

# Subscription Agreement

## HSCtute Ops Co Pty. Ltd.

### PARTIES

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1. **HSCTUTE OPS CO PTY. LTD. (ACN 157 892 969)** of 92 Pitt Street, Redfern, NSW, 2016 (**HSchub**); and
2. The entity agreeing to this Agreement (**Licensee / you**).

### TERMS AND CONDITIONS

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#### 1. GENERAL

- (a) This HSchub Subscription Agreement, together with each Schedule and applicable Rate Sheet(s) (the **Agreement**), is effective from the date on which you either, as they case may be:
  - (i) click the “I Accept” button located on the URL “[www.hschub.com](http://www.hschub.com)”; and/or
  - (ii) sign the execution clauses set out in **Schedule 2**.(the **Effective Date**)
- (b) HSchub relies on the details the Licensee has provided either:
  - (i) on the URL; or
  - (ii) in **Schedule 3**.
- (c) If you are entering this Agreement on behalf of another entity (the **Represented Entity**) as its agent, officer, employee or other representative, you acknowledge that you are providing the following warranties to HSchub:
  - (i) you have full legal authority to bind the Represented Entity to this Agreement;
  - (ii) you accept the terms and conditions of this Agreement on behalf of the Represented Entity;
  - (iii) you have been provided with a reasonable opportunity to read and understand this Agreement; and
  - (iv) you indemnify HSchub against any damage or losses that may arise on the basis that you do not have the authority to bind the Represented Entity.
- (d) This Agreement governs the Licensee’s access to the Application.

#### 2. INTERPRETATION

In this Agreement unless the context otherwise requires:

- (a) reference to a person includes any other entity recognised by law;
- (b) the singular includes the plural and vice versa;
- (c) words importing one gender include all genders;
- (d) any reference to any of the parties by their defined terms includes that party’s executors, administrators or permitted assigns or, being a company, its successors or permitted assigns;
- (e) an agreement, representation, or warranty on the part of two or more persons binds them jointly and severally;
- (f) an agreement, representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (g) clause headings are for reference purposes only;
- (h) reference to an Item is a reference to an Item in the Schedule to this Agreement;
- (i) reference to a Schedule is a reference to the corresponding Schedule to this Agreement;
- (j) reference to a statute, ordinance, code, or other law includes regulations and other instructions under it and consolidations, amendments, re-enactments, or replacements of it.
- (k) reference to a time is to that time in Sydney, Australia;
- (l) reference that something is to be done in writing includes electronic communication;
- (m) if the time for something to be done or to happen is the 29th, 30th or 31st day of a month, and that day does not exist, the time is instead the next day; and

- (n) if the time for something to be done or to happen is a day that is not a business day, the time is extended to the next business day.

### 3. DEFINITIONS

- (1) **Agreement** means this subscription agreement being entered into;
- (2) **Application** means the online software applications described at the following Uniform Resource Locator (URL): “*www.HSChub.com*” or other such URL that HSChub provides the Licensee from time to time;
- (3) **Authentication Credential** means the username and password (or other means of authentication provided by HSChub from time to time) that are provided to the Licensee to enable access to the Application by it or any of its representatives;
- (4) **Authorised User** means either, if the Licensee is an individual, the Licensee, or, if the Licensee is a corporate entity, any employee, agent, Independent Contractor or other representative that has been issued an Authentication Credential in accordance with this Agreement by such corporate entity;
- (5) **Billing Cycle** has the meaning given to it in **clause 7.2(c)**;
- (6) **Business Day** means a day on which banks are open for business in New South Wales, Australia excluding a Saturday or a Sunday or a public holiday;
- (7) **Debit Notice** means the tax invoice issued by HSChub to the Licensee on the 1<sup>st</sup> of each month which sets out the Subscription Fees payable by the Licensee in relation to the previous Month;
- (8) **Documentation** means the standard Application manuals, guides and reference materials, including but not limited to, notes essays, questions, responses, comments and resources that HSChub generally makes available in connection with the Application in electronic or hard-copy form;
- (9) **Fair Use Policy** means the policy set out on the URL, or such other URL as HSChub might specify from time to time;
- (10) **GST** means any tax, levy, charge or impost implemented under the GST Act or act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act;
- (11) **GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- (12) **Independent Contractor** means any entity which:
- (i) is an independent contractor at law;
  - (ii) is actively providing contractor services to the Licensee; and
  - (iii) has entered into an agreement with the Licensee as prescribed in **clause 5.5(d)**.
- (13) **Intellectual Property** means all industrial and intellectual property rights of any type throughout the world which conferred under statute, common law or equity, whether unregistered, registered, unregistrable or registrable and whether such rights are presently existing or future rights, in respect of or in connection with copyright, trade marks, service marks, designs, confidential information, trade secrets, know-how, patents, inventions, circuit layouts, source code, test data, user interfaces, displays, menu screens, forms, views, macros, databases, formulae, business processes, methods and discoveries, business names, trade names and domain names and all other intellectual property rights defined by Article 2 of the convention establishing the World Intellectual Property Organisation in 1967 and all applications for and any right to apply for the registration or renewal of such rights, and includes, but is not limited to, for the avoidance of doubt:
- (i) the Application; and
  - (ii) the Documentation.
- (14) **Licensed Materials** means the Application and the Documentation;
- (15) **Licensee** means the entity that, or on whose behalf another entity, has clicked the “*I Accept*” button on the URL;
- (16) **Losses** means any liabilities, claims, actions, suits, proceedings, judgments, losses, damages, costs and expenses which arise from this Agreement, but excludes legal and other expenses incurred in connection with a claim for which one party seeks indemnification from the other;
- (17) **Marks** means a party's registered or unregistered trade names, trademarks, logos and service marks;
- (18) **Non-Public Personal Information** means personally identifiable information about any person that a party knows or reasonably should know has not been made available to the general public, or that is covered by applicable privacy, security, or security breach notification laws or regulations;
- (19) **Optional Usage Fees** means the fees payable by the Licensee in accordance with **Clause 7.1** and which are set out in **Item 2** of the Rate Sheet;

