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## **AGREED TERMS**

### **1 Interpretation**

1.1 The following definitions apply in this Contract:

#### **Confidential Information**

means all information of a confidential nature disclosed in whatever form by us to you directly or indirectly and includes:

- (a) any know-how, commercial, financial or technical information of any kind;
- (b) information relating to the Services or the eMR;
- (c) all information produced or developed in the performance of this Contract or all information marked as confidential; and
- (d) any information you know, or you could reasonably be expected to know, is confidential.

#### **Consent**

means the consent given by the Patient for us to provide the Medical Record to you.

#### **Contract**

means the agreement between you and us for the supply of the Services, incorporating these Terms.

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

have the meaning given to them in the Data Protection Legislation.

#### **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) (**GDPR**); 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 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.

#### **eMR**

means the electronic medical reporting system the GP Surgery uses to submit the Medical Record through.

#### **Further Access Period**

has the meaning given to it in clause 5.2.

#### **GP Surgery**

means a GP Surgery who provides the Medical Record following a Request.

#### **Initial Access Period**

has the meaning given to it in clause 5.2.

#### **Main Agreement**

means the agreement between us and the GP Surgery relating to the processing of the Medical Record.

#### **Medical Record**

means the medical record relating to the Patient submitted by the GP Surgery through the eMR following a Request and supplied by us to you through the URL following receipt of the Consent.

#### **Patient**

means the individual that the Medical Record relates to.

#### **Privacy Policy**

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

#### **Protected Data**

means Personal Data received by you in connection with the performance of our obligations under the Contract.

#### **Request**

means a new request by the Patient or such other third party who is authorised by the Patient to make a request for the Medical Record of the Patient.

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**Secure Access Portal**

means the secure access portal you will be provided access to through the URL to view the Medical Record.

**Services**

means us providing the Medical Record to you through the URL.

**SMS Token**

means the SMS token code requested by you following receipt of the URL in order to access the Services.

**Terms**

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

**URL**

means the secure URL we send to you to access the Medical Record.

1.2 In these Terms, unless the context requires otherwise:

- 1.2.1 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.
- 1.2.2 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.
- 1.2.3 Any clause, schedule or other headings in these Terms is included for convenience only and shall have no effect on the interpretation of the Terms.
- 1.2.4 A reference to a 'party' includes that party's personal representatives, successors and permitted assigns.
- 1.2.5 A reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.2.6 A reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.2.7 A reference to a gender includes each other gender.
- 1.2.8 Words in the singular include the plural and vice versa.

**2 These Terms****3 Information about us and how to contact us**

- 3.1 'We', 'us' or 'our' means 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 'You' or 'your' means the person or company receiving the Services from us.
- 3.3 **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).
- 3.4 **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 most recently provided to us for you.

**4 Our Contract with you****5 Our obligations**

- 5.1 Without prejudice to the remaining provisions of this clause 5, we will not provide the Services to you until such time as we have received Consent to do so and we will cease to provide the Services to you should the Patient withdraw their Consent at any time.

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- 5.2 Upon receiving Consent, we will make the URL available to you to access the Services. Your access to the URL and Secure Access Portal will remain valid for a period of thirty (30) days from the date you are granted access to the URL and Secure Access Portal (“**Initial Access Period**”) after which time your access will be withdrawn. Your access can only be extended beyond the Initial Access Period for a further period of thirty (30) days (“**Further Access Period**”) if we receive consent from the Patient to grant you access for a Further Access Period.
- 5.3 In order to access the Services, you must request an SMS Token through the URL we send to you. If you do not request an SMS Token, you will not be able to access the Services and we will not have any responsibility or liability to you for failing to provide the Services.
- 5.4 We may have to suspend availability of the Secure Access Portal to:
- 5.4.1 deal with technical problems or make minor technical changes;
  - 5.4.2 update the Secure Access Portal to reflect changes in relevant laws and regulatory requirements.
- 5.5 Time shall not be of the essence for performance of the Services.
- 5.6 When we supply the Services to you:
- 5.6.1 we will use all reasonable efforts to ensure they are free from defects, viruses and other malicious content; and
  - 5.6.2 we do not promise that they are compatible with any third-party software or equipment.

