



End User Licence Agreement

This End User Licence Agreement will apply to you if you use the Remote Back Up Service. Please do not use the Remote Back Up Service (or allow others to do so) before you understand and agree with the terms of this End User Licence Agreement.

1. DEFINITIONS

1.1 The definitions and rules of interpretation in this clause apply in this EULA.

you (or your):	means the party entering into this EULA (and into the Docman Agreement with Docman).
us, we or our:	means Egton Medical Information Systems Limited (dba “ Egton ”) a company incorporated in England (Company No. 2117205) having its registered office at Rawdon House, Green Lane, Yeadon, Leeds, LS19 7BY.
Additional Storage Charge:	means such additional charge identified by Egton to meet the cost of a request made by you for additional storage pursuant to clause 4.1.
Clinical Data:	means all data that resides within your clinical system and for the avoidance of doubt shall not be limited to patient identifiable data.
Commencement Date:	means the date upon which Egton shall commence providing the Services hereunder to you as detailed in the Particulars above.
Computers:	means the computers in respect of which you wish us to perform the Services.
Confidential Information:	means information that is proprietary or confidential and is either clearly labelled as such or otherwise identified as Confidential Information.
Data:	means the data you identify that you wish us to back up as part of the Services but for the avoidance of doubt shall not include any Clinical Data.
Data Centre:	means an N3 accredited secure data centre.
Docman:	means PCTi Solutions Limited (dba “ Docman ”) a company incorporated in England having its registered office at Unit 2, Pioneer Court, Pioneer Way, Whitwood, Castleford WF10 5QU.
Docman Agreement:	means the agreement between you and Docman under which Docman agrees to procure the provision of various services to you, including, the Services (subject to the terms of this EULA).
N3:	means the N3 network utilised by the NHS.
Services:	means the services detailed at clause 0.
Sites:	means the locations at which we shall provide the Services as detailed in the relevant order form provided to us by Docman on your behalf.
Software:	means the remote access software which allows us to access your Data in order to perform the Services.

Term: means the term of this EULA, commencing on the date on which we commence delivery of the Services and ending on the date of termination of this EULA.

- 1.2 References to clauses are to the clauses of this EULA. Clause, attachment and paragraph headings shall not affect the interpretation of this EULA.
- 1.3 A reference to: (i) person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assignees; (ii) a company shall include any company, corporation or other body corporate, wherever and however incorporated or established; (iii) words in the singular shall include the plural and vice versa; (iv) one gender shall include a reference to the other genders; (v) a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it; and (vi) writing or written shall not include communications sent by email.
- 1.4 Any words following the terms 'including', 'include', 'in particular', 'for example' or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. SERVICES

- 2.1 We shall during the Term, remotely backup your Data at the Sites on a continuous basis using a hosted service. As part of the Services, we will also monitor the Data on a daily basis and in the event of any problems offer remote diagnosis and data restoration services (as more fully detailed below in this clause 0). A description of the Services is set out in your Docman Agreement – if you have any queries or questions regarding the scope of the Services then you should direct these to Docman in the first instance.
- 2.2 In order to perform the Services, we shall:
- 2.2.1 install and configure the Software remotely on the Computers;
 - 2.2.2 monitor the Software to ensure that the Data is backed up to the Data Centre;
 - 2.2.3 reserve the right to also securely store a further backup copy of the backup Data on tape;
 - 2.2.4 ensure that only our (or Docman's) approved staff has access to the Data at any time; and
 - 2.2.5 use our reasonable endeavours to ensure that the Services are available on a 24/7 basis.
- 2.3 We shall provide second line support services to Docman. All first line support in respect of the Services shall be provided to you by Docman in accordance with the Docman Agreement.
- 2.4 If you ask us to restore any of the Data from the backup to your Computers then we shall:
- 2.4.1 using our service desk staff perform an initial diagnosis; and
 - 2.4.2 if we are willing and able to do so, provide you with an anticipated response time for completing the Data restoration.

3. YOUR OBLIGATIONS

- 3.1 You shall:
- 3.1.1 provide us with full and safe access to the Computers as we may reasonably require for the purposes of this EULA and in particular clause 2.2.1;
 - 3.1.2 not attempt to use any Clinical Data in the Services; and

- 3.1.3 not unreasonably refuse to accept changes to the Services which we may introduce from time to time in response to changes in technology and resultant changes in our working practices.

