

**SMART Medical Debt Recovery Ltd
Terms & Conditions**

PREAMBLE

- A. THESE TERMS AND CONDITIONS RELATE TO DEBT RECOVERY SERVICES, (AS DEFINED IN PARAGRAPH B BELOW), PROVIDED BY SMART MEDICAL DEBT RECOVERY LTD ("SMART MEDICAL") TO THE CLIENT, ("CLIENT" IS DEFINED IN CLAUSE 1 BELOW), IN RELATION TO A CLAIM MADE BY THE CLIENT FOR OUTSTANDING MONIES OWED TO THE CLIENT PURSUANT TO SERVICES AND/OR GOODS PROVIDED BY THE CLIENT TO A PERSON OR LEGAL ENTITY, THAT REMAIN UNPAID, AND CONTINUE IN ACCORDANCE WITH THE LAWS OF ENGLAND AND WALES TO BE PAYABLE TO THE CLIENT.
- B. THESE TERMS AND CONDITIONS STRICTLY APPLY TO THE SERVICES PROVIDED BY SMART MEDICAL ("DEBT RECOVERY SERVICES") WHICH COMPRISE THE COLLECTION AND RECOVERY OF MONIES OWED TO THE CLIENT BY MEANS OF LETTERS, CORRESPONDENCE, NEGOTIATIONS, AND IF NECESSARY THE INSTRUCTION OF SOLICITORS OR OTHER REGULATED LEGAL ADVISORS ON BEHALF OF THE CLIENT AND THESE TERMS AND CONDITIONS ARE STRICTLY LIMITED TO THE AFORESAID DESCRIBED SERVICES AND THEREFORE DO NOT RELATE TO THE COMMENCEMENT BY SMART MEDICAL OF COURT PROCEEDINGS OR TO THE PROVISION BY SMART MEDICAL OF LEGAL ADVICE OR LEGAL SERVICES.
- C. THESE TERMS AND CONDITIONS TOGETHER WITH THE CLIENT SERVICE PACK ("CLIENT SERVICE PACK IS DEFINED IN CLAUSE 1 BELOW) SET OUT THE CIRCUMSTANCES IN WHICH SMART MEDICAL WILL CHARGE AND BE PAID FEES, EXPENSES, AND COSTS.
- D. THESE TERMS AND CONDITIONS TOGETHER WITH THE CLIENT SERVICE PACK SPECIFY THE REASON FOR SETTING THE AMOUNT OF PAYMENT AT THE LEVEL SET BY SMART MEDICAL AND AGREED BY THE CLIENT AND TAKES INTO ACCOUNT WHETHER THE CLAIM IS ONE OF SEVERAL SIMILAR CLAIMS BY THE CLIENT. THE REASONS FOR SETTING THE AMOUNT OF PAYMENT AT THE LEVEL SET BY SMART MEDICAL AS SET OUT IN THE CLIENT SERVICE PACK IS BECAUSE;
- (I) THE COMPLEXITY INVOLVED IN DEBT COLLECTION AND THE RISKS OF NON-RECOVERY OF THE DEBT;
 - (II) THE RISKS OF UNDERTAKING WORK FOR NO PAYMENT;
 - (III) THE DIFFICULTIES FREQUENTLY INCURRED IN COLLECTING OF DEBTS;
 - (IV) THE FINANCIAL STATUS OF THE DEBTOR; AND
 - (V) THE AGE OF THE DEBT.

1. INTERPRETATION

1.1. Definitions. In these Terms and Conditions, the following definitions apply:

Business Day:	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Commencement Date:	has the meaning set out in clause 2.1.
Conditions:	these terms and conditions:
Contract:	the contract between SMART MEDICAL and the Client for the supply of Services in accordance with the Client Service Pack and these Terms and Conditions;
Client:	the person or business who purchases the Services from SMART MEDICAL;
Client Service Pack:	the document provided by SMART MEDICAL to the Client outlining SMART MEDICAL's specific requirements, Services and Fees (and includes any incorporated schedules thereto);
Data Protection Law:	means: (a) the GDPR, Directive 95/46/EC, Directive 2002/58/EC and Directive 2009/136/EC, together with any national implementing laws in any member state of the European Union; and (b) any equivalent legislation, or legislation dealing with the same subject matter, anywhere in the world; each as applicable and each as amended, consolidated or replaced from time to time;
Debt:	the sum which SMART MEDICAL is engaged to try and recover;
Fee:	the sum that SMART MEDICAL is entitled to be paid in relation to the Services as specified in the Client Service Pack;
Recovery:	where part or all of the Debt is paid, whether by the Debtor or a third party whether paid to SMART MEDICAL, to any third party for the Client's benefit or to the Client directly. Recovery shall also be deemed to include goods being returned to the Client, whether or the Client accepts the return of goods in lieu of payment and to whichever Client location those are returned. Recovery shall extend to any recovery after the Debt is referred to SMART MEDICAL (even if made direct to the Client). The word "Recovered" shall be construed accordingly;
Services:	the debt recovery, debt management and dispute resolution services as provided by SMART MEDICAL and as set out in the Client Service Pack;
Smart Medical:	Smart Medical Debt Recovery Limited.

