Zubisoft Terms of Services

Version: August 2021, replacing all previous versions.

By accessing or using the Zubisoft Services (as defined below) Customer acknowledges that you have read, understood and agreed to be bound by the following terms and conditions (collectively, the **'Terms'**, **'Customer Terms'** or the **'Agreement'**).

The Zubisoft Services are provided by Zubisoft GmbH whose address is Mandachstrasse 56, CH-8155 Niederhasli, Switzerland (**'Zubisoft', 'we', 'us' or 'our'**).

Definitions

As used in these Terms, the following expressions have the following meanings:

API Account means the primary means for accessing and using the Zubisoft API by an API Service Provider.

API Documentation means the documentation provided by Zubisoft from time to time containing instructions about how to use and integrate with the Zubisoft API. The API documentation also contains information about the functions, classes, return types of the Zubisoft API and more, supported by tutorials and examples.

API Service Provider means a 3rd Party interfacing with the Zubisoft API and providing API Services to their clients, subject to these Terms.

API Services means all Zubisoft products and services that are accessed via the Zubisoft API and provided, usually embedded in or integrated with, a 3rd Party software application.

Application means a 3rd Party's web-based service or native software application for desktop or mobile devices.

Customer means the User, API Service Provider or 3rd Party that has entered in a business relationship with Zubisoft.

Customer Data means all data provided to Zubisoft via the use of Zubisoft Services by a Customer.

Fee means the regular payment required for use of the User or API Account, as set out in the relevant Plan (as defined below).

IBRA means any or all versions of Zubisoft's IBRA Digital Health Suite (DHS) products and services.

Plan means a range of criteria related to the use and functionality of the Zubisoft Services, and the offered Support, on which the Fee is based. The latest Plans are shown on the Zubisoft website (www.zubisoft.com) under the 'Fee', 'Pricing' or 'Plan' section. Zubisoft may update Plans from time to time but any related changes to the Fee will be notified to the Customer in advance.

Private Key means a long string that is assigned to an Application of an API Service Provider and used as a confidential key for authentication, like a password. This key should only be known to the API Service Provider and to the Zubisoft API. To keep the Private Key secret, it is usually hashed before included in the request header.

Public Key means a long string that is assigned to an Application of an API Service Provider. The Public Key is included, like a username, in the request header for identification of the API Service Provider when using the Zubisoft API. The Public Key is not a secret key.

Standalone Services means all Zubisoft products and services that are provided directly from Zubisoft via Zubisoft's own website and user interface.

Standard Support means the basic support provided to the Customer as defined by the Plan.

Third / 3rd Party means a company, usually a manufacturer of an electronic medical record system, a medical device, or a digital health suite application, or in some circumstances a person, benefiting from, facilitating, providing, or sponsoring Zubisoft Services.

User means a person, usually a surgeon, or in some circumstances a company, using Zubisoft Services subject to these Customer Terms.

User Account means the primary means for accessing and using Zubisoft Services by a User, which is usually subject to registration and payment of a Fee.

User Data means all data provided to Zubisoft via the use of Zubisoft Services by a User. Data can be in a digital format, such as text, audio, video, images, or paper-based, or other form.

User Key means a long string that is assigned to a User and used for identification of the User. The User Key is shown in the Settings of the User Account. The User Key is not a secret key; however, it should not be publicly exposed.

Zubisoft API means the application programming interface made available to an API Service Provider by Zubisoft through specific URLs documented in the API Documentation.

Zubisoft Services means all Standalone Services and API Services Zubisoft offers to Customers, including training, support, data hosting and professional advice / consultancy.

1. Ownership, Copyright and Restrictions

All Zubisoft Services are the exclusive property of Zubisoft. Zubisoft shall have sole and exclusive ownership and all rights, title, and interest in and to the Zubisoft Services and all derivative works, modifications, and enhancements thereof (including ownership of all trade secrets, patents, copyrights, and any other intellectual property rights pertaining thereto) subject only to the license rights expressly granted pursuant to these Terms. Customer hereby assigns to Zubisoft all rights and title to any adaptations, additions, collective works, compilations, derivative works, enhancements, modifications, and translations regardless of when or by whom created; and shall execute whatever documents are required by Zubisoft to affect such assignment. Customer shall keep Zubisoft free from all claims, liens, and encumbrances. Any enhancements or software upgrades (whether provided under separate maintenance agreement or otherwise) shall be deemed a part of Zubisoft's Services and are provided subject to the Customer Terms.

Except as set forth in the Customer Terms Zubisoft makes no warranty and expressly disclaims any other warranty, express, implied, or statutory, with respect to the Zubisoft Services including (without limitation) any implied warranty of satisfactory quality, merchantability or fitness for a particular purpose, non-infringement of third-party rights, and those arising from a course of dealing or usage of trade. In particular (but without prejudice to the generality of the foregoing) Zubisoft makes no warranty that the use of the Zubisoft Services will be uninterrupted or error free or that any errors or defects in the Zubisoft Services will be corrected, or that the Zubisoft Services' functionality will meet the Customers' requirements. The Customer accepts responsibility for the selection of Zubisoft Services to achieve its intended result.

