

**NOW THEREFORE e-MD AND THE PRACTITIONER  
HEREBY AGREE TO THE FOLLOWING:**

2.8 **"DATA SUBJECT"** means the person to whom the Personal Information relates;

**1 TERMS AND CONDITIONS**

- 1.1 The Agreement and Business Relationship between e- MD Technologies (Proprietary) Limited and the Practitioner shall be governed by the terms and conditions as set forth herein.
- 1.2 These Terms and Conditions form an annexure to the Business Contract between the Parties and are applicable whether signed or not.
- 1.3 An electronic version of this document is available at [www.e-md.co.za](http://www.e-md.co.za).
- 1.4 e- MD offers a variety of service Packages to Practitioners, certain of the provisions contained herein will only apply mututis mutandis, to certain service packages.

2.9 **"DESIGNATED WORKSTATION"** shall mean the computer, identified by its IP address, at which the PM Software is installed or any additional computer on which e-MD has installed and licensed PM Software;

2.10 **"e-MD"** shall mean e-MD Technologies (Proprietary) Limited, a Company duly registered in accordance with the laws of the Republic of South Africa with Registration number 2003/029818/07 and an Operator, its subsidiaries and associated entities, its Officers, Members, agents, employees and servants and successors in title;

2.11 **"ENHANCEMENTS"** shall mean significant improvements to the PM Software resulting in the addition of feature/s or capability or compatibility not present in the PM Software as rented by the Practitioner;

2.12 **"HEALTHCARE FUNDERS"** shall mean participating Medical Aid Societies, Medical Aid administrators and insurance companies and other funders providing healthcare insurance;

2.13 **"INTELLECTUAL PROPERTY RIGHTS"** shall mean any and all present and future rights in the PM Software and other rights which may in the future be based thereon, including but not limited to Copyright;

2.14 **"LICENCE"** shall mean a non-transferable and non-exclusive right granted to the Practitioner to use the PM Software for the purposes and as specified therein on these terms and conditions;

2.15 **"LICENCE FEE"** shall mean that fee in respect of Licencing, installation and use of the PM Software to the Practitioner;

2.16 **"MODIFICATIONS"** shall mean changes, improvements or customisation of or to the PM Software which may be required to adapt the PM Software to the requirements of the Practitioner;

2.17 **"MONTHLY CLAIM TRANSMISSION FEE "** shall mean that fee in respect of claim transmissions in respect of a particular Billing Period, billed monthly in arrears;

2.18 **"MONTHLY FEE"** shall mean the sum of the Month Claim Transmission Fee and the Monthly Support Fee, invoiced monthly in arrears;

**2 DEFINITIONS**

Unless the contrary is clear from the context, the following words and/or phrases used in this agreement shall have the following meanings:

- 2.1 **"AGREEMENT"** shall mean the Business Contract together these terms and conditions and any variation or addendums reduced to writing and signed by the Parties;
- 2.2 **"BANK ACCOUNT"** shall be the Practitioners Bank Account as specified from time to time;
- 2.3 **"BILLING PERIOD"** that period between the 16<sup>th</sup> of the previous month up till and including the 15<sup>th</sup> day of the current month.
- 2.4 **"BREACH OF PERSONAL INFORMATION"** shall mean an instance where a Patient's Personal Information is accessed by an unauthorised person.
- 2.5 **"COMMENCEMENT DATE"** shall mean the date upon which the PM Software is installed on the Designated Workstation;
- 2.6 **"CONFIDENTIAL INFORMATION"** shall mean any information of a private or confidential nature which is disclosed to or becomes known to a party to this agreement as a result of its relationship with the other Party, irrespective of the manner in which such information is obtained, including but not limited to written documentation, sketches, photographs, plans, circuit diagrams and models;
- 2.7 **"CONSENT"** means any voluntary, specific and informed expression of will in terms of which permission is given for the processing of Personal Information;

