



## Smart Referrals Service Terms of Access and Use

Please carefully read these terms and conditions (the '**Terms**') for your access to, and use of, the Smart Referrals Service (the '**Service**'). **If you do not agree with these Terms, you must cease using the Service immediately.**

### 1. Definitions

In these Terms:

- a) the expressions:
  - i. '**user**', '**you**' and '**your(s)**' refer to the person or entity accessing and using the Service;
  - ii. '**we**', '**us**', and '**our**' and '**the State**' means the State of Queensland acting through Queensland Health;
- b) '**Applicable Privacy Law**' means:
  - i. for the State, each HHS, and other entities of the State of Queensland, the *Information Privacy Act 2009* (Qld); and
  - ii. for you, the *Privacy Act 1988* (Cwth);
- c) '**Application**' means an application (for example, a widget) that integrates with practice and patient management software used by a Practitioner accessing or making use of the Service;
- d) '**Claim**' includes (and is not limited to) any claim, action, demand, application, proceeding, judgment, enforcement hearing or enforcement order;
- e) '**Content**' means information accessed through, or provided by, the Service that relates to the care or treatment of a Patient, including information that relates to a Practitioner, and their Personal Information;
- f) '**GP Practice**' means a business that delivers general practice or primary health services (through one or more locations, including mobile services) through a Referring Practitioner;
- g) '**Health Service**' has the meaning given to it Schedule 2 of the *Hospital and Health Boards Act 2011* (Qld);
- h) '**HHS**' means a hospital and health service established under section 17 of the *Hospital and Health Boards Act 2011* (Qld);
- i) '**Licence**' has the meaning given it in clause 2(b);
- j) '**Patient**' means a person who is receiving, or has received, care or treatment by a Practitioner;
- k) '**Personal Information**' has the meaning given to it in the Applicable Privacy Law;
- l) '**PHN**' means a Primary Health Network for Queensland, being one of the following:
  - i. Partners 4 Health Limited t/a Brisbane North PHN (ABN 55 150 102 25);
  - ii. Brisbane South PHN Ltd (ABN 53 151 707 765);
  - iii. Primary Care Gold Coast Limited t/a Gold Coast Primary Health Network (ABN 47 152 953 092);

- iv. Darling Downs and West Moreton Primary Health Network Limited (ABN 51 605 975 602);
- v. Western Queensland Primary Care Collaborative Limited t/a Western Queensland PHN (ABN 86 604 686 660);
- vi. Sunshine Coast Health Network Limited t/a Central Queensland, Wide Bay, Sunshine Coast PHN (ABN 2 156 526 706);
- vii. North Queensland Primary Healthcare Network Limited t/a North Queensland PHN (ABN 35 605 757 640),

and any other Queensland Primary Health Network established during the term of this agreement;

- m) **'Practitioner'** has the meaning given to the term 'health professional' in Schedule 2 of the *Hospital and Health Boards Act 2011* (Qld) as that definition relates to:
- i. an individual who:
    - A. has completed a Fellowship of the Royal Australian College of General Practitioners or a Fellowship of the Australian Colleges of Rural and Remote Medicine;
    - B. is a registered nurse whose registration is endorsed under section 95 of the Health Practitioner National Law as being qualified to practice as a nurse practitioner; or
    - C. is an Indigenous Health Worker qualified to deliver primary care in Queensland and authorised by us to access and use the Service,  
within a GP Practice (a **'Referring Practitioner'**); or
  - ii. an individual who is, or has been, listed in the Service directory to whom a Patient may be, or has been, referred to receive a Health Service (a **'Receiving Practitioner'**);
- n) **'Purpose'** means:
- i. to facilitate the care or treatment of a Patient, including by a Referring Practitioner referring, or seeking to refer, a Patient to a Receiving Practitioner through the Service; and
  - ii. for the State to operate, evaluate, monitor, manage and plan the Service and its development;
- o) **'Service'** means:
- i. the Smart Referrals portal, system, and the services available through it, operated by, or on behalf of, the State regardless of the means by which the same is accessed; and
  - ii. where the items described at subclause (i) directly above are accessed through an Application, the description at subclause (i) directly above is taken to include the Application.
- p) **'Terms'** means these Smart Referrals Service Terms of Access and Use, which includes, to the extent that they are not inconsistent with the Terms, the following:
- i. the Queensland Health [Privacy Policy](#);
  - ii. the Queensland Health [Copyright Statement](#); and

- iii. the Queensland Health [Disclaimer](#).