- (20) **Payment Authority** means the authority provided by the Licensee to HSChub, in the form required by HSChub from time to time, which enables HSChub to direct debit the Payment Facility in accordance with **clause 7.2**;
- (21) **Payment Facility** means any credit card, bank card, bank account or other payment facility registered by the Licensee with HSChub, to be used for payment by the Licensee of the Subscription Fees in accordance with **clause 7.2**;
- (22) **Performance Incident** means:
- (i) any irregularity, error, problem or defect resulting from an incorrect functioning of the Application if such irregularity, error, problem or defect renders the Application incapable of meeting the material specifications contained in its Documentation or causes incorrect functions to occur; or
  - (ii) an incorrect or incomplete identification, statement or diagram in the Documentation that causes the Documentation to be inaccurate or incomplete in any material respect;
- (23) **Proprietary Information** means:
- (i) information relating to technical specifications, including without limitation developments, pricing and financial information, designs, patents, inventions, improvements, writings and other works of authorship, trade secrets, drawings, models, software (including source code and object code), algorithms, and flow charts and other documentation;
  - (ii) all other confidential, proprietary or trade secret information which a reasonable person would recognise as such, or which is specifically designated as confidential; and
  - (iii) any compilation or summary of information or data that is itself Proprietary Information, excluding all Non-Public Personal Information;
- (24) **Rate Sheet** means an itemisation of rates, fees and/or charges related to the Application or consulting services that is made available to Licensee in reference to this Agreement and set out in **Schedule 1** or varied by HSChub from time to time in writing in accordance with this Agreement;
- (25) **Related Entity** has the same meaning as in the *Corporations Act (Cth) 2001*, which is legislation enacted in the federal jurisdiction in Australia;
- (26) **Schedule** means any supplement to this Agreement which is:
- (i) specific to one or more Applications or service; and
  - (ii) incorporated into this Agreement by its terms or by agreement between the parties.
- (27) **Security Hazard** means use of the Application by an Authorised User in violation of this Agreement which, in HSChub's reasonable discretion, is deemed:
- (i) could affect use of the Application by other Authorised Users;
  - (ii) could affect the Application itself; or
  - (iii) constitutes unauthorised access of the Application by unauthorised users, or for illegal purposes.
- (28) **Security Incident** means any instance of unauthorised access to, or use, disclosure, alteration, transfer, or destruction of Non-Public Personal Information;
- (29) **Server** means any hosted storage facilities maintained by HSChub in order to store active and backup data;
- (30) **SMS Messages** means any short message service used by the Licensee during the course of accessing the Licensed Materials;
- (31) **Subscription** means a grant of access to the Application to an Authorised User in accordance with this Agreement;
- (32) **Subscription Fees** means all fees charged in accordance with **Section 7.1** and which are set out in **Item 1** of the Rate Sheet;
- (33) **Suspension Notice** means the notice issued by HSChub sixty (60) days after the issue of a Debit Notice in order to confirm suspension of the Licensee's access to the Licensed Materials due to non-payment of the Subscription Fees relevant to that Debit Notice;
- (34) **Third-Party Application** means any product, service, including SMS Message service, system, application and/or internet site integrated or interfaced with the Application that is owned or operated by a Third-Party Provider, and that is used by the Licensee to access and use the Application;

- (35) **Third-Party Licensor** means any third party that licenses or otherwise conveys to HSChub the right to use, distribute or make available any component of the Licensed Materials or any other data, services, software or other materials; and
- (36) **Third-Party Provider** means any third party that provides support, business, technology and/or other products or services.

### **3. GRANT AND OBLIGATIONS**

#### **3.1 Licence**

Upon acceptance by the Licensee of this Agreement, HSChub grants the Licensee a non-exclusive, non-transferable licence to:

- (a) access and use the Application through its Authorised Users only; and
- (b) use the Documentation,

in accordance with the terms and conditions set out in this Agreement.

