

GENERAL TERMS AND CONDITIONS OF MEDVIEW FOR HEALTH PROFESSIONALS

1. AGREEMENT

This Agreement is between the Healthcare Provider who is registering for MedView ('You' or 'Your') and FRED IT Group Pty Ltd ABN 68 109 546 901 of 20 Trenerry Crescent, Abbotsford VIC 3067 (**we, our or us**). You and We are each a 'Party' and collectively the 'Parties'.

1.1. These General Terms and Conditions (**Agreement**) govern the supply of MedView by us to you and your rights to access, use and exploit MedView. These terms and conditions operate so that each obligation of yours also operates as an obligation on you to procure that all Personnel of yours (including all Healthcare Providers engaged by you or otherwise associated with you) also comply with your obligations as if they were Parties to this Agreement and these obligations bound them as such.

1.2. MedView is an online system for making Health Information about a Patient available to you (including your personnel that you authorise to access MedView) for the purposes of providing healthcare to that Patient. We collect the Patient's Health Information from eRx, various Healthcare Providers and where applicable the Patient's My Health Record. In order to access such data bases the Patient must first agree to their Health Information being made available to all Healthcare Providers who are users of MedView. You agree that you will procure the necessary consent from a Patient in a manner consistent with Privacy Law prior to accessing MedView on behalf of that Patient. You must also obtain from the Patient their express consent to allow their Healthcare Providers to create medication reconciliations and information pertaining to medication management services in relation to their Health Information and to them adding such further Health Information concerning them to the MedView system as their Healthcare Provider considers appropriate.

1.3. The Health Information that you and your Personnel including all Healthcare Providers associated with you access via MedView comes from records held on computer systems elsewhere and from Healthcare Providers. In addition to the limitations of liability contained in clauses 7.3 to and including 7.6, and without in any way limiting the operation of those clauses, you

acknowledge and agree that we do not warrant the accuracy of such Health Information and shall have no liability for any loss, damage or injury that any person (including you) may suffer as a result of reliance on such Healthcare Information and you indemnify us as a continuing indemnity and hold us harmless against any loss, damage or costs that we may suffer, pay or incur as a result of any person (including you) bringing any claim against us arising out of or relating to such reliance.

1.4. Commencing on the Commencement Date and continuing for a minimum period of 12 months, we grant you a non-transferrable, non-exclusive, non-sublicensable licence to exploit the Software for the monthly Licence Fee and on the terms of this Agreement.

1.5. You are entitled to authorise (in a manner that is consistent with the terms of this Agreement) your Personnel including any Healthcare Providers associated with you (collectively your **authorised users**) to access, use and exploit MedView for purposes directly related to the healthcare of Patients. You acknowledge and agree that you and your authorised users may not use MedView to access the Health Information of Patients who are not currently at the time of such access under your care or the care of your Personnel.

1.6. Without limiting clause 8.1, should we suspect that the Software is being used in breach of the limitations contained in this Agreement by you or any of your authorised users, we may immediately terminate this Agreement and the licence created by it without further notice.

1.7. MedView is provided as a web portal and is therefore available for use on any device running an appropriate operating system. You acknowledge that MedView is provided over the internet and mobile phone networks and accordingly the quality, speed, availability and reliability of MedView may be affected by factors outside our control.

1.8. You acknowledge that the terms and conditions of use of your mobile network provider continue to apply to you in relation to your use of MedView and that this may involve the incurring of fees and charges by or with your mobile network provider.

1.9. We are not required to provide Updates or New Releases pursuant to this Agreement. If we do provide you with any Updates or New Releases then they will form part of the Software and be subject to the terms and conditions of this Agreement as varied.

1.10. Except as expressly permitted by sections 47B(3), 47C, 47D, 47E or 47F of the *Copyright Act 1968* (Cth), you and your Personnel (including any Healthcare Providers associated with you) must not:

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- 1.10.1. decompile, delete, reverse engineer, modify, copy, reproduce, disassemble, adapt, translate, or create any derivative works of the Software, or any Intellectual Property Rights, products, or services obtained from us in respect of the Software; or
- 1.10.2. disseminate, distribute, transmit, display, perform, publish, directly or indirectly sell, transfer, offer for sale, licence, assign, rent, timeshare or sublicense any part of the Software or any copies of the Software.

