

# MD Clinical, MD PracSoft, MD Bluechip and MD Sidebar End User Licence Agreement

Last updated September 2017

The Applications are owned and operated by Health Communication Network Pty Limited T/A MedicalDirector (ACN 068 458 515) (**MedicalDirector, we, us or our**) or its licensors. This End User Licence Agreement (**EULA**) sets out the terms and conditions under which you may use and access:

- (a) the Applications as a Trial User;
- (b) the Applications and related services as an individual (for which your Subscriber has been granted a licence as specified in a Subscription Agreement entered into by your Subscriber) (**Individual Users**); or
- (c) the Applications and related services as a Subscriber, where such Subscriber has entered into a Subscription Agreement with MedicalDirector.

Unless otherwise specified in this EULA, a reference to **you** or **your** is a reference to any user accessing and using the Applications under (a), (b) or (c) above (as the context requires).

1 MedicalDirector has been supporting healthcare professionals and improving health outcomes for more than 20 years. We adopt a trusted partner approach in relation to how we collect, use and disclose your Personal Information and any Patient Data. This EULA includes our Privacy Policy, including our "Software User" part of the Privacy Policy (available at <http://medicaldirector.com/about/privacy>), which is incorporated into this EULA by reference and the MD Health Education and Research Tool terms at Appendix 1 to this EULA. Subscribers and Individual Users have the functionality to opt-out of (or opt-in to) the MD Health Education and Research Tool offering at any time. No Personal Information (i.e. no identified Patient Data) is extracted in connection with the MD Health Education and Research Tool offering.

## 2 Applications

2.1 Clause 1 applies to Trial Users and Individual Users only.

2.2 **Please read this EULA carefully.** This EULA, if accepted by you in accordance with clause 2.3, will constitute a binding agreement between you and MedicalDirector.

2.3 **By clicking "I agree" or by accessing and/or using the Applications and related services, you agree to be bound by this EULA (which includes our Privacy Policy).** If you agree to this EULA on behalf of a Subscriber, you represent and warrant to MedicalDirector that you have full authority to bind the Subscriber to this EULA. If you do not agree to this EULA, you may not access or use the Applications or any content, data or materials (including any text, graphics, logos, audio and software) made available to you on or via the Applications (or the MD Health Education and Research Tool) by MedicalDirector (**Application Content**) or any related services and you must immediately cease accessing and using the Applications, Application Content and related services. We recommend that you save a local copy of this EULA for your own records.

2.4 Application Content does not include Patient Data. In relation to the Applications, we do not ourselves collect or store Patient Data in our systems. It is possible that from time to time in providing Support Services to you that our personnel may have temporary access to Patient Data, but this will be temporary only and Patient Data will not be collected or held by us.

2.5 For clarity, your use of and access to the Applications and Application Content does not affect your ownership of Patient Data.

2.6 In order to access and use the Applications and Application Content, you must:

- (a) be at least 18 years of age;
- (b) possess the legal right and ability to enter into a legally binding agreement with us;
- (c) agree and warrant to use the Applications and Application Content in accordance with this EULA and the Documentation; and
- (d) be a registered user with MedicalDirector.

2.7 The terms of this EULA commence when you agree to them (for example, by clicking 'I agree') and will continue in full force and effect for the Subscription Period or until terminated in accordance with its terms.

### **3 General**

3.1 We may, in our sole discretion, update, modify or replace any or all of this EULA from time to time by posting an updated version at this on our website, unless such update, modification or replacement changes how we collect, use or disclose your personal information (or Patient Data) or de-identified data in relation to the MD Health Education, Research And Insight Tool, or detrimentally affects the functionality or performance of the Applications (in which case we will notify you in advance of such update, modification or replacement and seek your agreement prior to implementing the change). You are responsible for checking the Applications for all other changes to this EULA. Your continued use of, or access to, the Applications following the posting of any such changes to this EULA constitutes acceptance of those changes. If you do not agree to any update to this EULA you must immediately cease using and accessing the Applications, Application Content and related services.

3.2 You may access and use the Applications and the Application Content only as permitted by this EULA.

### **4 Grant of licence**

4.1 In consideration for the mutual promises set out in this EULA, MedicalDirector grants to you for the Subscription Period a personal non-exclusive, non-transferable, non-sub-licensable licence to use and access the specific Applications and the Application Content, within Australia, in accordance with this EULA and solely for (where you are a Trial User) your legitimate business purposes or (where you are an Individual User or Subscriber, the legitimate business purposes of the Subscriber) and subject to the following restrictions:

- (a) you have no right to adapt, modify, redistribute, disassemble, decompile or reverse engineer the selected Applications nor may you make any copies of the Applications (but you may make one copy solely for disaster recovery purposes);
- (b) your use must be in accordance with any user identification and password requirements stipulated by us; and
- (c) (for Individual Users and Subscribers) MedicalDirector has received payment in full of the relevant Subscription Fee and any amounts due to MedicalDirector as set out in the relevant Subscription Agreement.

