

MASTER SERVICE AGREEMENT

1. Agreement

This is an agreement made between Magentus Practice Management Pty Ltd ABN 25 086 370 130 (**we, us** or **our**) and the person or entity that conducts a medical practice or medical administration office (the **Practice**):

- (a) listed in the Quotation; and/or
- (b) subscribed to use, or trialling the use of, the Software.

2. Licence to use the Software

On and from the Commencement Date, we grant to the Practice a non-exclusive, non-transferable licence (or sub-licence, as applicable) (**Software Licence**) to access and use the Software:

- (a) until the end of the Term; and
- (b) otherwise, in accordance with, and subject to the terms set out in, this Agreement.

3. Term and acceptance

This Agreement commences at the earlier of:

- (a) the time when the Practice executes the Quotation;
- (b) the time when the Practice otherwise indicates its acceptance of the terms of this Agreement in writing; and
- (c) the Commencement Date,

and continues until the date it is terminated in accordance with this Agreement (**Term**).

4. Practice obligations

4.1 Users

- (a) The Practice may authorise its Staff to access the Software by following the User enrolment process in the Software to create User Credentials for each authorised member of its Staff.
- (b) The Practice must ensure that only its authorised Staff members:
 - (i) enrol to become Users;
 - (ii) have User Credentials created for them; or
 - (iii) use or otherwise have access to the Software,

and it is the Practice's responsibility to disable access to the Software for any person that ceases to be a Staff

member or who is no longer authorised to access the Software.

- (c) The Practice is responsible for:
 - (i) allocating the appropriate level of Software access to each User; and
 - (ii) how the Users use the Software and the Practice Material.
- (d) The Practice must ensure that each User complies with the Practice's obligations under this Agreement (other than any obligation to pay fees to us) as if that User were the Practice.
- (e) The Practice is liable to us for any breach of this Agreement by a User, as if the User were the Practice in relation to the breach.

4.2 Practice Material

- (a) The Practice is solely responsible for the accuracy, legality and quality of all Practice Material used with the Software.
- (b) If the Practice does not comply with its obligations under clause 4.2(a), then we may (in our absolute discretion) suspend the Software Licence until the Practice removes that Practice Material from the Practice's Software account.

4.3 Use of the Software

- (a) The Practice must:
 - (i) use the Software solely for the internal business purposes of the Practice; and
 - (ii) comply with all applicable laws (and any Acceptable Use Policy) in connection with the Practice's use of the Software.
- (b) The Practice must not:
 - (i) use the Software for the storage of Data unrelated to the Practice;
 - (ii) sell, resell, license, sublicense, distribute, make available, rent or lease the Software;
 - (iii) use the Software to store or transmit code, files, scripts,

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- agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses;
- (iv) interfere with or disrupt the integrity or performance of the Software;
- (v) attempt to gain unauthorised access to the Software or its related systems or networks; or
- (vi) copy, reproduce, merge, modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Software, either directly or indirectly, or allow or procure any third party to do so.

4.4 Technology solutions

The Practice must provide and maintain the hardware, software, operating systems, internet access, firewalls and virus protection software and other services needed to access and support the Software in a manner that meets the Minimum Specifications.

4.5 Practice to provide security

- (a) While we will be responsible for managing and maintaining the security of any of our servers and/or systems hosting the Software, the Practice is responsible for maintaining the security of:
 - (i) the Practice's (and each User's) User Credentials;
 - (ii) any devices and/or internet connections used to access the Software; and
 - (iii) where the PMS is Genie, any servers or hardware that the Practice uses to run the Software.
- (b) The Practice must comply with good industry practice in relation to the security of the Practice's (and each User's) account within the Software and all devices and connections used to access the Software.
- (c) We advise and encourage the Practice to enable multifactor

authentication and other security features, to the extent they are made available for the Software or the devices used to access the Software (and we advise the Practice to encourage each of its Users to do the same).

- (d) The Practice agrees to immediately notify us of any unauthorised use of the Practice's (or any User's) account or unauthorised access to the Software.

5. Access to the Software

5.1 Set up, migration and implementation

- (a) Subject to clause 5.1(d), we will, using reasonable skill and care:
 - (i) set up the Software database for the Practice in accordance with the relevant Quotation; and
 - (ii) if specified in a Quotation, provide reasonable technical assistance to the Practice to enable the Practice to migrate the Practice's existing structured electronic Data to the Software,(together, the **Set Up Services**).
- (b) The Practice is solely responsible for the accuracy, quality and completeness of any Data that is to be migrated to the Software as part of the Set Up Services.
- (c) If any of the Set Up Services are performed by a third party or one or more of the certified advisers listed on our website, then the Practice acknowledges and agrees that:
 - (i) we are not responsible or liable for the services performed by those third parties;
 - (ii) any services provided by those third parties may be governed by and subject to their own terms and conditions and the Practice may need to enter into an agreement directly with the relevant third party in relation to any such services; and

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- (iii) the Practice should conduct its own due diligence in relation to those third parties before engaging their services.
- (d) To the maximum extent permitted by law, the Practice agrees that we are not responsible for (or liable to the Practice or any User in respect of) any loss suffered by the Practice, its Users or any third party however caused (including through negligence) arising from:
 - (i) any Data migration, or any Data transfers (whether historical or otherwise) from or to another practice management software used (or that is intended to be used) by the Practice, to or from the Software; or
 - (ii) any activity associated with that migration or transfer,

where we perform that migration or transfer in accordance with the Practice's request and/or instructions.

5.2 Security of Practice Material

We will adhere to good industry practice in relation to data security and the prevention of data loss in connection with the Software.

