

[Medical-Surveys.com](https://www.medical-surveys.com)

Terms of Use and Disclaimer

This document governs Your commercial relationship with Us and sets out legally binding provisions which govern Your use of the MedicalSurveys (**MS**) platform including our website and mobile/smartphone/tablet applications.

(version 2.0 – 15 March 2019)

1. Introduction

MS is a mobile platform to design, draft and perform Surveys among Respondents within the framework of a Clinical Trial, Research Project, Audit, Patient Feedback, Staff Feedback or other data collections. These Terms of Use together with Our Privacy Policy at <https://www.medical-surveys.com/api/static/legal/privacy-policy> and any other linked information referred to in these Terms of Use govern Our commercial relationship with You.

You may only access and use MS if You accept these Terms of Use and all linked information. We strongly recommend that You read the whole of these Terms of Use and all linked information (including our Privacy Policy) before using MS.

By accessing and/or using MS, You confirm that You have read and understand and wholly and unconditionally agree to be legally bound by and accept these Terms of Use and all linked information (including Our Privacy Policy).

We may modify and/or replace these Terms of Use and any linked information from time to time without notifying You, unless You are an Account Holder of MS in which case We will notify You of any updates that We make via Your email address specified in Your Account on MS. We will always upload the latest version of Our Terms of Use to <https://medical-surveys.com/api/static/legal/terms-of-use>. It is Your responsibility to regularly check that webpage to ensure that You have read and understand the latest version of these Terms of Use.

If You do not accept these Terms of Use or any variation that We make to these Terms of Use, You must not and cannot use MS and must immediately cease all use of MS.

2. Account Registration

You may only register an Account on Medical-Surveys if You are over the age of 18 and are able to enter into legally binding contracts.

MS reserve the right to accept or reject any person's registration on MS in Our absolute discretion.

If You register for an Account with MS:

- You must ensure that You provide a valid email address at the time of registration. Your email provided at the time of registration is Your Personal Identifier throughout all MS Services.
- We reserve the right to send an email with a hyperlink that requires You to verify that You are the owner or operator of the email address entered by You during registration. Your registration with MS will not proceed and the application will be canceled/rejected if Your rights to the email address are not so verified.
- If You become an Account Holder, subject to Your compliance with these Terms of Use, You will have an exclusive, non-sublicensable, revocable right to access the Member Services, for the purposes expressly described in the Member Services Description. You must not access the Member Services for any other purpose.
- If any of Your contact details or other information which You provide during the registration process change, You must promptly update Your Account with Your up-to-date details and information.
- You must not provide Your Account username or password to any person. You agree and acknowledge that You shall be solely responsible for the confidentiality and security of Your username and password and any use of Your Account (including unauthorised use).
- You take full responsibility for everything done through Your Account and in particular:
 - You agree not to share the login credentials for Your Account with any other person;
 - You agree to use a password for Your Account that is not easily guessable and that is likely to remain secure (incorporating upper and lower case letters, numbers and symbols);
 - You agree to notify Us straight away if You suspect that another party has access to Your login credentials or if You suspect that another party is conducting activity on or using Your Account.

Unregistered Users of MS may use the MS-website only as Respondents in a current active Survey. As such Unregistered Users must not violate privacy data and personal information of any other Users and must restrict their website activity solely to their particulate personal survey questionnaire. Under No Circumstances are Unregistered Users allowed to login and participate

in Survey Questionnaires of Users other than their own. Unregistered Users do not have access to any data throughout the MS Services outside of the specific Questionnaire targeting them.

