

Support Services Terms and Conditions:

1. Services

- (a) HealthInc will provide the Services by telephone from 8:00am to 5:00pm Monday to Friday and between the hours of 8:00am and 12:00 noon on Saturdays for Significant Problems only, Eastern Standard (or Daylight Saving) Time, excluding Public Holidays. 24/7 Service contracts can be provided at additional cost. Hardware Support Contracts will not be available after designated "End of Life" of the demised hardware.
- (b) If the Customer discovers that the software or hardware if applicable fails to substantially conform with the descriptions and specifications, Customer will immediately notify HealthInc. Upon notifying HealthInc of the non conformance Customer will provide in so far as it is able, documentary evidence or example of the non-conformance. Customer will assist HealthInc to determine or locate the source of the non-conformance and provide all access and assistance to rectify.
- (c) During the term of this Agreement (and during the times noted at (a) above), HealthInc will generally respond by telephone to requests for service within thirty (30) minutes from the time each request is received by HealthInc and remedy any Significant Problem within one (1) day of the time each such request is received by HealthInc. All other material functional errors or defects will be remedied in accordance with HealthInc's normal support policies as soon as reasonably possible after the time each such request is received by HealthInc.
- (d) During the term of this Agreement and subject to Customer acceptance, the Customer will receive all HealthInc software module Updates for the Software.

2. Fees

- (a) The Customer must pay the Fees to HealthInc at least 30 days prior to the Commencement Date.
- (b) Additional charges will be payable by the Customer if HealthInc is requested to provide services which are not specified in the Quotation or which, in HealthInc's sole opinion, are found to be unnecessary.
- (c) HealthInc may vary its fees for future terms in its absolute discretion. HealthInc will notify the Customer of updated fees prior to the effective date of any update. If the Customer wishes to renew this Agreement, then it must pay to HealthInc the updated fee for the next term at least 30 days prior to the expiry of the term of this Agreement. **Such payment will be taken as reasonable acceptance of this Agreement for a further term of 12 months.**
- (d) The Fees are exclusive of GST.
- (e) If any GST is imposed on any supply made under this Agreement, then the party making the supply will collect from the recipient, in addition to any consideration due for the supply, an amount equivalent to the GST payable on that supply.
- (f) If the recipient of the supply is required to pay an additional amount for GST pursuant to this clause, then the recipient will pay the increased amount in the same manner and at the same time as the consideration, which may be due under this Agreement.
- (g) If payments are not made by the Customer in strict accordance with the terms set out in this Agreement, interest may be charged to the Customer at the rate of 18 per cent per annum on the overdue amount, calculated daily, compounding monthly. This is a genuine pre estimate of likely damage to be suffered by HealthInc in the event of such a default.
- (h) Notwithstanding any other rights of HealthInc, if the Customer fails to pay to HealthInc any amounts due and owing to HealthInc under this Agreement by the due date for payment, HealthInc may suspend performance of any or all of its obligations under this Agreement upon providing 14 days prior written notice, such notice period is acknowledged by both parties as reasonable.

3. Exclusions

The Customer acknowledges and agrees that the Services provided by

HealthInc do not include the following:

- (a) Rectification of defects or errors caused by modification of the Software not made or expressly authorised by HealthInc;
- (b) use of the Software in combination with equipment other than the system on which it was installed;
- (c) Rectification of operator errors;
- (d) Third Party software updates;
- (e) Rectification of operating system errors, or errors or defects which are subject of a warranty under another agreement;
- (f) Professional services associated with Updates, including but not limited to training and installation services; and
- (g) on site visits by applications specialist.
- (h) Support for Customer's network, internet connections, routers, switches and cabling unless specifically included in the Quotation.
- (i) Data Integrity and Security: The Customer must have adequate technical and procedural systems to ensure data privacy, confidentiality, integrity, authorisation, authentication and computer virus detection and eradication throughout the Term. HealthInc in no way warrants or guarantees data integrity even if HealthInc has been contracted to provide or host remote archival services as part of this Agreement.

