

# GENERAL TERMS AND CONDITIONS OF ERX SCRIPT EXCHANGE NETWORK PARTICIPATION

## 1. APPLICATION

- 1.1. By completing the online Application, you accept these terms and conditions as amended from time to time, and agree to be bound by them.
- 1.2. Your participation in eRx Script Exchange is at our discretion and we have the right to approve or reject your Application.
- 1.3. If we provide you with a User ID, either directly or through your IT Vendor, then we have accepted and approved your Application. At that point an 'Agreement' will be formed between us and you on the terms and conditions set out in your Application and on these terms and conditions, on the date such acceptance and approval is communicated to you in writing.
- 1.4. We may, by notice to you, require you to pay to us a transaction fee for your use of the eRx Script Exchange but this obligation shall only apply in relation to your use of the eRx Script Exchange on and after the date you receive such a notice from us.
- 1.5. We will provide to our associates, contractors and agents, engaged for the purpose of operating or administering eRx Script Exchange information about you, your Pharmacy or medical practice and activities undertaken by you or your Personnel in relation to eRx Script Exchange for one or more of the following purposes:
  - (a) considering your Application;
  - (b) delivering ePrescriptions and associated messages; or
  - (c) billing or invoicing and collecting payment.
- 1.6. You authorise us and our associates, agents and contractors to access, collect and use the information described in clause 1.5, disclose that information between themselves and store that information on a server, for one or more of the purposes set out in clause 1.5.

## 2. VARIATION, SUSPENSION AND TERMINATION

- 2.1. Unless otherwise prevented by law, we may, by at least 30 days' written notice to you, vary this Agreement.
- 2.2. If you are not satisfied with any variation under clause 2.1, or if for any other reason

you wish to terminate your participation in eRx Script Exchange, you can do so by giving us notice to that effect.

- 2.3. We may, at any time, by notice to you:
  - (a) terminate this Agreement including your access to the eRx Script Exchange;
  - (b) temporarily, or indefinitely, suspend your right to use eRx Script Exchange.
- 2.4. At the end of this Agreement:
  - (a) the licence created pursuant to this Agreement including all rights held by each Authorised User will cease and you must cease, and must ensure that each of your Authorised Users ceases, to access and use eRx Script Exchange and any material and Intellectual Property Rights relating to eRx Script Exchange;
  - (b) you must stop using and return to us all our Confidential Information and your obligations of confidence (but not the right to use and disclose) in clause 7 (Confidential Information) continue;
  - (c) clauses 5 (Intellectual Property), 8 (Privacy), 9 (Warranties and Liability), 10 (Insurance) and 2.4 (effect of termination) continue; and
  - (d) accrued rights or remedies of either party are not affected.
- 2.5. You must not assign, dispose of, or otherwise deal with, this Agreement without our prior written consent, which we will not unreasonably withhold as long as:
  - (a) the assignment, disposal or dealing occurs at the same time as a change in the ownership of the Pharmacy or medical practice (including a change in the constitution of a partnership that owns the Pharmacy or medical practice) and in the case of a Pharmacy that change has been approved by the Secretary under section 90 of the *National Health Act 1953* (Cth);

