

Dental4Web Terms and Conditions

Definitions

Unless the context requires otherwise, the following definitions apply in these Terms and the singular includes the plural and vice versa.

Business Day means each day Monday to Friday excluding national or NSW public holidays.

Business Hour means all hours between 8am – 5pm AEDT during a Business Day.

Customer Data means any information held within our software and Services relating to you and your customers, including but not limited to:

- (i) name;
- (ii) address;
- (iii) phone number;
- (iv) a valid email address;
- (v) clinical, financial information;
- (vi) other information as applicable to set up and administer Subscriber Account to access the Services.

A reference to Customer Data in these Terms includes all Customer Data of a subscriber such as information, customer data, works and materials (including without limitation, text, graphics, images, audio material, video material, audio-visual material, scripts, software and files) that a subscriber submits to us or our Website for storage, or publication on, processing by, or transmission via, our Website.

End User means you or your employee or any other entity or legal person using the Services on your behalf.

Intellectual Property (Rights) means all intellectual property rights, including all copyright, patents, trade marks, design rights, trade secrets, circuit layouts, domain names, know-how and other rights of a similar nature worldwide, whether registered or not, and any applications for registration or rights to make such an application.

Order Form means a document, either digital or physical, that details the products(s)/services(s) you are purchasing or subscribing to.

NDP means National Dental Plan.

Services means the services provided via D4Web such as, but not limited to, CMS Mediasuite Online, eServices, NDP, SMS, Practice Analytics, D4W Mobile, Patient Discovery, D4W Marketing, etc.

Site means <https://d4web.dental4web.com>.

Subscriber Account means your account with us on behalf of the legal entity using our Services.

Subscriber Information means any information required by us to setup and maintain your Subscriber Account, including but not limited to:

- (i) business name;
- (ii) business address;
- (iii) subscribers name;
- (iv) business phone number;

- (v) business email address;
- (vi) direct debit information;
- (vii) other information as applicable to setup and administer your Subscriber Account.

Works means any material made available on the Website and included our Services, including (without limitation) written texts, documents, articles, news, newsletters, posts, commentaries, surveys, Customer Data, photographs, pictures, graphic works, video, or images.

You/Your means the customer purchasing and subscribing to the Services referred to in these Terms.

1. About

- (a) Welcome to our website at centaursoftware.com.au (**'Website'**). This Website is operated by Centaur Software Development Co Pty Ltd (ACN 057 620 390) (**'Centaur'**).
- (b) These Software as a Service terms and conditions of use (**"Terms"**) govern your use and End User's use of our Services. Any reference to "you, or "your" means you as a subscriber to our Services. Any reference to "we", "our", or "us" means Centaur.
- (c) Please read our Terms and Privacy Policy carefully before accessing and using our Services or our software platform (**'D4Web'**) which is accessed through the Site as these Terms and our **Privacy Policy** create a contract between us and you.
- (d) If you are entering these Terms on behalf of a legal entity, you represent that you have the authority to bind the entity to these Terms. You must be at least 18 years of age to create an account and use our Services.
- (e) We reserve the right to amend these Terms from time to time. Any such amendments shall take effect on the date they are published on our website. Notice of the amendments will be sent to your registered email address no less than fourteen (14) days prior to the effective date.

2. Services

- (a) D4Web provides dental practice management solutions to its subscribers and is an Internet browser web-based software solution that works on Windows, Apple and Android devices (**'Services'**). The functionality and limitations of D4Web on various non-Windows devices are set out in our D4Web System Requirements.
- (b) You warrant that:
 - (i) You are legally capable of entering into contracts; and
 - (ii) You are authorised to access our Website and that all relevant consents have been obtained to use our Services.

3. Subscription Terms

- (a) Your and any End User's right and entitlement to use the Services concludes at the end of the term of the Licence (subject to payment of monthly payments and is not linked to the dates of release, registration or provision by Centaur of any Upgrades and/or Updates).
- (b) If you have purchased these Services to upgrade or transition from any other Centaur Software products, this Licence shall supersede any previous licence agreement and these Terms shall apply to your Licence.

- (c) Upgrades and/or Updates will be developed and included in the Services at Centaur's sole discretion. Centaur does not warrant or represent that it will develop or release any Upgrades and/or Updates during the term of the Licence but Centaur will release at least three (3) Updates per year.
- (d) Our Services are subscription based with a minimum initial subscription period of one (1) month that is billed upfront and monthly in advance. The subscription fee for the initial 1 month is non-refundable. If you wish to cancel or terminate access to the Services during the initial 1-month period, the 1-month fee will be due in full immediately, notwithstanding payment is made on a monthly basis. After the initial 1-month subscription, you agree that the subscription will automatically renew on a monthly basis at the applicable rates subject to termination under the terms of this agreement. Centaur reserves the right to amend the applicable subscription fees from time to time and will provide you 30 days' notice in advance of any price amendment.

