

inTOUCH APPLICATION LICENSE AND SUPPORT AGREEMENT

THESE TERMS ARE AN AGREEMENT BETWEEN INCISIVE SOFTWARE LIMITED AND **YOU**. PLEASE READ THEM. THEY APPLY TO THE PRODUCT YOU ARE USING. THE TERMS ALSO APPLY TO ANY UPDATES, UPGRADES, MODULES, MATERIALS, INTERNET-BASED SERVICES, AND SUPPORT SERVICES FOR THIS PRODUCT, UNLESS OTHER TERMS ACCOMPANY THOSE ITEMS. IF SO, THOSE TERMS APPLY. USE OF THE PRODUCT AND MATERIALS BY AUTHORISED USERS IS ALSO GOVERNED BY THIS AGREEMENT. BY USING THE PRODUCT, **YOU** ACCEPT THESE TERMS. IF **YOU** DO NOT ACCEPT THESE TERMS, DO NOT USE THE PRODUCT. This License and Support Agreement ("Agreement") is entered into between **You** (either an individual or a single entity) and Incisive Software Limited. ("Company") for the number of Authorised Servers, as referenced by the corresponding invoice or agreed specifications.

Capitalized terms used in the Agreement and Schedule A, which are incorporated herein by reference, are defined in the last section of this Agreement.

1. SOFTWARE GRANT

Company permits **You** to use the Product, Documentation, and Materials only in accordance with the terms of this Agreement, via the number of Authorised Servers, defined herein, or referenced in a corresponding invoice. Subject to **Your** payment of the applicable License & Support Fees and **Your** compliance with the other terms of this Agreement, Company grants to **You** a limited, personal, non-exclusive, non-transferable and non-assignable right to use the Product, Materials, and Documentation as set forth in this Agreement.

Subject to the restrictions set forth below, **You** may:

- a) install the number of authorised copies of Product in executable form for **Your** internal operations;
- b) use the Documentation for **Your** internal operations;
- c) make backup copies of the Product, provided the backup copies are not used for Production Purposes;
- d) use the Materials in conjunction with the Product, and
- e) permit **Your** employees, agents, representatives, contractors or customers designated by **You** ("Authorised Users") to access and use the Product locally or remotely in accordance with this Agreement.

Copyright notices and any other proprietary legends on the original copy of the Product and Materials must be reproduced on any copies of the Product. **You** may not transfer the rights to a backup copy.

2. USE RESTRICTIONS

2.1 You may not:

- a) sell, license, sublicense, distribute, lease or otherwise transfer or allow the transfer of the Product, or any backup copy, to third parties;
- b) use the Product in any manner inconsistent with the rights granted above, including, but not limited to, use of the Product in a service bureau, renting, leasing, lending or using the Product to provide commercial hosting services, or allow the Product to be served by more than the number of Authorised Servers;
- c) modify or create derivative works of the Product, Documentation, or Proprietary Information or separate the Product's component parts to use on more than one device;
- d) use, or allow others to use, the Product, Documentation, Materials, or Company Proprietary Information to develop a product that is competitive with the Product, Documentation, or Materials; or
- e) unless specifically permitted under applicable law, without the possibility of contractual waiver, attempt to decompile, disassemble or reverse engineer the Product, or otherwise attempt to:
 - i. derive Source Code or underlying ideas, algorithms, structure or organization from the Product or
 - ii. defeat, avoid, bypass, remove, deactivate or otherwise circumvent any Software protection mechanisms in the Product, including without limitation any such mechanism used to restrict or control the functionality of the Product.
- f) allow any other application or process, that is not provided by the **Company**, to access, read, write or modify records in the database used by the Product.

If **You** wish to exercise any contrary right granted by applicable law to reverse engineer to ensure interoperability, **You** will first provide written notice to the Company, and permit the Company, at its discretion, to provide information and assistance reasonably required to ensure the Product's interoperability as Special Services.

2.2 THERE MAY BE TECHNOLOGICAL MEASURES IN THE PRODUCT THAT ARE DESIGNED TO PREVENT UNAUTHORISED USE OF THE PRODUCT, INCLUDING, BUT NOT LIMITED TO, A TIME-OUT ROUTINE THAT MAY RENDER THE PROGRAM UNUSABLE IF

LICENSE & SUPPORT FEES ARE NOT PAID. **You** understand that **You** may need to activate or reactivate the Product from time to time to continue use of the Product.

2.3 THERE MAY BE TECHNOLOGICAL MEASURES IN THE PRODUCT THAT ARE DESIGNED TO ENSURE THE PRODUCT CAN ACCESS INTERNET BASED SERVICES AND DATA AND TO ALLOW THE COMPANY'S SUPPORT, SERVICE, AND ADMINISTRATION PERSONNEL TO EFFICIENTLY ACCESS THE PRODUCT, INCLUDING, BUT NOT LIMITED TO, A ROUTINE THAT MAY RENDER THE PROGRAM UNUSABLE IF THE ACCESS IS NOT WORKING. **You** understand that **You** may need to re-establish access to the Product from time to time to continue use of the Product.

