



xWave CDS Solutions Terms and Conditions

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www.xwave.ie

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TERMS AND CONDITIONS

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This Agreement (the “Agreement”) covers your use of any of xWave Technologies’ CDS platforms (the “Service”). If you are entering into the Agreement on behalf of a company, a partnership or other legal entity, you represent that you have the authority to bind such entity and its Affiliates to these terms and conditions, in which case the terms “You” or “Your” shall refer to such entity and its Affiliates.

1. Interpretation

1.1. The definition and rules of interpretation in this clause 1.1. apply in this agreement:

“Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“Agreement” means this Agreement, including all of its schedules, which have full effect as if they were incorporated into the body of the agreement.

“Us”, “We”, “Our” or “Company” means xWave Technologies Limited, with registered office 20 Harcourt Street, Dublin 2, Ireland. To contact us, please email at hello@xwave.ie.

“You” or “Your” refers to your organisation.

“Patient” means any patient or client of the User.

“Patient(s) Data” means Personal Data of Patients, including clinical notes, assessments.

“Data Controller” means the person who or organisation which determines the purposes for which, and the manner in which, any Personal Data is processed, who/which makes independent decisions in relation to the Personal Data and/or who/which otherwise controls that Personal Data.

“Data Processor” means the person who processes Personal Data on behalf of the Data Controller.

“Data Subject” has the meaning given to such term in the Data Protection Acts 1988 to 2018 and in the GDPR.

“GDPR” means the Regulation 2016/649 of the European Parliament and of the Council, General Data Protection Regulation.

“Maintenance Release” means release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software.

“Personal Data” means any information relating to an identified or identifiable natural person.

“Privacy Policy” means the privacy policy available at <http://www.xwave.ie>.

“Service” means the software or service(s) provided by the Company to the User as specified in clause 3.

“Sub-Processor” means any person or entity appointed by or on behalf of the Data Processor to process Personal Data on behalf of the Data Controller.

“User” means any person:

(a) who uses the Website or Service, or



(b) who is authorized by You to use the Service, or

(c) for whom You have ordered the Service,

and in each case, to whom You (or We at Your request) have supplied a user identification and password. Users may include, for example, your employees, consultants, contractors and agents, and third parties with which You transact business.

“Website” means the website known as xWave CDS, and also the xWave CDS apps, owned and operated by the Company.

1.2. The headings in this Agreement shall not affect their interpretation.

1.3. A person includes an actual person, corporate or unincorporated body (whether or not having a separate legal personality).

1.4. A reference to a statute or statutory provision is a reference to it as it is in force for the time being taking account of any amendments, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.5. Any obligation in this Agreement on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

1.6. References to clauses are to clauses of this Agreement.

2. Application of this Agreement

2.1. The Company shall provide the Services to the User on the terms and conditions of this Agreement.

2.2. The provisions of this Agreement shall prevail over any inconsistent terms or conditions contained or referred to in any document supplied by the User or implied by law, trade, custom, practice or course of dealings.

3. The Services

3.1. The Company shall, subject to the provisions of this Agreement provide the User with the following Service:

3.1.1 The Service is a cloud-based Clinical Decision Support (CDS) system which can be integrated with an existing Electronic Health Record or Order Comms System. Where no digital referral pathways exists, xWave CDS can be deployed via xWave Refer, xWave’s cloud-based digital referral platform. xWave CDS can also be deployed through xWave Vetting, our modular vetting system that uses CDS technology to bring greater efficiency and consistency to vetting and protocolling. xWave Vetting can be deployed as a standalone vetting system or can be integrated with a Radiology Information System (RIS) or Picture Archiving and Communication System (PACS). Wave Insight is an advanced analytics and operational intelligence service built on xWave CDS data. It provides configurable dashboards, KPI builders, benchmarking, predictive models and exportable reports to help diagnostic services optimise capacity, reduce waiting lists, measure guideline adherence and demonstrate compliance.