4. Registration and Acceptance

- (a) To obtain access to the Services you must sign up for a Subscriber Account and sign our Order Form. By signing the Order Form, you are given notice of and agree that you have read and accepted these Terms and our Privacy Policy.
- (b) As part of the registration process for our Services, you must provide current, complete and accurate identification, and other information required during the registration process ("**Subscriber Information**").
- (c) After registration our Services will be setup based on the Order Form. Access to our Services will follow. Subscriber Account must be active and current to obtain access to our Services.
- (d) By visiting, registering for, or using the Site, you agree that Centaur may:
 - (i) use Customer Data to transmit it to the devices which you make available (e.g., your computer, mobile, or tablet, projector);
 - (ii) send direct communications, including email and short message service (SMS), to the email addresses and devices that you make available; and
 - (iii) utilise the data captured by the Services for our own benchmarking purposes, whilst maintaining customer confidentiality at all times
- (e) You own all right, title and interest in Subscriber's Information and Customer Data.
- (f) You agree that:
 - (i) a Subscriber Account is exclusive and personal to you;
 - (ii) you must not allow another user without a licence to use any of the Services that we deliver to you under these Terms;
 - (iii) you are solely responsible for maintaining the confidentiality of Subscriber Account and the secrecy of the Login Details;
 - (iv) you must not authorise or permit anyone else to access Subscriber Account by using the Login Details;
 - (v) you accept sole responsibility for the Customer Data that is posted to any device including maintenance of patient confidentiality;
 - (vi) you must obtain all legally necessary consents to use Customer Data;
 - (vii) you will comply with all state and federal laws and ethical and licensure requirements;
 - (viii) if Subscriber Account has been compromised in any way, you must contact us immediately;
 - (ix) your access to and use of the Services is non-transferable except as permitted by these Terms;
 - (x) you will use the Services only for purposes permitted by these Terms; and

(xi) you will abide by any applicable law, regulation or generally accepted practices or guidelines related to the Services in the relevant jurisdictions.

(g) We reserve the right to deny access to a Subscriber Account.

5. Fees

(a) You agree to pay the selected subscription fee for each package ("**Subscription Fee**") as detailed on the Order Form or agreed between us via other electronic or written communication for the purchase of our Services.

(b) Payment of the selected Subscription Fee are made via direct debit. The direct debit online form is provided to you via the onboarding email.

(c) This Licence will be automatically renewed upon payment of the monthly Subscription Fee. Your nominated account will be direct debited by the 5th business day of the new month. You authorise and request Centaur to directly debit your monthly Subscription Fee from the bank account or credit card nominated by you.

(d) All payments for our Services are in Australian Dollar (AUD). Centaur will be entitled to add on Goods and Services Tax ('**GST**') for the supply of its Services at the applicable rate in either Australia or New Zealand depending on your geographic location.

(e) You agree that we may electronically store Subscriber Information and your payment information to process Subscription Fees.

(f) Centaur reserves the right to increase or change the Subscription Fee at any time subject to giving you 30 days' notice in advance and subject to your right of termination in accordance with these Terms.

(g) You are responsible for ensuring that sufficient funds are available at the time of the direct debit and that the bank account or credit card details are correct in order to access our Services. You will be liable for any penalty charges incurred by Centaur by reason of the dishonour or reversal of any payments made by you.

(h) If there are insufficient funds when the monthly Subscription Fee is direct debited you will be contacted via email to inform you and require you to contact Centaur's Accounts department (accounts@centaursoftware.com) to arrange payment.

(i) All payments remain payable whether or not you use the Services while the subscription remains active. If there are payment failures due to insufficient funds, incorrect or outdated payment information, we reserve in our sole discretion to:

(i) recover payment and deny a subscriber access to our Services; and/or

(ii) cancel or suspend a Subscriber's Account if we are unable to process the fees for our Services.

(j) We may suspend or terminate a Subscriber Account for any misuse, breach of these Terms or if fraudulent activity is detected.

(k) Your access to the Services will be disabled when your Subscriber Account is suspended, terminated or your subscription ends.

6. Refund Policy

(a) D4Web will process refunds in accordance with the Australian Consumer Law and the New Zealand Consumer Guarantees Act for major failures ('**Major Failures**') and minor failures ('**Minor Failures**').

- (b) For example, a Major Failure occurs where you would not have bought the Services if you had known about the defect, the Services are significantly different to what was described, the Services are substantially unfit for their usual purpose or a purpose made known to you or the Services are unsafe. For major failures or substantial problems with the Services as defined under the Australian Consumer Law and New Zealand Consumer Guarantees Act, you are entitled to a replacement or refund.
- (c) If the Services fail to be of acceptable quality, and the failure does not amount to a Major Failure ('**Minor Failure**'), we are entitled an opportunity to fix the minor problem as long as this is within a reasonable period of time. If we cannot fix the Minor Failure, you are entitled to cancel the contract with us and obtain a refund for the proportion of the Services not already consumed at the time of the cancellation.
- (d) Except as required by law, any Subscription Fees paid by you are final and non-refundable.

7. Intellectual Property

- (a) You acknowledge that ownership of the Intellectual Property Rights relating to the Website, our Site or our Services is the property of, licensed by or vest on creation in Centaur.
- (b) The Works on the Website or generated by or related to any of our Services ("**Copyright Material**") are subject to copyright and owned by the copyright owner. The Copyright Material on the Website is protected by copyright under the laws of Australia and through international treaties. Unless otherwise indicated, all rights (including copyright) in the Copyright Material and compilation of the Website (including but not limited to text, graphics, logos, button icons, video images, audio clips, code, scripts, design elements and interactive features) are owned or controlled by us. Data procured from a third party may be the subject of copyright owned by that third party.
- (c) The Website and the Copyright Material or any part of it (excluding, without limitation, any Customer Data or Customer images) may not be copied, reproduced, adapted, publicly displayed, duplicated, translated or distributed in any way (including mirroring) to any other device, server, Website or other medium for publication or distribution without our express prior written consent. Subscribers shall take due care to protect the Intellectual Property Rights licensed via our Services from unauthorised use, copying, reproduction, lending, reselling, manipulation, disassembly, distribution or publication.
- (d) All Intellectual Property including any trade marks, service marks, trade names and any other proprietary designations are owned, registered or licensed by us. Any other trade marks, service marks, logos, trade names and any other proprietary designations are the trade marks or property of the respective parties.
- (e) Unless otherwise stated, Centaur retain all rights, title and interest in and to the Copyright Material on the Website and delivered under our Services. You shall not reproduce any software, content, Intellectual Property in any form except as permitted in these Terms. Nothing you do on or in relation to the Website or our Services will transfer any:
 - (i) business name, trading name, domain name, trade mark, industrial design, patent, registered design or copyright;
 - (ii) right to use or exploit a business name, trading name, domain name, trade mark or industrial design;
 - (iii) thing, invention, design, system, work or process that is the subject of a patent, registered design or copyright or any other Intellectual Property Right (or an adaptation, improvement, modification of such a thing, invention, design, system, work or process); or
 - (iv) any proprietary rights to our database, know-how or technology.

