

PharmOutcomes[®] System User Agreement V3.PINNACLE

Date: 7 January 2013

IMPORTANT: PLEASE READ CAREFULLY BEFORE USING PHARMOUTCOMES. THIS IS A BINDING LEGAL AGREEMENT.

WELCOME TO THE USER AGREEMENT FOR PHARMOUTCOMES ("**USER AGREEMENT**").

THE SERVICES AVAILABLE AT [HTTPS://WWW.PHARMOUTCOMES.ORG.UK](https://www.pharmoutcomes.org.uk) ("**PHARMOUTCOMES**") ARE PROVIDED BY PINNACLE HEALTH PARTNERSHIP LLP, INCORPORATED AND REGISTERED IN ENGLAND WITH REGISTRATION NUMBER OC347501 WHOSE REGISTERED OFFICE IS AT 1ST FLOOR WEATHERWISE BUILDING, WELL ROAD, EAST COWES, ISLE OF WIGHT PO32 6SP ("**PINNACLE**", "**WE**", "**US**" OR "**OUR**").

COMMUNITY PHARMACIES ARE REQUIRED TO COMPLY WITH 'CONFIDENTIALITY: NHS CODE OF PRACTICE' AND HIE IS COMMITTED TO COMPLYING WITH THAT CODE.

PINNACLE PROVIDES PHARMOUTCOMES TO NHS PHARMACY CONTRACTORS FOR THE PURPOSE OF SUPPORTING THE DELIVERY OF SERVICES BY PHARMACY CONTRACTORS, INCLUDING PRODUCING INVOICES OR CLAIMS FOR SUCH SERVICES.

HEALTH INFORMATION EXCHANGE LIMITED ("**HIE**"), A COMPANY REGISTERED IN ENGLAND AND WALES UNDER COMPANY NUMBER 07343096 AND WITH REGISTERED OFFICE AT DA VINCI HOUSE, BASING VIEW, BASINGSTOKE, HAMPSHIRE RG21 4EQ. ITS MAIN TRADING ADDRESS IS TIMES HOUSE, 5 BRAVINGTONS WALK, LONDON, N1 9AW. ITS VAT NUMBER IS 105292833. HIE IS A COMPANY LIMITED BY SHARES WHICH ARE HELD ON TRUST FOR THE BENEFIT OF THE PHARMACEUTICAL SERVICES NEGOTIATING COMMITTEE ("**PSNC**") ([WWW.PSNC.ORG.UK](http://www.psn.org.uk)). THE PSNC IS AN ASSOCIATION RECOGNISED BY THE SECRETARY OF STATE FOR HEALTH AS THE BODY THAT REPRESENTS NHS PHARMACY CONTRACTORS. THE PSNC WORKS CLOSELY WITH LOCAL PHARMACEUTICAL COMMITTEES ("**LPCS**") TO SUPPORT THEIR ROLE AS LOCAL NHS REPRESENTATIVE ORGANISATIONS.

THIS USER AGREEMENT IS A LEGAL AGREEMENT BETWEEN PINNACLE AND THE NHS PHARMACY CONTRACTOR TO WHOM HIE OR PINNACLE HAVE PROVIDED LOGIN DETAILS ("**YOU**" OR "**YOUR**"). YOU WARRANT AND REPRESENT THAT YOUR REPRESENTATIVE TO WHOM YOU HAVE ASKED US TO SUPPLY LOGIN DETAILS ON YOUR BEHALF ("**PRIMARY USER**") IS DULY AUTHORISED BY YOU TO ENTER INTO AND BIND YOU TO THE TERMS OF THIS USER AGREEMENT.

THIS USER AGREEMENT ALSO CONTAINS TERMS WITH WHICH END USERS, INCLUDING THE PRIMARY USER, WHO HAVE BEEN GIVEN ACCESS TO PHARMOUTCOMES BY YOU OR ON YOUR BEHALF ("**SYSTEM USERS**") MUST COMPLY AS A CONDITION OF USING PHARMOUTCOMES. YOU SHOULD UNDERSTAND THAT BY USING PHARMOUTCOMES, YOU ARE AGREEING TO BE BOUND BY THIS USER AGREEMENT AND TO BE RESPONSIBLE TO US FOR SYSTEM USERS' COMPLIANCE OR NON-COMPLIANCE WITH THIS USER AGREEMENT.