Customer may not use, copy, modify or distribute Zubisoft Services (electronically or otherwise) or any copy, adaptation, transcription, or merged portion thereof except as expressly authorized by these Terms. Customer may not perform benchmark and performance tests on Zubisoft Services. Customer may not (and shall not permit others to) reverse assemble, reverse engineer, reverse compile or otherwise translate Zubisoft Services in any manner except to the extent that applicable law specifically prohibits such restrictions. Customer's rights herein may not be transferred, leased, encumbered, or assigned. The license granted herein permits Customer to use Zubisoft Services solely for its own benefit and its own internal business operations. Customer shall not remove or alter any copyright or other proprietary notices or legends.

2. Our Responsibilities to Customers

2.1 Provision of Zubisoft Services
Zubisoft will make Zubisoft Services available to the Customer pursuant to these Terms. Zubisoft will use commercially reasonable efforts to make the Zubisoft Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which we shall give advance electronic notice), and (b) any unavailability caused by circumstances beyond our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem, Internet service provider failure or delay, or denial of service attack. Zubisoft has no control over Customer equipment or the transfer of data over communications facilities (including the internet).

2.2 Protection of Customer Data
Zubisoft is committed to safeguarding the privacy of Customers and the data they provide. Zubisoft will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Customer Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification, or disclosure of Customer Data by our personnel, except: (a) to provide the Zubisoft Services and prevent or address service or technical problems, (b) as compelled by law (subject to the Confidentiality provisions, see below), or (c) as Customer expressly permits in writing. Zubisoft may use external providers to perform the Zubisoft Services and/or protect Customer Data.

3. Using Zubisoft Services

3.1 User Account
Certain features, functions, parts or elements of the Zubisoft Services can be used or accessed only by holders of a User Account. The person, or company, who wishes to create a User Account must complete the registration sign-up form on the website or use an alternative registration process provided by Zubisoft. Registration requires submission of a personal name, the name of the relevant business or clinic or institution, physical address, a personal email address, and other information that we require to create an account. User Accounts can also be created by API Service Providers via the Zubisoft API. To complete the registration,

these Terms must be accepted by clicking 'Sign up' (or another button). The '**Date of Registration**' is the date of submission of acceptance of these Terms.

If you are entering into these Terms on behalf of your organization, that organization is deemed to be the User and you represent that you have the power and authority to bind that organization to these Terms.

If several persons need to use a User Account on behalf of a User, the User must designate such persons as **'Sub-Users'**. Each Sub-User shall be subject to the restrictions set forth in these Terms and will be deemed to be authorized to act on behalf of the User when using the User Account. Zubisoft is not responsible for and shall have no liability for verifying the validity of authorization of any Sub-User.

3.2 Access to Zubisoft Services

The User has a non-exclusive, non-sublicensable, non-transferable (except as specifically permitted in these Terms) right to access and use the Zubisoft Services.

Access to the Zubisoft Services is granted only to Users having identified themselves by entering a username and password ('**Login Credentials**') (unless the User uses a single sign-on feature or another service to log in (e.g., API direct login)). Zubisoft strongly recommends changing passwords periodically and to have a password length of at least 8 characters with a combination of numbers, lower-case and upper-case characters.

Zubisoft offers 2-Factor authentication ('**2FA**') for enhanced access security. For the use of 2FA the use of a mobile device and installation of additional Zubisoft software is required.

Zubisoft may, in its discretion, request additional information or proof of a User's credentials. If Zubisoft is not certain whether a User should be granted authorization, Zubisoft may, in its sole discretion, prevent such User from accessing the Zubisoft Services.

If the User has designated several Sub-Users, each will be provided with separate Login Credentials. User and each Sub-User are responsible for keeping confidential all Login Credentials associated with a User Account. Users must promptly notify Zubisoft of any disclosure, loss or unauthorized use of any Login Credentials, and of any termination of a Sub-User's authorization for any reason. Zubisoft may request that a User suspends the account of any Sub-User who violates these Terms or is using the Zubisoft Service in a manner that Zubisoft reasonably believes may cause a security risk, a disruption to others or liability for Zubisoft.

Zubisoft may record and analyze all User activities and data, and Zubisoft reserves the right to audit data and use of the Zubisoft Services for verifying User's compliance with the Terms and for the purposes of analysis, forecasting, clinical research, security, system monitoring, sales and marketing. Users have the right to access information held about them.

Zubisoft may block access by the User and/or one or all the Sub-Users to individual or all Zubisoft Services at any time, without stating reasons and without prior notification, if Zubisoft deems there to be reasonable grounds for doing so. Zubisoft accepts no liability for any loss or damage incurred by User because of such action by Zubisoft.

3.3 Training and Support

Zubisoft considers on-boarding and training as highly important parts of the Zubisoft Service. All Users have access to on-boarding materials, including videos and other information. Some Plans may also offer free 1-to-1 training with experienced Zubisoft customer support staff. More specific or advanced training, data processing and consulting services may be subject to additional Fees. If Zubisoft cancels a service, training or webinar, the relevant registration fees will be refunded in full. Zubisoft does not offer refunds for non-attendance due to illness, emergency, or events beyond Zubisoft's control.

