

**PLEASE READ THESE LICENCE TERMS CAREFULLY BEFORE DOWNLOADING OR USING THE PATHCARE MOBILE APPLICATION**

**BY CLICKING ON THE “ACCEPT” BUTTON BELOW YOU AGREE TO THESE TERMS WHICH WILL BIND YOU.**

**IF YOU DO NOT AGREE TO THESE TERMS, CLICK ON THE “REJECT” BUTTON BELOW.**

**1. WHO WE ARE AND THE PURPOSE OF THIS AGREEMENT**

We, Drs Dietrich, Voigt, Mia and Partners t/a PathCare of PathCare Business Centre, PathCare Park, Neels Bothma Street, N1 City, Western Cape, South Africa (“**place of business**”), hereby grant to you a revocable, non-exclusive, non-transferable, limited license to use:

- 1.1. **PATHCARE Results Apps** application software for mobile devices, the data supplied with the software and any updates or supplements to it (“**Mobile App**”); and
- 1.2. the service you connect to via the Mobile App and the content we provide to you through it, which includes access to the Pathcare collaborative work management service (“**Subscription Service**”) and the use of such Subscription Service will be subject to the existing agreement governing such use (“**Subscription Agreement**”), as permitted in these terms.

**2. AGREEMENT AND ELECTRONIC COMMUNICATIONS**

**2.1. Formation and validity of this End User License Agreement (“EULA”) (by way of a Click Wrap Agreement)**

You agree that:

- 2.1.1. you are at least 18 years of age and possess the legal right and ability to enter into this EULA and to use this Mobile App and our Subscription Services in accordance with all terms and conditions herein contained;
- 2.1.2. any and all information incorporated by way of the use of hyperlinks and/or other methods of reference form part of this EULA;
- 2.1.3. you acknowledge that all agreements, authorization or request under this EULA satisfies the ‘*writing*’ requirement;
- 2.1.4. for purposes of this EULA no electronic signature is required. The mere sending of data messages, i.e. clicking on “**I accept**” or adding the tick to the box and clicking on submit, demonstrates your intent and agreement to be a party to this EULA; and
- 2.1.5. this EULA is regarded as being concluded at our place of business.

**2.2. Time and Place of communication, dispatch and receipt**

- 2.2.1. Data messages sent from Us to you:
  - 2.2.1.1. shall be regarded as having been from our place of business; and
  - 2.2.1.2. is deemed to be received by you when the complete data message enters an information system designated or used for that purpose by you and is capable of being retrieved and processed by you.
- 2.2.2. Data messages from you to Us are deemed to be received by Us only when we respond thereto. Such acknowledgement further does not give legal effect to that message, unless specifically indicated by Us that it does give legal effect to it.

**3. MOBILE APP AND SUBSCRIPTION SERVICES**

Our Mobile App and Subscription Services are directed at people residing in the Republic of South Africa. We do not represent that content available on or through Our Mobile App or Subscription Services are appropriate or available in other locations. We may limit the availability of Our Mobile App and Subscription Services to any person or geographic area at any time. If you choose to access Our Mobile App and/or Subscription Services from outside the Republic of South Africa, you do so at your own risk.

#### **4. YOUR PRIVACY**

- 4.1. We only use Personal Information we collect through your use of the Mobile App and the Subscription Services in the ways set out in our [Privacy Policy](#).
- 4.2. Please be aware that internet transmissions are never completely private or secure and that any message or information you send using the Mobile App or any Subscription Services may be read or intercepted by others, even if there is a special notice that a particular transmission is encrypted.

#### **5. APPLICABILITY OF THE TERMS OF THE APP STORES**

The ways in which you can use the Mobile App may also be controlled by the rules and policies of the App Store (Google Play Store or Apple App Store) from which you downloaded the Mobile App.

#### **6. SUPPORT SERVICES**

##### **6.1. Support**

If you want to learn more about the Mobile App or the Subscription Services We provide, or have any problems and require support services, please make use of Our support resources at [clients@pathcare.co.za](mailto:clients@pathcare.co.za).

##### **6.2. Making contact with Us**

If you experience any difficulties relating to our Mobile App or the Subscription Services or wish to contact Us for any other reason, please email Our customer service team at [clients@pathcare.co.za](mailto:clients@pathcare.co.za) or call them on +27 21 946 2105..

##### **6.3. Communicating with you**

Should We need to contact you We will do so by email or SMS or postal address, using the contact details you have provided to Us.