## 2. Formation and Variation of the Agreement for Service

- a) By accessing or making use of the Service you agree to be bound by these Terms and to abide by them in connection with your access or use of the Service.
- b) The State reserves the right to amend, modify, add, delete and make corrections to these Terms by updating the Service to incorporate new Terms, at any time without notice. All changes are effective from the date they are posted, and your continued access or use of the Service after the posting of each variation will constitute your acceptance of the variation of the Terms. It is your responsibility to ensure you are aware of any changes to these Terms each time you access or use the Service.

## 3. Formation and Variation of the Agreement for the Application

Where a GP Practice or PHN (a **'Business'**) installs on its computers or other information and communication technology systems an Application in connection with access or use of the Service by Practitioners within the Business, the Business and the Practitioners through which the Business delivers Health Services are bound by:

- a) these Terms; and
- b) the End User Licence Agreement of BPAC Informatics Pty Ltd ACN 604 667 638 in the Appendix to these Terms attached after clause 17 of these Terms.

## 4. Permitted Use and Licence

- a) Only Practitioners are authorised to access and use the Service. If you are not a Practitioner you must not access or use the Service.
- b) Subject to these Terms, you may access and use the Service and Content for the Purpose. You must not use the Service and Content for any other purpose.
- c) We grant you a non-exclusive, revocable, non-transferable, royalty-free, worldwide licence to use Content in accordance with these Terms (a **'Licence'**). We may terminate your Licence at any time with immediate effect if you fail to comply with these Terms.
- d) You acknowledge that you have no rights, including intellectual property rights, in, or to, the Content or other information in connection with, or provided by, the Service or technology used, or supported by, the Service, other than the right to use the Content and the Service in accordance with these Terms.

## 5. Exercise of professional judgment

You agree to exercise sound professional judgment, including, in relation to a Practitioner, sound clinical practice and your own independent clinical judgement, when accessing or using the Service and any Content.

## 6. Patient Content and Consent

- a) You must ensure that you upload, and permit the State and each HHS to use, for the Purpose Personal Information, including the Personal Information of Patients, only where permitted by the Applicable Privacy Law, including by ensuring that you have obtained lawful and adequate consent to do so.
- b) You warrant that all information and material relating to Patients that you upload is, to the best of your knowledge, true and correct and suitable for use by the Service for the Purpose.

- c) You agree that all information and material, including information, material and Personal Information relating to Patients, uploaded to the Service will comprise Content and be incorporated into a 'public record' of the State as that term is defined in the *Public Records Act 2002* (Qld).

## 7. Limitations on Use

You must not:

- a) use the Service or Content in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these Terms;
- b) use the Service in any way that could damage, disable, overburden, impair or compromise the Service;
- c) hack into the Service, destroy data, or insert malicious code, a virus or harmful data into the Service;
- d) disrupt or interfere with the Service or servers or other websites, software, hardware or equipment connected to or via the Service;
- e) violate any applicable law by your use of the Service; or
- f) permit, whether directly or indirectly (including through careless or reckless conduct), any access to, or use of, the Service by any person who is unauthorised to do so.

## 8. Termination

- a) We reserve the right to cease operating the Service at any time, without notice, and to terminate these Terms and any Licence granted under them.
- b) We may terminate your right or ability to use the Service, and any Licence granted under these Terms, at any time with immediate effect if you fail to comply with these Terms.