2. VARIATION AND SUSPENSION

- 2.1. We may temporarily suspend your right (and those of any or all of your authorised users) to use MedView if we are of the opinion, acting reasonably, that your access, use and exploitation (including the acts and omissions of your authorised users) of MedView will cause loss or damage to us or another person however that loss or damage may arise.
- 2.2. At the end of this Agreement:
- 2.2.1. the licence created pursuant to this Agreement including all rights held by you and your authorised users to access and otherwise use and exploit MedView will cease and you must cease, and must ensure that each of your authorised users ceases, to access, use and exploit MedView and any material and Intellectual Property Rights relating to MedView;
- 2.2.2. clauses 5 (Intellectual Property), 6 (Privacy), 7 (Warranties and Liability), and 2.2 (effect of termination) continue to apply; and
- 2.2.3. accrued rights or remedies of either Party are not affected.
- 2.3. You must not assign, dispose of, or otherwise deal with (including encumber), this Agreement without our prior written consent, which in the case of an assignment we will not unreasonably withhold if the assignor is a relevant health service as defined by the *Health Services Act 1988* (Vic).

3. ADDITIONAL MATTERS RELATING TO THE USE OF MEDVIEW

- 3.1. In relation to your use, and the use by each of your authorised users, of MedView, you must not, and must ensure that each of your authorised users does not, direct any Patient's Personal Information to any third party in a manner not permitted by the Privacy Laws that must be observed by you.
- 3.2. Nothing in this Agreement or your access, use and exploitation (or the use of your authorised users) of MedView prevents or relieves you or any of your authorised users from complying with, or in any way limits or prejudicially affects, any legal and ethical responsibilities that must be observed by you and your authorised users and you agree that you will, and you will ensure that each of your authorised users, comply with any such legal and ethical responsibilities.

4. ADDITIONAL OBLIGATIONS ON YOU

- 4.1. You are responsible for acquiring and installing and maintaining any telephone, internet, electronic, email facilities and any other hardware and software systems that we consider necessary for you and your authorised users to access, use and exploit MedView.
- 4.2. You must use your best endeavours to ensure that MedView is protected at all times from unauthorised access, use and exploitation and from physical misuse, damage or destruction by any person.
- 4.3. You must establish a registration procedure for issuing your Personnel (including all Healthcare Providers associated with you) with a unique user ID for connection to MedView, and we may at any time revoke such user ID without being obliged to provide a replacement if we believe that the security of that user ID has, or may have been, compromised, or that you or an authorised user has failed to use responsible security practices in respect of MedView.
- 4.4. You must immediately inform us if you suspect that the security of a user ID or password has, or may have been, compromised, if you suspect that there has been unauthorised access to MedView or if an authorised user of yours has failed to use responsible security practices in respect of MedView.
- 4.5. You must not, and must ensure that your authorised users do not, disclose their user ID to any other person (including by training and regularly reminding your authorised users not to make such disclosures).
- 4.6. Your rights pursuant to this Agreement are personal and accordingly you cannot assign or purport to assign or otherwise encumber your rights (which includes granting a security interest to another as that expression is understood in the *Personal Property Securities Act 2009* (Cth) pursuant to this Agreement without first obtaining our written consent which consent we may choose to withhold.

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5. INTELLECTUAL PROPERTY

- 5.1. You acknowledge and agree that:
- 5.1.1. as between the Parties, and without regard to the ownership rights of third parties, our right, title, and interest in and to the software, trademarks and any other Intellectual Property Rights that comprise MedView and the branding associated with MedView (including any goodwill or other benefits accruing from your use of the above software, trademarks and other Intellectual Property Rights), shall inure to our benefit; and
 - 5.1.2. we own the Software, trademarks and other Intellectual Property Rights that comprise MedView and the branding associated with MedView.
- 5.2. You must not take any action, or cause any third party to take any action, challenging, contesting or in any way impairing the rights, title, interest and ownership rights set out in clause 5.1.
- 5.3. You must ensure that all copyright notices and other indications of ownership that appear in relation to MedView are not deleted or obscured by you or any Authorised User.
- 5.4. You must do all things reasonably requested by us to give effect to clause 5.1.
- 5.5. You acknowledge and agree that you will not have any rights in MedView, except those limited rights expressly granted by us in this Agreement; and that all licenses, rights, and interests not specifically granted to you will be, and are specifically and entirely, reserved by us, and may be fully exploited by us without regard to the extent to which such rights may be competitive with this Agreement or the rights granted to you under this Agreement.
- 5.6. Without limiting the generality of clause 5.5, we reserve the right to make modifications and upgrades to MedView from time to time. You are under no obligation to implement a modification or upgrade that is made to the MedView and if a modification or upgrade results in the MedView becoming unworkable for you, you may immediately terminate this Agreement by providing us with written notice.