3.4 Acceptable Use Policy

All Users must comply with this Acceptable Use Policy ('**AUP**').

Disruption of the Zubisoft Service. User may not: (a) access, tamper with, or use non-public areas of the Zubisoft Service, Zubisoft's systems, or the technical delivery systems of Zubisoft's providers; (b) probe, scan or test the vulnerability of any system or network or breach or circumvent any security or authentication measure; (c) access or search the Zubisoft Service by any means other than Zubisoft's publicly supported interfaces (for example, "scraping"); (d) attempt to disrupt or overwhelm our infrastructure by intentionally imposing unreasonable requests or burdens on our resources (e.g. using "bots" or other automated systems to send requests to our servers at a rate beyond what could be sent by a human user during the same period of time); or (e) interfere with or disrupt the access of any User, host or network, including, without limitation, by sending a virus, overloading, flooding, spamming, mail-bombing the Zubisoft Service, or by scripting the creation of User Data in such a manner as to interfere with or create an undue burden on the Zubisoft Service.

Misuse of the Zubisoft Service. User may not utilize the Zubisoft Service to carry out, promote or support: (a) any unlawful or fraudulent activities; (b) the impersonation of another person or entity or the misrepresentation of an affiliation with a person or entity in a manner that does or is intended to mislead, confuse, or deceive others; (c) activities that are defamatory, libelous or threatening, constitute hate speech, harassment, or stalking; (d) the publishing or posting of other people's private or personally

identifiable information, such as credit card numbers, street address or Social Security/National Identity numbers, without their express authorization and permission; (e) the sending of unsolicited communications, promotions advertisements, or spam; (f) the publishing of or linking to malicious content intended to damage or disrupt another User's browser or computer; or (g) promotion or advertisement of products or services other than User's own without appropriate authorization.

Content standards within the Zubisoft Service. User may not post any data on the Zubisoft Service that: (a) violates any applicable law, any third party's intellectual property rights, or anyone's right of privacy or publicity; (b) is deceptive, fraudulent, illegal, obscene, pornographic, defamatory, libelous or threatening, constitutes hate speech, harassment, or stalking; (c) contains viruses, bots, worms, or similar harmful materials; or (d) contains any information that the User does not have a right to make available under law or any contractual or fiduciary duty.

Violations of this Acceptable Use Policy. In addition to any other remedies that may be available to us, Zubisoft reserves the right to immediately suspend or terminate a User Account or access to the Zubisoft Service upon notice and without liability for Zubisoft should the User fail to abide by this AUP. Zubisoft reserves the right to notify User's employer or organization of any violations of this AUP.

Modifications. Zubisoft may amend or modify this AUP from time to time in its sole and reasonable discretion. Zubisoft will post any such changes on the Zubisoft website. If the User object to any such change(s), the sole recourse shall be to cease using the Zubisoft Service. Continued use of the Zubisoft Service following notice of any such changes shall constitute User's acknowledgement and acceptance of such changes.

3.5 User Data

If the User provides User Data to the Zubisoft Services, for example by manual entering the data or uploading the data, such User Data and any processing by the User of such User Data must be compliant with these Terms and applicable law.

The User owns all rights to the User Data. The User grants Zubisoft and its service providers a worldwide, non-exclusive license to host, copy, access, process, transmit, and display User Data: (a) to maintain, provide, and improve the Zubisoft Services and perform its obligations under these Terms; (b) to prevent or address technical or security issues and resolve support requests; (c) to investigate in good faith an allegation that a User is in violation of the Terms; or (d) at User's direction or request or as permitted in writing by the User.

In addition, Zubisoft may use User Data and/or grant 3rd Parties access to anonymized User Data and patient data for the purposes of research, post-market surveillance including safety and effectiveness monitoring, treatment review, and the creation of treatment nomograms and outcome predictions. User and patient identities will be kept confidential except where Zubisoft is obliged to release such information, for example for the mandatory reporting of adverse events, or under- or malperformance or other safety problems in relation to the use of a medical device. Zubisoft will contribute to benefit-risk assessments where reasonably possible.

The User shall implement appropriate technical and organizational measures to ensure that all User Data is accurate and, depending on local law and other relevant requirements, is anonymized or de-identified. Zubisoft offers no guarantee of the accuracy, completeness, or reliability of data that Zubisoft makes available to the User. All data provided by Zubisoft, including (but not limited to) mathematical results, performance outcomes, predictions and analyses published by the Zubisoft Services, transmitted to the User, or obtained via the selection and decision-making tools provided by Zubisoft, is provided for information purposes only and should not be relied upon as advice or a recommendation.

Zubisoft is not obliged to pre-screen, monitor, or filter any User Data or processing activities in respect of User Data by the User. The User is responsible for ensuring that: (a) the User and any of the Sub-Users associated with the User Account do not create, transmit, display or make otherwise available any User Data that violates the these Terms, the rights of Zubisoft, other User or Customers, persons or Organizations or is harmful, offensive, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, invasive of another's privacy, hateful or otherwise unlawful; and (b) the User and all of the Sub-Users associated with the User Account have the necessary rights to use the User Data, including to upload it to the Zubisoft Services and process it by means of the User Account.