4.2 If you wish to use the Applications or Application Content for any other purpose, you must seek the consent of MedicalDirector. If such consent is granted, you may be required to enter into a separate agreement.

### **5 Conditions of access and acceptable use**

5.1 The Applications are for your use for (where you are a Trial User) your legitimate business purposes or (where you are an Individual User or Subscriber) the legitimate business purposes of Subscriber only. You must not:

- (a) modify, copy, distribute, transmit, display, perform, reproduce, publish, license, commercially exploit, create derivative works from, transfer, or sell any content, software, products or services contained within the Applications or Application Content;
- (b) use the Applications, or any Application Content, to further any other commercial purpose, including any advertising or advertising revenue generation activity;
- (c) access or use the whole or any part of the Applications or Application Content, except as expressly authorised by this EULA, or otherwise with the prior written consent of MedicalDirector;
- (d) copy or replicate, or directly or indirectly allow or cause a third party to copy or replicate, the whole or part of any of the Applications or Application Content (but you may make one copy solely for disaster recovery purposes);
- (e) remove or obscure any proprietary notice (including any copyright, trade mark, service mark, tagline) or other notices contained in the Applications or Application Content;
- (f) circumvent any mechanisms in the Applications intended to limit your use of or access to areas within or components of the Applications;
- (g) vary, alter, modify, merge, interfere with, reverse disassemble, decompile or reverse engineer, or otherwise seek to obtain or derive the source code from, or directly or indirectly allow or cause a third party to vary, alter, modify, merge, interfere with, reverse disassemble, decompile or reverse engineer or obtain or derive the source code from, the whole or any part of the Applications, except as permitted by Law; or

- (h) use any data mining, gathering or extraction tools in connection with the Applications or Application Content, without MedicalDirector's prior written consent.
- 5.2 You must not access or use the Applications or Application Content, or post, provide or transmit any data or content in any way that:
- (a) violates or infringes the rights of MedicalDirector, or others (such as individuals under applicable Privacy Laws) including, without limitation, any Intellectual Property Rights;
  - (b) is unlawful, offensive, indecent, objectionable, harassing, obscene, pornographic, threatening, abusive, defamatory, libellous, fraudulent, tortious, or invasive of another's privacy or constitutes a breach of any other of the legal rights of individuals (including with respect to the Spam Act);
  - (c) impersonates any person, business or entity, including MedicalDirector, or the employees or agents of MedicalDirector;
  - (d) includes personal and sensitive information about another person without that person's current consent or authorisation as required by applicable Privacy Laws;
  - (e) is false, misleading, or deceptive;
  - (f) violates this EULA or any policy posted on the Applications or as part of the Application Content;
  - (g) contains viruses, malware or any other computer code, scripts, files or programs that interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or other property, or otherwise permit the unauthorised use of a computer or computer network;
  - (h) could damage, disable or impair the servers or networks used by the Applications or their users; or
  - (i) advertises products or services (except, in the case of a Subscriber, as permitted under the terms of the Subscription Agreement or another direct arrangement with MedicalDirector).

5.3 If you are an Individual User or Subscriber, we reserve the right to suspend or terminate your use of and access to the Applications at any time (at our sole discretion and without notice) if Subscriber defaults in the payment of any amounts due to MedicalDirector under the relevant Subscription Agreement. However MedicalDirector will provide you with read only Application functionality during any such suspension period and for a reasonable period (as determined by us) post-termination in order for you to access and review Patient Data for your internal purposes (for example, for the purposes of facilitating ongoing care by other healthcare providers or in connection with legal proceedings involving relevant Patient Data).

## **6 Registration and Login Credentials**

6.1 When you login to the Applications, you may be prompted to update or select your own Login Credentials for use in accessing the Applications. You must keep your own Login Credentials (including your username and password) secure and you must not share them with any other person or allow any third party to use your Login Credentials to log in to the Applications. MedicalDirector will not be liable for any Loss arising out of or in connection with your failure to maintain the security of your Login Credentials. As between you and MedicalDirector, you are fully responsible for all activities carried out under or using your Login Credentials (whether or not authorised by you). You must immediately notify MedicalDirector of any unauthorised use of your Login Credentials or any other breaches of security. To the extent permitted by Law, including the Australian Consumer Law, MedicalDirector and its contractors, suppliers, licensors and other employees will not be liable for any acts and omissions undertaken by or on behalf of you by a user of your Login Credentials, including any damages of any kind arising from such acts of omissions.

