

TERMS OF USE
CLINICMINDS

These Terms of Use apply to the use of the Service of Clinicminds as defined below. We advise you to read these Terms of Use carefully so you are aware of your rights and responsibilities when you use the Service. You can download and print these Terms of Use on the Website.

1 Definitions

<i>Account:</i>	the personal environment which is managed by the Client and to which the Client or User obtains access after entering his Login Details;
<i>Agreement:</i>	the agreement between the Client and Clinicminds regarding the use of the Service by Client, of which these Terms of Use are an integral part;
<i>App:</i>	the webapplication developed by Clinicminds or its licensors, available through <i>inter alia</i> smartphones, tablets and PC;
<i>Client:</i>	the legal entity that has entered into the Agreement with Clinicminds to obtain the right to use the Service for its own business exploitation;
<i>Clinicminds:</i>	Clinicminds B.V., a company with limited liability established and existing under the laws of The Netherlands, having its registered office in (1165MP) Amsterdam, the Netherlands, at Suikersilo-Oost 38, registered with the Chamber of Commerce under number 58343210;
<i>Details:</i>	all information or materials that the Client and/or User provides through the use of the Service, including – but not limited to – name and address details, medical details and financial details;
<i>Intellectual Property Rights:</i>	all intellectual property rights and related rights such as copyright, trademark rights, patent rights, trade name rights, design rights, , database rights and neighbouring rights, as well as rights to know-how and sui generis intellectual property rights;
<i>Login Details:</i>	a user name and a password with which the Client or User obtains access to the Service;
<i>Party:</i>	Client and/or Clinicminds;
<i>Reports:</i>	all output of the Service, including – but not limited to – documents, reports, graphs, diagrams, overviews, emails and invoices, that is produced by the Client using the Details;
<i>Service:</i>	making available the App, by which the Client can manage the practice of its clinic, including the management of treatments, patients, (e-mail) correspondence and invoices;
<i>Terms of Use:</i>	these terms of use;
<i>User:</i>	a natural person to whom the Client has designated the right to access and use (parts of) the Service.
<i>Website:</i>	the website of Clinicminds, www.clinicminds.com , and all underlying or related webpages.

2 Scope

- 2.1 These Terms of Use apply to the Agreement and all agreements between Clinicminds and Client, as well as all use made by Client and/or User of the Service. Clinicminds may at any time amend or supplement these Terms of Use. The most up-to-date Terms of Use can always be found on the Website. The amended or supplemented Terms of Use will be brought to the Client's attention during the Client's use of the Service. If the Client continues to use the Service after these Terms of Use have been amended or supplemented, by such action the Client irrevocably accepts the amended or supplemented Terms of Use. If the Client does not agree to the amended or supplemented Terms of Use, the only option open to the Client is to cease the use of the Service.
- 2.2 Deviations from and additions to the Agreement and/or these Terms of Use on initiative of Client are only valid if they have been agreed in writing between the Parties.
- 2.3 The applicability of any of the Client's purchasing conditions or other conditions is expressly rejected.
- 2.4 If any provision in the Terms of Use is void or is declared invalid, the other provisions of the Terms of Use will continue to apply in full. In that case Clinicminds will provide new provisions to replace the provisions that are void or have been declared invalid, whereby the object and the tenor of the conditions that are void or that have been declared invalid will be taken into consideration to the extent possible.
- 2.5 Amendments or additions to agreed Services at the request of the Client may only take place with the written consent of Clinicminds. If Clinicminds performs any additional services at the request of the Client or with the prior consent of the Client, that fall outside the scope of this Terms of Use, these services shall be paid by the Client in accordance with the rates of Clinicminds that are applicable at the time of the performance of the work. Clinicminds is not obliged to comply with a request for additional services and is allowed to request the conclusion of a separate agreement.

3 Service and availability

- 3.1 The Client accepts that the Service contains only the functionalities and information that he finds at the moment of use ("as is" basis). The Client acknowledges and accepts that the (quality of the) Service and the availability thereof depends *inter alia* on external factors which are not under Clinicmind's control or for its risk. Clinicminds therefore provides the Service on the basis of a best efforts obligation, unless and in so far as otherwise stated in the Terms of Use.
- 3.2 In the event the Service shall or may be temporarily unavailable due to maintenance of the Service, including the App, Clinicminds will notify the Client thereof as soon as possible, but at least five (5) business days in advance. In case of emergency, due to which the Service has to be taken offline or restricted immediately, Clinicminds will inform the Client as soon as reasonably possible.
- 3.3 Clinicminds shall make every effort to ensure that the Service is provided with due care and in accordance with the arrangements and procedures agreed in these Terms of Use and the Agreement.
- 3.4 Clinicminds shall under no circumstances be obliged to provide the Client with a physical data carrier containing the App to be made and kept available to the Client in the context of the Service.