## 9. Intellectual Property Rights

- a) You acknowledge that all intellectual property rights in the Service and Content is owned by, or licensed to, the State and are protected by copyright, trademark and intellectual property laws in Australia or overseas.
- b) Without our prior written consent (unless you are expressly authorised by law) you must not yourself, or with others, or permit any other person, to do, or omit to do, anything in relation to the Service or the Content other than as permitted by these Terms.
- c) Nothing you do on or in relation to the Service or the Content will transfer any intellectual property rights to you or license you to exercise any intellectual property rights except as expressly stated in these Terms.

## 10. Privacy

- a) You acknowledge that Personal Information about you collected by us because of your access to the Service will be held by, or on behalf of, the State, including by HHSs. This information is collected by us for the purpose of operating and managing the Service and providing you with Content. The State may use your Personal Information in accordance with the Queensland Health [Privacy Policy](#). The State protects, collects and manages your Personal Information in accordance with the *Information Privacy Act 2009* (Qld). The State may be permitted or required to disclose Personal Information by law, under compulsion of law by a court or government agency.

- b) For information on how to gain access to your personal information, how we use your personal information, provision of contact details or other privacy matters, please see the Queensland Health [Privacy Policy](#).

### **11.Exclusion of warranties**

- a) All Content and services on or available through the Service are provided on an 'as is' and 'as available' basis and without warranties of any kind, expressed or implied except any which may be implied by statute and are incapable of exclusion, in respect of the Service or the Content.
- b) To the maximum extent permitted by law, the State and each HHS excludes, and does not make any representation, warranty or endorsement of any kind, whether express or implied, in relation to the content, accuracy, completeness, accessibility, suitability, safety, security, reliability, or any other aspect of:
  - i. any Content, material and/or information in the Service;
  - ii. the performance and availability of the Service;
  - iii. the loss, damage, corruption or degradation of any data or other material as a result of the use of the Service; or
  - iv. that access to, or use of, the Service or any Content, information or materials available through the Service will result in treatment, including appropriate or adequate treatment, of any Patient by any Practitioner.
- c) You acknowledge that the Content available on the Service may change at any time.

### **12.Exclusion of liability**

To the maximum extent permitted by law, the State and each HHS excludes all liability for any loss or damage whatsoever which is suffered, (including but not limited to direct, indirect, incidental, special, consequential or exemplary damages, loss of profits or revenue, business interruption, loss, damage or corruption of data or failure to realise anticipated savings or benefits or business opportunities) as a result of:

- a) the use of, reliance on, or action taken as a result of your access to, or use of, the Service, Application or any Content, Personal Information, or any information or material in the Service or Application for any decision or otherwise;
- b) accessing, viewing and using the Service, Application or any Content;
- c) any interruption, suspension or termination of the Service or Application in whole or in part for whatever reason including failure of or suspension of public or private telecommunications network;
- d) the unavailability, unsuitability and non-connectivity of the Service, Application, Content, or third party sites;
- e) any loss, damage, corruption or degradation of any Content, data, information, computer code or other material as a result of:
  - i. the use of the Service, Application or any Content; or
  - ii. viruses or other technologically harmful material that may infect your computer or mobile device due to your use of the Service or Application.

