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## **AGREED TERMS**

### **1 Interpretation**

The following definitions and rules of interpretation apply in these Terms.

#### **AMRA**

means the Access to Medical Reports Act 1988.

#### **AMRA Instruction**

has the meaning given to in clause 10.2 of these Terms.

#### **App**

means the Electronic Medical Report application, version EMR2018.1.

#### **Client**

means any individual, legal person or other entity who requests an Instruction.

#### **Commencement Date**

has the meaning given in clause 4.

#### **Contract**

means the contract between us and you for your use of the App, in accordance with these Terms.

#### **Controller, Consent, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate, technical and organisational measures**

as defined in the Data Protection Legislation.

#### **Data Protection Legislation**

means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party to the Contract relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

#### **Deliverables**

means each medical report or medical record (including any data contained in each medical report or medical record), submitted by you, your agents or employees through the App.

#### **Intellectual Property Rights**

patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

#### **Instruction**

means a new instruction to provide the Deliverables through the App, either received by you directly from a Client or as set out in an email from us to you following receipt of a new instruction by us from a Client from time to time.

#### **Patient**

means the individual to which the Patient Personal Data relates.

#### **Patient Personal Data**

means the Personal Data of a Patient provided in the Deliverables.

#### **Privacy Policy**

means the privacy policy of MediData Exchange Limited, as amended from time to time.

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## **Services**

means the service you connect to via the App and the content we provide to you through it.

## **Surgery Fee**

the charges payable to you in accordance with clause 10.2 of this Contract.

## **Terms**

means these terms and conditions, as amended from time to time.

## **UK Data Protection Legislation**

means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), as amended.

A reference to a statute or statutory provision is a reference to it as amended or re-enacted from time to time. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2 These terms**

- 2.1 These Terms apply to us making the App available to you and your use of the App, including but not limited to when providing the Deliverables.
- 2.2 Please read these Terms carefully before you use the App. These Terms tell you who we are, how we will provide the App to you, your obligations, how you and we may change or end the Contract, what to do if there is a problem and other important information.
- 2.3 These Terms constitute the entire agreement between us in relation to your use of the App. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of us which is not set out in these Terms and that you shall have no claim for innocent or negligent misrepresentation based on any statement in these Terms.

## **3 Information about us and how to contact us**

- 3.1 We are MediData Exchange Limited a company limited by shares registered in England and Wales. Our company registration number is 09481183 and our registered office is at Ty Derw, Lime Tree Court Mulberry Drive, Cardiff Gate Business Park, Pontprennau, Cardiff, Wales, CF23 8AB, United Kingdom. Our registered VAT number is 272368684.
- 3.2 **How to contact us.** You can contact us by telephoning us at +3333055774 or by sending us an email to [emr@medi2data.com](mailto:emr@medi2data.com)
- 3.3 **How we may contact you.** If we have to contact you we will do so by telephone or sending you an email to the email address or by writing to you at the postal address you most recently provided to us.

## **4 Our contract with you**

The Contract will come into existence between you and us upon you indicating your acceptance to the Terms by selecting the tick box below ("**Commencement Date**").

## **5 Providing the App**

- 5.1 We will make the App available to you as soon as you have accepted the Terms and, subject to these Terms, we will make the App available to you until the Contract ends in accordance with clause 8 of these Terms.
- 5.2 We reserve the right to amend the specification of the App if required by any applicable statutory or regulatory requirement or if the amendment will not materially affect the nature or quality of the App.

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We may update or require you to update the App, provided that the App shall always match the specification of it that we provided to you before you downloaded it.

5.3 We may have to suspend the App to:

5.3.1 deal with technical problems or make minor technical changes to the App;

5.3.2 update the App to reflect changes in relevant laws and regulatory requirements.

5.4 If the App is unavailable due to an event outside our control, then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. Provided we do this we will not be liable for delays caused by the event.

5.5 We are not obliged to continue to provide the App or the Services. We may withdraw access to and use of the App and the Services at any time by notice in writing to you without liability or fault on our part.