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- (b) the new owner (including any newly constituted partnership) lodges an application in our then approved form to participate in eRx Script Exchange and otherwise complies with all of our requirements and protocols relating to a change in ownership.
- 2.6. If you are a Pharmacist you must give us written notice of any other change in the Pharmacy or in the location of the Pharmacy that requires approval under relevant national or state legislation, including but not limited to section 90 of the *National Health Act 1953* (Cth) at the time you apply for that approval. This Agreement continues to apply to the Pharmacy as changed or relocated as long as the change or relocation is approved by an authorised representative under that section and you comply with all of our requirements and protocols applicable to that change or relocation.
- 3. IMPLEMENTING ACCESS TO eRx SCRIPT EXCHANGE**
- 3.1. You must ensure that your Authorised Users undertake any training required by us or your IT Vendor from time to time relating to eRx Script Exchange.
- 3.2. In relation to your use, and that of each of your Authorised Users, of eRx Script Exchange, you must not, and must ensure that your Personnel do not, direct any Patient's Personal Information to any third party where a Patient has not given his or her Informed Consent to do so, or has withdrawn or revoked his or her Informed Consent.
- 3.3. You must prescribe and dispense medicines and counsel Patients in respect of those medicines, in accordance with all applicable Laws, codes of conduct, Authorisations, requirements of a relevant Governmental Agency.
- 3.4. Nothing in this Agreement or your use of eRx Script Exchange prevents or relieves you or any of your Personnel from complying with, or in any way limits or prejudicially affects, any legal and ethical responsibilities as pharmacists or Medical Practitioners and you agree that you will, and you will ensure that each of your Personnel, comply with any such legal and ethical responsibilities.
- 4. eRx SCRIPT EXCHANGE TECHNOLOGY**
- 4.1. Subject to clause 2.3, we grant to you a limited, non-exclusive, non-transferable, non-assignable, non-sublicensable license to access and use eRx Script Exchange for the sole purpose of transmitting ePrescriptions in accordance with this Agreement.
- 4.2. You must not disclose any part of eRx Script Exchange, any documentation relating to eRx Script Exchange, or any other confidential or proprietary information relating to eRx Script Exchange to any person, except to your Personnel who have a legitimate business need to access and use eRx Script Exchange ('**Authorised Users**').
- 4.3. You must not, and must ensure that Authorised Users do not:
- (a) decompile, delete, reverse engineer, modify, copy, reproduce, disassemble, adapt, translate, or create any derivative works of, eRx Script Exchange, or any Intellectual Property Rights, products, or services obtained from us in respect of eRx Script Exchange; or
- (b) disseminate, distribute, transmit, display, perform, publish, directly or indirectly sell, transfer, offer for sale, license, assign, rent, timeshare or sublicense any part of eRx Script Exchange or any copies of eRx Script Exchange and any related Adaptors.
- 4.4. You are responsible for acquiring and installing any telephone, internet, electronic, email facilities and any other hardware and software systems that we consider necessary for you to access and use eRx Script Exchange. Your Pharmacy or medical practice must have a fulltime broadband connection to the internet to be eligible to use eRx Script Exchange.
- 4.5. You must use your best endeavours to ensure that eRx Script Exchange is protected at all times from unauthorised access or use and from physical misuse, damage or destruction by any person.
- 4.6. We will issue to each Authorised User a unique user ID for connection to eRx Script Exchange, 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,

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- compromised, or that you or an Authorised User has failed to use responsible security practices in respect of eRx Script Exchange.
- 4.7. 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 eRx Script Exchange or if an Authorised User has failed to use responsible security practices in respect of eRx Script Exchange.
- 4.8. 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 Authorised Users not to make such disclosures).
- 5. INTELLECTUAL PROPERTY**
- 5.1. You acknowledge and agree that:
- (a) as between the parties, and without regard to the ownership rights of third parties, our right, title, and interest in and to the software, trade marks and any other Intellectual Property Rights that comprise eRx Script Exchange and the branding associated with eRx Script Exchange (including any goodwill or other benefits accruing from your use of the above software, trade marks and other Intellectual Property Rights), shall inure to our benefit;
  - (b) we own the software, trade marks and other Intellectual Property Rights that comprise eRx Script Exchange and the branding associated with eRx Script Exchange; and
  - (c) we own the software and other Intellectual Property Rights that comprise eRx Script Exchange.
- 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 eRx Script Exchange 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 eRx Script Exchange, 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 eRx Script Exchange from time to time.
- 5.7. You must promptly notify us of any claim that eRx Script Exchange or any associated trade marks infringes the IPR of any person.
- 6. GST**
- 6.1. 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:
- (a) increase the consideration otherwise provided for that supply under this Agreement by the amount of that GST; or
  - (b) otherwise recover from the recipient (in cash) the amount of that GST within 14 days of the day that the supplier gives notice to the recipient.
- 6.2. 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 or adjustment note to the recipient.
- 6.3. If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST recovered by the supplier, as appropriate, the supplier: may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount recovered; or must refund to the recipient the amount by which the amount

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recovered exceeds the amount of GST on the supply.