2.4 Security. It is **Your** responsibility to ensure that suitable measures or mechanisms are used to secure the Product and the environment in which it operates, to exclude access by parties not considered to be Authorised Users.

If there is the possibility that non-Authorised Users could compromise the security of the Product or its operating environment you must immediately cease use of the Product and shut-down the server that the Product is installed on.

2.5 Materials. Materials are valuable Intellectual Property exclusively (except for some registered trademarks and service marks referenced therein) owned by the Company. No proprietary rights are transferred to **You** in the Materials or in any information therein. **You** are not authorised or permitted to furnish the Materials to any person or firm for distribution, reuse or retransmission. **You** may not externally redistribute or disseminate the Materials in any manner which competes with or substitutes for distribution by the Company

Information included in the Materials is obtained from sources considered reliable, but there is no guarantee with respect to the accuracy, currency, or completeness of the Materials or any information contained therein. Epidemics and disease outbreaks as well as other national, regional, seasonal, and/or patient specific factors may make these Materials inappropriate for **Your** customers/patients.

You are responsible for implementing sufficient procedures and checkpoints to satisfy **Your** requirements to make the final judgment and evaluation as to the usefulness of the Materials in **Your** own environment.

NEITHER THE COMPANY NOR ITS SOURCES MAKE ANY WARRANTY, EXPRESS OR IMPLIED, AS TO ACCURACY, APPROPRIATENESS, ADEQUACY, CURRENCY, OR COMPLETENESS OF INFORMATION CONTAINED IN THE MATERIALS, WHICH ARE PROVIDED "AS-IS", WITHOUT WARRANTY AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, OR RESULTS. NEITHER THE COMPANY NOR ANY SOURCES SHALL BE LIABLE FOR ANY ERRORS OR OMISSIONS NOR SHALL THEY BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT OR INDIRECT, SPECIAL OR CONSEQUENTIAL, INCLUDING LOSS OF PROFITS, EVEN IF ADVISED OF THE POSSIBILITY. IN NO EVENT SHALL THE CUMULATIVE LIABILITY OF THE COMPANY FOR ALL ACTIONS EXCEED THE AVERAGE MONTHLY FEE PAID BY SUBSCRIBER FOR ACCESS TO THE MATERIALS.

You are prohibited from using, or allowing others to use, the Materials for subsequent commercial purposes such as resale or preparing databases of such material.

The foregoing terms and conditions shall survive any termination of **Your** right of access to the Materials.

2.6 Product Operation. **You** agree that the Product purchased shall be operated exclusively by duly qualified personnel in a safe and reasonable manner in accordance with the appropriate written instructions and for the purpose for which the products were intended. **You** agree to indemnify and hold the Company harmless from and against all claims, demands, actions, judgments, and costs, including reasonable attorney's fees, arising out of or in connection with **Your** operation of the Product.

3. INVOICES, TAXES, AND PAYMENT

License & Support Fees, any Special Services charges, Development Services charges and any Supplies charges, shall be payable upon **You** signing the order and thirty (30) days prior to the subsequent Renewal Dates. If **You** request Special Services, Development Services, or Supplies, the charges for such Services or Supplies shall be invoiced as soon as practicable after the Special Services, Development Services or Supplies are provided if payment was not requested beforehand.

Any payments received by the Company are applied to any unpaid invoices for Special Services, Development Services, or Supplies first and to invoices related to License & Support Fees last. Any credits on **Your** account must be used within 12 months or they expire worthless.

If any authority imposes a duty, tax, levy or fee, excluding those based on Company's net income, upon the Product, **You** shall pay the amount specified. **You** are responsible for any personal property taxes for the Product from the date it was acquired. This paragraph also applies to any Products in transit to **You** or **Your** premises, or held under this agreement for delivery.

The cost of any special handling, installation, or modifications to the Product caused by **Your** requirements or requests or the cost of complying with the particular requirements of any electrical, building or health and safety codes or legislation shall be invoiced as soon as practicable after the special handling, installation, or modifications are provided if payment was not requested beforehand.

Payments provided for in this Agreement shall, when overdue, be subject to a late payment charge calculated at a rate of two

percent (2%) per month until paid; provided, that if the late payment charge exceeds the maximum permitted by law, such charge shall be reduced to such maximum amount.

Should an invoice fall more than 90 days overdue, the Company shall be entitled to invoice **You** for, and You will be liable to pay, a Delinquent Account Administration Fee of \$1,000 (or the then current published rate). You agree to pay any debt collection fees, debt collection commissions, legal fees, and/or court costs incurred by the Company in an effort to collect the money owing on the overdue invoice.

If a payment is not made in accordance with standard terms of payment, the Company reserves a security interest in and to the products purchased hereunder and the Buyer shall execute a financial statement, security agreement, conditional sales agreement, chattel mortgage, lease and/or any other documents requested by the Seller. If Buyer shall fail to pay any amount when due or shall default, the Company may without notice to Buyer peaceably enter any premises in which the Product may be found and render them inoperable or remove them and hold and sell them in accordance with applicable law.

