

**TELEMEDICINE CLINIC
DIAGNOSTIC RADIOLOGY REPORTING SERVICES**

- 1. THIS AGREEMENT IS MADE ON THE 29TH OF JANUARY 2015**
- 2. PARTIES**
 - 2.1 The Provider:** TELEMEDICINE CLINIC LIMITED (TMC), Company Number 06958314 whose registered office is care of Mazars, 45 Church Street, Birmingham, West Midlands, B3 2RT
 - 2.2 The Client:** The University of York, on behalf of York NeuroImaging Centre, whose registered address is Heslington, York, YO10 5DD

3. DEFINITIONS AND INTERPRETATION

- 3.1** In this Agreement the following words and expressions have the meanings given to them in this clause.

Business Day: a day (other than a Saturday or a Sunday) on which clearing banks are open for business in the City of London.

Business Hours: 9am to 5pm on a Business Day

Confidential Information: Information which has been designated as confidential by the Client or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, goods, services, developments, trade secrets, intellectual property rights, know-how, personnel, customers and suppliers of the Client and its affiliates, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998, and commercially sensitive information.

Data Controller: Has the meaning set out in the Data Protection Act 1998

Data Processor: Has the meaning set out in the Data Protection Act 1998

Data Protection Legislation: the Data Protection Act 1998, the Data Protection Directive (95/46/EC), and all applicable laws and regulations relating to the processing of personal data and privacy, including the guidance and codes of practice issued by the Information Commissioner.

Data Subject: has the meaning set out in the Data Protection Act 1998

Force Majeure Event: An event beyond the Provider's beyond its reasonable control, being for the purposes of this Agreement an act of God including but not limited to fire, flood, earthquake, windstorm or other natural disaster, act of any sovereign including but not limited to war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, nationalisation, requisition, destruction or damage to property by or under the order of any government or public or local authority or imposition of government sanction embargo or similar action; law, judgment, order, decree, embargo, blockade; or an interruption or failure of utility service including but not limited to electric power, gas, water, or telephone service.

Indemnify and Indemnifying: fully indemnifying and holding harmless the indemnified Party from and against all and any loss, costs, actions, claims, damages and demands arising from or as a result of the event or omission in respect of which the indemnity is given (including, without limitation, legal fees and court costs on a full-indemnity basis).

Insolvency Event: An event where a Party passes a resolution, or the court makes an order that: (a) the Party be wound up (otherwise than for the purpose of a bona fide and solvent reconstruction or amalgamation); or (b) a receiver, manager or administrator on behalf of a creditor is appointed in respect of all or part of the business of the Party; or (c) circumstances arise which entitle a court or creditor to appoint a receiver, manager or administrator or which entitle the court (otherwise than for the purpose of a solvent and bona fide reconstruction or amalgamation) to make a winding up order; or (d) the Party ceases to trade or is unable to pay its debts within the meaning of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction.

Minimum Data Set: Means the Patient data required by TMC to provide the Services, which shall comprise: (i) digital image data, and (ii) digital clinical information and/or digital copy of referral form.

Party: either the Provider or the Client

Parties: the Provider and Client together

Personal Data: has the meaning set out in the Data Protection Act 1998

Price: Contained within Schedule 1

Payment Term: 30 days from the date an invoice is received by the Client.

Report: means a written interpretation of a set of diagnostic images in respect of a Patient by a Consultant Radiologist (where the "Report" may comprise a number of reports in respect of different body parts of a single Patient).

RI: Means the Radiology Information System provided and maintained by TMC for the receipt of patient referrals from, and the provision of radiology reports to the Client.

