

INFOSMART™ WEB TERMS AND CONDITIONS

Effective as of October 2023

These terms and conditions (Terms) govern our relationship with users of our web-based software application called InfoSmart™ Web which allows them to (1) review information relating to their patients' usage of a Fisher & Paykel Healthcare device (Device) and the effectiveness of the therapy provided by the Device, and (2) identify and resolve issues patients may be having with their therapy(including to adjust the therapy settings on their Device if necessary).

In these Terms, references to "us", "we" and "our" mean Fisher & Paykel Healthcare Limited (FPH), a company existing under the laws of New Zealand with its registered office at 15 Maurice Paykel Place, East Tamaki, Auckland 2013, New Zealand. References to "you" and "your" mean the person or entity accessing or using InfoSmart Web (InfoSmart Web User). FPH and InfoSmart Web User are deemed joint controllers regarding the processing of patient personal data for the purposes described above in accordance with applicable law.

By using InfoSmart Web you acknowledge that you have read and agree to be bound by these Terms. If you do not accept these Terms, you must not use InfoSmart Web.

1. PRIVACY

- 1.1. The privacy of your information is very important to us. Our FPH InfoSmart Web Privacy & Cookie Policy located at <https://www.fpinfosmart.jp/terms/privacypolicy> is intended to provide you with details regarding our collection, use, disclosure, storage and security of your personal data collected through InfoSmart Web as well as your rights with respect to your personal data. If you have any questions or concerns about privacy matters relating to InfoSmart Web, please contact our Data Protection Officer at privacy@fphcare.com. Full contact details of Fisher & Paykel Healthcare or its representative in your country can be found at <https://www.fphcare.com/our-company/contact-us/fph-offices/>.

2. PATIENT DATA

- 2.1. Details regarding the collection, use, disclosure, storage and security of personal data about patients collected through InfoSmart Web is set out in the Patient Information and Consent Form set out in <https://www.fpinfosmart.jp/terms/patientconsent> (the Consent Form).
- 2.2. Registering a patient on InfoSmart Web and/or any uploading of their data (including personal health data) onto InfoSmart Web triggers statutory data protection requirements and restrictions in your jurisdiction. These requirements stipulate that a patient must not be registered on InfoSmart Web nor must any of their data be uploaded onto InfoSmart Web without their express consent.
- 2.3. By accessing and using InfoSmart Web, you confirm and agree that:
 - a. prior to registering a patient on InfoSmart Web, you have ensured that the patient has, in accordance with all applicable laws, provided their consent to the matters set out in the Consent Form. Without limiting the generality of the foregoing, this shall include ensuring that 1) before you register a patient onto InfoSmart Web, that patient either signs the Consent Form or a form which at least includes the matters set out in the Consent Form, 2) you retain a copy of that signed form and 3) if requested, you provide us with a copy of that signed form;
 - b. in the event it comes to your attention that a patient would like to withdraw their consent, you will not take any further steps to upload that patient's data onto InfoSmart Web and without that patient's express consent, you will not use or otherwise process their data to the extent accessed through InfoSmart Web;
 - c. you will receive, address and respond to all patients' requests for the exercise of their rights in relation to their personal data (including requests of access to, rectification or erasure of their personal data, requests of restriction of, or objection to, the processing of their personal data and data portability requests) in accordance with and within the time frame required by applicable law. We will assist you in responding to any such requests to the extent you are unable to address it and provided that any requests for our assistance are conveyed to us (by email to privacy@fphcare.com) in a timely manner;
 - d. you will at all times in connection with InfoSmart Web and its associated technologies (including InfoUSB™ and InfoGSM™) comply with 1) your legal and professional responsibilities and, 2) without limiting the generality of the foregoing, all laws and regulations relating to the collection, use and disclosure of personal data and personal health data. For example, in the event you use or process patient data for purposes other than as set out in the Consent Form, you will ensure that you have obtained the patient's prior express consent in accordance with and to the extent required by applicable law;
 - e. you will ensure that any patient data (including personal health data) uploaded onto InfoSmart Web is retained on InfoSmart Web only for so long as you need that data. You will immediately remove, or if you are unable to do so ask us to remove, any patient personal data that is no longer necessary for the purposes set out in the Consent Form or any other purposes for which you have obtained the patient's prior express consent in accordance with and to the extent required by applicable law;
 - f. InfoSmart Web is not a permanent medical record archive. Whilst you will have access to your patient data in InfoSmart Web as long as you are an active InfoSmart Web user, we may de-activate your InfoSmart Web access in accordance with clause 11 (for example if there has been no user log-in to the account in at least six (6) months). You agree that you are solely responsible for downloading from InfoSmart Web, or otherwise maintaining your own record of, the data relating to your patients;

- g. If requested, you will to the extent legally permitted provide us with information relating to any patient consent withdrawals, patient requests as contemplated by clause 2.3(c) or data removals as contemplated by clause 2.3(e); and
- h. you will indemnify us and every member of the Fisher & Paykel Healthcare group from all costs, losses, damages or liability arising directly or indirectly out of any claim by a patient or any other third party (including, any regulatory authority) in connection with a breach of clause 2.3.