- (f) "Centaur" and all associated trade marks on the Website are our trade marks or any related entities. You must not use our trade marks:
 - (i) in or as the whole or part of subscriber own trade marks;
 - (ii) in connection with activities, products or Services which are not ours; or (iii) in a manner which may be confusing, misleading or deceptive.
- (g) The obligations accepted by subscribers under this clause survive termination or expiry of these Terms.

8. Licence Grant

- (a) We grant to you a limited, non-exclusive, non-transferable, non-sublicensable and revocable license ("**License**") to access the Website and to interact with and use our Services for the term of your subscription solely in connection with your rights under these Terms. The features available to you will depend on the licence or package that you selected on your Order Form(s).
- (b) These Terms do not constitute a sale or transfer of any of Centaur's Copyright Material and you must not use, post or upload the Copyright Material or any version of it on any application that enables other people to create and share Customer Data or use our Copyright Material on the Internet including on any social networking Sites or applications.
- (c) You grant to us, or to any third parties used by us a non-exclusive, worldwide, perpetual, irrevocable and royalty free license to use, copy, display, perform, distribute, disseminate, transmit, translate, edit, cache and create derivative works of your Customer Data and any associated intellectual property rights (including name, likeness, trade marks and other identifiers) in order for Centaur to perform its obligations under these Terms. By submitting Customer Data, you grant Centaur a licence to use Customer Data and transmit it via your devices and make it available for publication and download to your end users.
- (d) You may access third party applications and technologies through the use of our Services. You agree that the terms of the third party's licence will apply to your use of all such third-party applications and technology.

9. Subscriber's Obligations

- (a) You will:
 - (i) exercise reasonable care, skill and diligence in using the Services;
 - (ii) use the Services in a responsible manner and only in accordance with its intended use;
 - (iii) be liable for giving any third-party access to the Services and use of Services through Subscriber's Account;
 - (iv) access and use the Services only in accordance with these Terms;
 - (v) advise Centaur of any issues with the Services as and when they occur;
 - (vi) keep secure all Login Details and notify Centaur immediately of any unauthorised access;
 - (vii) implement, maintain and enforce suitable virus protection in relation to use of the Services;
 - (viii) use best efforts to ensure that no virus or similar computer programs are transmitted to the Services as a result of access being granted to the Services.
- (b) You will not:
 - (i) use or rely upon the Services for any purpose or in any manner for which the Services is not warranted;
 - (ii) distribute, sell, market, transfer, publish, lease, licence, sub-licence, rent, lend or otherwise dispose of the Services except where permitted under these Terms or otherwise use the Services to provide any Internet based services, including a bureau or hosting service;

- (iii) hack, attempt to hack, modify, adapt, merge, translate, decompile, disassemble, reverse engineer or create derivative works out of the Website or the Services or our Copyright Material or any part of it;
 - (iv) use the Services in any way prohibited by law, regulation, governmental order or decree;
 - (v) introduce any computer code or routine that is harmful, destructive, disabling or which assists in or enables theft, alteration, denial or service, unauthorised disclosure or destruction or corruption of Customer Data, including viruses, worms, spyware, adware, keyloggers, trojans, time bombs and any new types of programmed threats; or
 - (vi) remove, disable, modify, add to or tamper with any program code or Customer Data, copyright, trade mark or other proprietary notices contained on the Website or in the Services; and
 - (vii) not sell, lease, publish, redistribute or sub-license any of our Copyright Material.
- (c) You agree that it is a condition of your use of the Services, that you will not yourself, or allow others:
- (i) to use the Services for unlawful purposes or any purpose prohibited by these Terms;
 - (ii) to use the Services in any manner that could damage, disable, overburden or impair any Centaur server, or the networks connected to Centaur's server or otherwise interfere with any other person's use and enjoyment of the Services;
 - (iii) to gain unauthorised access to any Services or other accounts, computer systems or networks connected to the Centaur server or Services, through hacking, password mining or any other means;
 - (iv) to obtain or attempt to obtain any materials or information through any means not intentionally made available through the Services;
 - (v) to knowingly or recklessly post, link to, install or transmit, or permit third party users to post, link to or to transmit any material that is abusive, threatening, harmful, malicious, defamatory, obscene, pornographic, profane or otherwise unlawful; or any material containing a virus or other hostile computer program; or, to post, link to or transmit any material that constitutes or encourages a criminal offence, gives rise to civil liability or infringes the intellectual property rights of any third parties; or
 - (vi) to knowingly or recklessly transmit or permit third party users to transmit unsolicited emails in breach of Australian or New Zealand law.