5.3 Maintenance

We may temporarily suspend the Software for the purpose of planned maintenance or any upgrade notified in advance, or without notice in the event that emergency maintenance is required.

5.4 Availability

The Practice acknowledges and agrees that:

- (a) some or all of the Software will not be accessible:
 - (i) at times during which the Practice is unable to connect to the internet;
 - (ii) during planned downtime (of which we will give notice to the Practice via the Software or otherwise) or when emergency maintenance is required;

- (b) accessing the Software carries inherent security risks;
- (c) response and performance times for the Software may vary; and
- (d) it is responsible for having a contingency plan for any unexpected interruptions to the operation of, or access to the Software, emergencies or incidents.

6. Support Services and training

- (a) Subject to clauses 6(e) and 6(f), we will use reasonable endeavours to provide remote support services (**Support Services**) for the Software in the form of:
 - (i) reasonable technical support (by live chat and other communication channels notified to the Practice) relating to the use of the Software; and
 - (ii) documentation and/or other material published by us and provided to the Practice and/or Users, to help Users understand how to use the Software.
- (b) As part of the Support Services, we will use reasonable endeavours to respond to questions notified to us by the Practice within 1 to 3 Business Days, depending on the nature of the matter requiring the Support Services.
- (c) The Practice must use the Support Services in a reasonable manner and within reasonable limits.
- (d) In addition to the Support Services, we may provide training (**Training Services**) to the Practice and its Users on the use of the Software, at a cost, location and time agreed by the parties in writing.
- (e) The Practice acknowledges and agrees that we have no obligation to provide the Practice with Support Services for (or in relation to) Excluded Support Items.
- (f) If we reasonably determine that the Practice's usage of the Support Services does not comply with

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clause 6(c), and the Practice fails to reduce its use of the Support Services after we have provided notice to the Practice, then we may at our discretion and by further notice (**Relevant Notice**) to the Practice, charge reasonable fees for any additional Support Services provided to the Practice or any of its Users after the date of the Relevant Notice at our then current rates (as set out in the Relevant Notice).

7. Fees

7.1 Software fees

- (a) The fees for the Practice's use of the Software (**Software Fees**) are specified in each Quotation, subject to any adjustments made in accordance with clause 7.5.
- (b) If the Practice agrees to a Quotation, then the Practice warrants that the information relating to the Practice in that Quotation is true and correct, and it agrees to notify us if any of that information changes.
- (c) The Software Fees:
 - (i) may include both initial and/or up-front costs and periodic recurring charges;
 - (ii) are based on:
 - A. the number and type of PMS licenses provided to Users on the date of the relevant Quotation; and
 - B. the number and type of Add Ons the Practice chooses to use; and
 - (iii) are payable on the dates (and at the frequency) set out in the relevant Quotation.

7.2 Set Up Services fees

The fees for any Set Up Services are specified in the relevant Quotation.

7.3 Training Services fees

- (a) The fees for any Training Services are specified in the relevant Quotation or will be agreed by the

parties in accordance with clause 6(d).

- (b) If the Practice re-schedules or cancels any training that we have agreed to provide, less than 2 Business Days prior to the scheduled date for that training, then the Practice agrees to reimburse us for any reasonable expenses incurred by us as a result of that rescheduling or cancellation.

7.4 Invoicing and payment

Subject to receipt of a Tax Invoice, the Practice will pay the invoiced amounts within 14 days of the date of the relevant Tax Invoice, without set-off or deduction, by any payment method we reasonably require.

7.5 Fee adjustment

- (a) Subject to rest of this clause 7.5, we may from time to time and by providing at least 30 days' notice to the Practice (**Fee Increase Notice**), increase the fees (including Software Fees) payable under this Agreement at our sole discretion to reflect the costs to us of providing the Software, product development and enhancements, and other commercial considerations.
- (b) At any time before the date that the fee increases contemplated by a Fee Increase Notice take effect (being at least 30 days after the date of the Fee Increase Notice), the Practice may give us written notice objecting to the relevant fee increases (**Objection Notice**).
- (c) If, within the 30 day period after we receive an Objection Notice from the Practice (**Objection Resolution Period**), we have not alleviated the concerns raised by the Practice in the Objection Notice, then before the end of the Objection Resolution Period, the Practice may provide us with a further written notice (**Transition Out Notice**) confirming that the Practice will cease using the Software (and this Agreement will terminate) on the date (**Termination Date**) nominated by the Practice in the Transition Out Notice (being no

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- more than 6 months' after the date of the relevant Fee Increase Notice).
- (d) If we have not alleviated the concerns raised by the Practice in the Objection Notice by the end of the Objection Resolution Period but the Practice has not provided us with a Transition Out Notice during the Objection Resolution Period, then the fee increases contemplated by the relevant Fee Increase Notice will apply from the date specified in the Fee Increase Notice and the Practice will be required to promptly pay us any difference that it has failed to pay during the Objection Resolution Period.
- (e) If the Practice provides us with a Transition Out Notice during the Objection Resolution Period, then during the period starting on the date of the relevant Fee Increase Notice and ending on the Termination Date (**Transition Out Period**) the fees applying prior to the Fee Increase Notice will apply to the Practice (and if the increased amounts have already been paid by the Practice, we will refund the difference to the Practice promptly following the end of the Transition Out Period).