6.4. Subject to clause 6.1.1 costs required to be reimbursed or indemnified under this Agreement must exclude any amount in respect of GST included in the costs for which an entitlement arises to claim an input tax credit.

6.5. In this clause 6 '**GST**' means GST as defined in the A New Tax System (Goods and Services Tax) Act 1999 as amended from time to time ('**GST Act**') or any replacement or other relevant legislation and regulations.

**7. CONFIDENTIAL INFORMATION**

7.1. You must in relation to our Confidential Information:

- (a) keep it confidential using the same degree of care normally exercised by you to protect your own proprietary or confidential information and Patient data (and in any event at least a reasonable degree of care);
- (b) use it only for for which it was provided and only to perform your obligations under this Agreement;
- (c) not disclose it to any person other than those of your Personnel ('**Representatives**') who have a legitimate need to know (and only to the extent of that need to know) and who are bound by an obligation to keep it confidential and to use it only as permitted under this Agreement ('**Confidentiality Undertaking**');
- (d) advise all of your Representatives of their obligations with respect to the Confidential Information;
- (e) use your best endeavours to enforce each Confidentiality Undertaking at your cost;
- (f) implement security practices against any unauthorised copying, use and disclosure (in any form);
- (g) notify us immediately of any suspected or actual unauthorised copying, use or disclosure; and

(h) comply with any direction issued by us regarding a suspected or actual breach.

7.2. Any and all information provided by you to us that could or might relate to our proprietary technology, its use, capabilities, features, functionality, methodology, or implementation, or other processes or transactions that could be transmitted on eRx Script Exchange or for which it could be used, will not constitute your confidential information and will be information that we shall be free to use without restriction, and which you hereby authorise us to use, in our business.

7.3. The obligations in clause 7.1 will not apply to any information that:

- (a) was previously known to you free of any obligation to keep it confidential before we disclosed the Confidential Information to you;
- (b) is or becomes generally available to the public other than as a result of disclosure by you;
- (c) is received from a third party whose disclosure would not violate any confidentiality obligation to us, direct or indirect, express or implied;
- (d) is information that we have explicitly approved for release.

7.4. Notwithstanding the obligations in clause 7.1, you may disclose our Confidential Information to the extent required by an order of the court or other Governmental Agency, but only after we have been notified of the required disclosure and have had the opportunity, if possible, to obtain reasonable protection for the information. Any Confidential Information disclosed pursuant to this clause 7.4 shall remain Confidential Information and the exclusions set out in clause 7.3 will not apply as a result of that disclosure alone.

7.5. On our request, you will return to us, or destroy, all Confidential Information and copies made of it, including all videotapes, photographs, paper, recordings on electronic media, and all compilations, notes, reports, or other reproductions containing Confidential Information. You must certify to us this return or destruction of all Confidential Information.

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### 8. PRIVACY

- 8.1. If you are a Medical Practitioner you must obtain and record a Patient's Informed Consent before directing eRx Script Exchange to send a dispense notification to the originating Medical Practitioner.
- 8.2. You must obtain and record a Patient's Informed Consent before directing eRx Script Exchange to send a copy of the ePrescription and dispense information to any third party except the personally controlled electronic health record system.
- 8.3. You must:
  - (a) to the extent that any Personal Information is disclosed to us, ensure that we are entitled to receive, use, and disclose that Personal Information in accordance with this Agreement and so as to enable us to perform our obligations under this Agreement; and
  - (b) not do anything, and must ensure that your Personnel do not do anything, that would cause us or our employees, officers, contractors or agents to be in breach of a Privacy Law.
- 8.4. Each party must, with respect to Personal Information that it receives from the other party in connection with this Agreement:
  - (a) protect the confidentiality of that Personal Information;
  - (b) comply with all applicable Privacy Laws; and
  - (c) implement policies and procedures to protect the privacy and security of that Personal Information.
- 8.5. You must ensure that each of your 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 Laws and by your obligations under this Agreement in relation to Confidential Information and Personal Information.