**6 Your obligations**

6.1 From the Commencement Date and for the duration of the Contract, you shall, complete any Instruction through the App in accordance with the terms of the Contract.

6.2 You shall meet any performance dates for completing the Instruction as specified in the Instruction and time is of the essence in relation to any of these performance dates.

6.3 It is your responsibility to ensure that:

6.3.1 you co-operate with us in all matters relating to the App;

6.3.2 you comply with all Instructions;

6.3.3 you complete any Instruction with all reasonable care, skill and diligence in accordance with best practice in your industry, profession or trade;

6.3.4 the Deliverables shall be fit for the purpose for which they are created;

6.3.5 you provide us with such information we may reasonably require in order to make the App available to you, and ensure that such information is complete and accurate in all material respects at all times;

6.3.6 you obtain and maintain all necessary licences, permissions and consents which may be required to use the App and to provide the Deliverables;

6.3.7 you shall comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply from time to time to the use of the App and to producing the Deliverables;

6.3.8 only personnel authorised by you have access to the App upon us making the App available to you pursuant to clause 5.1 of this Contract;

6.3.9 the Deliverables are a true and accurate reflection of the medical record of the Patient referred to in the Instruction at the date the Deliverables are provided by you;

6.3.10 the Deliverables do not contain reference to, or Personal Data of, any third parties to which the Instruction does not relate; and

6.3.11 you shall not do or omit to do anything which may cause us to lose any licence, authority, consent or permission on which we rely for the purpose of conducting our business.

6.4 If our ability to make the App available to you is prevented or delayed by any failure by you to fulfil any obligation listed in clause 6.3 (**Your Default**):

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- 6.4.1 in this unlikely event, we will be entitled to withdraw the availability of the App until you remedy Your Default; and
  - 6.4.2 we will not be responsible for any costs or losses you or others sustain or incur arising directly or indirectly from our failure to make the App available.

## 7 Data Protection

- 7.1 Both you and us will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 7, **Applicable Laws** means (for so long as and to the extent that they apply) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.
- 7.2 We will only use your Personal Data in accordance with our Privacy Policy which can be accessed [here](#).
- 7.3 Both you and we acknowledge that for the purposes of the Data Protection Legislation, you are the Controller and we are the Processor of any Patient Personal Data processed as a result of your use of the App and you providing the Deliverables.
- 7.4 Without prejudice to the generality of clause 7.1, you will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the Patient Personal Data to us and/or lawful collection of the Patient Personal Data by us or on your behalf for the duration of and for the purposes of this Contract.
- 7.5 Without prejudice to the generality of clause 7.1, we shall, in relation to any Patient Personal Data processed by us in connection with your use of the App and providing the Deliverables under this Contract:
  - 7.5.1 process that Patient Personal Data only on the documented instructions of you unless we are required by Applicable Laws to otherwise process such Patient Personal Data. Where we are relying on Applicable Laws as the basis for processing Patient Personal Data, we shall promptly notify you of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit us from notifying you;
  - 7.5.2 ensure we have in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Patient Personal Data and against accidental loss or destruction of, or damage to, Patient Personal Data appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - 7.5.3 ensure that all personnel who have access to and/or process Patient Personal Data are obliged to keep the Patient Personal Data confidential; and
  - 7.5.4 not transfer any Patient Personal Data outside of the European Economic Area unless we obtain your prior written consent and the following conditions are fulfilled:
    - (a) we or you have provided appropriate safeguards in relation to the transfer;
    - (b) the Data Subject has enforceable rights and effective legal remedies;
    - (c) we comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any Patient Personal Data that is transferred; and
    - (d) we comply with reasonable instructions notified to it in advance by you with respect to the processing of the Patient Personal Data;