- 5.7. You must promptly notify us of any claim that MedView or any associated trademarks infringe the IPR of any person.

6. PRIVACY

- 6.1. Each Party must, in carrying out this Agreement, comply, and as far as practicable must ensure that its Personnel comply, with the provisions of any applicable Privacy Law.
- 6.2. Each Party must promptly (within 1 business day) notify the other Party if it becomes aware of a breach or possible breach of clause 6.1.
- 6.3. Each Party must:
- 6.3.1. to the extent that any Personal Information is disclosed to the other Party, ensure that that Party is entitled to receive, use, and disclose that Personal Information in accordance with this Agreement and the Privacy Law and so as to enable that Party to perform its obligations under this Agreement; and
 - 6.3.2. not do anything, and must ensure that its Personnel do not do anything, that would cause that Party or its employees, officers, contractors or agents to be in breach of a Privacy Law.
- 6.4. Each Party must, with respect to Personal Information that it receives from the other Party in connection with this Agreement:
- 6.4.1. protect the confidentiality of that Personal Information; comply with all applicable Privacy Laws; and
 - 6.4.2. implement policies and procedures to protect the privacy and security of that Personal Information.
- 6.5. Each Party must ensure that each of its Personnel who will or may have access to any Personal Information in connection with this Agreement is (before being given access to the Personal Information) briefed on or otherwise made aware of the restrictions on the use and disclosure of Personal Information imposed by applicable Privacy Law and by its obligations under this Agreement.
- 6.6. Each Party must promptly comply with any reasonable direction given by the other Party regarding Personal Information and any guidelines, directions or policies issued by a Governmental Agency.
- 6.7. Neither Party will unlawfully disclose any Personal Information relating to Patients.

7. WARRANTIES AND LIABILITY

- 7.1. Each Party warrants that it has full right, power and

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authority to enter into this Agreement and has full corporate power and authority to perform its obligations hereunder, and its execution and performance of this Agreement will not conflict with or violate any provision of its incorporation, by-laws, constitution or other organisational or governance documents or conflict with or violate any law applicable to it or any of its assets or business.

7.2. We do not warrant or represent that MedView will:

7.2.1. operate uninterrupted, or can be accessed and used by you or the authorised users associated with you at all times without interruption;

7.2.2. the Software will be, or is, compatible with any software, hardware or service utilised by you, or your business;

7.2.3. that any data transmissions between you and us will be secure and that any data you send us shall at all times remain secure or

7.2.4. be free from defects or errors.

7.3. Subject to clauses 7.4 to and including 7.6, to the full extent permitted by law all express and implied warranties and conditions (whether by statute, common law, equity, trade, custom, usage or otherwise) that in any way relate to the Software and the provision of any goods and/or services provided by us pursuant to this Agreement are expressly excluded.

7.4. If the goods or services supplied by us are other than of a kind ordinarily acquired for personal, domestic or household use or consumption and if we are liable for a failure to comply with a guarantee contained in Division 1 of Part 3-2 of the Australian Consumer Law (**ACL**), other than a guarantee under sections 51, 52 or 53 of the ACL, then our liability for such failure will, to the extent permitted by law, be limited to one of the following at our election:

7.4.1. in the case of goods: the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods;

or the payment of having the goods repaired.

7.4.2. in the case of services: the supplying of the services again; or the payment of the cost of having the services supplied again.

7.5. For the avoidance of any doubt, no provision of these terms and conditions shall have effect as, or be taken to be, a term referred to in section 276A(4) of the ACL imposing on us a liability greater than that mentioned in section 276A(1) of the ACL in circumstances where section 276A(1) of the ACL operates to limit our liability under section 274 of the ACL.

7.6. You acknowledge and agree that to the full extent permitted by law:

7.6.1. we exclude all liability to you for indirect or consequential loss or damage (including but not limited to, lost revenue, business, profit, goodwill or data) suffered by you in any way relating to this Agreement, any operation of the MedView, regardless of the basis of such liability and even if advised of the likelihood of such damage; and

7.6.2. we limit our aggregate liability to you in connection with this Agreement, to AUD\$1,000.

8. TERMINATION

8.1. Clauses 8.1 to 8.4 inclusive apply if:

8.1.1 a Party commits a breach of this Agreement ; and

8.1.2 the Party not in breach proposes to terminate this Agreement.

