

MRI Now – Terms and Conditions of Use

The website at www.mrinow.com.au (**Website**) is owned and operated by **MEDICAL RADIOLOGY IMAGING NOW PTY LIMITED** incorporated and registered in New South Wales having its principal place of business at Level 12, Suite 12.01, 75 Elizabeth Street, Sydney NSW 2000 “MRI Now”. The terms “MRI Now”, “we”, “us” or “our” refer to **MEDICAL RADIOLOGY IMAGING NOW PTY LIMITED**.

We provide radiology booking services through independent specialists. We provide services to patients and persons engaging us on behalf of a patient (**Referrers**) and introduce patients to independent radiology provider(s) (**Provider**) by telephone, through use of our Website and using our proprietary software Portal (**Services**).

“you” or “your” refers to any user of our Website or our Services and includes where the context permits a Referrer or Customer.

Except in circumstances where we have expressly agreed separate terms with a Referrer to the contrary, these terms and conditions together with our Privacy Policy located at https://mrinow.com.au/wp-content/uploads/2019/07/privacy_policy_terms_of_use.pdf (together our **Terms of Use**) set out the terms and conditions that apply to your use of the Website, our Portal or any of the Services accessible to you either through us directly or by a Provider.

Please read these Terms of Use carefully before accessing or using the Website, our Portal or any of our Services.

Should you continue to use this Website, our Portal or accept our Services, you are agreeing to comply with and be bound by our Terms of Use. Should you not agree to our Terms of Use, please do not use our Website, our Portal or our Services. We may immediately terminate these Terms of Use or any Services with respect to you, or generally cease offering or deny access to the Services or any portion thereof, at any time for any reason.

1. KEY TERMS

Data includes all information or data submitted by you or on your behalf via the Website, the Portal, by telephone or otherwise.

Customer means a patient that approaches MRI Now for the provision of Services directly and not through a Referrer.

Patient means an individual that requires the provision of Provider Services arranged by MRI Now.

Portal means a web portal provided by MRI Now that allows us to co-ordinate the provision of the Services.

Products means goods or services offered for sale by a Third-Party Vendor or MRI Now.

Provider means an independent supplier of radiology services which is recommended or introduced by us.

Provider Services means the specialist services, scans and reports provided by a Provider on behalf of a patient.

Referrer means a third party that is responsible for providing Referral Services to a patient which includes but is not limited to general practitioner physicians, specialists, solicitors, insurers or other persons engaged by or on behalf of a patient.

Referrer Services means processing and management of a patient’s claim or injury by a Referrer.

Services means the arranging and co-ordinating of patient appointments with a Provider and the return of scans and reports to Referrers and Customers but specifically excludes the Provider Services and/or Referrer Services, as the case may be.

Software means the Portal, any mobile applications, administrative codes, application programming Interfaces (APIs), plug-ins or other software MRI Now makes available to you, and includes any interfaces, applications and Portals made available in connection with the use of any specific software programs.

User is an individual who accesses the Website, the Portal or otherwise makes use of our Services. Users include patients and Referrers, and can be, but are not limited to, your employees, contractors, agents and any third party you invite to use the Service on their behalf.

2. INTERPRETATION

In some instances, supplemental, special terms and conditions may apply to the Services or an activity (**Special Conditions**). Such Special Conditions will be disclosed to you in connection with the applicable Services and are in addition to, and shall be deemed a part of, the Terms of Use for the purposes of the applicable Services. Save to the extent expressly stated otherwise in these Terms of Use, if there is a conflict between these Terms of Use and the applicable Special Conditions, the following order of precedence will apply when resolving that conflict:

- 2.1 For Referrer Services provided by a Referrer to a patient:
- (a) MRI Now is not party to any agreement for the supply of these Referrer Services. These Terms of Use apply to exclude our liability arising from the supply of these Referrer Services; and
 - (b) the terms are as agreed separately between the patient and the Referrer.
- 2.2 For Provider Services provided by a Provider to a patient:
- (a) MRI Now has no involvement in the supply of Provider Services. These Terms of Use apply to exclude our liability arising from the supply of these Provider Services; and
 - (b) the terms are as agreed separately between the patient and the Provider (if any).
- 2.3 For Use of our Services: These Terms of Use will apply.

