

# PathCloud<sup>®</sup> Conditions of Use

Last updated on 29<sup>th</sup> April 2019

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Welcome to PathCloud.

We provide services to you when you (a) visit any of our websites (including [www.pathcloud.net](http://www.pathcloud.net) or [www.pathcloud.life](http://www.pathcloud.life), collectively the "**Sites**"), (b) transact via our Sites, (c) use our products or services (including the Sites, the **PathCloud**<sup>®</sup> interactive web application and any **PathCloud**<sup>®</sup> applications for mobile) or (d) use software provided by us in connection with any of the foregoing (collectively the "**PathCloud Services**"). We provide the PathCloud Services subject to the Conditions of Use set out below.

**Please read these Conditions of Use carefully. By using PathCloud Services, you signify your agreement to be bound by these Conditions of Use.**

## 1. WHO WE ARE AND HOW TO CONTACT US

Our Sites are operated by PathCloud Ltd ("**we**" or "**us**"). We are a private limited liability company registered in England and Wales under company number 09213639 and have our registered office at Pioneer House, Chivers Way, Histon, Cambridge CB24 9NL, United Kingdom. Our main trading address is 184 Cambridge Science Park, Cambridge CB4 0GA, United Kingdom.

To contact us, please email [support@pathcloud.net](mailto:support@pathcloud.net) or telephone +44 (0)845 527 5994.

## 2. WHAT DO THESE TERMS CONTAIN?

These Conditions of Use tell you the rules for using the PathCloud Services.

## 3. BY USING OUR SERVICES, YOU ACCEPT THESE TERMS

By using any of the PathCloud Services (including visiting our Sites), you confirm that you accept these Conditions of Use and that you agree to comply with them. If you do not agree to these Conditions of Use, you must not use any of the PathCloud Services. We recommend that you print a copy of these Conditions of Use for future reference.

## 4. THERE ARE OTHER TERMS THAT MAY APPLY TO YOU

We offer a range of PathCloud Services, and sometimes additional terms may apply. When you use a particular PathCloud Service (for example the listing of diagnostics services offered by you, or applications for mobile), you may be asked to agree to the additional terms and conditions applicable to that PathCloud Service ("**Service Terms**"); if so, and you do not so agree, you will not have access to that particular PathCloud Service. If these Conditions of Use are inconsistent with any Service Terms, the Service Terms will prevail.

## 5. WE MAY MAKE CHANGES TO THE CONDITIONS OF USE AND SERVICE TERMS

We may amend these Conditions of Use and any Service Terms from time to time. Every time you wish to use a PathCloud Service, please check these Conditions of Use and the applicable Service Terms (if any) to ensure you understand the terms that apply at that time. The date that these Conditions of Use were most recently updated is shown at the top of this page.

## 6. WE MAY CHANGE, SUSPEND OR WITHDRAW OUR SERVICES

We may update and change our PathCloud Services from time to time (including changing the URLs of our Sites) to reflect changes to our services, our users' needs and our business priorities, or for any other reason.

## 7. ELECTRONIC COMMUNICATIONS

When you use any PathCloud Service or send e-mails to us, you are communicating with us electronically. We will communicate with you electronically in a variety of ways, such as by e-mail, text, in-app push notices or by posting e-mail messages or communications on the Sites or through the other PathCloud Services, such as a message centre. For contractual purposes, you agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing, unless mandatory applicable laws specifically require a different form of communication.

## 8. YOU MUST KEEP YOUR ACCOUNT DETAILS SAFE

You may need your own PathCloud account to use certain PathCloud Services. If so, you are responsible for maintaining the confidentiality of your account information (including your user identification code, password or any other piece of information as part of our security procedures) and for restricting access to your computer network, and to the extent permitted by applicable law you agree to accept responsibility for all activities that occur under your account or password. You must not disclose any account information to any third party, and you should take all necessary steps to ensure that your password is kept confidential and secure. We have the right to disable any user identification code or password, whether chosen by you or allocated by us, at any time, if in our reasonable opinion you have failed to comply with any of the provisions of these Conditions of Use or any Service Terms. If you have any reason to believe that your password has become known to anyone other than you, or if the password is being, or is likely to be, used in an unauthorised manner, you must inform us immediately at [support@pathcloud.net](mailto:support@pathcloud.net).