10. Communication

Centaur will communicate with you by email. It is your responsibility to ensure that:

- (a) Centaur is provided with all your current contact details, including your email address and that you receive and check your emails regularly;
- (b) the information and Subscriber Information you provide Centaur is accurate.

You agree that Centaur will not be liable to you for any damage or loss that you may incur as a result of not providing us with your current details or if the details you provide are incomplete or inaccurate or if you do not receive any communications from Centaur because of the aforesaid.

11. Term and Termination

- (a) This agreement shall start on the date of the availability of the Services and will remain in effect for an initial term of one (1) month. At the end of the initial 1-month term, this agreement will automatically renew for successive renewal terms unless you provide Centaur with written notice of your election not to renew at least thirty (30) days prior to the expiration of the then current term.
- (b) In the event that the Subscription Fee is not paid by the due date, and no prior arrangement for deferred payment has been made with Centaur, Centaur will endeavour to contact you to discuss the possibility of such an

arrangement. If no agreement is reached within a reasonable period, Centaur reserves the right to terminate your licence and suspend your access to the services.

- (c) If you renew your subscription and payment of the Subscription Fee is made by the due date, you will continue to have access to the Services.
- (d) This Licence may be terminated at any time in our sole discretion if you use the Website or the Services except as permitted by these Terms.

12. Termination Consequences

- (a) Upon termination of these Terms for any reason:
 - (i) the Services will be discontinued;
 - (ii) you will not have access to the Services; and
 - (iii) your Customer Data will be destroyed within 30 days from the expiry of your subscription unless agreed arrangements have been made by you with Centaur to transfer your Customer Data before the termination of your licence.
- (b) You agree that before the effective date of termination, it is your sole responsibility to arrange with Centaur to transfer all your Customer Data from Centaur's servers. You agree that your Customer Data will not be recoverable 30 days after the termination is effective.

When requesting your Customer Data you can choose either or both of the below options:

- (i) Raw Data Files
The database itself (D4W.DB, CMS.DB)
Patient Documents in their actual format (.DOC, .DOCX, .PDF, .RTF, .TXM, etc) Patient Images from CMS (.CMI)
- (ii) Converted Images/Extracted Database Tables
The D4W.DB will have each table extracted into a non-relational .CSV format
The CMS Images will be converted into .JPEG format (named based on the patients' basic details)

Note both options will incur a fee based on the size of the files being converted/extracted and will be discussed at the time of termination.

- (c) You must pay to Centaur any outstanding Fees for purchases/Services completed to the end of the month containing the effective date of termination.
- (d) Centaur may terminate these Terms without notice to you if:
 - (i) You have breached any provision of the Terms;
 - (ii) Centaur believes that you are making unauthorised or improper use of the Services;
 - (iii) Centaur is required to do so by law.
- (e) Centaur reserves the right to discontinue Subscriber Account at any time and may suspend or deny, in our sole discretion, your access to all or any portion of the Services if your conduct impacts our name or reputation or violates the rights of any other party.
- (f) The early termination of Subscriber Account or the Services is not a ground for a refund unless required by law.

- (g) If you have not logged into Subscriber Account within a six (6) month period and the status of Subscriber Account is dormant, we reserve the right to unilaterally terminate Subscriber Account and delete all Subscription Data.
- (h) The end or termination of these Terms will not affect any other accrued rights or remedies of the parties.

13. Internet Access, Telecommunications Networks, Remote Access, Firewalls and Security

- (a) We do not have control over communications, networks, the Internet or other technology required or used across the Services and accepts no responsibility for any direct or indirect loss in any form associated with them.
- (b) By using our Services, you acknowledge that Internet transmissions are never completely private or secure. You agree that:
 - (i) use of the Services requires Internet access which may be affected by factors beyond the control of Centaur;
 - (ii) speed of Internet access will vary and may be affected by factors beyond the control of Centaur;
 - (iii) access to the Internet and storage of Customer Data on servers involve risks and Centaur cannot and does not warrant that the use of the Services will be risk free; and
 - (iv) You accept responsibility for maintaining your own security when accessing the Internet.
- (c) Any transmission of information online using the Services is performed at your risk. Submissions made via email are not protected by encryption and may be vulnerable to interception during transmission. We do not guarantee the uninterrupted availability of the Services, the Website, applications hosted by the Website, its servers (or the servers of third parties, which Centaur may engage to provide the whole or part of the Services) including connections to its online activation server because these may be dependent upon third party networks and security measures over which Centaur has no control.
- (d) You agree that Centaur does not accept any liability for damage to Customer Data or other systems as a result of remote access. You agree to implement security procedures to protect against damage as an unlikely result of remote access.
- (e) The obligations accepted by subscribers under this clause survive termination or expiry of these Terms.

14. Third party Online Services

The Services may contain access to or features that interface with third party online services (**‘Third-party Online Services’**). Where Third party Online Services are available or used, separate terms and conditions with the provider of the Third-party Online Services may apply. Charges may apply for the use of Third-party Online Services. Access to Third party Online Services may be withdrawn by Centaur at any time. Centaur does not make any recommendations in relation to the Third-party Online Services.

