INFOSMART™ WEB TERMS AND CONDITIONS

These terms and conditions (Terms) govern our relationship with users and others who interact with the web-based software application called InfoSmart™ Web which allows healthcare providers, physicians and sleep laboratories to review information relating to their patients (InfoSmart Web).

If you are a resident or have your principal place of business in the US or Canada, these Terms form an agreement between you and Fisher & Paykel Healthcare, Inc. Otherwise, these Terms form an agreement between you and Fisher & Paykel Healthcare Limited (New Zealand). References to "us", "we" and "our" mean either Fisher & Paykel Healthcare, Inc. or Fisher & Paykel Healthcare Limited (New Zealand) as appropriate.

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 patients' data is very important to us. Our Privacy Policy located at https://www.fpinfosmart.info/terms/privacypolicy is intended to provide you with details regarding our use, disclosure, storage and security of information collected from users of InfoSmart Web.

1.2. We use cookies to support a smooth user experience. The cookie remains after you close your browser and may be used by your browser on subsequent visits to InfoSmart Web. We use cookies to better understand how you use InfoSmart Web and to improve the service. We do not use cookies to collect personal data. If you do not wish to have cookies placed on your computer, you should set your browser to refuse cookies. However, switching off cookies may restrict your use of InfoSmart Web.

2. GRANT OF LIMITED LICENCE

2.1. 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.

3. AUTHORITY

3.1. 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);

c. you have sufficient authority from your patients to allow Fisher & Paykel Healthcare to collect, store, manage and transmit information regarding your patients, the use of their CPAP device and other personal health information; and

d. you will not provide direct login access to InfoSmart Web to your patients.

3.2. You confirm that you have sufficient authority to access the information made available through InfoSmart Web. By using InfoSmart Web to access information, you:

a. confirm that we are authorised by each of your patients to disclose to you personal, health and other information and records we hold about those patients; and

b. agree that you will only use the information in a way that complies with your legal and professional responsibilities.

4. FEES

4.1. 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 11.1.

4.2. 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.

5. HIPAA

5.1.

If we are your "Business Associate" as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, then the HIPAA Business Associate Addendum published at https://www.fpinfosmart.info/terms/baa as of the date that we become your Business Associate forms part of the agreement between us and you.

6. SECURITY

6.1. When you register for InfoSmart Web you will be provided with a login name and password. Should you change your password at any stage, you must select a password that you can easily recall but that would be difficult for others to guess.

6.2. Some passwords will be unsuitable. 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, then please contact our InfoSmart Web Systems Administrator immediately on softwaresupport.usa@fphcare.com or +1 877 707 5454.

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 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.

c. WE MAY AT ANY TIME AND WITHOUT NOTICE MODIFY INFOSMART WEB, OR WITHHOLD, SUSPEND OR RESTRICT ANY SERVICE AVAILABLE THROUGH INFOSMART WEB.

d. WE EXPRESSLY DISCLAIM ANY LIABILITY WHICH IS BASED ON, OR ARISES OUT OF, THE INFORMATION, DATA OR MATERIAL ACCESSED USING INFOSMART WEB.

e. 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:

a. your use of InfoSmart Web; or

b. any unauthorised use of your login name and password; or

c. 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

d. any suspension or restriction of any service available through InfoSmart Web; or

e. malfunction of any equipment or system, or any telecommunications link failure; or

f. any cause or event reasonably beyond our control.

8.2. The limitations of liability set out in this clause 8 shall not apply to:

a. liability arising from death or injury to persons caused by negligence;

b. liability arising as a result of fraud; and

c. anything else which cannot be excluded or limited at law, to which no limit applies.

9. RESTRICTIONS ON USE

9.1. You must not:

a. modify, adapt, translate, reverse engineer, decompile, disassemble or create derivative works based on InfoSmart Web or otherwise attempt to alter InfoSmart Web;

b. use any device, including any software or routine, which interferes with the usual operation of InfoSmart Web; or

c. 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:

a. Fisher & Paykel Healthcare Limited owns all copyright, trademark and other intellectual property rights in InfoSmart Web; and

b. 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 cancel your InfoSmart Web access at any time. To do this you must notify us in writing, by email to softwaresupport.usa@fphcare.com or by phone to +1 877 707 5454.

11.2. We may cancel your InfoSmart Web access at any time by giving you notice which is reasonable in the circumstances. We may suspend or cancel your InfoSmart Web access immediately:

a. upon your death, or if we become aware that you lack legal capacity;
b. if you breach these Terms;
c. if we have reason to believe your InfoSmart Web access has been compromised; or
d. if we consider we have other reasonable grounds to do so.

12. ASSIGNMENT AND SUB-LICENSING

12.1. You may not:

a. assign your licence in whole or part to any third party;
b. allow any other person to use or access InfoSmart Web using your login and password; or
c. 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, the Privacy Policy and the Business Associate Agreement (if applicable) make up the entire agreement between the parties 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. If you are a resident or have your principal place of business in the US or Canada, these Terms are governed by the laws of the state of California and when you access InfoSmart Web you submit to the exclusive jurisdiction of the courts of the state of California in connection with all disputes arising out of or relating to your use of InfoSmart Web. Otherwise, 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.