7.6 GST

- (a) In this Agreement:
- (i) the expressions **Consideration, GST, Input Tax Credit, Recipient, Supply, Tax Invoice** and **Taxable Supply** have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)*; and
- (ii) **Supplier** means any party treated by the GST Act as making a Supply under this Agreement.
- (b) Unless otherwise expressly stated, all fees, prices or other sums payable or Consideration to be provided under or in connection with this Agreement are exclusive of GST.
- (c) If GST is imposed on any Supply made under or in connection with this Agreement, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.
- (d) Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with this Agreement.
- (e) If this Agreement requires a party (the **First Party**) to pay for, reimburse, set off or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by the other party (the **Other Party**), the amount required to be paid, reimbursed, set off or contributed by the First Party will be the sum of:
- (i) the amount of the Reimbursable Expense net of Input Tax Credits (if any) to which the Other Party is entitled in respect of the Reimbursable Expense (Net Amount); and
- (ii) if the Other Party's recovery from the First Party is a Taxable Supply, any GST payable in respect of that Supply,
- such that after the Other Party meets the GST liability, it retains the Net Amount.

8. Ownership and Intellectual Property

8.1 Our Material

- (a) We warrant that we own or have a right to use all Intellectual Property Rights in the Software and to provide the Software Licence on the terms of this Agreement.
- (b) The Practice acknowledges and agrees that:

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- (i) the Software, User Analytics and all Intellectual Property Rights in the Software, User Analytics and our products and services (**Our Material**), are owned by us (or licensed to us);
 - (ii) all Intellectual Property Rights created by or on behalf of us in the course of this Agreement vest in us on creation; and
 - (iii) except as expressly provided for in this Agreement, the Practice does not have any Intellectual Property Rights or other proprietary rights in Our Material.
- (c) If the Practice becomes aware of any suspected, alleged or actual infringement of the Intellectual Property Rights in Our Material, the Practice agrees to:
- (i) promptly notify us; and
 - (ii) provide all assistance reasonably requested by us in relation to that suspected, alleged or actual infringement.

8.2 Claims in relation to the Software

- (a) If the Practice becomes aware of a matter that may give rise to a Claim against us under this Agreement in connection with any infringement or alleged infringement of a third party's Intellectual Property Rights (**Practice Third Party Claim**) the Practice must:
- (i) notify us of that Practice Third Party Claim as soon as reasonably possible; and
 - (ii) permit us to have sole control of the conduct of the Practice Third Party Claim and provide all reasonable assistance to us in the conduct of that Practice Third Party Claim.
- (b) If any Claim that the Software infringes a third party's Intellectual Property Rights (including a Practice Third Party Claim) is proven or

otherwise accepted by us, then we may:

- (i) modify the Software so that it no longer infringes;
- (ii) obtain the right for the Practice to continue to use the affected part of the Software; or
- (iii) suspend or terminate the Practice's use of the Software or the affected parts if we believe (acting reasonably) that the above options are not commercially reasonable.

8.3 Practice Material

- (a) The Practice warrants that:
- (i) it owns or has a right to use all Practice Data and all Intellectual Property Rights in the Practice Data (**Practice Material**);
 - (ii) it has obtained all necessary consents and authorisations required, including from all Users and patients of the Practice, in order to lawfully provide and licence the Practice Material (including any Personal Information, Sensitive Information or Health Information contained therein) to us and for us and our Staff to Use the Practice Material in accordance with this Agreement; and
 - (iii) such consents and authorisations were obtained in accordance with, and comply with, applicable Privacy Laws and Privacy Principles (and the Practice will provide reasonable evidence of compliance to us on request).
- (b) We acknowledge and agree that, except as expressly provided for in this Agreement, we do not have any Intellectual Property Rights or other proprietary rights in the Practice Material.

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- (c) If we become aware of any suspected, alleged or actual infringement of the Intellectual Property Rights in the Practice Material, we will:
 - (i) promptly notify the Practice; and
 - (ii) provide all assistance reasonably requested by the Practice in relation to that suspected, alleged or actual infringement.

8.4 Licence to Use Practice Material and De-Identified Data

- (a) The Practice grants to us and our Staff a non-exclusive, irrevocable, perpetual, royalty free, worldwide licence (or sub-licence, as applicable) to:
 - (i) Use the Practice Material during the Term for the purpose of performing our obligations under this Agreement (including to provide the Software Licence, Set Up Services, Training Services, and Support Services), and for all other purposes set out in the Privacy Policy;
 - (ii) Use (and the Practice appoints us as agent to Use) Personal Information of patients and Practitioners from the Practice Data to create De-Identified Data; and
 - (iii) Use De-Identified Data (both during and after the Term) for the Approved Purposes.
- (b) The Practice:
 - (i) acknowledges and agrees that use of the Software (for all types of PMS) may involve the transfer, storage and processing of Practice Material on our Australian based cloud infrastructure and platforms; and
 - (ii) without limiting the rights granted under clause 8.4(a), consents to the Use of Practice

Material on our Australian based cloud infrastructure and platforms for the Approved Purposes and to create De-Identified Data.

9. Privacy and Data Breaches

9.1 Privacy

- (a) Each party acknowledges that it has obligations under, and must comply with, the Privacy Laws (as applicable) to ensure that its collection, use disclosure and storage of Personal Information in connection with this Agreement complies with applicable Privacy Laws, any associated privacy principles (**Privacy Principles**) and agrees to comply with all Privacy Laws, Privacy Principles and the Privacy Policy.
- (b) The Practice acknowledges and agrees that our Use of any Personal Information contained within the Practice Materials to create De-Identified Data is directly related to the primary purpose of processing that Personal Information.