- 8.6. You must promptly comply with any reasonable direction we give you regarding Personal Information and any guidelines, directions or policies issued by a Governmental Agency.
- 8.7. We will not disclose any Personal Information relating to Patients other than in a manner consistent with the Patient's Informed Consent.

### 9. WARRANTIES AND LIABILITY

- 9.1. Each party warrants that it has full right, power and 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.
- 9.2. Neither we, nor your IT Vendor, warrant that eRx Script Exchange will:
  - (a) operate uninterrupted, or can be accessed and used by you or your Authorised Users at all times without interruption;
  - (b) be free from defects or errors; or
  - (c) be, or is, compatible with any software, hardware or service utilised by you, your medical practice or your Pharmacy.
- 9.3. We exclude all terms, conditions and warranties implied by custom, the general law or statute except any implied condition or warranty the exclusion of which would contravene any statute or cause any part of this Agreement to be void (**Non-excludable Condition**).
- 9.4. We limit our liability to you for breach of any Non-excludable Condition, at our option, to the supply again of any goods or services in respect of which the breach occurred, or the payment by us to you of the cost of having the goods or services supplied again.
- 9.5. You acknowledge and agree that to the full extent permitted by law:

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- (a) 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 eRx Script Exchange, regardless of the basis of such liability and even if advised of the likelihood of such damage; and
- (b) we limit our aggregate liability to you in connection with this Agreement, to AUD\$1,000.

9.6. You must indemnify and defend us and our Personnel and hold us and our Personnel harmless (collectively the '**Indemnified**') from any loss, cost, damage and expense (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:

- (a) a breach by you of this Agreement;
- (b) the negligent, unlawful, or wilfully wrong, act or omission of you or your Personnel in connection with this Agreement, ; or
- (c) 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 Personnel.

**10. INSURANCE**

- 10.1. You must take out and maintain, with reputable insurers, appropriate professional indemnity and public and products liability insurance policies to cover any liability you might incur to us in connection with this Agreement, and workers compensation insurance as required by law.
- 10.2. You must, if requested to do so by us, produce sufficient evidence that the insurances required under clause 10.1 have been obtained, are current and comply with clause 10.1.

**11. NOTICES**

11.1. A party notifying or giving notice under this Agreement must give notice left at or sent by

prepaid post, email or by fax to the address set out in the Application or such other address as may be notified to the other party from time to time.

11.2. A notice given in accordance with this clause 11 will be deemed received:

- (a) if left at the recipient's address, on the date of delivery;
- (b) if sent by prepaid post, 5 days after the date of posting;
- (c) if sent by email, on the business day after it is sent; and
- (d) if sent by fax, when the sender's facsimile system generates a message confirming successful transmission to the recipient of the total number of pages of the notice.

11.3. We may nominate any other electronic means of giving you notice under this Agreement or in accordance with any operation of eRx Script Exchange, in which case we may give you notices by using that electronic means. A notice given to you in this way is taken to be given on the business day after it is sent.

11.4. If we nominate an electronic means by which you may be notified that notices are available, and an electronic means you may use to access such notices, we may give you a notice by notifying you that the notice is available and how you may use our nominated electronic access means to access the notice. A notice given to you in this way is taken to be given on the business day after the day on which you are notified that the notice is available.

**12. GENERAL**

12.1. If the whole or any part of any clause of this Agreement is illegal or unenforceable, it will be severed from this Agreement and will not affect the continued operation of the remaining provisions of this Agreement.

12.2. This Agreement:

- (a) accurately reflects the agreement between the parties as to their subject matter;
- (b) records the entire agreement between the parties with respect to

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the subject matter of this Agreement; and

- (c) supersedes all prior representations and agreements in connection with that subject matter.