- 2.19 **"MONTHLY SUPPORT FEE"** shall mean the fee in respect of support services for the Billing Period billed monthly in arrears;
- 2.20 **"NOTICE"** shall mean a written document transmitted by one party to the other in terms of this agreement, physically or electronically;
- 2.21 **"OPERATOR"** in relation to the provisions of the POPI Act means e-MD Technologies (Proprietary) Limited;
- 2.22 **"PARTIES"** shall mean both e-MD and the Practitioner;
- 2.23 **"PATIENT INFORMATION"** such information regarding ailments, illness and the treatment thereof subject to Doctor Patient Confidentiality and shall include but not be limited to Personal Information;
- 2.24 **"PAYMENT OFFICE"** shall mean the office at which payment can be affected to e-MD as specified from time to time;
- 2.25 **"PERSONAL INFORMATION"** mean information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including but not limited to-
- 2.25.1 Information relating to race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;
- 2.25.2 Information relating to the education or the medical, financial, criminal or employment history of the person;
- 2.25.3 Any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
- 2.25.4 The biometric information of the person;
- 2.25.5 The personal opinion, views or preferences of the person;
- 2.25.6 Correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
- 2.25.7 The views or opinions of another individual about the person; and
- 2.25.8 The name of the person if it appears with other Personal Information relating to the person or if the disclosure of the name itself would reveal information about that person.
- 2.26 **"PROCESSING"** in relation to Personal Information shall mean any operation or activity or any set of operations, whether or not by automatic means, concerning information, including-
- 2.26.1 The collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
- 2.26.2 Dissemination by means of transmission, distribution or making available in any other form; or
- 2.27 Merging, linking, as well as restriction, degradation, erasure or destruction of information;
- 2.28 **"PM SOFTWARE"** shall mean the computer application software being the software supplied, installed and supported by e-MD which allows the Practitioner to engage the services of e-MD on the terms and conditions as set forth herein;
- 2.29 **"POPI ACT"** shall mean the Protection of Personal Information Act 4 of 2013.
- 2.30 **"PRACTITIONER"** the registered Medical Professional, Firm or partnership of Medical Professionals, including their officers directors, agents, servants or employees and any associated persons, natural or juristic and such persons estate and executors who contract with e-MD to supply services in terms hereof and his executor or successor in title. Each Practitioner is a Responsible Party;
- 2.31 **"RESPONSIBLE PARTY"** means a public or private body or any other person which can, alone or in conjunction with others, determines the purpose of and means for processing personal information;
- 2.32 **"REPLICATE"** a internet based procedure where, through the PM Software, the Practitioner actively downloads updates any information made available by e-MD for optimal functionality of the PM Software;
- 2.33 **"SERVICE PACKAGES"** shall mean either the Full House Option, DIY Option or e-Bureau option being the service options available to the Practitioner from e-MD;
- 2.34 **"STANDARD SUPPORT HOURS"** shall be Monday to Friday 08h30 to 16h30 on all days excluding Saturdays, Sundays and public holidays;
- 2.35 **"SUPPORT AND CLAIMS TRANSMISSION SERVICES"** shall mean the following:
- i) the setup, installation and upgrading of the PM Software;
  - ii) the telephonic support;
  - iii) the on-site support;
  - iv) remote support;
  - v) correction of critical errors in the PM Software;
  - vi) claims transmission, claims resubmissions and claims reconciliations, dependant upon the option chosen by the Practitioner;
- 2.36 **"SYSTEM"** shall mean the Practitioner's complete computer hardware system and specifically excludes the operating system software or any other computer software. The practitioner shall

ensure that the system meets the minimum hardware requirements as specified from time to time;

- 2.37 **"UPDATES"** shall mean revised information as per Health Care Funder cost updates and applicable legislation as integrated into the PM Software Through the process of Replication;
- 2.38 **"UPGRADES"** shall mean changes or improvements to the PM Software which relates to or affects the operating performance of the PM Software, but which does not change the basic operation or functioning of the PM Software;
- 2.39 **"USE"** shall mean the operation of the PM Software, by the Practitioner for his own benefit only, for the purposes and functions as set out therein and only at the Designated Workstation, as installed by e-MD;

### **3 LICENCING**

- 3.1 e-MD herewith grants a licence to the Practitioner on the terms and conditions set forth in this agreement.
- 3.2 The licence granted to the Practitioner authorises the Practitioner to use the PM Software only at the Designated Workstation for the duration of this agreement.

### **4 COMMENCEMENT AND DURATION**

This agreement shall commence on the Commencement Date and continue for an indefinite period until terminated in accordance with the terms hereof.