## **6 Your rights and obligations**

- 6.1 It is your responsibility to ensure that:
- 6.1.1 you co-operate with us in all matters relating to the Services and provide to us all information we reasonably require to make the Services available to you, and you will ensure such information is complete and accurate in all material respects at all times;
  - 6.1.2 you obtain and maintain all necessary licences, permissions and consents which may be required to use the Services;
  - 6.1.3 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 Services;
  - 6.1.4 you keep the access to the URL and SMS Token you receive secure and confidential and do not share this with any third party and if you know or suspect that anyone other than you knows how to access the URL or SMS Token provided to you, you must promptly notify us at [emr@medi2data.com](mailto:emr@medi2data.com); and
  - 6.1.5 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.
- 6.2 Subject to clause 7, should you share the Medical Record with any third party, whether through the Secure Access Portal or in any other format, you do so at your own discretion and at your own risk. We will have no responsibility or liability to you for you making the Medical Record available to such third parties.
- 6.3 If our ability to make the Services available to you is prevented or delayed by any failure by you to fulfil any obligation listed in clause 6.1 (**Your Default**):
- 6.3.1 we will be entitled to withdraw the availability of the URL unless and until you remedy Your Default; and
  - 6.3.2 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 URL 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.

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- 7.2 Your privacy and Personal Data is important to us. Any Personal Data that you provide to us will be dealt with in accordance with our Privacy Policy which can be accessed [here](#). Our Privacy Policy explains what Personal Data we collect from you, how and why we collect, store, use and share such information, your rights in relation to your Personal Data and how to contact us and supervisory authorities in the event you have a query about the use of your Personal Data.
- 7.3 To the extent that you will be processing the Patient's Personal Data as a Controller you shall inform the individual, in accordance with the Data Protection Legislation, of the purposes for which you will process their Personal Data, the legal basis for such purposes and such other information as is required by Article 14 of the GDPR including, if their Personal Data will be transferred to a third party, that fact and sufficient information about such transfer and the purpose of such transfer to enable the Data Subject to understand the purpose and risks of such transfer.
- 7.4 You shall indemnify and keep indemnified us against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, 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 supervisory authority) arising out of or in connection with any breach by you of your obligations under this clause 7.

## **8 Intellectual Property Rights**

- 8.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by us.
- 8.2 We grant to you, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to use the URL and the Secure Access Platform for the purposes of receiving and using the Services.

## **9 Termination**

- 9.1 Without affecting any other right or remedy available to us, we may end this Contract at any time by notice in writing to you because of Your Default and we reserve the right to withdraw access to the URL and the Services upon termination of this Contract.
- 9.2 Without affecting any other right or remedy available to us, we may end this Contract at any time by notice in writing to you:
- 9.2.1 if you commit a material breach of any term of this Contract and (if such breach is remediable) fail to remedy that breach within fourteen (14) days of you being notified in writing to do so; or
  - 9.2.2 if we or you 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 if given, a 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
  - 9.2.3 if the Patient withdraws the Consent at any time; or
  - 9.2.4 if the GP Surgery suspends or ceases to carry on all or a substantial part of its business; or
  - 9.2.5 the Main Agreement terminates for any reason.
- 9.3 Without affecting any other right or remedy available to us, we may terminate this agreement on giving not less than thirty (30) days' written notice to you.
- 9.4 If we end this Contract pursuant to this clause 9, we will use our reasonable endeavours (wherever possible) to write to you or email you to let you know that we are going to withdraw the availability of the URL and Secure Access Portal and cease providing the Services in advance of doing so but we accept no liability to you for failing to do so.
- 9.5 Termination of the Contract will not affect your or our rights and remedies that have accrued as at termination.
- 9.6 Any provision of the 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.

