

## Consultant Connect – Terms of Use

These Terms of Use are intended to explain Consultant Connect's obligations as a service provider and Subscriber's obligations as a customer. Please read them carefully.

These Terms of Use are binding on any use of the Service and apply to Subscriber from the time that Consultant Connect provides Subscriber (or any Invited User) with access to the Service.

By agreeing to receive the Service You warrant that You have read and understood these Terms of Use and have the legal authority bind Subscriber and all Invited Users on the terms set out in these Terms of Use. You are deemed to have agreed to these Terms of Use on behalf of Subscriber.

### Definitions

#### **"Agreement"**

means the agreement between Consultant Connect and Subscriber on the terms set out in these Terms of Use.

#### **"Access Fee"**

means any fees (excluding any taxes and duties) payable by Subscriber in accordance with the sums agreed in Correspondence between Subscriber and Consultant Connect and subject to change from time to time as set out in Clause 3.1.

#### **"Confidential Information"**

includes all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including the Service but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other party.

#### **"Consultant Connect"**

means Consultant Connect Limited which is a company registered in England based at 1 St Aldate's, Oxford OX1 1DE.

**"Consultant Connect Data"** means all metadata and other data generated through Subscriber's and Invited Users' use of the Consultant Connect System, excluding any Subscriber Data.

#### **"Consultant Connect System"**

means the technology platform and associated telephony, messaging and photography facilities offered by Consultant Connect as well as the reporting system accessed at the domains [www.consultantconnect.org.uk](http://www.consultantconnect.org.uk) and [www.photosaf.com](http://www.photosaf.com) and the smartphone apps and the telephone numbers associated with the Consultant Connect service in Subscriber's area. For the avoidance of doubt, this includes all products supplied by Consultant Connect, including but not limited to Urgent Connect, Mental Health Connect, PhotoSAF, PhotoSAF Sharing and the Consultant Connect app.

#### **"Correspondence"**

means any written communications between Subscriber and Consultant Connect, including emails, in which Subscriber's use of the Consultant Connect System were discussed and agreed.

#### **"Data Protection Law"**

means

- a) the GDPR and any national data protection laws implementing or supplementing the GDPR in any EEA member state or other country in Europe which decides to adopt the GDPR; and
- b) any other relevant data protection legislation, regulations or guidelines.

**"GDPR"**

means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC and the terms "controller", "data subject", "personal data" and "processing" as used in this Agreement have the meanings given in the GDPR.

**"Intellectual Property Right"**

means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.

**"Invited User"**

means any person or entity, other than the Subscriber, that uses the Service with the authorisation of the Subscriber from time to time including GPs, consultants, other clinicians and healthcare managers.

**"Service"**

means the communication and data capture and presentation services made available via the Consultant Connect System through which clinicians are given communication links to other clinicians, as such service may be modified by Consultant Connect from time to time.

**"Subscriber"**

means the entity which enters into this Agreement and contracts to use the Service.

**"Subscriber Data"**

means any data inputted by Subscriber or an Invited User or with Subscriber's or Invited User's authority into the Consultant Connect System. This data includes the NHS number of the subject patient, recordings of telephone calls placed through the Consultant Connect Systems, any written notes and messages and any photographs sent by Subscriber or an Invited User via the Consultant Connect System.

**"Term"** means the term of this Agreement, as set out in clause 6.

**"You"**

means the individual who accepts these Terms of Use on behalf of Subscriber, whether by email, by signing a copy of these Terms of Use or otherwise. **"Your"** has a corresponding meaning.

## 1. Provision of Service

Consultant Connect will provide the Service to Subscriber and Subscriber shall use the Service, in each case in accordance with these Terms of Use.

## 2. Use of Software

Consultant Connect grants Subscriber the right to access and use the Service for the Term via the Consultant Connect System. This right is non-exclusive, non-sublicensable and non-transferable except that Subscriber may grant the right to access and use the Service to Subscriber's Invited Users. Subscriber's use (and Subscriber's Invited Users' use) of the Services is limited by and subject to this Agreement.