4. SERVICE CHARGES

- 4.1 You shall pay the relevant charges due under the Docman Agreement in respect of the Services.
- 4.2 If you require any additional storage above the initial agreed parameters then, if we are willing and able to provide the same, you shall pay the relevant Additional Storage Charge as notified to you by Docman.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 You acknowledge that any and all Intellectual Property Rights created, developed, subsisting or used in or in connection with the delivery of the Services, Software and Documents are and shall remain our sole property (or that of our third party licensors). Except as expressly stated in this EULA, we do not grant you any rights to, or in, any intellectual property rights or any other rights or licences in respect of the Services, Software or Documents.
- 5.2 In the event that new inventions, designs or processes evolve in performance of or as a result of the Services, you acknowledge that the same shall be our property.
- 5.3 You acknowledge that, where we do not own the intellectual property rights subsisting in any Software, Documents or other materials we may provide in respect of the Services, then your use of the same is conditional on our obtaining the necessary licence(s) from the relevant licensor(s) of such materials on such terms as will entitle us to license such rights to you.

6. CONFIDENTIALITY

- 6.1 Each party may have access to Confidential Information of the other party under this EULA. A party's Confidential Information shall not include information that:
 - 6.1.1 is or becomes publicly known through no act or omission of the receiving party;
 - 6.1.2 was in the other party's lawful possession prior to the disclosure;
 - 6.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - 6.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - 6.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 6.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of this EULA.
- 6.3 Each party agrees to take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this EULA.

7. LIMITATIONS OF LIABILITY

- 7.1 YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE 7, WHICH YOU ACKNOWLEDGE IS A FAIR AND EQUITABLE APPORTIONMENT OF RISK UNDER THIS EULA.
- 7.2 This clause 7 sets out our entire financial liability (including any liability for the acts or omissions of our employees, agents, consultants, and subcontractors) to you in respect of:
 - 7.2.1 any breach of this EULA;

- 7.2.2 any use made by you of the Services (or any part of them); and
- 7.2.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this EULA.
- 7.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this EULA.
- 7.4 Nothing in this EULA limits or excludes our liability for:
 - 7.4.1 death or personal injury resulting from our negligence;
 - 7.4.2 any damage or liability incurred by you as a result of fraud or fraudulent misrepresentation; or
 - 7.4.3 any liability which cannot be excluded or limited pursuant to applicable law.
- 7.5 Subject to clause 7.4, we shall under no circumstances whatever be liable to you, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, for any:
 - 7.5.1 loss of profits;
 - 7.5.2 loss of business or contracts;
 - 7.5.3 depletion of goodwill and/or similar losses;
 - 7.5.4 loss of anticipated savings;
 - 7.5.5 loss of goods;
 - 7.5.6 loss of use;
 - 7.5.7 loss of corruption of data or information; or
 - 7.5.8 special, indirect, consequential or pure economic loss, costs, damages, charges or expenses,arising under or in connection with this EULA.
- 7.6 Subject to clause 7.4, our total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of this EULA shall be limited to a sum equal to one hundred and twenty percent (120%) of the fees paid by you to Docman under the Docman Agreement which relate to the Services in the twelve (12) months preceding the date of such claim.

8. DATA PROTECTION & SECURITY

- 8.1 The parties acknowledge their respective duties and obligations under the Data Protection Act 1998 (“**DPA**”) and the Freedom of Information Act 2000 (“**FOIA**”) (and any other applicable laws or obligations regarding the use of personal data) and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.
- 8.2 To the extent that we are acting as a data processor (as defined in the DPA) on your behalf, we shall:
 - 8.2.1 process the relevant personal data only in accordance with the terms of this EULA and any lawful instructions reasonably given by you from time to time;
 - 8.2.2 put in place appropriate technical and organisational measures against any unauthorised or unlawful processing of such personal data, and against the accidental loss or destruction of or damage to such personal data having regard to the specific requirements within this EULA, the state of technical development and the level of damages that may be suffered by a data subject whose personal data is affected by such unauthorised or unlawful processing or by its loss, damage or destruction;

8.2.3 take reasonable steps to ensure the reliability of employees who will have access to such personal data, and ensure that such employees are aware of and trained in the policies and procedures identified within this EULA; and

8.2.4 not cause or allow such personal data to be transferred outside the European Economic Area without your prior written consent.

8.3 We shall both use our reasonable efforts to ensure that personal data processed in accordance with this EULA is safeguarded at all times in accordance with any applicable law.

9. TERM AND TERMINATION

9.1 The Services hereunder shall commence on the commencement date of the Docman Agreement and shall remain in effect unless or until it is terminated in accordance with this EULA.

9.2 This EULA shall terminate immediately and without notice upon termination or expiry of the relevant Docman Agreement (either in its entirety or in respect of the Services).

9.3 Without prejudice to any other rights or remedies which the parties may have, either party may terminate this EULA without liability to the other immediately on giving notice to the other if:

9.3.1 the other party commits a material breach of any of the terms of this EULA and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that party being notified in writing of the breach;

9.3.2 the other party repeatedly breaches any of the terms of this EULA in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this EULA; or

9.3.3 the other party becomes insolvent, is the subject of a petition for creditor protection or a petition in bankruptcy or of any other proceedings under bankruptcy, insolvency or similar laws or makes an assignment for the benefit of creditors (or any event occurs, or proceeding is taken, with respect to the other party that has an effect equivalent or similar to any of the events mentioned in this clause).

9.4 On termination of this EULA for any reason:

9.4.1 you shall immediately cease use of the Services and shall delete the Software from your systems; and

9.4.2 the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.

9.5 On termination of this EULA (however arising), the following clauses shall survive and continue in full force and effect: clauses 5, 6, 7, 7.2.3, 9, 10 and 9.3.

10. INDEMNIFICATION

You shall defend, indemnify and hold us harmless (and our directors, officers, agents and employees) at all times from and against any claims, liabilities, suits, losses, injuries, expenses, damages and/or costs suffered, sustained or incurred in relation to any claim relating to or arising from your use of the Services other than in accordance with the terms of this EULA.

11. FORCE MAJEURE

Neither party shall have any liability to the other under this EULA if it is prevented from, or delayed in performing, its obligations under this EULA or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

12. VARIATION

- 12.1 We may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If we require a change to the scope of the Services for any other reason, you shall not unreasonably withhold or delay consent to it.
- 12.2 Subject to clause 12.1, no variation of this EULA or of any of the documents referred to hereunder, shall be valid unless it is in writing and signed by or on behalf of each party.

13. WAIVER

- 13.1 A waiver of any right under this EULA is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under this EULA or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.
- 13.2 Unless specifically provided otherwise, rights arising under this EULA are cumulative and do not exclude rights provided by law.

14. SEVERANCE

Should any of the provisions of this EULA be ineffective due to being invalid, illegal or unenforceable (an “**Ineffective Provision**”), such Ineffective Provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without invalidating the remainder of such provisions or the remaining provisions of this EULA. The parties agree to attempt to substitute for any Ineffective Provision a valid, legal and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the Ineffective Provision.

15. ENTIRE AGREEMENT

- 15.1 This EULA constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 15.2 Each party represents and agrees that in entering this EULA it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this EULA or not) other than as expressly set out in this EULA. The only remedy available to either party for breach of the warranties will be for breach of contract under the terms of this EULA. Nothing in this clause 15 shall limit or exclude any liability for fraud.

16. ASSIGNMENT

- 16.1 You shall not, without our prior written consent, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of your rights or obligations under this EULA.
- 16.2 Each party that has rights under this EULA is acting on its own behalf and not for the benefit of another person.

17. NOTICES

- 17.1 Any notice required to be given under this EULA shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Order Form, or such other address as may have been notified by that party for such purposes.
- 17.2 A notice delivered by hand or email shall be deemed to have been received when delivered (or if delivery is not in normal business hours, at 9:00am on the first working day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

17.3 All notices sent to us must be marked for the attention of Legal Counsel.

18. GOVERNING LAW AND JURISDICTION

18.1 This EULA, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.

18.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this EULA or its subject matter or formation (including non-contractual disputes or claims).