

## These Terms & Conditions are for Pharmacies using MedView Flow

### 1. Application

- 1.1. **App** means the software developed by us and known as MedView Flow.
- 1.2. **Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, designs, patents, circuit layouts, business and domain names, inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields.
- 1.3. **Licence** means the licence of the Software granted pursuant to this agreement.
- 1.4. **New Release** means software which has been provided primarily to implement an extension, alteration, improvement or additional functionality to the Software.
- 1.5. **Software** means MedView Flow software and all Updates and all New Releases.
- 1.6. **Update** means software which has been produced primarily to overcome defects in the licensed Software.
- 1.7. **you, your** or derivatives of any of these terms means the person who has accepted these terms and conditions of use relating to the App.
- 1.8. **we, us, our** or derivatives of any of these terms means Fred IT Group ACN 109 546 901 of 20 Trenerry Crescent Abbotsford 3067.

### 2. Software & related matters

- 2.1. We grant to you a limited, non-exclusive, non-transferable, non-sub-licensable licence to access and use the Software. We may at our discretion permit you to grant other persons access to and use of the Software on such additional terms and conditions to be agreed upon.
- 2.2. You acknowledge that the App functionality is provided over the internet and mobile phone networks and accordingly the quality, speed, availability and reliability of the App may be affected by factors outside our control.
- 2.3. The App is currently made available to you for your commercial use for the fee that is agreed by you and us from time to time.
- 2.4. You acknowledge that the terms and conditions of use of your broadband network provider continue to apply to you in relation to your use of the App and that this may involve the incurring of fees and charges by your broadband network provider
- 2.5. 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.
- 2.6. Except as expressly permitted by sections 47B(3), 47C, 47D, 47E or 47F of the Copyright Act 1968 (Cth), you must not and you must ensure that your officers, employees, agents and contractors do not:
  - 2.6.1. 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
  - 2.6.2. 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.
- 2.7. We shall take reasonable steps to ensure that any data you send us remains secure but we do not warrant that your data, once received by us, will remain secure and in accordance with other provisions of this agreement we have limited or otherwise excluded our liability to you for any loss or damage you suffer or incur in relation to the dissemination (whether lawful or unlawful) or impermissible use of your data.

### 3. Licence personal to you

- 3.1. Your rights pursuant to this agreement are personal and accordingly you cannot assign or purport to assign or otherwise encumber your rights pursuant to this agreement without first obtaining our written consent which consent we may choose to withhold.
- 3.2. You acknowledge that if you are not the bill payer for the device or devices being used to access this App that you have received permission from the bill payer for using the App.

#### **4. Intellectual Property Rights**

- 4.1. You acknowledge and agree that:
  - 4.1.1. 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 the Software and the branding associated with the Software (including any goodwill or other benefits accruing from your use of the Software, trademarks and other Intellectual Property Rights), shall inure to our benefit;
  - 4.1.2. we own the Software, trademarks and other Intellectual Property Rights that comprise the Software and the branding associated with the Software.

#### **5. Term and termination**

- 5.1. This agreement (and your licence to use the App) operates for an initial term of 1 year commencing on the date on which you accept these terms and conditions. At any time after the expiration of this initial term either party may end this agreement by giving the other party 1 months' notice in writing (such notice may only be given after the expiration of the initial term).. Subject to any rights of termination available to a party at law this agreement shall remain on foot until it has been brought to an end in the manner required by this clause 5.1.
- 5.2. At the end of this agreement (however occurring) the licence created pursuant to this agreement will cease and you must cease, and must ensure that each of your officers, employees, agents and contractors ceases, to access and use the Software and any material and Intellectual Property Rights relating to the Software.

#### **6. Limitation of liability**

- 6.1. We do not warrant that:
  - 6.1.1. the Software will operate uninterrupted or can be accessed and used by you or your officers, employees, agents and contractors at all times without interruption;
  - 6.1.2. the Software will be free from defects or errors;
  - 6.1.3. the Software will be, or is, compatible with any software, hardware or service utilised by you, or your business;
  - 6.1.4. that any data transmissions between you and us will be secure and that any data you send us shall at all times remain secure.
- 6.2. Subject to clauses 6.3, 6.4 and 6.5, 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 services provided by us pursuant to this agreement are expressly excluded.
- 6.3. 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 section 51, 52 or 53 of the ACL), then our liability for such failure will be limited to one of the following as determined by us:
  - 6.3.1. in the case of the 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 the cost of having the goods repaired.
  - 6.3.2. in the case of any services: the supplying of the services again; or the payment of the cost of having the services supplied again.

- 6.4. You acknowledge and agree that to the full extent permitted by law:
- 6.4.1. we exclude all liability for indirect or consequential loss or damage (including but not limited to, lost revenue, business, profit, goodwill or data) suffered or otherwise incurred by you in any way relating to this agreement, any operation of the Software (including its defective operation), regardless of the basis of such liability and even if advised of the likelihood of such loss or damage; and
  - 6.4.2. we limit our aggregate liability to you arising out of or relating to this agreement, to AUD \$100.
- 6.5. You must indemnify and defend us and our officers and employees and hold us and our officers and employees harmless (collectively the Indemnified), regardless of any wilful, reckless or negligent acts or omissions on the part on an Indemnified, from any loss, cost, damage and expense of whatsoever nature (including legal costs on a full indemnity basis and whether incurred by or awarded against an Indemnified) suffered or incurred by any of the Indemnified arising from or in connection with:
- 6.5.1. a breach by you of this agreement;
  - 6.5.2. the negligent, unlawful, or wilfully wrong, act or omission of you or your officers, employees, agents and contractors in connection with this agreement;
  - 6.5.3. any claim made or threatened by a third party arising out of or in connection with any negligent, unlawful, or wilfully wrong, act or omission of you or your employees, agents and contractors;
  - 6.5.4. any loss, damage or injury to property (including your property) or persons caused or contributed to by your use (including lawful use) of the Software.

## **7. Audit**

- 7.1. We (including our applicable personnel, agents and contractors) shall at our expense have the right to enter your premises upon 24 hours' written notice to inspect, review and/or audit your IT hardware and systems and your business records to determine whether you have been complying with the terms of your licence of the Software (including without limitation any applicable limit on the number of devices upon which the Software may be used). You must cooperate fully with us and our personnel, agents and contractors and all reasonable requests made by us and our personnel, agents and contractors during such process.
- 7.2. If as a result of the process set out in clause 7.1 we reasonably form the view that you have used the Software on more devices than permitted under the terms of the licence provided to you, you agree that we may charge you and you shall pay additional fees per excess device for the relevant period or periods at the rates prevailing at the relevant time or times.

## **8. Governing law**

- 8.1. This document is governed by and construed in accordance with the laws for the time being in force in the State of Victoria.
- 8.2. 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.