#### **3.2 Right to Use The Licenced Materials**

The Licensee may only use the Licensed Materials (other than the Documentation or applications of Third-Party Licensors) on the following basis, unless otherwise expressly agreed by HSChub in writing:

- (a) the Licensee may only copy the Documentation to the extent necessary to use the Application;
- (b) the Licensee must reproduce the Marks on copies of the Documentation;
- (c) the Licensee shall only access and use the Licensed Materials for its own internal business purposes;
- (d) the Licensee shall not access, use or allow others to access or use the Licensed Materials in a multiple-use arrangement or as part of a service bureau;
- (e) the Licensee shall not resell, sublicense, distribute, allow access to or otherwise provide or make available for any purpose any component of the Licensed Materials to any person, firm or entity;
- (f) the Licensee shall not attempt to disassemble, decompile, circumvent any technological measure that effectively controls access to, or reverse engineer the Application, or otherwise engage in any conduct designed or intended to interfere with the operation of the Application, except to the extent that such activity is expressly permitted by applicable law;
- (g) the Licensee shall not modify, alter, translate, reverse engineer or create derivative works based upon the Licensed Materials;
- (h) the Licensee shall only access and use the Licensed Materials for their intended use, as described in the Documentation; and
- (i) the Licensee must comply with the Fair Use Policy, and use its best endeavours to ensure that its Authorised Users and all other employees, agents and representatives do the same.

#### **3.3 Schedule(s)**

In the event that further Licensed Materials are made available to the Licensee, the following applies:

- (a) a Schedule shall be entered into by the Licensee for each set of Licenced Materials; and
- (b) each additional Schedule shall:
  - (i) be executed by an authorised officer of the Licensee;
  - (ii) reference the Agreement, except to the extent, if any, that such Schedule expressly provides otherwise; and
  - (iii) be effective as of the date on which the subject Application is first made available to the Licensee, which shall be deemed to constitute HSChub's acceptance of the Schedule.
- (c) Nothing in this Agreement shall obligate HSChub to accept and enter into any Schedule with the Licensee.

### 3.4 Unauthorised Representations

Without the express prior written consent of HSChub, the Licensee agrees not to make any representations, statements or suggestions to a third party that purport to be or might reasonably be construed to be made on behalf of HSChub or its Third-Party Licensors.

## 4. OWNERSHIP OF LICENSED MATERIALS

### 4.1 Ownership

- (a) The Licensee agrees that title and all ownership rights to the Licensed Materials and all copies of the Documentation made by Licensee hereunder, and any and Intellectual Property rights therein shall reside in HSChub or its Related Entities or its Third-Party Licensors, as the case may be.
- (b) The Licensee further acknowledges that:
  - (i) the Licensed Materials are protected by copyright and other intellectual property rights under applicable laws and international treaties; and
  - (ii) the Licensee has no rights in the Licensed Materials, except those expressly granted by the Agreement.

### 4.2 Protection

The Licensee will take all reasonable measures requested by HSChub, and/or as otherwise provided in the Agreement, to protect the Licensed Materials from any access, use, reproduction, publication, disclosure or distribution, except as specifically authorised by the Agreement.

## 5. RIGHTS AND RESPONSIBILITIES

### 5.1 Hardware, Software and Alternative Systems

The Licensee shall be exclusively responsible for:

- (a) providing all materials, including, without limitation, hardware, software and any Third-Party Application, necessary for accessing and using any Application; and
- (b) providing alternative systems when the Application is not available.

### 5.2 Third-Party Applications and Providers

- (a) The Licensee acknowledges that it may, directly or indirectly, gain access to findings, data, information, material or functionality through Third-Party Applications, and that the Application may enable interfacing between the Licensee and Third-Party Providers.
- (b) In the event that the Licensee gains access or participates in transactions as envisaged by **Section 5.2**, the Licensee acknowledges and agrees that:
  - (i) such Third-Party Providers are entities that are separate from and independent of HSChub;
  - (ii) that HSChub makes no representations or warranties relating to Third-Party Providers, Third-Party Applications, or any other product, service, internet site, or other functionality operated by Third-Party Providers or any data or information provided by any of them, including, but not limited to representations or warranties as to any Third-Party Provider's compliance with laws and representations or warranties as to site availability;
  - (iii) such Third-Party Providers and HSChub are not partners, joint venturers, representatives or agents of each other;
  - (iii) neither HSChub nor any Third-Party Provider have any right, power or authority to enter into any agreement for or on behalf of the other, or to incur any obligation or liability, or to otherwise bind the other;
  - (iv) any agreement between the Licensee and any Third-Party Provider (to which HSChub is not also a party), including but not limited to any licensing, data or other information agreement between a Third-Party Provider and the Licensee, shall not be binding upon HSChub; and
  - (v) the applicable or relevant liability limitations, protections and rights afforded to HSChub, and the applicable or relevant restrictions and responsibilities imposed upon Licensee, all under the Agreement, shall be construed to apply to HSChub and Licensee, respectively, in relation to the Licensee's access to or participation in Third-Party Provider sites, systems or services (including, but not limited to, any Third-Party Application) to the fullest extent practicable under the circumstances, including, but not limited to, the provisions of the Agreement relating to confidentiality, liability limitation, disclaimers, indemnification, publicity, intellectual property protection and ownership and compliance with laws.
- (c) The inclusion of any link to or integration or interface with any Third-Party Application will not constitute or imply any affiliation with, or sponsorship, endorsement or approval of the Third-Party Application or its Third-Party Provider, or any investigation, verification or monitoring by HSChub of any information contained in any Third-Party Application.

