

## **General Conditions of Service**

Version dated may, 14th 2018

### **The following is an agreement between:**

- The company, AMedSU - APPLICATIONS FOR MEDICAL AND SURGICAL USE stock company with a capital of €20,000, registered with the Nice Trade and Companies Register under no. 800 563 090, having its registered office at 61 Simone VEIL Avenue, immeuble Nice Premium, Bureau N°2-44, Nice (06200), hereinafter referred AMedSU;
- and between any natural or legal person, individual or professional, under private or public law wishing to engage in one or more of the services provided by the AMedSU company hereinafter named the Customer.

### **ARTICLE 1: PURPOSE**

The Customer acknowledges having verified the adequacy of the service him/herself and receiving all information and advice from AMedSU that he/she needed to knowingly sign this commitment.

This contract is to define the legal, technical and financial conditions in which AMedSU engages the Customer.

These General Conditions of Service, supplemented if necessary by special conditions and/or appendices proposed by AMedSU, are applicable, with the exception of all other conditions, in particular those of the Customer, of any order by the Customer of AMedSU services.

Services offered by AMedSU free of charge are also governed by these General Conditions of Service.

## **ARTICLE 2: AMedSU OBLIGATIONS**

AMedSU undertakes to provide all care and diligence necessary for the provision of a quality service. AMedSU only meets an obligation of diligence.

## **ARTICLE 3: AMedSU LIABILITY**

AMedSU will not be responsible:

If the execution of the contract, or any AMedSU obligation hereunder is prevented, restricted or disturbed due to a failure of transmission networks, law, an injunction, a request or requirement of any government, withdrawal of authorization, or other circumstances beyond the reasonable control of AMedSU ("Force Majeure Event"), then AMedSU, subject to prompt notification to the Customer, shall be exempt from the performance of its obligations to the extent of such prevention, restriction or inconvenience, and the Customer will be equally exempt from the performance of his/her obligations to the extent that his/her obligations relate to the execution thus prevented, restricted or disturbed, provided that the affected party and make its best efforts to avoid or remove such causes of non-performance and both parties shall proceed promptly whenever such causes have ceased or been removed. The party affected by Force Majeure shall keep the other regularly informed by email of the predictions for removal or recovery from the Force Majeure.

If the effects of a Force Majeure Event should have a duration longer than 60 days, counted from the notification of force majeure to the other party, the contract may be terminated automatically at the request of either party, without any right to compensation from the other party.

The contract may be terminated automatically at the request of AMedSU because of the Customer, particularly in the following cases:

- deterioration of the application,
- misuse of the terminals by the Customer or its Customers, fault, negligence, omission or failure from him/her, non-compliance with advice given,
- unauthorized disclosure or use of the password provided confidentially to the Customer,
- fault, negligence or omission of a third party over which AMedSU has no power to control or monitor,
- request for temporary or permanent Service interruption from a competent administrative or judicial authority, or notification of a third party as defined in Article 6 of the LCEN.

In any event, the amount of damages that could be borne by AMedSU, if its responsibility, will be limited to the amount of the sums actually paid by the Customer to AMedSU for the respected period or billed to the Customer by AMedSU, or the amount of money corresponding to the service price for the Service part for which AMedSU was determined to be liability for. The lowest amount of such sums will be considered.

Not being a health data host, AMedSU makes no specific backup of data transmitted on the servers. Therefore the Customer must take all necessary measures to protect his/her data in case of loss of or damage to data entrusted, whatever the cause, including those not specifically mentioned herein. The Customer acknowledges that no provision hereof shall relieve him/her from the obligation to pay all amounts due to AMedSU under the services provided.

#### **ARTICLE 4: CUSTOMER OBLIGATIONS AND LIABILITY**

The Customer shall have the power, authority and capacity necessary for the conclusion and execution of obligations hereunder.

The Customer undertakes to communicate, during the creation of his/her account and each modification thereof, his/her contact and accurate and current banking information to AMedSU.

AMedSU reserves the right to request supporting documentation from the Customer to ensure the accuracy of his/her information.

The Customer is entirely and exclusively responsible for the information and passwords necessary for using the Service.

AMedSU disclaims all liability for any unlawful or fraudulent use of the information and passwords available to the Customer or generated by the Customer him/herself. The provision of passwords is considered to be confidential. Any suspicion of disclosure, whether intentional or not, of the supplied passwords, is the Customer's sole responsibility, and not that of AMedSU.

