

End User License Agreement

Introduction

This software licence ("Licence") is a legal agreement between you (either an individual or a single legal entity) and LetterAssist Limited (a company registered in England and Wales, company number 15310649, whose registered office is at B1 Vantage Park, Old Gloucester Road, Hambrook, Bristol, England, BS16 1GW) ("Supplier") for use of the Software (as defined below). By installing, downloading or otherwise using the Software, you agree to be bound by this Licence. If you do not agree to the terms of this Licence, click the "do not accept" button and do not use the Software. You are advised to read the terms of this Licence, the LetterAssist SLA and the Quotation (both as defined below) with care.

1 Definitions

1.1

In this Licence the following words and expressions shall have the meanings set out

"Associated Fees" means those fees set out in the Quotation excluding the Licence Fee and any fees payable in respect of support services;

"Clinical System API" means the application programming interface ("API") enabling interaction between the LetterAssist Software and a third party's clinical software;

"Confidential Information" means the Software and any information which is designated by the party disclosing it to be confidential;

"LetterAssist SLA" means the service level agreement relating to the Software provided by the Supplier with the Quotation;

"Documentation" means any instruction manuals and other information associated with the Software supplied by the Supplier to you including the Quotation, whether in electronic form or otherwise;

"Equipment" means computer hardware onto which the Software is installed by or with the consent of the Supplier;

"Installation Date" means the date the LetterAssist Software is installed onto any Equipment at the Location;

"Licence Fee" means the licence fee set out in the Quotation;

"Location" means the general practice surgery or surgeries referred to in the Quotation or accompanying documents, or such other premises as the Supplier agrees in writing from time to time;

"Paying PCT" means the Primary Care Trust that pays for this Licence on your behalf if applicable, this may include GP clusters or GP practice groups as well;

“LetterAssist Software” means the Supplier’s “LetterAssist” and “SmartFlow” software and any other associated software from the LetterAssist Company, including any modules within such software that can be activated, bug fixes, workarounds, patches and other minor modifications to it supplied under the LetterAssist SLA and any Upgrades to it supplied in accordance with clause 3;

“Quotation” means the accepted quotation provided by the Supplier or your accepted order;

“Software” means the LetterAssist software, SmartFlow software or any other associated software from LetterAssist Ltd.

“Third Party Software” means software owned by anyone other than the Supplier that is provided to you by the Supplier under this Licence (including but not limited to the Clinical System API);

“Upgrade” means any new version/release of or other revision or amendment to the Software made available by the Supplier; and

“Warranty Period” means the period of 30 days commencing on the installation of any LetterAssist Software.

1.2

If there is any conflict between this Licence and the Quotation, this Licence will take precedence.

2 Licence

2.1

In consideration of payment of the Licence Fee and Associated Fees, the Supplier grants to you a non-exclusive perpetual licence to use the Software on the Equipment at the Location and to possess and refer to the Documentation in accordance with this Licence, subject to clause 8.3.

2.2

You shall not reproduce, modify, adapt, merge, translate, disassemble, decompile, recompile or reverse engineer the Software or create derivative works based on the whole of or any part of the Software or incorporate the Software into any other software program not provided by the Supplier.

2.3

The Supplier shall do such things necessary to activate the Software installed on the Equipment and licensed for use by you on the terms of this Licence.

2.4

For the avoidance of doubt, unless otherwise provided for in the LetterAssist SLA, any installation or reinstallation of the Software beyond the installation specified in the Quotation may incur a further installation fee that shall be payable in addition to the Associated Fees.

2.5

You shall only use the Software and the Documentation for your internal business

Purposes and shall not make the Software and/or the Documentation available for use by any third party without the prior written consent of the Supplier.

2.6

You shall not use the Software at any premises other than the Location or on any computer hardware other than the Equipment without the prior written consent of the Supplier.

2.7

The Supplier or any third party nominated by the Supplier may, on reasonable notice, visit the Location and any other premises in which the Software is being used. You shall grant the Supplier or such nominated third party such access to your premises and to the Equipment and to any other computer hardware on which the Software is being used as is required to enable the Supplier or such nominated third party to verify that this Licence is being complied with or to investigate any issue with the Software or to repossess the Software under clause 4.4.

