



Private provision for pharmacies

Pharmacy and online doctor terms and conditions

THE PARTIES

'You' or 'your' refers to yourself acting in your role as a superintendent pharmacist or pharmacist owner or pharmacy manager or to your pharmacy or your pharmacy organisation

'We' or 'our' or 'us' refers to Escripts Marketing Ltd registered in England and Wales 04780577, registered office at Interpower House, Windsor Way, Aldershot GU11 1JG, as the company administering the operation of the website Pharmadoctor.co.uk.

BACKGROUND

We provide Patient Group Directions through our website Pharmadoctor. You wish to register your pharmacy or pharmacy organisation with us to allow you and any pharmacists connected with your pharmacy or pharmacy organisation to access our services with a view to obtaining Patient Group Directions. This will operate under the terms of this Agreement.

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Definitions

"Commencement Date" means the date on which we issue your PGD

"ePGD" means a type of PGD which allows the user to pay a "per transaction" fee instead of an annual subscription fee.

"online ePGD register" refers to a Pharmadoctor database onto which individual transactions arising from the use of an ePGD are uploaded by you or your pharmacist(s)

"PGDs" refers to both **"ePGDs"** and **"Paid outright PGDs"**

"Paid outright PGD" refers to a type of PGD which allows the user to pay for PGD rights lasting 12 months for a once only annual fee.

"Patient group direction(s)" refers to directions written by the authorised doctor and pharmacist of the Independent Medical Agency FMC Marketing Ltd in compliance with the relevant modifications to the provisions in and under the Medicines Act 1968 for the supply of specified medicine by pharmacists to patients at pharmacy premises.

"Pharmacist" means your manager and or your employee and or your locum and or your relief pharmacist using our PGD

"Pharmacist owner" means a GPhC registered pharmacist having overall responsibility for pharmacy services in a pharmacy or group of pharmacies as a sole trader or in partnership.

"Pharmacy or pharmacies" means a GPhC registered premises providing dispensing service.

"Pharmadoctor" refers to our website www.pharmadoctor.co.uk

"RAF" means Risk Assessment Form - a form used to record PGD authorised consultations.

"Right(s)" refers to an entitlement we confer on you or your pharmacists to supply medicine(s) to patients using patient group directions for a specified period which unless otherwise stated is twelve months from the commencement date.

"Superintendent Pharmacist" means a GPhC registered pharmacist having overall responsibility for pharmacy services in a pharmacy or group of pharmacies owned by a corporate body.

"Termination date" means the date twelve months after the commencement date

"User(s)" means Superintendent pharmacist(s) or Pharmacist(s)

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Our Warranties, Undertakings and Obligations

- 2.1 We warrant that PGDs supplied by us have been co-authored and authorised by the medical team of FMC Marketing Ltd, an Independent Medical Agency registered with the Care Quality Commission and comply with all regulatory requirements.
- 2.2 We warrant that we will update our PGDs as and when best practice guidelines change and that we will review, audit and update if necessary each PGD annually.
- 2.3 We warrant that we will inform you via our online messaging system of any amendments we make to our PGDs and make the revised PGDs available for you or your users to download online from Pharmadoctor.
- 2.4 We undertake to give you 20 working days' notice prior to the termination date to remind you of your PGD's expiry.

3 Your Warranties, Undertakings and Obligations

You warrant that any work under your PGD rights is carried out strictly in accordance with the clinical guidance set out in each individual PGD and training resources provided by us. Furthermore:

- 3.1 You warrant that your users will only use our PGDs in GPhC registered premises except in the case of vaccine PGDs which may be performed off site if an appropriate premises assessment is successfully completed.
- 3.2 You warrant that PGD consultations will take place in consultation rooms complying with the standards set for Advanced Services
- 3.3 You warrant that only GPhC registered pharmacists with up to date Continual Professional Development (CPD) documents will use our PGDs to provide services and supply medication.
- 3.4 You warrant that pharmacists in your organisation will use our PGDs in accordance with our PGD instructions.
- 3.5 You warrant that medication is supplied, labelled and recorded in accordance with our PGD instructions.
- 3.6 You warrant that you have adequate liability insurance in place to cover all work carried out by your users under our PGDs.
- 3.7. You warrant that all RAFs will be stored securely for 8 years.
- 3.8 You warrant that you will enter all ePGD RAFs onto our online ePGD register not less than 5 working days after the end of each calendar month after the commencement date.
- 3.9 You warrant you will inform us of any change in your or your user(s)' GPhC registration details within 5 working days of any such change.
- 3.10 You warrant that you will inform us in writing if you cease to be the Superintendent Pharmacist or Pharmacy owner for the organisation you register under the terms of this agreement and you will provide notification 10 working days before cessation and not later than the date of cessation.
- 3.11 You warrant you will inform us of any change in your circumstances including significant illness or disciplinary matters where these could be reasonably considered to affect your ability to ensure your responsibilities under the terms of this agreement.
- 3.12 You warrant you will post to us within 20 working days request copies of up to ten completed RAFs selected as specified by us. You will allow us and/or our agents to enter your registered pharmacy premises after we give you 10 working days' notice of our intention to visit and by arrangement to view forms and to make reasonable enquiry regarding the use of your PGDs and especially the collection and storage of clinical information.
- 3.13 You warrant that you must inform us in writing of any patient complaint arising from the use of our PGDs.

4 Validity and Termination of rights

- 4.1 Breach of any of your warranties, undertakings and obligations under clause 3 above will invalidate your PGD rights under the terms of this agreement. In this event, we will automatically withdraw your rights without further notice and you are required to stop the use of our PGDs.

4.2 Irrespective of clause 4.2, we reserve the right to terminate your PGD rights at our discretion by informing you by email and/or letter and you are required to stop the use of your PGDs.

5. Liability

5.1 In the event of a breach by you of any of your warranties, undertakings and obligations, we shall not be held liable for any loss of profits, loss of business, depletion of goodwill or similar losses or pure economic loss or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising.

6. Payment and Payment Terms for ePGDs

6.1 Our fees will become payable as soon as you have entered any completed RAFs onto our online ePGD register

6.2 If any sum payable by you is not paid in accordance with clause 6.1, we reserve the right to remove your rights under the terms of this agreement. Furthermore, we reserve the right to charge interest on the overdue sum on a day to day basis from 30 days after the date of the invoice to the date of actual payment (both dates inclusive) at the rate of 3 per cent per annum above the base rate of Barclays Bank (or such other London Clearing Bank as we may nominate) from time to time in force. You shall pay such interest to us within 5 working days of demand by us.

7 Refunds

7.1 Refunds will be paid on request for periods of unexpired rights if for reasons within our control, our PGDs become unfit for purpose. Refunds will be calculated on a pro rata basis.

7.2 No refunds will be paid for periods of PGD unexpired rights no longer being used or no longer required.

8. Calculation of Payment/Right to audit

8.1 Each party shall co-operate with the other to ensure the correct calculation of payment due to you in accordance with clause 6

8.2 You shall allow us or our authorised representative at all reasonable times (whether this Agreement be terminated or not) to inspect copies of such records. We may require a certified copy of such records from your external auditors confirming their completeness and accuracy. In the event that we do require such a certified copy from your external auditors then (a) in the event that such investigation discloses an overpayment to you of more than 3% then you shall pay the costs associated with obtaining such certificate; whereas (b) in the event that such investigation discloses that the payments were correct or you was overpaid by no more than 3% then we shall pay the costs associated with obtaining such certificate.

8.3 We shall allow you or our authorised representative at all reasonable times (whether this Agreement be terminated or not) to inspect copies of such records. You may require a certified copy of such records from our external auditors confirming their completeness and accuracy. In the event that you do require such a certified copy from our external auditors then (a) in the event that such investigation discloses an underpayment to you of more than 3% then we shall pay the costs associated with obtaining such certificate; whereas (b) in the event that such investigation discloses that the payments were correct or we were underpaid by no more than 3% then you shall pay the costs associated with obtaining such certificate.

9 Confidentiality

- 9.1. Each party undertakes that it will treat as confidential all information, intellectual property and know how obtained as a result of entering into or performing this Agreement which relates to the provisions or subject matter of this Agreement; and that it will not replicate, distribute or disclose any such information to any other person.
- 9.2. Notwithstanding Clauses 7.1 a party may disclose any information;
- 9.2.1 If and to the extent required by law;
- 9.2.2 If and to the extent required by any securities exchange or governmental body to which that party is subject;
- 9.2.3 To our professional advisers, auditors and bankers (subject to a duty of confidentiality);
- 9.2.4 If and to the extent the information has come into the public domain through no fault of that party;
- 9.2.5 if and to the extent necessary for it to carry out effective marketing and business operations as anticipated pursuant to this Agreement.
- 9.3 The restrictions contained in this Clause 7 shall continue to apply after the termination of this Agreement without limit in time.

