

LapBase Pty Ltd

Data Management Services for Bariatric Surgery terms and conditions effective 1 November 2023 for existing Practices

These terms and conditions apply to the use of the LapBase Data Management 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

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;

Fee means the fee payable by the Practice for the provision of the Services for the Term as advised and invoiced by LapBase to the Practice;

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

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;

Term means from 1 January 2024 to 31 December 2024 or such earlier date as agreed by the parties;

User Account means the user account of the Practice established to gain access to the Website; and

Website means www.lapbase.net.

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 Accounts

- (a) By registering with LapBase or by continuing to access your User Account, the Practice agrees to be bound by these terms and conditions, and warrants that the registration information provided is truthful, accurate and complete.
- (b) The Practice will be issued with up to 10 User Accounts per Surgeon.
- (c) An initial username and password will be assigned by LapBase to the Practice for each of its User Accounts. These initial usernames and passwords must be changed by the Practice upon activation of the relevant User Account.
- (d) It is the Practice's responsibility to keep their User Account usernames and passwords confidential. The Practice must not loan their User Accounts to others.
- (e) The Practice may only access and use the Services through its User Accounts.
- (f) Differing levels of access may be assigned to the User Accounts.

3. Services and Term

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

4. Fee

- (a) The Practice agrees to pay the Fee to LapBase within 30 days of the date of invoice in consideration of the provision of the Services and the establishment of the User Accounts. Payment of the Fee entitles the Practice to have access to the Services for the Term.
- (b) If payment of the Fee is not received by LapBase by the due date for payment, LapBase may, at its option:
 - (i) Suspend or terminate the Practices access to its User Accounts and the Services; or
 - (ii) Charge interest on the overdue monies at the rate of 5% per annum.

5. Data

- (a) The Data is the property of the Practice, and it is the responsibility of the Practice to protect its Data.

- (b) The Practice is solely responsible for the collation, maintenance and protection of the Data.
- (c) It is recommended that the Practice take all prudent steps to backup the Data.
- (d) LapBase when requested will provide the Practice with functionality within the Software to backup copies of the Data, LapBase is not responsible for any loss 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. The Practice agrees that it will not bring any claim against LapBase related in any way to 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.

7. Warranties, indemnity and liability

- (a) LapBase makes no warranty that the Practice's access to the Services or the Website will be uninterrupted, continuous or error free.
- (b) The Practice acknowledges and agrees that its use of the Website and the Services is dependent on, and 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 Website or the Services from such external factors which include, but are not limited to internet speeds, internet access, desktop tools and browsers.
- (c) To the maximum extent permitted by law, the liability of LapBase in damages (including special, indirect or consequential damages, which damages will be deemed to include loss or revenue, loss or profit and opportunity loss) 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 the amount of the Fee.
- (d) To the fullest extent permitted by law, any condition or warranty which would otherwise be implied in these terms and conditions is hereby excluded.
- (e) 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/officers'](#) employees or agents; or (iii) a loss of Data.

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 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 either party by another person.
- (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 Accounts closed and its passwords 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.

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 subclause (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.