

Managed IT Services Agreement

Parties

Customer		Hunter Primary Care	
Name		Name	
ACN		ACN	
Address		Address	
Contact		Contact	
Email		Email	

Agreed by the parties

Signed by the **CUSTOMER** by its
authorised representative:

.....
Signature
.....
Print name

.....
Date
.....
Position

Signed by **HUNTER PRIMARY CARE** by
its authorised representative:

.....
Signature
.....
Print name

.....
Date
.....
Position

Agreement

Capitalised terms used are defined in this Agreement (including clause 19).

1. Structure

1.1 General obligation

We agree to supply, and you agree to obtain, the Services from time to time on the terms and conditions of this Agreement.

1.2 Agreement parts

This Agreement consists of the following parts:

- (a) the Special Conditions;
- (b) this document; and
- (c) each SOW.

If there is any inconsistency between the parts of this Agreement listed above, then the part listed earlier prevails to the extent of the inconsistency.

1.3 SOWs

The precise description of the Services and Deliverables (if any) will be set out in a SOW. Once agreed by the parties, the parties will sign the SOW and that SOW will be incorporated into, and governed by the terms and conditions of, this Agreement.

2. Initial Term

This Agreement commences on the Start Date and continues until the later of:

- (a) 3 years; and
- (b) the expiration or termination of all SOWs, (**Initial Term**), unless terminated or renewed in accordance with this Agreement.

2.2 Renewal

This Agreement will automatically renew for a period of 12 months at the end of the then current term, unless:

- (a) either party notifies the other party in writing at least 30 days' prior to the expiry of the then current term that it does not wish to renew this Agreement; and
- (b) all SOWs have expired and terminated before the end of the then current term.

2.3 Term of SOW

Each SOW commences on the SOW Start Date and continues until the expiry of the SOW Term, unless earlier terminated in accordance with that SOW or this Agreement.

3. Services

3.1 Supply of Services

We will supply the Services and deliver the Deliverables to you on the terms and conditions of this Agreement including the relevant SOW.

3.2 Customer Data

- (a) The parties agree that, as between the parties, you own and are solely responsible for the accuracy and completeness of the Customer Data.
- (b) If you disclose Customer Data to us, then you must ensure that you are able to disclose or otherwise provide all such Customer Data to us, including obtaining all necessary consents.

- (c) You agree that we may access and use the Customer Data provided to us to perform our obligations under this Agreement.
- (d) Without limiting paragraph (b) above, the parties acknowledge and agree that you are responsible for seeking all necessary consents, approvals and licences required by you to disclose information (including personal information) to us, access and use the Services, and otherwise perform this Agreement.

3.3 General commitments

We will use our best endeavours to ensure that a Deliverable:

- (a) meets the requirements for that Deliverable as set out in the relevant SOW; and
- (b) is free from material defects.

4. Intellectual Property Rights

4.1 Ownership

Other than as provided in this clause 4 and the relevant SOW, nothing in this Agreement transfers ownership in, or otherwise grants any rights in, any Intellectual Property Rights of a party.

4.2 Customer materials

You grant to us a non-exclusive, transferrable, sub-licensable and royalty-free licence to use the Customer Pre-Existing Material and the Customer Data to enable us to perform our obligations and exercise our rights under this Agreement.

4.3 Deliverables

- (a) We grant you a non-exclusive licence to:
 - (i) use the Deliverable in the Licensed Territory;
 - (ii) permit any person to assist you to do any of the things referred to in paragraph (i) above; and
 - (iii) sub-licence the right referred to in paragraph (i) above for your benefit. .

4.4 Additional Licence Terms

- (a) The licence granted under clause 4.3 may be subject to additional terms and conditions as set out in the relevant SOW (**Additional Licence Terms**).
- (b) You agree:
 - (i) to comply with the Additional Licence Terms; and
 - (ii) that a breach by you or your Authorised Users of:
 - (A) the Additional Licence Terms;
 - (B) the licence terms set out in clause 4.3; or
 - (C) clauses 6.3 and 6.4 with respect to the relevant Deliverable or the Services,is a breach of a material term of this Agreement.

4.5 No other rights

You agree that:

- (a) you must not licence, sub-licence, assign, transfer or dispose of, the Licensed Deliverables, in whole or in part, to any person without the prior written consent of us, unless otherwise provided in this Agreement or any SOW;
- (b) you have no rights to the Licensed Deliverables except as expressly granted and set out in the relevant SOW and this Agreement; and
- (c) as between you and us, all rights (including Intellectual Property Rights), title and interest in and to the Licensed Deliverables and accompanying documentation and other materials, including modifications to the Licensed Deliverables, belong to us.

5. Third Party Materials

5.1 Supply of Third Party Materials

We may supply or otherwise provide you with Third Party Materials under this Agreement.

5.2 Third Party Terms

- (a) You must, and must ensure that your Authorised Users, comply with any additional terms that may apply to the use of a Third Party Material (**Third Party Terms**) (as updated from time to time).
- (b) If the Services and materials do not include access to Third Party Material at the Start Date, you agree to comply with the Third Party Terms if such material is made available to you at a later date.

5.3 Availability of Third Party Terms

Third Party Terms may be:

- (a) provided by us to you in the relevant SOW;
- (b) located on our Website; or
- (c) included with, or referenced in, the Third Party Materials provided to you.

5.4 Variations

You acknowledge and agree that the Third Party Materials and Third Party Terms may change without notice, and we will notify you within 10 working days if any such changes are made.

5.5 Responsibility

You are solely responsible for evaluating the accuracy and suitability of the Third Party Material and for your and your Authorised User's compliance with the applicable Third Party Terms. You release us from all liability arising out of or in connection with the provision and use of such Third Party Material.

