or these Terms, any related policy or other documents described in the Order or these Terms, including any Annex.
Applicable Law	New Zealand law, except to the extent that the laws of the Client's jurisdiction or the jurisdiction where the Services are hosted must be complied with, in which case those laws will apply to that extent only.
Client	the person or organisation who subscribes to the Services by making an Order which is accepted by Clinician.
Clinician	The Clinician Limited (New Zealand company number 5692079)
Data	all data, content, and information (including Personal Information) owned, held, used or created by or on behalf of the Client (including Customer information) that is stored using, or inputted into, the Services.
SaaS Service	the services having the core functionality described in the Order.
Services	the SaaS Service and any Related Services.

3 DATA SOVEREIGNTY

Clinician agrees to handle and back up your data in accordance with the Applicable Law. Clinician will securely store and back up all Data in the cloud hosting providers outlined in Table 1, unless otherwise agreed in writing between Clinician and Client. Clinician commits to not disclose any data except as directed by the Client or as required by law.

Country of Service	AWS Region
Australia	Sydney (ap-southeast-2)
Singapore	Singapore (ap-southeast-1)
New Zealand	Sydney (ap-southeast-2)

Table 1: Hosting locations