## **7 Intellectual Property Rights**

7.1 Unless otherwise indicated, MedicalDirector owns or licenses from third parties all rights, title and interest (including Intellectual Property Rights) in the Applications and Application Content, including in any improvements to the Applications or the Application Content, Updates and enhancements and including as they may incorporate any suggestions, ideas, information, comments, process descriptions or other information that you provide to us from time to time (**Feedback**).

7.2 Your use of and access to the Applications and Application Content does not grant or transfer any rights, title or interest to you in relation to the Applications or the Application Content. However we do grant you a licence to access the Applications and view the Application Content in accordance with this EULA and, where applicable, as expressly authorised by us and/or our third party licensors.

7.3 You may from time to time provide us with Feedback. You absolutely and unconditionally assign to MedicalDirector all rights, title and interests (including all Intellectual Property Rights) in and to any Feedback immediately upon creation, free of all encumbrances and third party rights and you must at your own cost do all things necessary to give effect to such assignment, including executing any required documents or effecting any required registrations.

## **8 Data and privacy**

(a) MedicalDirector may collect Personal Information about you as a "Software User" for the purposes set out in our Privacy Policy. MedicalDirector will handle your Personal Information in accordance with this EULA and our Privacy Policy, which provides information on how we manage your Personal Information, including what Personal Information we collect and how and why we collect this information. By providing your Personal Information to us (including through your use of the Applications), you consent to the collection, use, storage and disclosure of that information as described in our Privacy Policy and this EULA.

## **9 Support Services**

- (a) Clause 8 applies to Individual Users using and accessing the Applications pursuant to a Subscription Agreement entered into by your Subscriber.
- (b) MedicalDirector may provide Support Services to your Subscriber (as set out in the relevant Subscriber Quote Form). These services may, at the sole option of MedicalDirector, take the form of remote access to your Subscriber's network, in accordance with MedicalDirector's then current procedures governing the performance of such services.
- (c) You acknowledge that if your Subscriber does not provide MedicalDirector with remote access to its network, MedicalDirector will not be able to provide as extensive a range of Support Services as if remote access were made available.
- (d) You acknowledge and agree that your information (including Personal Information) may be disclosed to or may be accessed by MedicalDirector in the course of MedicalDirector facilitating providing support or technical services to your Subscriber. Our personnel may have temporary access to Patient Data, but this will be temporary only and Patient Data will not be collected or held by us. You must ensure that at all times you (or your Subscriber) hold all necessary authorisations and current consents from individuals (as required by applicable Privacy Laws) in order for MedicalDirector to access such information in the course of providing Support Services to your Subscriber.

## **10 eHealth Record System**

10.1 This clause 9 applies in addition to the other provisions of this EULA and does not limit the operation of any other provision, including, without limitation, clauses 15 and 16. To the extent of any inconsistency between this clause and any other provision of this EULA, this clause applies instead of the other inconsistent provision.

10.2 To the extent relevant to your use of the Applications, you must comply with all:

- (a) laws and regulations; and
- (b) policies, procedures and terms of use,

relating to or governing use of the eHealth Record System.

10.3 You must ensure that you hold all necessary authorisations and consents to upload information to or access information from the eHealth Record System using the Applications. You must comply with all restrictions, limitations and terms governing those authorisations and consents.

10.4 You acknowledge that MedicalDirector may:

- (a) provide information (for example, logs relating to use of the Applications to access the eHealth Record System) to anyone authorised to receive it; and
- (b) do anything else permitted or required, by law or by the terms or agreements relating to conformant clinical information systems or the eHealth Record System.

You hereby authorise MedicalDirector to do all of those things.

## **11 Confidentiality**

### **11.1 Confidential Information**

Subject to clause 11.2:

- (a) you must not disclose, or use for a purpose other than as contemplated by this EULA, any Confidential Information of MedicalDirector;
- (b) MedicalDirector must not disclose, or use for a purpose other than as contemplated by this EULA, any of your Confidential Information.

