

Airmid Terms of Use and End User Licence Agreement

Updated on 04/11/2020

This is the important legal stuff that enables you to use Airmid. When you have read this please also read the Airmid Privacy Policy which includes the Deletion Policy.

By the way, if you want to get involved in supporting research into health and social care there is a section in Airmid called 'Help the NHS'. In that section you will see the research groups available to you – each one of those will describe their handling of any data you make available to them.

PLEASE READ THESE TERMS OF USE CAREFULLY

BY SELECTING THE "I AGREE" BUTTON YOU AGREE TO THESE TERMS OF USE WHICH WILL BIND YOU.

IF YOU DO NOT AGREE TO THESE TERMS OF USE, YOU WILL NOT BE PERMITTED TO USE THE APP.

WHO WE ARE AND OUR MISSION

We, The Phoenix Partnership (Leeds) Ltd license you to use:

- A. The Airmid mobile application software, the data supplied with the software, and any updates or supplements to it (the '**App**')
- B. The related online/electronic documentation ('**Documentation**'); and
- C. The services you connect to via the App and the content we provide to you through it ('**Service**')

as permitted in these Terms of Use.

Our aim is to improve patient engagement with their own health, provide patients with access to their medical record, therefore improving healthcare quality for everyone, and to provide the opportunity for you to support important research.

The way we work is straightforward; we're here to provide you with valuable tools for your benefit to help you understand your health and care, and we will always strive to provide the best possible experience. We hold ourselves to the highest legal and ethical standards.

1. YOUR PRIVACY

- We understand how important your privacy is to you and we respect your rights. We only use any personal data we collect through your use of the App and the Service in the ways set out in the Airmid Privacy Policy. Please take time to read the Privacy Policy as it is important you know how your data is being used.
- We do our best to keep the App safe and secure but we cannot guarantee it, so please be aware that your use of the App is at your own risk.

2. SUPPORT FOR THE APP AND PROVIDING FEEDBACK

We value hearing from you so if you have any questions or ideas, or if you need to provide notice to us, don't hesitate to get in touch. If you encounter any problem using the App or the Service, please refer to the dedicated "Support" section on the Settings page within the App.

If we have to contact you we will do so via the App, email, telephone or SMS, using the contact details you have provided to us.

3. HOW YOU MAY USE THE APP

In return for you agreeing to comply with these Terms of Use you may:

- Download a copy of the App onto your device and use the App and the Service on your device for your personal purposes only;
- Use any Documentation to support your permitted use of the App and the Service; and
- Receive and use any free supplementary software code or update of the App incorporating "patches" and corrections of errors as we may provide to you.

4. OUR SERVICES

The service we provide allows you, amongst other things, to:

- Access aspects of your health record entered by the health and care professionals (e.g. your GP, your district nurse, your hospital doctor) who provide you with care and who agree to share your record with you;
- Enter health and associated data, supplementing your health record;
- Find healthcare services nearby;
- Receive notifications from your health and care professionals;
- Create medication reminders; and
- Participate in research studies (see 'Help the NHS')

NOTE: The data you record via the App will only be reviewed by your health and care provider (e.g. your GP or hospital doctor) if they choose to do so. Do not rely on the App to notify them of changes to your health, unless otherwise agreed with your health and care provider.

All information within the App and the Service is provided on the basis that the health and care professionals responsible for your care will retain FULL and SOLE responsibility for:

- Deciding whether further treatment, including but not limited to medical referrals, are required for you;
- Prescribing treatment or medication to you; and
- Diagnosing your health conditions.

This is because:

- A. The health and care professional caring for you must make sure that the information they have is relevant, current and accurate and they remain responsible for making informed decisions based on that information.
- B. The App is intended to supplement, not substitute for, the expertise and judgment of health and care professionals. It is intended as an information aid only.
- C. While information within the App may be helpful in providing an indication of your medical or health conditions or circumstances, the App is not designed as, nor may it be used as:
 - a replacement for seeking direct advice/consultations from health and care professionals;
 - a definitive diagnosis or treatment decision maker for any medical or health condition;
 - your sole source for monitoring such conditions.
- D. The output of the App does not constitute medical advice, diagnosis or treatment.
- E. The information stored within the App is not exhaustive. It therefore must not be relied upon as complete.

