

Alimetry Data Processing Service Terms

1 APPLICATION

- 1.1 These Service Terms (**Service Terms**) apply to the provision of the data processing and data analysis services (**Services**) requested in a data request form that references these Service Terms (**Data Request Form**).
- 1.2 Each Data Request Form, once accepted by us as set out below, forms a binding agreement on these Service Terms and the terms set out in the Data Request Form (together, the **Terms**).
- 1.3 In the Terms:
 - a **Alimetry, we, us** and **our** means Alimetry Limited, a New Zealand company, company number 7465336; and
 - b **Institution, you** and **your** means the institution, company or other entity submitting the Data Request Form, or on whose behalf the Data Request Form is submitted.
- 1.4 The Terms apply to the exclusion of any standard or other terms you may have for the purchase of services.
- 1.5 The Alimetry app and the cloud services are provided on the terms set out at <https://www.alimetry.com/terms-of-sale-and-use>.

2 ORDER ACCEPTANCE

When you submit a Data Request Form to us:

- a you are making an offer to buy the Services, and we are not bound by the Data Request Form until we have accepted it;
- b our acceptance of the Data Request Form occurs on the earlier of when we commence supplying the Services to you or notify you by email that we accept the Data Request Form; and
- c we can reject a Data Request Form for any reason. Once accepted, a Data Request Form cannot be altered or cancelled without our prior written consent.

3 INTERPRETATION

3.1 In the Terms:

Alimetry Cloud means the cloud services provided by us to you and used in connection with our Gastric Alimetry™ medical devices.

Background IP of a party means:

- a intellectual property, information, materials, and other items of that party (or its licensors) existing prior to the date of the Data Request Form or developed independently of the Services; and
- b any modifications, improvements, and additions to any of the items in paragraph a of this definition.

Confidential Information means the terms and conditions of the Data Request Form and the Terms and any information that is not public knowledge and which is obtained from the other party in the course of the performance of, or in connection with, the Services. Our Confidential Information includes intellectual property owned by us and our licensors. Your Confidential Information includes the Data.

Data means:

- a data, content, and information (including personal information) that is collected using a Gastric Alimetry™ medical device and held in the Alimetry Cloud;
- b all other data, content, and information (including personal information) provided to us by you in connection with the provision of the Services; and
- c the Results.

Fees means the fees for the Services set out in the Data Request Form or otherwise agreed in writing between the parties (if any).

Results means the information, data, findings, discoveries, reports, and other results arising from the performance of the Services, excluding any of our Background IP.

3.2 In the Terms:

- a clause and other headings are for ease of reference only and do not affect the interpretation of the Terms;
- b words in the singular include the plural and vice versa;
- c **personnel** includes officers, employees, contractors and agents, but a reference to your personnel does not include us; and
- d a reference to **including** and similar words do not imply any limit.

4 DATA

4.1 You acknowledge that:

- a we will require access to the Data to exercise our rights and perform our obligations under the Terms; and
- b to the extent that this is necessary but subject to clauses 4.2 and 7, we may authorise a member or members of our personnel to access the Data (including accessing the Data held in your Alimetry Cloud account) for this purpose.

4.2 We will download Data from the Alimetry Cloud in de-identified format only.

4.3 You must arrange all consents and approvals that are necessary for us to access the Data as described in clause 4.1.

4.4 You acknowledge and agree that to the extent Data contains information that is personal information, personal data, personally identifiable information or equivalent information as defined under applicable privacy and data protection laws (collectively, **personal information**):

- a in collecting, holding and processing that information for the purposes of providing the Services, we are acting as a data processor and/or as a service provider and/or as your agent for the purposes of applicable privacy and data protection laws; and
- b if the personal information originates from a jurisdiction where applicable privacy and data protection laws require additional safeguards to be put in place for the protection of that information, or if we transfer the personal information from such a country, we agree to take such steps as you reasonably require, including entering into a data processing addendum or contractual clauses, to meet the requirements of applicable privacy and data protection laws

4.5 You agree that we may store Data (including any personal information) in the United Kingdom and New Zealand and may access that Data (including any personal information) in the United Kingdom and New Zealand from time to time.

5 WARRANTIES

5.1 Each party warrants that it has full power and authority to enter into and perform its obligations under the Terms.

5.2 To the maximum extent permitted by law, our warranties are limited to those stated in clause 5.1. Any implied condition or warranty (including any warranty of merchantability or fitness for purpose) is excluded.

5.3 Without limiting clause 5.2, we give no warranties, representations or undertakings as to:

- a the Results (including any incidental findings that could impact patient treatment or outcomes as a result of our provision of the Services);
- b the suitability of the Results or any such incidental findings for any purpose; or
- c any outcomes of the use of the Results or such incidental findings.