3. GRANT OF LIMITED LICENCE

- 3.1. We grant you a non-exclusive, non-transferable, revocable licence to access and use InfoSmart Web solely for the purposes of providing professional services to your patients and subject to the terms and conditions set out in these Terms.

4. AUTHORITY

- 4.1. You confirm that:
 - a. you are a healthcare provider, physician or sleep laboratory, or an employee or agent of a healthcare provider, physician or sleep laboratory;
 - b. if you are signing these Terms on behalf of a corporation, employer, partnership, or similar legal entity, you have the full power and authority to enter into these Terms and have obtained all consents and approvals necessary to bind the corporation, employer, partnership or other legal entity (as appropriate); and
 - c. you will not provide direct login access to InfoSmart Web to your patients.

5. FEES

- 5.1. We do not guarantee that your use of InfoSmart Web will always be free. You may be charged fees for your use of InfoSmart Web provided that we have previously notified you in writing of the fees to be charged. If you do not agree to pay the fees you may request that we cancel your InfoSmart Web access at any time in accordance with the provisions of clause 11.
- 5.2. Certain additional services which are made available via InfoSmart Web, including without limitation phone and text reminders, may have fees associated with their use. We will notify you of the fees which are charged for these services and any discounts which you might be entitled to, and you can decide whether you do or do not wish to utilise these additional services.

6. SECURITY

- 6.1. When you register for InfoSmart Web you will be required to choose a login name and password. You must select a password that you can easily recall but that would be difficult for others to guess.
- 6.2. You must not choose an unsuitable password. These include:
 - a. Sequential number and letter combinations, or using the same number or letter repeatedly.
 - b. Personal information that others may have easy access to (for example, surname, birthday, street, pets' names).
 - c. Passwords you have previously used as a password elsewhere.
- 6.3. You must take all reasonable steps to safeguard your login name and password. This includes not revealing them to other people; not leaving your computer unattended when logged onto InfoSmart Web; and not keeping a physical record of your login name and password.
- 6.4. If you suspect that anyone has gained access to your password, or that it has been lost or stolen, you must contact our InfoSmart Web Systems Administrator immediately on eu-support@fphcare.assist.com or .

7. DISCLAIMER

- 7.1. YOUR USE OF INFOSMART WEB IS AT YOUR OWN RISK. TO THE FULLEST EXTENT ALLOWED BY LAW:
 - a. THE INFORMATION AND SERVICES PROVIDED VIA INFOSMART WEB ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED; AND
 - b. WE DO NOT PROVIDE MEDICAL ADVICE. INFOSMART WEB AND THE CONTENT AND THE SERVICES PROVIDED IN CONNECTION WITH INFOSMART WEB ARE FOR INFORMATION PURPOSES ONLY. WE ARE NOT HEALTHCARE PROFESSIONALS AND DO NOT DISCUSS OR ADVISE ON MEDICAL TREATMENT OR DIAGNOSTICS. YOU ARE RESPONSIBLE FOR ALL RELIANCE ON, AND ANY MEDICAL DECISIONS BASED ON, THE CONTENT AND SERVICES PROVIDED IN CONNECTION WITH INFOSMART WEB.
 - c. WE DO NOT WARRANT THAT INFOSMART WEB WILL BE UNINTERRUPTED, SECURE OR ERROR-FREE, OR THAT THE INFORMATION WILL BE ACCURATE, ADEQUATE, CURRENT OR COMPLETE, OR THAT IT IS SUITABLE FOR YOUR INTENDED USE.
 - d. WE MAY AT ANY TIME AND WITHOUT NOTICE MODIFY INFOSMART WEB, OR WITHHOLD, SUSPEND OR RESTRICT ANY SERVICE AVAILABLE THROUGH INFOSMART WEB.
 - e. WE EXPRESSLY DISCLAIM ANY LIABILITY WHICH IS BASED ON, OR ARISES OUT OF, THE INFORMATION, DATA OR MATERIAL ACCESSED USING INFOSMART WEB.
 - f.