By choosing to integrate with Third-party Products or Services using Centaur’s software the Customer hereby agrees to indemnify Centaur Software and its directors, officers and employees from and against all claims, demands, actions, damages, liabilities, losses, costs, and expenses directly or indirectly arising out of or related to:

- (i) any breach of any representation or warranty of the Customer by Centaur Software resulted through the use by the Customer of the 3rd party products or services;
- (ii) any Claims, which arise out of, relate to or result from any act or omission of Customer in use by the Customer of 3rd party products of Services.
- (iii) any Claims, which arise out of breach of Data Protection, Data Security or Patient Privacy Laws and Legislation as a result of use by the Customer of the 3rd party products or Service. This is in addition to clauses 20, 21 and 22.

15. Backup and Security

- (a) Centaur uses Australian based servers to perform Customer Data backups and we have put in place safeguards and procedures to make sure the security of your Customer Data is maintained. Whilst all care is taken by Centaur to back up your Customer Data, Centaur will not guarantee or accept liability for any loss of Customer Data or any other form of loss or damage resultant from loss of Customer Data or failed backups of Customer Data. Centaur's backup procedure includes:
- Daily database level log file
 - Daily AWS S3 backups for physical files (scanned documents, images, etc)
 - Weekly file level backups of the database
- (b) In addition to 15 (a), Centaur performs the following data integrity and health checks of the database and hosted environments:
- Weekly database validations to ensure the integrity and optimum database health
 - Automated up to the minute monitoring and alerts
- (c) Centaur will use reasonable precautions to prevent the unauthorised disclosure of your Customer Data and will not decrypt your Customer Data. We will not, however, be responsible or incur any liability for any matters, including without limitation, any unauthorised access to your Customer Data, including by third parties to whom you have intentionally or inadvertently given shared access. In the event that Centaur is served with a subpoena or is otherwise lawfully compelled to provide access to your Customer Data, we will, subject to it being lawful, notify you of that fact.
- (d) Internet access: Any access to the Internet involves security risks and new threats to Internet security are continually evolving. Information stored on our servers or the servers of third parties that Centaur use, may be vulnerable to attack and cannot be guaranteed to be secure. In addition, submissions made via email are not protected by encryption and may be vulnerable to interception during transmission.
- (e) Backup: Although Centaur does regular backups on its overall infrastructure, Centaur on behalf of itself and/or any of its distributors and associates, does not assume any liability for loss of Customer Data and you are solely responsible for making your own backups.
- (f) Centaur's Backup and Security methods may change at any point based on continual improvements to our processes and environments as well as changes to the security landscape.

16. Data Retention

We retain your Customer Data for the term that you hold a Subscriber Account with us. If after the initial term you do not renew your subscription, or your subscription expires or is terminated, you will no longer have access to the Services and your Customer Data will be destroyed within 30 days from the expiry or termination of your subscription. After the 30-day period is up, your Subscriber Account and all your Customer Data will be permanently deleted including any content such as information, Customer Data, works and materials (including without limitation, text, graphics, images, audio material, video material, audio-visual material, scripts, software and files) that you submit to us or our Website for storage, or publication on, processing by, or transmission via, our Website and software.

17. Technical Support

Centaur provides technical support ('**Technical Support**') for the Services only. Technical Support means the support that Centaur will provide in accordance with its then current Service Level Agreement available upon request.

18. Confidentiality and Data Protection

- (a) In this agreement, '**Confidential Information**' means any information relating to the business of the disclosing party, which is not publicly available including, but not limited to:
 - (i) information regarding the business, affairs, customers, clients, suppliers, operations, processes, product information, know-how, technical information, designs, trade secrets or software of the disclosing party;
 - (ii) any information, findings, data, or analysis derived from Confidential Information including;
 - (iii) the existence and terms of this agreement; and
 - (iv) any other information which should otherwise be reasonably regarded as possessing a quality of confidence or as having commercial value in relation to the business of the disclosing party.
- (b) Each party undertakes that it shall not at any time disclose the other party's Confidential Information to any third party except the extent necessary for the proper performance of this agreement.
- (c) Each party warrants to the other that it shall apply the same security measures and degree of care to Confidential Information disclosed to it as it takes in protecting its own Confidential Information and in any event no less than that which a reasonable person or business would take in protecting its own Confidential Information.
- (d) Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under this agreement.
- (e) Each party may disclose the other party's Confidential Information:
 - (i) to its employees, officers, representatives, advisers, and third-party suppliers who need to know such information to perform its obligations under this agreement. Each party shall ensure that its and its employees, officers, representatives, advisers, and third-party suppliers to whom it discloses the other party's confidential information comply with this clause; and
 - (ii) as may be required by law, court order or any governmental or regulatory authority;
- (f) For the purposes of this clause, Confidential Information shall not include information which:
 - (i) is or becomes generally available to the public (other than through a breach of this agreement);
 - (ii) is lawfully in the possession of the other party before the disclosure under this agreement took place;
 - (iii) is obtained from a third party who is free to disclose it; or
 - (iv) the parties agree in writing is not confidential or may be disclosed.
- (g) Centaur and you must comply with their respective obligations under any applicable privacy and data protection laws and regulations in the relevant jurisdictions.

19. Warranties and Representations

- (a) No warranty of any kind whether express or implied is made in relation to the accuracy of the Copyright Material or any Customer Data on the Website.
- (b) Centaur does not warrant that the Services will be performed error-free, uninterrupted or free of bugs or viruses.
- (c) It is your sole responsibility to determine that the Services or any part of these meet your needs or are otherwise suitable for the purpose for which they are purchased.
- (d) Centaur excludes from these Terms all other warranties, conditions and terms implied by law except for any, the exclusion of which would contravene any law.

