

App Terms & Conditions – eRx Express (for consumers)

1. **Application**
 - 1.1. **App** means the Software developed by us and known as *eRx Express* which may be used on Apple, Android and Windows operating systems.
 - 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, trade marks, 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 *eRx Express* software and related applications 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 eRx Script Exchange Pty Ltd ACN 132 884 658 of 20 Trenerry Crescent Abbotsford 3067.
 2. **Software & related matters**
 - 2.1. We grant to you a limited, non-exclusive, non-transferrable, non-sub-licensable; royalty and fee free licence to access and use the Software for the purpose of assisting you with your medication management (note that you will still need to present your physical prescription to the pharmacist at the time of collection in order to collect medications and that collection of medications may be subject to identity verification at the discretion of the pharmacist concerned). Your use of the Software is limited to using it in relation to prescriptions for you and people in respect of whom you are either an authorised representative (within the meaning of the *Personally Controlled Electronic Health Records Act 2012*) or a nominated representative (within the meaning of the *Personally Controlled Electronic Health Records Act 2012*) and you agree that you shall not use the Software to scan or send prescriptions of any other person. Without limiting clause 5.1, should we suspect that the Software is being used in breach of these limitations, we may terminate this licence without further notice.
 - 2.2. The App is (as at September 2013) available for use on both tablet and handheld mobile devices running Apple, Android or Windows operating systems, however, we may cease supporting any such platform (or may add additional platforms) at any time in our absolute discretion. You acknowledge that the App 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.
 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. However, we may
- 2.3. The App is currently made available to you free of charge and we reserve the right to amend or withdraw the App, or charge for the App or service provided to you at any time and for any reason (whether stated or not).
 - 2.4. 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 the App and that this may involve the incurring of fees and charges by your mobile 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.

- assign our rights pursuant to this agreement at any time without providing notice to you first.
- 3.2. You acknowledge that if you are not the bill payer for/owner of the handheld device or desktop device being used to access this App that you have received permission from the bill payer/owner 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, trade marks 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, trade marks and other Intellectual Property Rights), shall inure to our benefit;
- 4.1.2. we own the Software, trade marks and other Intellectual Property Rights that comprise the Software and the branding associated with the Software.

5. **Termination**

- 5.1. We may terminate this agreement (and thus your use of the App) with immediate effect at any time. Obligations of reasonableness, fair dealing and good faith do not apply to us when we exercise this right of termination..
- 5.2. At the end of this agreement 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 **clause 6.3**, 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. You acknowledge and agree that to the full extent permitted by law 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 including, without limitation, loss or damage in the nature of, or relating to, death or personal injury arising out of any incorrect medication, dosage or medication information.

7. **Governing law**

- 7.1. This document is governed by and construed in accordance with the laws for the time being in force in the State of Victoria.
- 7.2. 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.

8. **Use of information**

- 8.1. You agree that we may use your personal information that we obtain through your use of the Software (including without limitation your "personal information" as defined by the *Privacy Act 1998*, your health information [which is also known as sensitive information] and data concerning your medical visits, diagnoses, prognoses, prescriptions and pharmacy purchases) for research, marketing and other purposes and may disclose such information to third parties (including without limitation pharmacists and other participants in the pharmacy and healthcare industries) for their use for any purpose including direct marketing purposes.
- 8.2. If you do not consent to allow us to use your personal information then we reserve the right at our absolute discretion not to activate the Software.