

## Terms and Conditions

### THE PARTIES

"You or 'your' refers to yourself acting in your role as a superintendent pharmacist or pharmacist owner or to your pharmacy or your pharmacy's website

"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](http://Pharmadoctor.co.uk).

### BACKGROUND

We offer online medical consultations through our website Pharmadoctor. You wish to register your pharmacy with us to allow your customers to access our doctor consultation services with a view to them obtaining a private prescription to be dispensed by you. This will operate under the terms of this Agreement.

## 1 Definitions

'Commencement Date' means the date of your registration

'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.

"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.

'Register' refers to your completing an online registration form and accepting terms and conditions.

"Patient(s)" refers to any of your customers who you refer to [Pharmadoctor](http://Pharmadoctor) and who subsequently order and pay for medication through [Pharmadoctor](http://Pharmadoctor)

"Pharmadoctor" refers to our website [www.pharmadoctor.co.uk](http://www.pharmadoctor.co.uk)

## 2 Term of Agreement and Termination

2.1. This Agreement shall be effective from the Commencement date and will automatically continue unless terminated by;

2.1.1. Us or you giving not less than one month's written notice of termination to the other; or in accordance with the remainder of this clause

2.1.2. This Agreement may be terminated forthwith by written notice:

2.1.2.1. by us on giving written notice to you if you commit any material breach of this Agreement if such breach, if it is capable of being remedied, has not been remedied within 30 days of our written request to do so.

2.1.2.2. by you on giving written notice to us if we commit any material breach of this Agreement if such breach, if it is capable of being remedied, has not been remedied within 30 days of your written request to do so,

- 2.1.2.3. by you to us or by us to you if:
  - 2.1.2.3.a. the other party is unable to pay our debts (within the meaning of Section 123 or 269 of the Insolvency Act 1996 as appropriate) or ceases to trade or compounds with our creditors;
  - 2.1.2.3.b. a receiver or administrative receiver is appointed in respect of any of the other party's assets;
  - 2.1.2.3.c. a petition for an administration order is presented or made in relation to the other
  - 2.1.2.3.d. a resolution or petition or order to wind up the other party is passed or presented or made or a liquidator is appointed (otherwise than for reconstruction or amalgamation) or an administrator is appointed;

or any of these things are threatened by or against the other party.

- 2.2. The rights to terminate and any termination of this Agreement shall not prejudice any other right or remedy of a party in respect of any breach of the Agreement.
- 2.3. Termination of the Agreement shall not absolve any party of any obligation in the Agreement which is expressed or by implication is intended to come into force or to survive any expiry or termination of the Agreement.

### **3. Our Warranties, Undertakings and Obligations**

- 3.1. We will track patients referred to us from you and should those patients register with Pharmadoctor that patient will be permanently identified as originating from you. Should a prescription for dispensing for a patient who originated from you be produced, we will identify this prescription as being for a patient originating from you in an agreed manner.
- 3.2. We will provide online consultation services to patients referred to us by you. The initial prices charged for these services to patients referred by you will be the cost of the medicines prescribed as set by you in the "Products" section of our Administration Module plus our consultation fee of £25 for a first time order and £17.50 for a repeat order. We reserve the right to increase or decrease the price of our consultation fee by any amount by giving you five working days' notice.
- 3.3. Any prescriptions generated under this clause 3.1 and 3.2 above for your patients as a result of an online consultation through Pharmadoctor will be dispensed by you to the exclusion of all other pharmacies.
- 3.4. We undertake not to market any services other than that of Pharmadoctor to your patients.
- 3.5. We undertake to market our services under clause 3.4 above only to your patients who have opted in to receive marketing material from us.
- 3.6. We warrant that all employees or agents who sign prescriptions on our behalf for dispensing by you are fully qualified to authorise the supply of prescription only-medicines and are registered in an EEA country or Switzerland.

### **4 Your Warranties, Undertakings and Obligations**

- 4.1. You will direct to [Pharmadoctor](#) any of your customers wishing to undertake an online consultation for any of the treatments you make available at Pharmadoctor, with the intention that they will undertake an online consultation with us
- 4.2. You will dispense the patients' prescriptions, dispatch the medicines to the patients' chosen delivery addresses and provide order tracking data to us that can be used to track that delivery until it is signed for at the delivery address. You will use all reasonable endeavours to dispatch 100% of all prescriptions received by 3pm on the same day the prescription is received by you.
- 4.3. If the parcel is lost in transit (i.e. you and us cannot determine our whereabouts through the tracking codes created at dispatch), you will send a duplicate package free of charge to the patient subject to the conditions in clause 5.6.
- 4.4. You will dispatch orders for the patients with accompanying materials which mention only Pharmadoctor or our chosen brand name. For the avoidance of doubt this clause will not exclude the naming of you as the dispensing pharmacy on the dispensing label on the dispatched medicine which is required by law.