- (e) You represent and warrant that you:
 - (i) are legally permitted to use and access the Services;
 - (ii) take full responsibility for the selection and use of and access to the Services;
 - (iii) are solely responsible for the accuracy, quality, reliability appropriateness and the right to use the Customer Data that Subscriber submits in relation to the supply of the Services;
 - (iv) agree that Centaur does not control, verify, or endorse the Customer Data;
 - (v) are solely responsible for creating backups of Customer Data; and
 - (vi) in relation to Customer Data, that you own it or are licensed to use the Intellectual Property Rights in it and that the use of the Customer Data will not result in the infringement of any of the proprietary rights of third parties.
- (f) You warrant in relation to the Services that:
 - (i) you have the right to use all Customer Data;
 - (ii) you are solely responsible for complying with all laws that govern the collection, use, transmission, processing, receipt, reporting, disclosure, maintenance and storage of patient information;
 - (iii) the Customer Data is not in contravention of any legislation or any advertising or marketing laws or any other third-party rights;
 - (iv) you have the right to submit Customer Data to Centaur;
 - (v) you have obtained appropriate legal releases and legal consents from all persons who appear in the Customer Data;
 - (vi) Customer Data does not infringe the intellectual property rights of others or their moral rights, rights of publicity and privacy rights; and
 - (vii) the Customer Data complies with these Terms and all laws in the applicable jurisdictions.
- (g) This clause survives the termination or expiry of these Terms for whatever reason.

20. Disclaimer

- (a) You agree that we act solely as the operator of the Site. You accept that:
 - (i) You are responsible for all activity that occurs under the Subscriber Account. If you become aware of unauthorised access to your Subscriber Account, you must change the Login Details and notify us immediately;
 - (ii) You may only submit Customer Data that you are permitted to share and must not submit any Customer Data that infringes the intellectual property rights of others or is scraped, reproduced, redistributed, recompiled, reverse engineered or is a derivative work of others.
- (b) You acknowledge that:
 - (i) Centaur does not make any terms, guarantees, warranties, representations or conditions whatsoever regarding the Services other than pursuant to these Terms, and
 - (ii) Centaur does not assume any responsibility for your use or misuse of patient information or Customer Data transmitted, uploaded or stored during your use of the Services.
- (c) To the maximum extent permitted by any law, including the Consumer Guarantees, neither Centaur nor any provider of Third-party Services ('**TPS Providers**'), including but not limited to any Third-party Online Services will be responsible for delays, non-performance, failure to perform, processing errors or any other matter or thing which may be required from any TPS Providers, such as an authority or approval, or any agreement with Centaur

or any TPS Providers, as the case may be. Nor will the liability of Centaur, or any TPS Providers (whether jointly, severally or jointly and severally) include or extend to any special or consequential loss or damage suffered by you, except where required by the Consumer Guarantees.

- (d) All the information and Customer Data on the Website is published for general information purposes. This information is not intended to provide legal, business, or other expert or professional advice. Centaur does not accept any responsibility or liability for the accuracy, completeness, legality or reliability of any Customer Data published or transmitted through the Customer Data. Centaur will not be held liable for any damage or loss whether indirect, consequential, or otherwise which may arise because of the Customer Data or your use or inability to use the Customer Data.
- (e) The views expressed on the Website are not necessarily those of Centaur. No responsibility is accepted by the Centaur, its subsidiaries, officers or employees for the accuracy of any statement, opinion or advice contained in any Customer Data, text or advertisements, and to the full extent allowed by law, the Centaur excludes liability for any damage or loss sustained by readers and users arising from, or in conjunction with, the supply or use of Customer Data on the Website through any cause.
- (f) Any action you take in relation to the Customer Data on our Website is strictly at your own risk and in your sole discretion. By using any information on the Website, you are responsible for assessing the accuracy of the material and rely on at your own risk. To the extent permitted by law, all representations, conditions, or warranties, whether based in statute, common law (including in negligence) or otherwise are excluded. Centaur does not accept any liability for any damage or loss (including loss of profits, loss of revenue, indirect and consequential loss) incurred by any person as a result of using the Website or relying on information or Customer Data published on the Website.
- (g) The nature of Internet communications means that your communications may be susceptible to Customer Data corruption, unauthorised access, interception and delays (the '**Disruptions**'). The Centaur disclaims any liability for these Disruptions or any incomplete information, inaccuracies or typographical errors, whether caused by the Website or users of the Website or by any of the equipment or programming associated with or utilised on the Website or by any technical or human error which may occur.
- (h) Nothing in these Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (or any liability under them) which by law may not be limited or excluded.
- (i) Subject to this clause, and to the extent permitted by law:
 - (i) all terms, guarantees, warranties, representations or conditions which are not expressly stated in these Terms are excluded; and
 - (ii) Centaur will not be liable for any indirect, special or consequential loss or damage, loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Services or these Terms (including as a result of not being able to use the Services or the late supply of the Services), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.
- (j) Use of the Website and the Services is at your own risk. Everything on the Website and the Services is provided to you on an "as is" and "as available" basis, without warranty or condition of any kind, except as otherwise expressly provided in these Terms.
- (k) None of the affiliates, directors, officers, employees, agents, contributors, third party Customer Data providers or licensors of Centaur (including any third-party providers) make any express or implied representation or warranty about the Services. This includes (but is not restricted to) loss or damage you might suffer as a result of any of the following:

- (i) failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of Customer Data, communication line failure, unlawful third-party conduct, or theft, destruction, alteration or unauthorised access to records;
- (ii) the accuracy, suitability or currency of any information on the Website (including third party material and advertisements on the Website);
- (iii) costs incurred because of your use of the Website and the Services;
- (iv) Website links which are provided for your convenience;
- (v) any failure to complete a transaction, or any loss arising from e-commerce transacted on the Website; or
- (vi) any defamatory, threatening, offensive or unlawful conduct of third parties or publication of any materials relating to or constituting such conduct.