#### 11.2 **Permitted disclosure**

You or MedicalDirector may disclose any Confidential Information of the other:

- (a) to each other;
- (b) to persons which control or are controlled by you or MedicalDirector (as the case requires) within the meaning of the Corporations Act, and the employees, legal advisors or consultants of such persons, in each case under corresponding obligations of confidence as imposed by this clause and only where such persons, employees, legal advisors or consultants of such persons have a need to know such information in connection with this EULA;
- (c) which is at the time lawfully in the possession of the proposed recipient of the Confidential Information through sources other than you or MedicalDirector or a related body corporate of you or MedicalDirector (as the case requires);
- (d) in enforcing this EULA or in a proceeding arising out of or in connection with this EULA;
- (e) if required under a binding order of a Governmental Agency or under a procedure for discovery in any proceedings;
- (f) if required under any Law or any administrative guideline, directive, request or policy whether or not having the force of Law;
- (g) as required or permitted by this EULA;
- (h) to its own legal advisers, insurers and consultants in each case under corresponding obligations of confidence as imposed by this clause and only where such persons have a need to know such information in connection with this EULA; or
- (i) with the prior written consent of the other.

### 12 **Updates and enhancements**

12.1 Apart from any Updates to notify revisions to the fee schedules of Medicare Australia, MedicalDirector does not warrant that any Updates of the Applications will be released during the Subscription Period.

12.2 MedicalDirector may (but is not required to):

- (a) provide standard or progressive Updates, changes or amendments to the Applications as MedicalDirector sees fit to ensure proper operation and interaction of all parts of the Applications and any general enhancements that may be introduced; and
- (b) offer new services and features for the Applications,

which will be subject to this EULA.

12.3 MedicalDirector does not warrant the accuracy of the revisions to the fee schedules of Medicare Australia which are provided on the basis of information supplied to it/published by Medicare Australia.

12.4 MedicalDirector's obligations to provide Updates relate only to the Applications, and not to any hardware or third party software used in conjunction with the Applications, nor to the extent the Applications have been modified by anyone other than MedicalDirector.

### 13 **Third party and open source software**

13.1 MedicalDirector may notify you from time to time that your use of the Applications requires the installation of third party software or products including open source software including where you have entered into separate agreements with MedicalDirector in respect of development of the Applications or products and services related to the Applications. You agree that:

- (a) you will comply with all third party terms associated with such third party software or products;
- (b) this is entirely your responsibility and as between you and MedicalDirector you bear all risk arising from any use or performance of such third party software or products;
- (c) MedicalDirector is not the manufacturer or owner of such third party software or products, does not warrant the suitability, performance or use of such third party software or products; and
- (d) MedicalDirector is not responsible in any way to make recommendations in that regard nor to supply or install such software or products.

13.2 Third party content (including links to third party websites) may be accessible via the Applications. You acknowledge that MedicalDirector has no control over any such third party content, and to the extent permitted by law (including the Australian Consumer Law if applicable) is not responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on such third party applications and content. MedicalDirector does not have control over all other users of the Applications and is not liable for their opinions or behaviour, including any information and/or advice and any defamatory statements or offensive conduct.

#### **14 User obligations**

14.1 You must provide all reasonable assistance to MedicalDirector in performance of its obligations under this EULA, including without limitation ensuring that MedicalDirector's personnel are provided with all information, facilities, assistance and access (including access to your premises and equipment) reasonably required to enable MedicalDirector to comply with its obligations under this EULA.

14.2 You shall be exclusively responsible for the supervision, management, and control of your, and your Administrator's, use of the Applications, including, but not limited to:

- (a) maintaining proper configuration of the equipment or devices on which the Applications are used;
- (b) maintaining the integrity of the data and databases used with and within the Applications;
- (c) establishing adequate operating methods;
- (d) implementing procedures sufficient to satisfy your obligations for security and licensed use under this EULA, including appropriate action between you and your officers, employees and contractors to prevent unauthorised access, misuse, unauthorised copying, modification, reverse engineering or disclosure of the Applications; and
- (e) compliance with all relevant laws and in particular but not limited to the Privacy Laws (including by obtaining all necessary authorities from individuals in relation to the access and sending of Patient Data by you or on your behalf from the Applications).

14.3 You acknowledge that the Applications, at your direction, may by operation or configuration interact with third parties, to for example, but not limited to, sending pathology requests and receiving results, sending or receiving messages, and receiving hospital discharge summaries.

14.4 You must not modify or use the Applications in a manner which interferes with the reasonable enjoyment or use of the Applications and related services by any other party, for example, but not limited to, by sending spam or unsolicited messages.

14.5 You must immediately inform MedicalDirector as soon as you become aware of any actual or potential data breaches (such as data breaches involving or affecting Personal Information) in relation to your access to, or use of, the Applications, including actual or potential breaches to your own systems where such data breach relates to data (including Personal Information) stored in, or obtained from, the Applications.