3.1.2 The Service is provided by, set up, managed and maintained by Us and our appointed hosting and compliance partners.

3.1.3 Periodically, we may make changes, add functionality, issue Maintenance Releases or introduce new features to the Service. These changes are made expressly at our discretion. We will endeavour to make the Service available 24 hours a day, seven days a week. However, you acknowledge and agree that the Service may occasionally be unavailable during periods of planned or unscheduled maintenance. We may perform unscheduled maintenance at any time but will do this outside of normal business hours where possible.

3.1.4 Protection of Your Data. We will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Your Data by Our personnel except (a) to provide the Services and prevent or address service or technical problems, (b) as compelled by law or (c) as You expressly permit in writing.

3.1.5 Our Personnel. We will be responsible for the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified herein.

3.1.6 . Non-xWave Technologies Applications and Your Data. If You install or enable a Non-xWave Technologies Application for use with a Service, You grant Us permission to allow the provider of that Non-xWave Technologies Application to access Your Data as required for the inter-operation of that Non-xWave Technologies Application with the Service. We are not responsible for any disclosure, modification or deletion of Your Data resulting from access by a Non-xWave Technologies Application.

3.1.7 Integration with Non-xWave Technologies Applications. The Services may contain features designed to inter-operate with Non-xWave Technologies Applications. To use such features, You may be required to obtain access to Non-xWave Technologies Applications from their providers, and may be required to grant Us access to Your account(s) on the Non-xWave Technologies Applications. If the provider of a Non-xWave Technologies Application ceases to make the Non-xWave Technologies Application available for inter-operation with the corresponding Service features on reasonable terms, We may cease providing those Service features without entitling You to any refund, credit, or other compensation.

4. Charges and Payments

4.1. In consideration of the provision of the Services by the Company to the User, You shall pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on Services purchased and not actual usage, (ii) payment obligations are non-cancellable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term.



4.2. This Agreement grants you the non-exclusive, non-transferable right to use the Service (in accordance with this Agreement) while you continue to pay the appropriate monthly fee for the Subscription you have selected.

4.3. Invoicing and Payment. You will provide Us with a valid purchase order or alternative document reasonably acceptable to Us. Such charges shall be made in advance, either monthly or in accordance with any different billing frequency stated in the applicable Order Form. We will invoice You in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

4.4. All fees are quoted exclusive of Value Added Tax which is payable in accordance with current legislation.

4.5. When upgrading your subscription, you will be charged the higher amount when your next payment is due.

4.6. Cancelling your account may cause the loss of access, content or features of the Service. We do not accept liability for any such loss.

4.7. If the User fails to make any payment by the due date then all monies owing to the Company shall immediately become due and payable and the Company shall be entitled to suspend the Services (or any part of them) and or may terminate this Agreement with immediate effect.

4.8. The Company will under no circumstances be liable to refund all or any part of the Charges in the event of any suspension of any of the Services or termination of the Agreement.

4.9. Future Functionality. You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features.

4.10. The Company reserves the right to amend the charges at any time without consultation. The Company shall provide the User of one month's notice of any change to the charges. In the event that the User is unwilling to accept the amended charges, the User may terminate this Agreement within the one-month notice period.

5. Users' Acceptable Use & Warranties

5.1. You warrant that when a User is transmitting any information to the Company it shall not contain any virus or corrupted data and shall not harm or damage in any way the Website or software of the Company.

5.2 The Service, including any software that forms part of the Service, is made available to You for Your internal business purposes, and such use must comply with all applicable laws, rules and regulations, including without limitation privacy laws, and must not infringe or violate third party rights.

5.3 xWave Technologies is not engaged in the practice of medicine, and neither the Clinical Decision Support (CDS) system nor any other services provided under this agreement should be considered medical advice or tools for medical diagnosis. The Services shall not be used in connection with



rendering patient care by anyone other than an appropriately qualified, registered and licensed medical professional exercising professional judgment.