9.2 Data Breach

- (a) If, in respect of Personal Information forming part of the Practice Material, a party (**First Party**) becomes aware or has reason to suspect that:
 - (i) there has been any unauthorised access to, or unauthorised disclosure of, that Personal Information;
 - (ii) there has been any other breach of the First Party's obligations in relation to that Personal Information; or
 - (iii) any such Personal Information has been lost in circumstances where unauthorised access to, or unauthorised disclosure of, that Personal Information may occur,(each a **Data Breach**), then the First Party must promptly notify the other party of that Data Breach.
- (b) Each party:

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- (i) must cooperate with the other party to investigate each Data Breach, including to determine if it is likely to result in serious harm to any person;
 - (ii) must give to the other party (or a third party nominated by the other party) all information reasonably requested by the other party or that nominated third party (as applicable) for the purpose of investigating the Data Breach;
 - (iii) must comply with any reasonable directions given by the other party for the purposes of remedying or mitigating the effects of the Data Breach; and
 - (iv) agrees that the party who has the closest relationship with the individuals affected (or who may be affected) by the Data Breach will be responsible for any notifications required to be made by the parties under applicable Privacy Laws.
- (c) Except as required by law, each party must cooperate reasonably with the other party to ensure that it does not disclose to any third party (including any government agency) the existence of, or circumstances surrounding, any Data Breach without the other party's prior approval (not to be unreasonably withheld or delayed).

10. Confidentiality

Each party must not use the other party's Confidential Information (or disclose that Confidential Information to any person), except:

- (a) to its Staff, professional advisors and auditors on a 'need to know' basis, provided those persons first agree to observe the confidentiality of the Confidential Information in a manner consistent with this Agreement;
- (b) with the other party's prior consent;
- (c) to the extent required by law or any stock exchange;
- (d) if the Confidential Information is in the public domain, other than as a result of a breach of this Agreement; and
- (e) if the Confidential Information is in the form of Practice Materials, we may use it to create De-Identified Data in accordance with clause 8.4(a)(ii).

11. Termination

11.1 Termination for cause

Either party may terminate this Agreement with immediate effect by notice to the other party, if the other party has breached a material term of this Agreement (and where the breach is capable of being remedied, has failed to remedy the breach within 14 days of being requested to do so by notice).

11.2 Termination without cause

Either party may terminate this Agreement for any reason by providing 30 days' notice to the other party.

11.3 Fee adjustment

The Practice may terminate this Agreement in accordance with clause 7.5 as a result of an increase to the fees payable under this Agreement.

11.4 Amendments

The Practice may terminate this Agreement in accordance with clause 15.1 as a result of a proposed amendment to the terms of this Agreement.

11.5 Effect of termination

- (a) Subject to clauses 11.5(c) and 11.6, on and from the date of termination of this Agreement, the Software Licence ends and the Practice (and each User) must cease using the Software.
- (b) Any Software Fees (or other fees or expenses) paid by the Practice in advance for the period after the date of termination of this Agreement:
 - (i) will be refunded in full if this Agreement is terminated by us under clause 11.2 or by the Practice under clause 11.1; and

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- (ii) in all other cases will be retained by us.
- (c) Termination of this Agreement does not affect the operation of clauses 8 (Ownership and Intellectual Property), 9 (Privacy and Data Breaches), 10 (Confidentiality), 11 (Termination), 12 (Clinical and business considerations), 14 (Limitation of liability), 15 (General), 18 (Definitions) or any rights or remedies already accrued to either party under, or in respect of any breach of, this Agreement.

11.6 Return of Practice Data

- (a) To the extent that we store any Practice Data for the Practice, we will retain that Practice Data for a minimum of 90 days after the expiry or termination of this Agreement (**Retention Period**).
- (b) On the written request of the Practice prior to the expiry of the Retention Period, we will make that Practice Data available for export to the Practice in a format reasonably determined by us.
- (c) After the expiry of the Retention Period, we may (or where required by law, will) take reasonable steps to delete the Practice Data from our systems within a reasonable timeframe and the Practice will not be able to recover it after that.
- (d) This clause 11.6 does not limit the rights granted to us under clause 8.4(a) to use and retain De-Identified Data after the end of the Term. The Practice also acknowledges and agrees that the User Analytics forms part of Our Material and will not be deleted (and may continue to be used by us) after the end of the Term.

11.7 Suspension

Without limiting any other rights or remedies we may have under this Agreement, if the Practice commits a material breach of this Agreement that is capable of being remedied, we may suspend access to the Software and/or provision of the Support Services until the Practice remedies that breach.

12. Clinical and business considerations

- (a) The Practice acknowledges that the Software is designed as a tool to assist in the management of information relevant to certain types of medical practice in Australia and it is not intended to be used, and must not be:
 - (i) used as a diagnostic or advisory service; or
 - (ii) used or accessed from outside of Australia or in relation to international health sectors (unless approved by us in advance).
- (b) We do not warrant that the Practice or its Users will achieve any clinical results using the Software. The Practice acknowledges and agrees that if there are errors in the Practice Data or the Third Party Data, then there may be errors in the results produced by the use of the Software.
- (c) The Practice and Users are solely responsible for:
 - (i) determining whether the Software or information generated by it is accurate, current, complete and sufficient for the purposes of the Practice and Users; and
 - (ii) all clinical and business decisions in the operation their practice.
- (d) The Practice must ensure that clinical components of the Software are used only by qualified medical practitioners as an aid in the clinical management of patients. The Software does not negate, or substitute for, the need for the Practice and its Staff to exercise medical skill and judgement, and/or the skill and judgement of a reasonable person performing in the same role as the relevant Staff member.

