

PATHWAYS LICENSE AGREEMENT

between Diacoustic Medical Devices (Pty) Ltd t/a **Stone Three Healthcare** (Registration No. 2007/034050/07),

hereinafter referred to as “**Stone Three**”

24 Gardner Williams Avenue, Paardevlei, Somerset West, 7130, South Africa.

and the **User** (as identified below)

USER'S DETAILS	
Full name:	
Co/CC/ID Registration No:	
Practice Name:	Practice Type:
HPCSA No:	Practice No: <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
Physical Address:	
Postal Code:	
Postal Address:	
Postal Code:	
Contact Person:	
Tel No:	Fax No:
Cell:	E-mail:

User Type:	Existing Contract	Upgrade			
------------	-------------------	---------	--	--	--

Signed by: _____ (full name) who hereby as a User

understands and accepts the Terms and Conditions of this AGREEMENT contained herein

For and on behalf of the User _____ For and on behalf of Stone Three _____

DATE OF SIGNATURE: ____ / ____ / 20____ COMMENCEMENT DATE: ____ / ____ / 20____

SEE THE TERMS AND CONDITIONS OVERLEAF

Stone Three grants the User a non-exclusive, non-transferrable and paid-up license to use the Pathways System (supplied in terms of the foregoing quotation) subjected to the following terms and conditions:

1 DEFINITIONS AND INTERPRETATION

In this Agreement, unless the context otherwise requires, the following expressions mean the following:

- 1.1 **“Agreement”** means this agreement including any Annexures, and any amendments to this Agreement from time to time.
- 1.2 **“Compatible Devices”** means any electronic stethoscope, camera or alternate medical device cleared for use with the Pathways Application.
- 1.3 **“Confidential Information”** means any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is or ought to be reasonably identifiable as confidential and/or proprietary to the Disclosing Party of which is provided or disclosed in confidence, and which the Disclosing Party or any person acting on behalf of the Disclosing Party may disclose or provide to the Receiving Party or which may come to the knowledge of the Receiving Party by whatsoever means.
- 1.4 **“Data”** shall mean any data of the User and/or its clients associated with the Pathways Software and all data that is in the possession of the User, and all data concerning or indexing such data (regardless of whether or not owned by the User or generated or compiled by the User); and all other records, data, files, input materials, reports, forms and other such items that may be received, computed, developed, used or stored by Stone Three or any of its employees, contractors (including Subcontractors) or agents from, for or on behalf of the User, or in connection with the Set-Up and Support Services;
- 1.5 **“Disclosing Party”** shall mean the Party that has disclosed Confidential Information.
- 1.6 **“Effective Date”** means the date of signing the agreement by both Parties.
- 1.7 **“FDA”** means the United States Food and Drug Administration.
- 1.8 **“Forms”** an HTML front end that stores user inputs into a database
- 1.9 **“Mediclinic”** is herein referred to as Mediclinic (Pty) Ltd (Company Registration No. 1969/009218/07), a company with limited liability incorporated in accordance with the laws the South Africa.
- 1.10 **“Mediclinic Applications”** means customised Forms developed by Mediclinic using the Pathways System in accordance with this Agreement.
- 1.11 **“Stone Three Applications”** means standard Forms developed by Stone Three using the Pathways System in accordance with this Agreement.

- 1.12 **“Pathways Documentation”** means written documentation provided by Stone Three relating to the Pathways Software, Compatible Devices, training material, user manual and administrator manual including documentation, standards, protocols, code samples, specifications and instructions.
- 1.13 **“Pathways Software”** means the Pathways software product being a web-based telemedicine portal that incorporates custom workflows, user management and video/audio streaming between various devices and endpoints used in tele-consultation sessions.
- 1.14 **“Pathways System”** means Pathways Software and Pathways Documentation provided to the User as set forth herein.
- 1.15 **“POPI”** means Protection of Personal Information Act No. 4 of 2013 to promote the protection of personal information processed by public and private bodies; to introduce certain conditions so as to establish minimum requirements for the processing of personal information.
- 1.16 **“Receiving Party”** shall mean the Party that has received Confidential Information from the Disclosing Party.
- 1.17 **“SAHPRA”** means the South African Health Products Regulatory Authority.
- 1.18 **“Set-Up Services”** means the installation, configuration and testing of the Pathways Software by providing a service to the User in order to realise the Pathways offering.
- 1.19 **“Subcontractor”** shall mean any Third Party that Stone Three selects to provide any functionality, portion or component of the Set-Up and Support Services.
- 1.20 **“Support Services”** means the support and maintenance of the Pathways Software in order to deliver the Pathways System in accordance with this Agreement.
- 1.21 **“Trial Period”** will be up until the 30th September 2020.
- 1.22 **“User”** means a healthcare practitioner being the primary user of the Pathways Software and identified on page 1 of this Agreement.

