

## 2MLPHARMACARE

### Pharmacy Agreement

#### DATE:

#### PARTIES:

- (1) **2ML LIMITED**, a company incorporated in Northern Ireland (registration number NI069530) having its registered office at 1 Lagan House, 1 Sackville Street, Lisburn, Co Antrim BT27 4AB and trading as 2MLPharmacare
- (2) **The Pharmacy**, a company or individual registered and authorised to operate a Pharmacy Business by a recognised Pharmacy Regulatory Body and who licenses a 2MLPharmacare website from 2ML Ltd, for the purpose of marketing and promoting that Pharmacy Business and its goods and services.

#### BACKGROUND:

- (A) 2MLPharmacare provides website services and multimedia content creation, hosting and maintenance services for high street pharmacies and similar businesses.
- (B) By placing an order and making payment to 2MLPharmacare, The Pharmacy agrees to appoint 2MLPharmacare to provide those services to the Pharmacy on the terms and conditions outlined in this Agreement.

#### AGREEMENT:

##### 1. Definitions and interpretation

###### 1.1 In this Agreement:

"**Additional Services**" means additional services relating to the Website that are or are to be supplied by 2MLPharmacare to the Pharmacy, the particulars of which are agreed in writing between the parties;

"**Agreement**" means this agreement and any amendments to it from time to time;

"**Business Day**" means any week day, other than a bank or public holiday in Northern Ireland;

"**Business Hours**" means between 09:00 and 17:30 on a Business Day;

"**Charges**" means:

- (a) the Set-up Charge;
- (b) the Quarterly Charge; and
- (c) any additional charges agreed between the parties from time to time in respect of Additional Services;

"**Effective Date**" means the date of execution of this Agreement;

"**Force Majeure Event**" means an event, or a series of related events, that is

outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**"Go Live Date"** means the date that the website is published by 2MLPharmacare in accordance with Clause 4;

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, moral rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**"Order Form"** means the form completed and signed by the Pharmacy as part of the sign-up procedure;

**"Personal Data"** has the meaning given to it in the Data Protection Act 1998;

**"Pharmacy Materials"** means all materials (including textual, graphic, photographic, audio, video, audio-visual materials) supplied by or on behalf of the Pharmacy to 2MLPharmacare for incorporation into the Website;

**"Quarter"** means:

- (a) the period of 3 months commencing on the Go Live Date; and
- (b) each succeeding period of 3 consecutive months,

and **"Quarterly"** shall be construed accordingly;

**"Quarterly Charge"** means a Quarterly charge as detailed on the Payment Summary page of the order form.

**"Services"** means the services provided or to be provided by 2MLPharmacare to the Pharmacy under this Agreement, which services are specified in Clauses 3 to 6, plus any Additional Services;

**"Set-up Charge"** means a set-up charge of plus VAT; as detailed on the Payment Summary page of the order form.

**"Term"** means the term of this Agreement;

**"Website"** means the website created, hosted and maintained by 2MLPharmacare under this Agreement; and

**"Year"** means a period of 365 days (or 366 days if there is a 29 February during the relevant period) starting on the Go Live Date or on any anniversary of the Go Live Date.

- 1.2 In this Agreement, a reference to a statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
  - (b) any subordinate legislation made under that statute or statutory provision.
- 1.3 The Clause headings do not affect the interpretation of this Agreement.
- 1.4 The ejusdem generis rule is not intended to be used in the interpretation of this Agreement.

## **2. Term**

This Agreement will come into force on the Effective Date and will continue in force indefinitely, unless and until terminated in accordance with Clause 13.

## **3. Services: overview**

2MLPharmacare will provide to the Pharmacy during the Term the following Services:

- (a) website creation services and multimedia content creation and provision services in accordance with the provisions of Clause 4;
- (b) website hosting and maintenance services in accordance with the provisions of Clause 5; and
- (c) domain name services in accordance with the provisions of Clause 6.
- (d) e-mail setup and registration services in accordance with the provisions of Clause 6.

## **4. Services: website creation**

4.1 2MLPharmacare will:

- (a) create the Website using the template(s) and scheme(s) selected by the Pharmacy; and
- (b) incorporate the Pharmacy Materials into the Website (subject to Clause 4.7).

4.2 2MLPharmacare will use reasonable endeavours to publish the Website within 30 days following the receipt of the Set-up Charge in cleared funds. However, 2MLPharmacare does not guarantee that this timetable will be met.