3. Medical-Surveys User (Account Holder, or Member) Services

Account registration provides Members with access to functionality on MS that is not available to Unregistered Users. In these Terms of Use, we describe the functionality provided by MS to Our Account Holders as Our “Member Services”, which include:

- Survey Design, Drafting, Activation and local Publication (last option under development): Members can use the MS app to draft Surveys following a fully individualised research scheme and thus become **Survey Owners**.
- Surveys are built on *Questionnaires*. Survey Owners can create and manage as many Questionnaires within one Survey as needed to query particular target audiences. MS provides to all Account Holders a powerful individualised platform which contains common and advanced forms of questions including scores, scales, ranges, multiple choice and checkboxes, textual and numeric types etc.
- Survey Owners can *store documentation* on the platform (Study Design charts, Consent Forms, Ethics Approvals etc) for sharing among participants in the Survey. Surveys can target one or more study groups depending on study design.
- Survey Owners can create *Procedure Metrics* Questionnaires to define and stratify each performed studied procedure into the designed study groups/arms.
- Within the MS App, Survey Owners can *invite* other registered Users over their provided email to collaborate in their Survey. Invited Users are Account Holders who may have or have not been involved in designing the particular Survey but can contribute to the progress of the Survey. Survey Owners can assign Linked Users very specific *privileges* to restrict and structure their cooperation.
- Survey Owners and Linked Users with according privileges can *review* the total available data in their active Surveys.
- Survey Owners can *download* total survey data for processing in third party applications. The data downloaded is provided in MS Excel .xlsx format and the individual procedures are separated in different sheets. Survey Owners can provide individual Respondents with all information from their personal responses by transmitting the matching downloaded single sheet to the correct subject.
- Survey Owners and Linked Users with according privileges can add studied *Procedures* to an active Survey and collect Responses from the target group. Members adding procedures are solely and *personally responsible* for:
 - Obtaining informed consent from the Survey Participant (Patient) for participation in the particular Survey/Trial/Research Project etc (independent of MS services)
 - Obtaining informed consent from the Survey Participant for collecting responses via the MedicalSurveys platform. The valid consent form is

available under <https://medical-surveys.com/api/static/legal/consent> on the Medical-surveys.com website.

- Complying with our Privacy Policy available at <https://medical-surveys.com/api/static/legal/privacy-policy>.
- **Members must NOT collect or store any direct Personal Information** of Respondents/Patients (eg. name, date of birth, initials, medical record numbers, email, telephone number, age, gender, ethnicity, location or similar) on Our Platforms and Services. These must *not* be part of any questionnaire in any Survey. MS is not responsible for personal data leaks of respondents occurring from external records/registries.

All added Procedures receive a Unique Procedure Identifier (UPI) and a unique Procedure Password (PW). The UPI is the only necessary identifier for a Procedure within a Survey. The Survey Owner/Linked User adding the Procedure to the Survey are responsible for recording the UPI/PW combination provided by the system for each individual procedure on their external registry. This links the Procedure Data to a real person for future reference. This registry *must not* (and cannot) be stored on the MS platform. Thus, MS cannot assist with and is not responsible for identifying real persons/Respondents on the basis of the UPI/PW combination. Survey Owners/Linked User adding a Procedure are provided with the option to copy to clipboard either the UPI/PW combination (which facilitates the creation of an App-external personal data registry) or a link which would guide the Respondents directly to their target Questionnaire over any internet browser and which can be used to prompt the Respondent to submit a Response at any desired time.

Survey Owners and Linked Members with granted privileges can keep *external off-line records of personal data* of their Respondents in accordance with local and national Privacy Laws in order to re-identify performed Procedures throughout the survey phase.

- All Survey Questionnaires (not the Procedure Metrics Questionnaires) can receive unlimited number of Responses as long as the Survey is active.
- Survey Owners can view a *Timeline* with all Responses to the questions of each added Procedure

4. General Comments

MedicalSurveys do not provide Medical Services. We do not offer or provide any medical advice or medical opinions of any kind Ourselves and We do not refer any person to, or recommend, any Medical Practices. When a Medical Patient obtains Medical Services from a Medical Practice/Practitioner, the Medical Services will be deemed to have been provided on the terms and conditions of an agreement between the Medical Practice/Practitioner and the Medical

Patient. We are not a party to that agreement and We are not responsible for the performance or enforcement thereof.