## 9. LICENCE AND ACCESS

Subject to your compliance with these Conditions of Use, and to your acceptance of and compliance with any applicable Service Terms (including the payment of any fees specified in such Service Terms), PathCloud grants you a limited, non-exclusive, non-transferable, non-sublicensable licence to access and make personal and non-commercial use of the PathCloud Services.

You may not misuse the PathCloud Services. You may use the PathCloud Services only as permitted by law. You must not use any PathCloud Service (i) in any way that causes, or is likely to cause, any PathCloud Service or any access to it to be interrupted, damaged or impaired in any way, or (ii) for fraudulent purposes, or in connection with a criminal offence or other unlawful activity, or (iii) to cause annoyance, inconvenience or anxiety.

The licence granted hereunder does not include any resale or commercial use of any PathCloud Service or its contents; any collection or use of any product listings, descriptions or prices; any derivative use of any PathCloud Service or its contents; or any downloading or copying of account information for the benefit of another merchant. You may not extract and/or re-utilise parts of the content of any PathCloud Service without our express written consent. In particular, you may not utilise any data mining, robots or similar data gathering and extraction tools to extract (whether once or many times) for re-utilisation any substantial parts of the content of any PathCloud Service, without our express written consent. You may also not create and/or publish your own database that features substantial parts of any PathCloud Service (e.g. our prices and product listings) without our express written consent. All rights not expressly granted to you in these Conditions of Use or any Service Terms are reserved and retained by PathCloud or its licensors, suppliers, publishers, rights holders or other content providers. No PathCloud Service, nor any part of any PathCloud Service, may be reproduced, duplicated, copied, sold, resold, visited or otherwise exploited for any commercial purpose without our express written consent. You may not frame or use framing techniques to enclose any trademark, logo or other proprietary information (including images, text, page layout or form) of PathCloud without our express written consent. You may not use any meta tags or any other "hidden text" utilising PathCloud's names or trademarks without our express written consent.

The licence granted by PathCloud will terminate automatically if you do not comply with these Conditions of Use or any applicable Service Terms.

## 10. OUR ROLE

We provide a cloud-based platform that (a) allows service providers to list and offer their diagnostics and related services to a large network of clinicians, healthcare professionals and other users of our Sites and mobile applications, (b) allows such professionals to order specific services from such service providers on behalf of their patients and (c) helps users of the platform to manage their workflow, data and communications.

We provide a venue for service providers and customers to connect and complete transactions. We facilitate such transactions and are neither the customer nor the provider of any services ordered via our Sites. Accordingly, any contract formed when a referral is made or a service is ordered via our Sites is solely between the service provider and the requesting party. We are not a party to any such contract, nor do we assume any responsibility arising out of or in connection with it, nor are we the service provider's agent. The service provider is solely responsible for the performance of the services and for dealing with any customer claims or any other issues arising out of or in connection with such referrals.

Unless otherwise expressly stated, the content on our Sites is provided for general information only. It is not

intended to amount to advice on which you should rely. You must obtain professional or specialist advice before taking, or refraining from, any action on the basis of the content on our Sites.

Although we make reasonable efforts to update the information on our Sites, we make no representations, warranties or guarantees, whether express or implied, that the content on our Sites is accurate, complete or up to date.

## 11. ORDERING SERVICES FROM THIRD PARTY SERVICE PROVIDERS

Parties other than PathCloud provide services via the Sites. We may provide links to the websites of third parties. These links are provided for your information only and we are not responsible for examining or evaluating, and we do not warrant the offerings of, any of these businesses or the content of their websites. Such links should not be interpreted as approval by us of those linked websites or information you may obtain from them. We have no control over the contents of those websites or resources, and we do not endorse, warrant or guarantee any information, products, services or merchandise offered by any third parties that you may connect with via the Sites, nor do we warrant the accuracy, reliability or suitability of any service ordered via PathCloud Services, nor the reports or results obtained therefrom, and we do not assume any responsibility or liability for the acts or omissions of any third parties. We will, however, subject to technical problems outside our control as described in Section 14 below, ensure that any information (including test results and reports) received from a third party from which you have ordered services will be transmitted or made available to you accurately and completely. Furthermore we do not warrant the reliability or suitability of any service provider offering services via the sites, and you are advised to satisfy yourself as to the suitability thereof before ordering any services therefrom.