4.3 The Pharmacy hereby grants to 2MLPharmacare a worldwide royalty-free non-exclusive licence to copy, adapt and publish the Pharmacy Materials for the purposes of this Agreement.

4.4 Nothing in this Agreement will operate to:

- (a) assign any Intellectual Property Rights or other rights in the Pharmacy

Materials from the Pharmacy to 2MLPharmacare; or

- (b) assign or licence any Intellectual Property Rights or other rights in the Website (excluding the Pharmacy Materials) from 2MLPharmacare to the Pharmacy.

4.5 The Pharmacy acknowledges the Website will be designed to work with the following web browser technologies:

- (a) Internet Explorer 7 or later versions; and
- (b) Firefox 3.5 or later versions,

in each case with Javascript and Flash enabled and cookies accepted, and 2MLPharmacare does not warrant that the Website will work with any other web browser technologies.

4.6 2MLPharmacare does not purport to provide any legal advice under this Agreement or in relation to the Website and 2MLPharmacare does not warrant that the Website will not give rise to any civil or criminal legal liability on the part of the Pharmacy or any other person. 2MLPharmacare will include standard legal documentation as part of the Website, but the Pharmacy acknowledges that the legal requirements in respect of the Website documentation may be dependent upon the Pharmacy's particular circumstances, and that the Pharmacy will be responsible for ensuring that such legal documentation is adequate for its requirements.

4.7 2MLPharmacare reserves the right not to incorporate Pharmacy Materials into the Website where such materials will in the opinion of 2MLPharmacare breach the provisions of this Agreement.

4.8 For the avoidance of doubt, the Pharmacy will have no administration rights in relation to the Website, and will have no administrative access to the Website or any part of the Website, whether during or after the Term.

## **5. Services: website hosting and maintenance**

5.1 2MLPharmacare will host and publish the Website on its servers from the Go Live Date and for remainder of the Term, providing that 2MLPharmacare does not guarantee that the Website will be available 24/7 during this period.

5.2 2MLPharmacare may suspend some or all of the Hosting Services in order to carry out scheduled maintenance or repairs. 2MLPharmacare will use reasonable endeavours to ensure that the hosting of the website is not suspended under this Clause during Business Hours.

5.3 2MLPharmacare will make available, during Business Hours, a telephone and email helpdesk facility for the purpose of (inter alia) providing support to the Pharmacy in relation to the updating of the Pharmacy Materials on the Website.

5.4 2MLPharmacare will ensure that requests for changes to the Pharmacy Materials on the Website are acted upon promptly and, where such requests are accepted, 2MLPharmacare will use reasonable endeavours to ensure that such changes are published on the Website within 7 days of receipt of the request.

5.5 From time to time during the Term, 2MLPharmacare will upgrade, change, remove or amend the Website content and/or functionality, and the Pharmacy

acknowledges that it will have no right to be notified of, or object to, such upgrades, change, removals or amendments.

## **6. Services: domain names & e-mail services**

6.1 2MLPharmacare will at the request of the Pharmacy and on behalf of the Pharmacy:

- (a) for no additional Charges, register or attempt to register not more than 1 domain name (being a generic top level .com or .co.uk domain name or other domain name type approved by 2MLPharmacare) selected by the Pharmacy for use in relation to the Website; and
- (b) subject to the payment of additional Charges (to be specified by 2MLPharmacare from time to time), register or attempt to register additional domain names selected by the Pharmacy for use in relation to the Website.

6.2 The following provisions apply to domain names that 2MLPharmacare agrees to register or attempt to register on behalf of the Pharmacy.

- (a) 2MLPharmacare may reject in its sole discretion any request to register a particular domain name.
- (b) The Pharmacy warrants that the information submitted for the purposes of a domain name registration is current, accurate and complete, that it has the legal right to apply for and use the domain name, and that its use of the domain name will not infringe any person's Intellectual Property Rights or other legal rights.
- (c) The Pharmacy undertakes to keep the information required for the purposes of a domain name registration up-to-date (which changes may be subject to additional Charges).
- (d) The Pharmacy acknowledges that certain information submitted for the purposes of a domain name registration will be published on the internet via "WHOIS" services.
- (e) The Pharmacy acknowledges that domain names will be subject to the rules and policies from time to time of the relevant registry or registration authority, and Pharmacy agrees to abide by all such rules and policies.
- (f) 2MLPharmacare will not offer any advice in relation to any actual or potential domain name dispute, and will have no liability in respect of the suspension or loss of a domain name by the Pharmacy as a result of any domain name arbitration procedure or court proceedings.
- (g) The Pharmacy agrees to the terms of the applicable domain name registration agreement (as amended from time to time): and 2MLPharmacare agrees to provide the Pharmacy with the applicable Registrant's Name and contact details upon request.

