



## Licence Agreement

This Licence Agreement is between Medi-Map and the purchaser of the subscription to the Service specified in the Order (**Customer**).

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### 1 Service

**1.1 Licence.** Medi-Map grants Customer a non-exclusive and non-transferable licence, during the Licence Period, to:

- (a) access and use the Service and Documentation; and
- (b) permit its End Users to access and use the Service and Documentation,

in each case, for the purpose of prescription management as part of its usual business operations at the sites agreed in the Order (and as updated from time to time by agreement between the parties in writing), subject to and in accordance with the terms of the Agreement.

**1.2 On-boarding.** To enable the Customer and its End Users to use the Service, Medi-Map will create an account, set the access controls for each End User and perform any other on-boarding activities specified in the Order. On-boarding typically does not include activities such as training, project management, and populating and uploading charts. If additional on-boarding activities will be required to use the Service, Medi-Map will provide Customer with a SOW detailing the necessary Professional Services and Fees before commencing those activities. Customer's execution of any installation authorisation or data cleansing authorisation forms constitutes Customer's irrevocable and unconditional acceptance that these on-boarding activities have been properly authorised and accepted by Customer in full. While Medi-Map will use reasonable endeavours to provide Customer with access to the Service and Support Services on and from the Delivery Date, Customer acknowledges that the Delivery Date is an estimate only.

**1.3 Licence Restrictions.** Customer must ensure that:

- (a) neither Customer nor any End User installs, hosts, accesses, uses, or otherwise exploits the Service, except as permitted under clause 1.1;
- (b) neither Customer nor any End User reverse engineers, decompiles or disassembles the Service, views or gains access to the source code to the Service, or uses the Service to provide any product or service that is an alternative, substitute or competitor to the Service;
- (c) neither Customer nor any End User copies, develops any modification, enhancement, derivative work or other development of the Service or incorporates any Customer, End User or Third Party Materials into the Service (except as permitted under clause 1.1);
- (d) neither Customer nor any End User uploads, distributes or displays through, the Service any material that is unlawful, harmful, malicious, threatening, defamatory, obscene, infringing, offensive, sexually explicit, violent or discriminatory;
- (e) neither Customer nor any End User removes any product identification, proprietary, trade mark, copyright or other notices applied to or contained in the Service or Documentation (unless approved by Medi-Map in writing); and
- (f) no person other than Customer, and its End Users, accesses or uses the Service or Documentation.

**1.4 Support Services.** Medi-Map will provide Support Services for the Service for the duration of the Licence Period, in accordance with the Support Services Agreement. Customer must provide all information and assistance reasonably required by Medi-Map to perform the Support Services. To avoid any doubt, the Support Services do not include support for the Customer's Environment, hardware, Customer Material or Third Party Materials (unless agreed as Professional Services under a SOW).

**1.5 Professional Services.** Customer may need to purchase Professional Services to implement and access the full functionality of the Service, particularly where this is not included as part of on-boarding (see clause 1.2 above). If Customer wishes to purchase Professional Services, the parties must agree a SOW. Once executed by both parties, a SOW forms part of the Agreement.

**1.6 Updates.** Customer acknowledges that Medi-Map may make Updates to the Service in its absolute discretion. If Customer can demonstrate to Medi-Map that any Update is materially adverse to it, then it may terminate the Agreement by written notice to Medi-Map within 30 days of notification of the Update and Medi-Map will provide a refund of any Fees paid in advance for use of the Service in the period after termination.

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### 2 Customer responsibilities

**2.1 Usage responsibilities.** To the extent permitted by law, Customer uses the Service at its own risk and is solely responsible for:

- (a) obtaining and maintaining the Customer Material, Third Party Materials and all hardware, software, services and network connectivity (including the Medi-Map IT Specifications) necessary to use the Service;
- (b) ensuring that the Service is accessed and used strictly in accordance with the Agreement. Customer is responsible for each act and omission of an End User in connection with the Agreement as though it were an act or omission of Customer;
- (c) making its own professional judgements and ensuring that the information displayed or otherwise produced by the Service is only used by an End User who is qualified and trained in using and interpreting such information;
- (d) ensuring that Customer's and each End User's use of the Service, and all Customer Material and data uploaded, distributed or displayed through the Service, complies with all applicable laws, regulations and contractual obligations;
- (e) obtaining all consents, licences and approvals, and making all notifications necessary to lawfully Process all Customer Material, Medical Data and data (including that protected by Intellectual Property Rights, confidentiality, or privacy) uploaded to, Processed by, or distributed or displayed through the Service and all output of the Service;
- (f) using reasonable endeavours to ensure that its End Users who access and use the Service accept, and comply with, any applicable end user licence agreement (including for use of the optional mobile application);
- (g) ensuring the confidentiality and security of any account numbers, user ID, passwords, authentication details and personal identification numbers (PIN) used by it and its End Users in connection with the Service;
- (h) ensuring that it complies with any requirements specified in the Order and/or a SOW;
- (i) configuring the security controls within the Service appropriately (as applicable);
- (j) all use of, and reliance upon, the Service by Customer and each End User.

**2.2 Third Party Material.** The Service may include, integrate with, interoperate with, or link through to, Third Party Material (including patient information). Customer acknowledges and agrees that:

- (a) Medi-Map has no control over, and is not responsible for, any Third Party Material;
- (b) Third Party Material is provided directly to Customer by the relevant Third Party Material provider, does not form part of the Service and is not governed by the Agreement;
- (c) Customer is solely responsible for entering into, and complying with, its own agreement with each Third Party Material provider necessary for Customer's and its End Users' proposed use of the Service;
- (d) Customer is solely responsible for integrating the Third Party Materials it opts to use with the Service in accordance with the application programming interface specifications provided by Medi-Map and for conducting end-to-end systems integration and user acceptance testing to ensure the Service and integrated Third Party Materials perform in accordance with Customer's requirements (unless agreed otherwise pursuant to a Professional Services SOW);
- (e) Customer uses all Third Party Material at its own risk and that (as between Customer and Medi-Map) Customer is solely responsible for all costs, Claims and Losses relating to Third Party Material; and
- (f) Third Party Material is subject to change, suspension, termination or discontinuation at any time and without notice by the Third Party Material provider (and that this may cause the Service to cease to be compatible).

**2.3 Disclaimer.** Customer acknowledges and agrees (and must ensure that its End Users acknowledge and agree) that:

- (a) Medi-Map provides a prescription management service only, and as such, merely facilitates the sharing of information between third parties in accordance with security controls;
- (b) Medi-Map does not provide medical advice and any information obtained through the Service by any person should not be so construed, used or relied upon as medical advice;
- (c) Customer is responsible for exercising its (and ensuring its End Users exercise their) professional knowledge and judgement and the Customer's and its End Users' obligations and duties to individuals in its care are not in any way reduced or transferred to Medi-Map through use of the Service;
- (d) Customer is solely responsible for the End Users and their acts and omissions, including any use of the Service or information accessed through the Service;
- (e) no decision (whether health, medical or patient related) should be based in whole or in part on anything contained in or on the Service and all information received or generated through the Service should be appropriately verified before it is used; and
- (f) no use of the Service, and nothing in the Agreement, is intended to create a physician-patient relationship between any individual and Medi-Map.

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### **3 Fees, invoicing and payment**

**3.1 Fees.** The Fees are payable in consideration of Medi-Map's supply of the Service, Support Services and any Professional Services. Medi-Map may increase the Fees:

- (a) under the Order on the anniversary date of the Order in accordance with clause 3.2 (or as otherwise set out in the Order); and
- (b) at any other time, provided that the increased Fees will only apply to Orders entered into after the date of the increase.

**3.2 Annual fee increase.** The Fees will automatically increase by a percentage amount equal to the greater of:

- (a) the percentage change in the Consumer Price Index over the preceding 12 month period; and
- (b) 5%.

**3.3 Invoicing and payment.** Medi-Map may issue invoices for the Fees to Customer at the times specified in the Order or applicable SOW. Customer must pay all Fees invoiced by Medi-Map, without any set-off or deduction and in immediately available funds, by the method and within the period specified in the Order or SOW. All Fees invoiced by Medi-Map are non-cancellable and non-refundable, except as required by law or set out in the Agreement.

**3.4 Late payment.** If Customer fails to pay any Fees (that are not disputed in good faith) by the due date for payment, Medi-Map may:

- (a) suspend the licence of the Service and the provision of Support Services and any Professional Services from the due date for payment until the date that payment is made by Customer; and/or
- (b) charge the Late Payment Fee.