If you order services from a third party via our Sites, you will **accept and agree to comply with any terms and conditions required by the applicable service provider** (including as to pricing, payment, sample collection or preparation requirements, cancellation fees etc) as indicated to you prior to confirmation of the order. We may share your information related to transactions entered into with a third party. You should carefully review their privacy statements and other conditions of use. If you order a service from a service provider via our Sites, you shall be solely responsible for (a) all clinical decisions made in connection with the selection of such service, (b) ensuring the accuracy of all information submitted in connection with such order, (c) checking and validating the order details prior to confirmation; (d) following up with the service provider if results are required urgently, (e) checking the report and results subsequently received pursuant to such order (including that they relate to the correct patient); and (f) notifying the patient of the results and advising him or her accordingly (including, where the report or results indicate that urgency is required, contacting the patient urgently). We do not check or verify any orders or give any view as to the suitability of any service ordered via our Sites; you are solely responsible for selecting the most appropriate service for your patients and for checking any test reports or results. You represent and warrant to us that you hold all licences and permits required by applicable legislation or regulations to make use of the PathCloud Services, and that you have the right to order the requested services on behalf of the relevant patient.

If we pay any amounts to a third party on your behalf (or otherwise incur out-of-pocket expenses) in connection with a service requested by you (or requested on your behalf with your authority), you shall reimburse us those amounts, immediately and in full, on demand.

Notwithstanding the above, as part of the PathCloud Services we may from time to time recommend features, products and services, including third party ads that might be of interest to you, identify your preferences and personalise your experience.

## 12. YOUR OBLIGATIONS

You shall provide, immediately on demand, all information requested by us in order to confirm (i) your identity and the identity of your authorised representatives and, if applicable, (ii) your ongoing ability to deliver a high quality and ethical service to your customers or patients, such as quality certification criteria, medical licensing certifications and any other relevant information that we may request.

You are responsible for ensuring that the details you provide us with are correct and complete, and for informing us of any changes to the information you have provided. You can access your information in the 'Your Account' section of the Sites.

You may be required to be logged into the account and have a valid payment method associated with it. If there is a problem charging your selected payment method we may charge any other valid payment method

associated with your account.

You shall comply with all applicable laws, these Conditions of Use and any applicable Service Terms, and we reserve the right to refuse service, terminate accounts or remove or edit content if you are in breach thereof, or if we believe that quality or ethical practice is not being maintained.

You are responsible for ensuring that all persons who access PathCloud Services through your Internet connection or through your account are aware of these Conditions of Use and any applicable Service Terms, and that they comply with them.

### 13. UPLOADING CONTENT TO OUR SITES AND USER-GENERATED CONTENT

Any content that you upload to our Sites, or allow or instruct us to publish on our Sites, for viewing by other users of the Sites generally (i.e. not directed specifically at a counterparty to a transaction with you – for example test descriptions but not test results), will be considered non-confidential and non-proprietary unless otherwise agreed. You retain all of your ownership rights in your content, but you grant us and other users of our Sites a limited licence to use, store and copy that content and to distribute and make it available to third parties. Any additional rights that you license to us are described in the relevant Service Terms. We also have the right to disclose your identity to any third party who is claiming that any content posted or uploaded by you to our Sites constitutes a violation of their intellectual property rights, or of their right to privacy. We have the right to remove any posting you make on our Sites if, in our opinion, your post does not comply with acceptable content standards. You are solely responsible for securing and backing up your content. Where you ask us to upload content to our Sites on your behalf, we will use reasonable endeavours to ensure that the content accurately reflects your request.

