



Capstone Online Customer Services Agreement

This Agreement is between you and us. By clicking “Agree”, and/or emailing your acceptance in writing, and/or accessing and using the Services, you acknowledge that you have read and agree to be bound by the terms of this Agreement.

Capitalised terms used are defined in this Agreement, including clause 14.

1 Term

1.1 This Agreement commences on the Commencement Date and continues until all Services have been terminated.

Service Term

1.2 The Service Term for any given Service commences on the relevant Go-live Date and automatically extends on a month to month basis on the existing terms, unless the relevant Services are terminated in accordance with clause 6 or clause 9 of this Agreement.

2 Services

2.1 We agree to supply, and you agree to acquire, the Services on the terms of this Agreement.

Purpose

2.2 You may access and use the Services solely for your internal business purposes.

Support Services

2.3 We will provide support services to you in connection with the Services for the term of the Agreement on a best efforts basis.

2.4 Support services will be available via chat or screen-sharing between the 8 a.m. and 5:30 p.m. (AEST) on Business Days.

2.5 You may request, and we may agree to provide, additional support or professional services, which may be provided under a separate agreement.

Setup Period

2.6 For an initial setup period of up to 4 weeks, we will supply the Services to you free of charge, including basic setup support via phone or email to assist you to use the Services.

2.7 You may terminate the Services immediately by notice to us at any time during the Setup Period.

Active Users

2.8 You

- (a) acknowledge and agree that each Active User is required to have login details and a password to access the Services;

- (b) must ensure that such login details and password will be kept safe and not disclosed to any third party; and
 - (c) are responsible for ensuring that each Active User selects a secure password.
- 2.9 You may request to change the number of Active Users for any Service(s) at any time during the relevant Service Term and such change will be effective commencing on the next automatic extension of the relevant Service Term after we receive the request.

Office 365

- 2.10 Some functions of the Services are only available when used in association with Microsoft® Office 365, however, we do not require you to acquire, and you acknowledge that you are under no obligation to acquire, Microsoft® Office 365 in order to access or use the Services.

3 Our Obligations

- 3.1 We will ensure that the Services are supplied with due care and skill, and by suitably qualified personnel, but do not warrant that the Services will be error-free, virus-free, continuous, fit for any purpose (regardless of whether you have advised us of your intended use of the Services) or that they will be compatible with your equipment.

4 Your Obligations

- 4.1 You:
- (a) are responsible for the acts and/or omissions of your Active Users as if they were your own acts and/or omissions;
 - (b) are solely responsible for backing up your data, including data hosted through the Services;
 - (c) are responsible for obtaining and maintaining your own systems and equipment and ensuring it is compatible with the Services; and
 - (d) are responsible for the accuracy, completeness and security of any data or information, including Patient Data, that you enter into the Services.
- 4.2 You must not and must ensure that you do not allow any other party (including your Active Users) to use the Services in a manner that:
- (a) is contrary to law;
 - (b) infringes, or may infringe, the rights (including Intellectual Property Rights) of a third party; or
 - (c) would result in us or any other person breaching a law.
- 4.3 You must not and must ensure that you do not allow any other party (including your Active Users) to:
- (a) without our prior written consent, sell or supply the Services (or any part of it) to any third party
 - (b) without our prior written consent, share the Services (or any part of it) with any third party;
 - (c) dispute our rights (including Intellectual Property Rights) in and to the Services (including any software we use to supply the Services);
 - (d) access or use, or permit the access or use of, the Services other than for the purposes permitted under clause 2.2 of this Agreement;
 - (e) permit any person to use or access the Services in an unauthorised manner;
 - (f) reproduce or attempt to reproduce the Services (including any software we use to supply the Services) in any way;
 - (g) tamper with, modify, disassemble, reverse engineer, create derivative works from the Services (including any software we use to supply the Services) in any way, or derive the source code, or attempt to do any of those things;

- (h) remove, modify or conceal any proprietary notices on the Services (including any software we use to supply the Services);
- (i) without our prior consent, incorporate or attempt to incorporate the Services (or any part of it) with any other software or services;
- (j) access, or attempt to access, the infrastructure, systems and software we use to supply the Services (or any part of it);
- (k) access, or attempt to access, any part of the Services not supplied to you under this Agreement;
- (l) introduce, attempt to introduce, or permit the introduction of any Malicious Code into the Services (or any part of it), either directly or indirectly; or
- (m) attribute any of the outputs or reports created in connection with the Services to us in the course or providing medical or other advice and otherwise.