SYSTEM USERS INCLUDING LOCUMS WHO HAVE BEEN GIVEN ACCESS BY YOUR PRIMARY USER SHOULD NOTE THAT THEIR USE OF PHARMOUTCOMES IS SUBJECT TO THIS USER AGREEMENT, AND IN PARTICULAR CLAUSES 2B (SCOPE) AND 4 (ACCEPTABLE USE).

YOUR DESIGNATED PRIMARY USER SHOULD TICK AND SUBMIT YOUR AGREEMENT TO ABIDE BY THE TERMS OF USE WHEN PROMPTED ON THE PHARMOUTCOMES LOGON SCREEN IF YOU ACCEPT THESE TERMS AND CONDITIONS. PLEASE UNDERSTAND THAT IF YOU REFUSE TO ACCEPT THESE TERMS AND CONDITIONS, YOU WILL NOT BE ABLE TO USE PHARMOUTCOMES PROVIDED BY PINNACLE.

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YOU SHOULD PRINT A COPY OF THESE TERMS AND CONDITIONS AND KEEP THEM CAREFULLY FOR FUTURE REFERENCE.

1. Technical Requirements

You will need to have Microsoft[®] Internet Explorer version 6 or later and a connection to the internet in order to access and use PharmOutcomes. It is recommended that you have a Personal computer with a minimum processor speed of 1.5GHz and 2 GB of RAM of which a minimum of 500 MB RAM should be free to run PharmOutcomes in the browser application, and a connection to the internet with minimum ADSL download speed of 8Mb/s to access and use PharmOutcomes. It is responsibility to ensure that these are in place.

2. Scope and User Administration

2A Obligations on NHS Pharmacy Contractor

- 2.1 If You accept this User Agreement, and in consideration of Your agreement to abide by the terms of this User Agreement, Your Primary User will be able to access and use PharmOutcomes in accordance with this User Agreement. Your Primary User will act as Your account holder for PharmOutcomes. Your Primary User will also be able to create, delete and maintain additional System User accounts for You within the criteria set out in this User Agreement. We will not create any System User accounts for You beyond the Primary User account.
- 2.2 You shall comply with, and shall ensure that the Primary User complies with the following conditions relating to System User accounts:
- (a) all System Users authorised by You must be either Your officer or Your employee and for the purpose of this User Agreement, 'Your employee' shall be taken to include a locum or contractor who is engaged by You to provide pharmaceutical services and to also include any of Your professional advisers and any other categories of persons that we approve (such approval not to be unreasonably withheld or delayed);
 - (b) Your access to PharmOutcomes (and each of Your System Users' access to PharmOutcomes) is strictly limited to the account for Your particular pharmacy premises on PharmOutcomes;
 - (c) accessing or attempting to access accounts of other pharmacies on PharmOutcomes is strictly prohibited; and
 - (d) we (and our designated representatives) will only liaise with Your Primary User in relation to any queries, technical or otherwise, relating to PharmOutcomes.
- 2.3 You represent and warrant that System Users will comply with the terms of this User Agreement (in particular clauses 2B and 4, and shall not place You in breach of Your obligations in this User Agreement. You shall at all times be liable for all acts or omissions of Your System Users in connection with PharmOutcomes and shall indemnify us in relation to any liabilities, costs, expenses, loss or damages which we suffer or incur as a result of any act or omission of any of Your System Users.

