Widget End User Licence Agreement

> **By clicking to accept or agree to this Agreement, where this option is made available to you, or by installing, downloading, accessing or otherwise using the Widget or any Update of the Widget, you agree to be bound by this Agreement.**
>
> **You represent and warrant to the Licensor that you have the authority to act on behalf of your employer or other entity and to bind your employer or such other entity to the terms of this Agreement. If you do not have such authority or if you DO NOT agree to the terms of this Agreement, then: (1) you MUST NOT install or use the Widget or any Update to the Widget and (2) you MUST delete all copies of the Widget and any Update to the Widget from your systems.**
>
> **Except as expressly stated, the Licensor makes no representation about the Widget and suitability for any purpose of the Widget. It is provided 'as is' without express or implied warranty of any kind.**
>
> **The Licensor does not warrant that the use of the Widget will be uninterrupted or error free.**

[Insert name of Developer] [insert ABN] of [insert address] makes the software program known as [insert description of specific widget which this Agreement relates to] (**Widget**) available subject to the terms of this Agreement (**Licensor**).

1. Access

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

2. Licence

2.1 Widget Licence

Subject to the terms of this Agreement, in consideration for the payment by the User of the Subscription Fee, the Licensor grants to User, and User accepts, a non-transferable and non-exclusive licence to use the Widget within Australia during the Subscription Period (**Licence**).

2.2 Licence conditions

Use of the Widget is subject to the following conditions:

(a)   User may use the Widget only at the location(s) and on the number of terminals (if any) for which the User has paid the relevant Subscription Fee as specified in the Documentation;

(b)   use is restricted to the number of Doctors or Administrators or other persons or positions (if any) specified in the Documentation and only for the purposes of the User's medical practice or such other purpose expressly authorised in writing by the Licensor;

(c)   User must have a current licence to use either Medical Director and/or PracSoft with the appropriate sidebar add-on functionality installed (**HCN Sidebar**);

(d)   User must not grant sub-licences of the Widget;

(e)   User has no right to adapt, modify, disassemble or reverse engineer the Widget nor may User make any copies of the Widget, except one (1) copy for backup purposes; and

(f)   the Licensor has received payment in full of the Subscription Fee and any amounts due to the Licensor under this Agreement.

3. Support Services

(a)   Provided User complies with its obligations under this Agreement and subject to paragraph (c) and clause 9, the Licensor agrees to provide the Support Services in respect of the Widget for the Subscription Period.

(b)   Support Services will take the form of telephone advice or error correction by means of modem or correction by other electronic means in accordance with the Licensor's then current procedures governing the performance of such services to assist the User.

(c)   For the avoidance of doubt, the Support Services do not include:

    (i)   rectification of errors arising from faults in the computer hardware on which the Widget is installed by User or any device connected to that computer hardware; or

    (ii)   correction of faults or errors, including data errors, arising directly or indirectly out of User's failure to comply with this Agreement or any other agreement between User and the Licensor

    (iii)   correction of faults or errors, including data errors, arising directly or indirectly out of User's use of the Widget.

4. Widget Updates

Provided User complies with its obligations under this Agreement, the Licensor agrees to make Updates of the Widget available for download via the Widget Store, subject to the following conditions:

(a)   the Licensor does not warrant that it will release any Updates of the Widget during the Subscription Period; and

(b)   any Updates which the Licensor makes available via the Widget Store will only relate to the Widget, and do not apply to any hardware or third party software used in conjunction with the Widget.

5. Intellectual Property Rights

(a)   All Intellectual Property Rights and other proprietary rights in or related to the Widget (including Widget Collateral) are and remain, as applicable:

    (i)   the Licensor's exclusive property and User must not do anything that jeopardises the Licensor's proprietary rights; or

    (ii)   a third parties' exclusive property and User must not do anything that jeopardises any third parties' proprietary rights.

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

6. Content and Links within the Widget

(a) The Widget and all parts thereof are the intellectual property of the Licensor, its suppliers, sponsors and/or licensors unless expressly indicated otherwise in the Widget. The Widget is protected by Australian and international copyright and trade mark laws. User must not modify, copy, reproduce, republish, upload to a third party, post, transmit or distribute the Widget in any way except as expressly provided for within the this Agreement or the Documentation or expressly authorised in writing by the Licensor.

(b) The Widget may contain hyperlinks and other pointers or buttons to web sites operated by third parties. These linked web sites are not under the control of the Licensor and the Licensor is not responsible for the content of any linked web site or any hyperlink contained in the linked web site. The Licensor provides these hyperlinks in the Widget as a convenience for the User. Inclusion of any such link is not and should not be construed as an endorsement by the Licensor of the linked web site. User accesses any such web site entirely at User's own risk.