5 Fees

- 5.1 You must pay us the Fees.
- 5.2 Unless we notify you otherwise, the Fees will be billed monthly in advance, commencing on the Go-live Date.
- 5.3 If the number of Active Users for any Service(s) is changed at your request, the relevant Fees will be adjusted accordingly for any subsequent billing periods starting from the date that such change takes effect.
- 5.4 We may adjust the Fees at any time on 5 days' notice to you. If you do not wish to continue to acquire the Services after receiving such notice, you may terminate the Services under clause 9.1 of this Agreement. Otherwise, you are taken to have agreed to such adjustment on and from the effective date of such adjustment if you continue using the Services on such effective date.

6 Suspension or Termination of Services

- 6.1 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:
 - (a) there is an emergency;
 - (b) the supply by us or use by you of the relevant Services is, or will be, unlawful;
 - (c) the Services or its provision may cause death, personal injury or damage to property.
- 6.2 By notice to you, we may (without any liability) immediately limit, suspend or terminate the Services (or any part of it) :
 - (a) if you fail to pay us the Fees on time; or
 - (b) if you are, or we reasonably believe that you are or will become, insolvent.

7 Taxes

Consideration is GST exclusive

- 7.1 Any consideration to be paid or provided for a supply made under or in connection with this Agreement, unless specifically described in this Agreement or on Our Website as "GST inclusive", does not include an amount on account of GST.

Gross up of consideration

- 7.2 Despite any other provision in this Agreement, if a party (**supplier**) makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as "GST inclusive"):
 - (a) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause (**GST Exclusive Consideration**) is increased by, and the

recipient of the supply (**recipient**) must also pay to the supplier, an amount equal to the GST payable by the supplier on that supply; and

- (b) the amount by which the GST Exclusive Consideration is increased must be paid to the supplier by the recipient without set off, deduction or requirement for demand, at the same time as the GST Exclusive Consideration is payable or to be provided.

Reimbursements (net down)

- 7.3 If a payment to a party under this Agreement is a reimbursement, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

Tax invoices

- 7.4 The recipient need not make a payment for a taxable supply made under or in connection with this Agreement until the supplier has given the recipient a tax invoice for the supply to which the payment relates.

Adjustment event

- 7.5 If the GST payable in relation to a taxable supply made under or in connection with this Agreement varies from the additional amount paid or payable by the recipient under clause 7.2, so that:
 - (a) a further amount of GST is payable in relation to that Supply; or
 - (b) a refund or credit of GST is obtained in relation to the Supply,then the supplier will:
 - (c) provide a corresponding refund or credit to; or
 - (d) be entitled to receive the amount of that variation from,the recipient.
- 7.6 Any payment, credit or refund under this clause 7.5 is taken to be a payment, credit or refund of the additional amount payable under clause 7.2. If an adjustment event occurs in relation to a taxable supply made under or in connection with this Agreement, the supplier must issue an adjustment note to the recipient in relation to that supply within 14 days after becoming aware of the adjustment.

8 Intellectual Property Rights

Ownership

- 8.1 Nothing in this Agreement transfers ownership in, or otherwise grants any rights in, any Intellectual Property Rights of a party.

Patient Data

- 8.2 The parties:
 - (a) acknowledge that you may enter Patient Data into the Services;
 - (b) as between the parties, agree that Patient Data belongs to you and that you are solely responsible for the Patient Data;
 - (c) agree that you are solely responsible for ensuring the accuracy and completeness of Patient Data.
- 8.3 You must ensure that you are able to disclose or otherwise provide all Patient Data to us, and must ensure that all necessary consents are obtained from the relevant individual.

9 Termination

- 9.1 Either party may terminate a Service at any time by notice to the other party at least 30 days prior to the renewal of the next Service Term.
- 9.2 If a Service or this Agreement is terminated for any reason, then:

- (a) it is your sole responsibility to retrieve your Patient Data from the relevant Services by requesting, within 10 Business Days of termination, to download all of your Patient Data from the Services in a form nominated by us
- (b) you must pay us all outstanding Fees by the due date;
- (c) we will not refund any Fees already paid in advance; and
- (d) any rights accrued by a party prior to termination will survive termination.