6. General commitments

6.1 General commitments – Hunter Primary Care

- (a) We will:
 - (i) provide the Services with due care, skill and attention, but we do not guarantee that they will be error-free, fault-free, virus-free, continuous or fit for any purpose; and

- (ii) ensure that all work we perform in connection with the Services is carried out by competent and suitably qualified personnel.

- (b) We may claim, and you will grant, a reasonable extension of time for any delays that are caused by you or your personnel.

6.2 General commitments – Customer

You are solely responsible for:

- (a) selecting, obtaining and maintaining your own facilities and infrastructure, and ensuring that all such items are technically compatible with the Services and Deliverables;
- (b) obtaining and maintaining an internet connection for use with the Services and Deliverables;
- (c) the content and security of your data, infrastructure or information used in connection with the Services and Deliverables;
- (d) taking and maintaining adequate and current back-up of data used, generated or stored by the Services and Deliverables; and
- (e) ensuring that your equipment and infrastructure used with the Services and Deliverables comply with, and are used in accordance with, all reasonable procedures notified by us and any applicable law.

6.3 Specific restrictions

You must not, and must ensure that your Authorised Users do not, for the Licensed Deliverables:

- (a) challenge the validity of our rights in and to a Licensed Deliverable and Service (including the underlying software used by us to provide the Services);
- (b) sell or otherwise make the Licensed Deliverables available to any person outside the terms of this Agreement;
- (c) copy or otherwise reproduce the Licensed Deliverables (including the underlying software used by us to provide the Services);
- (d) translate, adapt, vary, tamper with, enhance or modify the Licensed Deliverables (including the underlying software used by us to provide the Services);
- (e) disassemble, decompile, reverse engineer or create derivative works from the Licensed Deliverables (including the underlying software used by us to provide the Services);
- (f) derive or attempt to derive the source code or any internal data file of or generated by the Licensed Deliverables;
- (g) alter, conceal or remove any notices regarding our Intellectual Property Rights that may appear on or within the Licensed Deliverables (including the underlying software used by us to provide the Services);
- (h) introduce, attempt to introduce, or permit the introduction of, whether directly or indirectly, viruses, Trojan horses, disabling code or other malicious or related code into any part of the Licensed Deliverable and the Services;

- (i) combine or incorporate the Licensed Deliverables with or in any other software or services without our prior written consent;
- (j) use the Licensed Deliverables in an unlawful manner;
- (k) use the Licensed Deliverables in a manner that infringes, or may infringe, a third party's rights (including Intellectual Property Rights) or that would result in us breaching a law; or
- (l) allow or permit others, directly or indirectly, to perform any of the actions referred to in paragraphs (a) to (k) above.

6.4 Further restrictions

You must not, and must ensure that your Authorised Users do not:

- (a) access, or attempt to gain access to:
 - (i) the underlying infrastructure, systems and software used by us to provide the Services (or any part of them); or
 - (ii) parts of the Services that are not supplied to us under this Agreement;
- (b) except as expressly permitted in this Agreement, on-sell, re-sell or otherwise provide a Service to any person (including through an application service, bureau service or similar service);
- (c) share or disclose any security information provided by us Care to you to any other person; or
- (d) do anything (or take any action or fail to take any action) that may disable or impair the proper working or appearance of our systems.

6.5 Conflicts of Interest

You must ensure that neither you nor any of your personnel carry on business, enter into financial arrangements or undertake any obligation that would in any way interfere or conflict with the performance of the Services by us and our personnel under this Agreement, without our prior written consent.

7. Equipment

- (a) If specified in the SOW, then you appoint us as your agent for the purpose of procuring and disposing the Equipment for and on behalf of you (**Scope of Agency**).
- (b) We accept the appointment as your agent under paragraph (a), and agree to perform the activities required for the Scope of Agency (in such capacity, we are the "**Agent**").
- (c) We acknowledge that our performance of our obligations as the Agent is at all times subject to the ultimate power of you from time to time to make decisions and give directions.
- (d) You agree:
 - (i) that any payments that we are required to make as a result of procuring the Equipment will be charged to you as a Fee; and

- (ii) to pay any agreed administrative costs in relation to us meeting our obligations in paragraph (a) above.

- (e) You agree and acknowledge that we bear no responsibility or liability in relation to the Equipment or our provision of the Equipment, and that you are responsible for obtaining support and warranty services from the relevant supplier or manufacturer in respect of any Equipment or defects in the Equipment.
- (f) You indemnify us from all claims, losses, damages, costs and expenses (including legal expenses), whether arising in contract, tort (including negligence), statute or otherwise, arising out of or in connection with our performance as your agent under this clause 7. Your liability under this indemnity is reduced to the extent that such losses and damages are directly caused by our unlawful or fraudulent act or omission or its breach of this clause 7.

8. Confidentiality

8.1 Value and ownership

The Recipient acknowledges that the Confidential Information of the Discloser has commercial value and is the property of the Discloser.

8.2 General obligation

The Recipient must keep the Confidential Information confidential and take all reasonable steps necessary to safeguard the confidentiality of the Confidential Information.

8.3 Particular obligations

The Recipient may use the Confidential Information only for the purposes of performing the Recipient's obligations or exercising the Recipient's rights under this Agreement.

8.4 Acknowledgements

Each party acknowledges and agrees that:

- (a) Our Confidential Information includes:
 - (i) the provisions of this Agreement; and
 - (ii) all information provided by us to you under this Agreement, including our technical, operational, billing, pricing or other commercially confidential information, and
- (b) Your Confidential Information includes the Customer Data.

8.5 Disclosure

- (a) The Recipient must not disclose the Discloser's Confidential Information to any person except:
 - (i) to its professional advisers and employees and subcontractors on a "need to know" basis, but only if those persons have been informed of the confidential nature of the Confidential Information and have agreed to keep the Confidential Information confidential in accordance with terms not less onerous than the terms set out in this clause 8;
 - (ii) to the extent required by law, any regulatory authority, or a stock exchange

on which the first party's shares are listed;

- (iii) to the extent required in connection with legal proceedings relating to this Agreement; or
- (iv) with the other party's prior written consent, but only to the extent that such consent is given.