- F. The App and those who are responsible for its construction, operation and maintenance do not necessarily know your full particular circumstances, conditions or medical history and so cannot advise as to individual cases.
- G. While the App uses highly reputable sources of information, such as data entered into the clinical record by health and care professionals treating you, it cannot validate or verify the information received from such third parties.
- H. The App and the data held within the App may not always be available, particularly if it is affected by events outside TPP's control. TPP are not responsible if this happens, but if it does, we will notify you as soon as we can and will undertake the steps that we reasonably can to minimise the interruption to our services.

You should always seek medical advice from health and care professionals if you have any concerns about your health or care.

You should not take or stop taking any action (such as altering medicines that you take) based on information within the App alone.

5. CAPACITY TO ACCEPT THESE TERMS OF USE

Children under 16 may be registered for the app by their health and care provider, providing they have been assessed as being Gillick Competent for consent.

By using the App you warrant that you have full capacity and authority to agree to these Terms of Use and to perform the obligations.

6. COSTS

We currently provide our App free of charge, but please be aware that your carrier's normal rates and fees, such as text messaging and data charges, will still apply.

7. CHANGES TO THESE TERMS OF USE

We may need to change these Terms of Use to reflect changes in law or best practice, or to deal with additional features or changes to features which we introduce.

We will notify you of any changes to these Terms of Use when you next start the App after an update.

If you do not accept the notified changes, you will not be permitted to continue to use the App and the Service.

Your continued use of the App, Documentation and its Service, following notice of the changes to our terms, policies or guidelines, constitutes your acceptance of our amended terms, policies or guidelines.

8. UPDATE TO THE APP AND CHANGES TO THE SERVICE

We may automatically update the App from time to time and change the Service to improve performance, enhance functionality, introduce additional functionality, reflect changes to the operating system or address security issues. Alternatively, we may ask you to install an update to the App for these reasons.

If you choose not to install such updates or if you opt out of automatic updates you may not be able to continue using the App and the Service.

9. IF SOMEONE ELSE OWNS THE PHONE OR DEVICE YOU ARE USING

If you download or stream the App onto any phone or other device not owned by you, you must have the

owner's permission to do so. You will be responsible for complying with these Terms of Use, the End User Licence Agreement (EULA) and policies or guidelines whether or not you use your own phone or other device.

10. WE MAY COLLECT TECHNICAL DATA ABOUT YOUR DEVICE

By using the App or any of the Service, you agree to us collecting the data and using technical information about the devices you use the App on, as well as their related software, hardware and peripherals to improve our products and to provide any Service to you.

11. WE MAY COLLECT LOCATION DATA (BUT YOU CAN TURN LOCATION SERVICES OFF)

Certain Services will make use of location data sent from your devices. You can turn off this functionality at any time by turning off the location services for the App on the device in Settings. If you use these Services, you consent to us and our affiliates' and licensees' transmission, collection, retention, maintenance, processing and use of your location data and queries to provide and improve location-based and road traffic-based products and services. You may stop us collecting such data at any time by turning off the location services settings.

12. WE ARE NOT RESPONSIBLE FOR OTHER WEBSITES YOU LINK TO OR THIRD PARTY TOOLS WITHIN THE APP

The App or any Service may contain links to other independent websites or apps which are not provided by us. Such independent websites or apps are not under our control, and we are not responsible for and have not checked and approved their content or their privacy policies.

The App may contain third party tools and functionality, which will be identified as such within the App. Such tools are not under our control and we are not responsible for their performance or accuracy.

You will need to make your own independent judgement about whether to use any such independent websites, apps or tools.