- (d) In no event shall HSChub be responsible for any information contained in a Third-Party Application, including without limitation, its formatting, screening or display of data, or for the Licensee's use of or inability to use such Third-Party Application.
- (e) Access to any Third-Party Application is at the Licensee's risk, and the Licensee should understand that linked internet sites (including Third-Party Applications) may have practices, terms and policies, including those pertaining to privacy, that are different from those of HSChub. HSChub is not responsible for these practices, terms and policies and specifically disclaims any liability for any of them.
- (f) HSChub and its Third-Party Licensors make no representations or warranties regarding:
  - (i) the availability or timing of any availability of any interface between the Application and any third-party software and/or systems (including the Third-Party Applications);
  - (ii) the availability of or access to or by any specific provider of third-party software and/or systems (including the Third-Party Applications);
  - (iii) the actual effect of the services provided via the Application on, inter alia, the Licensee's knowledge, skill sets or ability to perform tasks of any kind;
  - (iv) all content contained in the Application takes the form of opinion only and in this regard HSChub takes no responsibility for it; and
  - (v) whether content contained in the Application is current or reflective of the syllabus of the Board of Studies or any other government or official organisation.
- (g) The Licensee acknowledges and agrees that:
  - (i) HSChub and its Third-Party Licensors will in no way be responsible for any Losses that may result from the Licensee's use of any Third-Party Application, despite the fact that any such Third-Party Application may interface with the Application, or that HSChub may have provided installation or integration services with respect to the same;
  - (ii) the Licensee shall maintain a direct, independent contractual relationship with any such Third-Party Provider relative to Licensee's access to and/or participation in such Third-Party Application; and
  - (iii) subject to the privacy legislation, HSChub reserves the right to share information on the Licensee with third parties, including but not limited to advisors and strategic partners.

### 5.3 Rights in Improvements

HSChub shall be the sole and exclusive owner of, and Licensee hereby assigns and agrees to assign to HSChub all rights in:

- (a) any changes, modifications, upgrades or enhancements, in design, functionality or otherwise, to the Licensed Materials, HSChub's internet sites and/or any successor products, systems or sites; and
- (b) any of the Licensee's proposed or suggested changes, modifications, upgrades or enhancements, in design, functionality or otherwise, to the Licensed Materials, HSChub's internet sites and/or any successor products, systems or sites, without any recourse or obligation to the Licensee. The Licensee acknowledges and agrees that HSChub shall be under no obligation to consider or implement any changes, modifications, upgrades or enhancements recommended or requested by the Licensee.

### 5.4 Rights in Data

HSChub, its agents and contractors may use, reproduce, distribute and retain all data generated by, submitted to or evaluated utilising the Application and all other data residing on HSChub systems for the purposes of:

- (a) system and network maintenance and the diagnosis, investigation and/or correction of actual or suspected Performance and Security Incidents;
- (b) measurement or evaluation of software, service or system usage or the functionality or performance of the Application, HSChub's systems or internet sites;
- (c) information security;
- (d) recommending, developing or monitoring improvements, upgrades or enhancements to the Application;
- (e) performing its obligations under the Agreement (including without limitation the preparation of billing statements) and operating the Application or HSChub's systems or internet sites;
- (f) providing reports to Licensee, those parties designated by the Licensee in writing and Third-Party Providers with whom the Licensee has a contractual relationship permitting the Third-Party Provider access to the data;
- (g) responding to the Licensee's requests;
- (h) analysis, modeling and auditing;

- (i) protecting against and/or preventing actual or potential fraud; and/or
- (j) compliance with applicable laws, regulations and other legal mandates.

5.5 **Authorised Users and Authentication Credentials**

- (a) The Licensee's access to the Application may be dependent upon a security access system that requires each Authorised User to use one or more Authentication Credentials.
- (b) The Licensee represents and warrants that each Authorised User:
  - (i) is an employee or Independent Contractor of the Licensee;
  - (ii) is authorised to receive an Authentication Credential and access and use the Application;
  - (iii) is the individual or system identified as such on the associated registration form submitted to HSChub (and/or a third party designated by HSChub); and
  - (iv) possesses all licenses, certifications and other authorisations, whether required by applicable law or otherwise, to effect the transactions for which the Licensee accesses and uses the Application.
- (c) The Licensee acknowledges and agrees that the actions of Authorised Users shall be deemed to be actions of the Licensee and the Licensee guarantees the full performance by its Authorised Users of all obligations under the Agreement.