The Customer alone is liable for malfunction of any subsequent Service use by his/her staff or any person whom the Customer has provided his/her (or their) password(s). Similarly, the Customer alone is liable for the loss of the above information and passwords.

The Customer agrees to comply with all legal and regulatory requirements, particularly those relating to data, files, freedoms and intellectual property, as well as the rights of third parties.

The Customer undertakes to take all necessary insurance with a reputable insurance company to cover any damages that are attributable to him/her under this contract or its implementation.

The Customer declares to fully accept all legal obligations arising from the administration of his/her Services, AMedSU cannot be searched or bothered in this regard for any reason whatsoever, including cases of violation of laws or regulations applicable to the Customer's Services. Failure by the Customer of the points mentioned above and points referred to special conditions, including any activity that may result in a civil and/or criminal liability, will give AMedSU the right to interrupt immediately and without prior notification the Customer Services and to immediately and automatically terminate the contract, without prejudice to the right to any damages which AMedSU may claim.

The Customer agrees to pay any sum required to be paid to AMedSU directly to the author of the complaint. In addition, the Customer agrees to intervene, at the request of AMedSU, in any proceedings against the latter and to guarantee AMedSU of all convictions which would be pronounced against it at that time. Therefore, the Customer agrees to be personally responsible for any claim and/or proceeding of any form, scope or nature that would be made against AMedSU and relating to the obligations accepted by the Customer under this contract.

The Customer undertakes to inform AMedSU within 48 hours of any change in his/her situation, and within 24 hours of any loss of passwords.

The Customer, regarding contact with AMedSU, is committed to articulate his/her request, according to the rules of use.

## **ARTICLE 5: TECHNICAL SUPPORT**

Technical support is available to the Customer at the following address: [support@amedsu.com](mailto:support@amedsu.com)

## **ARTICLE 6: EXECUTION, PRICE and PAYMENT**

### **6.1. Creation of the Customer account**

For any subscription Service from AMedSU, the Customer must create a Customer account including contact information and accurate and current banking information. This account may be subject to a verification procedure by AMedSU to ensure that the information provided by the Customer is correct.

## **6.2 Execution of the order**

The provision of the Service comes after validation of the subscription by AMedSU. However, AMedSU reserves the right to suspend the subscription in case of incorrect bank details or failure of the transaction.

## **6.3. Prices**

The current prices for the various services offered by AMedSU are available to be reviewed online on the website or by sending an email to the following address: [pricing@amedsu.com](mailto:pricing@amedsu.com).

For custom orders, the Customer must send an email to the following address: [mycloud@amedsu.com](mailto:mycloud@amedsu.com).

The prices include all taxes unless otherwise stated and are payable in euros. Depending on the nature of the subscribed Service, AMedSU will charge the Customer installation or service activation fees.

AMedSU will make an invoice after each payment available through its Customer Management Interface.

AMedSU reserves the right to change prices at any time, subject to informing the Customer by e-mail or an online warning on the AMedSU website one month in advance if the new prices without taxes are less favorable to the Customer. In this case, the Customer will be able to, within one month of receiving this information, terminate this contract without penalty. Otherwise, the Customer will be deemed to have accepted the new prices. The price changes will apply to all contracts including those in process.

AMedSU reserves the right to immediately reflect any new tax or any increase in existing tax rates.

The services provided by AMedSU are payable on order. The Customer is solely responsible for payment of all sums due under the AMedSU Service provision contract. By expressed agreement and unless in the case of a delay requested in time and agreed upon by AMedSU in a specific and written way, the total or partial non-payment at maturity of any amount due under the contract ipso jure and without prior notice:

- the immediate payment of all sums due from the Customer under the contract, regardless of the expected settlement;
- the suspension of all current benefits, whatever their nature, without prejudice to AMedSU to use the option for terminating the contract;

- the inability to purchase new services or to renew them;
- the application of an interest equal to the legal interest rate in force in France.

Any disagreement concerning the billing and nature of the Services must be expressed to AMedSU Customer Support.

In the event that costs would be incurred by AMedSU, AMedSU shall inform the Customer of them and provide him/her with the corresponding supporting documents and invoice. The Customer will then pay the amount due in euros.