- 3.5 Clinicminds may make adjustments to the content or scope of the Service. Clinicminds will inform the Client of this as early as possible. In the event that the amendment(s) result in a modification of the Service which is substantial in relation to the Service as defined in these Terms of Use, Client is entitled to terminate the Agreement in writing within thirty (30) days after the notification as of the date on which the adjustment would take effect, without Clinicminds becoming liable for any damages as a result of the adjustments or the termination.
- 3.6 Clinicminds may continue to perform the Service using new or modified versions of the App. Unless explicitly agreed otherwise in writing, Clinicminds is not obliged to maintain, alter or add certain characteristics or functionalities of the Service or the App specifically for the Client.
- 3.7 Clinicminds may temporarily take the Service offline in full or in part and/or restrict its use if, in its view, this is necessary, for example for purposes of preventive, corrective or adaptive maintenance.

4 Account and Users

- 4.1 In order to use the Service, the Client needs an Account. To obtain an Account, the Client must follow the registration process available on the Website. During the registration process the Client shall provide the requested information, including the specifications of the Agreement and personal, contact and payment information.
- 4.2 The Client guarantees that the information provided to Clinicminds in accordance with article 4.1 is accurate, complete and up-to-date. In the event the aforementioned information is (no longer) accurate, complete and/or up-to-date the Client shall immediately adjust its information in its Account or by notifying Clinicminds, so that the information is (again) accurate, complete and up-to-date.
- 4.3 Upon completion of the registration as meant in article 4.1, Clinicminds shall provide the Client with its Login Details. The Client may change its Login Details in its Account. The Client may create additional Login Details for its Users to gain access to the Account, up to the amount of Users as agreed upon between Parties in the Agreement. In the event Client supersedes the amount of Users it is allowed to provide access to the Service, Client shall be notified thereof and its subscription shall automatically be upgraded and the additional costs shall be invoiced to Client in accordance with article 5.3.
- 4.4 The Client is responsible for maintaining secrecy with regard to the Login Details, including Login Details of its Users, for his Account. As soon as the Client knows or has reason to suspect that his Login Details have come into the hands of unauthorised persons, the Client must inform Clinicminds of this without delay, without prejudice to his own obligation to immediately take effective action, such as modifying his Login Details.
- 4.5 The Client therefore accepts and acknowledges that the Client is at all times responsible and liable for the use of the Service by third parties via the Client's Account. The Client indemnifies Clinicminds against any and all damage and costs arising from and/or related to the use of the Service by third parties via the Client's Account.
- 4.6 Clinicminds may at all times (i) make functional, procedural or technical changes or improvements to the Service, including the Application and login procedure, and (ii) (temporarily or permanently) take out of service, restrict the use of or terminate Accounts on the Service, without becoming liable to the Client and/or User.
- 4.7 The Client is responsible and liable for any and all use of the Service by the Users and warrants that the Users comply with the provisions of these Terms of Use.

5 Payment

- 5.1 The Client may solely purchase the Service against payment. The prices for use of the Service are stated on the Website. Prices are in Euros or Dollars and exclusive of VAT and other government levies, unless stated otherwise on the invoice or the Website.
- 5.2 Clinicminds is authorized to adjust the current prices in writing with a period of notice of at least three months. If the Client does not wish to agree to such adjustment, the Client is entitled to terminate the Agreement in writing within thirty days after the notification as of the date on which the adjustment would take effect, unless the adjustment is less than or equal to the annual Dutch consumer price index.
- 5.3 In the event the Client exceeds the User amount as agreed upon in the Agreement, Clinicminds may charge Client additional costs for the additional Users registered in its Account in accordance with the current pricing as specified on the Website.
- 5.4 Clinicminds shall invoice the Client monthly by email. Clinicminds shall charge the amounts due within 14 days through the preferred method of Client, as indicated during the registration process as meant in article 4.1 and/or in its Account. In any event, payments must be made within fourteen (14) days after the invoice date, unless explicitly agreed otherwise in writing or stated on the invoice.
- 5.5 If, after this period has expired, Clinicminds has not yet received payment (in full), the Client is immediately in default without any advance demand or notice of default being required. From the time of default, the Client owes interest equal to the statutory interest for commercial transactions.
- 5.6 If the Client remains in default of payment of the claim after a reminder or notice of default, Clinicminds may decide to refer the debt for collection. In that case all costs incurred by Clinicminds, such as costs of the action and extrajudicial and court costs, including the costs of legal assistance, process servers and collection agencies, incurred in connection with late payments are charged to the Client. The extrajudicial costs are fixed and come to at least 10% of the amount of the invoice with a minimum of €150,- exclusive of VAT.
- 5.7 Complaints in relation to invoices and/or the Service do not suspend the Client's payment obligations. Clinicminds may suspend its Service if the Client is in default of payment.