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2B Obligations on NHS Pharmacy Contractor and All System Users

- 2.4 Your use and right to access PharmOutcomes is subject at all times to Your compliance with the terms of this User Agreement.
- 2.5 You are responsible for the confidentiality, security and proper use of Your Hard Key Rescue Card (where applicable), user ID (where applicable), passwords and security codes allocated by us or by the Primary User which are used in connection with PharmOutcomes (including changing such passwords and security codes on a regular basis) and must take all necessary steps to ensure that they are kept confidential, secure, used properly and not disclosed to unauthorised people. You shall be solely responsible for any damage caused by any such unauthorised access.
- 2.6 You must immediately inform us if there is any reason to believe that Your User ID, password, or security code allocated by us or by the Primary User has, or is likely to, become known to someone not authorised to use it or is being, or is likely to be, used in an unauthorised way.
- 2.7 We reserve the right to suspend a User ID, password, security code or access to PharmOutcomes by giving You reasonable notice to the extent and for the duration that we, in good faith, have reason to believe that there is, or is likely to be, a breach of security or misuse of PharmOutcomes. In the event we exercise this suspension right we will resolve the issue as soon as possible and will use reasonable endeavours to do so promptly. Suspension may be without notice if we at our sole discretion and in good faith, decide on reasonable grounds that the breach of security or misuse of PharmOutcomes is likely to cause damage to the integrity of any data stored on the system, or is likely to lead to a breach of our obligations under this User Agreement or to a breach of our obligations to any other users of PharmOutcomes, particularly with respect to confidentiality or data protection.
- 2.8 We reserve the right to require You to change any or all of the security code or passwords allocated by us or the Primary User and used by any System Users in connection with PharmOutcomes where we reasonably believe it is necessary for You to do so to preserve security of PharmOutcomes.
- 2.9 System User IDs must only be changed by Your Primary User. If You forget, lose or wish to change a password or User ID allocated by us or by Your Primary User, You must contact us or Your Primary User as appropriate and satisfy such reasonable security checks as may be operated.
- 2.10 You shall provide all such reasonable assistance, facilities and information to us and any of our employees, agents, or sub-contractors as we may reasonably require in order to enable us to provide PharmOutcomes to You.

3. Your Information and Commissioner Information

- 3.1 "**Your Information**" means any information You enter in PharmOutcomes including but not limited to pharmacist details, prescriber details and patient details, details of patient consultations, prescriptions, courses of treatment and associated service records. You are solely responsible for the accuracy of Your information.

"**Anonymised Information**" means the version of Your Information that has been anonymised by Pinnacle such that none of the data subjects in the anonymised version can be identified.

"**Web Hosting Service Provider**" means Tollon Limited, Suite 4 Scotts Sufferance Wharf, 1 Mill Street, LONDON, SE1 2DE, **Company No. 03565311**.

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- 3.2 By this User Agreement, You authorise Pinnacle to use Your Information for the purposes of fulfilling its obligations pursuant to this User Agreement.
- 3.4 You grant Pinnacle the right to anonymise Your information on the terms and conditions set out in this User Agreement. You grant Pinnacle a non-exclusive, royalty-free licence to use the Anonymised Information, and aggregate it, for use for commercial and non-commercial purposes which Pinnacle and PSNC reasonably consider to be of benefit to the interests of the pharmacy community as a whole or as may otherwise be required to fulfil legal or regulatory obligations of Pinnacle or PSNC. Pinnacle may provide such Anonymised Data to PSNC and to other entities relevant to the pharmacy community, such as the NHS Commissioning Board, other commissioners of services, NHS Employers and the Department of Health. For example, Pinnacle may provide summary reports of collated Extracted Data across various pharmacies to the NHS Commissioning Board, other commissioners of services, NHS Employers and the Department of Health. Pinnacle will ensure access, use and processing of the Anonymised Information is compliant with the Data Protection Act 1998 and will not aggregate or publish any information in any way that may compromise the commercial confidentiality of Your Information or the Anonymised Information or be in breach of the NHS Information Governance Guidelines or which would cause you to be in breach of the Data Protection Act 1998.
- 3.5 There will be a small number of technical support staff of Pinnacle or contractors to Pinnacle (e.g. the Web Hosting Service Provider) ("**Pinnacle Contractors**") who will have access to all data and Your Information stored on PharmOutcomes, but such staff or contractors will access the information only to the extent necessary for the purpose of managing the databank and / or resolving user concerns and shall at all times be subject to the provisions of clauses 5 and 6.