- 12.3. Our failure at any time to insist on your performance of any obligation under this Agreement is not a waiver of our right:
- (a) to insist on performance of, or claim damages for breach of, that obligation unless we acknowledge in writing that the failure is a waiver; and
  - (b) at any other time to insist on performance of that or any other obligation under this Agreement.
- 12.4. This Agreement does not create a relationship of employment, agency or partnership between the parties.
- 12.5. We may, without the need to obtain your consent, transfer all or any part of our rights, interests, obligations or liabilities under this Agreement by assignment or by novation.
- 12.6. This Agreement is governed by the laws and the parties submit to the non-exclusive jurisdiction, of the courts of Victoria, Australia.

### 13. DICTIONARY AND INTERPRETATION

- 13.1. In this Agreement:

**Adaptors** mean software licensed to you by your IT Vendor that allows you to gain access to the eRx Script Exchange.

**Agreement** has the meaning ascribed to that term in clause 1.3.

**Application** means your application for eRx Script Exchange network participation.

**Authorisations** means:

- (a) any consent, registration, filing, agreement, certificate, notarisisation, licence, approval, permit, authority or exemption from, by or with a Governmental Agency; or
- (b) any consent or authorisation regarded as given by a Governmental Agency due to the expiration of the period specified by statute within which the Governmental Agency should have

acted if it wished to proscribe or limit anything already lodged, registered or notified under that statute.

**Authorised Users** has the meaning ascribed to that term in clause 4.2.

**Confidential Information** means our information that:

- (a) is by its nature confidential;
- (b) is treated by us as confidential; or
- (c) you know or ought to know is confidential,

and is disclosed by us to, or obtained by, you under this Agreement (including without limitation any confidential information of eRx Script Exchange, any IPR relating to eRx Script Exchange, and any information relating to eRx Script Exchange).

**ePrescription** means an order issued via the eRx Gateway Exchange by a Medical Practitioner that authorises a pharmacist to supply specific medication or other products to a Patient.

**eRx Script Exchange** means the central electronic exchange for the receipt, storage and forwarding of ePrescriptions from Medical Practitioners to pharmacists and forwarding of dispense notifications from pharmacists to Medical Practitioners which exchange is owned and operated by us.

**Gateway Interface** means the proprietary user interface developed, maintained and exploited by the IT Vendor which allows for and facilitates the transmission of ePrescriptions over the eRx Gateway Exchange.

**Governmental Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**Informed Consent** means you and/or your Personnel have engaged in a process with the Patient that results in the Patient giving his or her consent in accordance with the Privacy Laws thereby permitting the lawful transmission of his or her Personal Information via the eRx Script Exchange.

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

- (a) patents, copyright, rights in circuit layouts, plant breeders rights, registered designs, trade marks and any right to have confidential information kept confidential; and
- (b) 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.

**IT Vendor** means a person who has made an agreement with us, under which we have given the IT Vendor the right to access and use our eRx Script Exchange in consideration of the IT Vendor developing and promoting its Gateway Interface.

**Medical Practitioner** means a natural person who is permitted under the laws of Australia to issue a prescription including an ePrescription.

**Patient** means a patient who obtains medical assistance and medicines in relation to which an ePrescription exists.

**Personal Information** means all information about a person that is 'personal information' as defined in the *Privacy Act 1988* (Cth) which is collected or held by any of the parties in connection with this Agreement.

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

**Pharmacy** means the pharmacy described in your Application as changed or relocated from time to time subject to clause 2.6.

**Privacy Laws** means the *Privacy Act 1988* (Cth) and any other Laws that regulate the collection and use of Personal Information in Australia.

**you, your** or derivatives of any of those terms, means the applicant set out in the Application.

**we, us, our** or derivatives of any of those terms, means eRx Script Exchange Pty Ltd ACN 132 884 658 of 20 Trenerry Crescent, Abbotsford 3067.

- 13.2. All other words starting with a capital letter have the meaning ascribed to them in the Application.
- 13.3. If a party consists of more than 1 person, this agreement binds each of them separately and any 2 or more of them jointly.
- 13.4. An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- 13.5. A party, which is a trustee, is bound both personally and in its capacity as a trustee.

**Signed by:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Position:** \_\_\_\_\_

**As the authorised representative of:**  
\_\_\_\_\_

**Date:** \_\_\_\_\_