8.6 *Return of Confidential Information*

On demand by the Discloser, the Recipient must deliver to the Discloser all the Confidential Information of the Discloser in the Recipient's possession or control, but the foregoing does not apply to Confidential Information of the Discloser that the Recipient requires in order to perform its obligations under this Agreement or is otherwise entitled to retain.

8.7 *Survival*

This clause 8 survives for three years after the termination or expiry of this Agreement.

9. **Privacy**

9.1 *Privacy*

You:

- (a) agree to comply with the *Privacy Act 1988* (Cth) and any other applicable privacy and data protection law in force from time to time if it is required to comply with these laws;
- (b) acknowledge and agree, and must ensure that your Authorised Users and any other person with respect to whom you make available personal information to us acknowledge and agree, that we may use and disclose personal information about you, your Authorised Users and such other persons in accordance with our privacy policy (available on the Website); and
- (c) warrant that it has notified, or made each relevant Authorised User and person with respect to whom you have made available personal information to us aware, of the matters required in Australian Privacy Principle 5.1 in respect of the disclosure to and use by us of the personal information provided by or on behalf of you to us.

9.2 *Policies*

We will comply with our privacy policy set out on the HPC web site in respect of personal information collected or accessed by us pursuant to this Agreement.

10. **Fees and Taxes**

10.1 *Fees*

You agree to pay us the Fees and other amounts specified in the relevant SOWs and this Agreement. All Fees paid by you are non-refundable, except as required by law.

10.2 *Invoices*

You must pay each invoice issued by us prior to using the Services.

10.3 *Overdue payments*

Subject to clause 10.4, if you fail to pay the Fees by the due date, we may charge interest at an annual rate equal to 2% above the Reserve Bank of

Australia's Official Cash Rate calculated on the monthly balance of the unpaid amount from the period of the due date until the date payment is received in full.

10.4 *Disputed invoices*

Disputes in relation to invoices must be dealt with in accordance with this clause 10.4 and clause 16. You are not obliged to pay any amount in an invoice that is the subject of a genuine dispute set out in a Dispute Notice until the dispute is resolved and a new invoice is issued for the resolved amount, but is required to pay all other non-disputed amounts. If you do not pay an invoice by its due date and have not issued a Dispute Notice, we may take the steps set out in clause 10.3.

10.5 *Taxes*

Unless otherwise stated in the relevant SOW, all Fees exclude Taxes. Subject to clauses 10.6 and 10.7, the Customer must pay all Taxes in connection with this Agreement.

10.6 *GST*

- (a) To the extent that a party makes a taxable supply under this Agreement, the consideration payable by the other party under this Agreement represents the value of the taxable supply for which payment is to be made.
- (b) Subject to paragraph (c) below, if a party makes a taxable supply under this Agreement for a consideration which, under paragraph (a) above, represents its value, then the other party must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.
- (c) A party's right to payment under paragraph (b) above is subject to a valid tax invoice being delivered to the other party.

10.7 *Indemnity*

If one party is required to indemnify or reimburse the other party for any cost, loss or expense, the indemnity or reimbursement payable does not include any amount for which the other party (or an entity grouped with the other party for GST purposes) is entitled to an input tax credit, but will be increased in accordance with clause 10.6 if the amount payable is consideration for a taxable supply.

10.8 *Adjustments to the Fees*

- (a) Within 60 Business Days of the expiry of the initial SOW Term and on each anniversary thereafter, we may notify you that the Fees (including licence Fees) set out in the relevant SOW are required to be adjusted. In this instance:
 - (i) we may change the Fees (including licence Fees) in accordance with the SOW; and
 - (ii) the adjustment to the Fees (including licence Fees) (if any) made pursuant to this clause 10.8 will apply retrospectively from the expiry of the initial SOW Term

and for each relevant anniversary date thereafter.

- (b) If the number of Authorised Users is changed at your request and if an adjustment to the Fees applies, the Fees will be adjusted accordingly for any subsequent billing periods after the date that such change takes effect.

11. Warranties

11.1 Hunter Primary Care warranties

- (a) We warrant that:
 - (i) we have the right and authority to enter into this Agreement;
 - (ii) we are able to lawfully grant the licence set out in clause 4.3(a) to a Licensed Deliverable;
 - (iii) our provision of the Services and Deliverables to you under this Agreement does not infringe any third party's Intellectual Property Rights in Australia;
 - (iv) in performing the Services, we will comply with all laws and any mandatory codes of conduct that apply to us; and
 - (v) we have all the necessary licences, approvals, permits and consents to enter into this Agreement and perform our obligations under it.

11.2 Customer warranties

- (a) You:
 - (i) are responsible for the acts and/or omissions of your Authorised Users as if they were your own acts and/or omissions; and
 - (ii) are solely responsible for obtaining and maintaining your own facilities and infrastructure, including any internet and telecommunications systems required by you to access and use the Services, and for ensuring that they are compatible with the Services.
- (b) You warrant that:
 - (i) you have the right and authority to enter into this Agreement;
 - (ii) you will comply with all applicable laws in relation to this Agreement;
 - (iii) you have not relied on any representations or warranties by us other than those expressly set out in this Agreement;
 - (iv) use of any materials provided to us by you to enable us to perform our obligations under this Agreement does not, and will not, infringe the rights (including Intellectual Property Rights) of any person; and
 - (v) to the best of your knowledge, there are no actions, claims, proceedings or investigations pending or threatened against you or by you which may have a material effect on the subject matter of this Agreement or your ability to carry out your obligations under this Agreement.

