

Licence Agreement Terms and Conditions:

1. Grant of Licence

- (a) In consideration of the strict compliance by the Customer with its obligations under this Agreement, HealthInc agrees to grant to the Customer a non-exclusive, non transferable, (except as agreed herein) and conditional licence to use (but not to sub-licence) the Software and certain Third Party Software on the terms and conditions of this Agreement and any other licence agreements as they apply to the Third Party Software.
- (b) HealthInc may but is not required to provide Updates or New Releases in respect of the Software.
- (c) HealthInc may, in its absolute discretion, consider a request from the Customer to sub-licence the Software to a third party. Any sub- licensee must sign a current version of this Agreement and any other agreement or document reasonably requested by HealthInc.

2. Delivery, Installation, Acceptance

Delivery: HealthInc will use its reasonable endeavours to deliver the Software to the Location on or before the Delivery Date or on such other date mutually agreed between the parties.

Installation: HealthInc will install the Software at the Location on the Designated Equipment on a date mutually agreed by the parties at the time the Quotation (and this Agreement) is executed and returned to HealthInc. The Customer must:

- (a) at the Customer's own expense, prepare the Location and Designated Equipment for installation in accordance with HealthInc's specifications (which includes without limitation, ensuring the Designated Equipment and the Location meet the Specified Configuration);
- (b) provide HealthInc with access to the Location, the Designated Equipment and any other equipment and facilities prior to and during the installation of the Software;
- (c) Provide HealthInc with at least 7 days' notice if the Customer wishes to change the agreed date for installation.

If the Customer fails to give the above notice or the Location or the Designated Equipment is not in the absolute opinion of HealthInc prepared for installation of the Software by the agreed date, the Customer may be liable for additional reasonable charges associated with rescheduling installation.

Use: Upon installation of the Software, the Customer will be responsible for ensuring that the Software is used in accordance with the Specifications. The Customer must only use the Software on the Designated Equipment unless HealthInc's prior written consent is obtained (which may be withheld in HealthInc's sole discretion).

Acceptance: Customer will be deemed to have accepted the Software and Hardware on the Acceptance Date.

Manual of specifications: HealthInc will deliver a copy of the Manual to the Customer on or before the Delivery Date. The Customer must not Copy the Manual except where necessary to enable proper use of the Software pursuant to this Agreement.

Training: HealthInc will provide the training (if any) which is set out in the Quotation.

Additional Services: HealthInc may agree to provide additional services which will be subject to a separate service level agreement.

3. Fee and Payment

Licence Fee: In consideration of the Licence, the Customer must pay the Licence Fee to HealthInc in accordance with the Quotation and as invoiced from time to time.

Fees advised in the Quotation are in Australian Dollars, based on foreign exchange rates known at the time of preparation of the Quotation. The Customer may be liable for any variations in the Fees from date of Quotation to the date of installation of the Software which may occur as a result of variations in foreign exchange rates.

Subject to foreign exchange rate variations, Fees advised in the Quotation will remain valid for 30 days. If an installation of the Software does not occur within

90 days from the date of the Quotation, HealthInc reserves its rights to revise the Quotation prior to the installation.

Involvement of a Financier: If the Customer engages a credit provider to make payments on its behalf, the Customer must provide HealthInc in writing, upon accepting the Quotation, with the details of the financier and an authority for HealthInc to obtain information from the financier of the Customer's credit approval and to advise the financier of the Customer's payment obligations to HealthInc.

Interest: If payments are not made by the Customer in strict accordance with the terms set out in this Agreement, interest will be payable by 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.

Breach of payment obligations: Notwithstanding clause 7(a), 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 without further notice and the whole of the outstanding balance will become immediately due and payable by the Customer together with all legal costs and expenses associated with recovery of the outstanding balance on an indemnity basis.

GST:

- (a) The Licence Fee is exclusive of GST.
- (b) 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.
- (c) 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.

4. Title, Security and Risk

Ownership: HealthInc retains ownership of the Software whether in its original form or as modified by the Customer during the term of the Licence. All Intellectual Property Rights in the Software remain vested in HealthInc.

Title to all Hardware will pass to the Customer on payment in full of all amounts owing to HealthInc.

Copies of and Modifications to the Software: the Customer must not without the prior written consent of HealthInc, make Copies of or modify the Software or the Hardware in any way whatsoever.

Reverse engineering: The Customer must not reverse assemble or reverse compile the Software or Hardware or any part of the Software or Hardware.

Security: The Customer is responsible for protecting the Software and the Manual at all times from unauthorised access, use or damage.

Risk: Risk of loss or damage to the Software, the Manual and the Hardware if applicable will pass to the Customer upon delivery of the Software, the Manual or Hardware if applicable at the Location.

5. Customer's Other Obligations

Procurement of Equipment and Other Items: The Customer must, at its expense, procure, maintain and update the Designated Equipment in accordance with the Specified Configuration and HealthInc's reasonable instructions. The Customer must, at its own expense, enter into and maintain appropriate maintenance agreements in respect of the Designated Equipment during the term of this Agreement.

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.

Cooperation and Access to Facilities, Data and Employees: The Customer must do all things reasonably necessary to enable HealthInc to provide installation, training and to comply with HealthInc's other obligations under this Agreement.

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Use of Software: the Software must only be used or accessed in strict accordance with the Manual, any direction or guidance provided by HealthInc at any time.