#### **15 Warranties and disclaimers**

##### **15.1 Practice and clinical use disclaimers**

To the maximum extent permitted by Law, including the Australian Consumer Law:

- (a) you acknowledge and agree that the Applications do not constitute professional medical or healthcare advice, diagnosis or recommendation of treatment and are not intended to, nor should be used to, replace professional medical advice. In no circumstances should the Applications be relied upon without independent consideration and confirmation by a qualified medical practitioner;

- (b) MedicalDirector makes no representations or warranties with respect to any treatment, action, suitability or application of medication or preparation by any person whether in accordance with the Applications or not. In no circumstances will MedicalDirector be liable for any direct, indirect, consequential, special, exemplary or other damages arising therefrom;
- (c) where the Applications provide alerts and warnings to interactions of certain pharmaceutical products, MedicalDirector does not represent or warrant that the list of such interactions in the Applications are accurate, complete or comprehensive. It is the sole responsibility of any prescribing medical practitioner to ensure that all current product and prescription information in relation to pharmaceutical products referred to in the Applications has been read and understood prior to the prescription of any pharmaceutical product;
- (d) the Applications may provide alerts to interactions of certain pharmaceutical products with certain diseases as well as warnings noted in the 'Warnings, Precautions and Contraindications' section of Product Information of individual pharmaceutical company products. MedicalDirector does not represent or warrant that the data set used by the Applications to produce these alerts and warnings is accurate, complete or comprehensive;
- (e) these alerts and warnings are based on information provided by pharmaceutical companies and clinical sources to enable users of the Applications to exercise their own professional judgment, having regard to, among other things, a particular patient's condition and other prescribed medication, as to whether a particular pharmaceutical product should or should not be prescribed. The information in the Applications is provided on an 'as is' basis as provided to MedicalDirector by the pharmaceutical companies and clinical sources and any alert or warning (or lack thereof) does not constitute a recommendation or advice by MedicalDirector to take or refrain from taking any course of action including, but not limited to, the prescription of a particular pharmaceutical product; and
- (f) you acknowledge and agree that messages, data, images or documents (each called a "message") sent or received utilising any of the Application's messaging facilities (where messages can be sent or received by the Applications to or from the internet and external software or systems) are sent or received at your own risk. MedicalDirector will not be liable for any loss, claim, damage or injury arising from the non-receipt of or a failure to deliver a message or if any message is incomplete, corrupted or in error. You should communicate separately with external message/data senders or recipients to verify the receipt of messages utilising any of the Application's messaging facilities.

## 15.2 **General disclaimers**

To the maximum extent permitted by Law, including the Australian Consumer Law:

- (a) the Applications and the Application Content are made available "as is" and MedicalDirector makes no warranties or representations about the Applications or the Application Content, including but not limited to warranties or representations that they will be accurate, current, reliable, timely, available, complete or of a certain quality, or that any data submitted, uploaded, input into, or otherwise displayed on the Applications will not be lost or corrupted, or that the Applications are free from defects, bugs, viruses, errors or omissions, or other harmful components, or that the Applications will operate in combination with any other hardware, software, system or data;
- (b) except to the extent that MedicalDirector is directly and solely responsible for such Loss, MedicalDirector will not be liable for any direct and indirect Loss – irrespective of the manner in which it occurs – which may be suffered due to:
  - (i) your use of the Applications and/or the Application Content;
  - (ii) any inaccessibility or unavailability of the Applications or Application Content;
  - (iii) the fact that certain information or materials contained on the Applications (including any Application Content) are incorrect, incomplete or not up-to-date;
  - (iv) any loss or corruption of any data submitted, uploaded, input, or otherwise displayed on the Applications by or about you; or
  - (v) the inability of the Applications to operate in combination with any other hardware, software, system or data;
- (c) MedicalDirector does not accept any liability for delays, interruptions, service failures and other problems relating to the Applications and the Application Content outside the reasonable control of MedicalDirector;