**3.5 Taxes.** The Fees are exclusive of all taxes, levies, withholdings, duties and other amounts imposed by taxing authorities. Where a supply is a taxable supply, all amounts payable must be increased by the amount of GST and other applicable taxes payable in relation to the supply. All such taxes must be paid at the time any payment for any supply to which it relates is payable (provided a valid tax invoice has been issued for the supply).

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## 4 Medi-Map Intellectual Property

**4.1 Ownership.** All Intellectual Property Rights in and to the Service and output of the Support Services and Professional Services, including any Customer or End User feedback, vest or remain vested in Medi-Map or its licensors. If any such Intellectual Property Right vests in Customer or End Users, Customer hereby assigns, and must procure that each End User assigns, that Intellectual Property Right to Medi-Map with immediate effect. Customer must take all further steps (including execution of documents) necessary to give effect to this clause.

**4.2 No other rights.** Neither Customer nor any End User receives any right, title or interest in or to the Service other than the licence expressly granted under clause 1.1.

**4.3 Notice of infringement.** Customer must immediately notify Medi-Map in writing upon becoming aware of any:

- (a) infringement or unauthorised use of the Service, Support Service or any output of the Professional Services by any person, including any End User; or
- (b) Claim by any person that use of the Service by Customer or any End User infringes that person's Intellectual Property Rights.

**4.4 Remedial action.** If the Service is the subject of an IP Claim, Medi-Map may (at its cost and option) either:

- (a) procure the right for Customer to continue using the Service;
- (b) modify the Service such that it no longer infringes the relevant Intellectual Property Rights; or
- (c) terminate the Agreement and provide Customer with a pro-rata refund of any Fees paid in advance for use of the Service after the effective date of termination.

This clause and clause 7.4 set out Customer's sole and exclusive remedy in respect of any IP Claim.

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## 5 Customer Material

**5.1 Licence.** Customer:

- (a) grants Medi-Map and its Personnel the right to Process Customer Material (including disclose any Personal Data to other authorised users of the Service); and
- (b) warrants that it has obtained (and ensured that its End Users have obtained) all consents, licences and approvals and given all notifications necessary to enable Medi-Map and its Personnel to Process Customer Material,

in each case, to the extent necessary to provide the Service, and perform the Professional Services, Support Services and as otherwise contemplated by the Agreement.

**5.2 Privacy.** Each party must comply with all Privacy Laws applicable to that party in Processing any Personal Data it becomes privy to in connection with this Agreement. All Personal Data will be Processed by Medi-Map in accordance with Medi-Map's privacy policy accessible at: <https://www.medimap.co.nz/privacy-policy> and <https://www.medimap.com.au/privacy-policy> (as applicable).

**5.3 Data security.** Customer Material in the Service will be hosted in Australia. Medi-Map must implement reasonable technical and organisational security controls to protect the Customer Material (and Personal Data therein) against

loss, interference, unauthorised access, modification and disclosure in accordance with the applicable Privacy Laws including:

- (a) not disclosing the Customer Material except to other appropriately authorised users, and its sub-processors and their respective Personnel for the purpose of performing the Agreement; and
- (b) maintaining reasonable business continuity and disaster recovery measures, subject to clause 5.4.

**5.4 Data back-up.** Medi-Map will take regular back-ups of all Medical Data stored in the Service, however, Customer must ensure that it continues to keep its own records (including of Customer Material).

**5.5 Data Breaches.** If either party becomes aware of any actual or suspected Data Breach:

- (a) it must promptly notify the other party in writing, including in such notice all known details of the actual or suspected Data Breach;
- (b) the parties (and any third party connected to Customer in its use of the Service as reasonably determined by Medi-Map e.g. a care organisation where Customer is a pharmacy) will promptly meet (and continue meeting as required) to determine (acting reasonably) who should be responsible for determining whether the actual or suspected Data Breach is notifiable under Privacy Laws, subject to sub-clause (c), and the notifier must not reference the other or its affiliates in any notification or communication relating to the actual or suspected Data Breach without the other's prior written approval as to the form and content of the reference; and
- (c) either party may make a notification or communication about the Data Breach if no notification is agreed or made, and it is required to do so under applicable Privacy Laws.