You shall obtain all permits, licenses and certifications required by federal, state, local authorities in connection with the installation and operation of the product, and shall bear any expense in obtaining same or in complying with any related rules, regulations, ordinances, and statutes.

4. TERM OF AGREEMENT

The term of this Agreement shall commence with an initial term of 1 year (the "Initial Term") from the date of **Your** acceptance of this Agreement. Thereafter, the Agreement shall automatically renew for successive 12 month annual term(s), hereinafter known as the "renewal period(s)" (collectively "Term"). After the Initial Term, either party may provide written notice on or before 30 days preceding an anniversary of the Start Date of its intent not to renew for the next annual period. The amount of charges for **Your** License shall be at Company's then current prices in effect at the time of such renewal.

If, after the Initial Term, a lapse in **Your** License occurs at any time, Company may invoice **You** a Reactivation Fee to inspect the Products prior to entering into a new agreement. During the Term, the Agreement may not be terminated except as follows:

- a) If **You** fail to pay any invoice in full within a period of 30 days after the same is due, Company may terminate this Agreement upon 5 business days' notice to **You** without any liability to **You** whatsoever.
- b) Except for **Your** failure to make payments, as invoiced, either party may terminate this Agreement on notice if the other party has defaulted in the performance of its obligations under this Agreement upon 30 days written notice, provided however, that the party in breach will have 30 days from the receipt of notice of termination to correct the default.
- c) A party becomes insolvent, invokes as a debtor any laws relating to the relief of debtors' or creditors' rights, or has such laws invoked against it as a debtor. Such termination shall be effective 30 days after notice unless the terminating party is satisfied with other party's solvency within that time.

Upon termination of the Agreement due to **Your** breach, Company shall be entitled to accelerate all remaining payments due for the term and any prepaid fees shall not be refunded.

On termination of this Agreement, **You**, at **Your** option, will either:

- i. destroy all copies of the Product, including any backup copies and the originals and any copies of the Documentation and Materials and certify such destruction in writing to Company, or
- ii. return all copies of the Product, including any backup copies and the originals and any copies of the Documentation and Materials to the Company.

This obligation shall survive the termination of this Agreement.

In the event **You** do not renew the License, **You** will no longer be able to use the Product, Materials, receive Software Upgrades, Technical Support, access the online portal and any other future benefits that may be available to subscribers at that time.

5. INTELLECTUAL PROPERTY

Company, and its suppliers, reserve all rights with respect to the Product, Documentation, Materials, Proprietary Information, and any copies under all applicable national and international laws and treaties for the protection of Intellectual Property, including, but not limited to, trade secrets, copyrights, trademarks, design, and patents. Any rights not expressly granted to **You** in this Agreement are retained by Company and its suppliers.

Except as otherwise provided in this Agreement, **You** shall not cause or permit unauthorised copying, reproduction or disclosure of any portion of the Product, Documentation, Materials, or Proprietary Information or the delivery or distribution of any part thereof to any third party, for any purpose. This restriction shall continue beyond the termination of this Agreement.

The Company agrees not to claim ownership over the medical records **You** enter into the Product including client and patient details. **You** acknowledge, grant permission and agree that the Company may collect statistical data from **Your** use of the Software and the Company may utilize this statistical data to provide industry statistics for third parties. Company will not disclose this information in a form that personally identifies **You**, **Your** clients or **Your** patients to any third parties.

6. LIMITED WARRANTY

Company warrants that it has sufficient rights to grant the rights in the Product pursuant to this Agreement; Company further warrants that the Product will operate substantially in accordance with its written specifications. No warranty is made that the Product will run uninterrupted or error-free. The warranty period for the Product, Materials, and Documentation is 90 days from delivery ("Warranty Period").

The Company's, and its suppliers', entire liability and **Your** exclusive remedy for any breach of this limited warranty or for any other breach of this Agreement or for any other liability relating to the Product and Materials shall be, at Company's option from time to time exercised subject to applicable law:

- a) repair,
- b) replacement, or
- c) return with proof of purchase and refund of the applicable License & Support Fees, of a Product and Materials that does not meet this limited warranty.

You will receive the remedy elected by Company without charge, except that **You** are responsible for any expenses **You** may incur (e.g. cost of shipping the Product to and from the Company).

This limited warranty is void if failure of the Product has resulted from accident, abuse, misapplication, abnormal use, malware, or a virus. Any replacement Product will be warranted for the remainder of the original warranty period or 30 days, whichever is longer, and Company will use commercially reasonable efforts to provide **You** remedy within a commercially reasonable time of **Your** compliance with Company's warranty remedy procedures.

Neither these remedies nor any Product Support Services offered by Company are available without proof of purchase from an authorised source.