### **13. Release from claims and indemnity**

- a) You hereby forever waive, release, forgive, discharge and relinquish any and all Claims that you may have against the State and each HHS and their related bodies corporate, directors, officers, employees, contractors, agents and representatives, in connection with, or arising out of, or incidental to, your access to, or use of, the Service, Application and Content, including, but not limited to, accessing or downloading the Application, any Content, Personal Information, other information and materials in, or from, the Service or submitting or uploading any Content, Personal Information, other information, concepts, data or other materials to the Service or through the Application.
- b) You indemnify the State and each HHS and their related bodies corporate, directors, officers, employees, contractors, agents and representatives (**‘those indemnified’**) from and against:
  - i. any loss, liability, damage or expense or liability for any loss, liability, damage or expense incurred by those indemnified; and
  - ii. any loss, liability, damage or expense (including legal fees on a solicitor client basis) in relation to each and every Claim made by any third party against those indemnified, howsoever caused (including through negligence) directly or indirectly arising out of or in connection with:
    - A. your access to, or use of, the Service and Content, including, but not limited to, accessing or downloading any Application, Content, Personal Information, other information and materials, including any linked website, in, or from, the Service or Application or submitting or uploading any Content, Personal Information, other information, concepts, data or other materials to the Service or through the Application;
    - B. your reliance on the Service, Application or any Content;
    - C. breach by you of the Terms or any terms in connection with the Application;
    - D. infringement, or potential infringement, of the Intellectual Property rights of a third party in connection with the Service, Application or any Content.

### **14. Your risk**

You access the Service and use Content at your own risk and the State accepts no responsibility for any interference, loss, damage or disruption to your own computer, mobile device, process, procedure, business, schedule or otherwise which arises in connection with your use of the Service. You must take your own precautions to ensure that the process which you employ to obtain access to the Service does not expose you to the risk of viruses, malicious computer code or other forms of interference which may damage your computer or mobile device or otherwise cause you or any person loss, damage or corruption.

### **15. Software viruses, etc**

Without limiting the above, the State does not warrant that the Service, Application, Content, information and or material available for download is free from viruses or other conditions that could damage or interfere with data, hardware or software. Accordingly, the State excludes to the maximum extent possible, any liability for any loss suffered as a result of any such viruses or defects.

## 16. Third party websites and applications

- a) The Service contains links to websites and applications owned and operated by third parties, who are not under the control of the State and/or Queensland Government.
- b) The State does not approve, endorse, recommend or sponsor these linked sites, their owners or operators, or any information, graphics, materials, products or services referred to or contained on those linked websites and applications, unless specifically stated.
- c) The State is not responsible for the content of these linked websites and applications and makes no representation as to the accuracy of any material on these websites or applications.
- d) The State, to the maximum extent possible, excludes liability for any loss suffered as a result of use of these third party websites and mobile applications, or reliance on the information contained within. The terms and conditions, terms of use and privacy policies of those third party websites and mobile applications will apply to your use of those websites and applications.

## 17. General

- a) Governing law

These Terms shall be governed by and construed in accordance with the laws in force in the State of Queensland, Australia.

- b) Jurisdiction

These Terms shall be governed by and construed according to the laws in force in the State of Queensland, Australia, and you irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of Queensland.

- c) Entire agreement

These Terms, together with other documents referred to in them, constitute the entire agreement between you and us relating to the Service.

- d) Severability

The invalidity or unenforceability of any provision of these Terms shall not affect the rest of the provisions in these Terms, which will continue in full force and effect.

- e) No waiver

No provision of these Terms will be taken to be waived except by written notice signed by you and us.

- f) Contact Details

Should you have any questions regarding the Terms please contact the Service administrator by emailing: [CED\\_SmartReferrals@health.qld.gov.au](mailto:CED_SmartReferrals@health.qld.gov.au)

----- APPENDIX FOLLOWS -----

## Appendix to Smart Referrals Service Terms of Access and Use

End User Licence Agreement of BPAC Informatics Pty Ltd ACN 604 667 638 for the Application (the 'EULA')

Words and phrases defined in the EULA set out in this Appendix, including those defined in clause 12.1 of the EULA, apply to the EULA and words and phrases defined in the Terms, including those defined in clause 1 of the Terms, do not apply to the EULA. Clause 12.2 of the EULA set out in this Appendix applies to the interpretation of the EULA.

By clicking to accept or agree to this Agreement, where this option is made available to you, or by installing, downloading, accessing or otherwise using the BPAC Referral Software or any Update of the BPAC Referral Software, you agree to be bound by this Agreement.

