

HEALTH ONE CONNECT USERS LICENCE AGREEMENT

between

MED-E-MASS (PTY)

and the

USER

THIS IS A LEGALLY BINDING AGREEMENT between **Med-e-Mass** and you, as a **User** of our on-line health record **System**. BY CLICKING "SIGN UP" OR THROUGH THE CONTINUED USE OF THE SYSTEM, YOU ARE UNDERTAKING LEGAL OBLIGATIONS AND CONFERRING LEGAL RIGHTS. Please read this agreement carefully, and do not click "Sign up" or continue use of the **System** unless you agree fully with its terms.

Terms and Conditions

1 DEFINITIONS

For purposes of this agreement:

- 1.1 "**commencement date**" means the date on which the **User's** registration as user is confirmed;
- 1.2 "**fees**" means the applicable fees as displayed on the **website**;
- 1.3 "**medical service provider**" means any medical practitioner, pharmacy, hospital, nursing home, clinic, pathology laboratory, optician or other entity, which provides medical services;
- 1.4 "**representatives**" means a party's trustees, directors, officers, employees, affiliates, agents or professional advisers;
- 1.5 "**services**" means the services to be rendered by **Med-e-Mass** to the **User** by means of and in connection with the **System** in terms of this agreement;
- 1.6 "**software**" means the **HEALTH ONE CONNECT** software licensed to the **User** in terms of this agreement;
- 1.7 "**System**" means **HEALTH ONE CONNECT** – a software system which:
 - 1.7.1 enables **medical service providers** to manage their patient files remotely by means of data processing and storage facilities hosted by **Med-e-Mass** at its premises;
 - 1.7.2 offers all the accessory services required for the optimal management of the healthcare records of medical service providers in a computerised environment; and
 - 1.7.3 embodies the **software** required for these purposes; and
- 1.8 "**website**" means the **HEALTH ONE CONNECT** website.

The **User** qualifies as a "**consumer**" in terms of the Consumer Protection Act 68 of 2008 if it is a company, a close corporation, a partnership, an association or a trust whose asset value or annual turnover is less than R2 million or if he or she is a natural person (a human being) who conducts a practice on his or her own, irrespective of his or her asset value or annual turnover. In what follows "**section**" refers to a section of the aforesaid Act.

2 GRANT AND TERMS OF LICENCE

- 2.1 **Med-e-Mass** grants the **User** a non-exclusive and non-transferable licence to use the **software** and **services** subject to the terms and conditions set out in this agreement.
- 2.2 **Med-e-Mass** retains ownership and all the intellectual property rights in or relating to the **software** and any copy thereof. The **software** is not sold and the **User** is only entitled to use it under licence for the **User's** processing and storing of data and for communication purposes.
- 2.3 This agreement shall commence on the **commencement date**, and shall, subject to the provisions of clause 4.7 below, remain in force until terminated by either the **User** or **Med-e-Mass** by giving the other party at least 90 (ninety) days' written notice.
- 2.4 On termination of this agreement, for whatever reason, **Med-e-Mass** shall forthwith disable the **User** from accessing the **services** and using the **software**.

3 ACTIVATION OF THE SYSTEM FOR THE USER

- 3.1 The **User** shall at all times while this agreement remains in force maintain its connection to the Internet by means an adequate online Internet connection and a browser such as Internet Explorer, Chrome, Safari, Mozilla, Opera or any other as **Med-e-Mass** may from time to time approve.
- 3.2 **Med-e-Mass** shall, subject to the provisions of this agreement, enable the **User** on the **commencement date** or as soon thereafter as is practicably possible:
- 3.2.1 to gain access to the **services** over the Internet;
- 3.2.2 to process and store its patient files online in storage facilities maintained at **Med-e-Mass's** premises; and
- 3.2.3 to retrieve relevant information online from such patient files as and when the need may arise.