## 3. Subscriber's Obligations

### 3.1 Payment obligations

An invoice for the Access Fee will be issued each quarter starting the month Subscriber agrees to use the Service. Consultant Connect will continue invoicing Subscriber quarterly in advance until this Agreement is terminated in accordance with clause 6. Subscriber must pay all amounts specified in any invoice by the due date for payment unless otherwise agreed by the parties in writing. All amounts payable under this Agreement shall be exclusive of VAT or relevant local sales tax (if any)



and Subscriber is responsible for payment of all VAT and other taxes and duties in addition to the Access Fee.

From time to time, Consultant Connect may change the Access Fees it charges by giving Subscriber 4 months' written notice of the change. If Subscriber continues to use the Service following such notice, it shall be deemed to have accepted the revised Access Fees. If Subscriber does not want to continue to use the Service, Subscriber can terminate the Agreement with Consultant Connect by giving 3 months' notice in accordance with clause 6 of this Agreement.

If Subscriber has a contract with an agreed Access Fee for a fixed period of time that has been agreed in Correspondence, Subscriber's Access Fee will not be affected by any changes until the end of that fixed period of time.

### 3.2 Access conditions

Subscriber is responsible for all use of the Services by Invited Users and Subscriber will ensure that all Invited Users comply with all Subscriber's obligations under this Agreement.

Subscriber is responsible for all activities on the Service using Subscriber's usernames and passwords. Subscriber must ensure that all usernames and passwords required to access the Service are kept secure and confidential. Subscriber must immediately notify Consultant Connect of any unauthorised use of Subscriber's usernames and passwords or any other breach of security and Consultant Connect will reset Subscriber's credentials and Subscriber must take all other actions that Consultant Connect reasonably deems necessary to maintain or enhance the security of Consultant Connect's systems and networks and Subscriber's access to the Services.

Save to the extent expressly permitted under applicable law Subscriber may not (and shall not permit any third party to) copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Service or Consultant Connect System in whole or in part.

Subscriber shall indemnify Consultant Connect against all claims, costs, damage and loss arising from Subscriber's breach of this Agreement or Subscriber's breach of any Data Protection Law.

### 3.3 Confidentiality

Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with these Terms. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same other than in accordance with this Agreement.

## 4. Intellectual Property

### 4.1 General

Title to, and all Intellectual Property Rights in, the Service, the Consultant Connect System, the Consultant Connect Data and any documentation relating to them are and remain the property of Consultant Connect.

### 4.2 Ownership of Subscriber Data

Title to, and all Intellectual Property Rights in, the Subscriber Data are and remain the property of Subscriber and its Invited Users as appropriate. Subscriber grants Consultant Connect a licence to use, copy, transmit, store, and back-up Subscriber's information and Subscriber Data for the purposes

of enabling Subscriber to access and use the Services and for any other purpose set out in this Agreement or related to provision of services to Subscriber.

Subscriber gives Consultant Connect permission to analyse the Subscriber Data to produce anonymised reports on system usage and gives Consultant Connect permission to use such analysis as it sees fit, although any usage shall not identify Subscriber unless expressly agreed otherwise in writing.

#### 4.3 Availability of Data and Service Interruptions

Subscriber's access to the Consultant Connect System is contingent on full payment of the Access Fee when due. Consultant Connect does not warrant that the use of the Service will be uninterrupted or error free. Among other things, essential maintenance, the operation and availability of the systems used for accessing the Service, including public telephone services, mobile and computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the Services. Consultant Connect is not in any way responsible for any such interference or prevention of Subscriber's access or use of the Services.

Save as expressly set out in this Agreement, all other conditions and warranties are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

## 5 Data Protection

5.1 Both parties will comply with all applicable requirements of the Data Protection Law. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Law.

5.2 The parties acknowledge that for the purposes of Data Protection Law, the Subscriber or relevant Invited User is the data controller and Consultant Connect is the data processor in relation to the Subscriber Data. The Schedule sets out the scope, nature and purpose of processing by Consultant Connect, the duration of the processing and the types of personal data and categories of data subject, in each case in relation to Subscriber Data. The parties acknowledge that for the purposes of Data Protection Law, Consultant Connect is the data controller in relation to Consultant Connect Data (to the extent it comprises personal data).