As a visitor to our Sites you may also post reviews, comments, questions, answers and other content (including text, images, videos and audio) generated by you for display on our Sites (together with the content described in the previous paragraph, "**User Generated Content**"); send emails and other communications to other users of PathCloud Services; and submit suggestions, ideas, comments, questions or other information to us, as long as the content is not illegal, obscene, abusive, threatening, defamatory, invasive of privacy, infringing of intellectual property rights or otherwise injurious to third parties or objectionable and does not consist of or contain software viruses, political campaigning, commercial solicitation, chain letters, mass mailings or any form of "spam". You may not use a false e-mail address, impersonate any person or entity, or otherwise mislead as to the origin of a communication or other content. You may delete your User Generated Content from public view or, where such functionality is offered, change settings so that it is only shown to people to whom you grant access.

You represent and warrant that you own or otherwise control all of the rights to the User Generated Content that you post, and that, as at the date that the User Generated Content is posted, the User Generated Content you post is accurate and use thereof does not breach any applicable policies or guidelines and will not cause injury to any person or entity (including that the content or material is not defamatory). You agree to indemnify PathCloud and its personnel for all claims brought by a third party against PathCloud arising out of or in connection with the User Generated Content you post.

You grant us (a) a royalty free, perpetual, irrevocable, unrestricted, non-exclusive worldwide licence to use, reproduce, publish, make available, translate and modify, in any manner or medium, any User Generated Content submitted by you, and (b) the right to identify you as the creator or author of any User Generated Content that you submit. You will not receive any compensation of any kind for the use of any User Generated Content submitted by you. No moral rights are transferred by this provision.

You acknowledge that PathCloud is a passive conduit for distribution of the User Generated Content and is not responsible to you or to any other third party for the content or accuracy of the User Generated Content. User Generated Content is not verified or approved by us unless otherwise stated (for example in the applicable Service Terms). The views expressed by other users on our Sites do not necessarily represent our views or values. We reserve the right (but not the obligation) at all times, in our sole and absolute discretion, to screen User Generated Content and to edit, move, delete and/or refuse to accept any content on our Sites, including User Generated Content, that in our judgment is inappropriate, whether for legal or other reasons or for no reason. You acknowledge that your use of, and any actions you take as a result of, any User Generated Content is at your own risk.

If you believe that any content on our Sites or any product or service offered via any PathCloud Service contains

a defamatory statement, or that your intellectual property rights are being used in a way that gives rise to concerns of infringement, or if for any reason you wish to complain about any User Generated Content, please notify us by sending an email to [support@pathcloud.net](mailto:support@pathcloud.net) and we will respond. Please note that giving false, misleading or inaccurate information in any such notification to PathCloud may result in civil and/or criminal liability.

#### 14. OUR LIABILITY TO YOU

Our Sites are made available free of charge (although certain PathCloud Services may involve payment). We will do our utmost to ensure that availability of the PathCloud Services will be uninterrupted and that transmissions will be error-free. However, due to the nature of the internet, this cannot be guaranteed. Also, your access to PathCloud Services may also be occasionally suspended or restricted to allow for repairs, maintenance or the introduction of new facilities or services; we will attempt to limit the frequency and duration of any such suspension or restriction.

We will not be liable to you for any loss or damage, whether in contract, tort (including negligence), breach of statutory duty or otherwise, even if foreseeable, arising under or in connection with your use of (or inability to use) our Sites or any PathCloud Service; or your use of or reliance on any content displayed on our Sites. We will not be responsible for losses that are not caused by any breach on our part, and we will not be responsible for any delay or failure to comply with our obligations under these Conditions of Use or any Service Terms if the delay or failure arises from any cause which is beyond our reasonable control. We will not be liable to you for any business loss, including: loss of profits, sales, business, contracts or revenue; business interruption; wasted expenditure or loss of anticipated savings; loss of data; loss of business opportunity, goodwill or reputation; or any indirect or consequential loss or damage that was not foreseeable to both you and us when you commenced using the PathCloud Services.

We exclude all implied conditions, warranties, representations and other terms that may apply to the PathCloud Services or to our Sites or any content on them. We do not exclude or limit in any way our liability to you where it would be unlawful to do so. In the United Kingdom this includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors and for fraud or fraudulent misrepresentation.

Different limitations and exclusions may apply to liability arising as a result of the supply to you of any PathCloud Services, which will be set out in the applicable Service Terms.