11.3 Exclusions

Subject to the warranties provided in clause 11.1 and 12.2:

- (a) we do not guarantee that the Services (or any part of it) will be provided on a continuous basis or that any part of them is accurate, complete or fault free;
- (b) you acknowledge and agree that the Service is provided "as is" and "as available" and, to the maximum extent permitted by law, without any warranty of any kind, express or implied; and
- (c) to the maximum extent permitted by law and except as set out in this Agreement (including clause 11.4), we exclude all warranties, rights, remedies and liability to you or a third party for breach of contract, negligence or breach of any other law, including for the Equipment.

11.4 Australian Consumer Law

- (a) If you are a "consumer" for the purposes of Schedule 2 of the Competition and Consumer Act 2010 (Cth) (**Australian Consumer Law**), our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law.
- (b) For major failures with the Services, you are entitled:
 - (i) to cancel your service contract with us; and
 - (ii) to a refund for the unused portion, or to compensation for its reduced value.
- (c) You are also entitled to choose a refund or replacement for major failures with goods.
- (d) If a failure with the goods or service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

12. Liability

12.1 Liability

- (a) Subject to clause 12.2:
 - (i) we exclude all liability for the Third Party Material, including any use of such Third Party Material; and
 - (ii) neither party is liable for Consequential Loss.
- (b) Subject to clause 12.2 and paragraph (a) above:
 - (i) the aggregate liability of you to us under or in respect of this Agreement whether in contract, tort (including negligence), statute or any other cause of action (other than the obligation to pay Fees) is limited to an amount equal to the Fees paid under this Agreement;
 - (ii) the aggregate liability of us under or in connection with a SOW whether in contract, tort (including negligence),

statute or any other cause of action, is limited to an amount equal to the Fees paid under that SOW; and

- (iii) the aggregate liability of us to you under or in respect of this Agreement whether in contract, tort (including negligence), statute or any other cause of action (other than claims in connection with a SOW) is limited to an amount equal to the Fees paid to us in the first three months of this Agreement.

12.2 No liability

Nothing in this Agreement operates to limit or exclude liability:

- (a) that cannot be limited or excluded by law, but for any such liability that cannot be excluded, but can be limited, our liability is limited to our choice of re-supplying or paying the cost of re-supplying services and repairing, replacing or paying the cost of repairing or replacing goods;
- (b) in relation to you, for any breach of our Intellectual Property Rights or a breach of clause 6.3 or 6.4, the terms of any licences granted under or pursuant to this Agreement to you, claims resulting from the breach of any Third Party Terms (excluding a breach by us of any such Third Party Terms), and claims relating to your products or services or any breach of your confidentiality and privacy obligations; or
- (c) under an indemnity in this Agreement.

Other than as set out in clause 11.1 and this clause 12 to the extent permitted by law, we exclude all other warranties, remedies and liability to you or a third party for breach of contract, negligence or breach of any other law.

12.3 Third party IP infringement claims

Subject to clauses 12.1 and 12.2, where a claim is made by a third party against you that the supply of the Services under this Agreement infringes the Intellectual Property Rights of that third party, we will pay any amounts finally awarded by a court to that third party or that is otherwise settled by us with that third party, provided that you allow us or our nominees to have complete and sole authority in directing any defence, compromise or settlement of the claim.

12.4 Exclusions

Clause 12.3 does not apply to any claims that arise out of:

- (a) your use of the relevant Service or Deliverable (as applicable) in breach of this Agreement;
- (b) the combination of the relevant Service or Deliverable (as applicable) with services, software or hardware that were not provided by us (including the Customer Pre-Existing Material);
- (c) your failure to use the most up-to-date version of the relevant Deliverable or Service (as applicable) made available to you by us;
- (d) any modification of the relevant Service or a Deliverable (as applicable) by a third party that has not been authorised by us;

- (e) the Third Party Material; and/or
- (f) Customer Data.

12.5 Rectification

If a claim referred to in clause 12.3 is made or if we believe that such a claim is likely, then we may, at its option, and at our expense:

- (a) procure for you the right to continue using the relevant Service;
- (b) replace or modify the relevant Service so that it becomes non-infringing; and/or
- (c) terminate this Agreement and/or the infringing item and reimburse you for any pre-paid Fees for the relevant Services that have not yet been supplied or delivered to you.

12.6 Exclusive remedy

Clauses 12.3 to 12.5 set out our entire liability, and your sole remedy, with respect to a third party claim referred to in clause 12.3.

12.7 Indemnity to Hunter Primary Care

You indemnify us against any direct loss, damage, liability, costs or expenses arising out of or in connection with:

- (a) the Customer Data;
- (b) a claim by a third party against us in relation to:
 - (i) you or your Authorised User's use of the Third Party Material; and
 - (ii) the Customer Pre-Existing Material; and
- (c) a breach of clauses 11.2(b)(ii) or 8 by you or your personnel.

12.8 Contribution

Notwithstanding anything else in this clause 12, our liability will be reduced to the extent the loss or damage is caused by you or your Authorised Users.

13. Insurance

We will, for the term of this Agreement, maintain at our own cost:

- (a) professional indemnity insurance for not less than \$1,000,000 for any one claim and \$1,000,000 for all claims in the annual aggregate;
- (b) public and product liability insurance for not less than \$20,000,000 for each occurrence and in the annual aggregate; and
- (c) workers' compensation insurance, as required by law.

14. Change Control

Either party may request a change to this Agreement, including an SOW, by discussing in good faith with the other party within 30 days of the next renewal date.