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13. Third party applications and Third Party Data

13.1 Third party applications

- (a) The Software may include integrations or interfaces, including Add Ons, which enable Users to access third party applications, services, sites and/or content (**Third Party Applications**). The Practice acknowledges that Third Party Applications may:
 - (i) be delivered as a software as a service model;
 - (ii) only be available for installation when the PMS can connect to cloud based infrastructure and platforms; and
 - (iii) be updated at any time.
- (b) The Software may include or provide the Practice with access to Third Party Data. The Practice acknowledges and agrees that we do not create, independently review or validate any Third Party Data.
- (c) The Practice's use of the Third Party Applications and/or Third Party Data may be governed by and subject to additional terms and conditions and, if appropriate we will make any such additional terms and conditions available on our website, and/or the Practice may need to enter into a licence agreement directly with the relevant third party.
- (d) The Practice acknowledges and agrees that, to the maximum extent permitted by law, we are not responsible or liable to the Practice or any person for any Claim or Loss (including Consequential Loss) arising from or in connection with:
 - (i) the availability, behaviour, features, or content of any Third Party Application;
 - (ii) any transaction the Practice may enter into with the provider of any Third Party Application or Third Party Data;

- (iii) the compatibility or continuing compatibility of any Third Party Application with the Software;
 - (iv) errors or omissions in, or performance of, the Third Party Applications or Third Party Data; or
 - (v) the Practice's use of the Third Party Applications or Third Party Data.
- (e) Where the Practice has subscribed or otherwise agreed to use a Third Party Application, the Practice:
- (i) grants us the right to disclose Practice Data to the provider of that Third Party Application as necessary to facilitate the Practice's use of or enablement of the relevant Third Party Application;
 - (ii) agrees that its use of the Third Party Application may involve the processing or storage or other Use of Practice Data in (or transfer of Practice Data to) a cloud based platform managed by the relevant third party; and
 - (iii) clause 13.1(d) applies notwithstanding that we may have installed the Third Party Application for the Practice.

13.2 Integrations

- (a) The Practice acknowledges and agrees that we may use an application programming interface platform and other integration methods to connect with, share, transfer and transmit Practice Data (including eligible claims on behalf of the Practice) and information with relevant Third Party Applications, including via a Provider Digital Access (**PRODA**) account, to facilitate Government Online Health Provider Services for the Practice.
- (b) The Practice must comply with the PRODA terms and conditions at <https://proda.humanservices.gov.au/pia/pages/public/registration/account/createAccount.jsf> when accessing

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and using Government Online Health Provider Services for the Practice.

- (c) The Practice acknowledges and agrees that we do not provide, control or manage the Government Online Health Provider Services and that (to the maximum extent permitted by law), neither we nor our Staff will be liable to the Practice for any Loss (including Consequential Loss) arising from, or in connection with, any access or use by the Practice or any User of the Government Online Health Provider Services.

13.3 Electronic Messages

- (a) The Software may include functionality that enables the Practice to send SMS, MMS or instant messages (together, **Short Messages**) to third parties.
- (b) The Practice acknowledges that any Short Messages that are sent from or using the Software may not be encrypted. The Practice:
- (i) must not, and it must ensure that its Users do not, include or send any Personal Information in any Short Messages; and
 - (ii) warrants that no Personal Information will be included in any Short Messages sent from or using the Software.
- (c) In each case, where a Short Message is sent from or using the Software, that Short Message is sent on the Practice's behalf, and we act on the Practice's instruction in sending it. The Practice is solely responsible for:
- (i) all Short Messages sent via the Software, including the content within those Short Messages;
 - (ii) ensuring that its use of Short Messages complies with all applicable laws (including Privacy Laws); and
 - (iii) ensuring that Short Messages are only sent to people who

have consented to receive them.

- (d) We reserve the right to limit or restrict the sending of Short Messages to recipients in certain locations outside of Australia from time to time.

13.4 Acknowledgement

The Practice acknowledges that electronic transmissions may be insecure, can be corrupted or intercepted, may not be delivered and may contain viruses, and that we are not responsible for any Loss suffered in connection with the use, access or transmission of Data to or by Third Party Applications.

13.5 Referrals

We may receive (or pay) a fee from (or to) some third parties that we work with to provide Add Ons or other integrations with our products.

14. Limitation of liability

14.1 Consequential Loss

To the maximum extent permitted by law, unless expressly stated otherwise in this Agreement neither party is liable to the other for any Consequential Loss.

14.2 Limitation of our liability

- (a) Except as set out in clause 14.3 and to the maximum extent permitted by law, our maximum aggregate liability for all Claims arising from or in connection with this Agreement, is limited to the total amount of the fees paid by the Practice under this Agreement in the 12 months preceding the event giving rise to the Claim.
- (b) To the maximum extent permitted by law, the Practice's maximum aggregate liability for all Claims arising from or in connection with this Agreement is limited to the total amount of the fees paid by the Practice under this Agreement in the 12 months preceding the event giving rise to the Claim.

14.3 Implied terms and consumer guarantees

- (a) Any term, guarantee, condition, representation, undertaking, warranty or other right which would be implied in or otherwise required

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in connection with this Agreement by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.

- (b) Despite the other provisions of this clause 14 and anything else in this Agreement, we do not exclude, restrict or modify any warranty, guarantee, condition, representation, undertaking or other right under any law (including the Competition and Consumer Act 2010 (Cth)) where to do so would contravene that law or cause any part of this Agreement to be void (**Non-excludable Condition**).
- (c) To the maximum extent permitted by law, our liability for a breach of any Non-excludable Condition is limited at our option to, in respect of all services supplied by us in connection with this Agreement, supplying those services again or paying the cost of having those services supplied again.