8.2. The Party not in breach must:

8.2.1 give to the Party in breach written notice that the Party not in breach proposes to terminate this document because of the breach; and

8.2.2 notify the Party in breach of what the Party not in breach requires to be done to remedy the breach; and

8.2.3 allow the Party in breach 30 days to remedy the breach.

8.3. If the breach is remedied in accordance with clauses 8.2.2 and 8.2.3, the Party not in breach must not terminate the Agreement because of that breach.

8.4. The obligation to give a notice pursuant to clause 8.2 applies to any breach irrespective of whether it is capable of being rectified or corrected within the period of 30 days.

8.5. Subject to the *Corporations Act 2001* (Cth) and the application of the law relating to ipso facto clauses, either Party may terminate this Agreement at any

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time by written notice to the other if either Party commits an Insolvency Event.

8.6. Either Party may terminate this Agreement by giving the other Party 30 days' written notice. At the end of such notice period the provisions of clause 8.7 shall apply. The earliest date on which a Party may give notice to the other pursuant to this provision is the first anniversary of the Commencement Date. Each Party may exercise this right without having to show cause or otherwise justify its decision to do so.

8.7. If this Agreement is lawfully terminated by us or by you then at the end of this Agreement:

8.7.1 the licence created pursuant to this Agreement will cease and is otherwise automatically revoked and you must cease, and must ensure that each of your authorised users cease, to access, use and exploit the Software and any Intellectual Property Rights relating to the Software;

8.7.2 you must stop using and exploiting the Software and return to us all our Confidential Information however your obligations pursuant to clauses 5 to 14 inclusive continue to apply; and

8.7.3 accrued rights or remedies of either Party are not affected.

8.8. The provisions of clauses 8.1 to 8.7 inclusive are in addition to any other rights and remedies that may be exercised by or available to the Parties.

9. GST

9.1. If GST is or will be imposed on a supply made under or in connection with this Agreement, the supplier may, to the extent that the consideration otherwise provided for that supply under this Agreement is not expressly stated to already include an amount in respect of GST on the supply:

9.1.1 increase the consideration otherwise provided for that supply under this Agreement by the amount of that GST; or

9.1.2 otherwise recover from the recipient (in cash) the amount of that GST within 7 days of the day that the supplier gives written notice to the recipient.

9.2. The recovery by the supplier of any amount in respect of GST pursuant to this Agreement on a supply is subject to the issuing of the relevant tax invoice for the supply to the

recipient.

10. Entire agreement

10.1. This document contains and otherwise records the entire agreement and understanding of the Parties as to its subject matter and supersedes all prior agreements, understandings, negotiations or representations between the Parties and there are no warranties, conditions or other terms, or agreements whether implied, oral or written, extending, defining or otherwise relating to the provisions of this document or its subject matter.

11. Some rules of construction

In this Agreement unless the contrary intention appears:

11.1. references to the singular shall include the plural and vice versa and references to any gender shall include the other genders;

11.2. references to a person includes a natural person, firm, body corporate, trust, partnership, body politic, unincorporated association or authority;

11.3. an obligation of 2 or more persons binds them jointly and severally;

11.4. a reference to a clause, schedule, or annexure is a reference to a clause of or schedule or annexure to, this document;

11.5. reference to a *month* means a calendar month and reference to a year means a calendar year;

11.6. references to a document (including this document) includes a reference to any agreement, promise or covenant (as applicable) in such document;

11.7. mentioning anything after includes, including, for example, without limitation or similar expressions, does not limit what else might be included;

11.8. a reference to a *business* day means a day on which banks generally are open for business in the place where an act is performed or a payment made, excluding a Saturday, Sunday or gazetted public holiday;

11.9. if a word or phrase is defined its other grammatical forms have a corresponding meaning.

12. Severance

12.1. If the whole or any part of a provision of this document is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this document has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause is of no effect if the severance alters the basic nature of this document.

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13. GENERAL

- 13.1. A Party's failure at any time to insist on the other Party's performance of any obligation under this Agreement is not a waiver of that Party's right:
- 13.1.1. to insist on performance of, or claim damages for breach of, that obligation unless that Party acknowledges in writing that the failure is a waiver; and
- 13.1.2. at any other time to insist on performance of that or any other obligation under this Agreement.
- 13.2. This Agreement does not create a relationship of employment, agency or partnership between the Parties.
- 13.3. We may, subject to receiving your consent, which must not be unreasonably withheld, transfer all or any part of our rights, interests, obligations or liabilities under this Agreement by assignment or by novation.
- 13.4. This Agreement is governed by and construed in accordance with the laws for the time being in force in the State of Victoria. The Parties irrevocably submit to the exclusive jurisdiction of the courts of the State of Victoria and the Commonwealth of Australia including any courts having appellate jurisdiction.