Services: MRI Elective reporting

4. CONTRACT DURATION

- 4.1 **This Agreement shall commence on the date first written above and expire one (1) year thereafter, unless terminated early under the conditions in section 15.**

5. SERVICES AND RESPONSE TIMES

- 5.1 The Provider shall provide the Services detailed in Schedule 1, as may be required from time to time by the Client.
- 5.2 The Provider represents, warrants, and undertakes that it will use reasonable skill, care, and judgment in providing the Services.
- 5.3 The Provider represents, warrants, and undertakes that it has all licences, permissions, and consents necessary to provide the Services.
- 5.4 The Provider shall provide the Client with a transcribed radiological report in writing into the RIs within 2 Business Days from receipt of all patient data on to the Provider's systems. Any deviation from this response time requires the prior written consent of the Client.
- 5.5 The turnaround time in clause 5.4 commences at the time the Provider is able to verify OR verifies that all image, patient and other relevant data has been transmitted to it to enable it to provide the Services. The Provider will immediately contact the Client if it has not received all relevant data necessary to provide the Services.

6. DUTIES AND OBLIGATIONS OF THE CLIENT

- 6.1 The Provider shall invoice the Client at the end of each month. Invoices shall be submitted in accordance with the following Invoicing Information, and if so submitted shall be deemed properly sent and received:

(Invoicing information, including address and Client Invoicing Contact Person required below):

Finance Department, University of York

Accounts Department: **Mr Ross Devlin, York Neuroimaging Unit Manager, Tel; - 01904 435338; email; - ross.devlin@ynic.york.ac.uk** (please provide contact details, email, phone)

VAT Number: GB 647205541

TMC Invoice Contact Person: Susana Rojas - srojas@telemedicineclinic.com)

Distribution method: Email.

- 6.2 The Client shall pay undisputed invoices within the Payment Term. In the case of non-payment or late payment the Provider is not obliged to provide further Services if it elects not to do so.
- 6.3 The Client must transmit all relevant data strictly in accordance with the agreed method to the Provider as detailed in Schedule 3 (Data Sharing Agreement), and must otherwise ensure that clear and complete data transfer is achieved. The Provider's obligation to provide the Services does not exist or commence until such data is so transmitted and is verified as such by the Provider, and the Provider accepts no liability for failure in such transmission.

7. PROVIDER'S DUTIES AND OBLIGATIONS

- 7.1 The Provider will provide the Services using utmost care and skill. The services of reporting radiologists registered with specialist proof/certification in diagnostic radiology in the United Kingdom. The Provider has and accepts no liability for late or non receipt of any report due to any fault in, or failure of, the Client's systems.
- 7.2 The Provider will provide a list of patient identifier and examination(s) reported to the Mr Ross Devlin of the Client to match with the invoice.

8. CONFIDENTIALITY

- 8.1 During the term of this Agreement and in perpetuity thereafter, the Provider will keep strictly confidential any Confidential Information of the Client.
- 8.2 The Provider shall:
- (a) only use the Confidential Information in the provision of the Services;
 - (b) only disclose and only disclose the Confidential Information to its employees who have a strict need to know and who are bound by written obligations of confidentiality no less strict than this section 8;
 - (c) protect the Confidential Information to the degree it would protect its own proprietary information, but in any event no less than a reasonable degree of care; and
 - (d) immediately notify the Client in the event of an unauthorised disclosure or unauthorised use of Confidential Information and take all measures possible to rectify and minimise the breach.

- 8.3 Confidential Information does not include information that:
- (a) is or becomes publicly available other than through breach of confidentiality by the Provider;
 - (b) is communicated to the Provider without any obligation of confidence by a third party who is not itself under any obligation of confidentiality;
 - (c) is already in the possession of the Provider, as evidenced by written records; or
 - (d) is required to be disclosed by applicable law, regulatory authority, or court order, provided that the Provider (to the fullest extent legally permitted) gives the Client prompt written notice so that the Client can seek protective measures.
- 8.4 This section 8 shall survive any termination or expiration of this Agreement and continue until, for each item of Confidential Information, an exception under clause 8.3 applies.