(d) **Independent Contractors as Authorised Users**

The Licensee shall not request or obtain an Authentication Credential for, or provide an Authentication Credential to, an Independent Contractor without first entering into a written agreement with him/her whereby:

- (i) the Independent Contractor acknowledges having received and read this Agreement (excluding any Rate Sheet) and agrees to abide by its terms in connection with his/her use of the Licensed Materials;
- (ii) the Independent Contractor agrees to use any Authentication Credential provided to him/her at the Licensee's request to access the Application for the sole benefit and on behalf of the Licensee;
- (iii) the Independent Contractor's access to and use of the Licensed Materials, and any and all rights under the agreement pertaining to the Licensed Materials, terminate upon the earlier of:
  - (A) the termination of this Agreement or any applicable Schedule;
  - (B) cessation of services by the Independent Contractor to the Licensee;
  - (C) termination of the agreement between Licensee and the Independent Contractor; and
  - (D) revocation of Authentication Credentials issued to the Independent Contractor.

(e) **Management of Authentication Credentials**

- (i) The Licensee agrees to ensure that each Authentication Credential is securely maintained and used only by the Authorised User to whom or which the Authentication Credential has been issued.
- (ii) The Licensee further agrees to immediately notify HSChub and take immediate steps to disable a previously issued Authentication Credential if:
  - (A) an Authorised User ceases to be an Authorised User for any reason, including as a result of such Authorised User no longer being employed or used by the Licensee; or
  - (B) in the event of any loss, theft or unauthorised disclosure or use of any Authentication Credential.
- (iii) Authentication Credentials shall not be transferred between or among Authorised Users or other individuals or systems, and the Licensee shall implement all necessary and appropriate measures to ensure that:
  - (A) such transfers do not occur; and
  - (B) these and all other requirements of this **clause 5.5** (including its subsections) are met, including, without limitation, apprising its employees with a need to know of the requirements of this Section.
- (iv) HSChub may provide functionality within the Application or otherwise such that Licensee is able to electronically compare its list of Authorised Users with such a list maintained by HSChub.

- (v) To the extent such functionality is provided, the Licensee shall conduct periodic comparisons of the separately maintained lists, and the Licensee shall immediately notify HSChub of any discrepancy revealed by any such comparison.
- (vi) HSChub shall be under no obligation to provide access to the Application to any Authorised User, and expressly reserves the right at any time and from time to time to change and/or revoke Authentication Credentials.
- (vii) The Licensee agrees that it shall periodically revoke and/or reset Authentication Credentials as and to the extent prescribed by HSChub, but in no event less than:
  - (A) every ninety calendar days for individuals;
  - (B) annually for systems; and
  - (C) notwithstanding **clause 5.5(e)(vii)(A)**, annually for Authentication Credentials issued by a third party.

(f) **Special Requirements for Authentication Credentials in Use by Licensee Systems**

If the Licensee implements an Authentication Credential in a system or Third-Party Application with the result that such a system is an Authorised User (in either instance, an **Authorised System**), the Licensee shall implement the Authorised System such that any Licensee employee or representative accessing the Application via the Authorised System can be accurately identified to HSChub upon its request, and the date, time and nature of such employee's access to the Application via the Authorised System can likewise be accurately identified to HSChub.

**5.6 Non-public Personal Information; Security Incidents and Procedures**

- (a) As and to the extent required by law, each party agrees to maintain at all times during the currency of this Agreement reasonable measures to:
  - (i) provide for the security and confidentiality of all Non-public Personal Information received by it as a result of this Agreement;
  - (ii) protect such Non-public Personal Information from unauthorised access or use and threats or hazards to its security, confidentiality or integrity;
  - (iii) address any Security Incident with prompt and effective corrective action, including cooperation with the other party in the investigation and remedy of such Security Incidents, as well as prompt disclosure and notification, where legally required;
  - (iv) provide for the security, confidentiality and integrity of all computer systems and networks on which such Non-public Personal Information is stored or transmitted;
  - (v) provide for the secure and confidential disposal or destruction of such Non-public Personal Information in such a manner as to reasonably protect against unauthorised access or use; and
  - (vi) instruct its employees, agents, representatives and contractors who may receive such Non-public Personal Information about the requirements of this provision of the Agreement, and the processes and procedures necessary to fulfil them.
- (b) Without limiting **clause 5.6(a)**, the Licensee shall implement reasonable procedures to prevent unauthorised persons or systems from gaining access to any Documentation or to the Application through the Licensee's systems or via an Authentication Credential of any of its Authorised Users.
- (c) The procedures referred to in **clause 5.6(b)** may include, but are not limited to, encrypting material prior to its transmission, utilising commercially available virus checking programs designed to prevent the transmission and receipt of viruses and other destructive code, implementing appropriate disaster recovery and back-up procedures, and implementing appropriate procedures to prevent disclosure of data and other materials to a party other than the intended recipient.
- (d) The Licensee shall comply with all reasonable security policies and procedures established by HSChub and communicated to the Licensee with respect to the access and use of any Licensed Materials.
- (e) HSChub shall have the right to remove any material, the content of which HSChub deems to be in violation of law or any term or condition of the Agreement.
- (f) Notwithstanding **clause 5.6(e)**, HSChub shall have no obligation to remove, screen, police, edit or monitor any data or other material generated by the Licensee or its employees, agents, contractors, representatives, customers or affiliates.