### **5 FEES AND PAYMENTS**

- 5.1 The Practitioner shall pay e-MD the licence fee, upon signature hereof, in South African Rands, at the payment office or at a place chosen by e-MD from time to time.
- 5.2 e-MD shall be deemed to have earned its monthly claim transmission fee (which fee shall be paid by the Practitioner between the 20<sup>th</sup> and the 25<sup>th</sup> day of the month), irrespective whether the Practitioner has received payment in respect of claims so submitted.
- 5.3 e-MD shall be entitled to charge the Practitioner Support Service Fees on the following basis:
- 5.3.1 R350.00 (three hundred and fifty rand) per hour or part thereof for any and all telephonic and modem support services rendered by e-MD outside the standard support hours or on onsite support rendered at any time;
- 5.3.2 e-MD shall be entitled to increase such per hour rates, provided such increase is market related and notice thereof has been given to the Practitioner prior to the support being requested;
- 5.3.3 e-MD shall provide a written quotation to the Practitioner in respect of rendering such support prior to the support being rendered and the Practitioner becoming liable for such Service Fees. It specifically being recorded that such quotations is

merely an estimate based on information supplied by the Practitioner to e-MD at the time of requesting such services.

- 5.4 e-MD shall be obliged to maintain time sheets in respect of support services rendered to the Practitioner which time sheets are required to be confirmed by the Practitioner.
- 5.5 e-MD shall invoice the Practitioner in respect of the monthly claim transmission fee, and aforesaid support fees on a monthly basis. Such invoices shall be transmitted electronically to the Practitioner via Replication function and facility of the PM Software.
- 5.6 In addition to any monthly or hourly rates set out in this agreement, the Practitioner shall reimburse e-MD on presentation for disbursements reasonable incurred in servicing the Practitioner.
- 5.7 The Practitioner will not be entitled to withhold or set-off any payment due to e-MD to satisfy any claim by the Practitioner against e-MD arising from whatsoever cause.
- 5.8 Any amount due by either of the parties to the other, shall exclude any taxes and/or levies due (including but not limited to value added tax) which amounts shall be for the Practitioner's account.
- 5.9 Notwithstanding anything to the contrary contained in this agreement, the Practitioner and e-MD shall utilise a debit order or magtape system in order to give, facilitate and effect automatic payment of the aforesaid monthly claim transmission fees, support fees and any other amounts due to e-MD by the Practitioner in terms of this agreement. It is the Practitioner's duty to ensure that his bank account, nominated for such purposes, has sufficient funds for the purposes of payment to e-MD.

### **6 RIGHTS AND OBLIGATIONS OF e-MD**

- 6.1 The Practitioner acknowledges that notwithstanding his right to discontinue the services of e-MD should such services have been engaged through direct marketing by e-MD within 7 days of date thereof, due to the confidential nature of the PM software and the information contained therein, the provisions of clause 9 will endure for a period of 12 months.
- 6.2 e-MD shall, with effect from the Commencement Date, render the support and claims transmission services provided that the Practitioner is not in breach of this agreement.
- 6.3 e-MD does not warrant or guarantee that the Healthcare Funders shall honour and accept the claims transmitted to them by e-MD on behalf of the Practitioner.

Practitioner's indebtedness in and to e-MD and the due date(s) for payment thereof.

6.4 e-MD's responsibility and obligations to the Practitioner are limited to the transmission and submission of the Practitioner's claims to the Healthcare Funders as specified.

6.5 e-MD has no obligation to the Practitioner in respect of ensuring payment of such claims from the Healthcare Funders or in respect of the accuracy thereof.

6.6 e-MD shall attempt to assist but not be obliged to provide any services not being support and claims transmission services, including without limitation any of the following services:

6.6.1 Support of any software other than the PM Software including accessories, attachments, machines, peripheral equipment, systems or other devices not supplied by e-MD.