The Customer, as a professional, in an arrears situation is the automatic debtor, with regard to AMedSU, to a fixed compensation for recovery costs up to €40, under French law 2012-387 of March 22, 2012.

#### **6.4. Payment**

Payment is made by credit card.

#### **6.5. Duration**

The Service is subscribed for a renewable period of one year. The Customer may terminate the subscription at any time with a notice period of one (1) month. Requests for cancellation must be sent to the following address: [termination@amedsu.com](mailto:termination@amedsu.com).

Customer data will be deleted one month after the termination or non-renewal of the Service.

AMedSU undertakes to perform at least two email reminders before the expiry of the Service.

#### **6.6. Service Renewal**

AMedSU shall notify the Customer, through emails sent before the deadline, of the forthcoming expiry of his/her Service, and therefore his/her future ending.

The Customer undertakes, under his/her responsibility, to maintain an email address.

Any default in payment or irregular payment, meaning in particular, in a wrong or incomplete amount, or not including the required references, or performed by a method or way not accepted by AMedSU, will be simply ignored and cause the rejection of the application for subscription or renewal.

## **ARTICLE 7: SERVICE TERMINATION, LIMITATION AND SUSPENSION**

7.1. The contract is automatically terminated at maturity. It may be renewed on AMedSU website upon payment by the Customer of the corresponding price, in accordance with Article 6.

According to Article L121-84-2 of the French Consumer Code, any contract termination request by the Customer will be effective the day after the date of receipt by AMedSU, provided that the Customer has specified all the required information in order to be identified.

The termination request shall take effect thirty (30) days after AMedSU receives the cancellation request.

7.2. Either party may automatically and without compensation terminate the contract in case of force majeure lasting more than thirty days.

7.3. For any termination prior to maturity of the contract, the Customer shall pay all amounts owed for the expired period and thereto until the effective date of termination.

7.4. In all other cases of a party failing to meet its obligations under the contract that has not been remedied within 7 days from either an e-mail sent by the complainant notifying the infringements in question, or any other form of authentic notification addressed by the said party, the contract will be automatically terminated, without prejudice to any damages and any interest that may be claimed from the defaulting party. The date of notification of the letter containing the infringements in question will be the date of actual receipt.

7.5. AMedSU reserves the right to interrupt the Customer's Service if the Service constitutes a danger to the maintenance of security and stability of AMedSU infrastructure. As much as possible, AMedSU will inform the Customer in advance. If necessary, AMedSU reserves the right to interrupt the Service to conduct a technical intervention to improve its operation or for maintenance.

AMedSU reserves the right to terminate the Customer's Service in case of non compliance with AMedSU general or specific conditions applicable to the Customer's Service.

## **ARTICLE 8: OPERATING CONDITIONS**

The Customer hereby acknowledges that fluctuations in bandwidth and provider hazards are elements that can cause discontinuity in the services offered by the AMedSU company, and outside of their technical resources.

Furthermore, the Service is restricted, limited or suspended automatically by AMedSU:

- if it appears that the Customer uses the Services provided to him/her for an activity, whatever it is, that would not comply with current regulations or these general conditions;
- under specific applicable conditions;
- if AMedSU is notified by any interested third party of an administrative, arbitration or court decision made in accordance with applicable laws, ordering such restriction, limitation or suspension without the need to name AMedSU as the cause of it.
- if AMedSU receives a notification in accordance with the law for Digital Economy Confidentiality that brings to its attention the existence of clearly illegal content.
- if the contact information in the Customer account appears false, inaccurate or outdated.

#### **ARTICLE 9: CUSTOMER INFORMATION AND SERVICE CONFORMITY**

The Customer acknowledges having verified the adequacy of hardware and service needs and received all information and advice from AMedSU that he/she needed to knowingly subscribe to this commitment.

AMedSU reserves the right to monitor compliance with the Service Usage Conditions.

#### **ARTICLE 10: ACCEPTANCE**

The fact that AMedSU does not avail itself at a given time of any of these general conditions and/or tolerate a breach by the other party to any of the obligations under these general conditions to not be interpreted as constituting a renunciation by AMedSU to subsequently avail itself of any of those conditions.

#### **ARTICLE 11 : PERSONAL DATA**

Within the Service, the Customer is informed that AMedSU collects personal data, which are subject to automated processing in accordance with the French "Data Processing and Freedoms" law of January 6, 1978, for the purposes of Customer relationship management and compliance with legal and regulatory obligations. The processing of personal data collected is the subject of a declaration to the CNIL, the french data protection agency, under number 2021702.