- (d) MedicalDirector does not accept any liability in relation to any third party content or materials available through the Applications; and
  - (e) all warranties, representations or endorsements, express or implied, with regard to the Applications and Application Content, including all implied warranties of merchantability, fitness for a particular purpose, or non-infringement are excluded from this EULA.
- 15.3 Although MedicalDirector implements security measures to help protect the Applications, you acknowledge that use of the Applications involve transmission of data over networks that are not owned, operated or controlled by MedicalDirector. MedicalDirector is not responsible for any data that is lost, corrupted, intercepted, modified or stored across such networks. You acknowledge and agree that, to the extent permitted by Law (including the Australian Consumer Law, if applicable), MedicalDirector cannot guarantee that its security measures will be error-free, that transmissions of data will always be secure or that our security measures (or those of our third party service providers) will always be incapable of being hacked or circumvented by unauthorised third parties.
- 15.4 You acknowledge and agree that MedicalDirector cannot guarantee and does not promise any specific results from use of the Applications.
- 15.5 It is your responsibility (not MedicalDirector's) to maintain a current backup of all business-critical data, and a full system recovery backup.
- 15.6 MedicalDirector does not accept responsibility for errors, defects, data loss, or any other unexpected or unexplained results when providing support services, including using remote access to attempt to remove, install, upgrade or repair your use of or access to an Application.
- 16 Indemnity and liability**
- 16.1 You will defend, hold harmless and indemnify MedicalDirector and its personnel (***Indemnified Parties***) from and against any and all Loss suffered or incurred by them arising out of or in connection with:
- (a) any data (including Personal Information and Patient Data) disclosed by you in connection with this EULA; or
  - (b) a breach by you of this EULA.
- 16.2 MedicalDirector will defend, hold harmless and indemnify you from and against any and all Loss suffered or incurred by you arising out of or in connection with any claim that an Application infringes the Intellectual Property Rights of a third party, except to the extent that such Loss was caused or contributed to by you.
- 16.3 You acknowledge and agree that MedicalDirector has been irrevocably appointed to act as sole and exclusive agent of these Indemnified Parties for the purpose of recovering (whether through court proceedings or otherwise) the Losses of the Indemnified Parties and enforcing the indemnities.
- 16.4 To the maximum extent permitted by Law, including the Australian Consumer Law:
- (a) MedicalDirector will not be liable for any Consequential Loss; and
  - (b) MedicalDirector's maximum liability arising out of or in connection with this EULA, the Applications and the Application Content, whether in contract, tort, breach of warranty or statutory guarantee or otherwise, will be limited at MedicalDirector's sole discretion, to:
    - (i) the resupply of the software or services to you; or
    - (ii) the payment of the cost of having the software or services supplied again.
- 17 Termination**
- 17.1 You will have committed an event of default, and this EULA and the licence granted under it will terminate automatically and without further notice upon the occurrence of any of the following:
- (a) you attempt to or do use, copy, licence, modify, reverse engineer or convey or deal with the Applications or any parts thereof in any manner contrary to the terms of this EULA or in derogation of MedicalDirector's Intellectual Property Rights; or
  - (b) you breach, or fail (including by neglecting to observe) to perform, any of your existing or future obligations under this EULA or any other agreement with MedicalDirector.
- 17.2 In the case of users of an Application where a relevant Subscription Fee (or any other amounts due and payable under a relevant Subscription Agreement) are not paid by your Subscriber, or for any other users where a Subscription Fee is no



longer applicable (excluding Trial Users of an Application), MedicalDirector may immediately terminate this EULA and the licence granted under it by notice to you.

- 17.3 At any time, a Trial User or MedicalDirector may terminate this EULA by providing 30 days' notice of such termination to the other.

## **18 Effect of Termination**

- 18.1 You agree that immediately upon an event described in clause 17.1, 17.2 or 16.3 you shall immediately cease all use of the Applications and Application Content. You also agree to destroy all copies of the Applications and certify that fact to MedicalDirector. MedicalDirector will provide you with read only Application functionality for a reasonable period (as determined by us) following an event described in clause 17.1, 17.2 or 16.3, in order for you to access and review Patient Data for your internal purposes (for example, for the purposes of facilitating ongoing care by other healthcare providers or in connection with legal proceedings involving relevant Patient Data).

- 18.2 For the avoidance of doubt, nothing in clauses 17 or 18 requires you to delete your Patient Data.

- 18.3 Upon termination of the licence granted under this EULA, following the period referred to in clause 17.1(b), MedicalDirector's obligations under this Agreement will cease. Without limiting any other provision of this EULA, clauses 6 (Registration and Login Credentials), 7 (Intellectual Property Rights), 8 (Your data and privacy), 11 (Confidentiality), 12 (Updates and enhancements), 16 (Indemnity and liability), 18.1, 22 (Definitions) 23 (Interpretation), Appendix 1 to this EULA and any other clauses which should by their nature survive termination of this EULA, survive termination or expiration of this EULA for any reason whatsoever.

## **19 Severability**

Any provision of this EULA that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this EULA nor affect the validity or enforceability of that provision in any other jurisdiction.

## **20 No waiver**

A failure to exercise or a delay in exercising any right, power or remedy under this EULA does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

## **21 Jurisdiction and governing law**

This EULA and your use of the Applications and Application Content is governed by the laws of New South Wales, Australia and you submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there.

## **22 Definitions**

The following definitions apply unless the context requires otherwise.