6.6.2 Rectification or the recovery of lost or corrupted data arising from any reason other than e-MD's own negligence;

6.6.3 Support rendered more difficult because of any changes, alterations, additions, modification or variations, not performed by e-MD, to the PM Software or any other software;

6.6.4 Attendance to faults caused by using the PM Software outside its design or other specifications or outside the provisions laid down herein and any other documentation or manual supplied for the PM Software by e-MD from time to time;

6.6.5 Diagnosis and/or rectification or problems not directly associated with the PM Software;

6.6.6 Repairs or replacements necessitated by accidental damage, operator errors, abnormal operating conditions, the connection of unauthorised peripheral equipment, improper use, misuse, neglect or abuse of the PM Software, assistance on hardware usage or service calls necessitated by causes external to the PM Software such as failures in the hardware on which the PM Software is operational;

6.6.7 Any support service of any nature whatsoever related to any fault or error or malfunctioning of the system.

6.7 In the event of the Practitioner defaulting in the payment of any sum which may be due to e-MD in terms of this agreement and without prejudice to any other rights and remedies available to e-MD in terms of this agreement and in law, e-MD shall charge the Practitioner interest at a rate of 10% (Ten Per Centum) on all the amounts overdue by no less than 90 days.

6.8 The Practitioner acknowledges that a certificate signed by a Manager of e-MD (whose designation need not be proved) shall be prima facie proof of the

6.9 Under no circumstances shall e-MD be liable to the Practitioner for loss of profits or for incidental, special or consequential damages arising out of or in connection with the use of the PM Software, the use of any information obtained from the PM Software and its database, and/or the delivery, installation, servicing, performance or use of it in combination with other computer software and/or faulty or poor support and claims transmission services.

6.10 There are no warranties and/or guarantees given in respect of the accuracy or correctness of any information transmitted to the Practitioner via the PM Software or obtained by the Practitioner from the PM Software and its various databases, such as but without limitation to, the Updates, Healthcare Funder Alerts and claim reconciliations. Should the Practitioner decide to make any decisions based on such information it is confirmed that he does so at his own risk and that he shall have no recourse in any manner whatsoever to e-MD for loss of profits or for incidental, special or consequential damages arising out of or in connection with the use of such information.

6.11 e-MD reserves the right to suspend the PM Software and prevent its operation, should the Practitioner breach this agreement and remain in default for a period of 14 days. The PM Software shall remain suspended until such time as the breach is remedied and the Practitioner shall have no claim for damages of any nature whatsoever against e-MD as a result thereof.

6.12 e-MD's personnel will endeavour to resolve a problem immediately upon being advised thereof. Should e-MD's personnel not be able to resolve the problem immediately, e-MD shall give the Practitioner an estimate of how long the problem may take to resolve and shall be obliged to keep the Practitioner apprised of the progress of the problem resolution.

6.13 Subject to what is stated in this agreement e-MD shall only perform and provide the support services during the standard support hours.

6.14 e-MD shall alert the Practitioner to system Updates as and when necessary.

6.15 In respect of the Processing of Personal Information, e-MD undertakes (provided the Practitioner uses e-MD's Standard Terms of collection of Personal Information) in favour of the Practitioner that:

6.15.1 e-MD takes cognisance of the right to privacy as enshrined in the Constitution of the Republic of South Africa and the limitation of that Right to balance other rights including the right to access to information and the protection of important interests

including the free flow of Information within the Republic of South Africa.

- 6.15.2 e-MD accordingly warrants that it complies with the POPI Act.
- 6.15.3 In this regard, e-MD processes Personal Information which the Practitioner warrants has been collected in accordance with the obligation of a Responsible Party in terms of the POPI Act.
- 6.15.4 e- MD processes information lawfully by insuring that it is:
- 6.15.4.1 Accountable;
  - 6.15.4.2 Purposes specific;
  - 6.15.4.3 Further processing is limited;
  - 6.15.4.4 Maintains quality information;
  - 6.15.4.5 Security safeguards are in place; and
  - 6.15.4.6 Data Subjects are entitled to participate.
- 6.15.5 e-MD retains records of Personal Information only so long as may be requested by law or so long as e-MD reasonably requires such retention.
- 6.15.6 As soon as e-MD no longer requires Personal Information, this information is destroyed and/or deleted in a manner that prevents reconstruction in an intelligible form.
- 6.15.7 e- MD warrants that it takes reasonable steps to ensure that your Personal Information is complete, accurate, not misleading and updated where necessary.
- 6.16 Appropriate Security measures are in place to protect your Personal Information. In this regard, details regarding such measures may be obtained by written request transmitted to popi@emd.co.za.
- 6.17 In the event of a Breach of Personal Information, e-MD undertakes to advise the Practitioner thereof within 72 (Seventy Two) hours of e-MD becoming aware of such Breach.