#### 15. CONFIDENTIALITY AND DATA PROTECTION

**“Confidential Information”** means all information of a confidential or proprietary nature, that is not at the time of receipt generally available to the public (including but not limited to personal data), and includes all technical and commercial know-how, specifications, inventions, processes and initiatives which are of a confidential or proprietary nature, and any other confidential or proprietary information concerning your or our business, products or services. It also includes all patient personal data. For the avoidance of doubt, Confidential Information shall not include information that is required to be published on the Sites in order for us to provide any PathCloud Services (including descriptions of any products and services offered, the providers thereof and the prices payable therefor).

You and we shall each keep all Confidential Information strictly confidential and shall not, without the consent of the owner thereof, disclose any Confidential Information to anyone other than the disclosing party’s employees and professional advisers to the extent necessary in connection with the performance of its duties hereunder, provided that such employees and professional advisers have been informed of the confidential nature of such information and are subject to obligations of confidentiality no less stringent than those set out herein (and the disclosing party shall be liable for any unauthorised disclosure thereby).

You and we shall each comply with the Data Protection Act 2018 and the EU General Data Protection Regulation (EU) 2016/679, and all other relevant data protection legislation in any applicable jurisdiction, and you and we shall each use all reasonable efforts to assist the other in complying with the other’s obligations thereunder. Please see our [Privacy Notice](#) and the [Cookies Notice](#) set out therein (which are incorporated by reference into these Conditions of Use) for further details of how we comply with such legislation and to understand how we collect and process personal information through PathCloud Services. By using our Sites, you consent to such processing and you warrant that all data provided by you is accurate. You further warrant and represent to us that you have the right to control and/or process (as the case may be) personal data of all patients on whose

behalf you are using any relevant PathCloud Services.

Whilst we agree to use best endeavours to ensure compliance with this Section 15, we shall not be liable to you for any breach of this Section 15 unless caused by our negligence or wilful default.

## 16. PATHCLOUD SOFTWARE TERMS

In addition to these Conditions of Use, the following terms (the "**Software Terms**") apply to any software (including any updates or upgrades to the software and any related documentation) that we make available to you from time to time for your use in connection with PathCloud Services (the "**PathCloud Software**"):

**19.1 Use of the PathCloud Software.** You may use PathCloud Software solely for purposes of enabling you to use and enjoy the PathCloud Services as provided by PathCloud, and as permitted by the Conditions of Use, these Software Terms and any Service Terms. You may not incorporate any portion of the PathCloud Software into your own programs or compile any portion of it in combination with your own programs, transfer it for use with another service, or sell, rent, lease, lend, loan, distribute or sub-license the PathCloud Software or otherwise assign any rights to the PathCloud Software in whole or in part. You may not use the PathCloud Software for any illegal purpose. You may not launch an automated program or script or any program which may make multiple server requests per second, or unduly burdens or hinders the operation and/or performance of any PathCloud Service. We may cease providing any PathCloud Software and we may terminate your right to use any PathCloud Software at any time. Your rights to use the PathCloud Software will automatically terminate without notice from us if you fail to comply with any of these Software Terms, the Conditions of Use or any other Service Terms. Additional third party terms contained within or distributed with certain PathCloud Software that are specifically identified in related documentation may apply to that PathCloud Software (or software incorporated with the PathCloud Software) and will govern the use of such software in the event of a conflict with these Conditions of Use. All software used in any PathCloud Service is the property of PathCloud or its software suppliers and protected by UK, EU and international copyright laws.

**19.2 Use of Third Party Services.** When you use the PathCloud Software, you may also be using the services of one or more third parties, such as a wireless carrier or a mobile platform provider. Your use of these third party services may be subject to the separate policies, terms of use, and fees of these third parties.

**19.3 No Reverse Engineering.** Unless explicitly permitted under applicable mandatory law, you may not, and you will not encourage, assist or authorise any other person to copy, modify, reverse engineer, decompile or disassemble, or otherwise tamper with, the PathCloud Software, whether in whole or in part, or create any derivative works from or of the PathCloud Software.

**19.4 Updates.** In order to keep the PathCloud Software up-to-date, we may offer automatic or manual updates at any time and without notice to you.