You represent and warrant to the Licensor that you have the authority to act on behalf of your employer or other entity and to bind your employer or such other entity to the terms of this Agreement. If you do not have such authority or if you DO NOT agree to the terms of this Agreement, then: (1) you MUST NOT install or use the BPAC Referral Software or any Update to the BPAC Referral Software and (2) you MUST delete all copies of the BPAC Referral Software and any Update to the BPAC Referral Software from your systems.

Except as expressly stated, the Licensor makes no representation about the BPAC Referral Software and suitability for any purpose of the Software. It is provided 'as is' without express or implied warranty of any kind.

The Licensor does not warrant that the use of the Software will be uninterrupted or error free.

BPAC Clinical Solutions Limited Partnership of 10 George Street, Dunedin, New Zealand (Licensor) makes the software program known as BPAC Referral (Software) available subject to the terms of this Agreement.

### 1. Access

In consideration for the Licensor granting the User the right to use the Software as set out in this Agreement the User agrees to the Terms and Conditions set out in this Agreement. By clicking the box above you confirm that you agree to these Terms and Conditions.

Before you can access the Software, you must agree to these Terms and Conditions, which include the terms in the click box above.

### 2. Licence

#### 2.1 Software Licence

Subject to the terms of this Agreement, the Licensor grants to User, and User accepts, a non-transferable and non-exclusive licence to use the Software within Australia during the Subscription Period (Licence).

#### 2.2 Licence conditions

Use of the Software is subject to the following conditions:

- (a) User may use the Software only at the location(s) and on the number of terminals (if any) as specified in the Documentation;



- (b) Use is restricted to the number of Doctors or Administrators or other persons or positions (if any) specified in the Documentation and only for the purposes of the User's medical practice or such other purpose expressly authorised in writing by the Licensor in the Documentation;
- (c) User must have a current licence to use any third party software which is integrated with the Software;
- (d) User must not grant sub-licences of the Software; and
- (e) User has no right to adapt, modify, disassemble or reverse engineer the Software nor may User make any copies of the Software.

### **3. Support Services**

- (a) Provided User complies with its obligations under this Agreement and subject to paragraph (c) of this clause and subject to clause 9, the Licensor agrees to provide the Support Services in respect of the Software for the Subscription Period.
- (b) Support Services will take the form of telephone advice or error correction by means of modem or correction by other electronic means in accordance with the Licensor's then current procedures governing the performance of such services to assist the User.
- (c) For the avoidance of doubt, the Support Services do not include:
  - (i) rectification of errors arising from faults in the computer hardware on which the Software is installed by User or any device connected to that computer hardware; or
  - (ii) correction of faults or errors, including data errors, arising directly or indirectly out of User's failure to comply with this Agreement or any other agreement between User and the Licensor
  - (iii) correction of faults or errors, including data errors, arising directly or indirectly out of User's use of the Software.

### **4. Software Updates**

Provided User complies with its obligations under this Agreement, the Licensor agrees to make Updates of the Software available subject to the following conditions:

- (a) the Licensor does not warrant that it will release any Updates of the Software during the Subscription Period; and
- (b) any Updates which the Licensor makes available will only relate to the Software, and do not apply to any hardware or third party software used in conjunction with the Software.

### **5. Intellectual Property Rights**

- (a) All Intellectual Property Rights and other proprietary rights in or related to the Software (including Software Collateral) are and remain, as applicable:
  - (i) the Licensor's exclusive property and User must not do anything that jeopardises the Licensor's proprietary rights; or
  - (ii) a third parties' exclusive property and User must not do anything that jeopardises any third parties' proprietary rights.
- (b) Any improvements to any Intellectual Property which is developed in the course of this Agreement shall be the property of the party who is the owner of the original Intellectual

Property, whether it be the Licensor, or a third party, but shall not in any event be the property of the User.

- (c) User must not remove, deface or destroy any copyright notice, patent notice, trademark, service mark, other proprietary markings or confidential legends placed on or within the Software.