6.3 2MLPharmacare will at the request of the Pharmacy and on behalf of the Pharmacy:

- (a) Set up web based e-mail services on one domain name selected by the Pharmacy for use in relation to the Website; for a Set Up Charge as

detailed on the Order Summary; and

- (b) Subject to the payment of an additional Charge as detailed on the Order Summary set up individual e-mail address on that Domain and as selected by the Pharmacy for use in relation to the Website.
- 6.4 The following provisions apply to e-mail services and addresses that 2MLPharmacare agrees to register set up on behalf of the Pharmacy.
- (a) 2MLPharmacare may reject in its sole discretion any request to register a particular e-mail address.
  - (b) The Pharmacy warrants that the information submitted for the purposes of a setting up the e-mail service is current, accurate and complete, and that its use of the e-mail address will not infringe any person's Intellectual Property Rights or other legal rights
  - (c) The Pharmacy acknowledges that 2MLPharmacare e-mail services are for web based e-mail services which may or may not be compatible or work with local e-mail clients.
  - (d) 2MLPharmacare agrees to provide the Pharmacy with a Web Based User Name and User Password for each individual e-mail address.
  - (e) The Pharmacy agrees to login to the web based e-mail service and change the User Passwords to secure the user passwords before they use the service or attempt to set up the service to work with a local e-mail client.
  - (f) The Pharmacy acknowledges that once e-mail passwords are changed by the pharmacy 2MLPharmacare can no longer access that e-mail address settings and responsibility for the management of the e-mail address passes from 2MLPharmacare to the Pharmacy.
  - (g) 2MLPharmacare agrees to provide the Pharmacy with details of the Mail Server type, Incoming Mail Server address, Outgoing Mail Server address, Password authentication details, Server authentication details, Server Port numbers. to enable the Pharmacy in their own time and at their own expense to set up a local e-mail client.
  - (h) The Pharmacy acknowledges that 2MLPharmacare service obligations only extend to ensuring e-mail works in the web based platform and cannot assist or advise on setting up local e-mail clients.

## **7. Pharmacy obligations**

- 7.1 The Pharmacy warrants and represents that the information provided on the Order Form is complete and accurate and not misleading.
- 7.2 The Pharmacy will provide 2MLPharmacare with all co-operation, information and documentation reasonably required for the provision of the Services, and the Pharmacy will be responsible for procuring any third party co-operation reasonably required for the provision of the Services.
- 7.3 The Pharmacy must ensure that the Pharmacy Materials (and the use of the Pharmacy Materials by 2MLPharmacare in accordance with the terms of this Agreement) will not infringe any person's Intellectual Property Rights or other

legal rights, will not breach any applicable laws or regulations, and will not give rise to a cause of action against any person in any jurisdiction.

7.4 Without prejudice to the generality of Clause 7.3, the Pharmacy must ensure that the Pharmacy Materials will not:

- (a) be libellous or maliciously false;
- (b) be obscene or indecent;
- (c) infringe any copyright, moral right, database right, trade mark right, design right or right in passing off;
- (d) infringe any right of confidence, right of privacy, or right under data protection legislation;
- (e) constitute negligent advice or contain any negligent statement;
- (f) constitute an incitement to commit a crime;
- (g) be in contempt of any court, or in breach of any court order;
- (h) be in breach of racial or religious hatred or discrimination legislation;
- (i) be blasphemous;
- (j) be in breach of official secrets legislation;
- (k) be in breach of any contractual obligation owed to any person;
- (l) depict violence in a explicit, graphic or gratuitous manner;
- (m) be lewd, pornographic or sexually explicit;
- (n) be untrue, false, inaccurate or misleading;
- (o) consist of or contain any instructions, advice or other information which may be acted upon and could, if acted upon, cause illness, injury or death, or any other loss or damage;
- (p) be offensive, deceptive, threatening, abusive, harassing, or menacing, hateful, discriminatory or inflammatory; or
- (q) cause annoyance, inconvenience or needless anxiety to any person.