7. Disclaimer

(a) User acknowledges and agrees that the Widget does not constitute professional medical or healthcare advice, diagnosis or recommendation of treatment and is not intended to, nor should be used to, replace professional medical advice. In no circumstances should the Widget be relied upon without independent consideration and confirmation by a qualified medical practitioner.

(b) The Licensor makes no representations or warranties with respect to any treatment, action, suitability or application of medication or preparation by any person whether in accordance with the Content or not. In no circumstances will the Licensor be liable for any direct, indirect, consequential, special, exemplary or other damages arising therefrom.

(c) The Licensor does not warrant that any interactions of pharmaceutical products that are described within the Widget are accurate, complete or comprehensive. It is the sole responsibility of any prescribing medical practitioner to ensure that all current product and prescription information in relation to pharmaceutical products referred to in the Widget have been read and understood prior to the prescription of any pharmaceutical product.

(d) The information contained within the Widget:

   (i) is provided to enable Users of the Widget to exercise their own professional judgment, having regard to, among other things, a particular patient's condition and other prescribed medication, as to whether a particular pharmaceutical product should or should not be prescribed; and

   (ii) is provided on an 'as is' basis and any alert or warning (or lack thereof) within the Widget does not constitute a recommendation or advice by the Licensor to take or refrain from taking any course of action including, but not limited to, the prescription of a particular pharmaceutical product.

8. Subscription Fees

    (a)   In consideration for the grant of the Licence, User shall pay HCN, as agent for the Licensor, the Subscription Fee and any other fees as specified in the Documentation.

    (b)   HCN, as agent for the Licensor, will provide User with a tax invoice in respect of the Subscription Fee on behalf of the Licensor and User must pay such Subscription Fee in the manner and within the timeframe specified in the Documentation.

    (c)   Unless otherwise specified, the Subscription Fee is inclusive of GST and each such amount includes an amount equal to the GST payable in respect of the supply to which the amount relates.

9. Termination

9.1 Termination for cause

User will have committed an event of default, and this Agreement and the Licence will terminate automatically and without further notice upon the occurrence of any of the following:

    (a)   User attempts to or does use, copy, licence, modify, reverse engineer or convey or deal with the Widget in any manner contrary to the terms of this Agreement or in derogation of the Licensor's or third party's Intellectual Property Rights;

    (b)   User fails or neglects to perform or observe any of its existing or future obligations under this Agreement, including without limitation, the timely payment of any amounts due to the Licensor (including but not limited to payment of the Subscription Fee); or

    (c)   User becomes Insolvent or ceases to carry on business.

9.2 Termination without cause

    (a)   In the case of Users of the Widget where no Subscription Fee is payable, for example but not limited to trial users of the Widget, the Licensor may immediately terminate this Agreement and the Licence by notice to the User.

    (b)   The Licensor may terminate this Agreement and the Licence on each anniversary of the Commencement Date by no less than 30 days prior notice to User.

    (c)   This Agreement and the Licence will terminate immediately without further notice if access to the Widget Store, or access to a Widget through the HCN Sidebar, is permanently disabled.

    (d)   If this Agreement is terminated under clause 9.2(c) then, subject to clause 11(c), User's sole remedy is a prorata refund of the Subscription Fee from the Licensor.

9.3   Effect of expiry or termination

(a)   If this Agreement expires or is terminated for any reason, then:

(i)   the Licence will come to an end;

(ii)   the Licensor's obligations under this Agreement will cease; and

(iii)   the User must immediately stop using and destroy all copies of the Widget and if the Licensor so requests, the User must certify that fact to the Licensor.

(b)   In the event of termination under clause 9.1 all fees or charges due for the remainder of the Subscription Period will immediately become due and payable.

10.   Warranties

(a)   Subject to this Agreement, the Licensor warrants that to the best of its knowledge and belief it has good title to the Widget and the right and authority to grant the Licence.

(b)   Subject to clause 11 and to the extent permitted by law the Licensor excludes all express warranties and representations other than the warranty in clause 10(a) and all implied warranties and representations and in particular does not warrant that:

(i)   the Widget is error free or that all errors can or will be corrected;

(ii)   use of the Widget will be uninterrupted or will not result in loss of data;

(iii)   the Widget will meet User's particular requirements, whether known to the Licensor or not;

(iv)   the Widget will function correctly on the User's particular computer equipment;

(v)   the Widget will provide any function not designated in the Documentation; or

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

11.   Limitation of Liability

(a)   Other than as set out in this clause and to the extent permitted by law:

(i)   any condition or warranty which would otherwise be implied in this Agreement whether by statute or otherwise is excluded; and

(ii)   under no circumstances will the Licensor be liable for any loss, damage or injury (including without limitation any loss of profits, indirect, incidental or consequential loss, damage or injury) arising from the supply or use of the Widget, or any other applications or services supplied under this Agreement, any failure by the Licensor to perform any obligation or observe any term of this Agreement or any loss of data suffered by the User in connection with use of the Widget.