## **7 RIGHTS AND OBLIGATIONS OF THE PRACTITIONER**

- 7.4 The Practitioner will inform e-MD of any faults or problems in or relating to the PM Software as soon as possible after any such fault or problem is encountered and will provide e-MD's personnel with reasonable access to the Designated Workstation on which the PM Software is operating, upon arrival of the personnel of e-MD at the Practitioner's premises, or via modem in order to facilitate on-line support.
- 7.5 The Practitioner hereby consents to and gives eMD an irrevocable instruction, confirmation and authorisation to debit the Bank Account by magtape or bank direct debit order for any and all amounts due to e-MD by the Practitioner in terms of this agreement.
- 7.6 In the event of the Practitioner changing his banking details, the Practitioner shall within 7 (seven) days of date thereof, give e-MD notice of same and shall complete and sign any and all documentation necessary to authorise and give eMD the right to debit such new bank account by means of the aforesaid magtape or direct debit system.
- 7.7 The Practitioner shall not modify, de-compile, disassemble or otherwise reverse-engineer the PM Software.
- 7.8 The Practitioner shall allow e-MD, upon receipt of prior written notice, access to its premises to audit the Practitioner's compliance with the agreement.
- 7.9 Licensing entitles the Practitioner to the Support and Claims Transmission Services as set forth herein on the Terms and Conditions hereof.
- 7.10 The Practitioner shall ensure that all contact details are updated within 24 hours of such details changing;
- 7.11 It is the Practitioner's Duty to Replicate regularly, daily Replication being recommended by e-MD, to ensure that the PM Software is regularly Updated;
- 7.12 The Practitioner shall ensure that the modem and system are operational in order for e-MD to render support services;
- 7.13 The Practitioner shall allow e-MD access to the premises where the Designated Workstation is situate for the rendering of onsite support;
- 7.14 The Practitioner is responsible for backing up his system and records not part of the PM Software loaded on the Designated Workshop.
- 7.15 Practitioners on the Ontime System acknowledge that submission rejection notifications appear as pop ups on the Ontime System. In this regard:
- 7.15.1 The Practitioner undertakes to check such pop ups for rejections on a regular basis ( recommended atleast every 48 (Forty Eight) hours);

7.15.2 Resubmit such rejections within the time limits as prescribed by the relevant Health Care Funders; and

7.15.3 Hold e-MD blameless for any losses and indemnify e-MD from any claims arising from such rejection of claims.

7.16 With regard to the Processing of patient's Personal Information, the Practitioner warrants in favour of e-MD that:

7.17 The Practitioner takes cognisance of the right to privacy as enshrined in the Constitution of the Republic of South Africa and the limitation of that Right to balance other rights including the right to access to information and the protection of important interests including the free flow of Information within the Republic of South Africa.

7.18 The Practitioner accordingly warrants that it complies with the POPI Act.

7.19 In this regard, the Practitioner collects Personal Information in accordance with the Provisions of the POPI Act.

7.20 The Practitioner processes information lawfully by insuring that he/ she is:

- 7.20.1 Accountable;
- 7.20.2 Purposes specific;
- 7.20.3 Further processing is limited;
- 7.20.4 Maintains quality information;
- 7.20.5 Security safeguards are in place; and
- 7.20.6 Data Subjects are entitled to participate.

7.21 The Practitioner confirms Data Subjects, have the following rights:

7.21.1 To be notified should Personal Information be accessed or acquired by an unauthorised person by way of electronic mail to stipulated e-mail address;

7.21.2 To request access to information as stored by the Practitioner by sending a written request to the Practitioner;

7.21.3 To request correction of Personal Information by sending a written request to the Practitioner;

7.21.4 To, under applicable circumstances send to the Practitioner a written request that destroys or deletes your Personal Information provided he/ she is permitted by law to destroy and/ or delete such);

7.21.5 To object to their Personal Information being used for the purposes of direct marketing as defined in the Consumer Protection Act 35 of 2008 or for the purposes of unsolicited electronic information;

7.21.6 Not to be subject, under certain circumstances, to a decision which is based solely on the basis of the automated processing of Personal Information;

7.21.7 To submit a complaint to the Regulator of Personal Information at should they feel that

the protection of your personal information has been interfered with; and

7.21.8 To institute proceedings regarding the alleged interference with the protection of Personal Information.

7.22 Collection of Personal Information shall be done directly by the Practitioner unless collection by another sources would not prejudice the Data Subject.