**5.7 Data Reporting**

- (a) If the Application is designed to facilitate the reporting or other provision of data to HSChub, the Licensee shall be responsible for:
  - (i) the accuracy and completeness of any such data; and



(ii) assuring that the proper Licensee personnel review and approve any notification, information or request submitted to HSChub (whether by means of the Application or otherwise) prior to its transmission.

(b) HSChub is hereby authorised to conclusively rely on the accuracy and genuineness of any information conveyed to HSChub using such Application or otherwise, and shall be under no obligation to authenticate the source of, or verify the accuracy of, any such information.

(c) The Licensee is solely responsible for the back-up and restoration of its data and other materials.

#### 5.8 Performance Incident Reporting and Audit Rights

(a) The Licensee agrees to provide HSChub with data, documentation or other such evidence of Performance Incident(s) that it experiences during the term of the Agreement promptly upon becoming aware of such Performance Incident(s).

(b) HSChub shall have the right, upon reasonable notice to Licensee, to audit the Licensee's use of the Licensed Materials (by means of remote access or through entry to the Licensee's premises), and Licensee agrees to allow HSChub or its representatives access to such systems, facilities, books and records as are reasonably required to audit the Licensee's compliance with the Agreement.

#### 5.9 Compliance With Law

(a) The Licensee will ensure its full compliance with:

(i) all federal, state and local laws, rules, and regulations applicable to its activities in connection with which the Application, and any data generated by, submitted to or evaluated utilising the Application; and

(ii) all applicable laws, rules, regulations and conventions relating to data privacy, data security, international communications, communications decency and the importation and exportation of software and data.

(b) The Licensee bears sole responsibility for complying with such laws, rules, regulations and conventions. Such compliance obligations shall in no event be considered imposed upon or shared by HSChub or its Third-Party Licensors by virtue of the Licensee's use of the Application.

#### 5.10 Indemnification

Notwithstanding the provisions of **clause 11**, the Licensee shall indemnify and hold harmless HSChub, its Third-Party Licensors and each of the foregoing entities' affiliates, partners, officers, employees, directors, agents, contractors, representatives, successors and assigns, as such, from and against any Losses which arise out of or result from any third-party claim relating to:

(a) the Licensee's use of the Licensed Materials in conjunction with any third-party system;

(b) any act or omission of Licensee in connection with the Agreement or the Licensed Materials (except to the extent that HSChub or its Third-Party Licensors caused such Losses);

(c) any software, information or data provided by or on behalf of the Licensee;

(d) any breach of **clauses 3.1, 3.3, 3.4, 5.5, 5.6, 5.9, 8** or **9** of the Agreement, and/or

(e) any defamatory or illegal, or allegedly defamatory or illegal, material transmitted by the Licensee (or any person or entity that gains access to the Application through the Licensee or pursuant to the Agreement).

## 6. SUPPORT

### 6.1 HSChub Support

(a) During the hours posted on the URL or the applicable HSChub internet site or otherwise provided to the Licensee from time to time, contact details or inquiry forms, in relation to HSChub personnel or Third-Party Providers, will be made available to the Licensee for the Licensee to use in order to obtain information in relation to technical questions regarding the functionality of the Application.

(b) The support set out in **clause 6.1(a)** shall constitute the sole and exclusive support services to be provided by HSChub to the Licensee under the Agreement.

(c) Unless otherwise agreed by HSChub in writing, the Licensee shall only use the most recent version of the Documentation provided (or otherwise made available) by HSChub, and will follow HSChub's instructions concerning the return or destruction of any prior versions of the Documentation. This Section shall not be interpreted to require HSChub to:

(i) develop and release any upgrades or enhancements to the Licensed Materials; or

(ii) provide Licensee with any upgrade or enhancement that HSChub decides, in its sole discretion, to make available as a separately priced item or only on a limited basis.

6.2 **Consulting and Other Services**

- (a) HSChub may, from time to time, provide certain consulting, implementation, training installation, integration and other services to Licensee at the rates set forth in an applicable Rate Sheet or separate agreement.
- (b) Unless otherwise separately agreed between the Licensee and HSChub, any such consulting and other services shall be provided on an "as-is" basis, without, to the extent permitted by law, warranty of any kind.