4. Customer's other Obligations

The Customer must:

- (a) comply with all of its obligations under the Licence Agreement;
- (b) co-operate fully with HealthInc and HealthInc's personnel in the diagnosis of any alleged non-conformity of the Software, Hardware or Third Party Software;
- (c) make available to HealthInc free of charge all information, facilities and services reasonably required to enable HealthInc to perform the Services effectively;
- (d) provide such telecommunication facilities as are reasonably required by HealthInc for testing and diagnostic purposes at the Customer's sole expense.

5. Warranties

HealthInc warrants that it will perform the Services in an efficient and professional manner and that HealthInc will observe standards generally observed in the industry for similar services.

6. Liability

- (a) The Customer acknowledges and agrees that to the extent permitted by law, HealthInc will not be liable for, and the Customer releases HealthInc in respect of, any claim, loss, cost, damage or expense (**Claim**) arising out of any act or omission of HealthInc or its employees, officers or agents unless that Claim is a direct result of the negligence or material breach of this Agreement by HealthInc.
- (b) The parties agree that any liability for a Claim against HealthInc will be limited to the lesser of:
 - i. the re-supply of the Services in question (if applicable);
 - ii. the cost of the re-supply of the Services in question (if applicable); or
 - iii. the contract price of the original supply of the Services.
- (c) Notwithstanding any of the above, the parties agree that HealthInc will under no circumstances be liable to the Customer for any indirect or consequential loss (including but not limited to loss of income, revenue or business).

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7. Termination

- (a) Healthinc may immediately terminate this Agreement, by giving written notice of termination to Customer, upon the occurrence of the following events:
- i. the Customer fails to pay Healthinc any past-due amount payable under this Agreement (including interest) within ten (10) days of written demand being made for payment by Healthinc;
 - ii. the Customer is in breach of any of its obligations under this Agreement, regardless of the significance of the breach, and fails to rectify such breach to the satisfaction of Healthinc within 14 days of being requested to do so in writing; and
 - iii. the Customer becomes insolvent, has an external administrator appointed, is dissolved or is placed into liquidation or otherwise discontinues all or a significant part of its business operations.
- (b) Neither party will be liable for, nor will either party be considered to be in breach of this Agreement due to any failure to perform its obligations under this Agreement (other than its payment obligations) as a result of a cause or event beyond its control.
- (c) The Customer must immediately on termination:
- i. cease all use of all the Software and Documentation;
 - ii. return to Healthinc the Software (and all copies thereof), all revisions, New Release and Upgrades, the Manual and any other Proprietary Items;
 - iii. return, if applicable, all Hardware for which the Customer has not paid in full;
 - iv. give Healthinc written notice that all copies of the Software and Manual have been permanently deleted from the Designated Equipment and any other equipment containing the Software;
- (d) Any termination of the Agreement will not affect any accrued rights of Healthinc or liabilities of the Customer, nor will it affect any provision of this agreement which is expressly or by implication intended to continue in force after such termination.

8. Confidentiality

- (a) A party will not, without the prior written approval of the other party, disclose the other party's Confidential Information.
- (b) Each party will take all reasonable steps to ensure that its employees, agents and sub-contractors engaged for the purposes of this Agreement, do not make public or disclose the other party's Confidential Information.
- (c) Notwithstanding any other provision of this clause, a party may disclose the terms of this Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.
- (d) Healthinc will endeavour to treat personal information of the Customer and that of its patients in accordance with relevant privacy legislation and according to Healthinc's current privacy policy, which is available at www.healthinc.com.au.
- (e) This clause will survive the termination of this Agreement.

9. Miscellaneous

- (a) Entire agreement: This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the Software. No addition to or modification of any provision of this Agreement will be binding upon the parties unless made by written instrument signed by a duly authorised representative of the party.
- (b) Notices: All notices, consents and other communications under or regarding this Agreement will be in writing and will be deemed to have been received on the earlier of the date of actual receipt, the third business day after being mailed by first class certified air mail or the first business day after being sent by a reputable overnight delivery service. Any notice may be given by facsimile, provided that a signed written original is sent by one of the foregoing methods within twenty-four (24) hours thereafter. Customer's address for notices is stated in the

Quotation. Healthinc's address for notices is PO Box 1218, MONA VALE NSW 1660. Attention: Managing Director.