4 OBLIGATIONS OF THE USER

- 4.1 The **User** shall pay **Med-e-Mass** the **fees** in advance before or on the 7th day of each month by employing one of the following methods:
- 4.1.1 by means of a debit order provided by the **User** to **Med-e-Mass**, which authorises **Med-e-Mass** to withdraw all the amounts due by the **User** in terms of this agreement from the relevant account; or
- If, in the latter event, the **User** is required to enter the three digit CVV ("Card Verification Value") number on the back of the debit or credit card in order to make a payment, that number will not be displayed on screen, and a fortiori not stored, by **Med-e-Mass**. This and other safety measures will be taken to thwart attempts at the abuse of the **User's** payment information for fraudulent purposes.
- 4.2 The **User** may pay fees in advance for any number of months or annually, in which event any intermediate escalation in the fees in terms of clause 4.8 below will become applicable to the **User** only at the end of the period for which the prepayment was made. As indicated elsewhere on the **website**, annual or quarterly fees are, in any event, lower per month than monthly fees.
- 4.3 If the **User** should fail to pay the fees timeously, **Med-e-Mass** will for a period of 30 (thirty) days after payment fell due, sporadically alert the **User** to the fact that the fees are overdue and that the withdrawal of the **services** is pending. However, at this stage the **User's** access to the **System** will not yet be affected.
- 4.4 If at the end of 30 (thirty) days following on the due date for payment the outstanding **fees** have not been paid, the **User's** access to the **services** will forthwith be blocked and a visual alert will be displayed notifying the **User** that its access to the **services** have been blocked and that the **services** will be restored only if the outstanding **fees** are paid in full.
- 4.5 In addition to the foregoing:
- 4.5.1 any outstanding amount or amounts shall bear interest at a rate two percentage points above the prime rate charged by Standard Bank of South Africa from time to time; and
- 4.5.2 **Med-e-Mass** shall be entitled to re-submit any debit order that is returned "unpaid" by the bank and all the resulting bank charges will be debited to the **User's** account.
- 4.6 If it should become necessary for **Med-e-Mass** to institute legal proceedings to recover **fees** from the **User**, the **User** shall be liable for tracing fees, collection commission and legal costs (on the attorney and own client scale) reasonably incurred by **Med-e-Mass**.
- 4.7 Irrespective of the foregoing, **Med-e-Mass** shall be entitled to cancel this agreement and terminate the **services** forthwith if the **User** should fail to pay the **fees** timeously, or if a debit order given by or on behalf of the **User** is not honoured.
- 4.8 **Med-e-Mass** may from time to time increase the **fees** by an amount which is fair and reasonable in view of:
- 4.8.1 any enhancement of the **services** that **Med-e-Mass** renders to the **User**; or
- 4.8.2 any increase in the CPI since the previous fixing of the fees;
- provided that **Med-e-Mass** gives the **User** at least 40 (forty) days' notice of its intention to do so. If the **User** does not terminate this agreement within the aforesaid notice period, it shall be deemed to have accepted the increase.

- 4.9 All persons attached to the **User**, who will be using the **System**, shall undergo initial basic training in its use.
- 4.10 The **User** shall forthwith notify **Med-e-Mass** in writing if there is an increase in the number of doctors attached to the **User's** practice, in which event the **fees** payable in terms of this agreement will be adjusted accordingly.
- 4.11 The **software** contains copyrighted material, trade secrets and other proprietary effects. The **User** shall not merge, modify, alter or adapt the **software** in any way, including disassembling, de-compiling or otherwise reducing the **software** to human perceivable form, or permit any third party to modify or alter or adapt the **software** in any way, or remove or alter any proprietary notices, logos or labels on or in the **software** or front end **User** interface.

5 INFORMATION SECURITY AND PRIVACY

Consumers' attention is specifically drawn to the provisions of this clause 5 in compliance with the requirements of **section 49(1)(a)**.

- 5.1 In order to use the **software** the **User** shall make use of a username, password or other security mechanism as **Med-e-Mass** may prescribe from time to time. The **User** shall forthwith notify **Med-e-Mass** in writing of any unauthorised or fraudulent use of such username, password or security mechanism. The **User** indemnifies and shall hold **Med-e-Mass** and its **representatives** harmless, from any claims, losses, damages and expenses incurred or caused by any unauthorised or fraudulent use of the **User's** username, password or security mechanism.
- 5.2 The **User** shall bear all the risks involved in the use of Internet applications, including the risks of exposure of sensitive or confidential information to persons for whom it was not intended, hacking, viruses, exposure to contaminated files and objectionable material, spamming, electronic fraud and other security risks. **Med-e-Mass** shall not be liable for any intrusion or hack to the **software** nor for any unauthorised access to the information or data stored or communicated by the **User** or any other person using the **software** or the **services**. It is the **User's** own responsibility to ensure that only authorised persons have access to such information or data through adequate information security standards and procedures to be implemented and monitored by the **User**.
- 5.3 **Med-e-Mass** does not guarantee the non-exposure of personal information and, notwithstanding the terms of **Med-e-Mass's** privacy policy, the **User** assumes the risk of any breaches of privacy.
- 5.4 The **User** gives **Med-e-Mass** permission to use data extracted from the **System** for comparative or commercial purposes as long as the identity of the **User**, a patient or member is not disclosed.

6 SOFTWARE MAINTENANCE AND SERVICES

Med-e-Mass shall, render maintenance and support **services** to the **User** as set out below.

6.1 *General services*

Med-e-Mass shall provide the following to the **User**:

- 6.1.1 subject to the provisions of clauses 6.3, 6.4 and 8.4 below, continuous accessibility of the **services** over the Internet, except for interruptions for purposes of routine maintenance, of which ample prior notice will be given;
- 6.1.2 telephonic support from **Med-e-Mass's** Call Centre provided the call is made by the **User** and does not exceed 10 (ten) minutes;
- 6.1.3 enhancements or new releases of the **software**, which will comply with all legal requirements as well as the requirements of SAMA and BHF; and
- 6.1.4 customized developments and on-site support requested by the **User**, which will be charged on a time and material basis at **Med-e-Mass's** ruling rates.