7. **FEES, TAXES AND BILLING**

7.1 **Fees**

- (a) The Licensee agrees to pay HSChub the following fees in accordance with **clause 7.2**:
  - (i) the Subscription Fees; and
  - (ii) the Optional Usage Fees.
- (b) HSChub may amend the Rate Sheet from time to time and the Licensee agrees to pay any such adjusted charges; provided that the adjustment shall be communicated to Licensee in writing:
  - (i) on or before its effective date with respect to fees which constitute pass-through charges from Third-Party Licensors or other vendors; and
  - (ii) at least twenty (20) days before its effective date with respect to all other charges.
- (c) The Licensee's use of the applicable Application(s) shall be deemed to be the Licensee's acceptance of any such adjustments.

7.2 **Billing**

The Licensee agrees and acknowledges as follows:

- (a) HSChub will direct debit the Subscription Fees from the Payment Facility;
- (b) the Payment Authority must be honestly and accurately completed by the Licensee and forwarded to HSChub prior to HSChub granting the Licensee access to the Licensed Materials;
- (c) HSChub will issue the Licensee with a Debit Notice on the 1<sup>st</sup> day of each Month in relation to the Subscription Fees which will be accrued by the Licensee for the next Month (the **Billing Cycle**);
- (d) HSChub will direct debit the Payment Facility on the 5<sup>th</sup> day of each Month in relation to the Subscription Fees accrued by the Licensee for the next Month unless the Licensee notifies HSChub that they wish to terminate the Subscription at least three (3) Business Days prior to receiving the Debit Notice;
- (e) in the event that the direct debit envisaged by **clause 7.2(d)** fails, for any reason, HSChub will issue the Licensee with a written notice requesting payment and/or new Payment Facility details;
- (f) in the event that HSChub does not receive payment for Subscription Fees which form the basis of a particular Debit Notice, within thirty (30) days of the issue of such Debit Notice, HSChub, in its absolute discretion, may issue a Suspension Notice to the Licensee;
- (g) in the event that HSChub does not receive payment within thirty (30) days of the Suspension Notice, HSChub may, in its absolute discretion, remove all of the Licensee's data from HSChub's Servers and forward the details of the outstanding amounts to a debt collection agency.

7.3 **GST**

- (a) All amounts payable under this agreement are expressed as exclusive of GST.
- (b) If HSChub is liable to pay GST in respect of any good or service supplied under this Agreement, HSChub will invoice the Licensee for that tax and will ensure that the invoice complies with the form of tax invoice required by the GST Act or other relevant tax legislation.
- (c) The Licensee must pay the amount of tax invoiced simultaneously with the corresponding consideration required to be paid or given under this Agreement.

7.4 **Other Taxes**

In addition to the Subscription Fees, the Licensee shall pay or reimburse HSChub on demand for all current and future federal, state and local taxes or duties imposed on the possession or use of the Licensed Materials, any services provided hereunder and any fees payable hereunder, excluding, however, any taxes assessed on HSChub's net income.

## 8. CONFIDENTIALITY OF PROPRIETARY INFORMATION

### 8.1 Protection

- (a) All Proprietary Information disclosed or obtained by a party during and under the Agreement shall be deemed to be the property of the disclosing party, or the appropriate Third-Party Licensor (or other third-party owner), as the case may be. The receiving party agrees to:
- (i) receive such Proprietary Information in confidence;
  - (ii) use reasonable efforts to maintain the confidentiality of such Proprietary Information and not disclose such Proprietary Information to third parties except to:
    - (A) the receiving party's representatives, agents and contractors who have a need to know, are under a duty of non-disclosure with respect to such information, and are acting for the sole benefit of the receiving party; and
    - (B) the receiving party's regulator, upon request by such regulator and subject to the receiving party's formal request that such information be treated in confidence of a level at least as stringent as set out in this **clause 8**; reasonable level of protection,
- (b) In the event that a party receives Proprietary Information as provided for in **clause 8.1(a)**, it agrees to:
- (i) use or permit the use of such Proprietary Information solely in accordance with the Agreement; and
  - (ii) promptly notify the disclosing party in writing of any actual or suspected loss or unauthorised use, disclosure or access of the disclosing party's Proprietary Information of which it becomes aware.
- (c) The Agreement, together with discussions in relation to the Agreement, shall be deemed to be the Proprietary Information of both parties. Without limiting the generality of the foregoing, the Licensee acknowledges and agrees that the Licensed Materials are the Proprietary Information of HSCtute and/or its Third-Party Licensors.
- (d) For the purposes of the Agreement, information shall be deemed to be disclosed by a party if such information is disclosed by any of its officers, employees, directors, contractors, agents or representatives.
- (e) Each party agrees that it shall abide by and reproduce and include any restrictive legend or proprietary rights notice that appears in or on any Proprietary Information of the other party or any Third-Party Licensor (or other third-party owner) that it is authorised to reproduce.
- (f) Each party also agrees that it shall not remove, alter, cover or distort any trademark, trade name, copyright or other proprietary rights notices, legends, symbols or labels appearing on or in any Proprietary Information of the other party or any Third-Party Licensor (or other third-party owner).