1.2. Construction. In these Conditions, the following rules apply:

- 1.2.1. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2. A reference to a party includes its personal representatives, successors or permitted assigns;
- 1.2.3. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.4. Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.5. A reference to writing or written includes faxes and emails.

2. BASIS OF CONTRACT

- 2.1. SMART MEDICAL will provide the Client with a letter of authority confirming the Client's instructions for SMART MEDICAL to act. The Contract between the Client and SMART MEDICAL shall commence on the earlier of SMART MEDICAL's receipt of a letter of authority signed by the Client or the commencement of the Services.
- 2.2. The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of SMART MEDICAL which is not set out in the Contract. Particularly, but not exclusively, SMART MEDICAL makes no representations as to the recoverability of the Debt.

- 2.3. The Contract applies to the Services to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4. Any quotation or fee estimate given by SMART MEDICAL shall not constitute an offer, and is only valid for a period of ten (10) Business Days from its date of issue unless otherwise confirmed in writing by SMART MEDICAL.
- 2.5. Each instruction/matter that the Client provides to SMART MEDICAL will constitute a separate contract. These Conditions will apply to each such contract.

3. SUPPLY OF SERVICES

- 3.1. SMART MEDICAL shall supply the Services to the Client in accordance with the Contract.
- 3.2. SMART MEDICAL shall use all reasonable endeavours to meet any performance dates agreed between the parties but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3. SMART MEDICAL shall have the right to make any changes to the Services which are necessary to comply with any applicable law or regulation, or which do not materially affect the nature or quality of the Services, and SMART MEDICAL shall notify the Client in any such event.
- 3.4. SMART MEDICAL warrants to the Client that the Services will be provided using reasonable care and skill. This is the only warranty that SMART MEDICAL gives in relation to its services.
- 3.5. The Client hereby acknowledges that SMART MEDICAL is not a law firm regulated by the Solicitors Regulatory Authority. SMART MEDICAL may give advice to the Client but any such advice is not legal advice and the Client expressly acknowledges that SMART MEDICAL does not proffer such advice. Where legal advice is required, SMART MEDICAL may recommend that the Client obtains that advice from SMART MEDICAL's recommend legal providers.
- 3.6. SMART MEDICAL will act as your agent and legal project managers in all instructed matters. This includes the authority to collect any monies on your behalf, negotiate the resolution of any disputes over payment and should a resolution prove unachievable and, where instructed to do so, instruct solicitors on your behalf to commence legal proceedings.
- 3.7. Upon receipt of the Recovered sums, you authorise SMART MEDICAL to retain those sums in its bank accounts for a period of up to twenty-eight (28) days to allow for any challenge to be made to the Recovered amount.
- 3.8. Payment of the Recovered amount and any other sums due to SMART MEDICAL, does not imply or warrant that there will not be any challenge to the Recovered sum in the future. If the Recovered sum that is remitted to you is challenged or it has to be repaid to the Debtor for any reason, that will not entitle the Client to a refund of the Fee. In the event that any Recovered amount is repayable then this will remain the responsibility of the Client.

4. OBLIGATIONS OF THE CLIENT

- 4.1. The Client shall:
 - 4.1.1. co-operate with SMART MEDICAL in all matters relating to the Services;
 - 4.1.2. provide SMART MEDICAL with such information and materials as SMART MEDICAL may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects; and
 - 4.1.3. co-operate with SMART MEDICAL in relation to any regulatory obligations on SMART MEDICAL including, but not limited to, any anti-money laundering steps that SMART MEDICAL chose to or are obliged to take.
- 4.2. If the performance of SMART MEDICAL of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation ("Client Default"):
 - 4.2.1. SMART MEDICAL shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays the performance of SMART MEDICAL of any of its obligations;
 - 4.2.2. SMART MEDICAL shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the failure or delay of SMART MEDICAL to perform any of its obligations as set out in this clause 4.2; and
 - 4.2.3. the Client shall reimburse SMART MEDICAL on written demand for any costs or losses sustained or incurred by SMART MEDICAL arising directly or indirectly from the Client Default.
- 4.3. The Client shall take all necessary steps to enable and assist SMART MEDICAL to recover the debt including taking or omitting to take any action or paying any court or other such fees that SMART MEDICAL, in its reasonable opinion, consider appropriate in order to secure a Recovery.