If you accept these Terms of Use, you represent that you have the capacity and authority to be bound by them. If you accept or agree to these Terms of Use on behalf of each User authorised by you, a company or other legal entity, you represent and warrant that you have the authority to bind that User, company, or other legal entity to these Terms of Use and, in such event, “**you**” and “**your**” will refer and apply to that company or other legal entity.

We may amend the Terms of Use related to the Services from time to time. Amendments will be effective upon posting of such updated Terms at this location. Your continued access or use of the Services after such posting constitutes your consent to be bound by the Terms of Use, as amended.

3. HOW OUR SERVICES WORK

- 3.1 Unless otherwise agreed by us in a separate written agreement with you:
- (a) the Services are made available solely to Referrers and Customers; and
 - (b) MRI Now's responsibilities are limited to assisting Referrers with optimizing the provision of Referrer Services.
- 3.2 **Use of Software:** MRI Now grants you the right to access and use its Software. This right is non-exclusive, non-transferable, and limited by and subject to these Terms of Use. You acknowledge and agree that, subject to any applicable written agreement between you and MRI Now, or any other applicable laws:
- (a) you are responsible for all appointed Users' use of the Software;
 - (b) MRI Now may suspend or terminate your use of the Software at any time including but not limited to any non-payment of any fees due to MRI Now; and
 - (c) You must only use the Software for your own lawful purpose, in accordance with these Terms of Use and any notice sent by MRI Now or condition posted on the Website. You may use the Software on behalf of others or in order to provide services to others but if you do so you must ensure that you are authorised to do so and that all persons for whom or to whom Services are provided comply with and accept all the Terms of Use that apply to you.

As a condition of you using the Software:

- (d) **You must:**
 - (i) not attempt to undermine the security or integrity of MRI Now's computing systems or networks or, where the Software is hosted by a third party, that third party's computing systems and networks;
 - (ii) not use, or misuse, the Software in any way which may impair the functionality of the Software, or other systems used to deliver the Software or impair the ability of any other user to use the Software;
 - (iii) not attempt to gain unauthorised access to any materials other than those to which you have been given express permission to access or to the computer system on which the Software is hosted;
 - (iv) not transmit, or input into the Software, any: files that may damage any other person's computing devices or software, content that may be offensive, or material or Data in violation of any law (including Data or other material protected by copyright or trade secrets which you do not have the

right to use); and

- (v) not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Software or to operate the Website except as is strictly necessary to use either of them for normal operation.

- (e) At any time and in its sole discretion MRI Now reserves the right to discontinue, update, revise, remove or otherwise change Software features and functionality, and the right to revise, update and modify the Terms of Use. Such modifications to this document will be effective immediately or at such future date as may be specified by MRI Now. Your continued use of the Software and/or the Services thereafter will be deemed acceptance of such changes to the Terms of Use and/or the Software.
- (f) You and each of your invited Users must, and must ensure that they, comply with any rules, regulations, guidelines or similar documentation posted or otherwise made available by MRI Now in respect of the Software.
- (g) The provision of, access to, and use of, the Software is on an "as is" basis and at your own risk.

3.3 **Customer:** MRI Now may provide Services to Customers that have responded to a referral or approached MRI Now directly.

3.4 **Provider Services:** Each Provider applies their own terms and conditions to the use of their Provider Services by a patient. Your use of any information or materials pertaining to Provider Services is entirely at your own risk, for which we shall not be liable. It is your own responsibility to ensure that any services, made available through Providers meet your specific requirements and that you have entered into appropriate terms of supply with those Providers.

