

Data Licence Agreement

This Agreement is made between **Pharmapod Canada Limited**, a Canadian company, having its principal place of business at 2 Bloor Street. W, Suite 150, Toronto, ONM4W 3E2 ("**Pharmapod**"); **Ontario College of Pharmacists**, having its principal place of business at 483 Huron Street, Toronto ON, M5R 2R4 ("**OCP**"); and you ("**Pharmacy**")

each a "**Party**" and together the "**Parties**".

Background:

- (A) The Pharmacy collects certain data concerning the use of medicines as part of its business.
- (B) The Pharmacy is regulated by the OCP and required to participate in the Service.
- (C) Pharmapod provides the Platform upon which the Service operates.
- (D) Therefore the Pharmacy has agreed to enter certain data into the Platform in order to facilitate the operation of the Service on the terms and conditions set out in this Agreement.

Agreed Terms:

1 Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

"**Agreement**" this data licence agreement;

"**Authorised User**" a Pharmacy employee or contractor authorised to access and use the Service by the Pharmacy;

"**Business Day**" a day other than a Saturday, Sunday or public holiday in Ontario, when banks in Toronto are open for business;

"**Confidential Information**" all confidential information (however recorded or preserved) disclosed by one Party to the other Party and in connection with this Agreement which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure;

"**Data**" the account setup data and the incident data entered into the Platform by the Pharmacy;

"Effective Date"	the date of this Agreement, as first noted above;
"Identifying Data"	those data fields in the Platform that contain identifying information in respect of pharmacists, pharmacy technicians or pharmacy prescribers (including any applicable chain or banner or franchise);
"Intellectual Property Rights"	any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights that subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites, and in each case all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world, in each case for their full term, together with any future rights and renewals or extensions;
"Platform"	the platform provided by Pharmapod for the input of Pharmacy Data and the operation of the Service at http://ocp.pharmapodhq.com/ ;
"Privacy Laws"	Canadian privacy legislation applicable to this Agreement, including the <i>Personal Information Protection and Electronic Documents Act</i> (Canada) and the <i>Personal Health Information Protection Act</i> (Ontario);
"Service"	the medical incident reporting system being operated by Pharmapod as a service provider to and on behalf of OCP, as part of OCP's medication safety program (" MSP "), more details of which are available at http://ocp.pharmapodhq.com/ ; and
"Territory"	Worldwide.

- 1.2 Clause, schedule and paragraph headings will not affect the interpretation of this Agreement.
- 1.3 Unless the context otherwise requires, words in the singular will include the plural and in the plural will include the singular.
- 1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.5 A reference to a statute or statutory provision will include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.6 Any phrase introduced by the words including, includes, in particular or for example, or any similar phrase, will be construed as illustrative and will not limit the generality of the related general words.

- 1.7 References to clauses and schedules are to the clauses and schedules of this Agreement. References to paragraphs are to paragraphs of the relevant schedule.
- 1.8 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.9 If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement will prevail.

2 Input and Use of Data

- 2.1 The Pharmacy will comply with the Privacy Laws in the collection and inputting of the Identifying Data.
- 2.2 The Pharmacy warrants that it is entitled to upload the Data (which for the avoidance of doubt includes the Identifying Data) into the Platform and that Pharmapod and its sub-contractors are entitled to process it in accordance with this Agreement. The Pharmacy may upload a unique identification number that it uses internally to track its own patients, provided that number is treated as confidential and personal information by the Pharmacy and is not disclosed to any person other than the patient or its authorized representatives. **The Pharmacy is not to upload any names or other information that is reasonably identifiable to a patient or customer. Only non-identifiable information about the patient or customer, specifically requested by the Platform interface (e.g., transaction number, month and year of birth) is to be uploaded.**
- 2.3 The Pharmacy will keep all passwords for accessing the Service confidential. The Pharmacy will keep a secure password for each of its Authorised Users that uses the Service, and will ensure that such password will be changed no less frequently than 90 days and that each Authorised User will keep his/her password confidential; if an Authorised User is no longer employed or engaged by the Pharmacy his/her password will be immediately disabled by the Pharmacy.
- 2.4 In the event that the Data is processed or managed by a third party on behalf of the Pharmacy, the Pharmacy will procure such third party's compliance with the terms of this Agreement in respect of the Data.
- 2.5 It is the Pharmacy's responsibility to maintain accurate records and to correct any inaccuracies or deficiencies necessary to maintain the integrity of the Data.
- 2.6 The Pharmacy will provide suitably experienced and qualified staff to provide communication in response to all reasonable queries and requests made by Pharmapod.