4. Acceptable Use, Access and Interference

- 4.1 Your Information, Your use and Your activity on PharmOutcomes must not
- (a) be false, inaccurate or misleading;
 - (b) involve sending or knowingly allowing the sending or receiving, uploading, downloading, using or re-using any information or material which:
 - i. may be offensive or menacing, abusive, defamatory, or in breach of confidence, privacy or any other rights; or
 - ii. is technically harmful or contains any computer viruses, macro viruses, trojan horses, worms or anything else designed to interfere with, interrupt or disrupt the normal operating procedures of a computer or surreptitiously intercept, access without authority or appropriate any system, data or personal information;
 - (c) infringe any third party's copyright, patent, trade mark, trade secret or other intellectual property or other proprietary rights or rights of publicity or privacy PROVIDED ALWAYS that this clause will not apply in respect of any services, software, databases or other materials provided by or on behalf of HIE, Pinnacle, or the Web Hosting Service Provider;
 - (d) in any way cause annoyance, inconvenience or needless anxiety;

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- (e) involve sending or providing or allowing the sending or providing of unsolicited advertising or promotional material that the recipient has not consented to receive (where consent is necessary to comply with applicable laws);
 - (f) be other than in accordance with the acceptable use policies provided to You from time to time and generally accepted internet standards, or otherwise in a way that causes us loss;
 - (g) be fraudulent; be in breach of any applicable laws or regulations, be obscene, indecent or contain child pornography;
 - (h) be in contravention of the instructions given to You by us or any public telecommunications operator or other competent authority in the UK;
 - (i) create liability for us or cause us to lose (in whole or in part) the services of our internet service providers or other suppliers;
 - (j) in any way interrupt or damage any access to PharmOutcomes or impair the effectiveness or functionality of PharmOutcomes.
- 4.2 You do not have a right to link to the PharmOutcomes site without our prior express written permission. You may not misuse the PharmOutcomes site (including, without limitation, by hacking or accessing or attempting to access any unauthorised part of the PharmOutcomes site).
- 4.3 We shall fully co-operate with any law enforcement authorities or court order requesting or directing us to disclose the identity or locate anyone posting any material in breach of clause 4.
- 4.4 You agree that You will not use any robot, spider, scraper or other automated means to access PharmOutcomes or any Site on PharmOutcomes for any purpose without our prior express written permission.
- 4.5 You further agree that You will not:
- (a) take any action that imposes, or may impose as determined by us an unreasonable or disproportionately large load on our infrastructure;
 - (b) copy, reproduce, modify, create derivative works from, distribute or publicly display any content (except for Your Information) from the PharmOutcomes site without the prior express written permission of Pinnacle, and any appropriate third party, as applicable;
 - (c) interfere or attempt to interfere with the proper working of PharmOutcomes or any activities conducted on the PharmOutcomes site;
 - (d) bypass any measures we may use to prevent or restrict access to PharmOutcomes.
- 4.6 We do not authorise You to extract or re-utilise substantial parts of PharmOutcomes, or to make systematic and repeated extractions or re-utilisations of insubstantial parts of PharmOutcomes.
- 4.7 In the event of any failure preventing You from inputting Your Information into PharmOutcomes, You are advised to keep paper-based records of such information as You would have inputted into

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PharmOutcomes during this period and to input such information into PharmOutcomes as soon as reasonably practicable once such failure is resolved.

4.8 Without limiting our other remedies, we may limit or prevent Your access or activity on PharmOutcomes (on reasonable notice recognising that in an emergency situation, no notice may be reasonable notice) in any of the following circumstances:

- (a) in accordance with clause 2.7;
- (b) if You breach this User Agreement;
- (c) if, despite our reasonable endeavours, we are unable to verify or authenticate any information You provide to us (other than Your Information which will not be verified or authenticated by us); or
- (d) if we reasonably believe that Your actions may cause financial loss, legal liability, breach data protection laws or infringe patient or commercial confidentiality PROVIDED ALWAYS that if You can reasonably demonstrate that Your actions would not have such effect, we shall promptly reinstate Your access and/or activity.