5.3 Without prejudice to the generality of clause 5.1, the Subscriber will ensure that it or relevant Invited User has all necessary appropriate consents and notices in place to enable lawful transfer of the Subscriber Data to Consultant Connect and processing by Consultant Connect of such Subscriber Data for the duration and purposes of this agreement.

5.4 Without prejudice to the generality of clause 5.1, Consultant Connect shall, in relation to any Subscriber Data which is personal data and which Consultant Connect processes on behalf of Subscriber or Invited User in connection with the performance by Consultant Connect of this agreement ("**Personal Data**"):

(a) process that Personal Data only on the written instructions of the Subscriber unless Consultant Connect is required by the laws of any member of the European Union or by the laws of the European Union applicable to Consultant Connect to process Personal Data (Applicable Laws). Where Consultant Connect is relying on laws of a member of the European Union or European Union law as

the basis for processing Personal Data, Consultant Connect shall promptly notify the Subscriber of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Consultant Connect from so notifying the Subscriber;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Subscriber, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

(d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Subscriber has been obtained and the following conditions are fulfilled:

(i) the Subscriber or Consultant Connect has provided appropriate safeguards in relation to the transfer;

(ii) the data subject has enforceable rights and effective legal remedies;

(iii) Consultant Connect complies with its obligations under the Data Protection Law by providing an adequate level of protection to any Personal Data that is transferred; and

(iv) Consultant Connect complies with reasonable instructions notified to it in advance by the Subscriber with respect to the processing of the Personal Data.

(e) assist the Subscriber in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Law with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the Subscriber without undue delay on becoming aware of a Personal Data breach;

(g) at the written direction of the Subscriber, delete or return Personal Data and copies thereof to the Subscriber on termination of the agreement in each case as set out in clause 6, unless required by Applicable Law to store the Personal Data; and

(h) maintain complete and accurate records and information to demonstrate its compliance with this clause.

5.5 The Subscriber does not consent to Consultant Connect appointing any third party processor of Personal Data under this agreement.

## 6. Term

6.1 The Agreement will continue for the period agreed between the parties in Correspondence. If the parties agreed an initial fixed period of usage, such as 12 months, and Subscriber intends to

terminate the Agreement at the end of the fixed period, Subscriber shall give Consultant Connect notice at least 3 months before the end of the fixed period that Subscriber intends to terminate the Agreement and the Agreement shall then terminate automatically at the end of the fixed period.

6.2 In the event that the parties did not agree a fixed period of usage in Correspondence or if the parties did agree a fixed period of usage and Subscriber did not give Consultant Connect notice at least 3 months before the end of that fixed period, this Agreement shall remain in effect until either party gives the other 3 months' written notice that it wishes to terminate the Agreement and the Agreement shall then terminate automatically on expiry of such notice.

6.3 On termination of this Agreement for any reason:

- (a) all rights granted to Subscriber and Invited Users under this Agreement (including the right to access the Consultant Connect System) shall cease;
- (b) Subscriber shall cease all activities using the Service authorised by this Agreement;
- (c) Subscriber shall immediately pay to Consultant Connect any sums due under this Agreement; and
- (d) Either:
  - (i) if Consultant Connect and Subscriber agree the costs for Consultant Connect to continue to host the Subscriber Data after such termination and for so long as Subscriber pays such costs, Consultant Connect shall host and provide access to the Subscriber Data on the terms set out in this Agreement (save that Subscriber shall have no access to the Service); or
  - (ii) if the parties do not agree the costs for Consultant Connect to continue to host the Subscriber Data or if Subscriber ceases to pay such costs, Consultant Connect shall provide access to the Subscriber Data for a reasonable period (but not exceeding 3 months) following termination and shall provide assistance to Subscriber (at Subscriber's cost) to enable Subscriber to transfer the Subscriber Data to Subscriber or to a third party selected by Subscriber, then Consultant Connect shall delete the Subscriber Data.