- (c) Assignment: Neither party will assign, whether in whole or part, the benefit of this Agreement or any rights or obligations hereunder, without the prior written consent of the other party.
- (d) Law: This Agreement will be governed by and construed in accordance with the laws of New South Wales and the parties agree to submit to the non exclusive jurisdiction of that state.
- (e) Waiver: No forbearance, delay or indulgence by a party in enforcing the provisions of this Agreement will prejudice or restrict the rights of that party, nor will any waiver of those rights operate as a waiver of any subsequent breach.
- (f) Severability: Should any part of this agreement be or become invalid, that part will be severed from this Agreement. Such invalidity will not affect the validity of the remaining provisions of the Agreement.
- (g) Dispute resolution: Any dispute or difference arising in connection with this agreement shall be referred to the respective contract managers for each party for consideration.
- (h) If the respective contract managers are unable to resolve the Dispute after five (5) days (or such other period as the parties agree) from the date of referral, the Dispute will be referred to the respective chief executive officers of each party who shall genuinely attempt to resolve the matter by negotiation or mediation.
- (i) If the Dispute is not resolved under the above procedures being not less than forty-five (45) days (or such other period as the parties agree) then the dispute will be submitted to arbitration in accordance with the Commercial Arbitration Act 1984 (NSW). During such arbitration, both parties may be represented by a duly qualified legal practitioner.
- (j) Negotiated Terms: The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that no rules or construction shall apply to the disadvantage of any party on the basis that that party put forward the document or any part thereof.
- (k) Counterparts: This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument. If this Agreement is executed via facsimile, each party hereto will provide the other party with an original executed signature page within five (5) days following the execution of this Agreement.

10. Definitions

Agreement means the Quotation, these terms and conditions, if applicable Healthinc's credit account application form and each other schedule or annexure to these terms and conditions.

Commencement Date means the date of expiry of the express 12-month warranty period set out in the Licence Agreement or the date of acceptance of the attached quotation, whichever is the later.

Confidential information means information that is by its nature confidential such as, among other things, Healthinc's data and the details of Healthinc business and computer operations, proprietary items of Healthinc and manufacturers of Hardware and Third-Party Software, the terms of this Agreement, the identity of the parties hereto or the identity of the products licensed under this Agreement but does not include:

- (a) information already known to the receiving party at the time of disclosure by the other party; or
- (b) information in the public domain other than as a result of disclosure by a party in breach of its obligations of confidentiality under this Agreement.

Customer means the person or entity named as the Customer in the Quotation.

Fees means the fees specified in the Quotation.

GST means:

- (a) the same as in the GST Law;
- (b) any other goods and services tax, or any tax applying to this agreement in a similar way; and
- (c) any additional tax, penalty tax, fine, interest or other charge under a law of such a tax.

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GST Law means the same as 'GST law' in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Hardware means the hardware and ancillary equipment identified in the Quotation pursuant to the Licence Agreement.

Intellectual property rights means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, circuit layouts, business and domain names, inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields (whether registered or otherwise).

Location means the place at which the equipment upon which the Hardware and Software are located and installed as specified in the Quotation pursuant to the Licence Agreement.

Licence Agreement means the agreement between the Customer and HealthInc in respect of the Customer's licence of the Software and certain Third Party Software from HealthInc.

Quotation means the quotation issued by HealthInc to, and accepted by the Customer, attached to these terms and conditions.

Services means the support services to be provided by HealthInc under this Agreement as set out in the Quotation.

"Significant Problem" means that the Software cannot be used by the Customer to perform all material functions as described in the user's manual (if any) or supporting documentation supplied with the Software.

Software means the HealthInc computer program and related documentation as specified in the Quotation pursuant to the Licence Agreement.

'Third Party Software' means ancillary and supporting software which is not the intellectual property of HealthInc.

'Update' means software which has been produced by HealthInc to overcome defects or to enhance the capability of the Software.

Words importing the singular include the plural and vice versa and words importing one gender shall include all other genders. Headings are for ease of reference only and shall not affect the interpretation of this Agreement.