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- 7.5.5 assist you, at your cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 7.5.6 notify you without undue delay on becoming aware of a Personal Data Breach;
  - 7.5.7 at your written direction, delete or return Patient Personal Data and copies thereof to you on termination of the Contract unless required by Applicable Law to store the Patient Personal Data; and
  - 7.5.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 7.
- 7.6 Without prejudice to the generality of clause 7.1 and subject always to this clause 7, we shall, in relation to any Patient Personal Data processed by us in connection with your use of the App and providing the Deliverables, process and retain that Patient Personal Data for as long as you instruct us to retain such Patient Personal Data, after which time we shall delete the Patient Personal Data unless:
- 7.6.1 required by Applicable Law to store the Patient Personal Data;
  - 7.6.2 or the Data Subject has given Consent for us to continue processing such Patient Personal Data for the purposes of this Contract or for such other purpose as we agree with the Patient.
- 7.7 You consent to us appointing a third-party processor of Personal Data under this Contract. We confirm that we have entered, or (as the case may be), will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 7 and in either case reflect and will continue to reflect the requirements of the Data Protection Legislation. As between us and you, we shall remain fully liable for all acts or omissions of any third-party processor appointed by us pursuant to this clause 7.6.
- 7.8 Subject to clause 7.6.2, you acknowledge that we are reliant on you for direction as to the extent we are entitled to use and process the Patient Personal Data processed as a result of your use of the App and you providing the Deliverables. Consequently, you shall indemnify us against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by us arising out of or in connection with the breach of the Data Protection Legislation by you, your employees or agents to the extent that such liabilities, costs, expenses, damages and losses arise as a result of the Deliverables or your use of the App.

## **8 Termination**

- 8.1 If you wish to end the Contract because we have told you about an upcoming change to the App or these Terms which you do not agree to, the Contract will end with immediate effect.
- 8.2 To end the Contract with us at any time on giving 14 days written notice, please let us know by emailing us at [emr@medi2data.com](mailto:emr@medi2data.com).
- 8.3 Without affecting any other right to remedy available to us, we may end the Contract at any time by notice in writing to you:
  - 8.3.1 if you commit a material breach of any term of this Contract and (if such breach is remediable) fail to remedy that breach within 14 days of you being notified in writing to do so; or
  - 8.3.2 because of Your Default;
  - 8.3.3 we suspend or cease carrying on all or a substantial part of our business;
  - 8.3.4 if we suffer an insolvency event including but not limited to us suspending payment of our debts or being unable to pay our debts as they fall due or are deemed unable to pay our debts within the meaning of section 123 of the Insolvency Act 1986; a petition is filed, a notice is given, a

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resolution is passed or an order is made, for or in connection with our winding up; or a receiver is appointed over all or any of our assets; or

8.3.5 if we wish to stop providing the Services and/or the App for any reason.

- 8.4 If we end the Contract pursuant to this clause 8, we will use our reasonable endeavours (wherever possible) to write to you to let you know that we are going to withdraw the availability of the App in advance of doing so but we accept no liability to you for failing to do so.
- 8.5 Notwithstanding the termination of this Contract in accordance with this clause 8, you agree to complete any Instruction sent by us to you prior to the date of termination of this Contract and such Instruction shall be completed in accordance with this Contract.
- 8.6 Termination of the Contract will not affect your or our rights and remedies that have accrued as at termination.
- 8.7 Any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination will remain in full force and effect.

## **9 Intellectual Property**

- 9.1 All Intellectual Property Rights in the App shall be owned by us.
- 9.2 We agree to grant you a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of this Contract to use the App. You may not sub-licence, assign or otherwise transfer the rights granted in this clause 9.2.
- 9.3 You agree to grant us a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by you to us for the term of this Contract for the purpose of providing the App to you.