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## 6 Confidentiality

**6.1 Obligation of confidence.** Each party (**Recipient**) must ensure that it keeps confidential and does not use or disclose any Confidential Information of the other party (**Discloser**) except as permitted by this clause 6.

**6.2 Permitted use.** The Recipient may use the Confidential Information of the Discloser solely to the extent necessary to perform the Agreement.

**6.3 Permitted disclosures.** The Recipient may disclose Confidential Information of the Discloser:

- (a) to the Affiliates, Personnel and professional advisers of the Recipient that need to know the Confidential Information for the purposes of the Agreement and that are subject to binding obligations of confidence at least as stringent as those set out in this clause;
- (b) to the extent required to perform the Agreement, by law or the rules of any stock-exchange; and
- (c) with the prior written consent of the Discloser.

To avoid doubt, Medi-Map will not reference or promote the Customer as a customer of Medi-Map, or use its name or logo for that purpose, without the Customer's prior written consent.

**6.4 Usage data and analyses.** Medi-Map may:

- (a) collect and Process data relating to Customer's and End User's use of the Service in identifiable form for billing, capacity planning, compliance, security, integrity, availability, providing and improving the Service; and
- (b) freely create and Process analyses, materials, data, insights, works and other things derived (wholly or partly) from use of the Service in anonymised and aggregated form provided that neither Customer nor End Users are identifiable.

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## 7 Warranties and indemnities

**7.1 Medi-Map warranty.** Medi-Map warrants that it will use commercially reasonable endeavours to ensure that the Service will be provided free of Inherent Defects. Customer's sole and exclusive remedy for any breach of the warranty in this clause 7.1 is the rectification of the Inherent Defect through the provision of the Support Services.

For the purposes of this clause 7.1, '**Inherent Defect**' means an error or defect caused by a programming error that significantly impacts Customer's ability to use the Service other than an error which is the result of:

- (a) an alteration or modification to the Service not made by Medi-Map;
- (b) use of the Service other than in accordance with the Agreement;
- (c) use of the Service in combination with equipment, programs or services not provided or recommended by Medi-Map; or
- (d) failure by Customer to meet its obligations under the Agreement or any other agreement relating to the Service.

**7.2 No other terms.** To the extent permitted by law and except as expressly set out in the Agreement, Medi-Map excludes all conditions, warranties and guarantees in relation to the Service, Support Services and Professional Services. Without limitation, Medi-Map does not warrant that the Service, Support Services or any Professional Service will be:

- (a) continuous, free from errors, omissions, defects, security risks or vulnerabilities;
- (b) fit for any purpose or meet the requirements of Customer or any End User; or

(c) capable of enabling Customer or any End User to comply with law or contractual obligations.

**7.3 Non-excludable terms.** If any condition, warranty or guarantee cannot be excluded at law, then to the extent permitted by law, Medi-Map's liability for breach of such condition, warranty or guarantee is limited (at Medi-Map's option) in the case of:

- (a) the Service, to the repair or replacement of the Service, the supply of an equivalent service, or payment of the cost of the same; and
- (b) Support Services or Professional Services, to the resupply of the Support Services or Professional Services, or payment of the cost of the same.

**7.4 Medi-Map indemnity.** Medi-Map must indemnify Customer against all Losses suffered or incurred by Customer arising directly in connection with any IP Claim, except to the extent that the IP Claim is caused or contributed to by Customer, End Users, Customer Material or any Third Party Material.

**7.5 Customer indemnity.** Customer holds harmless and indemnifies Medi-Map against all Losses suffered or incurred by it arising directly in connection with:

- (a) any Claim relating to the use of the Service other than as authorised by the Agreement or reliance on the Service by Customer or End Users; and
- (b) the Customer Material, or any Processing of Customer Material or Medical Data in connection with the Agreement, failing to comply with any law, regulation or contractual obligation,
- (c) in each case, except to the extent that the Claim or breach is caused or contributed to by Medi-Map.

**7.6 Conduct of Claims.** The indemnification obligation of a party (**indemnifying party**) under clause 7.4 or 7.5 in respect of any third party Claim is subject to the other party:

- (a) promptly notifying the indemnifying party of the third party Claim;
- (b) permitting the indemnifying party to control the defence of the third party Claim; and
- (c) providing (at the indemnifying party's cost) all information and assistance reasonably requested by the indemnifying party in connection with the defence of the third party Claim.