5.4 Usage Limits. The Plan you purchase will limit the number of named Users that may use the Service. You must not allow any additional users to use the Service or permit User accounts be shared between Users. Unless otherwise specified, (a) a quantity in an Order Form refers to Users, and the Service or Content may not be accessed by more than that number of Users, (b) a User's password may not be shared with any other individual, and (c) a User identification may be reassigned to a new individual replacing one who no longer requires ongoing use of the Service or Content. If You exceed a contractual usage limit, We may work with You to seek to reduce Your usage so that it conforms to that limit. If, notwithstanding Our efforts, You are unable or unwilling to abide by a contractual usage limit, You will execute an Order Form for additional quantities of the applicable Services or content promptly upon Our request, and/or pay any invoice for excess usage in accordance with our invoicing and payment procedures.

5.5 We reserve the right to audit your use of the Service, at our own cost and upon giving you reasonable notice, to determine whether your use is in accordance with this Agreement and any other terms that apply to the Service.

5.6 Subscriptions. Unless otherwise provided in the applicable Order Form, Services and content are purchased as subscriptions monthly or annually for You only.

5.7 Your Responsibilities. You will

- (a) be responsible for Users' compliance with this Agreement,
- (b) be responsible for the accuracy, quality and legality of Your Data and the means by which You acquired Your Data,
- (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content, and notify Us promptly of any such unauthorized access or use, and
- (d) use Services and content only in accordance with applicable laws and government regulations.

5.8 Usage Restrictions. You will not

- (a) make any Service or content available to, or use any Service or content for the benefit of, anyone other than You or Users,
- (b) sell, resell, license, sublicense, distribute, rent or lease any Service or content,
- (c) use a Service to store or transmit infringing, libellous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights,
- (d) use a Service to store or transmit malicious code or other harmful virus,
- (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein,
- (f) attempt to gain unauthorized access to any Service or content or its related systems or networks,



(g) permit direct or indirect access to or use of any Service or content in a way that circumvents a contractual usage limit,

(h) copy a Service or any part, feature, function or user interface thereof,

(i) copy content except as permitted herein or in an Order Form,

(j) frame or mirror any part of any Service or content, other than framing on Your own intranets or otherwise for Your own internal business purposes,

(k) access any Service or content in order to build a competitive product or service, or

(l) reverse engineer any Service (to the extent such restriction is permitted by law).

5.9 External-Facing Services. If You subscribe to a Service which is hosted on external-facing websites, You will comply with, and be responsible for Users' compliance with Our terms and conditions and be solely responsible for complying with applicable law in any use of cookies or other tracking technologies on such websites.

5.10 Removal of Content and Non-xWave Technologies Applications. If We are required by a licensor to remove content, or receive information that content provided to You may violate applicable law or third-party rights, We may so notify You and in such event You will promptly remove such content from Your systems.

5.11 Any unauthorised use of the Service is a violation of this Agreement and may breach UK or EU law. Such violations may subject you or your staff to civil and criminal penalties.

6. Indemnity

6.1. You shall indemnify and hold the Company harmless for all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages, expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Company as a result of or in connection with: (a) any alleged or actual infringement, whether or not under UK or EU law of any third party's intellectual property rights or any rights arising out of the use or supply any products and or services by the User or any other person or; (b) any alleged or actual loss damage or injury of any person arising out of the treatment by the Users; or (c) any breach by the User of the warranties set out in clause 5 above.

7. Proprietary Rights and Licences

7.1. Reservation of Rights. Subject to the limited rights expressly granted hereunder, We and Our licensors reserve all of Our/their right, title and interest in and to the Services and content, including all of Our/their related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

7.2. Licence by Us to Use Content. We grant to You a worldwide, limited-term licence, under Our applicable intellectual property rights and licences, to use content acquired by You pursuant to Order Forms, subject to those Order Forms, this Agreement and all related documentation.