Zubisoft may also collect data from the use of the Zubisoft Services, including account data, administrative data, subscription data, interaction data, behavioral data, attitudinal data, outcome reference data, data from benchmarking and scoring of User's treatment outcomes created with Zubisoft's calculation algorithm and technologies (collectively, '**Zubisoft Data**'). Zubisoft owns all the rights to the Zubisoft Data.

To prevent unauthorized access to User Data, Zubisoft uses advanced data encryption for all data transfers between the User and Zubisoft (encrypted in transit).

All User Data is stored in Switzerland in secure data centers fulfilling ISO 9001 quality management and ISO 27001 information security standards. Zubisoft stores protected health information (PHI) encrypted on the servers (encrypted at rest). PHI is subject to the Swiss Federal Data Protection Act.

Zubisoft retains User Data for as long as we provide the Zubisoft Services to the User, or the User Account remains open. After the User has closed the User Account, we may retain User Data where reasonably necessary to comply with our legal obligations (including law enforcement requests), meet regulatory requirements, maintain security, prevent fraud and abuse, resolve disputes, enforce our Terms, offer new features you may be interested in, or fulfil your request to 'unsubscribe' from further messages from us. If none of these obligations apply, Zubisoft will irreversibly delete User Data within five years of the User Account being closed.

3.6 Privacy Policy
The use and collection of personal data by Zubisoft via the Zubisoft Services is described in our Privacy Policy at https://www.zubisoft.com/resources/privacy.pdf.

4. Subscriptions

4.1 Fees
Zubisoft will provide the Zubisoft Services to you for the Fees described in the Plan. The subscription Plan is usually chosen during the registration process, or after the first login. Different rates apply to different Plans. A User may subscribe to more than one Plan. The applicable Fee is charged in advance on monthly or annual payment intervals, unless agreed otherwise between the parties. Zubisoft may revise the Fees or Plans at any time. However, Zubisoft will provide you with at least 30 days' advance notice before revisions become applicable to you (or a longer period of notice if this is required by applicable law).

All Fees are non-refundable. For example, refunds or credits will not be made for periods during which the User did not use the Account, or only used it for part of the time, downgraded to a cheaper Account or deactivated (terminated) the Account during an ongoing payment interval. If, after signing up, the User elects to upgrade to a more expensive Plan, the unused portion of any prepaid Fee shall be applied to the Fee for the more expensive Plan.

4.2 Payment
The Plan can be purchased and renewed via online payments. Online credit card transactions are Zubisoft's preferred payment method and will be handled by payment service providers (e.g., Datatrans, SIX) with 3-D Secure processes (e.g., Verified by Visa, MasterCard Secure Code). Zubisoft will not store credit card details. Processing fees may apply. Zubisoft is compliant with the Payment Card Industry Data Security Standard (PCI DSS) for protecting credit card transactions.

The User is obliged to pay all taxes, fees and other charges imposed by any governmental authority, including any value added tax, goods and services tax, sales tax, and applicable indirect and transactional taxes ("**Taxes**") on the Zubisoft Services provided under these Terms. Sales are seen as export business-to-business deals (reverse taxing). Zubisoft will add MWST to the fees for sales within Switzerland. Zubisoft's VAT number is CHE-106.842.908.

4.3 Voucher
The Plan can also be renewed by TopUp Voucher codes. Vouchers have an expiry date and are not refundable. Additional 'Voucher Terms and Conditions' may apply. Zubisoft does not act as partner or agent on behalf of the voucher seller and the voucher seller does not act as partner or agent on behalf of Zubisoft.

4.4 Auto-Renewal
The User agrees that its Plan will automatically renew on an annual or monthly basis depending on User's Plan (the **'Renewal Date'**). For recurrent payments, a payment provider 'Alias' is used (Zubisoft does not store credit card details). User authorizes Zubisoft to automatically charge the User for the applicable Fees on or after the Renewal Date unless the Plan has been terminated or cancelled in accordance with these Terms.

The User must cancel its Plan prior to the next Renewal Date to avoid be billed for the next period's Fees. The User may cancel its Plan anytime online by going into its User Account settings and following the instructions provided. If the User chooses to cancel the Plan, the User may continue to use the Zubisoft Service until the next Renewal Date but will not be issued a refund for the most recently (or any previously) charged Fees.

4.5 Changing Plan
Users have the right to change a Plan at any time by selecting a new Plan. Changing a Plan (e.g., downgrading) may result in the loss of features, functionality, credit, or capacity of the User Account, as well as the loss of User Data.

4.6 Termination
These Terms commence on the 'Date of Registration' and shall remain in effect until all Plans have expired or have been terminated. Users may terminate these Terms and close a User Account at any time (conditions apply, see Clause 'Termination').

4.7 Free Trial
A User may be entitled to a time-limited free trial. The User is not required to provide any credit card information during the period of the trial. The User Account will be automatically deactivated when the trail period expires. To prevent deactivation or to reactivate the User Account, the User is required to select a suitable Plan and pay the relevant Fee. If the User does not pay the

first Fee within 2 weeks as of the expiry of the free trial, Zubisoft has the right to permanently delete the User Account, including all User Data therein. In addition to the Plans, Zubisoft may offer special discounts and motivation schemes from time to time at its discretion.