## **6. Content and Links within the Software**

- (a) The Software and all parts thereof are the intellectual property of the Licensor, its suppliers, sponsors and/or licensors unless expressly indicated otherwise in the Software. The Software is protected by Australian and international copyright and trade mark laws. User must not modify, copy, reproduce, republish, upload to a third party, post, transmit or distribute the Software in any way except as expressly provided for within this Agreement or the Documentation or expressly authorised in writing by the Licensor.
- (b) The Software may contain hyperlinks and other pointers or buttons to web sites operated by third parties. These linked web sites are not under the control of the Licensor and the Licensor is not responsible for the content of any linked web site or any hyperlink contained in the linked web site. The Licensor provides these hyperlinks in the Software as a convenience for the User. Inclusion of any such link is not and should not be construed as an endorsement by the Licensor of the linked web site. User accesses any such web site entirely at User's own risk.

## **7. Disclaimer**

- (a) User acknowledges and agrees that the Software does not constitute professional medical or healthcare advice, diagnosis or recommendation of treatment and is not intended to, nor should be used to, replace professional medical advice. In no circumstances should the Software be relied upon without independent consideration and confirmation by a qualified medical practitioner.
- (b) The Licensor makes no representations or warranties with respect to any treatment, action, suitability or application of medication or preparation by any person whether in accordance with the Content or not. In no circumstances will the Licensor be liable for any direct, indirect, consequential, special, exemplary or other damages arising therefrom.
- (c) The Licensor does not warrant that any interactions of pharmaceutical products that are described within the Software are accurate, complete or comprehensive. It is the sole responsibility of any prescribing medical practitioner to ensure that all current product and prescription information in relation to pharmaceutical products referred to in the Software have been read and understood prior to the prescription of any pharmaceutical product.
- (d) The information contained within the Software:
  - (i) is provided to enable Users of the Software to exercise their own professional judgment, having regard to, among other things, a particular patient's condition and other prescribed medication, as to whether a particular pharmaceutical product should or should not be prescribed; and
  - (ii) is provided on an 'as is' basis and any alert or warning (or lack thereof) within the Software does not constitute a recommendation or advice by the Licensor to take or refrain from taking any course of action including, but not limited to, the prescription of a particular pharmaceutical product.

## **8. Termination**

### **8.1 Termination for cause**

This Agreement and the Licence will terminate automatically and without further notice upon the occurrence of any of the following:

- (a) User attempts to or does use, copy, licence, modify, reverse engineer or convey or deal with the Software in any manner contrary to the terms of this Agreement or in derogation of the Licensor's or third party's Intellectual Property Rights; or
- (b) User fails or neglects to perform or observe any of its existing or future obligations (that might apply in accordance with clause 12.7) under this Agreement; or
- (c) User attempts to or does use the Software outside Australia; or
- (d) User becomes Insolvent or ceases to carry on business.

### **8.2 Termination without cause**

- (a) The Licensor may terminate this Agreement and the Licence on each anniversary of the Commencement Date by no less than 30 days prior notice to User.
- (b) This Agreement and the Licence will terminate immediately without further notice if access to the Software is permanently disabled.

### **8.3 Effect of expiry or termination**

- (a) If this Agreement expires or is terminated for any reason in accordance with clause 8.1 or 8.2, then:
  - (i) the Licence will come to an end;
  - (ii) the Licensor's obligations under this Agreement will cease; and
  - (iii) the User must immediately stop using and destroy all copies of the Software and if the Licensor so requests, the User must certify that fact to the Licensor.