9. DATA PROTECTION ACT

- 9.1 With respect to the Parties' rights and obligations under this Agreement, the Parties agree that the Client is the Data Controller and the Provider is the Data Processor.
- 9.2 In so far as the Provider processes any Personal Data on behalf of the Client, the Provider shall:
- (a) process the Personal Data only on behalf of the Client for the purposes of performing its obligations under the Agreement and only in accordance with instructions received from the Client from time to time;
 - (b) not otherwise modify, amend or alter the contents of the Personal Data or disclose or permit the disclosure of any of the Personal Data to any third party unless specifically authorised in writing by the Client;
 - (c) at all times comply with the provisions of the Seventh Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 and, in so doing, provide a written description of the technical and organisational methods employed by the Provider for processing Personal Data (within the timescales required by the Client) and implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;
 - (d) take reasonable steps to ensure the reliability of any of the Provider personnel who have access to the Personal Data;
 - (e) obtain prior written consent from the Client before transferring the Personal Data to any sub-contractors in connection with the discharge of its obligations under the Agreement;

- (f) ensure that only those of the Supplier personnel who need to have access to the Personal Data are granted access to such data and only for the purposes of the performance of the Agreement and all of the Provider personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this section 9;
- (g) not publish, disclose or divulge any of the Personal Data to any third party (including for the avoidance of doubt the Data Subject itself) unless directed to do so in writing by the Provider;
- (h) notify the Client (within five (5) Business Days) if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data; or
 - (ii) a complaint or request relating to the Client's obligations under the Data Protection Act 1998; or
 - (iii) any other communication relating directly or indirectly to the processing of any Personal Data in connection with the Agreement;
- (i) provide the Client with full co-operation and assistance in relation to any complaint or request made, including by:
 - (i) providing the Client with full details of the complaint or request;
 - (ii) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Client's instructions;
 - (iii) providing the Client with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Client); and
 - (iv) providing the Client with any information requested by the Client;
- (j) permit the Client to inspect and audit the Provider's data processing activities and those of its agents, subsidiaries and sub-contractors and comply with all reasonable requests or directions by the Client to enable the Client to verify and procure that the Provider is in full compliance with its obligations under this section 9; and
- (k) not transfer Personal Data outside the European Economic Area without the prior written consent of the Client and, where the Client consents to such transfer, to comply with:
 - (i) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - (ii) any reasonable instructions notified to it by the Client.

- 9.3 The Parties shall, and the Provider shall procure that each of its sub-contractors shall, comply at all times with the Data Protection Legislation and shall not perform their obligations under the Agreement in such a way as to cause either Party to breach any of its obligations under the Data Protection Legislation. The Supplier shall immediately notify the Client in the event that it becomes aware of any breach of the Data Protection Legislation by the Supplier or any of its sub-contractors in connection with the Agreement.
- 9.4 The Data Sharing Agreement in Schedule 3 is complementary to this section 9. In the event of conflict, this section 9 shall prevail over Schedule 3.

10. INDEMNITY

- 10.1 The Provider shall Indemnify the Client, its officers, employees, and agents from and against any liability that arises due to the negligence or deliberate act of the Provider or its employees or subcontractors or any breach of any term of this Agreement, including, without limitation, a breach of data protection.

11. LIABILITY; INSURANCE

- 11.1 The Provider does not seek to restrict its liability for death or personal injury arising from its negligence.
- 11.2 The Provider warrants that it shall maintain with a reputable insurer insurance to cover its obligations under this Agreement, including, without limitation, professional indemnity insurance in the amount of not less than £5m per claim. The Provider shall maintain such insurance throughout the term of this Agreement and for six (6) years thereafter. The Provider shall provide proof of insurance cover upon the Client's request at any time.

12. FORCE MAJEURE

- 12.1 The Provider shall not be in breach of this Agreement, nor liable for any failure or delay in performance of any obligations under this Agreement due to a Force Majeure Event. The Provider shall immediately notify the Client in writing of the Force Majeure Event and shall use its best endeavours to minimise the effect of the Force Majeure Event. If the Force Majeure Event continues for a period of sixty (60) days or more, the Client may terminate this Agreement upon written notice to the Provider.