2.8

You shall not copy the whole or any part of the Documentation, and shall not remove any trade mark, copyright or proprietary notices from the Documentation.

3 Upgrades

3.1

From time to time, the Supplier may make Upgrades available to you.

3.2

Where the Supplier makes available to you an Upgrade that materially adds to the functionality of the Software or is identified by a change of the Software version number before the first decimal point, you shall be liable to pay any applicable fees in respect of the Upgrade of such amount as is agreed between the parties.

3.3

The Supplier may at its discretion make available to you minor upgrades (being any Upgrade other than an Upgrade made available under clause 3.2) free of any additional charge.

3.4

Any Upgrades provided to you shall form part of the Software and shall be subject to this Licence.

4 Payment and payment terms

4.1

You shall pay, or shall ensure that the Paying PCT pays, the Licence Fee and Associated Fees to the Supplier on the Installation Date or date of registration for the software.

4.2

If the Licence Fee and/or any Associated Fees and/or any other sums due under this

Licence are not paid within 30 days of the date such sums become due and payable, the Supplier reserves the right to charge interest at a daily rate on all sums outstanding until payment in full is received whether before or after judgment at a rate of 3% above the Bank of England base rate. The Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

4.3

If the Licence Fee and/or Associated Fees are not paid within 30 days of the date such sums become due and payable without prejudice to any other right or remedy:

4.3.1

the Supplier may terminate this Licence immediately by giving written notice to you; or

4.3.2

the Supplier may terminate or suspend access to any part of the Software for which payment has not been made.

4.4

If the Licence Fee and/or Associated Fees and/or any other sums due under this Licence are not paid within 60 days of the date such sums become due and payable, the Supplier or any third party nominated by the Supplier may repossess any copies of the Software for which payment has not been received by the Supplier and any Documentation, data, records or information relating to such Software.

4.5

You shall be responsible for any applicable sales, use or value added taxes arising out of or in connection with this Licence, other than UK corporation tax arising in respect of the Supplier's income or profits. All payments due are expressed exclusive of UK Value Added Tax, which will be invoiced in addition where applicable.

4.6

All payments made to the Supplier shall be made in full without set-off, deduction or counterclaim.

5 Intellectual property rights

5.1

You acknowledge that the Supplier owns, or is licensed to use, all copyright and other intellectual property rights of whatever nature in and relating to the Software and the Documentation together with any customisation and/or configuration work carried out by the Supplier under this Licence.

5.2

The Supplier's software is owned by LetterAssist Ltd.

5.3

The Supplier warrants that the use and licence of the LetterAssist Software and the Documentation in accordance with this Licence will not infringe the copyright of any

third party.

5.4

Subject to clauses 5.5 to 5.6, if any claim is brought against you that the normal use or possession of the LetterAssist Software or the Documentation in accordance with this Licence infringes the copyright of a third party, the Supplier indemnifies you and will keep you indemnified against any damages that are awarded to be paid to any such third party in respect of a claim and any losses, costs (including all reasonable legal fees) and expenses incurred by or on behalf of you provided that you:

5.4.1

as soon as reasonably practicable notify the Supplier in writing of any such claim of which you become aware;

5.4.2

do not make any admission of liability or compromise or agree any settlement of any claim without the prior written consent of the Supplier, which consent shall not be unreasonably withheld or delayed, or otherwise prejudice the Supplier's or any other third party's defence of any claim;

5.4.3

give the Supplier, or such person as the Supplier directs, immediate and complete control of the conduct or settlement of all negotiations and litigation arising from any claim; and

5.4.4

upon payment of your reasonable costs, give the Supplier and such other third parties as the Supplier directs all reasonable assistance with the conduct or settlement of any such negotiations or litigation.

5.5

If there is a claim that the use by you of the LetterAssist Software or the Documentation in accordance with the provisions of this Licence infringes the copyright of a third party, the Supplier shall have the right in its absolute discretion and at its own expense:

5.5.1

to procure the right for you to continue using the LetterAssist Software and/or the Documentation in accordance with the terms of this Licence;

5.5.2

to make such alterations, modifications or adjustments to the LetterAssist Software and/or the Documentation so that they become non infringing; or

5.5.3

to replace the LetterAssist Software and/or the Documentation with non-infringing software and/or documentation.