2 LICENSING

- 2.1 Mediclinic will cover the license costs for the User to access the system during the trial period. During this trial period Mediclinic will review system utilisation and uptake and thereafter make decisions on system continuation and/or enhancements.
- 2.2 This Agreement is entered into for the sole purpose of allowing the User to utilise Pathways System.
- 2.3 Stone Three hereby grants to the User a non-exclusive, non-transferable, non-commercial, paid-up, revocable license to use the Pathways System, including any modified or enhanced versions thereof provided to the User by Stone Three, at no cost.
- 2.4 The Pathways System will be presented as an online service (Software-as-a-Service).

2.5 The license includes a period to allow Mediclinic to assess the value and impact of the platform until 30th September 2020

2.6 The license will allow a dedicated login per User.

3 WARRANTY DISCLAIMER

3.1 The Pathways System is provided “as is” and “where is,” and Stone Three disclaims any and all warranties, whether express or implied, including, but not limited to, any implied warranties of merchantability, fitness for a particular purpose, non-infringement, and those arising from trade usage or a course of dealing.

3.2 Without limiting the foregoing, Stone Three does not warrant that the Pathways System is free from bugs, errors or omissions, that the Pathways System will provide acceptable results.

4 PROPRIETARY RIGHTS

4.1 The User agrees that the Pathways System, all derivative works thereof and intellectual property embodied therein, are the sole and exclusive property of Stone Three and its licensors, and that the User has no right, title or interest therein other than as expressly provided in this Agreement.

5 CONFIDENTIALITY

5.1 User Confidential Information – The User acknowledges that the Pathways System is unpublished and contains proprietary and Confidential Information of Stone Three, which Stone Three considers to constitute valuable trade secrets. In addition, the User may also be provided with or be exposed to Confidential Information of third parties with which Stone Three conducts business. In recognition of the foregoing, the User covenants and agrees:

5.1.1 That the User will keep and maintain all Confidential Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized use or disclosure;

5.1.2 That the User will not, directly or indirectly, disclose any Confidential Information to any third party, except with Stone Three 's prior written consent;

5.1.3 That the User will not make use of any Confidential Information for its own purposes, such as creation of a competitive product; or for the benefit of anyone or any other entity other than Stone Three;

5.1.4 That (i) on termination of discussions with Stone Three, or (ii) if Stone Three is engaged to perform services for the User, upon completion of the engagement, or (iii) at any time Stone Three may so request, the User will deliver promptly to Stone Three or, at Stone Three’s option, will destroy all memoranda, notes, records, reports, media and other documents and materials (and all copies thereof) regarding or including any Confidential Information which the User may then possess or have under its control; and

5.1.5 That the User will take no action with respect to the Confidential Information that is inconsistent with its confidential and proprietary nature.

5.2 The User shall be permitted to disclose the Confidential Information only as follows:

5.2.1 To its Employees having a need to know such information in connection with this Agreement (and in any event the User shall be responsible for all Employees' compliance with the terms of this Agreement); and

5.2.2 If disclosure is required by law, but in such event, the User shall notify Stone Three in writing in advance of such disclosure and provide Stone Three with copies of any related information so that Stone Three may take appropriate action to protect the Confidential Information.