6 Intellectual Property

- 6.1 The Intellectual Property Rights in relation to the Service, including the Intellectual Property Rights on the App, the Website and Reports are held by Clinicminds or its licensors. Nothing in the Terms of Use is intended to entail any transfer of Intellectual Property Rights to the Client.
- 6.2 If the Client complies in full with its obligations pursuant to the Agreement and the Terms of Use with Clinicminds, Clinicminds will grant the Client a limited, personal, revocable, non-exclusive, non-sublicensable and non-transferable right to distantly access and use the Service, including the App, in accordance with the Terms of Use.
- 6.3 Save to the extent that it is allowed by mandatory statutory law, the Client may not modify, reproduce or decompile the App and/or Website or apply reverse engineering to the App and/or Website. Furthermore, removal and/or circumvention of security measures or technical limitations (to use) of the Service, the Website and/or the App is not allowed.
- 6.4 In the event of infringement of the foregoing, the Client will incur an immediately due and payable, non-offsettable penalty to Clinicminds of EUR 10.000,= per infringement as well as EUR 1.000,= per day that the infringement continues, without prejudice to the other

legal remedies available to Clinicminds under the Terms of Use and/or the applicable law, including the right to additional compensation.

- 6.5 Any Intellectual Property Rights that vest in the Client, including but not limited to Intellectual Property Rights in the Details and Reports, remain vested in the Client. By using the Service, the Client grants Clinicminds a royalty-free, unencumbered, sub-licensable, non-exclusive license to use and reproduce the Details and Reports insofar as is necessary in connection with providing the Service.
- 6.6 Clinicminds shall keep a download of the Details and Reports available to Client for a period of at least three (3) months after termination of the Agreement as meant in article 9. The download shall solely be provided in a common format. Clinicminds is under no circumstances obligated to provide Details and/or Reports in any other format. In the event Clinicminds does perform a conversion of Details and/or Reports, Clinicminds may charge Client for the additional costs.

7 Warranties and indemnifications

- 7.1 Each and every use of the Service is for the risk and responsibility of the Client. Clinicminds is not liable for loss, damage, inaccuracy and/or incompleteness of Details or Reports.
- 7.2 Clinicminds does not guarantee that the App is free of defects and will operate without interruptions. Malfunctions in the Service may occur (but not exclusively) as a result of malfunctions in the internet or the telephone connection or due to viruses or faults/defects. Clinicminds is not responsible or liable for malfunctions in the Service due to malfunctions in the internet, the telephone connection, a server, or due to viruses.
- 7.3 Clinicminds is not responsible for the purchase and/or correct functioning of the Client's infrastructure or that of third parties. Clinicminds is never liable for damage or costs on account of transmission errors, malfunctions or non-availability of computer, data or telecom facilities, including the internet.
- 7.4 The Client is responsible for meeting any technical and functional requirements that may be provided and/or advised by Clinicminds in order to be able to use the Service. Clinicminds may at any time adjust its recommended technical and/or functional requirements. It is to the sole responsibility of Client to meet these adjusted technical and/or functional requirements.
- 7.5 The Client is responsible for the management, including monitoring settings, the use of the Service and the manner in which the results of the Service, including the Details and Reports, are used. The Client is also responsible for the use of the Service by the Users, regardless of whether or not there is a relationship of authority between the Client and these Users.
- 7.6 The Client accepts that Clinicminds solely provides the Service to Client. Clinicminds is in no event party to any agreement and/or relationship between the Client and a third party, including any User or patient of Client. Clinicminds does not have any influence with respect to the Details, Reports and/or use of the Service by Client, including any information or data provided by Client, and is therefore not liable for any damages or costs as a result of the (use of) the Service, Details, Reports or any claims of third parties.
- 7.7 The Client is responsible for checking the accuracy and completeness of the results of the Service and the Details and Reports generated through the use of the Service. The Client shall regularly check the results of the Service and the Details and Reports generated through the use of the Service. In the event the Client is of the opinion that a

certain result is incorrect, incomplete or not up-to-date, the Client shall notify Clinicminds thereof as soon as reasonably possible.