The Customer's personal data is never transmitted to third parties without prior permission of the Customer, except in the case of services for which the data communication is necessary for the successful completion of the Service.



In accordance with the French "Data Processing and Freedoms" law of January 6, 1978, the Customer has a right to access and rectify information concerning him/her. He/she may exercise this right and obtain information about him/her :

- by emailing the following address : [dpo@amedsu.com](mailto:dpo@amedsu.com)
- by mail to : AMedSU SAS, 61 avenue Simone Veil, Immeuble Nice premium, Bureau N°2-44, 06200 Nice France.

The Customer is solely and entirely responsible for the processing of personal data that he/she executes for his/her own account and undertakes, with regard to such data, to comply with all legal and regulatory requirements relating to computers, files and freedoms, in particular to carry out any appropriate formalities with the French National Commission for Data Protection and Liberties (CNIL) or any other competent authority.

Pursuant to the provisions of Article 34 bis of the French Data Protection and Liberties Law of January 6, 1978, it is the responsibility of the public supplier of electronic communications services on the electronic communications networks, open to the public and implementing personal data processing as defined by the aforementioned law, to immediately notify the CNIL of any security violation leading to the accidental or unlawful destruction, loss, alteration, disclosure or unauthorized access of personal data.

Furthermore, in the event that the breach would be likely to infringe the personal data or privacy of a Customer or another person, they have the responsibility of notifying the affected parties, as provided in Article 34bis of the law of January 6, 1978.

Finally, it is the responsibility of the electronic communications services provider to maintain an inventory of violations of personal data, in particular their methods, effects, and measures taken to address them, and to make them available to the CNIL.

## **ARTICLE 12 : RULES APPLICABLE TO HEALTH DATA HOSTING**

The French law no. 2002-303 of March 4, 2002 requires persons exercising personal health data hosting activities to have a license meeting the requirements of Article L 1111-8 of the French Public Health Code. AMedSU reminds the Customer that he/she shall refer to the list of approved hosts ([http://esante.gouv.fr/services/repositories/security/chartered hosts](http://esante.gouv.fr/services/repositories/security/chartered_hosts)) for hosting all personal health data.

As such, AMedSU expressly informs the Customer that it does not have the capacity of hosting personal health data and does not have the authorization meeting the requirements of Article L. 1111-8 of the French Public Health Code.

AMedSU expressly informs the Customer that the data is hosted by AMAZON Web Services inc. as part of a service meeting the standards of the "Health Insurance Portability and Accountability Act" which ensures a high degree of data security.

The service complies with HIPAA security standards and requirements.

To access information relating to hosting provided by AMAZON, please follow this link: <https://aws.amazon.com/fr/compliance/hipaa-compliance/>

### **ARTICLE 13: RESPONSABILITY FOR MANAGEMENT OF PERSONAL HEALTH DATA**

The customer is informed that he is, as a professional , responsible for handling patient personal data he collected. He must follow applicable legislation in this field. AMedSU shall have no liability in the event that the customer does not respect applicable rules

### **ARTICLE 14: OUTSOURCING**

The personal health data collected and handled by the customer is hosted by AMAZON Web Services inc. as part of a service meeting the standards of the "Health Insurance Portability and Accountability Act" which ensures a high degree of data security. The service complies with HIPAA security standards and requirements.

The network management ensuring the health data back up, the maintenance operations, and the relationships with the hosting company are outsourced to AMedSU by the customer.

The acceptance of these terms and conditions shall be understood as acceptance of the outsourcing contract between AMedSU and the customer.

### **ARTICLE 15: PRIVACY, LOCATION AND PHYSICAL SECURITY OF AMedSU INFRASTRUCTURE**

AMedSU, along with all its personnel and partners, is bound by professional secrecy and the obligation of discretion in all matters concerning the facts, information and decisions they have learned as part of these general conditions and achieving the related services.

AMedSU agrees not to disclose to anyone other than itself, its personnel or a third party on request of a competent authority (administrative, arbitration or judiciary, in accordance with applicable laws), directly or indirectly, all or part of information of any kind (commercial, technical, financial, identifying, etc.) communicated to it or that AMedSU becomes aware of during the execution of the service.