#### **7. USE OF THE MOBILE APP**

In consideration of your agreement to comply with this EULA you may:

- 7.1. download or stream a copy of the Mobile App onto your mobile device and view, use and display the Mobile App and the Subscription Services on such device for your personal purposes only;
- 7.2. provided you comply with the License Restrictions below, make up to 1 copy of the Mobile App for back-up purposes; and
- 7.3. receive and use any free supplementary software code or update of the Mobile App incorporating Patches and corrections of errors as We may provide to you.

#### **8. PROHIBITION ON TRANSFER OF MOBILE APP**

We are giving you personally the right to use the Mobile App and the Subscription Services as set out above. You may therefore not transfer the Mobile App or the Subscription Services to someone else, whether for money, for anything else or for free. If you sell any device on which the Mobile App is installed, you must remove the Mobile App from it.

#### **9. AMENDMENT OF THESE TERMS**

- 9.1. We may need to change the terms of this EULA to reflect changes in law or best practice or to deal with additional features which We introduce.
- 9.2. We will notify you of any changes when you next start the Mobile App.
- 9.3. If you do not accept the notified changes you will not be permitted to continue to use the Mobile App and the Subscription Services.

**10. UPDATE TO THE MOBILE APP AND CHANGES TO THE SUBSCRIPTION SERVICES**

- 10.1. From time to time we may automatically update the Mobile App to improve performance, enhance functionality, reflect changes to the operating system or address security issues. Alternatively, we may ask you to update the Mobile App for these reasons.
- 10.2. If you choose not to install such updates or if you 'opt out' of automatic updates you may not be able to continue using the Mobile App or the full function of the Mobile App and Subscription Services.

**11. IF SOMEONE ELSE OWNS THE MOBILE DEVICE**

If you download or stream the Mobile App onto any phone or other device not owned by you, you must have the owner's permission to do so. You will still be responsible for complying with these terms, whether or not you own the phone or other device.

**12. COLLECTION OF TECHNICAL DATA**

By using the Mobile App or the Subscription Services, you agree to Us collecting and using technical information about the devices you use, the Mobile App and related software, hardware and peripherals, for the purposes of improving our Subscription Services to you.

**13. COLLECTION OF LOCATION DATA (THIS CAN BE DISABLED)**

Certain Subscription Services may make use of location data sent from your devices. You can turn off this functionality at any time by turning off the location services settings for the Mobile App on the device. If you use these Subscription Services, you consent to us and our affiliates' and licensees' transmission, collection, retention, maintenance, processing and use of your location data and queries to provide and improve location-based products and services. You may stop Us collecting such data at any time by turning off the location services settings on your device or on the Mobile App.

**14. LINKING TO OTHER WEBSITES**

- 14.1. The Mobile App or Subscription Service may contain links to other independent websites which are not provided by Us. Such independent sites are not under Our control, and We are not responsible for and have not checked and approved their content or their privacy policies (if any).
- 14.2. It is your responsibility to make your own independent judgment on whether to use any such independent sites, including whether to buy any products or services offered by them.

**15. LICENSE RESTRICTIONS**

You agree that you will:

- 15.1. not rent, lease, sub-license, loan, provide, or otherwise make available, the Mobile App or the Subscription Services in any form, in whole or in part to any person without Our prior written consent;
- 15.2. not copy the Mobile App or Subscription Services, except as part of the normal use of the Mobile App or where it is necessary for the purpose of back-up or operational security;
- 15.3. not translate, merge, adapt, vary, alter or modify, the whole or any part of the Mobile App or Subscription Services nor permit the Mobile App or the Subscription Services or any part of them to be combined with, or become incorporated in, any other programs, except as necessary to use the Mobile App and the Subscription Services on devices as permitted in these terms;
- 15.4. not disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Mobile App or the Subscription Services nor attempt to do any such things, except to the extent that such actions cannot be prohibited

because they are necessary to decompile the Mobile App to obtain the information necessary to create an independent program that can be operated with the Mobile App or with another program (Permitted Objective), and provided that the information obtained by you during such activities:

- 15.4.1. is not disclosed or communicated without Our prior written consent to any third party to whom it is not necessary to disclose or communicate it in order to achieve the Permitted Objective;
- 15.4.2. is not used to create any software that is substantially similar in its expression to the Mobile App;
- 15.4.3. is kept secure; and
- 15.4.4. is used only for the Permitted Objective;
- 15.5. comply with all applicable technology control or export laws and regulations that apply to the technology used or supported by the Mobile App or Subscription Services.