5. CHARGES AND PAYMENT

- 5.1. SMART MEDICAL will be entitled to be paid the appropriate success fee plus VAT when the Debt is recovered from the Debtor.
- 5.2. The success fee is as set out in the Client Service Pack and shall be payable by the Client within five (5) Business Days of SMART MEDICAL's invoice.
- 5.3. SMART MEDICAL will be entitled to charge and retain from the Debtor any and all Interest and Compensation collected from a Debtor.
- 5.4. Payments are to be made in cleared funds directly to SMART MEDICAL. Cheques are not accepted as a method of payment.
- 5.5. Where there is no Recovery, SMART MEDICAL may offer to the Client, without obligation, additional services to assist the Client in its debt recovery matters. If the Client so instructs, it will be bound by additional charges at a cost agreed between the parties or at SMART MEDICAL's prevailing hourly rates (available on request).
- 5.6. All and any discounts offered or invoiced by SMART MEDICAL to the Client are subject to the Client making payment to SMART MEDICAL within agreed payment terms. If payment terms are not adhered to, SMART MEDICAL shall, at their sole discretion, be entitled to revoke all and any discounts offered or invoiced to the Client.

Provisions applicable to any Fee

- 5.7. All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT).
- 5.8. If the Client fails to make any payment due to SMART MEDICAL under the Contract by the due date for payment, then:
 - 5.8.1. the Client shall pay interest on the overdue amount under the Late Payment of Commercial Debts (Interest) Act 1998; and
 - 5.8.2. SMART MEDICAL shall have the right to unilaterally amend any previously agreed payment terms with the Client to such new payment as SMART MEDICAL, in its absolute discretion, deems appropriate save that SMART MEDICAL will not be entitled to make any such amendments which breach any of the regulations for charging of fees on the recovery of a debt otherwise known as a damage-based agreement.
- 5.9. In the event that the Client fails and/or refuses to pay any Fee when due (or any sums which SMART MEDICAL is entitled to be paid for whatever reason), the Client shall be liable to pay SMART MEDICAL as a debt any costs/charges/fees incurred plus VAT (including but not limited to legal costs and court fees) by SMART MEDICAL and/or its agents in connection with any unpaid sums due to SMART MEDICAL from the Client. If SMART MEDICAL pursues the non-payment itself, the costs payable pursuant to this clause shall include a Fee calculated in accordance with the Contract with the Debt being the sum due to SMART MEDICAL.

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5.10. The Client shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). SMART MEDICAL may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by SMART MEDICAL to the Client.

6. CONFIDENTIALITY

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 6 shall survive termination of the Contract.

7. LIMITATION OF LIABILITY

7.1. Nothing in these Conditions shall limit or exclude the liability of SMART MEDICAL for:

- 7.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
 - 7.1.2. fraud or fraudulent misrepresentation.
- 7.2. Subject to clause 7.1:
- 7.2.1. SMART MEDICAL shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 7.2.2. the total liability of SMART MEDICAL to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the Fee due to SMART MEDICAL (not including interest or any late payment or similar charges).
- 7.3. The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.4. This clause 7 shall survive termination of the Contract.

8. TERMINATION

- 8.1. Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party thirty (30) days' written notice. In the event that the Client terminates by notice, it shall pay to SMART MEDICAL a sum equivalent to 7.5% plus VAT of the Debt (notwithstanding the fact that the Debt has not been Recovered) subject to a minimum of £150 plus VAT.
- 8.2. Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 8.2.1. the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within fourteen days' (14) days of receipt of notice in writing to do so;
 - 8.2.2. the other party takes or is subject to, or in the case of the Client in SMART MEDICAL's reasonable opinion is likely to take or likely to be subject to, any insolvency related event;
 - 8.2.3. the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
 - 8.2.4. the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 8.3. Without limiting its other rights or remedies, SMART MEDICAL may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within seven (7) days after being notified in writing to do so.
- 8.4. Without limiting its other rights or remedies, SMART MEDICAL may suspend provision of the Services under the Contract or any other contract between the Client and SMART MEDICAL if the Client becomes subject to any of the events listed in clause 8.2.1 to clause 8.2.4, or SMART MEDICAL reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the due date for payment.