7.23 The Practitioner retains records of Personal Information only so long as may be required change in each one.

7.24 As soon as the Practitioner no longer requires the Data Subject's Personal Information, this information is destroyed and/ or deleted in a manner that prevents reconstruction in an intelligible form.

7.25 The Practitioner warrants that it takes reasonable steps to ensure that Personal Information is complete, accurate, not misleading and updated where necessary.

7.26 Data Subjects must accordingly consent to the Practitioner collecting and/ or processing their Personal Information and ensure that:

7.26.1 Data Subjects are competent to grant such consent.

7.27 That the Practitioner shall advise Patients of any Breach of Personal Information within 72 (Seventy Two) hours of being advised of such Breach in terms of clause 6.17 hereof.

## **8 BREACH AND TERMINATION**

8.1 Notwithstanding anything to the contrary contained in this agreement should the Practitioner:

8.1.1 breach or otherwise be in default of any of its obligations under or in terms of this agreement and remain in default or fail to remedy such breach within 7 (seven) days of receipt of written notice from e-MD calling upon it to do so; and/or

8.1.2 be placed under judicial management or be wound up, whether compulsorily or voluntarily, then e-MD will have the right, without prejudice to any other rights which it may have or remedies which may be available to it at law to cancel this agreement forthwith, with or without claiming damages.

8.1.3 In the event of the Practitioner breaching any of the terms and conditions of this agreement and as a result thereof e-MD having to institute legal

proceedings against the Practitioner, the Practitioner shall be responsible and liable for all e-MD's legal costs so incurred, on an attorney and client scale, including collection commission.

- 8.1.4 The parties hereby consent to the jurisdiction of the Magistrate's Court for any action which e-MD may institute, but e-MD at its sole option shall be entitled to institute proceedings in the relevant High Court or refer the dispute or matter to arbitration.
- 8.1.5 e-MD may terminate this agreement at any stage by giving 30 days notice.
- 8.2 e-MD reserves its rights to terminate its services immediately upon the death of a Practitioner.
- 8.3 Upon the termination of this agreement the Practitioner shall:
- 8.3.1 immediately discontinue the use of the PM Software and e-MD shall have the right to uninstall either via modem on-line or on-site, the PM Software from the system of the Designated Workstation and from any other Designated Workstation at any other premises in which the PM Software may be located.
- 8.3.2 The Practitioner shall ensure that the modem and system are operational so that e-MD may have access to the system via modem in order to uninstall the PM Software on-line and / or shall give e-MD reasonable access to the Designated Workstation in which the PM Software was installed should e-MD elect to uninstall the PM Software on-site. Uninstalling the PM Software is entirely eMD's prerogative to be exercised at its discretion.
- 8.3.3 deliver to e-MD the PM Software Operations Manual and all stationery, literature, signs and other documentation related to the PM Software whether directly or indirectly without charge or any recoupment of costs by the Practitioner;
- 8.3.4 on presentation or demand, pay to e-MD (without any deduction or right of set-off) all sums of money which may be due or owing by the Practitioner to e-MD including interest, administration costs and the costs involved with uninstalling the PM Software as specified herein;
- 8.3.5 Upon termination, e-MD will immediately deactivate the functionality of the PM Software.

## **9 INTELLECTUAL PROPERTY RIGHTS, RESTRAINT OF TRADE, CONFIDENTIALITY AND NON SOLICITATION**

9.1 The Practitioner acknowledges that any and all of the Intellectual Property Rights used or embodied in or in connection with the PM Software are and will remain the sole property of e-MD.

9.2 The Practitioner shall not question or dispute the ownership of such rights deny the subsistence of this agreement thereafter.

9.3 e-MD warrants that, to the best of its knowledge, the PM Software does not infringe upon or violate any Intellectual Property Rights of any third party.