5. Data Protection

5.1 "Personal Data", "Data Controller", "Data Processor" and "Data Subject" each have the meanings given to them by the Data Protection Act 1998 (as may be amended from time to time) and in the case of Personal Data includes the categories of 'sensitive' personal data set out in Section 2 of that Act.

5.2 In the course of this Agreement, if You transfer **Personal Data** (which, for the purposes of this User Agreement includes Sensitive Personal Data) to PharmOutcomes, the parties intend that You will be the Data Controller and we will be a Data Processor in relation to such Personal Data.

5.3 Where You input Personal Data into PharmOutcomes, You warrant and represent that You are entitled to use Pinnacle as a Data Processor under the Data Protection Act 1998 to perform its obligations in accordance with this User Agreement.

5.4 Whenever Pinnacle processes Personal Data on Your behalf it will and will procure, in a contract made in writing, that its agents and subcontractors (including but not limited to the Pinnacle Contractors) each of whom may only be appointed if it has given sufficient guarantees to protect the Personal Data in accordance with this clause 5.4) will:

- (a) do so solely to perform our obligations under this User Agreement;
- (b) to anonymise Your Information so as to create a separate file of Anonymised Information for it to use in accordance with clause 3.4 PROVIDED ALWAYS that on the creation of the Anonymised Data, it will permanently delete all copies (whether whole or part copies) of Your Information such that it does not retain any of Your Information whatsoever (but for the avoidance of doubt, Your Information stored by the Web Hosting Service Provider will not be deleted by the creation of the Anonymised Data);
- (c) in the case of the Web Hosting Service Provider, to host PharmOutcomes;

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- (d) exercise a degree of skill, prudence and diligence which would reasonably and ordinarily be expected from a skilled and experienced user in providing systems similar to PharmOutcomes acting in good faith in relation to the storing and processing of such Personal Data;
- (e) act only on and in compliance with Your instructions (as the Data Controller) as such instructions are given and varied by You from time to time;
- (f) take appropriate technical and organisational measures against unauthorised and/or unlawful processing of Personal Data and against accidental loss, theft, and/or destruction of, and/or damage to, Personal Data which shall include but is not limited to:
 - i. compliance with the ISO standard 27001:2005 (without having any obligation to apply for and be accredited under the standard) that are appropriate to the services being provided to You under this User Agreement;
 - ii. ensuring only those persons who have a need to know (whether employees, agents, subcontractors or otherwise) have access to the Personal Data and that they have undergone appropriate training on the care and handling of the Personal Data that are the subject of this User Agreement;
 - iii. notifying You of any security incident that may compromise the Personal Data or any of Your customers;
 - iv. encrypting the Personal Data from the point of key entry into PharmOutcomes by You using at least 128-bit encryption technology and allowing the decryption keys to be used only by the Anonymisation Service Provider to the extent and for the duration necessary to create the Anonymised Information;
 - v. preventing all those persons who have access to Personal Data accessing it via or storing it on any insecure network, equipment or device;
- (g) not store or transfer any of Personal Data in Your Information to any country outside of the United Kingdom;
- (h) promptly assist You with any subject access requests received from Data Subjects so as to ensure that You can meet the statutory timescales for complying with such a request;
- (i) not disclose the Personal Data to any third party in any circumstances other than with Your prior written consent or in compliance with a legal obligation;
- (j) co-operate with You to enable You to monitor compliance with the obligations set out in this User Agreement; and
- (k) return the Personal Data (including all copies and derivative works) to You and to securely destroy all remaining copies of Personal Data by:
 - i. in the case of electronic copies: secure physical destruction of the storage media or secure deletion using appropriate electronic shredding software using a minimum setting of US DOD overwriting standard (7 passes); and

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- ii. in the case of hard copies: secure destruction by cross-cut shredding and secure re-cycling of the resulting waste

on termination of this User Agreement providing certification by an officer of Pinnacle that this clause 5.6(k) has been fully complied with.