THE PRECEDING WARRANTIES ARE THE ONLY WARRANTIES RELATED TO THE PRODUCT, MATERIALS, DOCUMENTATION AND SUPPORT SERVICES AND ARE MADE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

If an implied warranty or condition is created by **Your** state/jurisdiction and federal or state/provincial law prohibits disclaimer of it, **You** also have an implied warranty or condition, BUT ONLY AS TO DEFECTS DISCOVERED DURING THE PERIOD OF THIS LIMITED WARRANTY (90 DAYS). AS TO ANY DEFECTS DISCOVERED AFTER THE 90 DAY PERIOD, THERE IS NO WARRANTY OR CONDITION OF ANY KIND. Some states/jurisdictions do not allow limitations on how long an implied warranty or condition lasts, so the above limitation may not apply to **You**. This limited warranty gives **You** specific legal rights. **You** may have other rights which vary from state/jurisdiction to state/jurisdiction.

The Company is acting on behalf of its suppliers for the purpose of disclaiming, excluding, and/or limiting obligations, warranties, and liability as provided in this Agreement, but in no other respects and for no other purpose.

8. LIMITATION OF LIABILITIES

IN NO EVENT WILL COMPANY, ITS PRODUCT DEVELOPERS OR SUPPLIERS HAVE ANY OBLIGATION OR LIABILITY (WHETHER IN TORT, CONTRACT, WARRANTY OR OTHERWISE AND NOTWITHSTANDING ANY FAULT, NEGLIGENCE, PRODUCT LIABILITY, OR STRICT LIABILITY), FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOSS OF OR DAMAGE TO DATA, PROFITS OR BUSINESS INTERRUPTION LOSSES, SUSTAINED OR ARISING FROM OR RELATED TO THE PRODUCT, MATERIALS, DOCUMENTATION OR SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY'S LIABILITY FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL AT ALL TIMES AND IN THE AGGREGATE AMOUNT BE LIMITED TO THE AMOUNT ACTUALLY PAID BY **YOU** TO COMPANY UNDER THIS AGREEMENT. NO ACTION OR PROCEEDING AGAINST COMPANY MAY BE COMMENCED MORE THAN ONE YEAR AFTER THE CLAIM ARISES EXCEPT FOR COMPANY CLAIMS RELATING TO COLLECTION OF FEES DUE AND PAYABLE BY **YOU**. THIS SECTION SHALL SURVIVE FAILURE OF AN EXCLUSIVE REMEDY.

Some states/jurisdictions may not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to **You**.

9. MISCELLANEOUS

Any action, suit, or proceeding arising under or in connection with the Product, Materials, Technical Support Services or this

Agreement must be conducted in the English Language. Any action, suit, or proceeding arising under or in connection with the Product, Materials, Technical Support Services or this Agreement must be commenced within one year after the claim or cause of action arises.

10.1 GOVERNING LAW The validity and construction of this Agreement shall be governed by the laws of New Zealand notwithstanding its conflict of laws principles. Party(s) entering into this Agreement with The Company shall not institute any litigation or proceedings against The Company outside of New Zealand. Any controversy or claim between the parties arising out of or in connection with this Agreement which might be the subject of any action, litigation, proceeding or law or suit in equity shall be settled by Arbitration in New Zealand. The award of a majority of arbitrators, including the apportionment of the expenses of arbitration, shall be final and binding upon the parties. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

10.2 SEVERABILITY If any term of this Agreement is held invalid or unenforceable for any reason, then such invalidity will not affect the validity of the remaining provisions of this Agreement, and further the parties will substitute for the invalid provision a valid provision which most closely approximates the intent and economic effect of the invalid provision.

10.3 WAIVER None of the requirements of this Agreement shall be considered as waived by either party unless the same is done in writing, and then only by persons executing this Agreement or other duly authorised agents or representatives. The waiver by either party of a breach or a violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach or violation.

10.4 ASSIGNMENT **You** may not assign (voluntarily, by operation of law, or otherwise) this Agreement. The Company may assign this Agreement to any Affiliate or successor on notice (by mail, fax, web, or email) to **You**.

10.5 COMPLIANCE WITH RIGHTS GRANTED Upon request from the Company or the Company's authorised representative, **You** will, within 30 days, fully document and certify any and all use of the Product at the time of the request is in conformity with **Your** valid and authorised rights granted from Company.

10.6 ENTIRE AGREEMENT This Agreement is the entire agreement between **You** and Company relating to the Product, Materials, Development Services, and Support Services (if any) and supersedes all prior or contemporaneous oral or written communications, proposals, and representations with respect to the Product or any other subject matter covered by this Agreement.

10.7 PARTIES BOUND This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, legatees, successors, and permitted assignees.

10.8 FORCE MAJEURE Except with respect to **Your** obligation to make timely payments, neither party shall be held responsible for any delay or failure in performance to the extent that such delay or failure is caused by fires, strikes, embargoes, explosions, earthquakes, floods, wars, water, the elements, labour disputes, government requirements, civil or military authorities, acts of God or by the public enemy, inability to secure raw Materials or transportation, facilities, acts or omissions of carriers or suppliers, illness of key personnel, unavailability of key personnel, viruses, malware, or other causes beyond its control whether or not similar to the foregoing.