5. Use of Zubisoft API ('API Terms')

5.1 Services and Documentation
The calculation algorithm and most of the databases and technologies used to enable the Zubisoft Services in the standalone version with dedicated user interface can also be accessed through a REST API, which is referred to in these Terms as the 'Zubisoft API'. The functionality of the API Services may differ from the Zubisoft Services for standalone products. The API Documentation provides detailed descriptions about the individual functions (API resources) with instructions about how to use and integrate with the Zubisoft API.

Zubisoft will update the Zubisoft API and API Documentation from time to time and may add or remove functionality. Zubisoft will provide API Service Providers with notice in the event of material changes, deprecations or removal of functionality from the Zubisoft API to enable continuance of use of the API Services with minimal interruption.

5.2 API Account
The Zubisoft API can be used or accessed only by API Service Providers holding an API Account for the Application. The API Account can only be created by Zubisoft.

5.3 Authentication
The API Service Provider will receive a Private Key and Public Key for each Application that will interface with the Zubisoft API. The keys are required for authentication when sending a request to the Zubisoft API.

5.4 Authorization
Authorization, the process of giving access to a specific resource or function, is controlled by the API Account and User Account. Zubisoft may block API access by the API Service Provider and/or one or all Users to individual or all API Services at any time, without stating reasons and without prior notification, if Zubisoft deems there to be reasonable grounds for doing so. Zubisoft accepts no liability for any loss or damage incurred because of such action by Zubisoft.

Zubisoft may limit the maximum number of API requests and the rate at which such requests are submitted, and/or the number of network calls that the Application may make via the Zubisoft API. Zubisoft may change such usage limits at any time, and/or may utilize technical measures to prevent over-usage and/or stop usage of the Zubisoft API by an application after any usage limitations are exceeded.

5.5 API Usage
Subject to compliance with these Terms and the API Documentation, Zubisoft grants the API Service Provider a non-exclusive, revocable, non-transferable and non-sublicensable license to: (a) access and use the Zubisoft API and API Documentation to receive, modify, use, and display User Data from the Zubisoft Service on the Application subject to the permissions applicable to the relevant Users' accounts; (b) use the Zubisoft API, API Documentation, or User Data to develop, test, and support the Application; and (c) distribute the Application to Users and to allow such Users to access the integration of the Zubisoft API within the Application.

The API Service Provider may not use the Zubisoft API for any other purpose without Zubisoft's prior written consent. If an API Service Provider is integrating the Zubisoft API with the Application, the API Service provider may charge for the Application and/or integration; however, they may not sell, rent, lease, sublicense, redistribute, or syndicate access to the Zubisoft API.

The API Service Provider shall implement appropriate technical and organizational measures to ensure that all User Data is accurate and, depending on local law and other relevant requirements, is anonymized or de-identified.

Zubisoft may record and analyze all API activities and data, and Zubisoft reserves the right to audit data and use of the Zubisoft API for verifying compliance with these Terms and for the purposes of analysis, forecasting, clinical research, security, system monitoring, sales, and marketing. API Service Providers have the right to access information held about them.

5.6 Requirements
In connection with the use of the Zubisoft API, the API Service Provider must obtain the explicit consent of the User before collecting, using, posting, or sharing any User Data obtained through the Zubisoft API on a behalf of the User. Mere authorization of the Application by the User does not constitute consent.

The API Service Provider must comply with any requirements or restrictions imposed on usage of User Data by the owner of such data. Although the Zubisoft API can be used to access User Data, neither Zubisoft's provision of the Zubisoft API nor use of the Zubisoft API overrides any requirements or restrictions placed on such data by the User or a third party with a legal interest in the User Data.

The API Service Provider must maintain a user agreement and privacy policy for the Application, which is prominently identified or located where Users download or access the Application. The privacy policy must meet applicable legal standards and describe the collection, use, storage and sharing of data in clear, understandable, and accurate terms. The API Service Provider must promptly notify Zubisoft in writing via email to info@zubisoft.com of any breaches of the user agreement or privacy policy that impact or may impact users of the Zubisoft API or the Zubisoft Services.

The API Service Provider must obtain the consent of a User prior to deleting or destroying any of the data associated with their User Account.

The API Service Provider is permitted to provide attribution to Zubisoft as the source of data in accordance with the following guidelines: display a Zubisoft or IBRA logo so it is clear to the User that the data is from Zubisoft, link the logo to https://www.zubisoft.com, and always comply with trademark guidelines provided by Zubisoft when using or displaying the logo.

The API Service Provider and all Users of the API are expected to comply with the Acceptable Use Policy (see above). Specifically, the API Service Provider may not: a) make requests that exceed Zubisoft API's rate limits or use the Zubisoft API in a manner that impacts the stability of Zubisoft's servers or impacts the behavior of other applications using the Zubisoft API; b) attempt to cloak or conceal the User's or the Application's identity when requesting authorization to use the Zubisoft API; c) create or disclose metrics about, or perform any statistical analysis of, the Zubisoft API; d) display the User Data on any site that disparages Zubisoft or its products or Services or infringes any Zubisoft intellectual property or other rights; and e) access the Zubisoft API or API Documentation in order to replicate or compete with the Zubisoft API, Zubisoft Services or Zubisoft Website.