## 7. Limits of Liability

7.1 Subject to clause 7.3, Consultant Connect shall have no liability under or in connection with this Agreement whether in contract, tort (including negligence) or otherwise for:

- (i) loss of profits;
- (ii) loss of anticipated savings;
- (iii) loss of business opportunity;
- (iv) loss of goodwill;
- (v) unavailability or corruption of data; or
- (vi) indirect or consequential loss,

Whether or not such losses were within the contemplation of parties at the date of this Agreement.

7.2 Subject to clause 7.3, the total liability of Consultant Connect, whether in contract, tort (including negligence) or otherwise under or in connection with this Agreement in respect of any calendar year, shall in no circumstances exceed a sum equal to 125% of the Access Fee paid or payable in respect of such calendar year.

7.3 The exclusions and limitations in clause 7.1 and 7.2 shall apply to the fullest extent permissible at law, but Consultant Connect does not exclude liability for:

- (a) death or personal injury caused by the negligence of Consultant Connect, its officers, employees, contractors or agents;

- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

## 8. [Redacted]

## 9. General Provisions

### 9.1 No Waiver

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### 9.2 Entire Agreement

Subject to clause 7.3, this Agreement and the Correspondence contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter. Each party acknowledges that, in entering into this Agreement and the Correspondence, it does not rely on any statement, representation, assurance or warranty other than as expressly set out in this Agreement and the Correspondence.

### 9.3 Severance

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

### 9.4 Third Party Rights

A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

### 9.5 No Partnership

Nothing in this Agreement shall establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party

### 9.6 Force Majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.

### 9.7 Notices

Any notice given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or by pre-paid first-class post at its principal place of business. Any such notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt; or



(b) if sent by pre-paid first-class post at 9.00 am on the second business day after posting.

#### 9.8 Governing law and jurisdiction

This Agreement and any dispute or claim arising in connection with it shall be governed by English law. The parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises in connection with this Agreement



## **THE SCHEDULE PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

### **1. PROCESSING BY CONSULTANT CONNECT**

#### **1.1 SCOPE**

Consultant Connect is a Data Processor, holding and processing patient data on behalf of data controllers who will typically be one of: individual GP Practices (or clinical Commissioning Groups on their behalf), Acute Hospital Trusts, Mental Health Trusts or District Nursing Providers.

Consultant Connect is the provider of communications systems to the NHS and Private Health Providers that facilitate easier and faster patient-specific discussions between different teams of clinicians. The overall objective is to ensure patient pathways are not delayed unnecessarily on account of clinicians being unable to contact each other.

#### **1.2 NATURE**

The Personal Data will have been provided, or will be provided by a clinician from whom the patient is requesting healthcare advice/services in order to provide those services to patient to the highest possible standard.

The Personal Data is used/retained, upon the instruction of the data controller, as part of a patient's medical record and serves as a record of advice given should any healthcare organisation need to access it in the future with regard to providing high quality care to that patient.

All the Personal Data is stored on Consultant Connect's database in the UK.

#### **1.3 PURPOSE OF PROCESSING**

The purpose of processing the Personal Data is to:

- Facilitate easier and faster patient-specific discussions between different teams of clinicians
- Retain a record of those discussions to support ongoing patient care and for medico-legal purposes should they be necessary

#### **1.4 DURATION OF THE PROCESSING**

Personal Data will be retained in accordance with Department of Health guidelines.

### **2. TYPES OF PERSONAL DATA**

- NHS Number – a patient's 10-digit NHS Number
- Call Recording – verbatim recording of a clinical discussion
- Photo Images – relevant photos taken by a clinician in order to support a clinical discussion
- Associated Notes – any notes sent by one clinician to another to support a clinical discussion
- Clinician Contact Details – names and contact details for NHS clinicians

### **3. CATEGORIES OF DATA SUBJECT**

- NHS Patients
- Clinicians including inter alia GPs and Consultants