9.3 If this Agreement expires or is terminated for any reason, this and the following clauses will continue to have effect: clause 4 (Your Obligations); clause 8 (Intellectual Property Rights); clause 10 (Confidentiality and Privacy); clause 11 (Limitation of Liability); and clause 13 (General), as does any other clause that, by its nature, is intended to survive such termination or expiry.

10 Confidentiality and Privacy

10.1 Each party acknowledges and agrees that:

- (a) our Confidential Information includes:
 - (i) the provisions of this Agreement;
 - (ii) all information provided by us to you under this Agreement, including our technical, operational, and commercial information in relation to the supply of Services, and
- (b) your Confidential Information includes the Patient Data.

10.2 A party must not disclose the other party's Confidential Information to any person except:

- (a) to its professional advisers and its Personnel on a 'need to know' basis, but only if those persons have agreed to keep the Confidential Information confidential in accordance with the terms of this Agreement;
- (b) with the other party's prior written consent, but only to the extent that such consent is given;
- (c) if required by law, or any regulatory authority or stock exchange, but only to the minimum extent required to satisfy the law or rules of the regulatory authority or stock exchange; or
- (d) if it is in the public domain, other than as a result of a breach of this Agreement by the Recipient.

10.3 You acknowledge and agree that:

- (a) you must ensure that you do not, and do not allow any other person (including your Active Users) to access or use the Services in a manner contrary to the requirements of Privacy Law;
- (b) you are solely responsible for obtaining all necessary consent with respect to the collection, use, access, disclosure and storage of personal information (including sensitive information) in relation to your access or use of the Services; and
- (c) you will ensure that any person whose information is disclosed to us in the course of accessing or using the Services, or otherwise in connection with this Agreement, acknowledges that we handle Personal Information (as that term is defined in the *Privacy Act 1988*) according to our privacy policy (which is available on Our Website), as amended by us from time to time.

11 Limitation of Liability

11.1 Subject to the remainder of this clause and to the maximum extent permitted by law, we exclude all warranties and liabilities arising under or in respect of this Agreement, whether in contract, tort (including negligence), statute or any other cause of action, except liability arising from our negligence or breach of contract for:

- (a) personal injury or death to you in relation to the supply of the Services; and

- (b) any damage to your real or tangible property resulting from the supply of the Services, limited to our choice of repairing or replacing the property or paying the cost of repairing or replacing it.
- 11.2 We are not liable for any consequential loss arising from or in connection with this Agreement, including a loss of opportunity or goodwill, loss of revenue or profits, loss of business, or a loss of or corruption to data.
- 11.3 Nothing in this Agreement excludes or restricts any obligation arising under the Australian Consumer Law.
- 11.4 To the extent that any liability may not lawfully be excluded but may be limited, our sole liability is limited to, at our discretion:
- (a) the supplying of the relevant Services again; or
 - (b) the payment of the cost of having the relevant Services supplied again.
- 11.5 Notwithstanding any other provision of this Agreement, our liability will be reduced to the extent the loss or damage is caused by you, your Active Users, or your Personnel.
- 11.6 For any liability that is not otherwise excluded or limited under clauses 11.1 and 11.2 above, but subject to clause 11.4, our aggregate liability to you under or in respect of this Agreement whether in contract (including under an indemnity), tort (including negligence), statute or any other cause of action is limited to the greater of
- (a) the Fees paid to us in the first six months after the Go-live Date, and
 - (b) \$10,000.

12 Third Party Intellectual Property Claims

- 12.1 Subject to clause 11.6, 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 you any amounts finally awarded by a court to that third party or that is otherwise settled 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.
- 12.2 We may modify, limit, suspend or terminate the Services (or any part of it)(without any liability) in response to a claim by any person for Intellectual Property Right infringement in connection with our supply of the Services (or any part of it).

13 General

Entire Agreement

- 13.1 This Agreement constitutes the entire agreement between the parties about the Services.

Governing Law

- 13.2 This Agreement is governed by the laws of New South Wales.

Interpretation

- 13.3 In this Agreement:
- (a) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (b) terms used that are defined in the GST Act have the meaning given in that Act, unless the context makes it clear that a different meaning is intended;
 - (c) a reference to a party includes a reference to the party's executors, administrators, successors and assigns;
 - (d) the singular includes the plural, and vice versa; and
 - (e) "includes", "including", "for example", "such as" and similar terms are not words of limitation.