Use of Trained Personnel: The Customer will ensure that operators of the Software and any Hardware are fully trained in the use of same and comply with this Agreement at all times.

6. Warranties and Limitation of HealthInc's Liability

HealthInc's warranties:

- (a) Subject to the remainder of this clause 6, HealthInc warrants that the Software will perform substantially in accordance with the Specifications and will be free from material defects for a period of 12 months from the Acceptance Date.
- (b) HealthInc will only be liable to rectify a defect in the Software if the Software is and has been used or accessed in strict compliance with guidelines or specifications provided by HealthInc in the Manual and if none are provided, then use under normal working conditions with the Specified Configuration and in accordance with generally accepted practices.
- (c) The warranty in this clause 6 does not extend to any defects arising out of or in connection with the misuse, neglect, or wilful destruction of the Software nor does it extend to any damage caused to the Software as a result of continued use of the Software after a defect has been detected or ought to have been detected.
- (d) If, within 12 months from the Acceptance Date, the Customer notifies HealthInc in writing that the Software is not performing substantially in accordance with the Specifications and provides sufficient detail of the alleged defects to enable HealthInc to investigate the allegation, HealthInc will at its own expense, examine the Software as soon as practicable.
- (e) If HealthInc determines in its absolute discretion that a defect exists which should be covered by the warranty in this clause 6, then it will use its reasonable endeavours to repair or replace the Software in a timely manner.
- (f) HealthInc warrants that it has the right to grant the licence to the Customer.
- (g) To the extent permitted by law, HealthInc does not provide any warranties in respect of the Software or Hardware other than the warranties provided in this Agreement. However, it will use reasonable endeavours to pass on any warranties provided by third party manufacturers of components of the Software and/or Hardware that can be passed on.

Limitation of 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 goods or services in question (if applicable);
 - ii. the cost of the re-supply of the goods or services in question (if applicable); or
 - iii. the contract price of the original supply of the goods or 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).

Customer's Warranties: The Customer warrants that it is not executing this Agreement as a result of or by reason of or in reliance upon any promise, representation, statement or information of any kind whatever given or offered by or on behalf of HealthInc whether in answer to an enquiry or otherwise and prior to the placement of any order, it has made his own independent enquiries and satisfied himself as to the quality and fitness for purpose of the Software, Documentation and Hardware.

Other acknowledgements: Customer acknowledges and agrees that HealthInc is not engaged in the practice of medicine, and is not determining appropriate medical use of any of the products and services that are, or may be, offered

pursuant to this Agreement. Medical treatment and diagnostic decisions, including those arising from the analysis of images produced by or in connection with the Software or hardware, are the responsibility of Customer and the Customer's employees, agents and professional healthcare providers.

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;
- (g) 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) A party will not be in breach of this clause in circumstances where it is legally compelled to disclose the other party's confidential information.
- (c) Each party will take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this agreement, do not make public or disclose the other party's confidential information.
- (d) 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.
- (e) This clause will survive the termination of this agreement.
- (f) HealthInc is committed to protecting the privacy and confidentiality of its customers and their customers personal information. A copy of our privacy policy is posted on our "website". Private information may be disclosed as required by law (Privacy Act 1998 as amended)

9. General

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.

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

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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.

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.

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.

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.

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.

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.

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.

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.

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.

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

'Acceptance Date' means the first day of clinical use of the Software or Hardware but in any event, means no later than 7 days after actual delivery and installation of the Software and Hardware by Healthinc.

'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.

'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.

'Copy' means any paper, disk, tape, film, memory device or other material or object on or in which any words, object code, source code or other symbols are written, recorded or encoded, whether permanent or transitory.

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

'Delivery Date' means the planned date for delivery as 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.

'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.

'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).

'Licence' means the licence of Software granted pursuant to this Agreement.

'Licence fee' means the fee stated in the Quotation and invoiced by Healthinc from time to time which will include an up front licence payment (or payments) and ongoing annual fees depending on usage.

'Location' means the place at which the Designated Equipment is located as specified in the Quotation.

'Manual' means the document which forms part of the Software and which contains technical information relating to the Software.

'New release' means software which has been provided primarily to implement an extension, alteration, improvement or additional functionality to the software.

'Proprietary Items' means, collectively, the Software and Documentation, the object code and the source code for the Software, the visual expressions, screen formats, report formats and other design features of the Software, all ideas, methods, algorithms, revisions, updates, releases, refinements, improvements and enhancements of the Software or Documentation, all derivative works (as such term is used in Australian copyright laws) based upon any of the foregoing and all copies of the foregoing.

'Quotation' means the quotation issued by Healthinc to the Customer, attached to these terms and conditions.

'Schedule' means the schedule to this Agreement.

'Software' means the Healthinc computer program and related documentation as specified in the Quotation.

'Specifications' means the specifications of the Software provided by Healthinc to the Customer in writing or electronically.

'Specified Configuration' means the computer hardware, operating systems software and other third-party software, telecommunications, networks, peripherals and other items and services which comprise the configuration specified by Healthinc for the operation of the Software.

'Term' means the term of this Agreement, commencing on date this Agreement is signed by the Customer and terminating on the earlier of:

- (a) 12 months from the Acceptance Date; or
- (b) In accordance with **clause 7** of this Agreement.

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

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

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