5.6

In the event of any claim attributable to the use or possession by you of the LetterAssist Software and the Documentation other than in accordance with the provisions of this Licence, clauses 5.3 to 5.5 shall not apply and you shall indemnify the Supplier against all liabilities, costs and expenses that the Supplier may incur as a result of

such claim.

6 Warranties

6.1

Subject to clauses 6.2 to 6.4 below, the Supplier warrants that the LetterAssist Software will during the Warranty Period under normal use conform in all material respects with the functionality outlined in the Documentation.

6.2

If you notify the Supplier in writing of any material failure of the LetterAssist Software to conform with the Documentation in accordance with clause 6.1 during the Warranty Period, your sole remedy shall be to require the Supplier to correct any demonstrable failure at its own cost and expense within a reasonable time or for the Supplier at its sole option to provide or authorise a refund of the Licence Fee and Associated Fees to you upon return of the Software and the Documentation.

6.3

The Supplier does not give any warranty in respect of:

6.3.1

use of the LetterAssist Software with any software, hardware, networks or other IT infrastructure or operating system environment that does not meet the requirements set out in the Quotation or the Documentation;

6.3.2

any parts or modules of the Software that are not owned by the Supplier, including but not limited to the Clinical System API, or any other Third Party Software;

6.3.3

any interfaces between the LetterAssist Software and software that is not owned by the Supplier, including, but not limited to, the Clinical System API and any third party API;

6.3.4

operation of any part of the Software being uninterrupted or error free;

6.3.5

any data delivered through the Software (including but not limited to the accuracy of the data);

6.3.6

the security of any data delivered through the Software; or

6.3.7

the time taken to deliver data through the Software.

6.4

Except as expressly set out in this Licence, all conditions, warranties, terms and undertakings, express or implied, whether by statute, common law, trade practice, custom, course of dealing or otherwise (including without limitation about quality, performance or fitness or suitability for purpose) in respect of the Software and the Documentation, are excluded to the fullest extent permissible by law.

7 Limitation of liability

7.1

Nothing in this Licence shall exclude or restrict the liability of either party to the other for death or personal injury resulting from the negligent act of that party or for liability for any fraudulent misrepresentation or act.

7.2

Subject to clauses 7.1 and 7.3, the liability of the Supplier to you in contract, tort or otherwise for direct loss arising out of or in connection with this Licence or your use of the Software or the Documentation shall be limited for any one incident or series of connected incidents to 150% (one hundred and fifty per cent) of the Licence Fee.

7.3

Subject to clause 7.1, the Supplier shall not in any circumstances be liable to you, whether in contract, tort, negligence, breach of statutory duty or otherwise, for any loss of profits, revenue, goodwill, business opportunity, loss of or cost of restoration of data or any indirect, consequential, financial or economic loss or any damage, costs or expenses whatever or however arising out of or in connection with this Licence or your use of the Software or the Documentation.

7.4

You agree to indemnify the Supplier against all claims, liabilities, losses, damages or expenses that the Supplier may incur as a result of your use of the Clinical System API and any third party API including but not restricted to claims, liabilities, losses, damages or expenses relating to patient information confidentiality and/or your obligation contained within clause 9.2 of this Licence.

7.5

If any of the limitations on the Supplier's liability under this Licence are adjudged to be unreasonable in the circumstances, then the Supplier's liability shall be limited to the amount that it can recover from its insurer for the loss in question.

8 Term and termination

8.1

The licence granted under clause 2 shall commence on the Installation Date or date of payment for the LetterAssist Software and shall continue in perpetuity, unless terminated earlier in accordance with clause 4.3 or this clause 8.

8.2

Either party may terminate this Licence immediately by notice in writing to the other if the other:

8.2.1

commits a material or persistent breach of any of its obligations under this Licence and either that breach is incapable of remedy or the other shall have failed to remedy that breach within 30 days after being given notice

by the first party to do so; or

8.2.2

ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise); has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction.