10.9 NOTICES All notices under this Agreement (except for requests for Service) shall be in writing and shall be given by mail, postage prepaid or by overnight delivery addressed to the respective parties, if to **You**, at **Your** addresses set forth in the invoice or to COMPANY at:

Incisive Software Limited.
127 Innes Road
Christchurch 8001
New Zealand.

or at the contact address specified on the Company's website.

Such notice shall be deemed to have been given when received. Either party may change its notice address upon notice to the other party pursuant to this provision.

10.10 INDEPENDENT CONTRACTOR All work performed under the Agreement by a party shall be performed as an independent contractor and not as an agent of the other. No persons furnished by either party shall be considered the other party's employees or agents, and each party shall be responsible for its own and its employees' compliance with all laws, rules, and regulations involving employment of labour, working conditions, payment of wages, and payment of taxes, such as unemployment, social security, and other payroll taxes, including applicable contributions from such persons when required by law.

10.11 CIVIL STANDARDS . The Company and its employees strive to deliver services in a professional manner. The Company expects its employees to treat **You** with courtesy and respect and to make reasonable efforts to address **Your** needs. Likewise the Company expects **You** to maintain the same civil standards when communicating with its employees. If a communication is deemed abusive or threatening, the Company reserves the right to terminate communication until You appoint a new site champion who will communicate in a professional and in a constructive manner with the Company's employees. You agree to

abide by the Company-Customer Pact

10.12 ENGLISH LANGUAGE. The parties hereto confirm that it is their wish that this Agreement and other documents relating hereto, including notices, have been and shall be written in the English language only.

11. DEFINITIONS

"Acceptance of Agreement" means the selection of the 'I Accept' button that is on the same form as this Agreement when the Product is executed or run.

"Administration Fee" means the amount payable by You to cover the Company's additional administration costs involved in collecting a License & Support Fee monthly or quarterly instead of annually.

"Affiliate" means a corporation, partnership, or other legal entity that controls, is controlled by, or is under common control with that party, either directly or through another Affiliate, but only while that control relationship exists; "control" of an entity means the power to direct the management and policies of that entity through a controlling vote on the board of directors or similar governing body of that entity or the ownership of interests entitled to more than 50% of the votes of that entity.

"Authorised Module" means additional functionality that can be invoiced and activated in addition to the base Product on an Authorised Server.

"Authorised Server" means a CPU licensed to serve the Product.

"Authorised Users" means Your employees, agents, representatives, or contractors whom You provide access to the Product.

"CPU" means a terminal, single computer, a virtual machine, a server, or logical partition (if a computer or server has more than one processor, logical partition).

"Data" means information entered by the Licensee and stored in the database, which remains the property of the Licensee, as distinct from the database structure.

"Database" means a software application that stores information in an indexed system and allows its ready retrieval.

"Database Structure" means the tables, fields, stored procedures and other properties of the database, as created by the Licensor, and as distinct from data.

"Delinquent Account" is a classification applied by the company to your account if you owe any amount on any invoice that is more than 90 days overdue.

"Delinquent Account Administration Fee" means the amount payable by You as liquidated damages to cover the Company's additional administration costs and management time involved in managing a Delinquent Account when Your license agreement has expired or has been terminated.

"Documentation" means written guides in any form or media describing the use and operation of Product, together with any related supporting Documentation.

"Fix(es)" means a Workaround and/or additional or replacement lines of Software code provided by Company to remedy a defect in the Product that caused it to not operate substantially in accordance with its written specifications.

"Intellectual Property Rights" means all current and future patents, patent applications (including, without limitation, all reissues, divisions, renewals, extensions, continuations and continuations-in-part), copyrights (including, but not limited to, rights in audio-visual works and moral rights), trade secrets, trademarks, designs, service marks, trade names and all other Intellectual Property rights and proprietary rights, whether arising under the laws of the United States or any other country, state or jurisdiction.

"License" means You may use the Product and Materials, subject to this Agreement, for a specified Term which use is conditioned on payment of a License & Support Fee for the current period. A License is automatically renewable upon payment for each succeeding period and includes Support Services at no additional charge in accordance with the Fair Use Policy.

"License & Support Fee" means the amount payable by You for the access and use of the Product, designated on a corresponding invoice.

"Major Failure" is a failure that completely stops the product running, causes you to be unable to make any appointments,

complete any visits, or print any invoices. It is Your responsibility to specify that the incident is a major failure of the Product at the time of placing the call with our response desk.

“Materials” include, but are not limited to, documents, spread-sheets, lists, databases, procedures, protocols, templates, hand-outs, forms, data, and information that relate to, are used by, are used in conjunction with, are referenced by, and/or are supplied with the product.

"Module" means a part of the Product that is enabled for an additional License & Support Fee.

“Normal Business Hours” means Monday to Friday between 8am and 5pm, excluding public holidays

"Problem" means Product that does not operate substantially in accordance with its written specifications; or Documentation that is not correct.

"Product" means the proprietary computer Software program specified in Schedule B. "Product" is the following, including the original and all whole or partial copies:

- a) machine-readable instructions and data,
- b) components,
- c) audio-visual content (such as images, text, recordings, pictures),
- d) related Software Materials,
- e) Modules,
- f) Materials,
- g) Software use documents or keys,
- h) Documentation,
- i) Database Structure
- j) server configuration and scripts.