**Application** means the clinical and practice management systems known as MedicalDirector Clinical, MedicalDirector PracSoft, MedicalDirector Sidebar, MedicalDirector Bluechip that are installed and hosted locally on your (or your Subscriber's) hardware and other MedicalDirector-endorsed (including as notified by MedicalDirector from time to time) applications or products that integrate or interface with MedicalDirector Clinical, MedicalDirector PracSoft or MedicalDirector Sidebar. At the commencement of this EULA, the list of current MedicalDirector-endorsed applications or products for the purposes of this definition will be made available to you. Any MedicalDirector-endorsed application or product is provided on the terms of this EULA (unless otherwise notified by MedicalDirector) and subject to the terms and conditions for any relevant third party software, includes the rights in third party software that MedicalDirector can lawfully grant.

**Application Content** is defined in clause 1.3, but for the avoidance of doubt Application Content excludes Patient Data.

**Australian Consumer Law** means the law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**Confidential Information** means all information of a confidential nature, in any form whether tangible or not and whether visible or not, disclosed or communicated by you or MedicalDirector, or learnt or accessed by, or to which you or MedicalDirector are exposed as a result of entering into this EULA and includes, without limitation, any information and material concerning the contractual or commercial dealings, financial details, products or services (current or proposed), customers, employees, internal policy, the Intellectual Property Rights of you or MedicalDirector or dealings under this EULA.

**Consequential Loss** means:

- (a) loss of profits, loss of revenue, loss of data, loss of or damage to reputation, loss of or damage to goodwill, loss of business opportunities (including opportunities to enter into or complete arrangements with third parties), loss of management time, damage to credit rating, or loss of business; and
- (b) any loss, not arising naturally (that is according to the usual course of things), from the relevant breach, whether or not such loss is reasonably supposed to have been in the contemplation of both parties, at the time they made this EULA, as the probable result of the relevant breach.

**Documentation** means any printed or electronic document or documentation, including any media (if any) provided by MedicalDirector in conjunction with the Applications from time to time.

**eHealth Record System** means all systems, networks, applications, other software, repositories and hardware for the storage, accessing and communication of patient controlled electronic health records and related uses, including the My Health Record system pursuant to the *My Health Records Act 2012* (Cth).

**Feedback** means any suggestions, ideas, information, comments, process descriptions or other information that you provide to MedicalDirector from time to time.

**Governmental Agency** means any government or any governmental, semi-governmental or judicial entity or authority. It also includes any self-regulatory organisation established under statute or any stock exchange.

**Intellectual Property Rights** means all industrial and intellectual property rights of any kind including but not limited to copyright (including rights in computer software), trade mark, service mark, design, patent, trade secret, semi-conductor or circuit layout rights, trade, business, domain or company names, moral rights, rights in Confidential Information, know how or other proprietary rights (whether or not any of these are registered and including any application, or right to apply, for registration) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.

**Law** means all laws including rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by-laws, rules, regulatory principles, requirements and determinations, mandatory codes of conduct, writs, orders, injunctions and judgments.

**Login Credentials** means the username, log-in token, licence key and/or access key (as relevant) provided by MedicalDirector in relation to the Applications.

**Loss** means any claim, loss liability, cost or expense (including legal expenses on a full indemnity basis).

**Patient Data** means health information and/or health records (as defined in any relevant Privacy Law) about an identified individual or an individual who is reasonably identifiable including progress notes, medical history and patient records about an individual that are entered into the Applications by You. For the avoidance of doubt, MedicalDirector does not assert ownership over Patient Data.

**Personal Information** means "Personal Information" and "sensitive information" (or either, as the context requires) as defined in the Privacy Act and any other information relating to individuals that is subject to the operation of the Privacy Laws that either party has collected, received or otherwise has access to in connection with this EULA.

**Privacy Laws** means:

- (a) the *Privacy Act 1988* (Cth);
- (b) the *Spam Act 2003* (Cth);
- (c) the *Do Not Call Register Act 2006* (Cth);
- (d) to the extent applicable, any legislation from time to time in force in any:
  - (i) Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and/or
  - (ii) non-Australian jurisdiction (to the extent that either party is subject to the laws of that jurisdiction), affecting privacy, Personal Information, Patient Data (including health records and information) or the collection, handling, storage, processing, use or disclosure of such data; and
- (e) any ancillary rules, binding guidelines, orders, directions, directives, codes of conduct or other instruments made or issued by a Government Agency under an instrument identified in paragraphs (a) to (d) above,

as amended from time to time.

**Privacy Policy** means the policy that is available at <http://medicaldirector.com/about/privacy>.

**Spam Act** means the *Spam Act 2003* (Cth).

**Subscriber** means:

- (a) (in the context of an Individual User) your designated subscriber (who has entered into a Subscription Agreement with MedicalDirector, pursuant to which you are authorised to access and use the Applications on that subscriber's behalf);
- (b) (in the context of a subscriber) the party that has entered into a Subscription Agreement with MedicalDirector.