7.8 The Client guarantees that he will not use the Service and/or the Reports and/or the Details in a way that:

- a. infringes the rights of Clinicminds or third parties and/or are wrongful vis-à-vis third parties, including but not limited to Intellectual Property Rights or rights in relation to the protection of privacy;
- b. is contrary to any current legislation or regulations; and/or
- c. is contrary to any provision in these Terms of Use.

The Client indemnifies Clinicminds against all damage and costs arising from and/or related to claims of third parties based a violation of this guarantee.

7.9 The Client indemnifies Clinicminds against all damage and costs arising from and/or related to claims of third parties, on any basis whatsoever, resulting from a breach of the above guarantee.

7.10 Clinicminds does not guarantee that the App or the Service will be adapted according to changes in relevant legislation an regulations. If Clinicminds chooses not to adapt the App or the Service according to such changes, Clinicminds, may terminate the Agreement by written statement to the Client, with a notice period of 2 months and without becoming liable.

8 Processing of personal data

8.1 Pursuant to legislation in respect of the processing of personal data (such as the Personal Data Protection Act 'Wet bescherming persoonsgegevens'), the Client has obligations towards third parties, such as an obligation to provide information, an obligation to allow inspection, correction and removal of personal data of parties involved. The Client is fully and exclusively responsible for ensuring compliance with these obligations.

8.2 Client guarantees that it will comply with all legal obligations regarding the processing of personal data, including but not limited to the obligations following from the European Directive 95/46/EC and the Dutch Data Protection Act. Client furthermore guarantees it is entitled to assign Clinicminds as a processor of the personal data.

8.3 The Parties agree that, with regard to the processing of personal data, Clinicminds is the 'processor' ('bewerker') within the meaning of the Personal Data Protection Act and Client will act as the 'controller' ('verantwoordelijke'). This provision qualifies as a processor agreement as meant in article 14 of the Dutch Data Protection Act.

8.4 Clinicminds shall only process personal data insofar as is necessary for the performance of the Agreement with Client and on instructions from Client, unless Clinicminds is required by law to process personal data outside this scope. Clinicminds is at all times entitled to further process the personal data for its own purposes insofar as the personal data is aggregated in such a way that the data subject is no longer identifiable, and thus no longer qualifies as personal data in the meaning of the Dutch Data Protection Act.

8.5 Clinicminds shall use its reasonable efforts to implement appropriate technical and organizational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing. Client has taken notice of the measures taken by Clinicminds and Client has determined that these measures guarantee an adequate level of protection for the processing of personal data.

8.6 Client indemnifies and holds harmless Clinicminds and/or its licensors against any claims of patients and/or customers of Client and/or third parties relating to or following from the processing of personal data by Clinicminds.

9 Term and termination

9.1 The Agreement is entered into for an indefinite period. The Client and/or Clinicminds may terminate the Agreement in Client's Account in the App, subject to a notice period of one month prior to the end of its duration.

9.2 If the Client breaches its obligations under the Agreement and/or the Terms of Use, Clinicminds has the right to immediately discontinue or to (temporarily) suspend its Service and/or to restrict access and/or use of the Service, notwithstanding Clinicminds's other rights and remedies, including its right to claim damages.

9.3 Each of the Parties is entitled to terminate ('opzeggen') the Agreement immediately in full or in part in the event that the other Party goes bankrupt or is granted a suspension of payments, as well as in the event that the other Party's business is closed down or liquidated. In the event of bankruptcy of the Client, Clinicminds is entitled to terminate the right of use it furnished, unless the consequences would be contrary to reasonableness and fairness.

9.3 Each of the Parties shall be entitled to rescind ('ontbinden') the Agreement if the other Party imputably fails to perform material obligations – including in any event the payment obligations of Client – under the Agreement and/or the Terms of Use – in all cases,

- a. after having received a proper written notice of default which is as detailed as possible and in which it has been given a reasonable time period to remedy the breach, or
- b. immediately if the other Party is in default without such a written notice being required according to Dutch law.

9.4 If, at any time of the rescission referred to in article 9.3, the Client has already received performance in connection with the execution of the Agreement and these Terms of Use, this performance and related payment obligation for the Client shall not be cancelled, unless the Client proves that Clinicminds is in default with regard to that performance. Amounts which Clinicminds has invoiced before rescission in connection with what it has already properly performed or delivered to execute the Agreement and these Terms of Use shall, subject to the provisions in the preceding sentence, continue to be owed in full and shall be immediately payable at the time of rescission.