## **16. ACCEPTABLE USE RESTRICTIONS**

You must:

- 16.1. not use the Mobile App or any Subscription Service in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with this EULA, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, such as viruses, or harmful data, into the Mobile App, any Subscription Service or any operating system;
- 16.2. not infringe our intellectual property rights or those of any third party in relation to your use of the Mobile App;
- 16.3. not transmit any material that is defamatory, offensive or otherwise objectionable in relation to your use of the Mobile App or any Subscription Service;
- 16.4. follow the Republic of South Africa and international laws regarding transmitting data and you will not attempt to gain access to Our computer system or any other computer systems without the necessary authorisation;
- 16.5. not use the Mobile App or any Subscription Service in a way that could damage, disable, overburden, impair or compromise Our systems or security or interfere with other Users; and
- 16.6. not collect or harvest any information or data from Our Subscription Service or Our systems or attempt to decipher any transmissions to or from the servers running any Subscription Service.

## **17. NO WARRANTY**

**YOUR USE OF THE MOBILE APP IS AT YOUR OWN RISK. THE MOBILE APP IS PROVIDED ON AN “AS-IS” AND “AS AVAILABLE” BASIS. PATHCARE EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.**

- 17.1. **Apple App Store: In the event of Our failure to conform to any applicable warranty, you may notify Apple and Apple will refund the purchase price for the Mobile App. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, APPLE WILL HAVE NO OTHER WARRANTY OBLIGATION WHATSOEVER WITH RESPECT TO (A) THE MOBILE APP AND (B) ANY OTHER CLAIMS, LOSSES, LIABILITIES, DAMAGES, COST, OR EXPENSES ATTRIBUTABLE TO ANY FAILURE TO CONFIRM TO ANY WARRANTY.**
- 17.2. **Google Play Store: GOOGLE EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.**

**18. INTELLECTUAL PROPERTY RIGHTS**

All intellectual property rights in the Mobile App and the Subscription Services throughout the world belong to Us (or our licensors) and the rights in the Mobile App and the Subscription Services are licensed (not sold) to you. You have no intellectual property rights in, or to, the Mobile App or the Subscription Services other than the right to use them in accordance with these terms.

**19. PASSWORDS AND SECURITY**

You agree and understand that you are responsible for maintaining the confidentiality of passwords associated with any account you use to access the Mobile App or use Our Subscription Services. Accordingly, you agree that you are solely responsible to Us for all activities that occur under your account. If you become aware of any unauthorized use of your password on the Mobile App or your account, you agree to notify Us immediately at: [clients@pathcare.co.za](mailto:clients@pathcare.co.za).

**20. DOWNTIME AND MAINTENANCE**

- 20.1. Your access to and use of the Mobile App and/or Subscription Services may be suspended for the duration of any anticipated, unanticipated, scheduled or unscheduled downtime, maintenance, system updates, malfunction, or other unavailability of any portion or all of the App or Services for any reason.
- 20.2. We shall also be entitled, without any liability to you, to suspend access to any portion or all of the Mobile App or Subscription Services at any time, on a system-wide basis:
  - 20.2.1. for scheduled downtime to permit Us to conduct maintenance or make modifications to any part of the Mobile App;
  - 20.2.2. in the event of a denial of service attack or other attack on the Mobile App or our Subscription Services or other event that we determine, in Our sole discretion, may create a risk to the applicable Mobile App or Subscription Services, to you or to any of Our other customers if your use of the Subscription Services were not suspended; or
  - 20.2.3. in the event that We determine that any Service or part thereof is prohibited by law or We otherwise determine that it is necessary or prudent to do so for legal or regulatory reasons.

**21. LIMITATION OF LIABILITY****21.1. We are responsible to you for foreseeable loss and damage caused by Us**

Subject to the terms and conditions below, if We fail to comply with these terms, We are responsible for loss or damage you suffer that is a foreseeable result of Our breaking these terms or Our failing to use reasonable care and skill, but We are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time you accepted these terms, both We and you knew it might happen.

**21.2. We do not exclude or limit in any way Our liability to you where it would be unlawful to do so**

This includes liability for death or personal injury caused by Our negligence or the negligence of Our employees, agents or subcontractors or for fraud or fraudulent misrepresentation.

**21.3. Instances when We are liable for damage to your property**

If defective digital content that We have supplied damages a device or digital content belonging to you, We will either repair the damage or pay you compensation. However, We will not be liable for damage that you could have avoided by following Our advice to apply an update offered to you free of charge or for damage that was caused by you failing to correctly follow installation instructions or to have in place the minimum system requirements advised by Us.

**21.4. We are not liable for business losses**

The Mobile App is there to serve as technology platform to convey certain information to you and enable you to collect information as made available by Us. We will have no liability to you for any consequential or special damages, including but not limited to loss of profit, loss of business, business interruption, loss of data or loss of business opportunity.

**21.5. Please back-up content and data used with the Mobile App**

We recommend that you back up any content and data used in connection with the Mobile App, to protect yourself in case of problems with the Mobile App or the Subscription Services.

**21.6. Check that the Mobile App and the Subscription Services are suitable for you**

The Mobile App and the Subscription Services have not been developed to meet your individual requirements. Please check that the facilities and functions of the Mobile App and the Subscription Services (as described on the applicable Mobile App Store Site) meet your requirements.

**21.7. We are not responsible for events outside Our control**

If our provision of the Subscription Services or support for the Mobile App or the Subscription Services are delayed by an event outside Our control, then we will contact you as soon as possible to let you know and We will take steps to minimise the effect of the delay. Provided We do this We will not be liable for delays caused by the event but if there is a risk of substantial delay you may contact Us to end your contract with us and receive a refund for any Subscription Services you have paid for but not received.

**22. SUSPENSION OF SERVICES**

22.1. We may terminate your rights to use the Mobile App and Subscription Services at any time by contacting you if you have breached any of these terms in a serious way. If what you have done can be put right, We will give you a reasonable opportunity to do so.

22.2. Should we suspend your rights to use the Mobile App and Subscription Services:

22.2.1. You must stop all activities authorised by the terms of this EULA, including your use of the Mobile App and any Subscription Services.

22.2.2. You must delete or remove the Mobile App from all devices in your possession and immediately destroy all copies of the Mobile App which you have and confirm to Us that you have done this.

22.2.3. We may remotely access your devices and remove the Mobile App from them and cease providing you with access to the Subscription Services.

**23. TRANSFER OF EULA**

23.1. We may transfer Our rights and obligations under these terms to another organisation. We will always inform you in writing if this happens and we will ensure that the transfer will not affect your rights under the contract.

23.2. You may only transfer your rights or your obligations under these terms to another person if we agree thereto in writing.

**24. SEVERABILITY AND ENFORCEMENT OF REMAINING PROVISIONS OF EULA**

Each of the paragraphs of these terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.

**25. DELAY IN ENFORCEMENT OF PROVISIONS OF EULA**

Even if we delay in enforcing the provisions of this EULA, we can still enforce it later. If we do not insist immediately that you do anything you are required to do under these terms, or if We delay in taking steps against you in respect of you breaching

this EULA, that will not mean that you do not have to do those things and it will not prevent Us taking steps against you at a later date.

## 26. APPLICABLE LAW AND JURISDICTION

- 26.1. These terms are governed by the law of the Republic of South Africa.
- 26.2. Any claim arising from the use or inability to use our Mobile App or Subscription Services, is subject to the laws of the Republic of South Africa.
- 26.3. All proceedings will be held in English and the unsuccessful party will be liable to pay all costs incurred by the successful party, including costs as between attorney and own client.
- 26.4. Your use of our Mobile App and/or Subscription Services will for all purposes relating to its use, constitute your consent and submission to the jurisdiction of the High Court of South Africa, Western Cape Division (Cape Town).
- 26.5. **Kindly take note:** No term, condition and/or provision of these terms and conditions is intended to limit, as the case may be, your right to settle a dispute concerning the Consumer Protection Act (to the extent applicable) using the mechanisms provided for therein

## 27. CONTACT US

- 27.1. In terms of our site(s) (functionality or any recommendations) you can send us an email at: [clients@pathcare.co.za](mailto:clients@pathcare.co.za).
- 27.2. In terms of our customer services: please use the contact information as per our website (<http://www.pathcare.co.za>).
- 27.3. For complaints: it is important to us that you are satisfied with our Mobile App and Subscription Services. Please contact Us first if you have a complaint or any other service issue. You can use the contact information as per Our Contact Us page on our website. Please ask for reference number if you speak to any of our representatives.
- 27.4. For any legal documentation or notices (hopefully this will never be required) we select the following address:
  - 27.4.1. Physical address: as above
  - 27.4.2. Email: [clients@pathcare.co.za](mailto:clients@pathcare.co.za) (heading: "**Legal**")
  - 27.4.3. (Marked for the attention of: Managing Director (Legal)).

- END OF EULA -