7.5 Where 2MLPharmacare reasonably suspects that there has been a breach of the provisions of this Clause 7, 2MLPharmacare may:

- (a) delete or amend the relevant materials; and/or
- (b) suspend any or all of the Services and/or the Pharmacy's access to any or all Services while it investigates the matter.

7.6 Any breach by the Pharmacy of this Clause 7 will be deemed to be a material breach of this Agreement for the purposes of Clause 13.

## **8. Charges and payments**

- 8.1 The Pharmacy will pay the Set-up Charge promptly following the execution of this Agreement, and in any event within 7 days following the Effective Date, and:
- (a) until the Set-up Charge is paid, 2MLPharmacare will have no obligation to provide any Services under this Agreement; and
  - (b) if the Set-up Charge is not paid within the period of 7 days following the Effective Date, the Pharmacy will be in breach of its obligations under this Agreement and 2MLPharmacare may terminate this Agreement by giving to the Pharmacy written notice of termination.
- 8.2 The Pharmacy will pay the Quarterly Charges in respect of a Quarter before the end of that Quarter, and in the event that the Pharmacy fails to do so:
- (a) 2MLPharmacare may suspend the provision of the Services under this Agreement; and
  - (b) the Pharmacy will be in breach of its obligations under this Agreement and 2MLPharmacare may terminate this Agreement by giving to the Pharmacy written notice of termination.
- 8.3 All Charges stated in or in relation to this Agreement are stated exclusive of VAT, unless the context requires otherwise.
- 8.4 Charges must be paid by bank transfer, standing order, DDM, cheque, or other means agreed between the Pharmacy and 2MLPharmacare (using such payment details as are notified by 2MLPharmacare to the Pharmacy from time to time).
- 8.5 If the Pharmacy does not pay any amount properly due to 2MLPharmacare under or in connection with this Agreement, 2MLPharmacare may:
- (a) charge the Pharmacy interest on the overdue amount at the rate of 5% per year above the base rate of HSBC Bank Plc from time to time (which interest will accrue daily until the date of actual payment, be compounded quarterly, and be payable on demand); or
  - (b) claim interest and statutory compensation from the Pharmacy pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.6 Once during each Year, 2MLPharmacare may, by giving to the Pharmacy not less than 60 days' written notice of the variation, vary the annual element of the Quarterly Charges on and from any anniversary of the Go Live Date by an amount not exceeding 10% of the amount of the then-current annual Charges.

## **9. Warranties**

- 9.1 The Pharmacy warrants to 2MLPharmacare that it has the legal right and authority to enter into and perform its obligations under this Agreement.
- 9.2 2MLPharmacare warrants to the Pharmacy:
- (a) that it has the legal right and authority to enter into and perform its obligations under this Agreement; and
  - (b) that it will perform its obligations under this Agreement with reasonable

care and skill.

- 9.3 All of the parties' liabilities and obligations in respect of the subject matter of this Agreement are expressly set out in the terms of this Agreement. To the maximum extent permitted by applicable law, no other terms concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

## **10. Indemnity**

The Pharmacy hereby indemnifies and undertakes to keep indemnified 2MLPharmacare against all liabilities, losses, costs, expenses (including legal expenses and amounts paid upon advice in settlement of any legal action) arising out of or in connection with any breach by the Pharmacy of any term of this Agreement.

## **11. Limitations of liability**

- 11.1 Nothing in this Agreement will exclude or limit the liability of either party for:
- (a) death or personal injury caused by that party's negligence;
  - (b) fraud or fraudulent misrepresentation on the part of that party; or
  - (c) any other liability which may not be excluded or limited under applicable law.
- 11.2 Subject to Clause 11.1, 2MLPharmacare's liability to the Pharmacy under or in connection with this Agreement or any collateral contract, whether in contract or tort (including negligence), will be limited as follows:
- (a) 2MLPharmacare will not be liable for any:
    - (i) loss of profits, income or anticipated savings,
    - (ii) loss or corruption of any data, database or software,
    - (iii) reputational damage or damage to goodwill;
    - (iv) loss of any commercial opportunity, or
    - (v) indirect, special or consequential loss or damage;
  - (b) 2MLPharmacare will not be liable for any losses arising out of a Force Majeure Event; and
  - (c) 2MLPharmacare's liability in relation to any event or series of related events will in no circumstances exceed the greater of:
    - (i) £1,000; and
    - (ii) the total amount paid (or, if greater, payable) by the Pharmacy to 2MLPharmacare under the Agreement during the 12 month period immediately preceding the event or series of events.