14.4 Reduction in liability

- (a) Our liability for any Claim made or Loss suffered or incurred by the Practice (or any User) under, or in connection with, this Agreement is reduced to the extent that the Loss was caused by or arises from:
 - (i) a breach of this Agreement by the Practice or its Users;
 - (ii) a negligent act or omission of the Practice or its Users;
 - (iii) the use of any Third Party Applications or Third Party Data; and/or
 - (iv) the use of any of the Practice's systems, networks and infrastructure not controlled or managed by us.
- (b) The Practice's liability for any Claim made or Loss suffered or incurred by us under, or in connection with, this Agreement is reduced to the extent that the Loss was caused by or arises from:

- (i) a breach of this Agreement by us; and/or
- (ii) a negligent act or omission by us or our Staff.

14.5 Events beyond control

- (a) A party is not liable for delay or failure to perform an obligation under this Agreement (other than an obligation to pay money) to the extent that the delay or failure is due to an event beyond its reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, pandemic, civil unrest, act of terror, strike, internet service provider failure, host server provider failure, downtime or unavailability, or a delay or denial-of-service attack.
- (b) A party must promptly act to take all reasonable steps to mitigate or avoid the impact of the event.

15. General

15.1 Amendments

- (a) Without limiting our rights under clause 7.5, from time to time we may amend or vary:
 - (i) the Minimum Specifications, Privacy Policy and/or any Acceptable Use Policy; and/or
 - (ii) any of the terms and conditions set out in this Agreement,in each case, by providing at least 30 days' notice to the Practice (**Amendment Notice**).
- (b) At any time before the date that the amendments contemplated by an Amendment Notice take effect (at least 30 days after the date of the Amendment Notice), the Practice may give us written notice objecting to the relevant amendments (**Amendment Objection Notice**).
- (c) If, within the 30 day period after we receive an Amendment Objection Notice from the Practice (**Amendment Objection Resolution Period**), we have not alleviated the concerns raised by the Practice in

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the Amendment Objection Notice, then before the end of the Amendment Objection Resolution Period, the Practice may provide us with a further written notice (**Transition Out Notice**) confirming that the Practice will cease using the Software (and this Agreement will terminate) on the date (**Termination Date**) nominated by the Practice in the Transition Out Notice (being no more than 6 months' after the date of the relevant Amendment Notice).

- (d) If we have not alleviated the concerns raised by the Practice in the Amendment Objection Notice by the end of the Amendment Objection Resolution Period but the Practice has not provided us with a Transition Out Notice during the Amendment Objection Resolution Period, then the amendments contemplated by the relevant Amendment Notice will apply (as between the Practice and us) from the date specified in the Amendment Notice.
- (e) If the Practice provides us with a Transition Out Notice during the Amendment Objection Resolution Period, then during the period starting on the date of the relevant Amendment Notice and ending on the Termination Date (**Transition Out Period**) the terms applying prior to the Amendment Notice will apply (as between the Practice and us).
- (f) This clause 15.1 does not apply to an amendment to the fees (including Software Fees) which may only be varied in accordance with clause 7.5.

15.2 Assignment

- (a) The rights and interests under this Agreement are specific to the Practice and may not be assigned or transferred without our prior written consent (and such consent must not be unreasonably withheld).
- (b) At any time by providing no less than 10 Business Days' prior notice to the Practice we may assign or transfer our rights under this Agreement to:

- (i) one of our related bodies corporate (as that term is defined in the Corporations Act 2001 (Cth)); or
 - (ii) a third party purchaser all or substantially all of our assets,
- and the Practice is taken to have consented to such assignment or transfer.

15.3 Entire agreement

This Agreement constitutes the entire agreement between us and the Practice in relation to its subject matter and supersedes all prior and contemporaneous discussions, terms and agreements (whether oral or written). Each party acknowledges that it has not relied on any term, condition, representation, warranty, matter or statement in entering into this Agreement other than as set out in this Agreement.

15.4 Governing law

This Agreement is governed by and construed in accordance with the laws of Queensland. The parties submit to the jurisdiction of the courts of Queensland and the Commonwealth of Australia.

15.5 Interpretation

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

- (a) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (b) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) words importing the singular include the plural and vice versa;
- (d) to the extent of any inconsistency between the terms in this document and another part of this Agreement, the terms in this document prevail; and
- (e) **includes** in any form is not a word of limitation.

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15.6 Notices

Each notice, consent, request, approval or other communication in relation to this Agreement:

- (a) must be in writing;
- (b) must be addressed to the party to whom it is to be given (addressee) at the address or email address notified by the addressee;
- (c) may be delivered by hand, posted by prepaid post or sent by email; and
- (d) is taken to be received by the addressee:
 - (i) on the third Business Day after the date of posting;
 - (ii) in the case of delivery by email, at the time the email is sent (provided the sender has not received notice that the email was not delivered); and
 - (iii) in the case of delivery by hand, on delivery.

15.7 Subcontracting

We may subcontract our obligations under this Agreement.

15.8 Waiver

The failure by a party to enforce a provision of this Agreement will not be interpreted as a waiver unless expressly waived in writing. A waiver of a specific breach of a term of this Agreement does not constitute a waiver in respect of any subsequent breach of that term or of any other term.

15.9 Trustee

- (a) If any party (**Trustee**) enters into this Agreement in the capacity as trustee of any trust (**Trust**) under any trust deed, deed of settlement or other instrument (**Trust Deed**), and whether or not any other party has notice of the Trust, then:
 - (i) solely in connection with this clause 15.9, the Trustee enters into this Agreement both as trustee of the Trust and in its personal capacity; and
 - (ii) in all other respects, the Trustee enters into this

Agreement in its capacity as trustee of the Trust and not in any personal capacity.