5.7 Termination
The API Service Provider's right to utilize the Zubisoft API and display the Zubisoft or IBRA logo shall continue until it is terminated by either party as set forth herein. The API Service Provider may terminate this Agreement at any time by discontinuing use of the Zubisoft API. Zubisoft may suspend or terminate the license to all or any of the Zubisoft API or the API Documentation at any time, with or without cause, and without notice. Upon termination of the license for any reason, you shall destroy and remove from all computers, hard drives, networks, and other storage media all copies of User Data and Zubisoft and IBRA logos.

Termination of 3rd Party's right to use the Zubisoft API will not automatically terminate User's right to use the Zubisoft Services, provided via the Zubisoft API or any standalone software.

5.8 Application Fee
The use of the Zubisoft API by the API Service Provider is subject to a fee for each application (**'Application Fee'**) interfacing with the Zubisoft API, except where Zubisoft agrees in writing to wave the Application Fee. Zubisoft reserves the right to change fees at any time.

5.9 Feedback and Ideas
The API Service Providers may choose to, or Zubisoft may invite them to, submit comments or ideas about improvements to the Zubisoft Service, the Zubisoft API, the API Documentation, or any other component of Zubisoft's products or services (collectively, **'Ideas'**). If the API Service Provider submits an Idea to Zubisoft, Zubisoft will presume that the submission was voluntary, unsolicited by Zubisoft, and delivered to Zubisoft without any restrictions on the use of the Idea. API Service Providers also agree that Zubisoft has no fiduciary or any other obligation to them in connection with any Idea submitted, and that Zubisoft is free to use API Service Providers' Ideas without any attribution or compensation to them.

6. Additional Provisions for GDPR Compliance
Zubisoft implements measures designed to ensure compliance with the General Data Protection Regulation ('**GDPR**') of the European Union (Regulation (EU) 2016/679). By agreeing to the Terms, the Customer agrees to comply with the requirements set out in this Agreement relating to the collection and processing of personal data relating to patients from within the European Union and the UK. Zubisoft will process personal data relating to Customers as described in these Terms and in the Privacy Policy. The processing of such personal data is necessary for performance by Zubisoft of these Terms. Zubisoft has appointed a data protection officer ('DPO') who can be contacted via email (info@zubisoft.com) for any Customer request and in case of a suspected data breach.

Customers must obtain explicit consent (opt-in) from their patients to process personal and treatment data using Zubisoft Services. Customers must also ensure that patients are provided with access to Zubisoft's Privacy Policy. Customers must be able to demonstrate that patient consent was given, for example using a Patient Consent Form. For children under the age of 16 years, consent must be obtained from the parent or guardian with responsibility for the child.

Customer and Zubisoft agree that in relation to personal data collected for and processed within Zubisoft's Services, each acts as a separate and independent data controller. Customer shall comply with the GDPR and/or UK GDPR (to the extent applicable to Customer) and with any other applicable data protection laws.

To the extent Zubisoft acts as processor in relation to personal data input by Customer the following provisions shall apply:

1. Zubisoft shall process such personal data only on the Customer's documented instructions (which complete and final instructions the parties agree are set out in this Agreement. Notwithstanding the foregoing, Zubisoft may process such personal data if it is required under EU, UK or Swiss law to which it is subject. In this situation, Zubisoft shall inform the Customer of such a requirement before Zubisoft processes such personal data unless the law prohibits this on important grounds of public interest. The subject matter, nature and purpose and details of the data processing and the details of the type of personal data and categories of data subjects are in accordance with the Zubisoft Privacy Policy.

2. Zubisoft shall ensure that any employee, agent or contractor is subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

3. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing, as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Zubisoft implements and maintains technical and organizational measures to ensure a level of security of the processing of personal data appropriate to the risk.

4. Taking into account the nature of the processing Zubisoft shall take reasonable steps to assist Customer in meeting Customer's obligations under Articles 30, and 32 to 36, of the GDPR and UK GDPR. Zubisoft and Customer agree that, for the purposes of Article 30 GDPR and UK GDPR, this Agreement and Zubisoft's Privacy Policy constitute the record of all categories of processing activities carried out by Zubisoft on behalf of Customer.

5. Zubisoft will, at the choice of the Customer, delete or return to the Customer all personal data after the end of this Agreement unless applicable data protection laws require storage of personal data.

6. Customer agrees that Zubisoft shall be entitled to use sub-processors for the provision of the Services. Zubisoft has entered into an agreement with the applicable sub-processor which ensures that such sub-processor shall be obliged to meet equivalent obligations as those set out in this Clause and, where the Standard Contractual Clauses are applicable and where the sub-processor is located in a third country which does not provide adequate protection for personal data, for the purposes of Clause 11(1) of the Standard Contractual Clauses, Zubisoft has entered into the Standard Contractual Clauses with such sub-processor.

7. Zubisoft will notify Customer if it changes any sub-processor in which case Customer shall be entitled to object to Zubisoft in writing on reasonable grounds.