## **9. Warranties**

- (a) The Licensor makes no warranty express or implied that the Software does not infringe any third party Intellectual Property Rights and the Licensor excludes all liability for all loss or damage that the User might suffer in the event that the Software is found to infringe third party Intellectual Property Rights.
- (b) Subject to clause 10 and to the extent permitted by law the Licensor excludes all express warranties and representations other than the warranty in clause 9(a) and all implied warranties and representations and in particular does not warrant that:
  - (i) the Software is error free or that all errors can or will be corrected;
  - (ii) use of the Software will be uninterrupted or will not result in loss of data;
  - (iii) the Software will meet User's particular requirements, whether known to the Licensor or not;
  - (iv) the Software will function correctly on the User's particular computer equipment;
  - (v) the Software will provide any function not designated in the Documentation; or

- (vi) the Software is of merchantable quality or fit for a particular purpose, whether the purpose is known to the Licensor or not.

## 10. Limitation of Liability

- (a) Other than as set out in this clause and to the extent permitted by law:
  - (i) any condition or warranty which would otherwise be implied in this Agreement whether by statute or otherwise is excluded; and
  - (ii) under no circumstances will the Licensor be liable for any loss, damage or injury (including without limitation any loss of profits, indirect, incidental or consequential loss, damage or injury) arising from the supply or use of the Software, or any other applications or services supplied under this Agreement, any failure by the Licensor to perform any obligation or observe any term of this Agreement or any loss of data suffered by the User in connection with use of the Software.
- (b) To the extent permitted by law and subject to clause 10(c), in the event that the Licensor is found to be liable to the User notwithstanding the exclusion of liability in clause 10(a) the liability of the Licensor to the User for any non-compliance with a statutory guarantee or loss or damage arising out of or in connection with the supply of the Software under this Agreement or any breach by the Licensor of this Agreement however arising (whether for breach of a term or terms of this Agreement, tort (including negligence), statute, custom, law or on any other basis) is limited to the total amount paid by the User to the Licensor under this Agreement.
- (c) Clause 10(b) is not intended to have the effect of excluding, restricting or modifying:
  - (i) the application of all or any of the provisions of Part 5-4 of Schedule 2 to the Competition and Consumer Act 2010 (ACL);
  - (ii) the exercise of a right conferred by such a provision; or
  - (iii) any liability of the Licensor in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services.
- (d) The Software contains information intended for use by Users in Australia only. Any use contrary to this is at the User's own risk and, to the extent permitted by law, the Licensor disclaims all and any liability to User or any third party for such use.

## 11. Indemnity

User must pay to the Licensor on demand the amount of any Loss suffered or incurred by the Licensor arising out of or in connection with:

- (a) User's use of the Software; or
- (b) any breach of this Agreement or any other negligent or wrongful act or omission by User.

## 12. General

### 12.1 Definitions

In this Agreement:

**"Administrator"** means a person who is not a Doctor employed by or otherwise associated with a User;

**"Commencement Date"** means the date that User enters into this Agreement;

**“Content”** means all information, text, material, graphics, images, data and software incorporated into the Software whether owned by the Licensor, its suppliers, sponsors and/or licensors;

**“Doctor”** means a medical practitioner or other clinician associated with User’s medical practice;

**“Documentation”** means any printed or electronic document, or documentation, including any media (if any) provided by the Licensor in conjunction with the Software specifying, but not limited to, any matter anticipated to be specified under this Agreement including one or more of: the Subscription Fee; any other fees in respect of the User’s licensing of the Software or optional components of the Software or services used in conjunction with the Software; and the matters referred to in clause 1;

**“Insolvent”** means, in relation to a party, that a liquidator, receiver, manager, receiver and manager, special investigator, administrator, statutory manager or similar person is appointed (whether by a Court or other persons) concerning any of the party’s property, assets, business or affairs or the party assigns its property, assets, business or affairs for the benefit of its creditors;

**“Intellectual Property Rights”** means:

- (a) patents, designs, trade marks and service marks (whether registered or unregistered) and any applications for, or rights to apply for, registration of any patent, design, trade mark or service mark;
- (b) copyright (including copyright in software, websites, databases and advertising and other promotional materials);
- (c) all rights to have information (including trade secrets, know how, operating procedures and technical information) kept confidential; and
- (d) all other rights or protections having similar effect anywhere in the world; "Licence" has the meaning given in clause 2.1;