- Infrastructure Location:

The infrastructures to develop AMedSU Services are located within the Republic of Ireland and are the responsibility of AMAZON Web Services inc.

- Physical Security of the premises:

AMAZON Web Services inc. takes all physical security measures to prevent access by unauthorized persons to the infrastructure on which the Customer data is stored.

## **ARTICLE 16: RIGHT OF WITHDRAWAL**

According to preliminary article of the French Consumer Code, "*considering a consumer to be any natural person who is acting for purposes which are outside the scope of his/her trade, business, craft or profession.* »

Therefore, given the nature of the service provided, the Customer is expressly informed that he is not a consumer.

However, the Customer has a right of withdrawal that he/she can exercise without having to give reason or pay penalties except, where applicable, of costs incurred in a period of thirty (30) days from the subscription of the contract for providing services, by message sent to AMedSU Customer Service through its management interface.

## **ARTICLE 17: CHANGES**

The online general and specific conditions prevail over the printed general and specific conditions. The parties agree that AMedSU may, by right, modify its service without formality other than informing the Customer by a online warning and/or including its changes in the online General Conditions of Service. Any change or introduction of new subscription options will be provided online on the AMedSU website or by sending an email to the Customer. In this case, the Customer may, in derogation from Article 7, cancel the contract within a period of thirty days from the entry into force of these changes.

## **ARTICLE 18: GENERAL PROVISIONS**

### **18.1 Severability**

The invalidity of any of the service provision contract terms underwritten by AMedSU, in application of a particular law, regulation or following a decision of a competent court has become res judicata, will not result in the invalidity of the other service provision contract terms, which will keep their full effect and scope.

In this case, the parties shall as much as possible replace the annulled provision by a valid provision corresponding to the spirit and purpose of the contractual conditions.

## **18.2 Titles**

The article titles of contractual conditions are only intended to facilitate references and are not by themselves a contract value or of particular significance.

## **18.3 Special Conditions and Annexes**

The specific conditions and any annexes are incorporated by reference in the AMedSU General Conditions of Service and are inseparable to those of the said General Conditions. All of these documents are herein referred to as "General Conditions. »

All the documents incorporated in this contract by reference may be reviewed by the Customer at the addresses indicated on the AMedSU website. These documents are also subject to changes or developments.

## **18.4 Communications**

For any exchange of information by email, the date and time of the AMedSU server will be official between the Parties. This information will be retained by AMedSU throughout the period of contractual relations.

All notifications, communications, and formal notices under the General Conditions will be deemed to have been validly delivered if sent by registered mail with return receipt to:

- For AMedSU: 61 avenue Simone Veil, Immeuble Nice Premium, Bureau N°2-44, Nice (06200)
- For the Customer: the postal and/or email that was provided to AMedSU

## **18.5 Advertising and promotion**

AMedSU may at opportunities for advertising, events, specialized conferences and in publications in professional markets, to avail themselves of services provided to the Customer and its business records and/or its board.

## **ARTICLE 19: JURISDICTION**

In case of dispute with a Customer not regarded as a consumer within the meaning of the Consumer Code, jurisdiction is assigned to the courts of Nice (France), notwithstanding multiple defendants or guarantee appeals, including emergency measures, conservatories in summary proceedings or petition.

## **ARTICLE 20: GOVERNING LAW**

This contract is governed by French law. It is thus to the substantive rules as for the formal rules.

## **ARTICLE 21: DATA ACCESS**

AMedSU will never access the customer's data base.

However, for technical reasons (debug, data recovery, back up verification), AMedSU may need to have access to the customer's data base that contains patients personal health data.

These data are deemed as sensitive. Before any action is taken, AMedSU will ask for a prior written consent of the customer and a proof of identity. The proof of identity will be deleted immediately after the verification is completed by AMedSU.

The informations should be sent by email to the following email adress : [dpo@amedsu.com](mailto:dpo@amedsu.com).

AMedSU undertakes to access only the necessary data to fulfill its mission, to keep no copies of such data, to maintain a complete confidentiality, to never submit such data to third parties.

## **ARTICLE 22 : DATA PROTECTION OFFICER**

AMedSU informs its customers that M. IHRAI Othman has been appointed Data Protection Officer. Any question regarding the protection of personal data and privacy should be sent to the following email adress : [dpo@amedsu.com](mailto:dpo@amedsu.com)