6. Confidential Information and Freedom of Information

6.1 We hereby undertake to:

- (a) keep all of Your Information as confidential and not use it for any purposes other than for the provision of PharmOutcomes in accordance with this User Agreement;
- (b) not without Your written consent disclose Personal Data in whole or in part to any person save those of our employees, agents and sub-contractors involved in the provision of PharmOutcomes and who have, and to the extent that they have, a need to know the same and provided at all times that the employee, agent or sub-contractor is subject to the provisions set out in clause 5 and agrees to keep such Personal Data confidential.

6.2 The provisions of this clause 6 shall not apply to the whole or any part of confidential information to the extent that is:

- (a) already in the other's possession without duty of confidentiality on the date of its disclosure;
- (b) in the public domain other than as a result of a breach of this clause; or
- (c) to the extent that disclosure of such information may be required by any governmental agency or by operation of law and, in either such case, we will shall use reasonable endeavours to notify You of such prior requirement prior to making the disclosure save as to when such notification is prohibited by any operation of law.

6.3 Our obligation to keep confidential information confidential will survive the termination of this User Agreement.

6.4 Pinnacle acknowledges and accepts that for the purposes of the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002 (together FOIA Acts), to the extent that You are a public authority for the purposes of either or both of the FOIA Acts, this Agreement is subject to Your obligations and commitments under the FOIA Acts. In particular, we agree and shall procure that the Web Hosting Service Provider (and any other third parties that we use) agrees:

- (a) to assist and co-operate with You to enable You to comply with Your disclosure obligations under the FOIA Acts;
- (b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA Acts is a decision solely for You;
- (c) where we or the Web Hosting Service Provider, and/or any other third party receives a request for information under the FOIA Acts, it will not respond to such request (unless directed to do so by You) and will promptly transfer the request to You;

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- (d) You, acting in accordance with the codes of practice issued and revised from time to time under the FOIA Acts and the Environment Information Regulations 2004 and/or any decision of the Information Commissioner, the Court or other competent authority, may disclose information concerning us, the Web Hosting Service Provider, and/or any other third party and/or this Agreement either without consultation or, following consultation and having taken the relevant person's views into account; and
- (e) to assist You in responding to a request for information by providing all information requested by You within (5) five days of such request.

7. Intellectual Property

- 7.1 We shall indemnify You against any third party claim, action, proceeding or demand that may be brought, made or prosecuted against You by any person arising from any infringement of any intellectual property rights in PharmOutcomes if:
- (a) any infringement or alleged infringement is not caused by any unauthorised changes to or unauthorised use of PharmOutcomes made by You or by anyone acting on Your behalf or authorised by You;
 - (b) You do not make any statement or admission without our prior written consent unless You are required to make such statement or admission without our prior written consent by a court, tribunal, a regulator or applicable law; and
 - (c) we or somebody of our choosing is in control of the defence of any action or such claim and all negotiations for settlement or compromise and You give us and anybody of our choosing all reasonable assistance with the defence or settlement of such claim at our expense.

8. Service Levels

- 8.1 We will use reasonable efforts to ensure that PharmOutcomes is available to You between 8am and 11pm, Monday to Saturday for no less than 97.5% of the time ("**Core Service Hours**") however, we do not guarantee continuous, uninterrupted or secure access to PharmOutcomes during the Core Service Hours or otherwise and You acknowledge that the operation of and access to PharmOutcomes may be impaired by numerous factors outside of our control.
- 8.2 You further acknowledge that outside the Core Service Hours, user access to the System may be restricted to allow scheduled maintenance and/or improvements to PharmOutcomes. However we will endeavour to minimise the impact on Your use of PharmOutcomes and will use reasonable efforts to give You notice of such scheduled interruptions.
- 8.3. We will use reasonable endeavours to ensure that PharmOutcomes and all data stored on it will be backed up by the Web Hosting Service Provider as follows. The PharmOutcomes platform is maintained in England, and a mirrored copy of the database is maintained as part of the PharmOutcomes Disaster Recovery arrangements. Incremental backups are created each day, with full backups carried out periodically.
- 8.4 We will take reasonable precautions to ensure that PharmOutcomes is safeguarded from known viruses or other contaminants. However, we do not guarantee that PharmOutcomes will operate free from viruses or other contaminants.