13. LICENCE RESTRICTIONS

You agree that you will:

- not rent, lease, sub-license, loan, provide, or otherwise make available, the App or the Services in any form, in whole or in part to any person without prior written consent from us. If you sell, transfer or dispose of any device on which the App is installed, you must remove the App from it;
- not copy the App, Documentation or Services, except as part of the normal use of the App or where it is necessary for the purpose of back-up or operational security;
- not translate, merge, adapt, vary, alter or modify, the whole or any part of the App, Documentation or Services nor permit the App or the Services or any part of them to be combined with, or become incorporated in, any other programs, except as necessary to use the App and the Services on devices as permitted in these Terms of Use;
- not disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the App or the Services nor attempt to do any such things,
- not use the app to create any software that is substantially similar in its expression to the App;

- keep the app secure; and
- comply with all applicable technology control or export laws and regulations that apply to the technology used or supported by the App or any Service.

14. ACCEPTABLE USE RESTRICTIONS

You must:

- not use the App or any Service in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these Terms of Use, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, such as viruses, or harmful data, into the App, any Service or any operating system;
- not infringe our intellectual property rights or those of any third party in relation to your use of the App or any Service);
- not transmit any material that is defamatory, offensive or otherwise objectionable in relation to your use of the App or any Service;
- not use the App or any Service in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users; and
- not collect or harvest any information or data from any Service or our systems or attempt to decipher any transmissions to or from the servers running any Service.

15. INTELLECTUAL PROPERTY RIGHTS

Within our App, associated Documentation and the Services containing proprietary and confidential information, we own copyright and other Intellectual Property Rights, including all right, title and interest in and to the App, Documentation, Services (except third party tools, apps and websites) and content, excluding content provided by you, that may be presented or accessed through the App, including without limitation all Intellectual Property Rights therein and thereto.

You are not permitted to copy, distribute or make any business use of the App, Services or Documentation, or any Intellectual Property Rights therein.

For your information, “Intellectual Property Rights” means all intellectual and industrial property rights of any kind whatsoever, including any and all rights existing from time to time under patent law, copyright law, trade secret law, trademark law, unfair competition law, and any and all other proprietary rights, and any and all applications, renewals, extensions and restorations thereof, now or hereafter in force and effect worldwide.

16. OUR RESPONSIBILITY FOR LOSS OR DAMAGE SUFFERED BY YOU

We are responsible for compensating you if we break any of these Terms of Use and you suffer loss or damage that is foreseeable as a consequence.

We will not be responsible for compensating you for loss or damage that is not a foreseeable result of breaking these Terms of Use. Nor are we liable to you for any lost profits or other consequential, special, indirect, or incidental damages arising out of or in connection with your use of the App, Services or Documentation, even if we have been advised of the possibility of such damages. We are not liable for business losses.

We do not exclude or limit in any way our liability to you where it would be unlawful to do so. This includes liability for death or personal injury caused by our negligence or for fraud or fraudulent misrepresentation.

Except where the law states liability cannot be limited, our aggregate liability to you will not exceed the amount you have paid us in the past twelve months.

We respect your rights to have your personal data stored securely. However, we are not liable for loss or unauthorised access to your data where you have not followed our guidance or terms or where the data has been accessed, manipulated or damaged via your device.

17. OTHER LIMITATIONS TO THE APP AND THE SERVICES

The App, Services and Documentation are provided for general information purposes only. They do not offer advice on which you should rely. You should obtain professional or specialist advice before taking, or refraining from, any action on the basis of information obtained from the App, Service or Documentation. Although we make reasonable efforts to update the information provided by the App, Service and Documentation, we make no representations, warranties or guarantees, whether express or implied, that such information is accurate, complete or up to date.

We are not responsible for events outside our control and we are not liable for delays. If our provision of the Services or support for the App or the Services is delayed by an event outside our control then we will take steps to minimise the effect of the delay.

Except as expressly stated in these Terms of Use, all warranties and conditions concerning the App, Documentation and the Services (including any failure to supply or delay in supplying these) whether express or implied by statute, common law or otherwise (including but not limited to the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose, the use of reasonable care and skill or non-infringement of third party intellectual property rights) are hereby excluded to the fullest extent permitted by law.

18. WE MAY END YOUR RIGHTS TO USE THE APP AND THE SERVICES IF YOU BREAK THESE TERMS OF USE

We may end or suspend your rights to use the App, Services and Documentation at any time by contacting you if you have broken these Terms of Use. If what you have done can be put right we will give you a reasonable opportunity to do so.