**7.7 Sole and exclusive remedy.** Without prejudice to the termination rights of each party:

- (a) clauses 4.4 and 7.4 set out Customer's sole and exclusive remedy in respect of the matters indemnified by Medi-Map; and
- (b) clause 7.5 sets out Medi-Map's sole and exclusive remedy in respect of the matters indemnified by Customers.

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## **8 Liability**

**8.1 Exclusion of Indirect Loss.** To the extent permitted by law, each party excludes any and all liability arising out of or in connection with the Agreement, whether in contract, tort (including negligence) or any other basis in law or equity, for any Indirect Loss.

**8.2 Limitation of liability.** The liability of a party for all Claims and Losses, whether in contract, tort (including negligence) or any other basis in law or equity:

- (a) arising out of or in connection with a breach by Medi-Map of clauses 5.2 through to and including 5.5 in respect of information or data that is Personal Data, is limited in the aggregate to the greater of: (i) \$1,000,000; and (ii) 2 times the cap specified in clause 8.2(b); and
- (b) otherwise arising out of or in connection with the Agreement, is limited in the aggregate to 1.5 times the Monthly Subscription Fees paid and payable under the Agreement for the 12 month period immediately preceding the first event giving rise to a Claim or Loss (or, if the event occurs in the first 12 months of the term of the Agreement, the amount estimated (based on the Monthly Subscription Fees payable under the Agreement) to be paid in the first 12 months of the term of the Agreement).

**8.3 Unlimited liability.** The limitation of liability in clause 8.2 does not apply to the liability of:

- (a) Customer under the indemnities in clause 7.5;
- (b) Customer for any breach of clauses 1.1, 1.3, 2.1 or 5.1 by Customer or End Users;
- (c) Customer to pay Fees due and payable;
- (d) either party for death or personal injury;
- (e) either party for gross negligence, fraud or wilful default; or
- (f) any matter in respect of which liability may not be limited at law.

**8.4 Injunctive relief.** Customer acknowledges that damages are not a sufficient remedy for any breach of clause 1.1, 1.3, 2.1 or 4 of the Agreement and that Medi-Map is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or anticipated breach of those clauses (in addition to any other remedies).



**8.5 Consumer laws.** For the avoidance of doubt, nothing in the Agreement is intended to exclude, reduce, limit or remove any applicable consumer protection laws that cannot be excluded by law.

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## **9 Term, suspension and termination**

**9.1 Term.** The Agreement commences on the date the last party executes the Order and will remain in force for the Initial Term, unless terminated by either party in accordance with its terms or extended in accordance with clause 9.2.

**9.2 Automatic renewal.** The term of the Agreement will be automatically extended by the length of a Renewal Term, unless either party notifies the other party in writing prior to the Renewal Opt-out Cut Off that it does not wish for an extension of the Initial Term (or Renewal Term, as applicable) to occur.

**9.3 Suspension.** Medi-Map may suspend the licence granted pursuant to clause 1.1:

- (a) during any period in which Customer (or any of its End Users) is in breach of the Agreement (including for failure to pay the Fees in accordance with the Agreement); or
- (b) to prevent or mitigate actual or suspected illegal activity, damage to Medi-Map's systems, loss of or unauthorised access to or disclosure of Medical Data, or threat to the integrity of the Service.

**9.4 Termination for cause.** A party may terminate the Agreement with immediate effect on written notice:

- (a) if the other party commits a material breach of the Agreement and fails to remedy that breach within 14 days of receipt of a notice specifying the breach and requiring it to be remedied. Any breach by Customer of clauses 1.1, 1.3, 2.1, 3.1, 4 or 6 is a material breach of the Agreement for the purposes of this clause;
- (b) if the other party becomes subject or threatens to become subject to, any form of insolvency or bankruptcy proceeding, appoints a liquidator, receiver or administrator, enters into an arrangement with its creditors, ceases to trade or do business in the ordinary course or is otherwise unable to pay its debts as and when they fall due; and
- (c) in accordance with clause 10.4.