5. Payments by Account Holders for use of Member Services at MedicalSurveys:

- Opening an account and the general use of the MS apps is free of charge.
- Design and drafting of any Survey is free of charge.
- Upon activation of a draft Survey the Survey Owner is offered 3 Procedures free of charge which allow to assess the functionality of the Survey design and questionnaires.
- Additional Procedures can be purchased by the Survey Owner. They will be priced in AUD, per procedure in depreciation related to the number of procedures purchased at once. Additional purchases are not cumulative, i.e. any following repeat purchase resets the procedure counter.
- Purchased Procedures are non-refundable and non-transferable between Surveys.
- The Survey Owner will be invoiced by the relevant App store for each individual purchase, with Australian GST declared and included in the invoice.
- If an Account Holder closes its Account for any reason MS will not refund any purchases by this Member.

5.1 Payments

MS do not store credit card information or any other financial data of users.

Account Holders who wish to perform in-app purchases of Procedures will need to have a valid credit card registered with their relevant App store (Apple or Google). All Payments are processed via the App Store Billing Services and are invoiced by them. If You are a Member:

- You acknowledge and understand that the App Store Billing Services may be affected by delays, defects, faults and/or other matters with their App store which render the App Store Billing Services unusable. These matters may be caused by factors including technical difficulties with the performance or operation Payment software or hardware or due to problems or malfunctions with the Internet or other telecommunications networks; it may caused by irregularities with the Member's credit card deposited at the App store.
- You acknowledge and understand that except in respect of any Non-Excludable Guarantees, We do not warrant, guarantee or represent that unauthorised access to information and data cannot occur;
- You acknowledge and understand that You have relied on Your own independent assessment and judgment in determining whether the App Store Billing Services meet Your requirements;

- You acknowledge that You have read, understand and agree to comply with the applicable terms and conditions of, and have read, understood and agree with the privacy policy of, the App Store Billing Services, copies of which are available on the App Store website at <https://www.apple.com/legal/internet-services/terms/site.html> and <https://policies.google.com/terms?hl=en-US>
- You indemnify Us in respect of all and any Losses We incur as a result of any breach by You of the App Store Billing Services agreement.

6. Responsibility for and ownership of Member Data

If You are an Account Holder, We agree that as between Us and You, You own all data that You transmit through or upload into the Member Services (“Member Data”).

Each time You access Your Account or use the Member Services You warrant, agree and represent to Us that:

- You will only upload, input and transfer Member Data into and/or via the Member Services or disclose Member Data to Us, which You are fully entitled and authorised to upload, input, transfer and disclose;
- the Member Data that You upload, input and transfer to Medical-Surveys (MS) and the processing of the Member Data by MS, will not breach any applicable law or right of any person;
- without limiting the foregoing provisions, if Your Member Data consists of Personal Information (including Health Information) You have obtained the consent of the relevant person to You recording his or her Personal Information in MS and to the provisions of Our Privacy Policy.

Each Member is solely responsible for the accuracy, legality and quality of all Member Data that it uploads, inputs and transfers to MS and for obtaining any permissions, licences, rights, consents and authorisations necessary for the use, hosting, transmission, storage and disclosure of the Member Data in connection with the Member Services.

You indemnify Us in respect of any Losses that We incur in respect of any complaint or claim that the transmission, storage, disclosure of or access to any Member Data that You upload, input and transfer to Our Services infringes the Intellectual Property Rights or other rights of any person or breaches any law, regulation, code or standard.

7. Closing Accounts

If You wish to close Your Account this can be done under Manage Account in Settings within the App. Upon closure of their account Survey Owners will have all data from their activity in MS irrevocably deleted.

Closure of Accounts of Members who are linked to Surveys not owned by them will preserve the data contributed by them to the still active or closed but not deleted linked Surveys.

Unregistered Users (Respondents) are entitled to review/request deletion of their personal responses and/or withdraw from the Survey. To pursue these goals Unregistered Users must contact the Survey Owner directly outside of MS. The Survey Owner is obliged to follow requests for review/change/deletion of any personal data in form of Responses from all study subjects.

8. Availability of Member Services

You agree and acknowledge that the accessibility and use of MS Services (Apps and Website) and the Survey Data hosted by the MS Services is highly dependent on the proper function of the Internet and any other computer and telecommunications networks and infrastructure upon which MS and the Member Services and the Survey Data operate, interface with, are hosted on or connect to, including any Provider networks , hardware, software or systems.