9.5 After termination of the Agreement, Parties shall remain bound to the articles meant to survive such termination.

9.6 If the Agreement terminates, whether due to expiry, rescission or termination, the license granted to the Client in article 6.2 will end immediately and the Client shall:

- a. cease and desist using the Service; and
- b. pay to Clinicminds any amounts, reimbursable expenses, compensations or other amounts payable under the Agreement and these Terms of Use;

9.7 Until the end of the Agreement, the Client itself can export the Details and/or Reports for use outside the App. After termination of the Agreement, Clinicminds is not obliged to furnish and/or convert any information, material, Details and/or Reports to the Client.

9.8 If the Agreement terminates, whether due to expiry, rescission or termination, Clinicminds may remove all information, material, Details and/or Reports, including all personal data of the Client, its Users and/or third parties associated with Client from its systems after expiry of the period as provided in article 6.6.

10 Liability

- 10.1 Clinicminds is not liable for any damages caused by imputably failing to perform the Agreement and/or these Terms of Use, an unlawful act or any other act. In the event Clinicminds is liable to Client, Clinicminds's liability shall be limited to compensating direct damages and not exceed the amount covered and paid by its liability insurance. In no event shall the liability of Clinicminds exceed the total amount paid by Client under the Agreement in the twelve (12) calendar months prior to such event.
- 10.2 "Direct damages" shall solely mean:
- a. property damages ;
 - b. reasonable expenses which the Client would have to incur to make Clinicminds's performance conform to the Agreement and Terms of Use; this alternative damage shall not be compensated, however, if the Agreement is rescinded by the Client (which includes rescission on its behalf by the competent judge) ("ontbinding", article 6:265 Dutch Civil Code);
 - c. reasonable expenses incurred by the Client to determine the cause and scope of the damage, insofar as the determination relates to direct damage within the meaning of these Terms of Use;
 - d. reasonable expenses incurred to prevent or mitigate damage, insofar as the Client demonstrates that these expenses resulted in mitigation of direct damage within the meaning of these Terms of Use.
- 10.3 Clinicminds shall not be liable for any other damages than direct damages as specified in article 10.2, including, but not limited to, consequential damages arising out of, or in connection with the Agreement or the Terms of Use, such as, but not limited to, loss of profit, loss of business, loss of anticipated savings, or any other similar financial loss or loss of goodwill or reputation, loss of data, or other incidental, indirect, punitive or exemplary damages of any kind, independent of whether the Client provides notice to Clinicminds of such potential injury, damages or loss.
- 10.4 In any event, the Client's right to claim damages under the Agreement, these Terms of Use, under tort or otherwise shall lapse one (1) year after the occurrence giving rise to the claim or action.
- 10.5 The limitations mentioned in the preceding paragraphs of this article shall not apply if and insofar as the damage or injury is the result of intentional acts or omissions or gross negligence by Clinicminds or its managers.

11 Force majeure

- 11.1 Except with respect to failure to pay any amount due under the Agreement and/or Terms of Use, a Party shall be entitled to invoke force majeure ("overmacht") if the execution or the performance of the Agreement is, in whole or in part, temporarily or not, prevented or impeded by circumstances reasonably beyond its control, including but not limited to:
- a. site or building blockades, strikes, riots, civil disruption, war, terrorist acts, inclemency, epidemic, specific work interruptions, delay in transportation, earthquake, fire, storm, flood, or water damage;
 - b. delay in or cancellation of the delivery to the Party of parts, goods or services ordered from third parties, interruptions in the internet connection; or
 - c. governmental, legal or regulatory restrictions.

- 11.2 If an event of a force majeure continues for more than three (3) months, the other Party shall be entitled to terminate the Agreement with notice. The Parties shall not be responsible for any damages in the event of force majeure.
- 11.3 Any Party whose ability to perform is affected by a force majeure event shall take all reasonable steps to mitigate the impact of such event.

12 Miscellaneous

- 12.1 Email messages are deemed to constitute written notice, unless explicitly agreed otherwise.
- 12.2 The Agreement between the Client and Clinicminds and the use of the Service are governed by Dutch law. The applicability of the Vienna Convention on the Sale of Goods is expressly excluded.
- 12.3 All controversies, disputes or claims that arise from or are related to the Agreement or these Terms of Use, or agreements that arise therefrom, will exclusively be submitted to the competent court in Amsterdam, The Netherlands.
- 12.4 Client shall not be authorized to transfer the Agreement and/or any of its rights and obligations arising out of the Agreement to a third party without prior permission being granted by Clinicminds.