## 17. WE ARE NOT RESPONSIBLE FOR VIRUSES AND YOU MUST NOT INTRODUCE THEM

We do not warrant or guarantee that our Sites or any files that may be available for downloading via any PathCloud Services will be secure or free from infections, viruses, worms, Trojan horses or other code that contains contaminating or destructive properties. You are responsible for configuring your information technology, computer programmes and platform to access our Sites. You should use your own virus protection software.

You must not misuse our Sites by knowingly introducing viruses, Trojan horses, worms, logic bombs or other material that is malicious or technologically harmful. You must not attempt to gain unauthorised access to our Sites, the servers on which our Sites are stored or any server, computer or database connected to our Sites. You must not attack our Sites via a denial-of-service attack or a distributed denial-of service attack. By breaching this provision, you would commit a criminal offence under the Computer Misuse Act 1990. We will report any such breach to the relevant law enforcement authorities and we will co-operate with those authorities by disclosing your identity to them. In the event of such a breach, your right to use our Sites and any PathCloud Services will cease immediately.

## 18. RULES ABOUT LINKING TO OUR SITES

You may link to our Sites' home pages, provided you do so in a way that is fair and legal and does not damage our reputation or take advantage of it.

You must not establish a link in such a way as to suggest any form of association, approval or endorsement on

our part where none exists. You must not establish a link to our Sites in any website that is not owned by you. Our Sites must not be framed on any other website, nor may you create a link to any part of our Sites other than the home page. We reserve the right to withdraw linking permission without notice.

If you wish to link to or make any use of content on our Sites other than as set out above, please contact [support@pathcloud.net](mailto:support@pathcloud.net).

## 19. COOKIES

Our Sites use cookies to distinguish you from other users of our Sites. Further information can be found in the [Cookies](#) section of our [Privacy Notice](#).

## 20. INTELLECTUAL PROPERTY

The PathCloud name and logo are UK registered trademarks of PathCloud Ltd.

All content included in or made available through the Sites or any PathCloud Service, such as text, graphics, logos, button icons, images, photographs, video clips, audio clips, digital downloads and data compilations, is the property of PathCloud or its content suppliers and is a trademark, service mark, trade dress and/or other intellectual property right thereof. The compilation of all content included in or made available through any PathCloud Service is the exclusive property of PathCloud and is protected by UK, EU and international copyright, design rights, authors' rights and database rights laws.

Your use of our Sites does not imply the grant of any licence in respect of the use of such marks or content unless otherwise agreed, and you are not permitted to use them without our approval, nor may you use them in connection with any product or service that is not PathCloud's, in any manner that is likely to cause confusion among customers or in any manner that disparages or discredits PathCloud.

## 21. WHICH COUNTRY'S LAWS APPLY TO ANY DISPUTES?

These Conditions of Use and all applicable Service Terms, and your relationship with us generally, are governed by and construed in accordance with the laws of England.

If you are a consumer, the courts of England and Wales will have exclusive jurisdiction, except that if you are resident of Scotland you may also bring proceedings in Scotland, and if you are a resident of Northern Ireland you may also bring proceedings in Northern Ireland.

If you are a business, we both agree that any dispute arising under or in connection with these Conditions of Use or in any way connected with the Sites and your use thereof shall be settled finally under the then-current Rules of Arbitration of the London Court of International Arbitration (the "**Rules**") by one arbitrator, appointed by the London Court of International Arbitration in accordance with the said Rules. The Rules are hereby deemed to be incorporated by reference. The place and seat of the arbitration shall be London, United Kingdom, and shall be conducted in the English language. We both hereby expressly waive any right of appeal to any court having jurisdiction on any question of fact or law. The arbitrator shall have no authority to award exemplary or punitive damages of any type under any circumstances, whether or not such damages may be available under the applicable law, and we both hereby waive our right, if any, to recover any such damages. We both irrevocably waive any objection that we now or hereafter have that any arbitration proceedings have been brought in an inconvenient forum.

If you breach these Conditions of Use or any applicable Service Terms and we take no action, we will still be entitled to use our rights and remedies in any other situation where you breach these Conditions of Use or any applicable Service Terms. If any of provision (or part thereof) of these Conditions of Use or any applicable Service Terms is determined to be invalid or unlawful, such provision (or part thereof) shall be excised and the remaining provisions shall continue to apply.

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