8. Customer may audit Zubisoft's compliance with the terms of this clause up to once per year (either for itself or on behalf of a regulatory body to which it is subject and only pursuant to a formal request for information from such regulator) ("**Audit**"). Customer agrees that its right to Audit means that it shall be entitled to exercise the following process:

   8.1. Customer will be able to review the output of any formal review of Zubisoft's technical and organizational measures conducted by an independent third party ("**Compliance Report**");

   8.2. Upon review of the Compliance Report if Customer identifies areas that have not been covered that it is lawfully under this Agreement permitted to audit, then Customer will submit an additional list of reasonably specific and detailed questions to Customer in writing. ("**Audit Questions**");

      8.2.1. Within a reasonable timeframe, Zubisoft will respond to the Audit Questions ("**Responses**") to Customer (or its regulator if so instructed in writing by Customer);

      8.2.2. Customer agrees that upon receipt of the responses to the Audit Questions Customer will have completed its Audit, unless Customer can objectively demonstrate that the Responses do not adequately demonstrate Zubisoft's compliance with its statutory obligations and this Agreement. Under such an event, Customer may then be entitled to invoke the process set out below;

   8.3. Subject to compliance with 8.2.1 and 8.2.2 above, Customer shall be entitled to request a formal audit of Zubisoft's compliance with this Clause concerning the Audit Questions not already covered by the documentation provided by Zubisoft ("**Gap Audit**"). In order to be able to do this, Customer must submit a detailed audit plan to Customer at least two weeks in advance of the proposed audit date. The audit plan must describe the proposed scope, duration, and start date of the Gap Audit. Zubisoft will review the audit plan and provide Customer with any concerns or questions (for example, any request for information that could compromise Zubisoft's security, privacy, employment or other relevant policies), and work with Customer to agree on a final audit plan; The Gap Audit will at all times be subject to the following:

      8.3.1. It must be conducted during normal business hours at the applicable facility, subject to Zubisoft policies with respect to on-site visitors and may not unreasonably interfere with Zubisoft business activities;

      8.3.2. The parties agree to use the least intrusive means to verify Zubisoft's compliance with obligations under this Clause;

      8.3.3. The Parties agree to respect the need for Zubisoft to maintain the security of facilities and uninterrupted business operation, protect Zubisoft and its other customers from risk and to prevent disclosure of information that would jeopardize the confidentiality of Zubisoft or Zubisoft's customers' information;

      8.3.4. If Customer appoints a third party to conduct the Gap Audit, the third party must be mutually agreed to by Customer and Zubisoft and must execute a written confidentiality agreement acceptable to Zubisoft before conducting the Gap Audit;

      8.3.5. Where Customer is conducting a Gap Audit because of a regulator's requests, and if Zubisoft and/or Zubisoft's sub-processor believe that it is not possible to meet a specific time frame set by the regulator, Zubisoft and/or its sub-processor will assist Customer to explain this to the relevant regulator. Customer acknowledges that access to the sub-processor's facilities is subject to agreement from the relevant sub-processor, and that Zubisoft cannot guarantee access to that sub-processor's facilities at any particular time;

8.3.6. Customer will provide Zubisoft any Gap Audit reports generated under this section, unless prohibited by law. Customer may use the Gap Audit report only for the purposes of meeting its regulatory audit requirements and/or confirming compliance with the requirements of this Clause. The Gap Audit report is Confidential Information of the parties under the terms of the Agreement.

9. Any audits (and any related costs incurred by Zubisoft (e.g., damages caused by Customer or its auditors to facilities or data held therein) are at the Customer's expense.

7. Additional Provisions for California Personal Information

These provisions shall apply only with respect to California Personal Information. When processing California Personal Information in accordance with Customer's instructions, the parties acknowledge and agree that Customer is a Business and Zubisoft is a Service Provider for the purposes of the CCPA. The parties agree that Zubisoft will Process California Personal Information as a Service Provider strictly for the purpose of performing the Zubisoft Services under the Terms or as otherwise permitted by the CCPA.

8. Confidentiality

Each party acknowledges that during our business relationship it may have access to information which is proprietary and/or confidential ("**Confidential Information**") and which belongs to the other party. Without limitation, the Zubisoft Services and the terms of this Agreement are Confidential Information of Zubisoft. Each party agrees not to disclose any Confidential Information of the other received because of this Agreement to any third party without the written consent of the other party provided, however, each party may permit access to Confidential Information to employees and agents of that party under confidentiality obligations consistent with this Agreement. Confidential Information does not include any information which: (a) is or becomes generally available to the public through no disclosure in breach of this Agreement; (b) is wholly and independently developed by the receiving party without the use of the disclosing party's Confidential Information; (c) becomes available to the receiving party from a source not a party to this Agreement, provided that such source is not violating any contractual or legal obligation; (d) was known on a lawful, non-confidential basis by the receiving party prior to disclosure; or (e) is required, based upon the reasonable advice of counsel, to be disclosed by any applicable law, regulation or competent judicial, governmental, or other authority. If the receiving party becomes legally required to disclose any Confidential Information, the receiving party shall, to the extent practicable, provide the disclosing party with prompt written notice of such requirement so that the disclosing party may seek a protective order or other appropriate remedy and/or waive compliance with respect to that disclosure.