- (l) This clause survives the termination or expiry of these Terms for whatever reason.

21. Limitation of Liability

- (a) To the extent permissible at law, we are not liable for any indirect, punitive, incidental, special, consequential damages including without limitation any claims, losses, liability, loss of Customer Data, loss of profits, revenue, business or goodwill arising out of or in any way connected with the provision of or failure to provide any products or services under these Terms including loss:
- (i) of Customer Data;
 - (ii) caused by any viruses or other disabling features that affect your access to or use of our Services;
 - (iii) caused by incompatibility between our Services and your hardware or software,
 - (iv) caused by delays or failures you may have in using the Services including any connections or transmissions that fail or are not completed in an accurate or timely manner.
- (b) Centaur (and its authorised distributors) will not be liable to you or any other person for any direct or indirect loss, damages, liability, costs or expenses suffered by you or any other person relating to the performance or non-performance of the Services, including but not limited to the availability of the Services, availability of the website or applications hosted by the website, loss of Customer Data, or any breach of this Licence or the supply of the Services or in connection with, but not limited to, the Third party Online Services, the TPS Providers, use of third party hardware (for example but not limited to HICAPS services) or provision of technical support (whether by telephone or remote access or other means).
- (c) You agree that Centaur (and its authorised distributors) will not be liable, other than as required by the Consumer Guarantees or as expressly set out in this Licence, and that you will indemnify Centaur (and its authorised distributors) from any liability, loss, damage, costs or expenses which Centaur (or its authorised distributors) may suffer or incur as a result of your use of the Services (including any claims made against Centaur (or its authorised distributors) by third parties).
- (d) The use of our Services does not constitute the provision of professional advice. The information contained in the Services may contain features designed to assist you in complying with the requirements of the relevant legislation at the time of the release of the Services, including GST reporting. These compliance requirements may change from time to time. You agree it is your obligation to ensure the details, calculations, reports and any other Customer Data or documents produced using the Services, are correct and compliant when created or used by you. Legal, accounting or other relevant professional advice should be obtained before taking any action in reliance on the Services or what is produced by you using the Services.

- (e) Centaur has no responsibility for recommendations. Except as required by the Consumer Guarantees, Centaur, its employees, agents, contractors and the authors disclaim any and all liability and responsibility to any person, whether a user of these Services or not, in respect of anything (including, without limitation, any error in or omission from these Services), and of the consequences of any actions taken or omitted to be taken in reliance, whether wholly or partially, upon all or any part of the content, recommendations or help, contained in these Services.
- (f) Except as required by the Consumer Guarantees, Centaur and its authorised distributors disclaim all liability for any corruption of Customer Data, inability to access Customer Data, loss of Customer Data, breach of privacy, or downtime as a result of or arising from the use of the Services or any online link available between the Services and another server including without limitation in connection with Third Party Online Services.
- (g) Except as required by the Consumer Guarantees, Centaur makes no warranty or representation in connection with the Third-party Online Services, or third-party hardware (for example but not limited to HICAPS services) the responsibility for which rests with the relevant provider of such Third-party Online Services or such hardware.
- (h) Third party Online service Providers ("TPS Providers") TPS means Third party Services. Except as required by the Consumer Guarantees, neither Centaur nor any TPS Providers, will be responsible for delays, non-performance, failure to perform, processing errors or any other matter or thing which may be required from any TPS Providers, such as an authority or approval, or any agreement with Centaur or any TPS Providers, as the case may be. Nor will the liability of Centaur, or any TPS Providers, (whether jointly, severally or jointly and severally) include or extend to any special or consequential loss or damage suffered by you.
 - (i) These Terms are to be read subject to any legislation that prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions, guarantees or obligations. If such legislation applies, to the extent possible Centaur limits its liability as follows, at our option:
 - (i) for any claims relating to these Terms, to the fees payable under this agreement (if applicable) for the preceding one (1) month;
 - (ii) in the case of products including any digital products (a) the replacement of the products or the supply of equivalent products; (b) the repair of the products; (c) the payment of the cost of replacing the products or of acquiring equivalent products; or (d) the payment of having the products repaired; or
 - (iii) in the case of services, the supply of the services again or the payment of the cost of having the services supplied again.
- (j) Without limiting any other term of this agreement, Centaur's maximum liability for damages arising in connection with this Licence or the supply of the Services is limited to the amount paid by you for the Services for the year in which any such claim is formally made by you.
- (k) Except as provided in these Terms, we exclude all representations and warranties relating to the subject matter of these Terms, our Site, Website and the supply of our Services.
- (l) This clause survives the termination or expiry of these Terms for whatever reason.