**9.5 Consequences of termination or expiry.** On termination or expiry of the Agreement:

- (a) all rights to the Service granted under the Agreement cease immediately and Customer must immediately cease using the Service and delete all copies of the Documentation in its possession or control; and
- (b) Customer must immediately pay Medi-Map all Fees due and payable as at the date of termination or expiry.

Expiry of a SOW will not otherwise affect the Agreement. The accrued rights, obligations and remedies of the parties are not affected by termination of this Agreement, and clauses that are intended to survive termination will continue to be effective after termination and/or expiry of this Agreement.

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## **10 Miscellaneous**

**10.1 Marketplace terms.** Where Customer chooses to utilise the optional paid-extra mobile application relating to the Service, and it or its End Users download the mobile application from the Google Play, the Apple App Store or similar digital marketplaces (**Marketplace**), Customer acknowledges and agrees that:

- (a) the Agreement is solely between Customer and Medi-Map (and not the Marketplace) and neither the Marketplace nor its Affiliates has any liability under or in connection with the Service or the Agreement. However, if any term of the Agreement is inconsistent with any Marketplace terms applicable to the Service, the Marketplace terms apply to the extent of the inconsistency;
- (b) Medi-Map is solely responsible for the Service, the Support Services, warranties given in the Agreement, Service Claims and third party Claims that the Service, or use or possession of it, infringes a third party's Intellectual Property Rights. If Customer has any complaints about the Service, or becomes aware of any third party Claim, please notify Medi-Map (and not the Marketplace);
- (c) any information collected by Medi-Map in connection with the Agreement will be processed in accordance with the Agreement and not the privacy policy or data processing agreement of any Marketplace;
- (d) Customer must comply with all applicable third party terms and conditions when using the Service;
- (e) Customer is not on a US government restricted parties' list and Customer does not live in a country subject to a US government embargo or which is designated as "terrorist supporting country"; and
- (f) the Marketplace and its subsidiaries are third party beneficiaries of this clause 10.1, and will have the right to enforce this clause 10.1 against Customer as a third party beneficiary of them.

**10.2 Disputes.** If a dispute between the parties arises in relation to the Agreement (a **Dispute**), the parties will act in good faith and promptly endeavour to resolve it in accordance with the process described in this clause 10.2. If the Dispute is not settled within 10 business days of it being notified in writing, then either party may escalate the Dispute to its CEO or nominated representative for resolution within a further 20 business days. Either party may commence court proceedings in respect of a Dispute only once the process in this clause 10.2 has been completed. For the avoidance of doubt, nothing in this clause:

- (a) excuses a party from performing its obligations under the Agreement while a Dispute is in existence, to the extent practicable having regard to the nature of the Dispute; and

- (b) prevents a party seeking urgent injunctive or similar interim relief from a Court without first complying with this clause.

**10.3 Entire agreement.** This Licence Agreement, the Order and any SOW are the entire agreement between the parties in respect of their subject matter. In the event of any inconsistency between the terms of this Licence Agreement, the Order and any SOW, the terms of the document listed first will prevail to the extent of the inconsistency.

**10.4 Amendment.** Medi-Map may amend this Licence Agreement at any time by posting the amended version of this Licence Agreement at <https://www.medimap.co.nz/terms-and-conditions> & <https://www.medimap.com.au/terms-and-conditions>. The amended version of this Licence Agreement will apply from the date that is 30 days following the date that it is posted. If any amended version of this Licence Agreement is materially adverse to Customer, Customer may terminate the Agreement by written notice to Medi-Map prior to the amended version becoming effective and Medi-Map will provide Customer with a refund of any Fees paid for use of the Service in the period after termination.

**10.5 Force Majeure Events.** Neither party is liable for any delay nor failure to perform its obligations under the Agreement to the extent such delay or failure is due to a Force Majeure Event.

**10.6 Severance.** If a provision of the Agreement is unenforceable, the provision will be read down to the extent necessary to avoid that result and if the provision cannot be read down to that extent, it will be severed without affecting the validity and enforceability of the remainder of the Agreement.