5.3 Stone Three Confidential Information - For purposes of this Agreement, Confidential Information shall include, but not be limited to, all business information of Stone Three, including the following:

5.3.1 All information and data related to the Software and Documentation;

5.3.2 All information relating to Stone Three 's planned or existing computer systems and systems architecture, including computer hardware, computer software, source code, object code, documentation, methods of processing and operational methods;

5.3.3 All information regarding Stone Three 's product strategies, customer lists, sales, profits, organizational restructuring, new business initiatives and financial information; and

5.3.4 Confidential information of third parties with whom Stone Three conducts business. Notwithstanding the foregoing, Confidential Information shall not include information that (i) is or becomes generally known to the public not as a result of a disclosure by the User, (ii) is rightfully in the possession of the User prior to disclosure by Stone Three or (iii) is received by the User in good faith and without restriction from a third party not under a confidentiality obligation to Stone Three and having the right to make such disclosure. The User acknowledges that the disclosure of Confidential Information may cause irreparable injury to Stone Three and damages, which may be difficult to ascertain. Stone Three shall, therefore, be entitled to injunctive relief upon a disclosure or threatened disclosure of any Confidential Information, without a requirement that Stone Three prove irreparable harm, in addition to such other remedies as may be available at law or in equity. Without limitation of the foregoing, the User shall advise Stone Three immediately in the event that it learns or has reason to believe that any person or entity, which has had access to Confidential Information, has violated or intends to violate the terms of this License Agreement.

5.4 In addition, the User shall not release the results of any evaluation or benchmark of the Pathways System to any third party without the express prior written consent of Stone Three.

6 PROHIBITED USES

6.1 All rights not expressly granted to the User herein are reserved to Stone Three and its licensors. The User shall not unlock, unencrypt, decompile, disassemble, reverse engineer or otherwise seek to gain access to the source code of the Pathways System except as expressly permitted by Stone Three. The User shall not use the Pathways System in any manner that may cause the Pathways System to be subject to an open source license.

7 PATHWAYS SYSTEM MODIFICATIONS

7.1 From time to time, Stone Three may modify the Pathways System. The User agrees to promptly implement, in the Pathways Software, any modifications provided by Stone Three if necessary, to maintain compatibility with a Pathways System.

8 TECHNICAL SUPPORT

8.1 SET UP SERVICES

8.1.1 Stone Three shall provide the Set Up Services to the User.

8.1.2 Stone Three shall ensure that the Set Up Services are provided within a timely manner after the Effective Date, tested as being fully operational.

8.2 SUPPORT SERVICES

8.2.1 Support levels are defined as follows:

Support Level	Definition of Support Level
First Line	Basic help desk resolution and service desk delivery for user queries
Second Line	In-depth technical support of local software, computers and devices
Third Line	Expert Pathways System product and service support

8.2.2 The User should report first line, second line and third line support issues with the Pathways Software by emailing or contacting Mediclinic service desk at servicedesk@mediclinic.co.za or calling 0861 429 434. Mediclinic service desk will use Teamviewer to assist in resolving the issue but will have no access to any practice or patient information.

8.2.3 Mediclinic will report third line support issues with the Pathways Software by emailing dev-support@pathways.africa or contacting the support Stone Three employee via the support mobile number: +27 66 300 2536.

8.2.4 In the event of no response from the Stone Three support mobile number regarding the support issue, Mediclinic will escalate the matter directly to the Stone Three Product Manager on +27 82 749 5720.

8.2.5 Mediclinic will assign an incident number to each problem with Pathways, which will be communicated to Stone Three via the support channels.

8.2.6 Mediclinic will allocate a priority level to all its support level requests as follows:

Severity Level of Problem	Definition of Severity
Severity 1 (S1) – Minor	Inconvenience - the system is causing a minor disruption in the way tasks are performed but does not stop the workflow. Able to accomplish all functions, but not as efficiently as normal and could include cosmetic issues.
Severity 2 (S2) – Mild	Problems with no material impact on Business Critical Operations causing non-critical work to back-up.
Severity 3 (S3) – Moderate	Function or performance is materially impaired or degraded, but all Business Critical Operations are practically usable. A temporary workaround is available.
Severity 4 (S4) – Severe	Business Critical Operations is unavailable or practically unusable with no acceptable workaround.

8.2.7 Stone Three will respond to Mediclinic regarding any problem reported to it with an initial assessment and action plan within the response time service levels set out below depending upon the severity level of the problem.