(b)   To the extent permitted by law and subject to clause 11(c), the liability of the Licensor to the User for any non-compliance with a statutory guarantee or loss or damage arising out of or in connection with the supply of goods or services under this Agreement or any breach by the Licensor of this Agreement however arising (whether for breach of a term or terms of this Agreement, tort (including negligence), statute, custom, law or on any other basis) is limited to:

(i)   in the case of services, at the option of the Licensor:

A.   the resupply of the services; or

B.   the payment of the cost of resupply; and

(ii)   in the case of goods, at the option of the Licensor:

A.   the replacement of the goods or the supply of equivalent goods;

B.   the repair of the goods;

C.   the payment of the cost of replacing the goods or of acquiring equivalent goods; or

D.   the payment of the cost of having the goods repaired.

(c)   Clause 11(b) is not intended to have the effect of excluding, restricting or modifying:

(i)   the application of all or any of the provisions of Part 5-4 of Schedule 2 to the Competition and Consumer Act 2010 (**ACL**);

(ii)   the exercise of a right conferred by such a provision; or

(iii)   any liability of the Licensor in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services.

(d)   The Widget contains information intended for use by User's in Australia only. Any use contrary to this is at the User's own risk and, to the extent permitted by law, the Licensor disclaims all and any liability to User or any third party for such use.

12.   Indemnity

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

(a)   User's use of the Widget; or

(b)   any breach of this Agreement or any other negligent or wrongful act or omission by User.

13.   General

13.1   Definitions

In this Agreement:

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

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

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

"Doctor" means a medical practitioner or other clinician associated with User's medical practice;

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

"GST" has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

"HCN" means Health Communication Network Limited ABN 76 068 458 515.

"HCN Sidebar" has the meaning given in clause 2.2(c);

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

"Intellectual Property Rights" means:

(a)   patents, designs, trade marks and service marks (whether registered or unregistered) and any applications for, or rights to apply for, registration of any patent, design, trade mark or service mark;

(b)   copyright (including copyright in software, websites, databases and advertising and other promotional materials);

(c)   all rights to have information (including trade secrets, know how, operating procedures and technical information) kept confidential; and

(d)   all other rights or protections having similar effect anywhere in the world;

"Licence" has the meaning given in clause 2.1;

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

"Medical Director" means HCN's clinical management software program known as Medical Director;

"PracSoft" means HCN's practice management software program known as PracSoft;

"Subscription Fee" means the amount (if any) specified as such in the Documentation for a Subscription Period;

"Subscription Period" means the period which commences on the Commencement Date and continues until this Agreement is terminated in accordance with clause 9;

"Support Services" means assistance to the User in the manner indicated in clause 3 to resolve any problems experienced by User in relation to use of the Widget;

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

"User" mean any person who opens or uses the Widget, Widget Collateral, Content, Documentation, Support Services or any Update;

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

(a)   is provided on the terms and conditions of this Agreement and the Documentation;

(b)   is more particularly described in the Widget Collateral; and

(c)   includes the Content and Updates to the Widget;

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

"Widget Store" means the online store owned and operated by HCN within its website at http://www.hcn.com.au.

13.2   Interpretation

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

(a)   words importing the singular include the plural and vice versa;

(b)   words importing a gender include any gender;

(c)   where a word or phrase is defined in this agreement, other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;

(d)   an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;

(e)   a reference to any thing (including, but not limited to, any right) includes a part of that thing but nothing in this clause implies that performance of part of an obligation constitutes performance of the obligation;

(f)   a reference to any statute includes all statutes varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;

(g)   a reference to a document includes an amendment or supplement to, or replacement or novation of, that document;

(h)   a reference to a party to a document includes that party's successors and permitted assigns;

(i)   no provision of this agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this agreement or that provision;

(j)   a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;

(k)   a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind; and

(l)   a reference to "**$**" or "**dollar**" is to Australian currency.

13.3   Assignment of Agreement

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

13.4   Nonwaiver

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

13.5   Severability

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

13.6   Governing Law

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

13.7   Changes to this Agreement

(a)   The Licensor may make changes to this Agreement when it distributes an Update of the Widget.

(b)   If the Licensor makes changes to this Agreement under paragraph (a), then:

(i)   the User must agree to the updated version of this Agreement included with the Update prior to downloading, installing or otherwise using the Update; and

(ii)   the updated version of the Agreement included with the New Release and agreed to by the User will replace all earlier versions of this Agreement.

13.8   Entire Agreement

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