- (b) The Trustee represents and warrants that:
 - (i) it is the only trustee of the Trust and no action has been taken or is proposed to remove it as trustee of the Trust;
 - (ii) the Trustee has power under the Trust Deed and, in the case of a corporation, under its constitution, to enter into this Agreement and to perform the obligations imposed under this Agreement as trustee;
 - (iii) all necessary resolutions have been passed as required by the Trust Deed and, in the case of a corporate Trustee, by its constitution, in order to make this Agreement fully binding on the Trustee;
 - (iv) this Agreement is for the benefit of the beneficiaries of the Trust;
 - (v) the Trustee is not, and has never been, in default under the Trust Deed;
 - (vi) it has a right to be fully indemnified out of the Trust assets in respect of obligations incurred by it under this Agreement and the assets of the Trust are sufficient to satisfy that right of indemnity;
 - (vii) there is not now, and the Trustee will not do anything by virtue of which there will be in the future, any restriction or limitation on the right of the Trustee to be indemnified out of the assets of the Trust; and
 - (viii) there is no material fact or circumstance relating to the assets, matters or affairs of the Trust that might, if disclosed, be expected to affect the decision of the other parties,

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- acting reasonably, to enter into this Agreement.
- (c) Any change of trustee of the Trust (including any appointment of an additional trustee) must be promptly notified to us in writing.

GENTU SPECIFIC TERMS

Clause 16 applies only if the PMS (or one of the PMSs) specified in the Quotation is Gentu.

16. Gentu additional terms

16.1 Changes to the Software

The Software is delivered using a software-as-a-service model which relies on customers sharing infrastructure and applications. The Practice acknowledges and agrees that the Software will be delivered using a common version of the underlying software application. Accordingly, we may change, add/or remove functions or other aspects of the Software at any time (**Service Update**). The Practice cannot opt out of a Service Update. This Agreement continues to apply in all respects to Service Updates.

GENIE SPECIFIC TERMS

Clause 17 applies only if the PMS (or one of the PMSs) specified in the Quotation is Genie.

17. Genie additional terms

17.1 Delivery and installation

- (a) We will deliver and install the PMS for the Practice at the address (and on the date(s)) specified in the Quotation.
- (b) The Practice must provide us and our Staff with reasonable assistance and access, including the provision of its personnel and facilities, to ensure satisfactory installation of the PMS.

17.2 4D Multi Users Software

The Practice may require 4D Multi Users Software in order to operate the PMS. If the 4D Multi Users Software is required, the Practice agrees that:

- (a) it will not use the 4D Multi Users Software for any purpose outside the scope of the PMS; and

- (b) the Practice's use of the 4D Multi Users Software may be governed by and subject to additional terms and conditions and the Practice may need to enter into a licence agreement directly with the relevant third party.

17.3 Updates and new releases

- (a) We may, at our discretion, provide updates or new releases in relation to the PMS, including to meet regulatory requirements.
- (b) Where we provide an update or new release of the PMS:
- (i) we will provide reasonable notice of any such updates or new releases through our website and/or to the Practice;
 - (ii) we will deliver it to the Practice at no additional charge;
 - (iii) it is the Practice's responsibility to install it, but we may do so if the Practice requests and agrees to pay us installation fees for doing so at our then current service rate (which will be notified to the Practice in advance);
 - (iv) this Agreement will continue to apply in all respects to the update or new release (which shall be deemed to be the Software for the purpose of this Agreement); and
 - (v) the Practice must deal with all copies of the original PMS in accordance with our directions.
- (c) We will provide the Practice with at least 30 days' notice if we will no longer maintain or support an older version of the PMS. (**Superseded Versions**). Such notice will constitute an Amendment Notice and clause 15.1 shall apply. The Practice acknowledges and agrees that any Superseded Version is an Excluded Support Item.
- (d) Nothing in this clause 17.3 affects the Practice's obligation to continue

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to pay the Software Fees pursuant to clause 7.1 of this Agreement.

17.4 Data back ups

The Practice must:

- (a) ensure the proper storage of all Practice Data;
- (b) ensure that data backups are functional and that Practice Data can be recovered if required;
- (c) perform regular daily backups of the Practice Data;
- (d) keep multiple backups of several sets of Practice Data;
- (e) store the backup medium at a place other than the Practice site; and
- (f) have a contingency plan for any unexpected emergencies or incidents.

18. Definitions

In this Agreement:

Acceptable Use Policy means any acceptable use policy relating to the use of the Software published by us or notified to the Practice or Users (and as may be amended or varied pursuant to clause 15.1).

Add Ons means application features which are integrated with the PMS and can be installed, activated and used through the PMS at the option of the Practice.

Agreement means this document, any Quotation, any Consents, and any other document incorporated by reference.

Approved Purposes means:

- (a) to perform our obligations under this Agreement;
- (b) to identify trends, patterns and insights in Data collected by us;
- (c) to provide the Practice, our customers and industry with benchmarking and best practice Data and services;
- (d) to evaluate, improve, develop, enhance and deliver our products and services (including healthcare digital products and services);
- (e) our internal business purposes;

- (f) the purposes set out in the Privacy Policy; and
- (g) any other purpose(s) that the Practice may expressly consent to on its own behalf and that of its Practitioners (if applicable).

Business Day means a day that is not a weekend or a gazetted public holiday in Brisbane.

Claim includes a claim, notice, demand, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute.

Commencement Date means the date when the Practice first accesses the Software.