15. Suspension and termination

- (a) Without limiting clause 12.5, at any time and without notice to you, we may limit, suspend or terminate the Services (or any part of it) if, in our reasonable opinion:
 - (i) you are in breach of clause 6.3 or 6.4;

- (ii) the supply by us or use by you of the Services (or any part of them) is, or will be, unlawful; or
- (iii) the Services or its provision (in whole or in part) may cause personal injury, death or damage to property.
- (b) By notice to you, we may (without any liability) immediately limit, suspend or terminate the Services (or any part of them) if you:
 - (i) fail to pay us the Fees on time; or
 - (ii) are, or we reasonably believe that you are or will become, Insolvent or otherwise unable to pay your debts as and when they fall due.
- (c) You may suspend the Services on notice to us for a minimum period of one month and a maximum period of three months.

15.2 Termination for cause

A party may terminate this Agreement or an SOW, in each case, in whole or in part, immediately on notice in writing to the other party if:

- (a) the other party commits a breach of a material term of this Agreement and that breach is incapable of remedy;
- (b) the other party breaches a material term of this Agreement that is capable of remedy, and the other party fails to rectify that breach within 30 days of the first party's notice to the other party specifying the breach;
- (c) the other party is Insolvent; or
- (d) the first party has an express right to do so under this Agreement.

15.3 Consequences of termination or expiry

- (a) If either party terminates this Agreement and/or an SOW, you must (to the extent applicable to the terminated part):
 - (i) immediately cease use of the relevant Service;
 - (ii) pay us all outstanding Fees by the due date;
 - (iii) unless the Agreement was terminated for our material breach, we will not refund any pre-paid Fees for Services that have not yet been delivered;
 - (iv) at your expense, and subject to any document retention requirements you have at law, return to us, within 10 Business Days of the date of termination or expiry, all copies of:
 - (A) the relevant Licensed Deliverable and documentation provided to the Customer; and
 - (B) Hunter Primary Care' Confidential Information,
 that are in the Customer's possession or control.
- (b) Clauses 8, 9, 12, 18 and 19, each indemnity and any other clause that, by its nature is intended to survive termination or expiry, survives the termination (for any reason) or any expiry of this Agreement.

16. Dispute Resolution

16.1 General

Each party must follow the process set out in this clause 16 before commencing proceedings against the other party (except for urgent injunctive or declaratory relief).

16.2 Process

- (a) If a dispute arises between the parties that cannot be resolved promptly, either party may notify the other party of a formal dispute by providing written notice (**Dispute Notice**).
- (b) Each party must nominate a senior executive to meet within seven days of the notice (or another agreed period) to try and resolve the dispute.

16.3 Obligation to continue to perform

Notwithstanding the existence of a dispute, each party will continue to perform its obligations under this Agreement.

17. Force Majeure Event

17.1 Effects of Event

If a party is unable to perform or is delayed in performing an obligation under this Agreement (other than an obligation to pay the Fees) because of an event beyond that party's reasonable control (**Force Majeure Event**), that obligation is suspended but only so far and for so long as it is affected by the Force Majeure Event.

17.2 Obligation of affected party

The party affected by the Force Majeure Event must notify the other party of the Force Majeure Event as soon as reasonably practicable and must take all reasonable steps to limit the effects of the Force Majeure Event.

18. General

18.1 Governing law

This Agreement is governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of that place.

18.2 Entire agreement

This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

18.3 Variation and waiver

A provision of this Agreement or a right created under it, may not be waived or varied except in writing, and signed by the party or parties to be bound.

18.4 Assignment

We may assign or novate this agreement to a Related Body Corporate on notice to you. Other than as set out in the foregoing, neither party may assign nor novate this Agreement without the other party's prior written consent (such consent not to be unreasonably withheld or delayed).

18.5 Notices

All notices and forms of communication in connection with this Agreement must be in writing and delivered by hand or sent by post or email to

the addresses or email address specified in this Agreement or as otherwise notified by the relevant party in writing.

18.6 When effective – notices

A notice will take effect from the time it is received unless a later time is specified. Notices sent by:

- (a) hand, are taken to be received when delivered;
- (b) post, are taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia); and
- (c) email, are taken to be received at the time when the email is capable of being retrieved by the addressee at its nominated email address.

18.7 Costs

The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this Agreement and other related documentation.

18.8 No agency relationship

Nothing in this agreement will be taken to constitute either party as an employee, agent, partner or joint venturer of the other party, nor is either party authorised to represent itself as acting, or to incur any obligation, on behalf of the other party.

18.9 Invalidity

- (a) A word or provision must be read down if:
 - (i) this Agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this Agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of clause 18.9(a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this Agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this Agreement has full effect even if clauses 18.9(b)(i) or 18.9(b)(ii) apply.

19. Definitions and interpretation

19.1 Definitions

In this Agreement:

Acceptance Test Period means, in relation to Acceptance Testing, the period specified in the relevant SOW for you to conduct that Acceptance Testing or, if no such period is specified, five Business Days from the date of delivery of the Deliverable.

Additional Licence Terms is defined in clause 4.4(a).

Agent is defined in clause 7(b).

Agreement is defined in clause 1.2.

Application means Hardware and Software including any programs for us to provide a Service to you with online access but excluding any applications linked to the Application but supplied to you by third parties, or any of your data stored or processed on the Application by you.

Authorised User means the employees you have authorised to use the Services. For clarity, you must not authorise any person other than a person who is your employee to access or use the Services without our prior written consent.

Business Day means any day except a Saturday, a Sunday or a public holiday in New South Wales.

Confidential Information means:

- (a) all confidential, non-public or proprietary information, regardless of how the information is stored, delivered or exchanged between the parties or their representatives (or in our case, provided by us, our Related Bodies Corporate and any other entity controlled by us (directly or indirectly), and in your case provided by your Related Bodies Corporate) before, on or after the Start Date relating to the business, technology or other affairs of the Discloser; and
- (b) in our case, includes all information disclosed by a third party that we are required to keep confidential,

but does not include information:

- (c) that is or becomes part of the public domain other than through breach of this Agreement or an obligation of confidence owed to the Discloser;
- (d) which the Recipient can prove by contemporaneous written documentation was:
 - (i) already known to it at the time of disclosure by the Discloser (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
 - (ii) independently developed by the Recipient without reference to the Confidential Information of the Discloser; or
- (e) which the Recipient acquires from a source other than the Discloser or any of its representatives, where such source is entitled to disclose it on a non-confidential basis.