3.5 In agreeing to these Terms of Use and as a condition of using our Services, you understand and agree that:

- (a) MRI Now does not provide any warranty or guarantee as to the performance, accuracy, timeliness, completeness or suitability of the information and materials for any particular purpose which is found or offered by the Referrer or by a Provider. You hereby acknowledge that such information and materials may contain mistakes, inaccuracies or errors and we expressly exclude any liability whether under contract or negligence for such to the fullest extent permissible by law.
- (b) MRI Now is a business independent of any Referrer or Provider and is not acting as an agent for and on behalf of a Referrer, Provider, Customer or patient at any time;
- (c) MRI Now does not and cannot control the content contained in any referral, report or how it and any Data may be transmitted by a Referrer, Provider or patient;
- (d) MRI Now does not control and is not responsible for the compliance with any laws by the Customer, the Referrer, a Provider or patient;
- (e) While we make every effort to conduct background and identity checks of our Referrers, Customers and patients, MRI Now is not responsible for any errors or misidentification of the identity, or for the behaviour of Referrers, Customers and patients, or for establishing the nature, condition or suitability of Provider Services;
- (f) Your use of any information or materials on this Website or as a result of our Services is entirely at your own risk, for which we shall not be liable. It shall be your own responsibility to ensure that any products, services or information available through us or this Website meet your specific requirements;
- (g) This Website and other materials provided as part of our Services may, on occasion, include links to other websites which are not controlled by us. These links are provided for your convenience to provide you with further information. You acknowledge that they are used at your own risk. They do not signify that we recommend or endorse the websites. We have no control over the nature, content and availability of those websites; and
- (h) As more specifically set out in Section 9.2 (**Limitations of Liability**), MRI Now is not responsible for and disclaims any and all liability related to any and all Provider Services to the maximum extent permitted by law. Bookings will be made at the Referrers', Providers' and Customers' own risk.

4. COMMISSIONS AND PAYMENTS

4.1 **Financial reward:** we provide our Services in return for a financial reward, including deriving a benefit from being able to deliver economies of scale to Referrers, Providers and customers alike. We are not a commissioned agent.

4.2 Cancellations:

(a) When cancelling any appointment for Provider Services, you may be liable for a cancellation charge to the extent the cancelled service cannot be rebooked by us or we incur any expenses as a result of the cancellation. In addition, we reserve the right to charge you an administration and/or a re-booking fee which is commensurate with the administration and/or a re-booking fee charged by the Provider.

(b) Terms and conditions for booking changes, cancellations and refunds and refundable damage deposits are specific to each Provider and, in some cases, each Referrer agreement. These terms must be agreed to at the time of agreeing to make your booking, or otherwise will be provided to you by the Provider.

5. REFERRER AND PATIENT RESPONSIBILITIES

Each Referrer and/or patient agrees to submit up to date and accurate data about their personal information together with such other data relevant to the performance of the Services.

6. USER RESPONSIBILITIES

6.1 Each User represents and warrants that:

(a) It will comply with all applicable federal, territory and state laws and regulations in the performance of its obligations under these Terms of Use;

(b) It is solely responsible for its Data and the Data of its invited Users, including without limitation, the security of such Data;

(c) It has all necessary rights and licenses, consents, permissions, waivers and releases to use the Data and submit it via the Software, including in respect of use and management of Data in accordance with these Terms of Use; and

(d) if you are an individual, that you are at least eighteen (18) years of age and have the legal capacity or permission of a legal guardian to use the Software.

7. GST

7.1 Expressions used in this clause have the same meaning as when used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

7.2 If a Party makes a taxable supply under any agreement subject to these Terms of Use, except where the agreement states otherwise, the payment made by a Party for the taxable supply is expressed as a GST inclusive amount.

7.3 The Party liable to pay for a taxable supply to which these Terms of Use apply, must also pay the amount of any GST payable in respect of the taxable supply on the date on which payment for the taxable supply is due.

7.4 A Party is not obliged under these Terms of Use to pay the GST on a taxable supply to it, until given a valid tax invoice for the supply.

8. INTELLECTUAL PROPERTY

8.1 The features, information, and materials provided and depicted through the Services are protected by copyright, trademark, patent, and other intellectual property laws. All text, graphical content, video, Data, and other content made available through the Services (collectively, the “**MRI Now Content**”) are provided by MRI Now or its partners or licensors solely to support your permitted use of the Services. The MRI Now Content may be modified from time to time by MRI Now in its sole discretion. Except as expressly set forth herein, no license is granted to you for any other purpose, and any other use of the Services or MRI Now Content by you shall constitute a material breach of these Terms of Use. MRI Now and its partners or licensors retain all rights in the Services and MRI Now Content and any associated patents, trademarks, copyrights, mask work rights, trade secrets, or other intellectual property rights. No license, right, or interest in any trademarks of MRI Now or any third party is granted under the Terms of Use.