8.3

If the Supplier's right to use or to make available to you any Third Party Software is terminated, your right to use such Third Party Software will automatically and immediately terminate. The Supplier will notify you as soon as reasonably possible of any such termination. If the Supplier gives notice to you requiring you to deactivate or uninstall such Third Party Software then you shall do so in accordance with the Supplier's instructions. If the Supplier requires access to your IT systems to deactivate or uninstall such Third Party Software itself then you shall give the Supplier such access in accordance with the Supplier's instructions.

8.4

Any termination of this Licence shall be without prejudice to any other rights or remedies either party may be entitled to under this Licence or at law.

8.5

Within seven days of the termination of this Licence (by either party for whatever reason) you shall, at the Supplier's option, either return to the Supplier or destroy all copies of the Software and the Documentation in your possession and a duly authorised officer of you shall certify in writing to the Supplier that you have complied with such obligation.

9 Confidentiality and data protection

9.1

Neither party shall at any time after the date of this Licence:

9.1.1

divulge or communicate to any person, company, business entity or other organisation;

9.1.2

use for its own purposes or for any purposes other than those of the other party; or

9.1.3

through any failure to exercise due care and diligence, cause any unauthorised disclosure of, any trade secrets or Confidential Information relating to the other party, provided that these restrictions

shall cease to apply to any such information that becomes available to the public generally other than through a breach of a duty of confidentiality owed to the other party and that neither party shall be restricted from disclosing the Confidential information or any part of it pursuant to a judicial or other lawful government order.

9.2

Where the Supplier is processing personal data for you through the Software, you acknowledge that you are the data controller of such personal data and you shall be responsible for complying with the DPA in respect of the personal data. In this clause 9.2, the terms “data controller”, “personal data” and “processing” shall have the meanings prescribed under the Data Protection Act 1998 (“DPA”).

9.3

Notwithstanding clauses 9.1 and 9.2 above, the Supplier shall have the right to access remotely the Equipment for the purpose of recording and analysing personal and non-personal data stored on the Software.

10 General

10.1

Neither party shall be liable for any delay in or for failure to perform its obligations under this Licence, other than an obligation to make any payment due to the other party, if that delay or failure is caused by circumstances beyond the control of that party including, without limitation, fires, strikes, insurrection, riots, embargoes, or regulations of any civil or military authority.

10.2

The failure or delay of a party to exercise or enforce any right under this Licence shall not operate as a waiver of that right or preclude the exercise or enforcement of it at any later time or times.

10.3

You shall not be entitled to assign this Licence nor any of your rights or obligations under this Licence nor sub-license the use of the Software or the Documentation without the prior written consent of the Supplier.

10.4

No other amendment or variation of this Licence shall be valid and binding on the parties unless it is agreed by the parties, recorded in writing as an express amendment or variation of this Licence and signed by or on behalf of each of them.

10.5

This Licence, the LetterAssist SLA and the Quotation constitute the entire agreement between the parties with respect to the subject matter of this Licence and supersede and replace all prior agreements, negotiations and discussions between the parties relating to it. You confirm and acknowledge that you have not been induced to enter into this Licence by any representation, warranty, or undertaking not expressly incorporated into it. However, nothing in this Licence purports to exclude liability for any fraudulent statement or act.

10.6

No person who is not a party to this Licence shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Licence.

10.7

If any provision of this Licence is held to be unlawful, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be severed from this Licence and rendered ineffective as far as possible without modifying or affecting the legality, validity or enforceability of the remaining provisions of this Licence which will remain in full force and effect.

10.8

Any notice to be given under this Licence shall be in writing and shall be delivered by hand, sent by first class post to the address of the other party set out in this Licence or the Quotation (or such other address as may have been notified). Any such notice or other document shall be deemed to have been served: if delivered by hand - at the time of delivery; if sent by post - upon the expiration of 48 hours after posting.

10.9

This Licence shall be governed by and construed in accordance with English law and each party by entering into this Licence irrevocably submits to the non-exclusive jurisdiction of the English Courts.