13. ENTIRE AGREEMENT; VARIATIONS

- 13.1 This Agreement contains the full and complete understanding between the Parties and supersedes all prior arrangements and understandings whether written or oral appertaining to the subject matter of this Agreement and may not be varied except by an instrument in writing signed by all of the Parties in this Agreement. The Client acknowledges that no representations or promises not expressly contained in this

Agreement have been made to the Client by the Provider or any of its servants, agents, employees, members or representatives.

14. THIRD PARTIES

- 14.1 No third party has or will acquire any rights to enforce any provision of this Agreement, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

15. NOTICES

- 15.1 Any notice to a Party under this Agreement shall be in writing signed by or on behalf of the Party giving it and shall, unless delivered to a Party personally, be left at, or sent by prepaid first class post, prepaid recorded delivery, facsimile or e-mail to the address of the Party as set out in this Agreement or as otherwise notified from time to time

- (a) A notice shall be deemed to have been served:
 - (i) At the time of delivery if delivered personally;
 - (ii) Two Business Days after posting; or
 - (iii) Two hours after successful transmission if served by facsimile or e-mail, provided no error message is received. [If such deemed time of service is not during Business Hours, the notice shall be deemed served at the start of the next Business Day.]
- (b) In proving service it will be sufficient to prove:
 - (i) In the case of personal service, that it was handed to the Party or delivered to or left at its address;
 - (ii) In the case of a letter sent by post, that the letter was properly addressed, stamped and posted;
 - (iii) In the case of facsimile or e-mail, that it was properly addressed and despatched to the number or e-mail address of the Party and that no error message was received.
- (c) A Party shall not attempt to prevent or delay the service on it of a notice connected with this Agreement.

16. TERMINATION

- 16.1 Either Party may terminate this Agreement immediately upon written notice to the other Party in the event that the other Party:
- (a) is in material breach of this Agreement and such breach is not cured within 10 Business Days of a notice from the non-breaching Party;
 - (b) is in materials breach of this Agreement and such breach is not capable of being cured; or

(c) suffers an Insolvency Event.


- 16.2 The Client may terminate this Agreement for convenience upon one months' written notice to the Provider.
- 16.3 The Client may terminate this Agreement in accordance with section 12 (Force Majeure).
- 16.4 Any termination shall be without prejudice to the rights of the Parties in respect of any breach of this Agreement occurring prior to such termination.
- 16.5 The following provisions shall survive expiration or termination of this Agreement for any reason whatsoever: section 8 (Confidentiality), section 9 (Data Protection Act), section 10 (Indemnity), section 11 (Liability; Insurance), and section 17 (Governing law and Jurisdiction).

17. GOVERNING LAW AND JURISDICTION

- 17.1 This Agreement (and any non-contractual liability arising from it) shall be governed by and construed in accordance with English Law.
- 17.2 Each of the Parties irrevocably submits for all purposes in connection with this Agreement to the non-exclusive jurisdiction of the courts of England.

AGREED:

Signed by and on behalf of Telemedicine Clinic Limited:

Signature: 

Name: Dr Henrik Agrell

Position: Managing Director

Date: 3rd February 2015

Signed by and on behalf of the University of York:

Signature:

Name:

Position:

Date:

Schedule 1

THE SERVICE - MODALITIES

1. MRI ELECTIVE SERVICE

Services

1. The provision of consultant radiologists for the production of Reports in accordance with this Agreement.
2. The radiological interpretation of diagnostic images by consultant radiologists, including the production of Reports in accordance with this Agreement.
3. The Report shall be accessible to the Client within 2 Business Days of receipt of the Minimum Data Set.
4. The provision of appropriate contact details in respect of a consultant radiologist to enable referring clinicians to confer directly with consultant radiologists in respect of Reports during the Term and for the period of 6 months from the termination of the Agreement.
5. Where a review of a Report is requested either by the Client or a referring clinician, provide such review within 2 Business Days of such request, where access to the patient data set is provided by the Client.

SCHEDULE 2

PRICE

Modality; MRI Elective Reporting - Neuro and MSK)

Tariff;

£50.00 for the first area report

£25.00 for the second and each subsequent area report

The Parties shall review these prices on no more frequently than an annual basis.