

General terms and conditions of service for Software-as-a-Service (SaaS)

1. Scope of Application and Object of Agreement

The following conditions (hereinafter called the “General Terms and Conditions”) are applicable for the use of and for the service support of standard software programs (hereinafter called the “Software”), developed by 360° Medical GmbH, Hamburg, Germany (hereinafter called “360° Medical”) and provided as a Software-as-a-Service on the internet. Object of the agreement are:

- the provision of programs under www.patientpathways.de and www.patientenpfade.de for use on the internet and
- the storage of clients' data on the servers in the computing center

2. Type and Scope of Service

The type and the scope of the mutual services are regulated through contractual arrangements. The services, defined in the contract, are considered as contractually agreed conditions. The standards are:

- the defined service scope of the quoted in the contract software,
- the user documentation,
- the conditions laid down in the contract,
- the terms and conditions listed bellow.

In case of discrepancies the above quoted contractual arrangements apply.

Further terms and conditions, especially general business terms of the contractual counterpart, are not applicable, even without explicit objection on behalf of 360° Medical. Applicable are solely the general terms and conditions of 360° Medical.

3. Terms of Use

3.1. Client Rights Over the Software

For the period of the contract 360° Medical grants the client non-exclusive, non-transferable and non-sublicenzable rights to use the software and the according documentation, quoted in the contract. The software is provided on the internet. The point of transfer of the SaaS services is the router gateway to the internet of the computing center, used by 360° Medical. The client is obliged to use the software exclusively in accordance with the contractual conditions and is not allowed to transfer it to third parties or to allow third parties access to it. The client is not allowed to use “reverse-engineering” in order to de-compile, disassemble, to copy or to use part of the software for developing of another separate application.

The client hereby acknowledges 360° Medical as the only grantor of a license of the software and the copyrights related to it. 360° Medical's rights as an only grantor of license apply also to extensions of the software, provided to the client by 360° Medical, unless stated otherwise in an additional written agreement.

The client hereby acknowledges 360° Medical's brand, name and patent rights regarding the software and the related documentation. The client is not allowed to remove, change or modify the copyright information or other similar proprietary notices in the programs or in the related documentation.

3.2. Data related Client Rights

The data gathered, created and processed by the software is stored on the server at the computing center. The client is the only person that has rights over the data and can at any time, especially in case of termination of the contract, require the transfer of particular or of the total data, in which case 360° Medical will not withhold any of it. The transfer of the data will be done electronically through a data network or upon a special agreement by handing over of a data carrier. The client carries the whole responsibility for the admissibility, processing and using of the data, as well as protecting the rights of the concerned parties (providing of information, usage, rights, blocking, erasing).

3.3. Violation of the Terms of Use

In case of violation of the terms of use 360° Medical reserves the right to partly or fully terminate the contract without prior notice. 360° Medical also reserves the right to receive a compensation from the client for the damages in result of the violation.

3.4. Contract Period and Termination

The term of a contract is defined by the quoted in the contract software.

4. Maintenance Terms and Service Level

4.1. Further Developments/Change of Services

360° Medical reserves the right to optimize the services after conclusion of the contract in accordance with continuous technical progress (for example by application of new or different technologies, systems, methods and standards). In case of significant changes in the services 360° Medical will send the clients a timely notification. In case significant disadvantages for the client arise in result of the change of service they have the right to terminate the contract to the date of the change. The termination notice should be send by the client within 2 weeks after receiving the notification regarding the change of service.

4.2. System Operation

360° Medical guarantees that the provided software is according to the client's requirements, environment and specifications, and is applicable for the hardware used by client for their purposes. That includes number of the servers, regular backups, fire walls, virus checking, broad band internet connection.

360° Medical makes daily backups of the database content.

4.3. System Availability

The availability of the network of the computing center at the router output gateway in internet is annual average of 99%. The connection of the client's side is their own responsibility. It is not subject of the SaaS service scope. The downtime is determined in complete minutes and is calculated out of the sum of the times of fault clearance per year. Exception thereof are the time periods that 360° Medical refers to as maintenance windows for optimizing and service improvement, as well as time spent on fault clearance not caused by 360° Medical and breakdowns caused by force majeure.

5. Warranty

Under the current state of technology it is not possible to avoid errors in the software under all application conditions. 360° Medical guarantees though that the software is in general applicable. The limitation period is one year.

Errors in the software and the associated documentation will be corrected by 360° Medical free of charge and in a timely manner. To be able to do so the error must be reproducible. In accordance with the warranty obligation 360° Medical can weather make improvements or provide an alternative solution. Particularly, in order to comply with the warranty obligations, 360° Medical may provide the client with a newer version of the software. The error is considered corrected as soon as 360° Medical provides an alternative solution for the malfunction that allows the client to use the software in accordance with the contract conditions.

Warranty claims become void in case the software is not used in accordance with the contract conditions. Warranty claims also become void if the client makes modifications on the extensions of the software, quoted in the contract, unless the client can prove that the errors are not related in any way with the applied modifications.

The quoted in the contract software of 360° Medical doesn't guarantee the fulfillment of the personal goals of the client. That applies especially to the not reaching of the desired commercial success. The right to warranty claims towards 360° Medical belongs only to the direct client and cannot be transferred.

6. Limitation of Liability

The contractual and tortoise liability of 360° Medical is limited to 100.000 EUR in case of property damages, material damages and damages on the work in process except in cases of deliberate acts and gross negligence. 360° Medical is not liable in case of loss of business profit.

360° Medical is not liable in case of failure of the telecommunication connections, failure in the internet network, force majeure, third party fault or actions of the client himself. 360° Medical is not liable for damages, caused by the client's passing passwords or user names to non-entitled parties.

The sole responsibility for the content of all documents lies with the customer. 360° Medical shall be released from any claims by third parties which are based on the unlawful use of the application by the customer or which result from data protection, copyright or other legal disputes caused by the customer which are connected with the use of the application.

7. Compensation

The amount of the usage fees depends on the information given in the contract.

The usage fees are payable with invoicing with a period of 14 days. The customer can settle the invoice by transfer or other means offered by 360° Medical. In the event of a delay in payment, the statutory provisions shall apply. The prices are subject to value added tax in the respective legal amount.

Other services are provided by 360° Medical at the expense of prices agreed by the parties. This applies in particular to software development for the customer, training of customers or users. Compensation shall be payable plus value added tax in the applicable statutory amount.

8. Confidentiality, Data Protection

The parties of this contract agree to keep confidential the gained knowledge, especially technological and economic information, as well as other information, such as personal identification numbers, and to use it only for purposes, relevant to the subject of the contract.

That doesn't apply to publicly accessible information or information that became available to the public in another manner through no action or omission of the contractual partner, or to information that had to be made available to the public due to a court order or a law.

Software provides services for knowledge management and knowledge communication. The software application is by no means intended to store personal or patient-related data. The customer therefore insures that no personal or patient-related data is stored in the software.

360 ° Medical is entitled to name the customer in advertising material, on the internet and in other publications, using the customer's logo, as long as no legitimate interests of the customer are opposed.

9. Final Provisions

The place of performance is Hamburg, Germany. The sole place of jurisdiction for both parties is Hamburg, Germany. Solely the laws of Federal Republic of Germany shall apply. The contract, its supplements and amendments, as well as any modifications must be in written form.

Should a clause of the contract be or become ineffective, this shall not affect the validity of the contract as a whole.

360° Medical GmbH

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