**10.7 Transfer.** Customer must not assign, subcontract, novate or otherwise dispose of its rights or obligations under the Agreement without the prior written consent of Medi-Map. Customer consents to Medi-Map:

- (a) assigning its rights under the Agreement to its Affiliates;
- (b) assigning or novating the Agreement in connection with any solvent amalgamation, reconstruction, restructure, sale of shares, assets, raise, or financing of Medi-Map and/or its Affiliates; and
- (c) subcontracting its obligations under the Agreement to third parties, including its Affiliates.

**10.8 Waiver.** A party waives a right under the Agreement only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.

**10.9 Third party rights.** No person other than Medi-Map and Customer has the right to enforce any term of the Agreement (whether at law or otherwise) or approve any amendment to the Agreement.

**10.10 Notice.** Any notice to be given to Medi-Map can be sent to [office@medimap.co.nz](mailto:office@medimap.co.nz) (where Customer is using the Service in New Zealand) and [office@medimap.com.au](mailto:office@medimap.com.au) (where Customer is using the Service in Australia or any other jurisdiction). Any notice to be given to Customer will be sent using the Customer contact details included in the Order.

**10.11 Relationship of the parties.** The parties are and will remain independent contractors. Nothing contained in the Agreement will be construed to create an agency, joint venture, partnership or other relationship between the parties.

**10.12 Governing Law.** The Agreement is governed by the laws of:

- (a) New Zealand, where Customer is using the Service in New Zealand; and
  - (b) New South Wales, Australia, where Customer is using the Service in Australia or any other jurisdiction,
- and each party irrevocably submits to the exclusive jurisdiction of the courts of those places (and relevant appellate courts) and waives any objection to proceedings being brought in those courts.

**10.13 Currency.** A reference to dollars or \$ is to:

- (a) New Zealand dollars, where Customer is using the Service in New Zealand; and
- (b) Australian dollars, where Customer using the Service in Australia or any other jurisdiction.

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## 11 Definitions

In this Licence Agreement, these terms have the following meanings:

**Affiliate** of a party means an entity that Controls, is Controlled by, or is under common Control with that party.

**Agreement** means the agreement consisting of this Licence Agreement, the Order and any SOW.

**Care Organisation** means an entity, organisation or person identified as such in the Order, and is a reference to an operator of a facility or an operator or manager of multiple facilities that provide care for individuals.

**Claim** means any demand, claim, action or proceeding, however arising and whether present, unascertained, immediate, future or contingent.

**Confidential Information** means information that is marked, designated or by its nature confidential relating to the business or affairs of a party or its Affiliate:

- (a) including the terms of the Agreement and, in the case of Medi-Map, all source code to and pricing for the Service; but
- (b) excluding any such information that is in the public domain (other than as a result of a breach of confidence).

**Consumer Price Index** means, where Customer is using the Service in:

- (a) New Zealand, the consumer price index as published by Statistics New Zealand; and
- (b) Australia or any other jurisdiction, the consumer price index (all groups weighted average of the eight capital cities) of Australia, as published by the Australian Bureau of Statistics.

**Control** in respect of a person, includes the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person, whether through the ownership of voting securities, by agreement or otherwise, and includes the following:

- (c) direct or indirect ownership of more than 50% of the voting rights of such person; or
- (d) the right to appoint the majority of the members of the board of directors of such person (or similar governing body) or to manage on a discretionary basis the assets of such person.

**Customer Material** means anything owned or controlled by Customer and transmitted, integrated with, or otherwise Processed through the Service (including information, medical charts, patient details etc.).

**Data Breach** means any actual interference with, misuse, loss, unauthorised access, modification or disclosure of Customer Material or Medical Data.

**Delivery Date** has the same meaning given to it in the Order.

**Dispute** has the meaning given in clause 10.2.

**Documentation** means the documentation provided to Customer from time to time in relation to the Service.

**End User** means any person who accesses or uses the Service through Customer's licence. In the case of a Pharmacy, this includes individual pharmacists, and for a Care Organisation includes staff members of that organisation and/or its facilities.

**Environment** means the physical or virtual computing environment.

**Fees** means the fees, costs and expenses for the supply of the Service and Support Services specified in the Order and any Professional Services specified in the applicable SOW.

**Force Majeure Event** means any incident, event, act or omission beyond the reasonable control of that party, including any acts of God, strikes, civil strife, riots, wars, fire, explosion, storm, flood, earthquake, failure of communications networks, subsidence, pandemics or epidemics.