Except in respect of any Non-Excludable Guarantee, We do not guarantee or represent that MS, the Member Services, the Member Data or any Provider services or access thereto will be uninterrupted or error-free and You release and indemnify Us in respect of any Losses We may incur and/or claims and/or complaints You (and if You are a Scientific Researcher, You, Your Research Institution, Your Funding Institution, Your Medical Patients and any of Your Related Bodies Corporate and Associated Entities) may have against Us in respect of any interruption, error or unavailability of the Member Services, Member Data or any Provider services.

You acknowledge that MedicalSurveys are being improved on a consistent basis, and as such will not be uninterrupted or error-free.

9. Usage Restrictions

You may not make any use of MedicalSurveys except as expressly permitted by these Terms of Use and may not do or authorise the commission of any act that would or might invalidate or be inconsistent with Our Intellectual Property Rights. In addition, unless and to the extent that We have entered into an API Access Agreement with You that allows You to do so, You must not, nor may You permit any person to:

- copy, alter, modify, adapt, reproduce, republish, frame, translate, reverse assemble, reverse engineer, reverse compile, transfer, sell, license, create

derivative works from or enhance MS and/or any content (other than Your Member Data) in MS.

- do any act that would or might invalidate or be inconsistent with Our Intellectual Property Rights or those of Our licensors;
- use MS in any way that infringes Our rights or the rights of any other person; or
- take any steps to circumvent any technological protection measure or security measures in MS.
- You must not use MS or any part of MS in any way which is in breach of any statute, regulation, law or legal right of any person. Without limiting the foregoing provisions, Members must ensure that any information they communicate through MS, including Member Data, and any communications they may have with any other users (including Medical Practitioners) through MS, fully complies with all applicable laws and rules of professional conduct and practice.

10. Acceptable Use Policy

You agree that:

- using MS to violate all or any legal rights of any person or company or other entity in any jurisdiction is strictly prohibited;
- using MS in relation to crimes such as theft and fraud is strictly prohibited;
- using MS in breach of laws relating to the protection of copyright, trade secrets, patents or other intellectual property and laws relating to spam or privacy and whether such violation is by way of the installation or distribution of pirated software or otherwise, is strictly prohibited;
- introduction of malicious programs into Our network or servers (e.g., viruses, worms, Trojan horses, e-mail bombs) is strictly prohibited;
- revealing Your Account password to others or allowing use of Your Account on MS by others is strictly prohibited;
- using another person's name, username or password or otherwise attempting to gain access to the Account of any other person is strictly prohibited;
- using MS to make fraudulent offers of goods or services is strictly prohibited;
- using MS to carry out security breaches or disruptions of network communication is strictly prohibited. Security breaches include, but are not limited to, accessing data of which You are not an intended recipient, logging into a server or Account that You are not expressly authorised to access, corrupting any data, network sniffing, pinged floods, packet spoofing, denial of service, and forged routing information for malicious purposes;
- using MS to execute any form of network monitoring which will intercept data not intended for You is strictly prohibited;
- using MS to circumvent user authentication or security of any of Our hosts, networks or accounts or those of Our customers or suppliers is strictly prohibited;
- using MS to interfere with or deny service to anyone is strictly prohibited;

- using any program/script/command, or sending messages of any kind, with the intent to interfere with, or disable, any person's use of MS is strictly prohibited;
- use of MS in breach of any person's privacy (such as by way of identity theft or "phishing") is strictly prohibited.