Notices

13.4 All notices and consents:

- (a) from us to you must be sent to your nominated email, fax or postal address;
- (b) from you to us must be sent to the contact details provided on Our Website for this purpose.

13.5 Notices sent:

- (a) by hand are taken to be received when delivered;
- (b) by post to an address in Australia are taken to be received by the third Business Day after posting;
- (c) by post to an address outside Australia are taken to be received by the seventh Business Day after posting; or
- (d) by fax are taken to be received when the sender's fax machine issues a successful transmission report.

Variations

13.6 We may vary the terms of this Agreement from time to time on reasonable notice to you. By continuing to use the Services after such variations take effect, you are taken to have accepted the variations.

Severability

13.7 If any provision of this Agreement is held by a court to be invalid or unenforceable, the remainder of this Agreement will otherwise remain in full force, apart from such provision which will be regarded as having been deleted.

Waiver Of Rights

13.8 A right created by this Agreement may only be waived in writing by the party giving the waiver. Any failure to exercise or any delay in exercising a right or remedy provided by this Agreement or by law does not waive the right or remedy.

13.9 A waiver of a breach of this Agreement does not waive any other breach.

Warranties

13.10 You warrant that entering into and performing your obligations under this Agreement does not breach any of your contractual obligations to any other person.

13.11 You warrant that you have not relied on any representations or warranties by us in relation to this Agreement or the Services other than those in this Agreement.

Assignment

13.12 We may assign or novate this Agreement, in whole or part, to a third party without notice to you. Other than as set out in this clause, no party may assign or novate this Agreement without the other party's prior written consent, such consent not to be unreasonably withheld or delayed.

Force Majeure

13.13 If an event beyond a party's reasonable control (**Force Majeure Event**) causes that party to be unable to perform or be delayed in performing an obligation under this Agreement (other than, in your case, an obligation to pay the Fees), that obligation is suspended for so long as it is prevented or delayed by the Force Majeure Event.

14 Definitions

14.1 In this Agreement, unless otherwise stated:

Affiliate means, in respect of us, any entity over which we have direct or indirect Control.

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Business Day means any day other than a Saturday, Sunday or recognised public holiday in New South Wales, Australia.

Commencement Date means the date of this Agreement, which may be the date on which you click “Agree”.

Confidential Information means:

- (a) all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, exchanged between the parties or their representatives (or in our case, provided by us, our Related Bodies Corporate, our Affiliates, and any entity owned by us, and in your case provided by your Related Bodies Corporate) before, on or after the Commencement Date relating to the business, technology or other affairs of the discloser of the information; and
- (b) in our case, all information disclosed by a third party which 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:
- (e) 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
- (f) independently developed by the Recipient without reference to the Confidential Information of the Discloser; or
- (g) 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.

Control of a person, means the ability (whether it is legally enforceable or not) to control, whether directly or indirectly, the composition of the board of directors (or other governing body) of that person, the voting rights of the majority of voting securities of that person, or the management of the affairs of that person.

Discloser means the party disclosing Confidential Information.

Fees means the fees and charges for the Services set out on Our Website, as reviewed or amended from time to time in accordance with clause 5.

Go-live Date means the date of expiry of the Trial Period, or if no Trial Period applies, the date of this Agreement.

GST has the meaning it has in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all current and future registered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, domain names, database rights, know-how and Confidential Information and any other intellectual property rights as defined by Article 2 of the World Intellectual Property Organisation Convention of July 1967, excluding patents.

Malicious Code means any virus, Trojan horse, malware, or other disabling or malicious code which may impair or otherwise adversely impact the Services.

Our Website means our website at capstonesystem.com.au.

Patient Data means any data and information in relation to your patients and your business that you enter into the Services.

Personnel means a person's officers, employees, agents, contractors and sub-contractors and in our case includes our Related Bodies Corporate.

Privacy Law means any applicable law relating to the privacy of information, including the personal and sensitive information of individuals, including:

- (a) in Australia, the *Privacy Act 1988* (Cth), and

(b) in any other jurisdiction, the equivalent legislation of that jurisdiction.

Recipient means the party receiving Confidential Information.

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

Services means the service(s), as selected by you, set out in the relevant product description(s) on Our Website as amended by us from time to time, and includes any individual service or component which constitutes the service.

Service Term means the term for which the Services are supplied under this Agreement.

We, us or **our** means to Capstone Medical Pty Ltd.

You or **your** means the customer entity that enters into this Agreement.