If we end or suspend your rights to use the App and Services:

- You must stop all activities authorised by these Terms of Use, including your use of the App, Services and Documentation; and
- You must delete or remove the App from all devices in your possession and immediately destroy all copies of the App which you have.

19. WE MAY TRANSFER OWNERSHIP OF THESE TERMS OF USE TO SOMEONE ELSE

We may transfer our rights and obligations under these Terms of Use to another organisation. We will inform you if this happens and we will ensure that the transfer will not affect your rights under these Terms of Use.

20. NO RIGHTS FOR THIRD PARTIES

These Terms of Use do not give rise to any third party rights to enforce any term herein.

21. IF A COURT FINDS PART OF THESE TERMS OF USE ILLEGAL, THE REST WILL CONTINUE IN

FORCE

Each of the paragraphs of these Terms of Use operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect. Furthermore, to the fullest extent permissible, we will replace any illegal, invalid or unenforceable provision of these Terms of Use with a valid provision that corresponds as much as possible to the spirit and purpose of the illegal, invalid or unenforceable provision.

22. EVEN IF WE DELAY IN ENFORCING THESE TERMS OF USE, WE CAN STILL ENFORCE THEM LATER

Even if we delay in enforcing these Terms of Use, we can still enforce them later. If we do not insist immediately that you do anything you are required to do under these Terms of Use, or if we delay in taking steps against you in respect of your breaking these Terms of Use, it will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.

23. WHICH LAWS APPLY TO THESE TERMS OF USE AND WHERE YOU MAY BRING LEGAL PROCEEDINGS

These Terms of Use are governed by the laws of the United Kingdom and you can bring legal proceedings in respect of the products in the United Kingdom courts.

Appendix

END USER LICENCE AGREEMENT

This End User Licence Agreement (the “**EULA**”) is entered into between you (the “**Licensee**”) and The Phoenix Partnership (Leeds) Ltd (the “**Licensor**”).

Notice: By using Airmid (the “**Software**”), the Licensee accepts and undertakes to be bound by all the terms and conditions of this EULA. The Licensor may change the terms and conditions of this EULA from time to time and without notice and it is the Licensee’s responsibility to check for the latest version.

1. LICENCE

- 1.1 Upon acceptance of this EULA, the Licensor grants to the Licensee a limited, non-exclusive, revocable, non-transferable and non-sublicensable licence (the “**Licence**”) to use the Software in accordance with the terms of this EULA.
- 1.2 The Licence given pursuant to this EULA is without prejudice to any additional user policies, rules or instructions which may be supplied with or in relation to the Software or published by the Licensor from time to time. The Licensee hereby agrees to comply with all such policies, rules or instructions and failure to do so shall be deemed to be a material breach of this EULA.
- 1.3 The Licensor reserves the right to amend the terms of the Licence given to the Licensee pursuant to this EULA. The new terms shall supersede the terms of the original Licence and shall thereafter be deemed to be binding and enforceable.

2. TERMS OF USE

- 2.1 Use of the Software shall be restricted to use in object code form for the purpose of delivering and/or receiving health and/or care related services (as applicable).
- 2.2 The Licensee may not use the Software other than as specified in the Terms of Use and this EULA without prior written consent of the Licensor.
- 2.3 The Licensee shall take such action as is reasonable to prevent use of the Software other than by authorised users, and shall notify the Licensor immediately of any unauthorised use which comes to its attention.
- 2.4 The Licensee shall use the Software only in accordance with any operating requirements or Terms of Use as provided by the Licensor from time to time.
- 2.5 The Licensee shall not use the Software in an unlawful manner or any manner that could damage, disable, overburden, or impair the Software (or servers or networks connected to the Software), nor use the Software in any manner that could interfere with any other party’s use of the Software (or servers or networks connected to the Software). The Licensee may not use the Software to transmit any material that is defamatory, offensive or otherwise objectionable.
- 2.6 By using the Software, the Licensee consents to having their personal data collected and processed by the Licensor in the United Kingdom. If functionality within the Software requires data to be processed outside of the United Kingdom, the Licensee shall be notified and will have to consent to this processing prior to accessing this functionality.
- 2.7 Except as expressly stated in this EULA, the Licensee has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the

Software in whole or in part and in particular shall not delete or amend or conceal any product identification, proprietary, intellectual property notices including copyright notices or other marks on or within the Software.