9. CONSEQUENCES OF TERMINATION

9.1. On termination of the Contract for any reason:

- 9.1.1. the Client shall immediately pay to SMART MEDICAL all unpaid invoices and interest of SMART MEDICAL and, in respect of Services supplied but for which no invoice has been submitted, SMART MEDICAL shall submit an invoice, which shall be payable by the Client immediately on receipt;
- 9.1.2. the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 9.1.3. clauses which expressly or by implication survive termination shall continue in full force and effect.

10. DATA PROTECTION

10.1. In this Clause 10:

- 10.1.1. Agreed Purposes: means the processing necessary for the performance of the Contract as identified herein;
- 10.1.2. Controller, data subject, personal data, personal data breach, processor and processing: are as defined in the GDPR (and process and process shall be construed accordingly);
- 10.1.3. Data Protection Law: means the General Data Protection Regulation (EU) 2016/679 (GDPR), the UK Data Protection Act (as amended or replaced) and any other applicable data protection or electronic privacy laws, regulations and decisions in force from time to time;
- 10.1.4. Permitted Recipients: means the parties to the Contract and (as necessary) the employees, personnel and advisers of each party and third parties engaged to perform obligations in connection with the Contract; and
- 10.1.5. Shared Personal Data: means the personal data to be shared between the parties as necessary for the performance of the Contract, as identified herein.

10.2. The Client and SMART MEDICAL agree that the provisions of this clause 10 shall apply where the Client and SMART MEDICAL process any shared personal data and/or the Client and/or SMART MEDICAL process any other personal data in connection with the performance of the Contract.

Processing by Controller

10.3. Where the Client and SMART MEDICAL process:

- 10.3.1. any Shared Personal Data as data controllers in common; and/or

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- 10.3.2. any other personal data as data controllers; in connection with the performance of the Contract the provisions of Clauses 10.2 to 10.5 (inclusive) shall apply
- 10.4. Each party shall comply with all applicable controller obligations under the Data Protection Law and shall provide assistance in respect of the other's compliance with such obligations, in particular in relation to the Shared Personal Data, where reasonable and permitted by Data Protection Law including notification of and consultation and co-operation with the other party over fair processing notices for, and where necessary consents and compliance with rights requests from, data subjects, as well as responses to any actual or suspected personal data breach and any contact with of from any supervisory authorities or regulators.
- 10.5. When disclosing any Shared Personal Data to the other party, the disclosing party shall ensure that it has compliant fair processing notices, and where necessary consents, in place to enable the lawful transfer to and processing (including any onward transfer) by the other party and the Permitted Recipients of the Shared Personal Data for the Agreed Purposes.
- 10.6. Without limitation of the above, when receiving any Shared Personal Data from the other party, the receiving party shall:
- 10.6.1. process, and procure that Permitted Recipients process, the Shared Personal Data only for the Agreed Purposes;
 - 10.6.2. not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients except as permitted by the Data Protection Law;
 - 10.6.3. ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by these Conditions
 - 10.6.4. ensure that it has in place appropriate technical and organizational security measures, in accordance with the Data Protection Law; and
 - 10.6.5. not transfer any Shared Personal Data outside the European Union unless the transfer is to a country approved by the European Commission, or there are appropriate safeguards in place or an applicable derogation for a specific situation, as provided for under the Data Protection Law.