3 Identifying Data

- 3.1 The Parties will comply with all applicable requirements of the Privacy Laws.
- 3.2 The Parties acknowledge that for the purposes of the Privacy Laws, Pharmapod is a data processor and service provider to the Pharmacy and OCP.
- 3.3 Without prejudice to the generality of clause 3.1, Pharmapod will, in relation to any Identifying Data processed in connection with the performance by Pharmapod of its obligations under the Agreement:
- (a) process that Identifying Data for the purposes of providing its services, only in accordance with the written instructions of the Pharmacy;

- (b) if Pharmapod is required by Canadian law applicable to Pharmapod ("**Applicable Laws**") to disclose such Identifying Data for other purposes, promptly notify the Pharmacy of such legally required disclosures as soon as possible (and before making any disclosures) unless those Applicable Laws prohibit Pharmapod from so notifying the Pharmacy;
- (c) subject to clause 3.3(b), not disclose any Identifying Data to any third party without the prior written consent of the Pharmacy;
- (d) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Identifying Data and against accidental loss or destruction of, or damage to, Identifying Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures include, where appropriate, pseudonymising and encrypting Identifying Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Identifying Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (e) ensure that all personnel who have access to and/or process Identifying Data are obliged to keep the Identifying Data confidential; and
- (f) not transfer any Identifying Data outside of Canada unless the prior written consent of the Pharmacy has been obtained and the following conditions are fulfilled:
 - (i) the Pharmacy or Pharmapod has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies in that foreign jurisdiction;
 - (iii) Pharmapod complies with its obligations under the Privacy Laws by providing an adequate level of protection to any Identifying Data that is transferred; and
 - (iv) Pharmapod complies with reasonable instructions notified to it in advance by the Pharmacy with respect to the processing of the Identifying Data;
- (g) assist the Pharmacy, at the Pharmacy's cost, in responding to any request from a data subject and in ensuring the Pharmacy's compliance with its obligations under the Privacy Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (h) notify OCP and the Pharmacy without undue delay on becoming aware of any actual or reasonably suspected loss, theft or unauthorized use or disclosure of Identifying Data;
- (i) at the written direction of the Pharmacy, and in any case upon termination of this Agreement, delete or return Identifying Data and copies thereof to the Pharmacy;
- (j) not provide any Identifying Data to, or permit access to any Identifying Data by, OCP;
- (k) maintain complete and accurate records and information to demonstrate its compliance with this clause 3.3 and allow for audits by the Pharmacy or the Pharmacy's designated auditor; and

(l) comply with all reasonable requests of the Pharmacy resulting from any such audit described in clause 3.3.

3.4 As between the Pharmacy and Pharmapod, Pharmapod will remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 3. Pharmapod will only appoint any third party processor of Identifying Data under this Agreement, provided that they contractually accept terms substantially similar to this clause 3, and the other confidentiality and data restrictions under this Agreement.

3.5 Pharmapod hereby indemnifies and agrees to keep indemnified the Pharmacy against any costs, expenses, damages, harm or loss suffered or incurred by reason of any disclosure of the Identifying Data in breach of the terms and conditions of this Agreement.

3.6 The Pharmacy acknowledges that the Platform is operated on a software as a service, hosted basis, with such hosting being provided by a third party processor in Canada.

4 Intellectual Property Rights and Licence

4.1 The Pharmacy own all Intellectual Property Rights in the Data.

4.2 Pharmapod is only entitled to use the Data as expressly provided for in this Agreement.

4.3 The Pharmacy hereby grants OCP a perpetual, irrevocable, royalty-free, fully transferrable, and sub-licensable, exclusive licence to maintain, use, reproduce, modify, create derivative works of, distribute, display and publish the Data for any purpose and to grant others the right to do so, provided that no publication or disclosure of the Data will involve Identifying Data.