9.4 The Practitioner, at any stage after the commencement of this agreement and for a period of 3 (three) years after this agreement has terminated and within the Republic of South Africa shall:

9.4.1 not in any capacity whatsoever, either as principal, agent, partner, representative, shareholder, director, employee, consultant, adviser, financier, or in any other like or similar capacity, directly or indirectly be associated or concerned with, interested or engaged in any firm, business, company or other association of persons which carried on or carries on any business which directly or indirectly competes with or is similar in nature to the business of e-MD;

9.4.2 shall not in any capacity whatsoever, directly or indirectly solicit or try and obtain business from any person who was during the period of 1 (one) year prior to such termination, a customer of, or in the habit of dealing with, e-MD in connection with the PM Software; and

9.4.3 shall not make any offers of employment to any staff member, who is or has been employed by e-MD. This shall not be applicable in the event where the prior written approval to make such an offer has been obtained from a n e-MD Manager. For the purpose of this clause "staff member" shall include but not be limited to permanent employees, part-time employees and independent contractors.

9.5 The restraints imposed on the Practitioner in terms of this clause shall be deemed to be imposed for the benefit of e-MD and its respective successors or assigns and such benefit may be accepted by and enforced by any one or more of such persons.

9.6 In the event of any of the terms and conditions in respect of the restraint of trade be found to be unenforceable, such unenforceable portion is severable from the remaining portions thus no affecting the validity of such enforceable provisions.

9.7 The Practitioner irrevocably acknowledges, accepts, confirms and agrees that:

9.7.1 the restraints imposed upon him as contained in these terms and conditions are reasonable as to subject matter, area and duration and are reasonably

necessary in order to preserve and to protect the Intellectual Property rights, PM Software and commercial and business interests of e-MD and the Practitioner;

9.7.2 notwithstanding the manner in which the foregoing restraints are grouped together or linked geographically, each of them constitutes a separate and independent restraint, severable from each of the other restraints.

9.8 The parties shall hold in confidence all confidential information received from each other and shall not divulge the confidential information to any other person.

9.9 The parties shall prevent disclosure of the confidential information, except as may be required by law.

9.10 Within 1 (one) week after the termination of this agreement, for whatever reason, the recipient of confidential information shall return same or at the discretion of the original owner thereof, destroy such confidential information and shall not retain copies, samples or excerpts thereof.

9.11 It is recorded that the following information will, for the purpose of this agreement, not be considered to be confidential information:

9.11.1 information which either of the Parties, in writing, authorises the other to disclose.

9.12 e-MD acknowledges the confidential nature of Patient Information and has internal infrastructure to ensure such information is not disclosed unlawfully. In the event of such information being disclosed from e-MD's records / offices eMD will endeavour to investigate such disclosure, take appropriate internal steps and assist the Practitioner in prosecuting the person / persons responsible for such unlawful disclosure.

## **10 NOTICES AND DOMICILIA**

10.1 The parties select as their respective domicilium citandi et executandi for the purpose of legal proceedings and for the purposes of giving or sending any notice provided for or necessary in terms of this agreement, the following addresses:

10.1.1 e-MD at The Willow, Riverwoods Office Park, 24 Johnson Road, Senderwood, Bedfordview, Johannesburg.

10.1.1 The Practitioner as detailed in the Registration Request Form.

10.2 Each of the parties will be entitled from time to time to vary its domicilium by written notice to the other to any other address within the Republic of South Africa which is not a post box or poste restante.

10.3 Any notice addressed to a party will be sent by prepaid registered post, or delivered by hand, sent facsimile, transmission per e-mail or other electronic transmission.

10.4 Any notice will be presumed, unless the contrary is proven, to have been given:

10.4.1 if posted by prepaid registered post, 5 (five) days after the date of posting thereof;

10.4.2 if hand delivered during business hours on a business day, on the day of delivery;

10.4.3 if sent by facsimile or e-mail, on the first business day following the date of sending of such facsimile.

10.4.4 if published on the e-MD News feature, on the day following such publication.

10.5 Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if given in writing and if delivered in accordance with the provisions of this clause.

## **11 TRAINING**

11.1 Subject to compliance by the Practitioner with the provisions hereof, e-MD shall provide an initial training session to the Practitioner in relation to the use, functioning, operations and purpose of the PM Software.

11.2 Such initial training program shall be conducted over such period, on such dates and at such venue as may be designated by e-MD as approved by the Practitioner and will be provided free of charge to the Practitioner.

11.3 All subsequent training sessions will not be charged for as agreed upon between the Parties in writing, prior to the trading being provided.