- 2.8 **The Licensee shall not separate the component parts of the Software for use on more than one computer** or device, or for any other purpose as the Software is licensed.
- 2.9 The Licensee shall not:
- 2.9.1 sub-license, assign or novate the benefit or burden of this licence in whole or in part;
 - 2.9.2 allow the Software to become the subject of any charge, lien or encumbrance;
 - 2.9.3 deal in any other manner with any or all of its rights and obligations under this EULA;
- without the prior written consent of the Licensor, such consent not to be unreasonably withheld or delayed.
- 2.10 The Licensee shall keep the Software confidential and not disclose the same to any third party, nor permit any third party to use the same, nor use it for the purposes of any third party.
- 2.11 The Licensee shall not use any information provided by the Licensor to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.
- 2.12 The Licensee shall immediately give notice to the Licensor in the event that it becomes aware of any infringement or suspected infringement of the Licensor's Intellectual Property Rights and for any breach or suspected breach of this EULA.
- 2.13 The Licensee indemnifies the Licensor and its officers, employees and agents against any claim, damages, expenses, liabilities and loss of any kind from any third party howsoever arising from the Licensee's use of the Software.
- 2.14 The Licensor may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this licence, provided it gives written notice to the Licensee.

3. INTELLECTUAL PROPERTY OWNERSHIP

- 3.1 The Licensee acknowledges that the Software contains proprietary and confidential information that is protected by applicable intellectual property and other laws, and the Licensor owns all right, title and interest in and to the Software and content, excluding personal data entered by the Licensee, that may be presented or accessed through the Software, including without limitation all Intellectual Property Rights therein and thereto.
- 3.2 "Intellectual Property Rights" means all intellectual and industrial property rights of any kind whatsoever including any and all rights existing from time to time under patent law, copyright law, trade secret law,

trademark law, unfair competition law, and any and all other proprietary rights, and any and all applications, renewals, extensions and restorations thereof, now or hereafter in force and effect worldwide.

4. TERMINATION

- 4.1 The Licensor shall have the right to terminate this EULA forthwith by notice in writing to the Licensee in the event that:
- 4.1.1 the Licensee shall fail to perform or observe any of the obligations on its part to be performed or observed under this EULA; or
 - 4.1.2 the Licensee challenges or does anything incompatible with the Licensor's Intellectual Property Rights in the Software.
- 4.2 Any termination of this EULA shall also terminate the License granted hereunder.
- 4.3 Termination of this EULA, for any reason, shall, subject to the other provisions of this clause 4, be without prejudice to the rights and liabilities of either party which may have accrued on or at any time up to the date of termination.
- 4.4 If this EULA is terminated, the Licensee shall not supply any further copies of the Software to any person nor purport to authorise any person to use the Software.
- 4.5 Upon termination of this EULA for any reason, the Licensee agrees to remove from all computers, devices, hard drives, networks, and other storage media all copies of the Software and, at the request of the Licensor, shall so certify to the Licensor that such actions have been performed. Termination of this EULA does not entitle the Licensee to any refund of any license fees paid by the Licensee, if any.

5. WARRANTIES

- 5.1 The Licensor warrants that it is the lawful owner of the legal title to the Software and/or that it has the lawful right to transfer or grant licence to the Software.
- 5.2 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
- 5.3 The Licensee warrants to use the Software responsibly and comply with the Terms of Use in clause 2 of this EULA.

6. DISCLAIMER

- 6.1 Except as expressly set forth above, the Licensor provides the Software "as is" and expressly disclaims all warranties, conditions or other terms, whether express, implied or statutory, including without limitation, warranties, conditions or other terms regarding merchantability, fitness for a particular purpose, design, condition, capacity, performance, title, and non-infringement. The Licensor does not warrant that the Software will operate uninterrupted or error-free or that errors will be corrected. In addition, the Licensor does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack.