

## LapBase Pty Ltd

### Data Management Services for Bariatric Surgery

#### Terms and Conditions

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These terms and conditions apply to the use of the Software and the Services for bariatric surgery.

By registering with LapBase Pty Ltd ACN 126 999 942 of 456 Balwyn Road, Victoria 3104 (“LapBase”), you, the Practice, agree to be bound by these terms and conditions.

#### 1. Definitions and interpretation

##### 1.1 Definitions

**Commencement Date** means the date on which the Practice registers with LapBase pursuant to clause 2;

**Confidential Information** means information that is by its nature confidential, and includes the Data, but does not include:

- (a) information already known to the receiving party at the time of disclosure by the other party; or
- (b) information in the public domain other than as a result of disclosure by a party in breach of its obligations of confidentiality under these terms and conditions;

**Data** means all data inputted by or on behalf of the Practice into the Software which includes patient personal and clinical records;

**Initial Fee** means the fee payable by the Practice for the provision of the Services and establishment of the Practice’s User Accounts;

**Initial Term** means the period starting on the Commencement Date, and ending 12 months after the Commencement Date;

**Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, circuit layouts, business and domain names, inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields;

**Licence** means the Licence provided to a Practice to enable users of that Practice access to a User Account. A Licence – Attachment A - is issued to a Practice annually and is only valid upon the payment of Licence Fees

**Practice** means the medical practice that provides bariatric surgery and related services to its patients and carries the responsibility for security and safeguarding the confidentiality of the medical information captured and stored on its patients as required in the delivery of their bariatric surgery and related services

**Renewal Fee** means the annual fee payable by the Practice for the provision of the Services for a 12-month period, as advised by LapBase to the Practice post the expiry of the Initial Term;

**Retention Fee** means a fee paid by the Practice upon termination or expiration of the Services to enable the Practice to access the Software for a period of 12 months to assist the Practice to comply with the data retention guidelines specified in the Health Records Act 2001(Vic).

**Services** mean the provision of access to the Software via the Practice's User Account;

**Software** means LapBase's Bariatric Surgery Data Management Software;

**Surgeon** means a surgeon of the Practice;

**User Account** means the user account of the Practice established by LapBase to enable the Practice to access the Software;

**Username** means the name given a user to gain access to a User Account; and

**User Password** means the eight or more characters determined by a user used in conjunction with a designated Username to gain access to a User Account.

## 1.2 Interpretation

Words importing the singular include the plural and vice versa and words importing one gender shall include all other genders. Headings are for ease of reference only and shall not affect the interpretation of these terms and conditions.

## 2. Registration and User Account

- (a) By registering with LapBase, the Practice agrees to be bound by these terms and conditions, and warrants that the registration information provided is truthful, accurate and complete. The date of registration is referred to as the Commencement Date.
- (b) The Practice will be issued with one User Account per Practice.
- (c) The Practice will be issued with up to 10 Usernames for every surgeon approved by the Practice to access a User Account.
- (d) An initial Username and User Password will be assigned by LapBase to the Practice for its User Account. The initial Usernames and user Passwords must be changed by the Practice upon activation of the relevant User Account.

- (e) It is the Practice's responsibility to keep their User Account Usernames and Passwords confidential. The Practice must not allow Usernames to be used by any person other than the person identified by LapBase as being the person to whom that Username was assigned.
- (f) The Practice may only access and use the Services through its licenced User Account.
- (g) Differing levels of access to the Services may be assigned to the Practice's Usernames within a User Account which can be determined by the Practice.
- (h) Every Practice is to assign one user as the "System Administrator" who will be responsible to manage the allocation of Usernames and User Passwords within the User Account.

### **3. Services**

LapBase will provide the Practice with the Services pursuant to these terms and conditions.

### **4. Fees and Term**

- (a) The Practice agrees to pay the Initial Fee to LapBase within 30 days of the Commencement Date in consideration of the provision of the Services and the establishment of the User Account and Usernames for the Practice.
- (b) Payment of the Initial Fee entitles the Practice to have access to the Services for the Initial Term.
- (c) At the end of the Initial Term, if the Practice wishes to continue to receive the Services, the Practice must pay the Renewal Fee on or before the completion of the Initial Term. Payment of the Renewal Fee entitles the Practice to continue to receive the Services for a further 12-month term ("**Further Term**") on these terms and conditions.
- (d) At the end of the Further Term, if the Practice wishes to continue to receive the Services, the Practice must again pay a Renewal Fee. Payment of a Renewal Fee entitles the Practice to continue to receive the Services for a further 12-month term on these terms and conditions.
- (e) If payment of the Renewal Fee is not received by LapBase on or before the commencement of the Further Term, LapBase may, at its option:
  - (i) suspend or terminate the Practices access to its User Account and the Services; and / or
  - (ii) charge interest on the overdue monies at the rate of 10% per annum.

### **5. Data**

- (a) The Data is the property of the Practice.
- (b) It is the responsibility of the Practice to protect its Data.

- (c) The Practice is solely responsible for the accuracy, collation, maintenance and protection of the Data at all times.
- (d) LapBase will use its reasonable commercial endeavours to provide regular backups of the Data.
- (e) LapBase will provide for the encryption of Data when any Data is transmitted between the Practice and LapBase.
- (f) LapBase is not responsible for or in any way liable whatsoever for any loss or damage to the Data. Specifically, LapBase has no responsibility or liability whatsoever in relation to the Data, the loss of Data, the corruption or damage to the Data in any way. LapBase is not responsible or liable for any claim, loss or damages arising or resulting from a loss of, or corruption of or damage to the Data.

## **6. Ownership and Intellectual Property Rights**

- (a) LapBase owns the Software.
- (b) All Intellectual Property Rights in the Software are owned by LapBase.
- (c) All Intellectual Property Rights in the Data are owned by the Practice.

## **7. Warranties, indemnity and liability**

- (a) LapBase makes no warranty that the Practice's access to the Services will be uninterrupted, continuous or error free.
- (b) The Practice acknowledges and agrees that its use of the Services is dependent on, and may be affected by, a number of factors outside of the reasonable control of LapBase. LapBase has no liability whatsoever relating to any failure of, or interruption in the performance of the Services from such external factors which include, but are not limited to, malware, cyber attacks, viruses and any other manner of interference by third parties designed to affect the Services, the Software, the Practice or the Data.
- (c) LapBase has no liability whatsoever related to internet speeds, internet access or desktop tools and browsers that are used to access the Services.
- (d) To the maximum extent permitted by law, the liability of LapBase to the Practice in respect of any act or omission of LapBase in connection with its obligations in the provision of the Services will not exceed an amount equal to the lower of the Initial Fee and the Renewal Fee.
- (e) To the fullest extent permitted by law, any condition or warranty which would otherwise be implied in these terms and conditions is hereby excluded.
- (f) The Practice indemnifies LapBase, and agrees to keep LapBase harmless against all loss or damages suffered or incurred by LapBase arising directly or indirectly, out of or in connection with (i) a breach by the Practice of these terms and conditions; (ii) any negligent or fraudulent act or omission on the part of the Practice or its officers employees or agents; or (iii) a loss, corruption or damage to the Data.

- (g) Lapbase is in no way whatsoever liable to the Practice for any special, indirect or consequential loss or damages, which loss or damages include but are not limited to loss or revenue, loss or profit or loss of opportunity.

## **8. Termination**

- (a) For the purpose of these terms and conditions, each of the following is a **Terminating Event**:
  - (i) failure by the Practice to pay the Initial Fee or the Renewal Fee on time;
  - (ii) the breach or threatened breach by either party of any of its material obligations under these terms and conditions;
  - (iii) the appointment of any type of insolvency administrator in respect of the property or affairs of either party;
  - (iv) the entry or proposed entry by either party into any scheme, composition or arrangement with any of its creditors;
  - (v) the permanent discontinuance of use of the Services by the Practice; and
  - (vi) the merger with or the takeover of the Practice by another party.
- (b) These terms and conditions may be terminated immediately on the happening of a Terminating Event at the option of the affected party.
- (c) Neither party shall be liable for the consequences of an occurrence of any event beyond its reasonable control, such as a force majeure event.
- (d) Where the Terminating Event is that of the Practice, the Practice shall immediately have its User Account cancelled by LapBase.
- (e) Any termination shall not affect any accrued rights or liabilities of either party, nor shall it affect any provision of these terms and conditions which is expressly or by implication intended to continue in force after such termination.
- (f) For Practices who pay the Retention Fee, LapBase will maintain for the Practice a read-only single user archive version of the Software for a period of 12 months.

## **9. Confidentiality**

- (a) A party will not, without the prior written approval of the other party, disclose the other party's Confidential Information.
- (b) A party will not be in breach of clause 9(a) in circumstances where it is legally compelled to disclose the other party's Confidential Information.
- (c) Each party will take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of these terms and conditions, do not make public or disclose the other party's Confidential Information.

- (d) Notwithstanding any other provision of this clause, a party may disclose the terms of these terms and conditions (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.
- (e) This clause will survive the termination of these terms and conditions.

## **10. General**

### **(a) Notices**

All notices which are required to be given under these terms and conditions must be in writing and must be sent to the registered address of LapBase, or to the email address of the Practice provided to LapBase. Any such notice will be deemed to have been served when delivered (if delivered by hand) or 48 hours after posting (except by prepaid letter) or if sent by email when the email enters the recipient's mail server.

### **(b) Assignment**

The Practice must not assign, whether in whole or part, the benefit of these terms and conditions or any rights or obligations hereunder, without the prior written consent of LapBase. LapBase may, by notice to the Practice, assign its rights and obligations under these terms and conditions.

### **(c) Governing law**

These terms and conditions shall be governed by and construed in accordance with the laws for the time being in force in Victoria and the parties agree to submit to the jurisdiction of the courts and tribunals of that Victoria.

### **(d) Waiver**

No forbearance, delay or indulgence by a party in enforcing the provisions of these terms and conditions shall prejudice or restrict the rights of that party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

### **(e) Variation**

LapBase may vary these terms and conditions by publishing a revised version of these terms and conditions on the Website, and may notify the Practice of such variation. Such variation will come into effect on the date the amended terms and conditions are posted on the Website.

### **(f) Severability**

Should any part of these terms and conditions be or become invalid, that part shall be severed from this agreement. Such invalidity shall not affect the validity of the remaining provisions of these terms and conditions.