

## 1. About this agreement

- 1.1. This agreement (herein "EULA") governs your use of the PathCare results application software (herein "Software").
- 1.2. You may be required to enter into additional agreements with the Licensor (or its nominees) to access and use services via the Software. In that case, you understand and agree that your use of the services accessible via the Software shall additionally be subject to such agreements.
- 1.3. If you do not agree to this EULA, or are not legally capable of doing so, you may not use the Software or any part thereof.
- 1.4. The terms set out in this EULA may be amended from time to time, with the revised terms taking effect when they are published with a new release. Your use of such release shall signify your agreement to the revised terms.
- 1.5. This EULA contains provisions that may limit your rights at law, or place additional obligations on you, some of which may be onerous. While you should have regard to all of the terms of this EULA, we have endeavoured to highlight these provisions by bolding the relevant text. Your attention is specifically drawn to clause 5 (Disclaimers), 6 (Limitation of liability), and 7 (Indemnity).
- 1.6. The Software is licensed to you by Drs Dietrich, Voigt, Mia & Partners trading as PathCare (herein the "Licensor"), a pathology practice under practice number 0774383, with the following further details:
  - 1.6.1. physical address: PathCare Park, Neels Bothma Street, Goodwood, 7460
  - 1.6.2. email address: [clients@pathcare.co.za](mailto:clients@pathcare.co.za)
  - 1.6.3. website: <https://www.pathcare.co.za/>

## 2. Ownership of intellectual property

- 2.1. For purposes of this EULA, the term "Intellectual Property" includes, without limitation, all intellectual property and similar proprietary rights, howsoever arising and in whatever tangible or intangible media, whether or not registered, including (without limitation) copyright, database rights, patents, trade marks, registered designs, unregistered design rights, domain names, confidential information, business processes, trade secrets, know-how, goodwill, and any applications for the protection or registration of those rights and all renewals and extensions thereof throughout the world (if applicable), as well as any adaptations, derivatives, and embodiments of the foregoing.
- 2.2. The Licensor (or its licensors, as the case may be) owns all right, title, and interest in any Intellectual Property in and to the Software, inclusive of any adaptations thereof. The foregoing does however not apply to any open-source software (herein "Open-Source Software") that is used as part of the Software, and which is regulated by clause 3.3 below.

### 3. Grant of licence

- 3.1. This EULA does not transfer any right or entitlement in and to the Intellectual Property vesting in the Software to you.
- 3.2. Subject to this EULA being binding on you and your continued compliance with the terms of this EULA, the Licensor hereby grants you a limited, revocable licence to use the Software on the following terms:
  - 3.2.1. Scope. You may only use the Software for your personal or internal business purposes in accordance with the terms of this EULA. You may not permit any other person to use the Software.
  - 3.2.2. Non-exclusivity. The rights granted in terms hereof are not exclusive to you.
  - 3.2.3. Sub-licensing: You may not sublicense the rights granted to you in terms of this EULA.
  - 3.2.4. Transferability. The rights granted to you by this EULA are personal to you and are not transferable.
  - 3.2.5. Territoriality. You may only use the Software in the Republic of South Africa, the Republic of Namibia, and the Kingdom of Lesotho.
- 3.3. In the event that the Software contains Open-Source Software that require us to make certain disclosures or to publish certain terms to you, such disclosures and terms are set out in Annexure A: Open-Source Software. You agree to abide by any terms set out in Annexure A: Open-Source Software in addition to the terms set out elsewhere in this EULA, as amended.
- 3.4. All rights in and to the Intellectual Property vesting in the Software that have not been explicitly granted to you in terms this EULA, shall remain reserved to the Licensor (or its licensors, as the case may be).