- 8.2 As a User, you may post, upload, publish, submit or transmit Data, text, graphics, images, information or other materials to be made available through the Website, the Software and Services (“**User Content**”, together with MRI Now Content, the “**Content**”). By making available any User Content, you hereby grant to MRI Now a worldwide, irrevocable, perpetual, non-exclusive, transferable, royalty-free license, with the right to sublicense, to use, copy, adapt, modify, distribute, license, sell, transfer, publicly display, publicly perform, transmit, stream, broadcast and otherwise exploit such User Content only on, through or by means of the Software and the Services. MRI Now does not claim any ownership rights in any such User Content and nothing in these Term of Use will be deemed to restrict any rights that you may have to use and exploit any such User Content.
- 8.3 You acknowledge and agree that you are solely responsible for all User Content that you make available through the Website, the Software or as part of your engagement with us or any Referrer and/or Provider. Accordingly, you represent and warrant that:
- (a) you either are the sole and exclusive owner of all User Content that you make available or you have all rights, licenses, consents and releases that are necessary to grant to MRI Now the rights in such User Content, as contemplated under these Terms of Use; and
 - (b) neither the User Content nor your posting, uploading, publication, submission or transmittal of the User Content or any other person's use of the User Content (or any portion thereof) will infringe, misappropriate or violate a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.
- 8.4 We do not screen User Content (including information posted by Referrers or Customers) or information on the Website and we cannot give any assurance as to its accuracy or completeness. You are expressly asked not to publish any defamatory, misleading or offensive content or any content which infringes any other person's intellectual property rights (e.g. copyright). Any such content is contrary to our policy. We do not accept liability in respect of such content. The relevant User responsible for posting the User Content will be personally liable for any damages or other liability arising from such content and you agree to indemnify us in relation to any liability we may suffer as a result of any such content.

9. DISCLAIMERS, LIMITATION OF LIABILITY AND INDEMNITY

9.1 Disclaimer

- (a) The Services are provided “as is” and “as available.”
- (b) To the maximum extent permitted by law:
 - (i) MRI Now disclaims all representations and warranties, express, implied or statutory, not expressly set out in these terms, including the implied warranties of merchantability, fitness for a particular purpose and non-infringement. In addition, we make no representation, warranty, or guarantee regarding the reliability, timeliness, quality, suitability or availability of the Services or any Products requested through the use of the Services, or that the services will be uninterrupted or error-free;
 - (ii) MRI Now does not warrant that the Software or Services (or any part of them) will be error free, or that the use of the Software will be uninterrupted, or meet the requirements of the User;
 - (iii) MRI Now will not be liable for any damages arising out of or related to interruption of, or defects in use or transmission of, the Software, including without limitation interruptions or defects due to inability to access the Internet or any part thereof, equipment modifications, upgrades, relocations, or repairs. No reduction of payments will be made in the case of temporary interruption of, or defects in use or transmission of, the Software;
 - (iv) MRI Now does not guarantee the quality, suitability, safety or ability of any Provider;
 - (v) You agree that the entire risk arising out of your use of the Software, Services, and any Provider Services requested in connection therewith, remains solely with you.

9.2 Limitation of liability

Notwithstanding any other Special Conditions:

- (a) MRI Now shall not be liable in contract (including under any indemnity), tort (including in negligence or for breach of statutory duty) or otherwise, for:
- (i) any loss of profit, loss of revenue, loss of business, loss of contracts or loss of anticipated savings, loss of property, alternative accommodation costs, costs of delay, lost Data, or any indirect, incidental, special, exemplary, punitive or consequential damages related to or otherwise resulting from any use of the Website and/or the provision of Provider Services, even if we have been advised of the possibility of such damages;
 - (ii) any damages, liability or losses arising out of: (i) your use of, or reliance on, the Services, or your inability to access or use the Services; or (ii) any transaction or relationship between the patient and the Referrer and/or Provider, even if we have been advised of the possibility of such damages;
 - (iii) any delay or failure in performance resulting from the provision of the Services.
- (b) Without prejudice to further limitations contained in Section 9.2(c), in no event shall MRI Now's total liability to you in connection with the Services for all damages, losses and causes of action exceed the lesser of (1) the value of Services provided by us to you or (2) two hundred dollars (AU\$200), save to the extent any death or personal injury is caused by our negligence, in which case our liability is limited to the value of the relevant insurance coverage we hold at the time of the loss causing event.
- (c) The limitations and disclaimer in this section 9 do not purport to limit liability or alter your rights as a consumer that cannot be excluded under applicable law. To the extent you have a statutory right under Australian Consumer Laws which cannot be excluded by these Terms of Use and:
- (i) For any minor problems with the Service provided by us which falls short of the contracted obligations to you, we will use reasonable endeavours (at our discretion) to resolve this to your reasonable satisfaction;
 - (ii) To the extent you have a major problem:
 - (A) With the Services provided directly by MRI Now, we will use reasonable endeavours (at our discretion) to resolve this to your reasonable satisfaction but in all cases your sole remedy will be to receive compensation for the drop in value in the Services received below the price paid, or a refund;
 - (B) With the Provider Services provided by a Provider, your sole recourse is to approach the Provider for resolution although we will provide assistance at our discretion to do so;
 - (C) With the Software, your sole recourse is to stop using the Software.
 - (iii) To the extent a Referrer has a major problem the Services provided by MRI Now (which amounts to breach of the relevant agreement with that Referrer), we will use reasonable endeavours (at our discretion) to resolve this to your reasonable satisfaction but in all cases your sole remedy will be to receive compensation for the drop in value in the Services received below the price paid, or a refund.

9.3 Indemnity

You agree to indemnify and hold MRI Now and its officers, directors, employees and agents harmless from any and all claims, demands, losses, liabilities, and expenses (including Solicitors' fees) arising out of or in connection with:

- (a) any claims made by any other person or entity in relation to the Services to the extent arising from a breach of these Terms of Use, any breach of statutory duty or negligence on the part of the Referrer or Provider;
- (b) Your access to, or use of, the Website, Software, Services or products obtained through your use of the Services;
- (c) Your breach or violation of any of these Terms of Use;
- (d) Our use of your Content or Data; and
- (e) Your violation of the rights of any third party, including patients.

10. MISCELLANEOUS

- 10.1 Your use of this Website and MRI Now's Services and any dispute arising out of your use of it is subject to the laws of New South Wales. The Vienna Convention on the International Sale of Goods of 1980 (ciscg) shall not apply.
- 10.2 We may give notice by means of a general notice on the Services, electronic mail to your email address in your account, or by written communication sent to your address provided to us as part of your agreement. You may give notice to us by written communication to info@mrinow.com.au
- 10.3 You may not assign or transfer these Terms of Use in whole or in part without our prior written approval. You give your approval to us to assign or transfer these Terms of Use in whole or in part, including to: (i) a subsidiary or affiliate; (ii) an acquirer of equity in MRI Now, business or assets; or (iii) a successor by merger.
- 10.4 No joint venture, partnership, employment or agency relationship exists between you, us, the Referrer or any Provider as a result of any agreement arising out of, or related to, the use of the Services.
- 10.5 If any provision of these Terms of Use is held to be illegal, invalid or unenforceable, in whole or in part, under any law, such provision or part thereof shall to that extent be deemed not to form part of these terms but the legality, validity and enforceability of the other provisions in these Terms of Use shall not be affected. In that event, the parties shall replace the illegal, invalid or unenforceable provision or part thereof with a provision or part thereof that is legal, valid and enforceable and that has, to the greatest extent possible, a similar effect as the illegal, invalid or unenforceable provision or part thereof, given the contents and purpose of these Terms of Use.
- 10.6 These Terms of Use constitute the entire agreement and understanding of the parties with respect to its subject matter and replace and supersede all prior or contemporaneous agreements or undertakings regarding such subject matter.

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LAST MODIFIED: 3 November 2021

Contact:

If you have any questions about these Terms, please contact MRI Now at info@mrinow.com.au