6.2 *Backups*

Med-e-Mass shall ensure that backups are continually made of all the data and information received from or processed by the **User** or **Med-e-Mass**.

6.3 **Corrective maintenance**

On notification of a breakdown or deterioration in the **services** due to a fault in the **software**, **Med-e-Mass** shall expeditiously carry out repairs including the replacement of **software**, if necessary, and restore service.

6.4 **Fault Reporting**

The **User** shall report a breakdown of the **software** to **Med-e-Mass**. **Med-e-Mass** shall expeditiously respond to such report in accordance with the foregoing provisions.

6.5 **Training**

Med-e-Mass shall provide training to the **User's** members of staff who operate the software. The **User** shall ensure that every operator completes the **Med-e-Mass** basic training course on the use of the **software**. It is also the continued responsibility of the **User** to keep its staff trained in the use of the **software**. **Med-e-Mass** will evaluate the competency level of operators from time to time (in line with **Med-e-Mass's** records of support required by the **User** and, if necessary, by on-site spot checks) to ensure effective use of the software.

6.6 **Availability of support services**

The telephonic support referred to in clause 6.1.1 shall be available between 08:30 and 17:00 from Mondays to Fridays, excluding Public Holidays.

7 **USE OF THE SOFTWARE**

The **User** shall be fully responsible for the supervision, use, care and control of the operating procedures carried out on the **User's** computer. The **software** shall be used on a computer system approved for that purpose by **Med-e-Mass**, failing which, any warranties given by **Med-e-Mass** will lapse.

8 **EXCLUSIONS**

Consumers' attention is specifically drawn to the provisions of this clause 9 in compliance with the requirements of **section 49(1)(a)**.

The support and maintenance services do not include the following:

- 8.1 maintenance or repairs of electrical works or telecommunication lines, computing equipment, hardware, circuits and apparatus connected to computers or any accessories or devices;
- 8.2 all items of any nature not forming an integral part of the **software**;
- 8.3 the repair of software data corruption due to virus attack, user interference, user generated errors, failure to do month-end routines, ignoring unbalanced or error reports or allowing an inadequately trained operator to use the system;
- 8.4 reparation for damage or lost service or data resulting from *vis major* or *causus fortuitus*, such as, but not limited to, strike, natural disaster, riot, flood, act of war, terrorism, accident, failure of transport, theft, fire, water, smoke, lightning, earthquake, neglect or misuse, including surge or outage of electrical power or the unavailability of water supply or means of communication or changes to the specified environment or any similar events which cannot, according to objective standards of reasonable conduct, be prevented or avoided by **Med-e-Mass**;
- 8.5 the cost incurred as a result of the **User's** request for **Med-e-Mass** to attend to an apparent fault or the restoration of service apparently lost or impaired due to misuse, malicious damage, incorrect operation or negligence or the failure of lines or other equipment or apparatus either directly or indirectly connected to the equipment, whether due to the **User**, its **representatives** or anyone on the **User's** premises or any other person or cause beyond the control of **Med-e-Mass**; or
- 8.6 additional assistance if the **User** employs untrained staff or staff is on leave or sick.

9 **WARRANTY AND LIMITATION OF LIABILITY**

Consumers' attention is specifically drawn to clauses 9.2 and 9.3 in compliance with the requirements of **section 49(1)(a)**.

- 9.1 **Med-e-Mass** warrants that the **software** will perform substantially in accordance with its published specifications, which the **User** acknowledges it has received, provided always that the **software** is used on computer hardware, and in conjunction with an operating system, for which the **software** is designed.
- 9.2 **Med-e-Mass** shall not be liable for any fault in the computer hardware or the **software** nor does **Med-e-Mass** warrant the integrity of any third party data or electronic information, including but not limited to converted data. **Med-e-Mass** shall, in particular, not be liable for any consequential loss which the **User** may suffer as a result of any fault in the **software** and its aggregate liability arising from breach of this agreement will, in any event, not exceed the **fees** charged by **Med-e-Mass** for 1 (one) month.
- 9.3 **Med-e-Mass** gives no undertakings or warranties in addition to the warranty contained in clause 9.1 above.
- 10 **NON-TRANSFERABILITY**
- 10.1 The **User** shall not, without **Med-e-Mass's** prior written consent, cede, assign, delegate or otherwise transfer its rights in terms of this agreement to any third party nor shall it allow any third party to use the **software**.
- 10.2 The licence will *ipso facto* lapse if there is a change in the membership, ownership or control of the **User**. In such event the **User** will have to apply for a new licence and pay the applicable registration **fees**.