Consequential Loss means:

- (a) indirect or consequential loss or damage;
 - (b) a loss of opportunity or goodwill;
 - (c) a loss of revenues;
 - (d) a loss of profits;
 - (e) a loss of anticipated savings or business; and
 - (f) a loss of, or corruption to, data,
- and any costs or expenses incurred in connection with the foregoing.

Content means scenarios, images and other content to be developed and supplied by us under this Agreement.

Corporations Act means the *Corporations Act 2001* (Cth).

Customer Data means all information and data, the Intellectual Property Rights in which are owned by, or licensed by a third party to you and that you enter into the Services or provide to us for use of a Service.

Customer Pre-Existing Material means any material you provide or otherwise makes available to us that contains any Intellectual Property Rights which were developed independently of this Agreement by you or a third party.

Deliverable means, in respect of the Services set out in an SOW, each item identified as such in that SOW that we will supply as an output of those Services, including Content.

Discloser means the party disclosing Confidential Information.

Dispute Notice is defined in clause 16.

Equipment means the equipment set out in the SOW and any virtual reality headsets and laptops that the parties agree that we will procure, as Agent, for the Customer.

Fee means the fees and charges for the Services and Deliverables, in each case, as set out in the relevant SOW.

Force Majeure Event is defined in clause 17.1.

GST has the meaning given to that term in the GST law.

GST law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the related imposition Acts of the Commonwealth.

HPCMITS means Hunter Primary Care managed IT support services.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it has had a controller appointed or is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this Agreement); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this Agreement reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or

- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

Initial Term is defined in clause 2.

Intellectual Property Rights means all intellectual property rights, including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in Article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Licence Term means, for a Licensed Deliverable, the term of the licence granted to you for that Deliverable, as specified in the relevant SOW.

Licensed Deliverable means the Deliverables licensed to you under this Agreement, except a Deliverable that is an addition, enhancement or update to the Software.

Licensed Territory is defined in the relevant SOW or, if not defined in that SOW, means Australia.

Receiver includes a receiver or receiver and manager.

Recipient means the party receiving Confidential Information.

Related Body Corporate has the meaning given to it in the Corporations Act.

Scope of Agency is defined in clause 7(a).

Services means the information technology management services we provide to you under an SOW, including the delivery of a Deliverable.

SOW means a statement of work agreed by the parties pursuant to clause 1.3 that sets out the particular details and terms for the supply of one or more Services, Content and/or Deliverables. A template SOW is set out in Schedule 1 to this Agreement.

SOW Start Date means, in respect of an SOW, the date specified as such in that SOW, or if no date is specified, the date on which the parties execute that SOW.

SOW Term means, in respect of an SOW, the term of that SOW, as specified in that SOW.

Special Conditions means the terms set out in Schedule 3.

Start Date means the date the last party signs this Agreement.

Taxes means a tax, levy, duty, charge, deduction or withholding, however described, imposed by law or a government agency, together with any related interest, penalty or fine, including in respect of GST, but excluding income tax.

Third Party Material means:

- (a) software;
- (b) content; and
- (c) data and other components,

in each case, that are sourced or licensed from third parties and supplied or made available to you under or pursuant to this Agreement.

Third Party Terms is defined in clause 5.2(a).

We means Hunter Primary Care Limited.

Website means our website located at [https://www.hunterprimarycare.com.au] or any other web domain owned by us.

You means the Customer.

notice period is extended until the following Business Day.

- (b) If any act or thing done under this Agreement is done after 5 pm on a day, it is taken to have been done on the following Business Day.

19.2 Interpretation

In this Agreement, unless the context indicates a contrary intention:

- (a) (documents) a reference to a document is to the document as varied, amended, supplemented, novated or replaced from time to time;
- (b) (references) a reference to a party, clause or paragraph is to a party, clause or paragraph to or of this Agreement;
- (c) (headings) clause headings and the table of contents are inserted for convenience only and do not affect the interpretation of this Agreement;
- (d) (person) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their permitted novatees, permitted assignees, personal representatives and successors;
- (e) (including) including and includes (and any other similar expressions) are not words of limitation and a list of examples is not limited to those items or to items of a similar kind;
- (f) (corresponding meanings) a word that is derived from a defined word has a corresponding meaning;
- (g) (singular and plural) the singular includes the plural and the plural includes the singular;
- (h) (time and date) a reference to a time or date is to the time and date in Sydney, New South Wales;
- (i) (joint and several) an agreement, representation, covenant, warranty, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (j) (replacement bodies) a reference to a body that ceases to exist or whose powers or functions are transferred to another body is to the body that replaces it or that substantially succeeds to its powers or functions; and
- (k) (Australian currency) a reference to dollars or \$ is to Australian currency.

19.3 Construction

Neither this Agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

19.4 Timing of acts or things

- (a) If the time for doing any act or thing required to be done under this Agreement or a notice period specified in this Agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that

Schedule 1 – Template SOW

Statement of Work

This is Statement of Work (**SOW**) number [insert] entered into under the Master Services Agreement between [insert] ACN [insert] (Customer) and Hunter Primary Care Pty Ltd (ACN [insert]) (Hunter Primary Care) dated [insert] (Agreement).