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## **10 Confidentiality**

- 10.1 You shall keep confidential all Confidential Information and shall only use the same as required to perform the Contract and receive the Services. The provisions of this clause shall not apply to:
- 10.1.1 any information which was in the public domain at the date of the Contract;
  - 10.1.2 any information which comes into the public domain subsequently other than as a consequence of breach of the Contract or any related agreement;
  - 10.1.3 any information which is independently developed by you without using information supplied by us;
  - 10.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract,
- except that the provisions of clause 10.1.1 to 10.1.3 shall not apply to information to which clause 10.3 relates.
- 10.2 This clause shall remain in force for a period of five years from the date of the Contract and, if longer, three years after termination of the Contract.
- 10.3 To the extent any Confidential Information is Protected Data such Confidential Information may be disclosed or used only to the extent such disclosure or use does not conflict with any of the provisions of clause 7.

## **11 Charges**

Subject always to clause 14.4, we will provide the Services to you free of charge.

## **12 Limitation of liability**

- 12.1 Nothing in these terms shall limit or exclude either party's liability for:
- 12.1.1 death or personal injury caused by our negligence;
  - 12.1.2 fraud or fraudulent misrepresentation; or
  - 12.1.3 any matter in respect of which it would be unlawful to exclude or restrict liability.
- 12.2 Subject to clause 12.1, we shall not be liable to you for:
- 12.2.1 consequential, indirect or special losses; or
  - 12.2.2 any of the following (whether direct or indirect):
    - (a) loss of profit;
    - (b) loss or corruption of data;
    - (c) loss of use;
    - (d) loss of production;
    - (e) loss of contract;
    - (f) loss of opportunity;
    - (g) loss of savings, discount or rebate (whether actual or anticipated);
    - (h) harm to reputation or loss of goodwill.
- 12.3 Subject to clause 12.1:
- 12.3.1 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 this Contract or any other contract between us for losses that:
    - (a) were not foreseeable to you and us when the contract was formed; or

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(b) were not caused by any breach on our part.

- 12.4 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 £50,000.
- 12.5 You shall indemnify and keep indemnified, us from and against damages, liability, costs (including legal fees) and expenses incurred by us as a result of or in connection with your breach of any of your obligations under the Contract.
- 12.6 This clause 12 will survive termination of the Contract.

### **13 Communication between us**

- 13.1 When we use the words "writing" or "written" in these terms, this includes emails.
- 13.2 Any notice or other communication given by one of us to the other under or in connection with the Terms must be in writing and sent by pre-paid first-class post or other next working day delivery service, or by email.
- 13.3 A notice or other communication is deemed to have been received:
- 13.3.1 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
- 13.3.2 if sent by email, at 9.00 am the next working day after transmission.
- 13.4 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.

### **14 Other important terms**

- 14.1 Neither of you or us shall be in breach of this 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 affected party) may terminate the Contract by giving fourteen (14) days' written notice to the other.
- 14.2 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 Terms.
- 14.3 You may only transfer your rights or your obligations under these Terms to another person if we agree to this in writing.
- 14.4 We shall be entitled to alter the provisions of these Terms from time to time by giving you thirty (30) days' notice in writing of such change to these Terms. No variation of these Terms or the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of MediData Exchange Limited.
- 14.5 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.
- 14.6 If any provision of the Contract (or part provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.
- 14.7 No failure, delay or omission by us in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any right, power or remedy.
- 14.8 No single or partial exercise of any right, power or remedy provided by law or under the Contract by us shall prevent any future exercise of it or the exercise of any other right, power or remedy by us.
- 14.9 This Contract constitutes the entire agreement between us and you and supersedes and extinguishes all previous agreements, promises, warranties, representations and understandings between us and you, whether written or oral relating to its subject matter. Each of you and us agree that we shall have no

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remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms. Each of you and us agree that we shall have no claim for innocent or negligent misrepresentation based on any statement in these Terms.

- 14.10 Any dispute or claim arising out of or in connection with the Contract or their 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.