4.4 The Pharmacy acknowledges and agrees that Pharmapod and/or its licensors own all Intellectual property Rights in the Platform. Except as expressly stated herein, this Agreement does not grant the Pharmacy any Intellectual Property Rights or any other rights or licences to, under or in the Platform.

4.5 Pharmapod grants the Pharmacy a non-exclusive license to use the Platform during the term hereof as part of the MSP and the Pharmacy's receipt of the Services.

4.6 The Pharmacy acknowledges and agrees that, to the extent that any modifications or improvements to the Service, are carried out under or in connection with this Agreement, whether by Pharmapod alone or jointly with OCP, and whether based on ideas or suggestions from a Pharmacy, or Authorised User, all Intellectual Property Rights to such underlying ideas, and in any resulting improvement or modifications, will be assigned to and will vest with and be solely owned by Pharmapod.

5 Confidentiality

5.1 Each Party ("**Receiving Party**") acknowledges that in the course of performing its duties under this Agreement, it may obtain Confidential Information from the other Party ("**Disclosing Party**").

5.2 During the term hereof and thereafter, the Receiving Party will treat all Confidential Information as secret, confidential, and proprietary, and will not disclose or use the same without the prior written consent of the Disclosing Party, other than to the Receiving Party's employees and contractors on a need to know basis for the purpose of performing its obligations under this Agreement, or as required by law. The Receiving Party will implement such procedures as it considers reasonably necessary to prevent the intentional or negligent disclosure to any third

party of any Confidential Information. Notwithstanding the foregoing, nothing in this Agreement will prevent the disclosure by the Receiving Party or its employees of information that:

- (a) prior to its disclosure to the Receiving Party, was of general public knowledge;
- (b) prior to its disclosure to the Receiving Party, was routinely provided to customers;
- (c) becomes, subsequent to its disclosure to the Receiving Party, a matter of general public knowledge other than as a consequence of a breach by the Receiving Party of any obligation under this Agreement;
- (d) is made public by the Disclosing Party; or
- (e) is received in good faith from a third party having the right to disclose it, who, to the Receiving Party's knowledge, did not obtain such information from the Disclosing Party and who imposes no obligation of secrecy on the Receiving Party with respect to such information.

5.3 No announcements or press releases concerning the subject matter of this Agreement will be made by the Pharmacy.

6 Limitation of Liability

6.1 Each Party will indemnify and keep indemnified and defend at its own expense the other Parties against all costs, claims, damages or expenses incurred by another Party or for which another Party may become liable due to any failure by the first Party or its employees or agents to comply with the Privacy Laws.

6.2 Nothing contained in this clause 6 will limit:

- (a) a Party's liability for death or personal injury resulting from that Party's negligence;
- (b) a Party's liability for fraud;
- (c) a Party's liability pursuant to clause 6.1;

6.3 Subject to clause 6.2, no Party will be liable in contract, tort (including negligence) or for breach of statutory duty or in any other way for:

- (a) any economic losses (including loss of revenues, profits, contracts, business or anticipated savings);
- (b) any loss of goodwill or reputation; or
- (c) any special or indirect or consequential losses

in any case, whether or not such losses were within the contemplation of the Parties at the date of this Agreement, or were suffered or incurred by a Party arising out of or in connection with this Agreement.

6.4 Subject to clause 6.2, a Party's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement will be limited in any 12 month period (the first of which will commence on the Effective Date and subsequently on each anniversary thereof) to an amount equal to the annual

accreditation fee paid by the Pharmacy to OCP during the 12 month period in which the claim arises.

7 Term and Termination

7.1 Except as otherwise provided in accordance with clause 7.2, or as otherwise agreed in writing by the parties, this Agreement will commence on the Effective Date, and will continue for so long as Pharmapod is operating the Service for the OCP.

7.2 One Party may immediately terminate this Agreement, at any time in the event that:

- (a) another Party commits a material breach of this Agreement which is not capable of remedy;
- (b) another Party commits a material breach of this Agreement and (if such breach is capable of remedy) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) another Party ceases to do business, becomes unable to pay its debts as they fall due within the meaning of applicable insolvency legislation, is the subject of bankruptcy proceedings (in the case of a sole trader), becomes or is deemed insolvent, has a receiver, manager, examiner, or similar officer appointed in respect of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt, or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction to which the non-terminating party has previously agreed in writing), enters into liquidation (whether compulsory or voluntary), or suffers or undergoes any analogous process to the above in any jurisdiction.