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9. Limitation of Liability

9.1 We will be liable for direct losses caused by a breach of our obligations under this Agreement subject at all times to the provisions of this clause 9. Pinnacle will be liable for direct losses caused by a breach of its obligations under this Agreement in relation to the PharmOutcomes system hosted on www.pharmoutcomes.org.uk.

9.2 Nothing in this User Agreement shall limit or exclude any party's liability for fraudulent misrepresentation, or for death or personal injury resulting from negligence or the negligence of our agents or subcontractors.

9.3 Subject at all times to clause 9.2:

(a) neither You nor we will be liable for:

- i. any loss of revenues; loss of profits; loss of contracts; loss of business or anticipated savings; loss of goodwill or reputation; in each case, whether such loss is directly or indirectly arising; or
- ii. any special, indirect or consequential damages arising in any way out of or in connection with this User Agreement;
- iii. for the acts or omissions of providers of telecommunications services or for faults in or failures of their networks and equipment (including without limitation liability arising as a result of negligence, breach of statutory duty or otherwise); or

(b) we will not be liable for any loss or damage caused by the inaccuracy of Your Information or information provided by any third parties for use in PharmOutcomes, including but not limited to information provided by commissioners;

and

(c) our total aggregate liability in relation to provision of PharmOutcomes or otherwise arising in connection with the performance or contemplated performance of this User Agreement, whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise howsoever, shall be limited to £1000.

10. Indemnity

10.1 You shall indemnify and hold us and (as applicable) our affiliates, officers, agents, sub-contractors and employees, harmless from any loss, claim, damage, liability or demand (including without limitation reasonable legal fees, charges and expenses) which we or any such persons may incur arising out of or in connection with any act or omission by You under this User Agreement (which for the avoidance of doubt shall include any act or omission by System User in breach of the terms of this User Agreement), or Your violation of any law or the rights of a third party.

11. Term, Termination and Consequences of Termination

11.1 This User Agreement shall commence on the date on which You accept these terms and conditions and shall continue automatically unless this Agreement is terminated by us giving You or You giving us

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not less than 90 days written notice, such termination to take effect on expiry of the notice, unless terminated in accordance with the remaining provisions of this clause.

11.2 This User Agreement may be terminated:

- (a) immediately by a party if the other party commits any breach of any material term of this User Agreement or repeatedly breaches any obligation of this User Agreement which, in the case of a breach capable of being remedied, shall not have been remedied within 30 days of a written request by the other party to remedy the same;
- (b) immediately by written notice from the non defaulting party to the defaulting party if the defaulting party breaches a material provision of this User Agreement and that breach is not capable of being remedied;
- (c) immediately if the other party shall:
 - i. cease to carry on business;
 - ii. convene a meeting of its creditors; or
 - iii. ceases to be able to pay its debts as they become due;
 - iv. if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986;
 - v. a proposal for any other composition scheme or arrangement with or assignment for the benefit of its creditors; or
 - vi. if the other party shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - vii. if a trustee, receiver, administrative receiver, administrator or liquidator or similar office is appointed in respect of the other party all or any part of its business or assets; or
 - viii. if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction); or
 - ix. if any analogous step is taken in any jurisdiction; or
- (d) pursuant to clause 12.3.

11.3 Any termination of this User Agreement shall be without prejudice to any rights or obligations of either party which shall have accrued before such termination.

12. General

12.1 **Interpretation:** Headings in the User Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of the applicable clauses.

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12.2 Entire Agreement: This User Agreement constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this User Agreement. Each of the parties acknowledges and agrees that in entering into this User Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently made or not) of any person (whether party to this agreement or not) other than as expressly set out in this User Agreement. The only remedy available to it for breach of the agreement shall be for breach of contract under the terms of this User Agreement.