### 4. Restrictions on use

- 4.1. Except as otherwise expressly permitted in this EULA, you agree not to:
  - 4.1.1. reproduce, modify, adapt, or create derivative works of the Software;
  - 4.1.2. rent, lease, distribute, sell, sublicense, transfer, or provide any third-party access to the Software;
  - 4.1.3. disrupt the functionality or proper operation of the Software, including bypassing security or authentication measures or circumventing mechanisms designed to restrict your use of the Software;
  - 4.1.4. attempt to, assist, authorise, or encourage third parties to circumvent, disable, or defeat any of the security features or components that protect, obfuscate, or otherwise restrict access to the Software;
  - 4.1.5. reverse engineer, disassemble, decompile, translate, or otherwise seek to obtain or derive the source code, including images and texts, underlying ideas, algorithms, file formats, or non-public APIs, to the Software, except to the extent expressly permitted by applicable law (and then only upon advance notice to us);
  - 4.1.6. access, use, or otherwise exploit the Software for purposes of competing with or disparaging the Licensor or any of its affiliated or associated entities; or
  - 4.1.7. otherwise use the Software to engage in unlawful, harmful, or offensive activities in any way.
- 4.2. **You agree to notify the Licensor without delay should you become aware of any infringement of its Intellectual Property rights or any breach of the terms of this EULA.**
- 4.3. **You are solely responsible for ensuring that your use of the Software complies with all applicable laws, regulations, and standards. The Licensor does not represent or warrant that your use of the Software will be compliant with local or international laws.**
- 4.4. **The Licensor reserves the right to discontinue or modify any features, functionality, or support for the Software at any time without liability to you.**

**5. Disclaimers**

- 5.1.** To the maximum extent possible under applicable law, your use of the Software is entirely at your own risk. The Software is made available "as is", without any warranty, representation, or undertaking, whether express or implied, including but not limited to implied warranties of merchantability, fitness for a particular purpose, title, or non-infringement.
- 5.2.** Specifically, and to the maximum extent possible under applicable law, we do not warrant, represent, or undertake that:
- 5.2.1.** the Software will always be available or that its operation will be uninterrupted or error-free; the Software may be temporarily unavailable due to maintenance, updates, upgrades, or other reasons beyond our control; or
  - 5.2.2.** any data or information stored, transmitted, or managed by the Software will be secure, or that the integrity of data will be maintained; you are solely responsible for maintaining backups and ensuring the security of your data.

**6. Limitation of liability**

- 6.1.** To the maximum extent possible under applicable law, in no event shall the Licensor, its affiliates, licensors, or service providers be liable for any direct, indirect, incidental, special, consequential, or punitive damages, or any loss of profits, revenue, data, goodwill, or other intangible losses, including, without limitation, any claims or damages arising out of or related to:
- 6.1.1.** your use of or inability to use the Software, or its failure to operate as intended;
  - 6.1.2.** unauthorised access to or alteration of your data;
  - 6.1.3.** third-party content or conduct;
  - 6.1.4.** loss of data or corruption of files;
  - 6.1.5.** errors or omissions in the Software; and
  - 6.1.6.** breach of security measures or unauthorised access, use, or distribution of your data or personal information.
- 6.2.** Even if the Licensor has been advised of the possibility of such damages, the limitations set forth herein shall apply regardless of the form of action, whether in contract, delict (including negligence), strict liability, or otherwise.
- 6.3.** In no event shall the Licensor's total liability to you for all direct and indirect damages, losses, and causes of action arising out of or relating to this EULA, the Software, or your use thereof exceed the amount you paid, if any, for accessing or using the Software.
- 6.4.** Some jurisdictions do not allow the exclusion or limitation of liability for certain types of damages, including direct or consequential damages, so the above limitation may not apply to you. In such jurisdictions, the Licensor's liability is limited to the maximum extent permitted by law.

**7. Indemnity**

- 7.1.** To the maximum extent possible under applicable law, you agree to keep the Licensor, its licensors, service providers, affiliates, and group companies indemnified from any claim, cost, damage, expense or other adverse consequence arising from:
- 7.1.1.** your violation of the terms of this EULA;
  - 7.1.2.** your use of and access to the Software;
  - 7.1.3.** any violation of any third-party rights; and
  - 7.1.4.** your violation of any law, rule, or regulation, or the rights of any third party.

## 8. Termination

- 8.1. Your rights under this EULA will automatically terminate if you fail to comply with any term or condition of this EULA.
- 8.2. In addition, the Licensor reserves the right to terminate this EULA on written notice to you.
- 8.3. Upon termination of this EULA for any reason, you shall have no further entitlement to use the Software or any Intellectual Property, and must immediately cease all use of the Software and delete all copies of the Software.

## 9. Notices

- 9.1. Each party hereby chooses as its nominated physical and email address for service and receipt of notices (i.e. domicilia citandi et executandi) for purposes of this EULA (herein each a "Notice Address"), the following:
  - 9.1.1. in the case of the Licensor, the prevailing Notice Addresses set out on the Licensor's website (listed at 1.6.3 above), which are incorporated herein by reference; and
  - 9.1.2. in the case of the licensee, (1) the details nominated in terms of any other agreement with the Licensor and (2) any email address used to communicate with the Licensor.
- 9.2. The licensee may change its Notice Addresses on 7 business days prior written notice to the Licensor.
- 9.3. Any notice served on a Notice Address before 17h00 in the recipient's time zone shall:
  - 9.3.1. if delivered by hand, be deemed to have been received on the day of delivery; or
  - 9.3.2. if sent by email, be deemed to have been received on the date when it is capable of retrieval by the recipient.
- 9.4. In the event of delivery of a notice to a Notice Address later than 17h00 in the recipient's time zone, then delivery shall be deemed to have taken place on the next day.
- 9.5. The provisions of this clause 9 do not preclude a serving party from otherwise proving that a notice was in fact duly received by a receiving party.

## 10. Interpretation

- 10.1. Any reference to a statute or other regulatory enactment is to the provisions thereof as amended or re-enacted from time to time.
- 10.2. When any number of days is prescribed in this EULA, it shall be reckoned exclusively of the first day and inclusively of the last day unless the last day falls on a day which is not a business day, in which case the last day shall be the following business day.
- 10.3. The rule of interpretation that a contract shall be interpreted against the party responsible for the drafting and preparation thereof (the contra proferentem rule) shall not apply.
- 10.4. The termination or expiry of this EULA shall not affect those provisions which expressly provide that they will continue to operate after such termination or expiry, or those provisions which of necessity must continue to have effect after such termination or expiry, even where those clauses do not expressly provide for this.
- 10.5. In the event that any right or remedy is expressly stated to be available to any of the parties in particular circumstances, such right or remedy shall be available without prejudice to or limitation of any other right or remedy that may be available to that party in such circumstances, unless the contrary is expressly stated.

## 11. General

- 11.1. Assignment. You are not entitled to transfer any right or obligation arising from this EULA to another (including transfer by way of cession, assignment, delegation, sale, merger, operation of law or otherwise), without the prior written consent of the Licensor. The Licensor (and its licensors, to the extent applicable) may freely assign any rights or obligations arising from this EULA without prior notice to you.
- 11.2. Applicable law and jurisdiction. This EULA shall be governed by and construed and interpreted in accordance with the Republic of South Africa. Unless and to the extent expressly agreed otherwise in this EULA, the parties hereto agree that the High Court of South Africa, Western Cape Division, shall have exclusive jurisdiction to hear any disputes that may arise from this EULA.
- 11.3. Independent contractors. The parties agree and acknowledge that the relationship between the parties is that of independent contractors. This EULA shall accordingly not create a partnership or joint venture, nor constitute any party as the other's agent, partner, employee or representative.
- 11.4. No representation. No party shall be entitled to represent or act for or in the name of another party, unless and only to the extent expressly provided otherwise in this EULA.
- 11.5. Third-party rights. Unless expressly otherwise agreed herein, this EULA is not intended to be for the benefit of (and shall not be enforceable by) any person other than the parties hereto.
- 11.6. Whole agreement. Unless to the extent otherwise stated herein, this EULA constitutes the whole agreement between the parties as to the subject matter hereof and no party shall be bound by any undertakings, representations, warranties or the like not recorded herein.
- 11.7. Relaxation. No failure or delay on the part of the Licensor to enforce its rights shall in any circumstances be construed as a consent, election, limitation or waiver of rights by such party.
- 11.8. Cost of legal services. Should the Licensor instruct attorneys to take any steps to enforce any rights in terms of this EULA arising from a breach thereof, then the breaching party shall be liable for all legal and incidental costs, including legal fees on the attorney and own client scale, collection commission and tracing charges.