11. Intellectual Property Rights

- You agree and acknowledge that these Terms of Use do not transfer or assign any Intellectual Property Rights to You.
- As between You and Us, except in respect of Your Member Data (if You are an Account Holder of MS), We own all Intellectual Property Rights in MS.
- You have no rights in MS or in any part of it or in any modification or enhancement thereof, other than the rights temporarily granted to You pursuant to these Terms of Use.
- Other than in respect of Your User Data, You agree that any Intellectual Property Rights in any content that You upload or post to MS or otherwise provide to Us (such as comments that You may provide to Us in connection with MS or requests for new MS features ("Improvement Suggestion") becomes Our sole and exclusive property immediately upon You uploading or posting that Improvement Suggestion to MS or otherwise providing the Improvement Suggestion to Us, and You hereby assign all Intellectual Property Rights in all and any such Improvement Suggestions to Us effective as soon as You provide each Improvement Suggestion to Us or upload or post an Improvement Suggestion to MS, pursuant to section 197 of the Copyright Act 1968 (Cth) and in equity. You consent to the infringement by Us and any third party We authorise, of all Moral Rights that You may have in any Improvement Suggestions.
- You must not take any step to invalidate or prejudice Our (or Our licensors') Intellectual Property Rights in MS or otherwise take any action that would prevent Us operating MS in the usual course. Without limiting the foregoing provisions, You must not register any security interest or purchase money security interest on the Personal Property Securities Register with respect to, or otherwise encumber or charge Your rights under, these Terms of Use.

12. Responsibility for other users

- We do not accept responsibility for the conduct of any Registered or Unregistered User of MS. You are solely responsible for Your conduct, interactions and communications with other users of MS. If You are a Medical Practitioner:
 - You are also responsible for the conduct of Your Medical Collaborators and Medical Practitioner Assistants;
 - You must ensure that Your Medical Collaborators and Medical Practitioner Assistants comply with Our Terms of Use;

- any breach of these Terms of Use by Your Medical Collaborators or Medical Practitioner Assistants will be deemed to constitute a breach by You of Your obligations under this Agreement.
- If You are a Medical Practitioner You indemnify Us for all Losses we incur flowing from any breach of these Terms of Use by Your Medical Collaborators and Medical Practitioner Assistants.
- If You believe that any user of MS has breached these Terms of Use please contact Us.
- Any dispute You have with any other user of MS is between You and the other user. You:
 - release Us from any claims that You may otherwise have against Us in relation to any conduct of any user of MS and in respect of any Medical Surveys advertised or provided by any user of MS;
 - indemnify Us in respect of any Losses We incur in connection with any claims and/or complaints made by any person where the claim or complaint is caused directly or indirectly by (i) Your misuse of MS; and/or (ii) Your provision of Medical Services.

Disclaimer

Medical-Surveys and any associated parties involved in the creation and provision of the service on our Apps and website disclaim all liability in relation to any action(s) taken, any loss or damage suffered based on any of the information or content contained on this service.

You should seek advice to determine if the information management tools provided across our services are applicable to your own circumstances. Before entering into any transactions based on this information or content you should seek advice from an independent research, medical, tax, legal or accounting professional.

Our liability

Except in respect of any non-excludable Guarantees, neither party to these Terms of Use is liable to the other party for any indirect, special or consequential losses incurred by the other

party, including liability for loss of profits, loss of savings, or loss of data and We are not liable for any matter beyond Our reasonable control.

Except in respect of any non-excludable Guarantees, to the maximum extent permitted by law (and if permitted by law), We will not have any liability to You for any Losses howsoever incurred in relation to Your use of or inability to use MedicalSurveys or the performance or non-performance of MedicalSurveys.

Our liability to You is limited to the maximum extent permissible by law. To the extent that Our liability is not otherwise excluded, subject to any Non-Excludable Guarantees, Our liability to You is limited to the aggregate sum of Australian \$100.

General Indemnity

You indemnify Us in respect of all Losses that We incur as a result of Your breach of these Terms of Use.

Termination

If You are an Account Holder, either party may terminate these Terms of Use if:

- the other party breaches any provision of these Terms of Use that is incapable of remedy; and/or
- the other party breaches any provision of these Terms of Use that is capable of remedy but fails to remedy the breach within 14 days of notice requiring it to do so.

Disputes

If You have a dispute or complaint against Us, You must notify Us in the way described in clause Notices. You must ensure that the notice contains specific detail identifying the nature of the dispute or complaint.

Within 7 days of the delivery of a dispute notice You and Us will discuss or communicate with respect to the dispute or complaint.