WE ASSUME NO RESPONSIBILITY FOR CONSEQUENCES RELATING DIRECTLY OR INDIRECTLY TO ANY ACTION OR INACTION YOU TAKE BASED ON THE INFORMATION, SERVICES, OR OTHER MATERIAL AVAILABLE THROUGH INFOSMART WEB.

8. LIMITATION OF LIABILITY

- 8.1. To the extent permitted by law, we will not be liable to you or any third party for any direct, indirect or consequential costs, claims, demands, actions, losses, damages or other liabilities resulting from:
- your use of InfoSmart Web; or
 - your breach of any of these Terms, including without limitation, clause 2.3; or
 - any unauthorised use of your login name and password; or
 - any delay or loss of access to, or use of InfoSmart Web at any time, or any fault or error in the design, content or engineering of InfoSmart Web; or
 - any suspension or restriction of any service available through InfoSmart Web; or
 - malfunction of any equipment or system, or any telecommunications link failure; or
 - or in connection with, any changes we may from time to time make to our InfoSmart Web Privacy and Cookie Policy; or
 - any cause or event reasonably beyond our control.
- 8.2. The limitations of liability set out in this clause 8 shall not apply to:
- liability arising from death or injury to persons caused by our negligence;
 - liability arising as a result of fraudulence by FPH; and
 - anything else which cannot be excluded or limited at law, to which no limit applies.

9. RESTRICTIONS ON USE

- 9.1. You must not:
- modify, adapt, translate, reverse engineer, decompile, disassemble or create derivative works based on InfoSmart Web or otherwise attempt to alter InfoSmart Web;
 - use any device, including any software or routine, which interferes with the usual operation of InfoSmart Web; or
 - transmit any information or software that contains a virus, spyware, worm or Trojan horse or any other harmful component.

10. INTELLECTUAL PROPERTY

- 10.1. You acknowledge and agree that:
- Fisher & Paykel Healthcare Limited owns all copyright, trademark and other intellectual property rights in InfoSmart Web; and
 - other than the right to use InfoSmart Web in accordance with these Terms, you do not and will not acquire any rights or ownership of InfoSmart Web as a consequence of these Terms or your use of InfoSmart Web.
- 10.2. You may download or print out information from InfoSmart Web for the purposes of providing professional services to your patients. Any other copying, distribution or use of the information or materials from InfoSmart Web without our prior written consent is strictly prohibited.

11. WITHDRAWAL OF INFOSMART WEB

- 11.1. You may request that we de-activate your InfoSmart Web access at any time. To do this you must notify us in writing, by email to eu-support@fphcare.assist.com or by phone to .
- 11.2. We may de-activate your InfoSmart Web access at any time by giving you notice which we consider in each case (at our sole discretion) to be reasonable in the circumstances. We may de-activate access to your InfoSmart Web account if there has been no user log-in to the account in at least six (6) months. We may suspend or de-activate your InfoSmart Web access immediately:
- upon your death, or if we become aware that you lack legal capacity;
 - if you breach these Terms;
 - if we have reason to believe your InfoSmart Web access has been compromised; or
 - if we consider we have other reasonable grounds to do so.

12. ASSIGNMENT AND SUB-LICENSING

- 12.1. You may not:
- assign your licence in whole or part to any third party;
 - allow any other person to use or access InfoSmart Web using your login and password; or
 - sub-licence the rights to use InfoSmart Web without our prior written consent.

13.

ALTERATION OF TERMS

- 13.1. These Terms may be amended in whole or in part by us from time to time. Amendments will be effective immediately upon posting of the amended Terms on the InfoSmart Web website. You are responsible for ensuring you are familiar with the latest Terms. Your continued use of InfoSmart Web represents your agreement to be bound by the Terms as amended.

14. OTHER

- 14.1. These Terms make up the entire agreement between FPH and yourself regarding InfoSmart Web and supersede any prior agreements.
- 14.2. If any portion of these Terms is found to be unenforceable, the remaining portion will remain in full force and effect.
- 14.3. If we fail to enforce any of these Terms, it will not be considered a waiver.
- 14.4. All of our rights and obligations under these Terms are freely assignable by us in connection with a merger, acquisition, or sale of assets, or by operation of law or otherwise.
- 14.5. You will comply with all applicable laws when using or accessing InfoSmart Web.
- 14.6. These Terms are governed by the laws of New Zealand and when you access InfoSmart Web you submit to the exclusive jurisdiction of the courts of New Zealand in connection with all disputes arising out of or relating to your use of InfoSmart Web. Notwithstanding the foregoing, nothing in these Terms shall exclude or limit the application of any provision of applicable law or regulation where to do so would contravene that law or regulation or cause any part of these Terms to be void, and the Terms shall be read down (only) to the extent necessary to comply with such applicable law or regulation.

ISW002-3.0