## **10 Surgery Fees and payment**

- 10.1 We will provide the App to you free of charge.
- 10.2 Subject always to clause 10.5, where an Instruction is received pursuant to a request under AMRA (**AMRA Instruction**), a Surgery Fee will be payable to you for completing an AMRA Instruction through the App. The Surgery Fee payable to you shall be set out in the AMRA Instruction you receive and will be based on the time it takes for you to complete the AMRA Instruction. The Surgery Fee shall be the full and exclusive remuneration of you for completing an AMRA Instruction. For the avoidance of doubt, Surgery Fee will only be payable by us to you pursuant to this clause 10.2, in respect of AMRA Instructions we receive directly from a Client.
- 10.3 The Surgery Fee payable to you exclude amounts in respect of value added tax (**VAT**), which we shall pay at the prevailing rate (if applicable).
- 10.4 In consideration of the supply of the Deliverables by you, we shall pay the Surgery Fee due to you in accordance with clause 10.2 plus VAT (if applicable) for each AMRA Instruction completed by you, within 30 days' from the date we receive each Deliverable from you, to a bank account nominated in writing by you to us. For the avoidance of doubt, we shall not be obliged to pay the Surgery Fee until we have received notification from you of the bank account to which the Surgery Fee shall be paid.
- 10.5 The Surgery Fee payable to you are subject to, and conditional on, payment to us from the Client who requested the AMRA Instruction.
- 10.6 You and we agree that the App shall maintain complete and accurate records of the Instructions completed by you.

## **11 Limitation of liability**

- 11.1 Nothing in these terms shall limit or exclude yours and our liability for:
- 11.1.1 death or personal injury caused by our negligence;
- 11.1.2 fraud or fraudulent misrepresentation; or

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11.1.3 any matter in respect of which it would be unlawful for us to exclude or restrict liability.

11.2 Subject to clause 11.1:

11.2.1 we shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise arising under or in connection with the Contract or any other contract between us for:

- (a) loss of profit;
- (b) loss of agreements or contracts;
- (c) loss of use or corruption of software, data or information; and
- (d) any indirect or consequential loss.

11.2.2 our total liability to you for all other losses arising under or in connection with this Contract and any other contract between us, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to £1,000,000.

11.3 This clause 11 will survive termination of the Contract.

## **12 Indemnity**

12.1 You shall indemnify us against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by us arising out of or in connection with:

12.1.1 your breach or negligent performance or non-performance of this Contract;

12.1.2 any claim made against us by a third party arising out of, or in connection with, your use of the App and the Deliverables.

12.2 This clause 12 shall survive termination of the Contract.

## **13 Confidentiality**

13.1 You undertake that you will not at any time, disclose to any person any confidential information concerning our business, affairs, customers, Clients or supplier, except as permitted by clause 13.2.

13.2 You may disclose the confidential information:

13.2.1 to such of your employees, officers and representatives who need to know such information for the purpose of carrying out your respective obligations under the Contract or to use the App. You will ensure that such employees, officers and representatives comply with this clause 13;

13.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3 You may only use the confidential information for the purpose of using the App and for fulfilling your respective obligations under the Contract.

## **14 Communication between us**

14.1 When we use the words "writing" or "written" in these terms, this includes emails.

14.2 Any notice or other communication given by one of us to the other under or in connection with the Contract must be in writing and sent by pre-paid first-class post or other next working day delivery service, or by email.

14.3 A notice or other communication is deemed to have been received:

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14.3.1 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting; or

14.3.2 if sent by email, at 9.00 am the next working day after transmission.

14.4 In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email, that such email was sent to the specified email address of the addressee last notified to us by you.

## **15 Other important terms**

15.1 Neither of you or us shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for one month, you or us (as the non-affected party) may terminate the Contract by giving 14 days' written notice to the other.

15.2 We may transfer our rights and obligations under these terms to another organisation. We will always tell you in writing if this happens and we will ensure that the transfer will not affect your rights under the Contract.

15.3 You may only transfer your rights or your obligations under these terms to another person if we agree to this in writing.

15.4 We shall be entitled to alter the provisions of this Contract from time to time by giving you 30 days' notice in writing of such change to this Contract.

15.5 This Contract is between you and us. This Contract does not give rise to any rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

15.6 Each of the paragraphs of the Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.

15.7 If we do not insist immediately that you do anything you are required to do under the Terms, or if we delay in taking steps against you in respect of your breaching this Contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.

15.8 Any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.