**Subscriber Quote Form** means the order form (if any) forming part of the relevant Subscription Agreement.

**Subscription Agreement** means a relevant subscription agreement (if any) entered into between Subscriber and MedicalDirector, as amended from time to time.

**Subscription Fee** means the amounts payable by Subscribers to MedicalDirector as specified the relevant Subscriber Quote Form for a Subscription Period.

**Subscription Period** means:

- (a) (where you are an Individual User or Subscriber) the period set out in the relevant Subscriber Quote Form for which Subscriber has been granted a licence to access and use the Applications;
- (b) (where you are a Trial User) the period described in the applicable trial user terms (or otherwise agreed in writing with MedicalDirector); or
- (c) otherwise, any such term as agreed between MedicalDirector and Subscriber.

**Support Services** means assistance provided to your Subscriber in the manner indicated in the relevant Subscription Agreement.

**Trial User** means a person using and accessing an Application on trial user terms as agreed with MedicalDirector from time to time, which will be governed by this EULA.

**Update** means any new release of or supplement to an Application issued by MedicalDirector and designed to correct errors identified in the Application(s), comply with legislative requirements, reflect changes to Medicare Australia fee schedules, or add extra program features or functionality, but specifically excludes any new release of the Application(s) designated by MedicalDirector as a new version.

**Use** includes to collect, receive, extract, locate, hold, use, copy, duplicate, manipulate, disclose or deal with in any way.

## 23 Interpretation

The following rules apply to this EULA unless the context requires otherwise:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural, and the converse also applies;
- (c) nothing in this EULA is to be interpreted against a party solely on the ground that the party put forward this EULA or a relevant part of it;
- (d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (f) a reference to a clause is a reference to a clause of this EULA;
- (g) a reference to an agreement or document (including a reference to this EULA) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this EULA or that other agreement or document;
- (h) a reference to a party to this EULA or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (i) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (j) a reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in visible or tangible form;

- (k) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (l) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind; and

mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.

## APPENDIX 1 TO MD CLINICAL EULA – MD HEALTH EDUCATION AND RESEARCH TOOL

MedicalDirector presents all MD Clinical Subscribers and Users with the opportunity to participate within health education and research through the sharing of de-identified data with MedicalDirector. Through the sharing of de-identified data MedicalDirector will drive innovation in product development, near real-time insights into population health and research into clinical pathways and health demands research. The benefits enabled through your sharing of de-identified data will be provided:

- (a) to MD Clinical Subscribers and Users and to privacy compliant third parties;
- (b) to digital publishing and medical reference services;
- (c) for research and further data analytics, on a personal de-identified basis; and to contribute to (and offer its own) medical information resources, education and health communication services.

The data shared will be in a de-identified form and will not comprise of any personally identifiable information. Future innovations and enhancements to the Health Education and Research Tool that will be enabled through data sharing will be via analytics, visualisations, machine learning or other such developments.

MedicalDirector provides you with the functionality to opt-out of **Data Sharing** with MedicalDirector at any time. By opting-out, you will no longer have access to the benefits and future innovation provided via MD Health Education and Research Tool.

By choosing to opt-out you will continue to have full access to and use of MD Clinical and the MD Insights application. The MD Insights application will only report on your practice data and will not contain any additional options based on research completed using the shared data.

### DATA SHARING

MedicalDirector's intention is to be a trusted partner through which data can be shared. Data sharing processes established will be compliant with relevant legislation and industry best practice. These processes will include:

- (a) Data Sharing will be achieved via an application associated with MD Clinical on-premise, and is used by MedicalDirector to collect **only de-identified data** stored in MD Clinical on-premise produced by MD Clinical Subscriber/Users.
- (b) Data shared will be de-identified on-premise using data anonymization principles and algorithms that are consistent with guidelines provided by the Australian Government Office of the Australian Information Commissioner and other industry leading organisations.
- (c) Data shared will be encrypted and transported to MedicalDirector cloud solutions. MedicalDirector cloud solutions are in Australia on the Microsoft Azure platform.
- (d) All data sharing activities will be logged and auditable.
- (e) All data sharing processes and applications have been tested to ensure data security from external threats.
- (f) MedicalDirector has established data profiling processes and functions to verify that no identifiable data is collected. If identifiable information is discovered, it will be deleted immediately and processes will be updated to prevent identifiable information being collected again.
- (g) MedicalDirector will ensure that all de-identified data shared is used in accordance with all applicable laws.
- (h) The data that will be shared will be published on MedicalDirector website. Upon termination of your MD Clinical EULA, you agree that MedicalDirector may retain a copy of all data shared