"Production Purposes" includes, but is not limited to, the use of Product for the purpose of commercial, educational, governmental, or research operations.

"Proprietary Information" means:

- a) with respect to the Product, Documentation, and Materials means benchmark results, data, databases, manuals, written copy, programs, data structures, flow charts, logic diagrams, functional specifications;
- b) the concepts, techniques, ideas, and know how embodied and expressed in the Product, Documentation, and Materials;
- c) information reasonably identifiable as Proprietary Information of the Company excluding information which:
 - i. is or becomes publicly available through no act or failure of You;
 - ii. was or is rightfully acquired by You from a source other than the disclosing party;
 - iii. is known by You prior to receipt from the disclosing party;
 - iv. becomes independently available to You as a matter of right.

"Reactivation Fee" means the higher of 15% of Your annual License & Support Fee or as Special Services calculated on a time and materials basis.

"Renewal Date" means the day after a License expires.

"Schedule A" means the terms relating to Software Upgrades & Technical Support attached to this Agreement and the terms of which are incorporated herein by reference.

“Schedule B” means information describing the Product and relating to the environment required for it to run in.

"Services" or "Software Upgrades & Technical Support Services" means the delivery of Updates and Upgrades and Technical Support to be provided pursuant to the terms of this Agreement repairing or replacing Product that does not operate in accordance with its written specifications.

"Software" means computer programs in machine-readable form for use on designated CPU(s). Software does not include any version of Source Code or any operating system Software installed on the CPU.

"Source Code" means a high level program that is not machine-readable.

"Start Date" means the date of execution by You which shall begin the Term.

"Supplies" means labels, toner, printers, terminals, servers, and other third party products.

"Support" means advising of functionality, assistance in problem-solving and encouraging optimum use of the Software

"Support Period" means the 12 months following the Start Date (the "Initial Support Period"). The Support Period shall also include any subsequent 12-month renewal periods in which You have paid for Services.

"Special Services" means any Services provided that are not part of the Software Upgrades & Technical Support Services in Section 1 of Schedule A.

"Site Champion" means an employee or agent of You with sufficient training and experience to identify and isolate Problems and to provide sufficient information and assistance to Company to be able to reproduce such Problems. The Site Champion or his/her delegate shall be the single point of contact with Company when reporting Problems. Company may require You to appoint a new Site Champion if Company reasonably determines that the Site Champion does not possess the training or experience necessary to perform the required functions of the Site Champion or cannot communicate effectively with Company's support personnel.

"Term" means the initial 12 months upon entering into this Agreement and any 12-month renewal thereof.

"Updates" means subsequent releases of Product and/or Materials which are generally made available for supported Software, to correct design faults, discrepancies or defects ("bugs") in the Product.

"Upgrades" means subsequent releases of the Products and/or Materials that contain an improvement in the Products and/or Materials that generally includes enhancements and new functionality.

"You" or "Your" includes Your divisions and departments within Your organization and Your Affiliates, but does not include clients, co-counsel, independent third parties or non-Affiliates. You shall be responsible for any use of the Product by Your Affiliates.

"Workaround" means a temporary solution to a Problem.

SCHEDULE A - SOFTWARE UPGRADES & TECHNICAL SUPPORT

SUPPORT SERVICES

The services covered in this Agreement consist of ad-hoc as well as pro-active support, regular maintenance and planned work to include updates, upgrades and enhancements.

The Company will give advice or assistance by telephone, the internet, or email to You and where appropriate carry out investigation and remedial work via an Internet connection.

The Company will advise or assist You to diagnose a fault in the Product that You have identified.

The Company will advise or assist You in seeking to correct a defect or fault in the Product identified and notified by You with the objective of maintaining the operation of the Product.

RESPONSE PROCEDURES

The procedure for logging a support case against this agreement is as follows:

1. Submit the case over the web using the link from the Product or telephone the Company's response desk.
2. The details will be entered onto a case management system, which You can view online to monitor the progress of the case. Cases are processed in the order they are entered into the job management system regardless of if they were logged via the web or over the telephone, except in case of a major failure that is prioritized as described below.
3. Explain the nature of the problem and the steps required to recreate the problem when logging the case.
4. If the problem is a major failure and requires urgent attention, please inform the response desk clerk when logging the case.

RESPONSE TIME

In instances where You suffer a major failure in the Product, the Company will use its best endeavours to respond within 1 hour of receipt of a call or lodgement of a ticket from You during Normal Business Hours. A major failure is a failure that completely stops the product running causing you to be unable to view medical records. It is Your responsibility to specify that the incident

is a major failure of the Product at the time of placing the call with our response desk.

In all other instances, the Company shall use its reasonable endeavours to respond to You within 8 hours of receipt of a request, during Normal Business Hours, for any of the above Services. A response will be deemed to be the planning of the job for a scheduled time. The Company will carry out its obligations under this Clause by the use of remote diagnostics via an Internet connection. You are responsible for the installation and connection of such a connection as agreed by the Company.