If You and Us are not able to reach a resolution of the dispute or complaint within 21 days from Our receipt of the notice of the dispute or complaint, either You or We may commence proceedings in relation to the dispute.

Nothing in this clause Disputes prevents:

- either party from seeking urgent interlocutory relief; or
- either party from seeking recovery for any claim that the seeking party reasonably considers to be a monetary claim, from a Court of competent jurisdiction at any time.

Notices

A notice under this Agreement shall be in writing sent by Us to You by email, using Your details that You provided to Us during Account registration.

You may send a notice to Us using Our contact details that are specified on Our website as contact.medicalsurveys@gmail.com.

Any notice issued via email shall be deemed to be delivered upon receipt by the sender of a read receipt or delivery receipt. We may send You email or other electronic messages concerning Your Account and Our Services from time to time.

App-Specific Provisions

The provisions of this clause apply only to Your use of our MedicalSurveys smartphone, smart application that You download from the Apple App Store or Google Play (each, an app).

You agree that our Terms of Use is an agreement between You and Us and not between You and Apple, or You and Google. As between Us and Apple Inc., and as between Us and Google Inc., We are solely responsible for any product warranties pertaining to the app, whether express or implied by law, to the extent not otherwise effectively disclaimed hereunder.

In the event of any failure of the app to conform to any applicable warranty and where the warranty relates to Your use of a version of the app downloaded through the Apple App Store You may notify Apple, and Apple will refund the purchase price for the app to You (if any); and, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the app, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure of the app to conform to any warranty will be Our sole responsibility.

You and We each acknowledge that, as between You and Us, We, and not Apple or Google, are responsible for addressing any of Your claims relating to the app or Your possession and/or operation of the app, including, but not limited to:

- product liability claims made in respect of the app;
- any claim that the app fails to conform to any applicable legal or regulatory requirement; and
- claims arising under consumer protection or similar legislation in respect of the App.

For the avoidance of doubt, You agree to release and indemnify Us from any claims that You or any other person might otherwise have (including any claims arising under consumer protection or similar legislation in respect of the app and any other claims, losses, liabilities, damages or expenses) which relate to Your provision of Medical Services or any of Your other acts or omissions;

We and You each acknowledge that neither Apple nor Google have any obligation whatsoever to furnish any maintenance or support services with respect to the app.

You represent and warrant that

- You are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a terrorist supporting country; and
- You are not listed on any U.S. Government list of prohibited or restricted parties.

We and You each acknowledge and agree that Apple and Google, and Apple and Google respective subsidiaries, are third party beneficiaries of these Terms of Use, and that Apple and Google will each have the right (and will be deemed to have accepted the right) to enforce these Terms of Use against You as a third party beneficiary of these Terms of Use. Apple and App Store are trademarks of Apple Inc., registered in the U.S. and other countries. Google is a trademark of Google Inc.

General

- Amendment: These Terms of Use may be amended by Us at any time
- Severability: If any part of these Terms of Use is deemed invalid by a court of competent jurisdiction, the remainder of these Terms of Use shall remain enforceable.
- Survivability: Any clause of these Terms of Use which by its nature is intended to survive termination shall survive termination of these Terms of Use.
- Relationship: You and Us are independent contractors and these Terms of Use do not create any relationship of partnership, joint venture, or employer and employee or otherwise.
- Australian Consumer Law: The exclusions and limitations of liability set out in these Terms of Use shall apply to the fullest extent permissible at law, but We do not exclude or limit liability which may not be excluded or limited by law. Without limiting the foregoing provisions, We do not exclude liability under the Australian Consumer Law which is prohibited from being excluded.
- Entire Agreement: These Terms of Use constitute the entire agreement between You and Us and to the extent possible by law, supersede all prior understandings, representations, arrangements and agreements between You and Us regarding its subject matter.
- Jurisdiction: These Terms of Use will be interpreted in accordance with the laws in force in New South Wales. You and Us irrevocably submit to the exclusive jurisdiction of the courts of New South Wales.

Contact Information:

contact.medicalsveys@gmail.com