**Indirect Loss** means:

- (a) loss of profit, loss of revenue, loss of anticipated savings, loss of opportunity, loss of use, loss or corruption of data, loss of reputation, loss of goodwill, or loss of contract; and
- (b) any Loss that does not arise naturally or according to the usual course of things from a breach, act or omission relating to the Agreement.

**Initial Term** means the period specified in the Order.

**Intellectual Property Rights** means intellectual property rights, including existing and future copyright, rights in designs, patents, semiconductors and circuit layouts and rights in trade marks, trade names and service marks, in each case, whether registered or unregistered and existing in Australia or elsewhere in the world and whether created before or after the date of the Agreement.

**IP Claim** means any Claim that use of the Service by Customer in accordance with this Agreement infringes any copyright or patent owned by any third party in:

- (a) New Zealand, where Customer is using the Service in New Zealand; and
- (b) Australia, where Customer is using the Service in Australia.

**Late Payment Fee** means 4% per annum above the:

- (a) Reserve Bank of Australia's cash rate, where Customer is located in Australia; and
- (b) Reserve Bank of New Zealand's official cash rate, where Customer is located in New Zealand.

**Licence Period** has the meaning given to it in the Order.

**Loss** means loss, damage, liability, cost (including all legal and other professional costs on a full indemnity basis), charge, expense, outgoing, fine or payment of any nature or kind.

**Medical Data** means any medical, patient or health related data transmitted, integrated with, or otherwise Processed through the Service by users (including information, medical charts, patient details etc.).

**Medi-Map** means, where Customer is using the Service in:

- (c) New Zealand, Medi-Map NZ Limited; and
- (d) Australia or any other jurisdiction, Medi-Map Group Pty Limited.



**Medi-Map IT Specifications** refers to the IT specifications available at: <https://medi-map.co.nz> and <https://medi-map.com.au>, as updated from time to time.

**Monthly Subscription Fees** has the meaning given in the Order.

**Order** means an order specifying the details of Customer's purchased licence to the Service in any:

- (a) Medi-Map order form in respect of the Service executed by the parties; or
- (b) online order form completed by Customer and logged in Medi-Map's customer relationship management system,

including details of the applicable Fees and Licence Period.

**Personal Data** means information about an identified individual or an individual who is reasonably identifiable, including 'personal information', 'sensitive information' and 'health information' as defined in applicable Privacy Law.

**Personnel** means individuals who are the employees, contractors or agents of a party and, in the case of Medi-Map, includes the employees, contractors and agents of Medi-Map's subcontractors. To avoid any doubt, Customer Personnel exclude all Medi-Map Personnel.

**Pharmacy** means an entity, organisation or person identified as such in the Order, and is a reference to a dispenser of prescription medicine and other care products to individuals.

**Privacy Law** means any applicable law governing the Processing of Personal Data, including the *Privacy Act 1988* (Cth) and *Privacy Act 2020* (NZ) and all applicable health information laws.

**Process** means to collect, store, access, use, copy, adapt, modify, reformat, transform, disclose or perform any other set of operations on.

**Professional Services** means any support, implementation, training, data migration or other service not forming part of the included on-boarding as specified in clause 1.2 or Support Services.

**Renewal Opt-out Cut Off** has the meaning given in the Order.

**Renewal Term** means the period specified in the Order.

**Service** means the Medi-Map Web Service (accessible at <https://medi-map.co.nz> and <https://medi-map.com.au>) that allows charting and management of prescriptions and medications administered to individuals in the care of a Care Organisation (which may also be made available through the Medi-Map mobile application) with the functionality specified in the Order:

- (a) including any Updates; but
- (b) excluding all Customer Material and Third Party Material.

**SOW** means a statement of work setting out the details of the Professional Services to be provided by Medi-Map, including the agreed scope and fees for the Professional Services.

**Support Services** means the support for the Service as specified in the Support Services Agreement.

**Support Services Agreement** means the support terms which are accessible at: <https://medi-map.co.nz> and <https://medi-map.com.au>, as updated from time to time.

**Third Party Material** means content, data, products, software, functionality or services owned or controlled by third parties, which are delivered through or integrate with the Service.

**Updates** means any new version, release, update, patch, fix, configuration or other modification of the Service made available by Medi-Map to its customers generally during the Licence Period.