9. Disclaimer of Warranties

Unless otherwise expressly stated by Zubisoft, the Zubisoft Services, material, and any content or features made available in conjunction with or through the Zubisoft Services are provided 'as is' and 'as available' without warranties of any kind either express or implied.

Zubisoft offers no guarantee of the correctness, accuracy, completeness, or reliability of data that it makes available to the Customer. All the data provided, including (but not limited to) mathematical results, performance outcomes, predictions and analyses published by the Zubisoft Services, transmitted to the Customer, or obtained via the selection and decision-making tools provided by the Zubisoft Services, is provided for information purposes only and should not be relied upon as advice or a recommendation. All the Customer's decisions shall be based exclusively on the Customer's own assessment and the Customer is solely responsible for all decisions.

Zubisoft makes no warranties or representation, and Customer shall not rely on information or advice, whether oral or written, from Zubisoft or from subcontracted Zubisoft agents.

Zubisoft offers no guarantee that the Zubisoft Services, or the server that makes the Zubisoft Services available, will be uninterrupted or free of viruses or other harmful components.

Many of the Zubisoft Services are internet-based software applications which are accessed remotely and while Zubisoft implements appropriate security measures it does not guarantee absolute security and Zubisoft accepts no responsibility for the integrity of the Customer's terminal equipment.

The laws of certain countries and states do not allow limitations on implied warranties or the exclusion or limitation of certain damages. If these laws apply to the Customer, some or all the above disclaimers, exclusions, or limitations may not apply, and Customer might have additional rights.

10. Limitation of Liability

Neither party excludes or limits liability to the other party which cannot lawfully be excluded or limited including, without limitation, for death or personal injury caused by its negligence.

In no event will Zubisoft be liable to Customer (whether in contract, tort (including negligence) or otherwise) for any loss of or corruption of data, loss of profits or of contracts, loss of business or of revenues, loss of operation time, wasted management time, loss of goodwill or reputation, in each case whether caused directly or indirectly, or for any indirect, incidental, punitive, exemplary or consequential loss, damage, cost or expense whatsoever and whether or not Zubisoft has been advised of their possibility.

To the extent permitted by applicable law, Zubisoft's liability hereunder is limited to CHF50. In cases where applicable state or national law does not allow such limitation Zubisoft's liability under this Clause shall be limited to the Fees paid for the relevant Plan in the 12 months immediately preceding the date on which the relevant claim arose.

No action, regardless of form, arising out of this Agreement may be brought by either party more than one (1) year after that party knew or should have known of the event which gave rise to the cause of action.

11. Indemnification
The Customer agrees to defend, indemnify and hold harmless Zubisoft and its affiliates, and their respective directors, officers, employees, and agents, from any claims, losses, damages, liabilities, including attorney's fees, arising out of Customer's use or misuse of the Zubisoft Services, Customer's violation of these Terms, or violation of the rights of any other person or entity.

12. Termination
These Terms shall take effect on the Date of Registration and shall remain in force unless and until terminated by either party in accordance with its terms.

A party may terminate the Terms immediately if the other party commits a material breach and fails to cure such breach within thirty (30) days after written notice thereof from the non-breaching party; or the other party enters bankruptcy proceedings, becomes insolvent or otherwise becomes generally unable to meet its obligations under these Terms.

Notwithstanding anything to the contrary in these Terms, any termination of the Terms shall not relieve either party of any of its obligations or liabilities accrued hereunder prior to such termination. On termination for any reason: (a) all rights granted to Customer under these Terms shall cease; (b) Customer shall cease all activities authorized by these Terms; (c) Customer shall immediately pay to Zubisoft any sums due to Zubisoft under these Terms; and (d) Customer shall immediately cease using and destroy or return to Zubisoft (at Zubisoft's option) all copies of software or any derivatives thereof then in Customer's possession, custody or control and, in the case of destruction, certify to Zubisoft that it has done so.

13. Foreign legal provisions / Import and export restrictions
Notwithstanding any other provision of this Agreement the Customer shall retain responsibility for compliance with all applicable regulatory requirements and laws. The customer acknowledges that the use of Zubisoft Services may constitute an infringement of import and export restrictions governing encryption algorithms.

14. Miscellaneous
If any of the terms in this contract are not valid or legally enforceable the other terms will not be affected.

Except for payment obligations, each party shall be excused from failure to perform its obligations under these Terms if such failure results from causes beyond its reasonable control including (without limitation) Acts of God, epidemic or pandemic, government action, terrorism, civil unrest, riots, war, boycott, economic sanctions or other "force majeure" events.

These Terms may not be assigned or transferred by Customer without the prior written consent of Zubisoft.

Nothing in these Terms is to be construed as creating an agency, partnership, or joint venture relationship between the parties hereto.

All legal relations between Zubisoft and the customer are governed by Swiss law. The sole place of jurisdiction for all legal proceedings is Zurich. Zubisoft also reserves the right to take legal action against the Customer before any other competent court.

These Terms constitute the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements and discussions of the parties regarding the transactions contemplated herein. Customer acknowledges that it is entering into these Terms solely based on the agreements and representations contained herein, and for its own purposes and not for the benefit of any third party.