SOW Start Date	The date the parties sign this SOW.	
SOW Term	<input checked="" type="checkbox"/> 12 months. <input type="checkbox"/> other:_____.	
Renewal of SOW Term (Note: Select the renewal option that will apply to this SOW)	<input type="checkbox"/> The SOW Term does not terminate. <input checked="" type="checkbox"/> The SOW Term automatically renews for successive periods of 12 months at the end of the then current term, unless either party notifies the other party that it does not wish to renew the SOW Term at least 30 days before the expiration of the then current SOW Term.	
Payment terms	Quarterly in advance by direct debit	
Acceptance Testing	<input type="checkbox"/> Applies	<input type="checkbox"/> Does not apply
Managed Services comprise	<input type="checkbox"/> Support Services <input type="checkbox"/> Implementation Services <input type="checkbox"/> Training Services <input type="checkbox"/> Professional Services <input type="checkbox"/> Hosted Services You may direct us in writing to vary the above Services.	

Agreed by the parties

Signed by the Customer by an authorised representative:

Signature _____

Date _____

Print
Name _____

Position _____

Signed by Hunter Primary Care by an authorised representative:

Signature _____

Date _____

Print
Name _____

Position _____

PART A: SERVICES

1. General overview

We will provide you with a fully managed support, maintenance and monitoring service on the terms set out in this Agreement, and SOW.

The services offered by us, as set out below, may be varied by us from time to time.

2. Requirements

2.1 Support Services

- (a) We undertake to provide support to you in respect of any Software for which you have paid a Fee during the Term of the Agreement, and will provide such support as follows, at no additional charge unless otherwise agreed between the parties:
 - (i) manned telephone advisory service on Business Days during business hours to respond to any queries and to give assistance to you and where practicable all responses will be immediate;
 - (ii) in accordance with the Service levels, correction of any Faults in the Software which may become apparent and which are notified to us by you during the performance of this Agreement;
 - (iii) supporting, where necessary, the interface between your existing Software, if any, and the Software; and
 - (iv) provision of updates.
- (b) Support Services will not include the rectification of any Fault that we can reasonably demonstrate arose from:
 - (i) any Hardware or Software residing on your premises with which the Software is used or any peripheral equipment used residing on the Client premises, unless we have previously been advised by you of the same in writing and confirmed that the performance of the Software will not be adversely affected. For the avoidance of doubt, we will provide all reasonable assistance and information requested by you in relation to the requirements for, and any issues with, your operating environment used in relation to the Software; or
 - (ii) any repair, adjustment, alteration or modification of the Software by any person other than our staff, or its agents or sub-contractors; or
 - (iii) the failure by you to implement reasonable recommendations (as determined by us, acting reasonably) in respect of solutions to Faults previously notified in writing by us.
- (c) We will use our best endeavours to ensure that the Software is maintained and updated to reflect any changes of Applicable Laws or best industry practice in any jurisdiction supported by the Software, in all cases to the extent that such changes impact on the functionality of the Software or in any amendment to the Software specification as agreed by the parties.
- (d) Except as otherwise stated in this Agreement, you are not be permitted to allow a third party to have access to, or otherwise use, the Software, or any part of it, where such third party is, or could reasonably be determined to be, a competitor, directly or indirectly, of ours.

2.2 Implementation Services

- (a) *Implementation Services* means the work to be undertaken by us to install, configure, customise, build, test and implement any Hardware or Software.
- (b) We undertake to provide the Implementation Services in consideration of the payment of the Fee.
- (c) We will notify you of completion of the Implementation Services. Following notification, you will have a reasonable period of time to test the Services in order to satisfy yourself that the Services comply with any of your requirements.
- (d) You will provide us with all reasonable assistance in relation to its testing activities.
- (e) If the Services fail to conform to any of your requirements, you may require us, at our expense, to promptly re-perform our configuration activities to rectify the failure.

2.3 Hosted Services

Hosted Services include:

- Build and configuration of a virtual server hosted on HPCMITS premises
- Supply of operating system, backup software, Anti-Virus protection
- Build and configuration of server including practice management software of choice by practice (software purchase not included)
- Configure RAID for data storage as required for accreditation
- Configure remote access to the server
- Transfer any existing data onto the new server
- Configure backup solution as required for accreditation

2.4 Professional Services

Professional Services include a range of information technology services including:

- Ongoing use of HPCMITS;
- Initial setup of HPCMITS for use in your network environment, including:
 - Support of Hardware where a HPCMITS agent is installed;
 - Installation of HPCMITS agent;
 - Initial consultation and configuration of the HPCMITS Management console;
 - Training on HPCMITS for relevant staff; and
 - Access to HPCMITS User Guide.
- Hardware procurement and disposal;
- Network Documentation;
- Updating workstations or troubleshooting workstations that have a HELP agent installed and are therefore part of this Agreement;
- Troubleshooting other network devices such as network switches that are located on the premises covered under this Agreement;
- Network and Infrastructure auditing; and
- Support on all clinical Software systems within HPCMITS IT support personnel's knowledge range.

Professional Services may also include services relating to leased servers.

HPCMITS will lease server hardware to you for a monthly fee. The hardware remains the property of HPCMITS for the duration of the Agreement. HPCMITS will replace the hardware every three years and upgrade the hardware as required by the Client. HPCMITS Leased Server Services include:

- Supply of server hardware
- Supply of operating system, backup software, Anti-Virus protection
- Build and configuration of server including practice management software of choice by practice (software purchase not included)
- Configure RAID for data storage as required for accreditation
- Installation of server onsite and configure for local environment.
- Transfer any existing data onto the new server
- Supply backup solution hardware, NAS box and 3 USB hard drives for offsite backup storage as required for accreditation
- Training for practice/business manager how to complete daily offsite backup procedure.
- Replacement of server every 3 years, or in the event of a hardware failure. A replacement fee of \$4,000 will apply if the server is damaged or stolen.