**"Loss"** means, in relation to any fact, matter or circumstance, all losses, costs, charges, damages, expenses and other liabilities arising out of or in connection with that fact, matter or circumstance including all legal and other professional expenses on a solicitor-client basis incurred in connection with investigating, disputing, defending or settling any claim, action, demand or proceeding relating to that fact, matter or circumstance (including any claim, action, demand or proceeding based on the terms of this Agreement);

**"Software"** means the software program identified on the first page of this document in machine readable object code as well as any registration number or other means to access the program as provided by the Licensor which:

- (a) is provided on the terms and conditions of this Agreement and the Documentation;
- (b) is more particularly described in the Software Collateral; and
- (c) includes the Content and Updates to the Software;

**“Software Collateral”** means all printed and electronic documentation provided to User in connection with the Software, including any media, and instructional and operational manuals covering the use of Software; and

**“Subscription Period”** means the period which commences on the Commencement Date and continues until this Agreement is terminated in accordance with clause 8;

**“Support Services”** means assistance to the User in the manner indicated in clause 3 to resolve any problems experienced by User in relation to use of the Software;

**“Update”** means any new release of or supplement to the Software issued by the Licensor and designed to correct errors identified in the Software, comply with legislative requirements or add extra program features or functionality;

**“User”** means any person who opens or uses the Software, Software Collateral, Content, Documentation, Support Services or any Update;

## 12.2 Interpretation

In this agreement, headings and boldings are for convenience only and do not affect the interpretation of this agreement and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) where a word or phrase is defined in this agreement, other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
- (e) a reference to any thing (including, but not limited to, any right) includes a part of that thing but nothing in this clause implies that performance of part of an obligation constitutes performance of the obligation;
- (f) a reference to any statute includes all statutes varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (g) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (h) a reference to a party to a document includes that party's successors and permitted assigns;
- (i) no provision of this agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this agreement or that provision;
- (j) a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (k) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind; and
- (l) a reference to "\$" or "dollar" is to Australian currency.

## 12.3 Assignment of Agreement

User shall not assign or otherwise transfer its rights under this Agreement, including the licence granted hereunder, or the Software obtained pursuant to this Agreement without the prior written consent of the Licensor. Any attempt to make such an assignment without the Licensor's consent shall be void and result in immediate termination of this Agreement without notice.

## 12.4 Nonwaiver

The Licensor and User agree that no failure to exercise, and no delay in exercising, any right, power, or privilege hereunder, on the part of either party shall operate as a waiver of any right, power, or

privilege. The Licensor and User further agree that no single or partial exercise of any right, power, or privilege hereunder shall preclude its further exercise.

### **12.5 Severability**

If any part of this Agreement is adjudged by any court of competent jurisdiction to be invalid, void or illegal, that judgment shall not affect or nullify the remainder of this Agreement, and the effect shall be confined to sever the part immediately involved in the matter adjudged.

### **12.6 Governing Law**

The laws of New South Wales govern this Agreement, and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that state.

### **12.7 Changes to this Agreement**

- (a) The Licensor may make changes to this Agreement from time to time by giving notice to the User.
- (b) If the Licensor makes changes to this Agreement under paragraph (a), then:
  - (i) the User must agree to the updated version of this Agreement included with the Update prior to downloading, installing or otherwise using the Update; and
  - (ii) the updated version of the Agreement included with the New Release and agreed to by the User will replace all earlier versions of this Agreement.

### **12.8 Entire Agreement**

User acknowledges and agrees that this Agreement is a complete and exclusive statement of the mutual understanding of the parties and that it supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement and supersedes any previous licence or subscription agreements between the User and the Licensor in relation to the Software.

----- END OF TERMS -----

**Terms of Access and Use Sign Off**

Practice Company Name:	
Name:	
Position:	
Phone:	
Email:	
Signature	
Date:	