Severity Level	Response Time		Time to Repair
	Within standard working hours	Outside standard working hours	
Severity 4	15 minutes	4 hours	Six Normal Business Hours or 24 Hours if Outside of standard working hours from when resolution agreed with licensee.
Severity 3	20 minutes	8 hours	Within two Business Days from when resolution agreed with licensee.
Severity 2	30 minutes	24 hours	Within three Business Days from when resolution agreed with licensee.
Severity 1	1 hour	24 hours	Within seven Business Days from when resolution agreed with licensee

8.2.8 Stone Three will provide a Workaround or Temporary Error Correction in respect of problems within the time to repair service levels set out above depending upon the severity level of the problem.

- 8.2.9 Response time and time to repair will be measured from the moment the incident is reported to Stone Three or is detected by Stone Three, whichever occurs first, until Mediclinic confirms that the problem has been resolved. If an acceptable Workaround or Temporary Error Correction can be provided, Stone Three shall provide a final coding solution in its next Upgrade.
- 8.2.10 Mediclinic change control process will be adhered to for system maintenance such as MS Azure environment and Pathways System
- 8.2.11 The service uptime availability will be 99% of the time except if hardware/software maintenance is performed. Service Credits should also be introduced after the trial phase if SLA 'Resolution Implementation time' is not met.
- 8.2.12 Stone Three shall report monthly usage statistics: View of all scheduled consultation invites.
View of all actual completed consultations (per consultation type).
- 8.2.13 Monthly review meetings of the Pathways System implementation shall be held between Stone Three and Mediclinic.
- 8.2.14 Exclusions or restrictions on delivering service:
- 8.2.14.1 Internet connection down or interrupted
- 8.2.14.2 third party video streaming provider down
- 8.2.15 Minimum hardware and software specifications:**
- Note that for full Pathways functionality and external device connection (e.g. external USB scope or electronic stethoscope) a laptop or PC should be used by the patient-side provider. For simple video consults without external peripherals, a mobile iOS or Android device can be utilised by the Provider side.
- Provider side (PC/laptop):**
Operating System: Windows 8 or greater / Mac OS X 10.11 or greater
Processor: 1.6 GHz (Windows) / 1.2 GHz (macOS) minimum
Memory: 2 GB (minimum)
Storage: 128 MB (minimum)
Internet connectivity: 2 Mbps or greater
Web Browser: Google Chrome (updated to the latest stable version)
Video Input: Any standard USB or UVC camera, built-in or external
Audio Input/Output: Any standard microphone and speaker, built-in or external
- Patient side:**
The patient can use a mobile iOS or Android device or a PC/laptop to receive Pathways video calls. If on PC/laptop, the same specifications as above applies.
Internet connectivity: 2 Mbps or greater
- 8.2.16 A maintenance window will be agreed upon with Mediclinic and is usually a 2 hour slot once per week after normal working hours.
- 8.2.17 Backup / Data Recovery Procedures:
The database of patient encounters and user details is backed up regularly, excluding the attachment (images or uploaded files). Data Recovery involves a restore of the software instance as well as a database recovery.
The consultation PDF reports are available for 48 hrs

after creation for downloading by the relevant User.
After 48 hrs, the reports are automatically deleted.

8.3 CONSULTING & TRAINING SERVICES

- 8.3.1 Should the User at any time require consulting or training services other than Support Services pertaining to the Pathways Solution, it may submit to Stone Three in a request, detailing the nature of and scope of the consulting or training services required and stipulating a reasonable timeframe within which Stone Three is to submit a written proposal to the User as to the rendering of such consulting or training services.
- 8.3.2 Only on written approval from Mediclinic, may Stone Three proceed with any consulting or training services and the implementation thereof

9 Independent development

- 9.1 Nothing in this Agreement will impair Stone Three's right to develop, acquire, license, market, promote, or distribute products or technologies that perform the same or similar functions as, or otherwise compete with Mediclinic Applications or any other products or technologies that the User may develop, produce, market, or distribute.
- 9.2 Mediclinic will be able to develop Mediclinic Applications during the duration of this Agreement using the Pathways Software for its own use.

10 RELATIONSHIP OF PARTIES AND THIRD-PARTY BENEFICIARIES

- 10.1 This Agreement will not be construed as creating an agency, partnership, joint venture, fiduciary duty, or any other form of legal association between the User and Stone Three, and the User will not represent to the contrary, whether expressly, by implication, appearance, or otherwise.
- 10.2 This Agreement is not intended for the benefit of any third parties except Mediclinic.