22. Indemnity

- (a) You agree to defend, indemnify and hold Centaur, our affiliates, employees, agents, contributors, third party Customer Data providers and licensors harmless from and against all actions, suits, claims, demands, liabilities, costs, expenses, losses and damage (including legal fees on a full indemnity basis) brought against or sustained by Centaur, which:

- (i) is directly or indirectly caused by your breach of these Terms;
 - (ii) is directly or indirectly caused by any wilful, reckless or negligent act by you;
 - (iii) arises through your actions or omissions and that may be brought against you in the event that patient information is compromised or disclosed due to your negligence or failure to secure Subscriber Account;
 - (iv) concerns personal injury to any person caused or contributed to by you;
 - (v) is caused by your act or omission and constitutes a loss of or damage to property;
 - (vi) is brought by any third-party in respect of personal injury, death or damage to third-party property; or
 - (vii) arises from your act or omission.
- (b) Centaur cannot and does not assume any responsibility for your use or misuse of patient information or other information transmitted, uploaded, or stored using the hosted site or the Services. You agree to indemnify Centaur, its officers, directors, employees, licensors, partners, and affiliates from any claim, action, or cause that maybe brought in the event that patient information is compromised due to your negligence or failure to secure ids.
- (c) Except as required by law, Centaur will not be liable for any claim, loss or liability for personal injury, death or damage to you or your property however it may be caused.
- (d) Centaur reserve the right, at our own expense, to assume the exclusive defence and control of any matter otherwise subject to indemnification by you, and in such case, you agree to cooperate with our defence of such claim.
- (e) In no event will Centaur be liable to you for any indirect, incidental or consequential damages including, without limitation, direct, indirect, special, punitive, or exemplary damages.

23. Disputes

(a) Compulsory process

A party shall not start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a Dispute unless it has complied with this clause.

(b) Notification

A party claiming that a Dispute has arisen shall notify each other party to the Dispute giving details of the Dispute.

(c) Initial period – efforts to resolve Dispute

During the 30-day period after a notice is given (or longer period agreed in writing by the parties to the Dispute) (Initial Period) each party to the Dispute (Disputant) covenants with the other to cooperate and take all reasonable steps necessary to attempt to resolve the Dispute.

(d) Mediation

If the Disputants are unable to resolve the Dispute within the Initial Period, each Disputant agrees that the Dispute shall be referred for mediation, at the request of any Disputant, to:

- (i) a mediator agreed on by the Disputants; or
- (ii) if the Disputants are unable to agree on a mediator within seven days after the end of the Initial Period, then the parties must submit the dispute for mediation through the Chair of Resolution Institute (ACN 008 651 232) or the Chair's designated representative and the Resolution Institute Mediation Rules shall apply to the mediation.

(e) Role of mediator

The role of any mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a decision that is binding on a Disputant unless that Disputant has so agreed in writing.

(f) Information

Any information or documentation disclosed by a Disputant under this clause shall be kept confidential and may not be used except to attempt to resolve the Dispute.

(g) Costs of mediation

Each Disputant shall pay its own costs of complying with this clause. The Disputants shall pay equally the costs of any mediator engaged.

(h) Location, timing and attendance

The mediation will be held in Sydney, Australia, within 30 days after expiry of the Initial Period. Each Disputant agrees to attend the mediation by a representative having full authority to resolve the dispute. At the mediation each Disputant may be represented by one or more legal representative.

(i) Failure to resolve

If the dispute fails to resolve at mediation or if one of the Disputants fails or refuses to attend the mediation, the mediator will be requested to inform each Disputant in writing that the mediation has been terminated without resolution (Mediation Termination Notice). Upon receipt of Mediation Termination Notice, the dispute resolution process will be terminated. A party to a dispute will only be entitled to pursue other remedies available to it at law or otherwise, after receipt of Mediation Termination Notice.

(j) Confidentiality

All communications concerning negotiations made by the Disputants arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable law of evidence.

24. Advertising and Links

The Website may contain links and other pointers to other Sites or applications operated by third parties. Centaur does not control these linked Sites and is not responsible for the contents of any linked application. The links are provided solely for your convenience and do not indicate, expressly or impliedly, any endorsement by us of the Website or the products or services provided at those Sites. Your access to any such advertisement or link is entirely at your own risk. You should contact the relevant third-party directly to enquire on that information prior to entering into a transaction in relation to the third-party products and services.

25. No Waiver

Any failure on our part to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision.

26. Assignment

- (a) You agree that Centaur may assign, transfer, sub-licence or otherwise deal with our rights and/or obligations under these Terms.
- (b) You may not without our prior written consent assign, transfer, sub-licence or otherwise deal with any of your rights and obligations under these Terms.

27. Entire agreement

Unless otherwise stated, these Terms, the Order Form and our **Privacy Policy** shall constitute the entire agreement between you and us in relation to your use of the Website and our Services.

28. Severability

If any part of provision of these Terms is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part of the provision otherwise it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.

29. Law and Jurisdiction

- (a) The Terms and information on this Website are governed by and construed in accordance with the laws of the State of New South Wales, Australia. You submit to the non-exclusive jurisdiction of the Courts of New South Wales and Courts of Appeal from them for determining any dispute concerning these Terms.
- (b) If any provision of these Terms is found to be invalid or unenforceable by a Court of Law, such invalidity or unenforceability will not affect the remainder of the Terms which will continue in full force and effect.

30. Force Majeure

Notwithstanding any other provision of these Terms, Centaur need not act if it is impossible to act due to force majeure, meaning any cause beyond our control (including war, pandemic, riot, natural disaster or law taking effect after the date of these Terms). You agree that we have no responsibility or liability for any loss or expense suffered or incurred by you because of not acting for so long as the force majeure continues.

31. How to Contact Us

- (a) Address: 507/410 Elizabeth St, Surry Hills NSW 2010
- (b) Email: information@centaursoftware.com
- (c) **Centaur Software Development Co Pty Ltd (ACN 057 620 390) ALL RIGHTS RESERVED.**