6 INTELLECTUAL PROPERTY

- 6.1 All Background IP remains the property of the current owner.
- 6.2 Title to, and all intellectual property rights in, the Data (as between the parties) is and remains your property. You grant us a worldwide, non-exclusive, fully paid up licence to use, store, copy, modify, make available and communicate the Data for the purposes of performing our obligations in accordance with the Terms.
- 6.3 If you provide us with ideas, comments or suggestions relating to the Services (**feedback**):
 - a all intellectual property rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications or derivative works), are owned solely by us; and
 - b we may use or disclose the feedback for any purpose, but only on an anonymised basis unless otherwise agreed by you in writing.

7 CONFIDENTIALITY

- 7.1 Each party agrees that, unless it has the prior written consent of the other party, it will:
 - a keep confidential at all times the Confidential Information of the other party; and
 - b ensure that any personnel or professional advisor to whom a party discloses the other party's Confidential Information is aware of, and complies with, this clause 7.1.
- 7.2 The obligations of confidentiality in clause 7.1 do not apply to any disclosure:
 - a for the purpose of performing the Services or exercising a party's rights under the Terms;
 - b required by law (including under the rules of any stock exchange);
 - c of Confidential Information which:
 - i is publicly available through no fault of the recipient of the Confidential Information or its personnel; or
 - ii was rightfully received from a third party without restriction and without breach of any obligation of confidentiality; or
 - d by us if required as part of a bona fide sale of our business (assets or shares, whether in whole or in part) to a third party, provided that we enter into a confidentiality agreement with the third party on terms no less restrictive than this clause 7.
- 7.3 Except to the extent that a party has ongoing rights to use Confidential Information, a party must, at the request of the other party following the completion of the Services, promptly return to the other party or destroy all Confidential Information of the other party in the recipient party's possession or control.

8 FEES

- 8.1 This clause 8 applies where Fees apply to the Services.
- 8.2 You must pay us the Fees for providing the Services.
- 8.3 Unless the parties agree otherwise in writing, you must pay the Fees in full on submission of the Data Request Form.
- 8.4 The Fees exclude sales tax, use tax, goods and services tax, value added tax and equivalent tax payable under applicable law, which you must pay where applicable, subject to us providing you with a valid tax invoice.

9 LIABILITY

- 9.1 Our maximum aggregate liability under the Terms or in connection with the Services, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not exceed the Fees paid by you, or if there are none, NZD100.
- 9.2 We are not liable to you under the Terms or in connection with the Services for any loss of profit, data, savings, business, revenue, and/or goodwill, or any indirect, consequential, incidental or special loss or damage of any kind.

10 TERM AND TERMINATION

- 10.1 Either party may, by notice to the other party, immediately terminate the Services if the other party:
 - a breaches any material provision of the Terms and the breach is not:
 - i remedied within 10 days of the receipt of the notice from the first party requiring it to remedy the breach; or
 - ii capable of being remedied;
 - b has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of external administration, or ceases to continue business for any reason.
- 10.2 Termination of the Services does not affect each party's rights and obligations accrued before the termination date.
- 10.3 Clauses which, by their nature are intended to survive termination, including clauses 7, 9 and 10.2 continue in force.

11 GOVERNING LAW AND JURISDICTION

- 11.1 If you are domiciled in New Zealand or any other country other than the United States of America or Canada:
- a the Terms are governed by, and must and interpreted in accordance with, the laws of New Zealand; and
 - b the courts of New Zealand will have non-exclusive jurisdiction in relation to any dispute connected with the Terms.
- 11.2 If you are domiciled in the United States of America or Canada:
- a the Terms are governed by, and must be interpreted in accordance with, the laws of Delaware; and
 - b each party irrevocably submits to the exclusive personal jurisdiction and venue of any Delaware state or United States federal court sitting in Wilmington, Delaware (a **Court**) in any dispute arising out of or in connection with the Terms and further irrevocably waives any claim of inconvenient forum or other challenge to venue in any Court.

12 GENERAL

- 12.1 We are not liable to you for any failure to perform our obligations under the Terms to the extent caused an event that is beyond our reasonable control.
- 12.2 We are your independent contractor. Subject to clause 4.4, no other relationship (e.g. joint venture, agency, trust or partnership) exists under the Terms.
- 12.3 Any illegality, unenforceability or invalidity of a provision of the Terms does not affect the legality, enforceability or validity of the remaining provisions of these Terms.
- 12.4 Any variation to these Service Terms or the Data Request Form must be in writing and signed by both parties.
- 12.5 These Service Terms and the Data Request Form set out everything agreed by the parties relating to their subject matter and supersede and cancel anything discussed, exchanged or agreed prior to the date of the Data Request Form. The parties have not relied on any representation, warranty or agreement relating to that subject matter that is not expressly set out in these Service Terms or the Data Request Form, and no such representation, warranty or agreement has any effect from the date of the Data Request Form.