
AGREED TERMS

1 Interpretation

2 These terms

- 2.1 These Terms apply to us making the App available to you and your use of the App.
- 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.

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.
- 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

- 4.1 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**").
- 4.2 With effect from the Commencement Date, you engage us to provide the Services on the terms and conditions of this Contract and we agree to provide the Services to you on the terms and conditions of this Contract and we shall procure the Deliverables from the GP Surgery who has agreed to provide Deliverables following a Request by you.

5 Our obligations

- 5.1 We will make the App available to you to use and submit Requests through 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. We may update or require you to update the App, provided that the App shall always match the specification that we provided to you before it was made available to you.
- 5.3 We may have to suspend the App or the eMR to:
 - 5.3.1 deal with technical problems or make minor technical changes to the App or the eMR; and
 - 5.3.2 update the App or the eMR to reflect changes in relevant laws and regulatory requirements.
- 5.4 If the App or the eMR 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 giving a minimum of thirty (30) days' notice in writing to you without liability or fault on our part.
- 5.6 You acknowledge that we are not required to procure Deliverables from the GP Surgery in the event the GP Surgery is not a user of the eMR and has not agreed to have access to or provide Deliverables through the eMR.
- 5.7 Time shall not be of the essence for performance of the Services. We shall use our reasonable endeavours to meet estimated dates for performance, but any such dates are approximates only.

6 Your rights and obligations

- 6.1 Subject to payment of the Transaction Fees, you shall be permitted to make a Request through the App from the Commencement Date, in accordance with the terms of the Contract.
- 6.2 It is your responsibility to ensure that:
 - 6.2.1 you procure from the Patient, and upload to the App, the Patient Consent;
 - 6.2.2 you co-operate with us in all matters relating to the App and provide to us all information we reasonably require to make the App available to you and you will ensure such information is complete and accurate in all material respects at all times;
 - 6.2.3 you obtain and maintain all necessary licences, permissions and consents which may be required to use the App;
 - 6.2.4 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
 - 6.2.5 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.
- 6.3 Save with our prior written consent, you shall not communicate directly with any GP Surgery in respect of a Request and you shall ensure that all communication with such GP Surgeries shall be through us.
- 6.4 In consideration of your payment of the Development Fee, and subject to our ability to develop your requested specifications we will create a Bespoke App for the purposes of us providing the Services to you. We are not obliged to create a Bespoke App and we will have no liability for any failure to develop, create or provide you with the Bespoke App.
- 6.5 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 6.2 (**Your Default**):
 - 6.5.1 we will be entitled to withdraw the availability of the App until you remedy Your Default; and
 - 6.5.2 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 any Request you submit through the App.
- 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 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;

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- 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 Patient Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Patient 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;
- 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;
- 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 clause 7.5.7 and subject always to 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 that Patient Personal Data for a period of six (6) months, or such other period of time as instructed by you, from the date the Patient Personal Data is first processed by us, after which time we shall delete the Patient Personal Data unless:
- 7.6.1 required by Applicable Law to store the Patient Personal Data; or
 - 7.6.2 the Data Subject has given Consent for us to continue processing such Patient Personal Data.
- 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 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 submitting a Request through the App. 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 any Requests submitted by you or our delivery of the Services to you in accordance with this Contract or any breach of the Data Protection Legislation by you, your employees or agents.

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- 7.9 Notwithstanding clause 7.4 and 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 purposes of using the Patient Personal Data to compile aggregated data for the purposes of generating outcomes and producing statistical data (**Permitted Purpose**), based on the contents of the Patient Personal Data (**Shared Personal Data**).
- 7.10 Each of you and us shall be a Controller of the Shared Personal Data. If the parties share the Shared Personal Data, it shall be shared and managed in accordance with this clause 7.
- 7.11 You shall ensure that at all times all Shared Personal Data transferred to us is accurate and up-to-date and has at all times been collected, processed and transferred by you in accordance with the Data Protection Legislation and that each Patient has been provided with sufficient information so as to enable fair, transparent and lawful processing (including sharing) of the Shared Personal Data for the Permitted Purpose in accordance with the obligations of each party under the Data Protection Legislation. You shall keep copies of all notices, Consents or other records and information necessary to demonstrate its compliance with this clause 7.
- 7.12 You shall immediately notify us if you become aware of any change or circumstance which will, may or is alleged to impact the lawfulness of any processing of the Shared Personal Data by us (including if the Patient withdraws any necessary Consent or requests their Shared Personal Data is no longer processed or is erased or if any of the Shared Personal Data is not accurate or up-to-date), together with full details of the circumstances.
- 7.13 You shall indemnify and keep indemnified us against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Patients, demands and legal or other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a data protection supervisory authority) arising out of or in connection with any breach by you of your obligations under clauses 7.9 to 7.12 (inclusive) of these Terms.
- 7.14 The provisions of this clause 7 shall survive termination or expiry of the Contract.

8 Termination

- 8.1 Without affecting any other right to remedy available to us, we may end the Contract at any time by notice in writing to you:
- 8.1.1 if you fail to pay any amount due under this Contract on the due date for payment and remain in default for not less than thirty (30) days' after being notified in writing to make such payment; or
- 8.1.2 because of Your Default.
- 8.2 Without affecting any other right or remedy available to either party, either party may end the Contract at any time by notice in writing to the other party if:
- 8.2.1 the other party commits a material breach of any term of this Contract and (if such breach is remediable) fail to remedy that breach within fourteen (14) days of you being notified in writing to do so; or
- 8.2.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986; or
- 8.2.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- 8.2.4 a petition is filed, a notice if given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party;
- 8.2.5 an application is made to court, an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party;
- 8.2.6 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

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- 8.2.7 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- 8.2.8 a creditor or encumbrancers of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days;
- 8.2.9 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of our business; or
- 8.2.10 if we wish to stop providing the Services and/or the App for any reason.
- 8.3 Without affecting any other right or remedy available to it, either party may terminate this Contract on giving not less than ninety (90) days' written notice to the other party.
- 8.4 If we end the Contract pursuant to this clause 8, we will use our reasonable endeavours (wherever possible) to write to you or to email 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 Termination of the Contract will not affect your or our rights and remedies that have accrued as at termination.
- 8.6 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.
- 8.7 On termination of this Contract, you shall immediately pay to us all of our outstanding invoices and, where no invoice has been submitted in respect of Transaction Fees for Services supplied, we may submit an invoice which will be payable in accordance with clause 10.3.

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, worldwide, non-exclusive, royalty-free 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.
- 9.4 You shall not take or authorise any action whereby the Intellectual Property arising from the App might be jeopardised or invalidated and immediately inform us of any actual or threatened infringement of the Intellectual Property owned by us, of which you become aware.

10 Charges and payment

- 10.1 In consideration of us providing to you the Services, you shall pay the Transaction Fee payable for each Request you submit through the App. We will invoice you in arrears on a bi-weekly basis for the Transaction Fee payable for each Request made in the preceding fortnight.
- 10.2 Notwithstanding clause 10.1, you shall pay to us the Surgery Fees payable to a GP Surgery for each Request you submit through the App. We will invoice you in arrears on a bi-weekly basis for the Surgery Fees payable for each Request made in the preceding fortnight.
- 10.3 Notwithstanding clause 10.1, if we create a Bespoke App for you, a Development Fee will be payable by you in advance of us commencing any development for the purposes of creating the Bespoke App. The Development Fee will be payable by you within 7 days of the date of our invoice.
- 10.4 You shall pay each invoice submitted by us pursuant to clause 10.1 and 10.2 within seven (7) days after the date of the invoice in full and cleared funds to the bank account nominated in writing by us to you.
- 10.5 You must pay all amounts due to us under this Contract in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding as required by law).
- 10.6 If you do not make payment of the Transaction Fees or the Surgery Fees on the due date, we may charge interest to you on the overdue amount at the rate of 4% a year above the base lending rate of the Bank of

England from time to time and without limiting or affecting any other right or remedy available to us, we shall have the right to suspend the Services and your access to the App until you make payment of the overdue amount. The interest shall accrue on a daily basis from the due date until the actual payment of the overdue amount, whether before or after judgement. You must pay us interest together with any overdue amount.

- 10.7 We shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our suspension of the Services in accordance with clause 10.5.
- 10.8 We reserve the right to review the Transaction Fees during the term of this Contract. We shall give you not less than thirty (30) days' written notice of any proposed changes to the Transaction Fee. If you object to a proposed adjustment to the Transaction Fee, you may terminate the Contract in accordance with the terms of this Contract.
- 10.9 All amounts payable by you to us under this Contract shall become immediately due and payable on termination of this Contract for any reason.

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
 - 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; and
 - 12.1.2 any claim made against us by any third party arising out of, or in connection with, your use of the App and any Request made by you.
- 12.2 This clause 12 shall survive termination of the Contract.

13 Confidentiality

- 13.1 You undertake that you will not during the term of this Contract and for a period of 5 years from termination of this Contract, 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 such confidential information:

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- 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 and you undertake to ensure that such employees, officers and representatives comply with this clause 13; or
 - 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:
- 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 fourteen (14) days' written notice to the other.
- 15.2 We may transfer our rights and obligations under this Contract 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 this Contract 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 thirty (30) days' notice in writing of such change of 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 Contract, 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 This Contract constitutes the entire agreement between us and you and supersedes and extinguishes all previous agreements, promises, warranties, representations and understandings between the, whether written or oral relating to its subject matter. Each of you and us agree that we shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each of you and us agree that we shall have no claim for innocent or negligent misrepresentation based on any statement in this Contract.
- 15.9 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.