## **12 CO-OPERATION**

12.1 In the event of either Party being unable to fulfil its duties as contained herein, alternatively e-MD being unable to render the services for which it was engaged by the Practitioner due to any act or omission of a third party, the Parties agree to assist each other in any action taken by a Party against such 3<sup>rd</sup> party.

## **13 GENERAL**

13.1 The clause headings in this agreement have been inserted for convenience only and will not be taken into consideration in the interpretation of this agreement.

13.2 Any reference in this agreement to the singular includes the plural and vice versa.

13.3 Any reference in this agreement to natural persons includes legal and juristic persons and references to any gender include references to the other genders and vice versa.



**14 FORCE MAJEURE**

- 13.4 This agreement constitutes the entire agreement between the parties and supersedes all prior verbal or written agreements or understandings or representations by or between the parties regarding the subject matter of this agreement and the parties will not be entitled to rely, in any dispute regarding this agreement, on any terms, conditions or representations not expressly contained in this agreement.
- 13.5 No variation of or addition to this agreement including the amendment of this clause will be of any force or effect unless reduced to writing and signed by or on behalf of the parties.
- 13.6 Neither party to this agreement has given any warranty or made any representation to the other party, other than any warranty or representation which may be expressly set out in this agreement. e-MD does not warrant or represent that any information such as medical alerts and Updates will be accurate and can be relied upon.
- 13.7 The Practitioner shall not be entitled to assign, cede, delegate or transfer any rights, obligations, share or interest acquired in terms of this agreement, in whole or in part, to any other party or person without the written consent of e-MD and such person subscribing to the terms and conditions hereof.
- 13.8 e-MD shall be entitled and shall have the right to assign, cede, delegate or transfer any of its rights, obligations, share or interest acquired in terms of this agreement, in whole or in part, to any other party or person without having to obtain the Practitioner's consent in any form, way or manner whatsoever.
- 13.9 No indulgence, leniency or extension of a right, which either of the parties may have in terms of this agreement and which either party ("the grantor") may grant or show to the other party, shall in any way prejudice the grantor, or preclude the grantor from exercising any of the rights that it has derived from this agreement, or be construed as a waiver by the grantor of that right.
- 13.10 No waiver on the part of either party to this agreement of any rights arising from a breach of any provision of this agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.
- 13.11 In the event that any of the terms or provisions of this agreement are found to be invalid, unlawful or unenforceable, such terms or provisions will be severable from the remaining terms, which will continue to be valid and enforceable.
- 13.12 Each of the parties shall bear its own cost incurred as a result of the negotiation, drafting and finalisation of this agreement, which shall include but not be limited to all legal fees.
- 13.13 The validity, interpretation and provisions of this agreement will be governed by the laws of the Republic of South Africa.
- 14.1 e-MD shall not be liable for a failure to perform any of its obligations insofar as it proves:
- 14.1.1 that the failure was due to an impediment beyond its control;
- 14.1.2 that it could not reasonably be expected to have taken the impediment and its effects upon its ability to perform into account at the time of the conclusion of this agreement; and
- 14.1.3 that it could not reasonably have avoided or overcome the impediment or at least its effects.
- 14.2 An impediment, as aforesaid, may result from events such as the following, the below mentioned enumeration not being exhaustive:
- 14.2.1 War, whether declared or not, civil war, civil violence, riots and revolutions, acts of sabotage;
- 14.2.2 Natural disasters such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning;
- 14.2.3 Explosions, fires, destruction of machines, factories and any kind of installations;
- 14.2.4 Boycotts, strikes and lock-outs of all kinds, go-slows, occupation of factories and premises and work stoppages;
- 14.2.5 Acts of authority, whether lawful or unlawful, apart from acts from which the party seeking relief has assumed the risk by virtue of any other provisions of this agreement.
- 14.3 For the purposes of this clause "impediment" does not include lack of authorisations, licences, permits or approvals necessary for the performance of this agreement and to be issued by the appropriate public authority.
- 14.4 Relief from liability for non-performance by reason of the provisions of this clause shall commence on the date upon which e-MD seeking relief gives notice of the impediment relied upon and shall terminate upon the date upon which such impediment ceases to exist, provided that if such impediment continues for a period of more than 60 (sixty) days either of the parties shall be entitled to terminate this agreement.