REGULAR MAINTENANCE

Periodically the Company may carry out maintenance and housekeeping tasks to ensure the Product is running correctly.

PLANNED WORK

The Company will keep You informed of upgrades that become available to the Product. Upon request, the Company will allow you to install an Update or Upgrade onto a Staging server for you to evaluate. You are responsible to perform any tests you deem necessary to determine if the upgrade is suitable for installation in your organization, including, if necessary, installation on your own test server.

You may from time to time request enhancements or additions to the Product. This work including specification, design and implementation may be charged under this Agreement.

UPDATES AND UPGRADES

Provided You have paid License & Support Fees, whenever Company makes Updates or Upgrades generally available to its users who have purchased Services, Company will grant You a copy of the new release containing the Updates and/or Upgrades. Your use of all such Updates and Upgrades is subject to this Agreement and the terms of this Software agreement as updated from time to time.

Except for the immediate purpose of data conversion from the previous version to the Upgrade, after implementing the Upgrade into Your organization You may no longer continue to use the earlier version of the Product. All Upgrades are provided to You on a per Software copy exchange basis.

By installing an Upgrade, or implementing an Upgrade or using an Upgrade or paying a renewal fee after an Upgrade has been installed, You voluntarily terminate Your right to use any previous version of the Product.

SPECIAL SERVICES

During the Term You may request Special Services. Special Services are billed on an hourly basis of \$160/hour (or the then current published rate), with a two-hour minimum. If applicable, You are also responsible for all expenses including any travel and living expenses associated with on-site Special Services. The hourly rate is measured from the time assistance is provided or from the time the Company's personnel depart their service centre for on-site Special Services, whichever the case may be. Each additional hour or fraction thereof will be charged in thirty-minute increments.

Examples of some special services would include:

1. Assistance & advisory services
2. Database and installation administration
3. Training
4. Assistance with system security matters
5. Assistance with hardware or software server system configuration
6. Assistance with reminder, recall, and healthcare indicator investigations.

DEVELOPMENT SERVICES

During the Term You may request Development Services. Development Services are billed on an hourly basis of \$250/hour (or the then current published rate), with a four-hour minimum. If applicable, You are also responsible for any travel and living expenses associated with on-site Development Services. The hourly rate is measured from the time assistance is provided or from the time the Company's personnel depart their service centre for on-site Development Services, whichever the case may be. Each additional hour or fraction thereof will be charged in thirty-minute increments.

COLLECTION OF INFORMATION

The Company and its Affiliates may collect and use information gathered as part of the Technical Support Services and internet based services provided to You, if any, related to the Product. Company may use this information to ensure proper authorization of all copies of the Software as well as to improve Company's Products or provide customized services or technologies to You. Company will not disclose this information in a form that personally identifies You to any third parties.

SUPPORT SERVICE EXCLUSIONS

The Software Upgrades & Technical Support Services and the charges quoted by Company for such Services do not cover or include the following:

- a) Support of a Product which has been modified or repaired other than by Company;
- b) Making specification changes or performing Services connected with the relocation of a Product;
- c) Modification or replacement of a Product, repair of damage, or increase in service time caused by failure to continually provide a suitable operational environment with all facilities prescribed by the applicable Documentation; including, but not limited to, the failure to provide or the failure of adequate electrical power, temperature or humidity control, or computing environment;
- d) Modification or replacement of a Product, repair of damage, or increase in service time caused by the use of the Product for other than the purposes for which it is authorised or not in accordance with the operating guidelines;
- e) Modification or replacement of a Product, repair of damage, or increase in service time caused by:
 - i. accident
 - ii. natural or man-made disaster which shall include but not be limited to fire, water, wind, and lightning
 - iii. transportation
 - iv. neglect or misuse
- f) Modification or replacement of a Product, or increase in service time caused by the use of the Product in combination with other products or Materials not furnished by Company;
- g) Backing up or restoring programs and/or data;
- h) Archiving of data or splitting or merging databases;
- i) Keying, importing, converting or manipulation of data;
- j) On-line, on-site or formal classroom training on the operation and use of the Product;
- k) Creation of any new non-standard, customer-defined reports;
- l) Installation and commissioning of the Product and /or Materials;
- m) Modification of the Product or Materials;
- n) Consultancy services;
- o) Repairs to data files or hard drives that have been corrupted or damaged as a result of a hardware malfunction;
- p) Installation, commissioning or repairs to hardware or network components;
- q) Correction of errors or defects caused by the operation of the Product in a manner other than specified by the Company;
- r) Correction of errors or defects caused by the configuration of the Product in a manner other than specified by the Company;
- s) Correction of errors or defects caused by modification, revision, variation, translation, or alteration of the Product not authorised by the Company;
- t) Rectification of errors caused by incorrect use of the Product;
- u) Equipment maintenance;
- v) Onsite visits;
- w) Diagnosis or rectification of faults not associated with the Product;
- x) Warranties and returns. (These are based on original manufacturer terms and conditions and/or extended manufacturer warranties purchased with new equipment);
- y) Version downgrades.
- z) Servers, networks, and hardware where the server or terminal is running an operating system (e.g. Windows Server 2000 or Windows XP) that is no longer fully supported by Microsoft.