## **5. Payment and Payment Terms**

- 5.1. We will pay you for the full value of the medicines dispensed for the patients and any associated costs with delivery of these medicines to the patient. The value of prescription medicines and delivery costs will be as set out by you in the "products" and "delivery" section of the Pharmadoctor Administration Module.
- 5.2. In accordance with the terms of clause 3.1 and 3.2 above, we will pay you a referral fee of 20% of any consultation fees arising from any prescriptions issued by Pharmadoctor. By the end of each week, we will advise you of the number of prescriptions issued and referral fees.
- 5.3. At the end of each week after the Commencement Date you shall send us an invoice for the payment due to you in accordance with 5.1 and 5.2.
- 5.4. We will pay all invoices within 7 working days from the date on which the invoice is received. If any sum payable to you is not paid within this time then you 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 Nat West Bank plc (or such other London Clearing Bank as you may nominate) from time to time in force. We shall pay such interest to you within 7 days of demand by you.
- 5.5. In the event of us incurring a chargeback from an order placed by the patient, we undertake to use all reasonable endeavours to challenge the chargeback. Where we are unable to successfully challenge the chargeback, you will refund the cost of the drugs and accruing referral fee for that chargeback to us within 5 working days upon receipt of written evidence that the challenge has been unsuccessful.
- 5.6. In the event that a customer complains that their order has not arrived, we undertake to use all reasonable measures to locate the missing order. In the event that the missing order cannot be traced, we will inform the customer that they must wait for 15 working days from the date on which the order was placed where the order was despatched by Royal Mail Recorded Delivery and 5 working days where the order was despatched by Royal Mail Special Delivery. In the event that the customer's order cannot be traced within this time, the customer's order will be deemed to have been lost and the customer will be given the option of a full refund or a replacement order. Where the customer opts for a replacement order, you will replace the order at no further cost to us or the customer. Where the customer opts for a full refund, you will refund the cost of the drugs and accruing referral fee for that order to us.

## **6. Calculation of Payment/Right to audit**

- 6.1. Each party shall co-operate with the other to ensure the correct calculation of payment due to you in accordance with 5.1 and 5.2. You shall ensure that you keep your own full and accurate records of all prescription items you dispenses for the patients. We shall ensure that we keeps our own full and accurate records of all prescriptions written for patients referred to us by you
- 6.2. 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.
- 6.3. 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.

## **7 Confidentiality**

- 7.1. 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.
- 7.2. Notwithstanding Clauses 7.1 a party may disclose any information;
  - 7.2.1. if and to the extent required by law;
  - 7.2.2. if and to the extent required by any securities exchange or governmental body to which that party is subject;
  - 7.2.3. to our professional advisers, auditors and bankers (subject to a duty of confidentiality);
  - 7.2.4. if and to the extent the information has come into the public domain through no fault of that party;
  - 7.2.5. if and to the extent necessary for it to carry out effective marketing and business operations as anticipated pursuant to this Agreement.
- 7.3. The restrictions contained in this Clause 7 shall continue to apply after the termination of this Agreement without limit in time.

## **8 Assignment**

- 8.1. 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.

## **9 Remedies and Waivers**

- 9.1. 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.
- 9.2. 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.

## **10. Invalidity**

- 10.1. 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:
  - 10.1.1. the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
  - 10.1.2. the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

## **11. No Partnership**

- 11.1. 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.

## **12. Contracts (Rights of Third Parties) Act 1999**

- 12.1. 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.

## **13. Entire Agreement**

- 13.1. This Agreement and the documents referred to in it constitute the whole and only Agreement between the parties relating to the subject matter of this Agreement.
- 13.2. This Agreement may only be varied in writing accepted by each of you and us

## **14. Counterparts**

- 14.1. 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.

## **15. Dispute Resolution**

- 15.1. 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:
  - 15.1.1. 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.
  - 15.1.2. 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.
  - 15.1.3. 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).
  - 15.1.4. Upon appointment of the mediator:
    - 15.1.4.1. each party shall promptly make available to the mediator a written précis on the Dispute; and
    - 15.1.4.2. the mediator shall agree with the parties the date and venue for the commencement of the mediation process.
  - 15.1.5. 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.
  - 15.1.6. 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.
  - 15.1.7. 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.
  - 15.1.8. 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.
- 15.2. 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,
- 15.3. 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.