7.3 The following clauses will survive any termination of this Agreement: 1, 3, 4, 5, 6, 7.3, 9, 10, 11, 12, and 13.

8 Force Majeure

No Party ("Delayed Party") will have any liability to another Party ("Affected Party") under this Agreement if it is prevented from, or delayed in, performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (excluding any strikes, lock-outs or industrial disputes involving its own workforce), act of God, war, riot, terrorism civil commotion, compliance with any law or regulation, fire, flood or storm (each a "**Force Majeure Event**"), provided that:

- (a) the Delayed Party notifies the Affected Party in writing of such an event and its expected duration; and
- (b) the Delayed Party uses all reasonable endeavours to mitigate, overcome or minimise the effects of the Force Majeure Event;

and that if the period of delay or non-performance continues for 30 days or more, and is material to the Affected Party's operations or expected benefits hereunder, the Affected Party may terminate this Agreement by giving 10 Business Days' written notice to the Delayed Party.

9 Notices

9.1 Normal communications between the Parties in respect of commercial matters will be conducted by email.

- 9.2 Any notice or other communication required to be given to a Party under or in connection with this Agreement (such as a termination notice or the like) will be in writing and will be delivered by hand or sent by pre-paid registered post or other next working day delivery service providing proof of delivery, at its principal place of business as set out above.
- 9.3 Any notice or communication will be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address, or if sent by fax, at 9.00 am on the next Business Day (excluding Saturdays) after transmission, or otherwise at 9.00 am on the second Business Day (excluding Saturdays) after posting or at the time recorded by the delivery service.
- 9.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" will not include e-mail.

10 Assignment

Neither the Pharmacy nor Pharmapod will, without the prior written consent of OCP (such consent not to be unreasonably withheld or delayed), assign, transfer, charge, subcontract, nor deal in any other manner with all or any of its rights or obligations under this Agreement, save to one of its Affiliates.

11 General

- 11.1 Nothing in this Agreement will be construed to give any Party the power to direct or control the daily activities of another Party, or to constitute the Parties as principal and agent, employer and employee, franchiser and franchisee, partners, joint venturers, co-owners or otherwise as participants in a joint undertaking.
- 11.2 The remedies of the Parties under this Agreement are cumulative and will not exclude any other remedies to which the Party may be lawfully entitled.
- 11.3 Each Party hereby covenants and agrees that it will execute and deliver such deeds and other documents as may be required to implement any of the provisions of this Agreement.
- 11.4 The failure of any Party to insist on strict performance of a covenant hereunder or of any obligation hereunder will not be a waiver of such Party's right to demand strict compliance therewith in the future.
- 11.5 This Agreement may be executed in multiple copies, each of which will for all purposes constitute one Agreement, binding on the Parties, and each Party hereby covenants and agrees to execute all duplicates or replacement counterparts of this Agreement as may be required.
- 11.6 In the event any provision, clause, sentence, phrase, or word hereof, or the application thereof in any circumstances, is held to be invalid or unenforceable, such invalidity or unenforceability will not affect the validity or enforceability of the remainder hereof, or of the application of any such provision, sentence, clause, phrase, or word in any other circumstances.

12 Entire Agreement

- 12.1 This Agreement constitutes the entire agreement between the Parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

- 12.2 Each Party acknowledges that in entering into this Agreement it does not rely on, and will have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 12.3 Nothing in this clause will limit or exclude any liability for fraud.
- 12.4 No alteration to or variation of this Agreement will take effect unless and until the same is in writing and signed on behalf of each of the Parties by a duly authorised representative.

13 Law and Jurisdiction

- 13.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the laws of Ontario, Canada.
- 13.2 Each Party irrevocably agrees that the courts of Ontario will have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement has been entered into on the date that agreement by the Pharmacy is signalled below.

Pharmacy Name:

Corporation Name:

Director Liaison (print)

Signature

Date

ⁱAuthorized Signatory (print)

Signature

Date

ⁱ The Director Liaison signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. The Director Liaison represents and warrants that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms. If the Director Liaison is not duly authorized to legally execute the contract, a person with appropriate authority must co-sign this agreement.