10 Assignment

- 10.1 You and us may not assign or charge the whole or any part or any of the benefits derived from this Agreement without the written agreement of the other party.

11 Remedies and Waivers

- 11.1 No delay or omission by any party in exercising any right, power or remedy provided by law or under this Agreement shall affect that right, power or remedy or operate as a waiver of it.
- 11.2 The single or partial exercise of any right, power or remedy provided by law or under this Agreement shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy. The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

12 Invalidity

- 12.1 12.1. If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair:
- 12.1.1 The legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- 12.1.2 The legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

13 No Partnership

13.1 Nothing in this Agreement and no action taken by the parties under this Agreement shall constitute a partnership, association, joint venture or other co-operative entity between any of the parties.

14. Contracts (Rights of Third Parties) Act 1999

14.1 The parties do not intend that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party.

15 Entire Agreement

15.1 This Agreement and the documents referred to in it constitute the whole and on Agreement between the parties relating to the subject matter of this Agreement.

15.2 This Agreement may only be varied in writing accepted by each of you and us

16 Counterparts

16.1 This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

17 Dispute Resolution

17.1 This Agreement shall be governed by and construed in accordance with English law, If any dispute ('Dispute') arises related to this Agreement or any transaction governed by this Agreement then the parties agree to follow a dispute resolution escalation procedure as set out below:

17.1.1 Senior executives of both parties, vested with authority to settle the Dispute, will first meet and attempt in good faith to resolve it. The meeting will be held promptly at the request of either party in the offices of the party requesting the meeting or at such other location as they may agree.

17.1.2 If the parties are unable to resolve the Dispute by negotiation, the parties agree to seek a settlement of the dispute by mediation in accordance with the CEDR (Centre for Dispute Resolution, 7 St. Katharine's Way, London E11 0LB) procedures.

17.1.3 The parties shall, within ten (10) working days, select by mutual agreement a mediator from a list of suitably qualified pharmaceutical services industry mediators proposed by CEDR for failing mutual agreement, such mediator as shall be selected by CEDR).

17.1.4 Upon appointment of the mediator:

17.1.4.1 Each party shall promptly make available to the mediator a written précis on the Dispute; and

17.1.4.2 The mediator shall agree with the parties the date and venue for the commencement of the mediation process.

- 17.1.5 The parties undertake to negotiate through the mediator in a spirit of goodwill and to enter into the process with the objective of settling the dispute.
- 17.1.6 All negotiations connected with the dispute shall be conducted in strictest confidence and without prejudice to the rights of the parties in any future legal proceedings.
- 17.1.7 If, with the assistance of the mediator, the parties reach a settlement such settlement shall be reduced to writing and, once signed by a duly authorised representative of each of the parties, shall become binding on the parties and shall be implemented forthwith by the parties in accordance with our terms. If no settlement is agreed within thirty (30) working days from the date on which the mediation commenced the mediation process shall be terminated, unless the parties agree an extension to the mediation process, and the arbitration process set out in Clause 15.2 shall be pursued.
- 17.1.8 Each party shall each bear our own costs arising from the mediation process but the costs and expenses of the mediation shall be borne by the parties equally.
- 17.2 If the parties are unable to resolve the dispute through mediation, the dispute may either be settled by recourse to the English courts or by arbitration conducted in London, England by a single independent arbitrator appointed by the parties in accordance with the Arbitration Act 1996 (as subsequently amended), provided that the arbitrator shall be chosen from a panel of arbitrators knowledgeable in pharmaceutical services and computer industries. If the parties cannot agree an arbitrator within 14 days, the arbitrator shall be appointed by the President from time to time of the Law Society of England and Wales on the request of either party.
- 17.3 The parties submit to the exclusive jurisdiction of the English courts and nothing in this clause 15 shall prevent either party seeking injunctive relief or enforcing any right to payment under this Agreement through the court at any time it considers it appropriate to do so.