Confidential Information means all Data disclosed or communicated to a party in connection with this Agreement which:

- (a) is of a confidential nature;
- (b) is designated as confidential by the disclosing party;
- (c) the recipient party knows or ought to know is confidential; or
- (d) is Data concerning the Quotation, commercial terms provided to the Practice for the Software, the business, assets, liabilities, financial position, patients, customers, pricing policies, marketing strategies or proposed business plans of the other party.

Consents mean any consent forms or documents:

- (a) relating to any set ups, implementations, data migrations and/or data exports required in connection with the Software and/or Practice Material; or
- (b) required under any applicable Privacy Law.

Consequential Loss means:

- (a) any Loss which is incidental, consequential, special, exemplary, punitive or indirect;
- (b) loss of revenue, profits, anticipated savings, production, goodwill, credit, reputation, interest or opportunity; or
- (c) any Loss which is not a natural or immediate consequence of a breach.

Data means any data in any form whether tangible or not and whether visible or not

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including information, documents, code, text, images, video, audio or other data.

De-Identified Data means Practice Data which has been de-identified in accordance with:

- (a) clause 8.4(a)(ii);
- (b) the Privacy Act 1988 (Cth) and/or any other applicable Privacy Law; and
- (c) industry standards,

and does not identify the individual and/or Practice, and there is no reasonable likelihood of re-identification of the relevant individual and/or Practice.

Excluded Support Items means support related to:

- (a) any Third Party Applications or Third Party Data;
- (b) information and communication technology solutions that are not ours;
- (c) Practice hardware (including printers and scanners);
- (d) a Superseded Version of the Software; and/or
- (e) recovery of Data or the correction of any errors or defects, in each case caused by:
 - the operation of the Software in any manner other than in accordance with this Agreement;
 - a failure to install and use any standard upgrade or new version of the Software;
 - the Practice's breach of this Agreement; or
 - a failure to follow instructions reasonably provided by us.

Government Online Health Provider Services means Australian Government online services for health and medical practitioners including Medicare Online (ECLIPSE, DVA, AIR), Health Identifiers Services, Australian Immunisation Register, Pharmaceutical Benefits Scheme, and My Health Record.

Health Information has the meaning given in a Privacy Law (as applicable).

Intellectual Property Rights includes all present and future rights in relation to copyright, trademarks, designs, patents, circuit layouts,

trade, business, domain or company names, trade secret, confidential or other proprietary rights, or any rights to registration of such rights whether created before or after the date of this Agreement, and whether existing in Australia or otherwise. These rights include all rights in all applications to register these rights; all renewals and extensions of these rights; and all rights in the nature of these rights.

Loss includes all losses, liabilities, damages, costs, interest, fees, penalties, fines, assessments, forfeiture and expenses of whatever description (whether actual, contingent or prospective).

Minimum Specifications means the specifications for hardware, software, operating systems, internet access, firewalls and virus protection software and other services needed to access and support the Software provided to the Practice on or before the date of this Agreement (and as may be amended or varied pursuant to clause 15.1).

Our Material has the meaning given in clause 8.1(b)(i).

Personal Information means 'personal information' as defined in a Privacy Law (as applicable).

PMS means the medical practice management system software (and all Data associated with that software, other than Practice Material or Third Party Data) made available by us to the Practice (namely, either Genie or Gentu, as elected by the Practice and set out in the Quotation).

Practice Data means Data (including Personal Information of each User) uploaded, posted, inputted, transmitted to, or otherwise made available via, the Software, Third Party Applications or the Practice's systems, but excluding User Analytics.

Practice Material has the meaning given in clause 8.3(a).

Privacy Laws means the *Privacy Act 1988* (Cth), the *Spam Act 2003* (Cth) and any other applicable laws, regulation and binding industry codes relating to privacy.

Privacy Policy means our [privacy policy](#) as amended or varied pursuant to clause 15.1).

Privacy Principles has the meaning given in clause 9.1(a).

Quotation means any Software quotation document provided to and accepted by or on behalf of the Practice and which specifies the

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details of the Software and other services the Practice wishes to subscribe to.

Sensitive Information has the meaning given in the Privacy Laws (as applicable).

Set Up Services has the meaning given in clause 5.1(a).

Software means:

- (a) the PMS; and
- (b) any Add Ons developed, owned or licensed by us and subscribed to by the Practice.

Software Fees has the meaning given in clause 7.1(a).

Software Licence has the meaning given in clause 2.

Superseded Version has the meaning given in clause 17.3(c).

Support Services has the meaning given in clause 6(a).

Staff means, in respect of a party, the directors, officers, agents and employees of that party, together with any contractors who are performing work for that party (but, in respect of us, does not include the Practice and, in respect of the Practice, does not include us).

Term has the meaning given in clause 3.

Third Party Applications has the meaning given in clause 13.1(a).

Third Party Data means Data provided by third parties and made available through the Software. It may include, source or reference data, including Integrated Medicine Information, MIMS Prescribing Information, the Medicare Schedule, ICD10 and ICPC2 Plus codes, AMA Fee List and Private Health Fund schedules.

Training Services has the meaning given in clause 6(d).

Use means to collect, ingest, use, host, store, transmit, copy, reproduce, process, modify, adapt, merge with other Data or materials, disclose, transfer, distribute and otherwise make available.

User means a member of Staff of the Practice who is authorised by the Practice to use the Software under this Agreement.

User Analytics means Data relating to the use of the Software by the Practice and its Users (but

excluding any Personal Information or Sensitive Information in such Data).

User Credential means, in respect of a User, a user name, password, code or other item used by us to secure the Software.

4D Multi Users Software includes 4D applications Servers, 4D Clients, 4D Write, View and Draw for Server and related expansion packs, 4DD Web Extension for 4D Server including any product upgrades supplied by the third party owner.