PART B: IMPLEMENTATION PLAN

[Insert implementation plan / milestone]

PART C: SERVICE LEVELS

We will endeavour to provide the Services to meet the following Service levels:

- A minimum of 98% uptime for our system (availability of our system during normal business hours), calculated on a month by month basis, subject to viable client internet connection
- We will endeavour to respond to support in business hours requests related to our system within four (4) business hours of a critical incident as per the Target Response Table below

You agree to adhere to the following:

- Ensure all servers and workstations are available (turned on) to receive updates when scheduled with our staff
- Provide Internet access with a minimum of 98% uptime
- Maintain warranty with server vendor
- Swap offsite backup media
- Not install any Software not related to the business on any computer within the network
- Not connect any device onto the network that is not to be used for business purposes

In the event of a major outage of internet services and you have a problem that requires assistance from HPCMITS, contact can be made via a dedicated HPCMITS Help Desk phone number - 02 4929 1000

Target Response Table

CALL PRIORITY	TARGET RESPONSE TIME
Critical: <ul style="list-style-type: none"> Hardware, Software or Application is inoperable with no access to functionality resulting in significant impacts to the Client 	Within four (4) business hours of the Fault being reported. A Fault will be deemed to be reported upon receipt of a telephone call or email to HPCMITS during business hours, whichever is the earlier.
High: <ul style="list-style-type: none"> A fault arising affecting most users and some impact to the Client 	Within eight (8) business hours of the Fault being reported. A Fault will be deemed to be reported upon receipt of a telephone call or email to HPCMITS during business hours, whichever is the earlier.
Low: <ul style="list-style-type: none"> Minor function is inoperable with minimal impact to the Client 	Within twenty four (24) business hours of the Fault being reported. A Fault will be deemed to be reported upon receipt of a telephone call or email to HPCMITS team during business hours, whichever is the earlier.

You must notify us of any Fault by first calling our Help Desk number (02 4929 1000) and then by submitting a request via the HPCMITS HELP icon if access is available.

You must monitor the availability of the Application and notify us of any material period in which the Application is unavailable to you, and we will be entitled to investigate and verify that non-availability.

PART D: EQUIPMENT

Appointment as Agent			
<input checked="" type="checkbox"/>	Applies	<input type="checkbox"/>	Does not apply

If we are appointed as the Agent, then we will procure, as Agent, the following Equipment:

Equipment	Description

PART E: DELIVERABLES

Deliverable No. [1]	[Insert Deliverable name]
Description	
Delivery requirements	
Acceptance Criteria	Delivered in accordance with the above specifications.
Acceptance Tests	
Acceptance Test Period	

Deliverable No. [1]	[Insert Deliverable name]
Description	
Delivery requirements	
Acceptance Criteria	Delivered in accordance with the above specifications.
Acceptance Tests	
Acceptance Test Period	

[Insert more tables for Deliverables as required.]

PART F: THIRD PARTY MATERIALS

[Insert]

PART G: FEES

The Fees for the Services are set out below.

The fees payable by you to us for performing the Services under the Agreement are listed in Table B1 – B3 below. **Should the Agreement be cancelled within 12 months of the contract execution date, you are required to pay to us the balance of the Minimum Total Cost.**

Table B1: Fee for IT Managed Services - Excluding GST

Business Cost for HPCMITS (excluding GST)			
No. of PCs	No. of Servers	Monthly	Yearly
«No_of_PCs»	«No_of_Servers»	\$«Monthly_»	\$«Yearly»

GST applies to all costs

Table B2: Fee for Leased Equipment – excluding GST

Business Cost for HPCMITS Leased Server		
Schedule of leased equipment	Monthly	Yearly
«Schedule_of_Leased_Equipment»	«Monthly_1»	«Yearly1»

Table B3: Fee for Hosted Server – excluding GST

Business Cost for HPCMITS Hosted Server (excluding GST)		
No. of Servers	Monthly	Yearly
«No_of_Leased_Servers»	\$«Monthly_2»	\$«Yearly2»

Minimum Total Cost is provided over a 36 month period for Leased Server/Hosted Server. Should the contract be cancelled within 36 months of the contract execution date, you are required to pay to us the balance of the Minimum Total Cost.

GST applies to all costs

Fees will be indexed annually for CPI.

Additional services provided with costs

The fees payable to us by you for work performed additional to the Standard Services as per B1-B3 above will attract fees detailed in Table B4, below:

Table B4: Cost of Services

Time	Service	Hunter Primary Care Members Rates (ex GST)	Non Hunter Primary Care Member Rates (ex GST)
08:00am to 6:00pm Monday to Friday	IT On-site service visit	\$105 per hour plus \$95 flat rate call out fee	\$126 per hour plus \$126 flat rate call out fee
	IT telephone or remote access support. Minimum 15 Minute block and 15 minute blocks thereafter	\$27 per 15 minutes	\$32 per 15 minutes
6:00pm to 10pm Monday to Friday or non- Business days	Planned on site visit	\$158 per hour plus \$95 flat rate call out fee	
6:00pm to 10pm Monday to Friday	Emergency unplanned support	\$200 per hour plus \$95 flat rate call out fee	

Payment Details

All payments must be made by the client by Direct Debit to us and a valid signed Direct Debit form is to be kept on file for the same.

PART H: ADJUSTMENTS TO THIS SOW

Changes to this SOW, including but not limited to changes to the:

- (a) Hosted Service terms;
- (b) Support Service terms;
- (c) Service Levels; and
- (d) Fees,

may be made by us upon us giving you 30 days' notice (**Notice Period**) of such changes. Your continued use of the Services and/or the Deliverables after the expiry of the Notice Period will be deemed to be acceptance of those changes.

PART H: DEFINITIONS

Unless otherwise specified, capitalised terms used in this SOW have the meaning given to them in the Agreement.

Schedule 3 – Special Conditions