Processing by Processor

- 10.7. Where either party processes any Shared Personal Data as data processor (the Processor) acting on behalf of the other party as data controller (the Controller), in connection with the performance of the Contract the provisions of Clauses 10.7 to 10.11 (inclusive) shall apply.
- 10.8. The Controller shall ensure that it has compliant fair processing notices, and where necessary appropriate consents or other lawful basis for processing under Data Protection Law, in place to enable the lawful transfer to and processing by the Processor of the Shared Personal Data for the Agreed Purposes.
- 10.9. The Processor shall in relation to the Shared Personal Data processed by it in connection with the performance of the Contract:
- 10.9.1. process the Shared Personal Data only on the written and lawful instructions of the Controller (unless the Processor is required by the Data Protection Law to process the Shared Personal Data in which case it shall promptly notify the Controller before doing so unless prevented by the Data Protection Law);
 - 10.9.2. ensure that all personnel who have access to and/or process the Shared Personal Data are obliged to keep the Shared Personal Data confidential;
 - 10.9.3. ensure that it has in place appropriate technical and organizational security measures as required by the Data Protection Law;
 - 10.9.4. be generally authorized to appoint third party sub-processors on terms which are substantially similar to those set out in this clause 10;
 - 10.9.5. assist the Controller in responding to any request from a data subject and in ensuring compliance with the Controller's obligations under the Data Protection Law with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 10.9.6. notify the Controller without undue delay on becoming aware of a personal data breach and assist the Controller with its Data Protection Law obligations in respect thereof taking into account the nature of the processing and information available to it;
 - 10.9.7. at the written direction of the Controller, delete or return the Shared Personal Data and copies thereof to the Controller on termination of the Contract unless required by the Data Protection Law to store the Shared Personal Data; and
 - 10.9.8. maintain complete and accurate records and information to demonstrate its compliance with the above and allow for audits by the Controller or the Controller's designated auditor.
- 10.10. The Processor shall not transfer any Shared Personal Data outside the European Union without the prior approval of the Controller.
- 10.11. In respect of the Shared Personal Data:
- 10.11.1. the scope, nature, purpose and duration of processing;
 - 10.11.2. the types of personal data; and
 - 10.11.3. the categories of data subject; are as set out in this Clause 10 or in, or agreed under, this Contract.
- 10.12. The Client will indemnify and keep indemnified SMART MEDICAL against all costs, claims, losses, fines or damages suffered by SMART MEDICAL arising out of the Client's breach of Clause 10.8.

11. GENERAL

11.1. Assignment and other dealings.

- 11.1.1. SMART MEDICAL may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 11.1.2. The Client shall not, without the prior written consent of SMART MEDICAL, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

11.2. Notices.

- 11.2.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this Clause 11, and shall be delivered personally, sent by pre-paid first-class post or other next working day delivery service, commercial courier, fax or email.
- 11.2.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2.1; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
- 11.2.3. The provisions of this Clause 11 shall not apply to the service of any proceedings or other documents in any legal action.

11.3. Severance.

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- 11.3.1. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 11.3.2. If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 11.4. **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.5. **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 11.6. **Force Majeure:** SMART MEDICAL shall not be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control.
- 11.7. **Intellectual Property:** All intellectual property rights in or arising out of or in connection with the Services shall be owned by SMART MEDICAL.
- 11.8. **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 11.9. **Variation.** Except as set out in these terms, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by Mr. Christopher Smart. Where such a variation is agreed, that variation shall prevail over any conflicting term(s) of these conditions, but leaving the other terms as set out herein unaffected.

12. DISPUTES AND GOVERNING LAW

- 12.1. The parties will use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to the Contract or any breach of it.
- 12.2. If any such dispute cannot be settled amicably through ordinary negotiations between the parties, or either or both is or are unwilling to engage in this process, either party may propose to the other in writing that structured negotiations be entered into with the assistance of a fully accredited mediator before resorting to litigation.
- 12.3. If the parties are unable to agree upon a mediator, or if the mediator agreed upon is unable or unwilling to act and an alternative mediator cannot be agreed, any party may within fourteen (14) days of the date of knowledge of either event apply to LawBite (registered as Lawbriefs Ltd with Solicitors Regulation Authority number: 622808 and registered in England and Wales with company number: 08636316) to appoint a mediator under the mediation procedure determined by Lawbite as amended from time to time.
- 12.4. Within fourteen (14) days of the appointment of the mediator (either by mutual agreement of the parties or by LawBite in accordance with their mediation procedure), the parties will meet with the mediator to agree the procedure to be adopted for the mediation, unless otherwise agreed between the parties and the mediator.
- 12.5. All negotiations connected with the relevant dispute(s) will be conducted in confidence and without prejudice to the rights of the parties in any further proceedings.
- 12.6. If the parties agree on a resolution of the dispute at mediation, the agreement shall be reduced to writing and, once signed by the duly authorised representatives of both parties, shall be final and binding on them. The parties shall bear the costs of any mediation on a 50-50 basis.
- 12.7. If the parties fail to resolve the dispute(s) within sixty (60) days (or such longer term as may be agreed between the parties) of the mediator being appointed, or if either party withdraws from the mediation procedure, only then may either party exercise any right to seek a remedy through litigation.
- 12.8. Any dispute shall not affect the parties' ongoing obligations under the Contract.
- 12.9. Nothing in this Clause 12 shall affect SMART MEDICAL's ability to take any legal action necessary to recover a Fee due under Clause 5 of this Agreement
- 12.10. The Contract is governed by English law and the courts of England and Wales will have the exclusive right to deal with any disputes arising from it.

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