12.3 Amendments: We may amend this User Agreement at any time by giving You notice ("**Notice**") by either e-mail to the Primary User if You have provided Us with a valid email address or by posting the amended User Agreement on the PharmOutcomes, Pinnacle, Healthinfoexchange.org.uk or PSNC web sites. The notice shall specify the date on which the amended User Agreement shall come into force, which shall be not less than 30 days after the posting of the Notice. After an amended User Agreement has come into force, You will be unable to access PharmOutcomes until You have ticked and submitted Your agreement to abide by the terms of use when prompted on the PharmOutcomes logon screen. If You fail to accept the amended User Agreement, this User Agreement will terminate with immediate effect and Your access to PharmOutcomes will no longer be permitted.

12.4 Events outside our control: We will not be liable for any act, event, non-happening, omission or accident beyond our reasonable control and includes in particular (without limitation) the following:

- (a) embargo, strikes, labour dispute, lock-outs or other industrial action (other than any such events which involve our own staff);
- (b) civil commotion, riot, invasion, insurrection, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;
- (c) illness, fire, explosion, storm, flood, earthquake, subsidence, epidemic, pandemic or any natural disaster, tempest or Act of God;
- (d) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
- (e) impossibility of the use of public or private telecommunications networks; or
- (f) the acts, decrees, legislation, regulations or restrictions of any government.

Our performance under this User Agreement is deemed to be suspended for the period that such event outside of our control continues, and the parties will have an extension of time for performance for the duration of that period. We will use our reasonable endeavours to bring such an event to a close or to find a solution by which our obligations under this User Agreement may be performed despite such event occurring.

12.5 Written Communication and Notices: Unless otherwise explicitly stated, notices to to Pinnacle must be sent by registered mail to Pinnacle Healthcare Partnership LLP, 1ST Floor Weatherwise Building, Well Road, East Cowes, Isle of Wight PO32 6SP. An email or postal address must be included in the correspondence for us to be able to reply (receipt is deemed 24 hours after an email is sent, unless we receive notice that the email address is invalid). In proving the service of any notice, it will be

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sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email, that such email was sent to the specified email address of the addressee. For contractual purposes, You agree to this electronic means of communication and You acknowledge that all contracts, notices, information and other communications that we may provide to You electronically comply with any legal requirement that such communications be in writing. We may send You notices to the email address of Your Primary User. You must notify us immediately of any changes in the Primary User e-mail address.

- 12.6 **Transfer of Rights and Obligations:** This User Agreement between You and us is binding on You and Us and our respective permitted successors and assignees. You may not transfer, assign, charge or otherwise dispose of this User Agreement, or any of Your rights under it, without our prior written consent. We may transfer, assign, charge or otherwise dispose of this User Agreement or any of our rights or obligations arising under it at any time on giving written notice to you. We may sub-contract our obligations under this User Agreement but this shall not relieve Us from our primary obligation to perform in accordance with this User Agreement and we shall be liable for the acts and omissions of our subcontractors as if they were our own acts or omissions.
- 12.7 **Third Party Rights:** Except as specified in this User Agreement, a person who is not a party to this User Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this User Agreement but this does not affect other right or remedy of a third party specified in this User Agreement or which exists or is available apart from that Act.
- 12.8 **Severance:** If any provision (or part of any provision) of this User Agreement is held to be invalid or unenforceable, such provision (or part provision) shall to the extent required be deemed deleted, and the validity and enforceability of the other provisions of the User Agreement shall not be affected. If any invalid, unenforceable or illegal provision of the User Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 12.9 **Waiver:** If we fail at any time to insist on strict performance of any of Your obligations under this User Agreement, or if we fail to exercise any of the rights and remedies to which we are entitled under this User Agreement, this shall not constitute a waiver of such rights and remedies and shall not relieve You from Your compliance with such obligations. A waiver of any right under the User Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. Unless specifically provided otherwise, rights arising under the User Agreement are cumulative and do not exclude rights provided by law.
- 12.10 **No Partnership:** You, Pinnacle and HIE are independent contractors, and no agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship is intended or created by this User Agreement.
- 12.11 **Governing Law and Jurisdiction:** This User Agreement shall be governed by and construed in accordance with English law and subject to the non-exclusive jurisdiction of the English courts.