14. DICTIONARY AND INTERPRETATION

- 14.1. In this Agreement:

Agreement has the meaning ascribed to that term in clause 1.1.

Commencement Date means the date that you, by your conduct, accept these

General Terms & Conditions of MedView for Health Professionals which includes you or any one of your authorised users accessing MedView at any time after the date that we have made these General Terms & Conditions of MedView for Health Professionals available to you for your review.

eRx means eRx Script Exchange Pty Ltd ACN 132 884 658 of 20 Trenerry Crescent Abbotsford 3067, a related company of ours, which operates an electronic script exchange network.

Governmental Agency means any government or any governmental, semi-governmental, administrative, fiscal or

judicial body, department, commission, authority, tribunal, agency or entity.

GST means the same as in the GST Law.

GST Law means the same as 'GST law' in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Healthcare Provider has the meaning given in the *My Health Records Act 2012 (Cth)*.

Healthcare Provider Organisation has the meaning given in the *My Health Records Act 2012 (Cth)*.

Health Information has the meaning given in the *Privacy Act 1988 (Cth)*.

Individual Healthcare Provider has the meaning given in the *My Health Records Act 2012 (Cth)*.

Intellectual Property Rights or **IPR** means all intellectual property rights, including but not limited to the following rights:

- 14.1.1. patents, copyright, rights in circuit layouts, plant breeders rights, registered designs, trademarks and any right to have confidential information kept confidential; and
- 14.1.2. any application or right to apply for registration of any of the rights referred to in paragraph (a),

including, without limitation, any error corrections or translations to that material or intellectual property and derivatives of that material where such derivative work cannot be used without infringing the IPR in the underlying material.

Insolvency Event means the occurrence of any one or more of the following events in respect of a person:

- (a) an order is made to appoint a liquidator or provisional liquidator;
- (b) an order is made for its winding up or dissolution;
- (c) an application is made to a court for an order described in sub-clauses (b) or (c) of this definition and that application is not withdrawn or discharged within 21 days;
- (d) a receiver, receiver and manager, liquidator, provisional liquidator or administrator is appointed (whether or not under an order);
- (e) (being an individual) becoming bankrupt (irrespective of any later annulment);
- (f) entry by the person into any arrangement, or compromise with, or assignment for, the benefit of its creditors;
- (g) the person becomes insolvent as disclosed by its accounts or otherwise, states that it is insolvent or it is presumed to be insolvent under any applicable

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law;

(h) (being a company) it becomes an insolvent under administration which for the purposes of this clause has the meaning it has in the Corporations Act;

(i) being unable to pay its debts other than a debt or claim the subject of a bona fide dispute;

(j) (being a company) as a result of the operation of section 459F(1) of the Corporations Act it is taken to have failed to comply with a statutory demand;

(k) a notice is issued under section 601AA or 601AB of the Corporations Act and not withdrawn or dismissed within 21 days; or

(l) anything occurs under the law of any jurisdiction which has substantially similar effect to any of the above paragraphs of this definition.

MedView is a registered trade mark of FRED's. It is also the Software that enables Healthcare Provider to have access, via the internet, to the medication information of Patients that they are caring for.

My Health Record has the meaning given under the *My Health Records Act 2012*(Cth).

New Release means software which has been provided primarily to implement an extension, alteration, improvement or additional functionality to the Software.

Patient means a patient who is under the care of you or Healthcare Providers engaged by you or otherwise associated with you.

Personal Information means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in a material form or no, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Personnel of a Party are the employees, officers, consultants, contractors, representatives and agents of the Party.

Privacy Law means the *Privacy Act 1988*; (Cth); the *Health Records Act 2001* (Vic); the *Public Health and Well Being Act 2008* (Vic); and the *Health Services Act 1988* (Vic); and any other statute, regulation or law in Australia relating to the protection of Personal Information that must be observed by you).

Software means MedView software and related applications as configured by us and all Updates and all New Releases which may be used on any Apple, Android and Windows operating system.

Update means software which has been produced primarily to overcome defects in the licensed Software.

you, your or derivatives of any of those terms, has the meaning set out in clause 1.

we, us, our or derivatives of any of those terms, means FRED IT Group Pty Ltd ACN 109 546 901 of 20 Trenerry Crescent, Abbotsford 3067.

14.2. A Party, which is a trustee, is bound both personally and in its capacity as a trustee.

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