7.3. Licence by You to Host Your Data and Applications. You grant Us and Our Affiliates a worldwide, limited-term licence to host, copy, transmit and display Your Data, and any Non-xWave Technologies Applications and program code created by or for You using a Service, as necessary for Us to provide the Services in accordance with this Agreement. Subject to the limited licences granted herein, We acquire no right, title or interest from You or Your licensors under this Agreement in or to Your Data or any Non-xWave Technologies Application or program code.

7.4. Licence by You to Use Feedback. You grant to Us and Our Affiliates a worldwide, perpetual, irrevocable, royalty-free licence to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction or other feedback provided by You or Users relating to the operation of the Services.

8. Liability of the Company

8.1. To the extent permitted by law, the Company provides the Services or Website without any warranties or guarantees.

8.2. The Company shall not be liable to You or to any User whether in contract, tort (including negligence) for breach of statutory duty, or otherwise, arising under or in connection with this agreement for loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated saving, loss of data or information, loss of or damage to good will and any indirect or consequential loss.

8.3. The Company is not liable for and accepts no responsibility for the any loss arising from any cancellation of or delay in the arrival to any appointment with the User or any third party.

8.4. The Company will accept no responsibility for any infection by virus or other contamination or by anything which is destructive to the property of the User or any third party.

8.5. The Company will accept no responsibility or liability to the user for any interruption or delay in accessing the Service.

9. Data Protection

9.1 The Company and the User acknowledge that for the purposes of the Data Protection Acts 1988 - 2018 and GDPR, the Company is the Data Processor and the User is the Data Controller in respect of Patient(s) Data

9.2 The User will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Patient's Personal Data via the xWave CDS platform for the duration and purposes of the Services.

9.3 The Company shall, in relation to any Patient(s) Data processed in connection with the performance by the Company of the Services:

9.3.1 process Patient(s) Data only on the written instructions of the user unless required by the laws of any member of the European Union or by the laws of the European Union applicable to the Company to process Personal Data ("Applicable Laws");



9.3.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Patient(s) Data and against accidental loss or destruction of, or damage to, Patient(s) Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

9.3.3 ensure that all the Company's staff who have access to and/or process Patient(s) Data are obliged to keep the Patient(s) Data confidential;

9.3.4 ensure that where a Sub-Processor is used, the Company shall:

(a) only engage a Sub-Processor with the prior consent of the User;

(b) inform the User of any intended changes concerning the addition or replacement of Sub-Processors;

(c) implement a written contract containing the same data protection obligations as set out in this agreement, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the Applicable Laws;

(d) understand that where any Sub-Processor is used on their behalf, that any failure on the part of the Sub-Processor to comply with the Applicable Laws or the relevant data processing agreement, the Company, as the initial Data Processor, remains fully liable to the User for the performance of the Sub- Processor's obligations;

9.3.5 not transfer any Patient Data outside of the United Kingdom or European Economic Area unless:

(a) the European Commission has issued a decision confirming that the country to which we transfer the Personal Data ensures an adequate level of protection for the data subjects' rights and freedoms;

(b) appropriate safeguards are in place such as binding corporate rules (BCR), standard contractual clauses approved by the European Commission, an approved code of conduct or a certification mechanism;

(c) the Patient has provided explicit consent to the proposed transfer after being informed of any potential risks; or

(d) the Patient Data is being transferred to a company in the US which has self-certified its compliance with the EU-US Privacy Shield or any iteration thereof or substitution therefor which has been found by the European Commission to provide an adequate level of protection to the Personal Data of EU citizens;

9.3.6 assist the User, at the User's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the data protection laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

9.3.7 notify You without undue delay on becoming aware of a Personal Data breach;



9.3.8 within 45 days of the date of termination or cancellation of your Contract delete Patient's Data and copies thereof unless required by Applicable Laws to store the Personal Data; and

9.3.9 maintain complete and accurate records and information to demonstrate its compliance with these obligations and make such records and information available to the User and allow for and contribute to audits, including inspections, conducted by the User or another auditor mandated by the User.