The Company may engage contractors or agents to assist in the provision of Services.

OBLIGATIONS OF CUSTOMER

You shall provide access to Your facilities and equipment in connection with Company's performance of its obligations hereunder. No charge shall be made for such access;

Where relevant, You will ensure the Company's support employees, contractors or agents ("Personnel") have full and safe on-site access to the Product and the relevant equipment at all reasonable times for the purpose of providing the Services;

You will ensure that the Company's support Personnel are provided with all information, facilities, assistance and accessories reasonably required by the Company to enable the Company to comply with its obligations under these Conditions;

If reasonably requested by the Company, You will provide a Site Champion to provide such advice or assistance to those Personnel as may be necessary in order to enable the Company to access the Product and relevant equipment and to otherwise effectively perform the Services.

You shall maintain a proper broadband internet and network connection near any CPU used with a Product being maintained by Company hereunder and provide access over the internet via a RDP connection from any of the Company's service centres (IP Address will be provided to You on request);

You shall be responsible for obtaining any required third party hardware and/or Software, including updates thereto;

You will check that any shipments made to You are complete and in good condition before You sign the delivery docket from the freight company. If part of the shipment is missing or damaged, You agree to immediately call the Company to advise of the shortfall or damage.

Your Site Champion must be present when any on-site Service is provided. If a Site Champion is not present when Company's technician arrives on site then no Service will be performed and You will be charged at the Special Service rate then in effect for such visit.

Your Site Champion must be available to check, confirm, and sign the associated acceptance forms before the Company's technician's leaves your clinic. If a Site Champion is not available when Company's technician has completed the on-site service then You will be charged at the Special Service rate then in effect for each hour or part thereof that elapses until Your Site Champion is available to check, confirm, and sign the associated acceptance forms.

Prior to the Company providing on-site or remote Services, it is Your responsibility to properly backup all data.

SOFTWARE UPDATES AND UPGRADES

All Updates, Upgrades and Fixes or Workarounds furnished to You shall be deemed to be part of such Products and Materials subject to the terms and conditions of the Software agreement for the Products and Materials.

WARRANTY FOR UPGRADES & SUPPORT

Company warrants to You that Services hereunder will be performed in a professional manner and in accordance with good usage and accepted practices as established in the community in which such Services are performed. If such Services prove to be not so performed and if You notify Company within a forty five (45) day period commencing on the date of completion of the Service, Company will, at its sole discretion, either correct any defects and deficiencies for which it is responsible or render a full or prorated refund or credit based on the original charge for the Service.

THE FOREGOING WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. YOUR SOLE AND EXCLUSIVE REMEDY SHALL BE THE COMPANY'S OBLIGATION TO MAKE CORRECTIONS OR GIVE A FULL OR PRORATED CREDIT OR REFUND AS SET FORTH ABOVE.

Company reserves the right to change or modify the Software Upgrades & Technical Support Services at any time and from time to time upon 60 days written notice to You.

MINIMUM INTERNET CONECTIVITY

You agree to maintain consistent, stable, reliable internet connectivity to the location all Authorised Servers, at least equal to the downstream and upstream speeds set out below.

You agree to provide access over the internet via a RDP connection from any of the Company's service centres (IP Address will be provided to You on request);

You understand that poor internet connectivity will adversely affect the operation of the product from branch locations and may cause sessions to dropout and/or freeze, printing to slow or stall, screen refresh rates to slow, etc.

SCHEDULE B – PRODUCT

NAME

The marketing name for the Product is 'inTOUCH'

DESCRIPTION

The Product is web application designed to allow You to use an internet browser to read and write patient, medical, and related

records that are stored in the primary database provided for the 'Specialist Practice Manager' or the 'Private Hospital Manager'. The Product is published from an internet server and is designed to function on a mobile device, such as a smartphone or tablet, but can be used on a desktop computer using any of the supported internet browsers that are listed below.

REQUIREMENTS

The minimum requirements are:

- A current 'Personal' license allowing **You** to use the 'Specialist Practice Manager' application for your practice; or
A current 'Private Hospital Manager' licence.
- Microsoft Internet Information Server (IIS) version 7.0 (or greater) web server on your network system
- Microsoft .Net Framework 4.0 installed on the web server.
- 'Specialist Practice Manager' or 'Private Hospital Manager' database attached to Microsoft SQL Server
- Internet Explorer 8.0, Mozilla Firefox, Google Chrome or Apple Safari web browser running on the 'client' device
- JavaScript enabled in the web browser on the 'client' device
- Network security Permissions to allow the Scanned Documents and Images files to be viewed from the Web server.
- A method of transmitting the data to the mobile device (wireless router for the intranet; hosted web domain for the internet)

AUTHORISED COPIES: 1

AUTHORISED SERVERS: 1