## **12. Data protection**

- 12.1 The Pharmacy warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to 2MLPharmacare under this Agreement, and that the processing of that Personal Data by 2MLPharmacare for the purposes of and in accordance with the terms of this Agreement will not breach any applicable laws (including the Data Protection Act 1998).
- 12.2 2MLPharmacare warrants that:
- (a) it will act only on instructions from the Pharmacy in relation to the processing of any Personal Data performed by 2MLPharmacare on behalf of the Pharmacy; and
  - (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by 2MLPharmacare on behalf of the Pharmacy.
- 12.3 The Pharmacy warrants that:
- (a) it will act only on instructions from 2MLPharmacare in relation to the processing of any Personal Data performed by the Pharmacy on behalf of 2MLPharmacare; and
  - (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Pharmacy on behalf of 2MLPharmacare.

## **13. Termination**

- 13.1 Either party may terminate this Agreement at any time by giving at least 14 days' written notice to the other party expiring at the end of any Quarter.
- 13.2 Either party may terminate this Agreement immediately by giving written notice to the other party if the other party commits any material breach of any term of this Agreement, and:
- (a) the breach is not remediable; or
  - (b) the breach is remediable, but other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so.
- 13.3 Either party may terminate this Agreement immediately by giving written notice to the other party if:
- (a) the other party:
    - (i) is dissolved;
    - (ii) ceases to conduct all (or substantially all) of its business;
    - (iii) is or becomes unable to pay its debts as they fall due;
    - (iv) is or becomes insolvent or is declared insolvent; or

- (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
  - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
  - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement);
  - (d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.
- 13.4 2MLPharmacare may terminate the Agreement in accordance with Clause 8.1 or 8.2.

#### **14. Effects of termination**

- 14.1 Termination of this Agreement will not affect either party's accrued liabilities or rights (including accrued rights to be paid) as at the date of termination.
- 14.2 Subject to Clause 14.1, upon termination all the provisions of this Agreement will cease to have effect, save that the following provisions of this Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 8.7, 10, 11, 14 and 16.
- 14.3 Where the Agreement is terminated by 2MLPharmacare under Clause 8.1, 8.2, 13.2 or 13.3 during a Quarter, then the Pharmacy will pay to 2MLPharmacare all Charges due in respect of that Quarter.
- 14.4 The Pharmacy will not be entitled to any refund of Charges on termination, and will not be released from any obligation to pay Charges to 2MLPharmacare.
- 14.5 Upon Termination 2MLPharmacare will continue to support any e-mail hosting service free of charge for a further quarter and maintain Domain Name registration for a further quarter or until the Domain renewal date (whichever is closer to the termination date).

14.6 During the 3 month period following Termination the Pharmacy will be required, at their own expense, to bring any e-mail services or Domain registration under their own control. Upon request and upon payment of an administration fee 2MLPharmacare will assist in the transfer of these services on behalf of the Pharmacy.

## **15. Notices**

15.1 Any notice given under this Agreement must be in writing (whether or not described as "written notice" in this Agreement) and must be delivered personally, sent by pre-paid first class post, or sent by fax, or e-mail using the principle e-mail address as featured on the Website, for the attention of the relevant person, and to the relevant address or fax number or e-mail address, given below (in the case of 2MLPharmacare) or set out in the Order Form (in the case of the Pharmacy) (or as notified by one party to the other in accordance with this Clause).

15.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):

- (a) where the notice is delivered personally, at the time of delivery;
- (b) where the notice sent by first class post, 48 hours after posting; and
- (c) where the notice sent by fax or e-mail, at the time of the transmission (providing the sending party retains written evidence of the transmission).

## **16. General**

16.1 No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.

16.2 If a Clause of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of this Agreement will continue in effect.

16.3 Nothing in this Agreement will constitute a partnership, agency relationship or contract of employment between the parties.

16.4 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

16.5 The Pharmacy hereby agrees that 2MLPharmacare may freely assign any or all of its rights and/or obligations under this Agreement to any associated company or successor in business without further consent. The Pharmacy may not without the prior written consent of 2MLPharmacy assign, transfer, charge, license or otherwise dispose of or deal in this Agreement or any rights or obligations under this Agreement.

16.6 Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under this Agreement.

16.7 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the

parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

16.8 Subject to Clause 11.1:

- (a) this Agreement will constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter; and
- (b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into this Agreement.

16.9 This Agreement will be governed by and construed in accordance with English law; and the courts of Northern Ireland will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.