9.4 Each party warrants to the other that it will process the Personal Data in compliance with all Applicable Laws, enactments, regulations, orders, standards and other similar instruments.

9.5 The Company is not liable in respect of any Patient(s) Data which is controlled by the User in breach of data protection laws or outside the scope of the permissions granted to the relevant healthcare provider by the Patient.

10. Termination

10.1. Either party may terminate the Agreement without liability to the other immediately on giving notice to the other if (a) the other party commits a breach of any of the obligations under the Agreement and (if such breach is remediable) and fails to remedy that breach within seven days of the party being notified in writing of the breach or (b) the other party ceases to trade, enters into liquidation either compulsory or (except for the purposes of reconstruction or amalgamation) voluntarily, has the receiver appointed over all or any of its assets or has an examination order made against it or, being a natural person, commences or is the subject of any personal insolvency process.

10.2. The Company may terminate the Agreement without liability to You where You fail to pay any sum due to the Company under clause 4 above.

10.3. You have the option to cancel the contract with 30 days' notice at any time based on G-Cloud 13 call off contract terms and conditions

10.4 All of Your content and data will be deleted 45 days after cancellation or termination of Your account. This information will not be able to be recovered. Prior to cancelling Your subscription We recommend that You perform a Data Export.

10.5 Failure to pay Your subscription fees will result in your account being suspended. Accounts are suspended for a maximum of 45 days before the account may be terminated by Us. We are not responsible for any loss You suffer as a result of such suspension or termination. A suspended account can be reactivated by supplying valid payment credentials and resuming your subscription.

10.10 If you cancel Your account before the end of Your currently paid month the service will continue to be available until midnight before your next payment date. You will not be entitled to a refund.

10.11 At Our sole discretion We have the right to suspend or terminate Your account and refuse any and all current or future use of the Service, for any reason, at any such time. Such termination can result in the deactivation or deletion of Your account.

10.12 We reserve the right to refuse service to anyone for any reason at any time.



11. Variation

11.1 You acknowledge that We may modify:

- the Service at any time, for any reason, and without notice
- this Agreement at any time.

11.2 In the event that We change the Agreement We will notify You of the changes and give You a reasonable period of time to notify Us that You do not agree to the modified Agreement and cease using the Service.

12. Waiver

12.1. A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by any party in exercising any right or remedy under the Agreement or by law shall constitute a waiver of that (or any other) right or remedy nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

12.2. Unless specifically provided otherwise, rights arising under the Agreement are communicative and do not exclude rights provided by law.

13. Severance

13.1. If any provision of the Agreement (or part of any provision) is found by a Court or other authority or competent jurisdiction to be invalid, illegal or un-enforceable that provision or part-provision shall, to the extent required, be deemed not to form part of the Agreement, and the validity and enforceability of the other provisions of the Agreement shall not be affected.

13.2. A provision of the Agreement or part of any provision if found illegal or unenforceable that provision shall apply with the minimum modifications necessary to make it legal, valid and enforceable.

14. Entire Agreement

14.1. The Agreement constitutes the whole Agreement between the parties and supersedes all previous Agreements between the parties relating to its subject matter.

14.2. Each party acknowledges that, in entering into the Agreement, it is not relied on and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently).

14.3. Nothing in this clause shall limit or exclude any liability to fraud.

15. Assignment



15.1. The Company may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights under the Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party or agent.

15.2. Each party that has rights under the Agreement is acting on its own behalf and not for the benefit of any other person.

16. Governing Law and Jurisdiction

This Agreement shall be construed in accordance with the laws of Ireland and the parties submit to the non-exclusive jurisdiction of the courts of Ireland.

17. Communications

17.1 You agree that we may at times send you communications regarding your account or the Service via email.

17.2 We may also send You communications about upgrades to the Service or other products and services that may be pertinent to Your use of xWave Technologies.

17.3 If You no longer wish to receive these communications you can unsubscribe from them by clicking on the “unsubscribe” link at the bottom of the email.