### 8.2 Exclusions

- (a) Notwithstanding **clause 8.1**, the restrictions set out in **clause 8.1** shall not apply if the Proprietary Information:
- (i) is or becomes generally available to the public through no fault of the receiving party (or anyone acting on its behalf);
  - (ii) was previously rightfully known to the receiving party free of any obligation to keep it confidential;
  - (iii) is subsequently disclosed to the receiving party by a third party who may rightfully transfer and disclose such information without restriction and free of any obligation to keep it confidential;
  - (iv) is independently developed by the receiving party or a third party without reference to the disclosing party's Proprietary Information; or
  - (v) is required to be disclosed by the receiving party as a matter of law, provided that the receiving party uses all reasonable efforts to provide the disclosing party with at least ten (10) days' prior notice of such disclosure and the receiving party discloses only that portion of the Proprietary Information that is legally required to be furnished pursuant to the opinion of legal counsel of the receiving party.
- (b) Notwithstanding **clause 8.2(a)**, neither party shall disclose, or permit the disclosure of, the Agreement without the prior written consent of the other party, except:
- (i) as provided in **clause 8.2(a)(v)** above; and
  - (ii) to the extent necessary to permit the exercise of its rights or the performance of its obligations under the Agreement; or
  - (iii) to seek advice from its legal representatives, accountants or other professional advisors.

## 9. PUBLICITY AND MARKS

### 9.1 Approval Procedure

- (a) Each party will submit to the other party for its prior approval, which approval may be withheld at such party's sole discretion, that portion of any press release, internet posting, marketing, advertising, promotional or similar materials referencing the other party and/or its Marks in connection with the Agreement (the **Marketing Materials**).
- (b) Once approved, such Marketing Materials may be used until such approval is withdrawn pursuant to this Section.
- (c) Notwithstanding **clauses 9.1(a)** and **(b)**, the parties agree that statements of fact made in routine correspondence with specific customers shall not constitute Marketing Materials.
- (d) The rights granted in this clause may be withdrawn at any time by the granting party upon reasonable prior written notice.

### 9.2 Ownership of Marks

- (a) Each party acknowledges and agrees that:
  - (i) the other party's Marks are and shall remain the sole property of the other party;
  - (ii) nothing in the Agreement shall confer in a party any right of ownership or license rights in the other party's Marks; and
  - (iii) neither party shall register the other party's Marks in any jurisdiction. In addition, the Licensee acknowledges and agrees that:
    - (A) the Marks of Third-Party Licensors are and shall remain the sole property of such Third- Party Licensors;
    - (B) nothing in the Agreement shall confer in Licensee any right of ownership or license rights in the Marks of Third-Party Licensors; and
    - (C) the Licensee shall not register the Marks of Third-Party Licensors.
- (b) Without limiting the generality of **clause 9.2(a)**, the Licensee agrees not to use or adopt any trade name, trademark, logo or service mark which is so similar to HSChub's Marks or the Marks of Third-Party Licensors as to be likely to cause deception or confusion, or which is graphically or phonetically similar to any of HSChub's Marks or the Marks of Third-Party Licensors.

## 10. WARRANTY

### 10.1 Warranty and Limitation

- (a) HSChub warrants that the Application owned by HSChub shall perform substantially in accordance with the current version of the Documentation for a period of sixty (60) days from the date the Application was first made available to the Licensee (the **Warranty Period**).
- (b) In the event such Application does not so perform during the Warranty Period, the Licensee shall, prior to the expiration of the Warranty Period, notify HSChub of the instance(s) of non-performance in writing.
- (c) Subject to the foregoing **clauses 10.1(a)** and **(b)**, HSChub will at its absolute discretion either resolve the instance(s) of non-performance of such Application or terminate the applicable Schedule(s) and provide the Licensee a refund of any Subscription Fees actually paid by Licensee for such Application for the month prior to its written notification to HSChub.

### 10.2 Disclaimer and Limitation on Remedy

- (a) Notwithstanding anything herein to the contrary, HSChub and its Third-Party Licensors specifically do not warrant that:
  - (i) any Application or any components thereof will perform without interruption or error, or that all Performance Incidents will be corrected;
  - (ii) any Licensed Materials (including the data and other information contained therein) will meet the Licensee's requirements;
  - (iii) any Application will operate in the configuration which the Licensee may select for use; or
  - (iv) data or other information generated by or contained in the Application will be accurate or complete.
- (b) Neither HSChub nor its Third-Party Licensors shall be responsible for the accurate or complete transmission of data or other materials.
- (c) The warranty set forth in this Section shall not apply to any irregularities, errors, problems or defects arising from:

- (i) failure of Licensee to provide a suitable installation and operating environment, including but not limited to, failure to use supplies, materials, software and hardware platforms that meet the specifications set forth in the Documentation;
  - (ii) the Licensee's incorporation, attachment or engagement of any attachment, feature, program or device to the Application, if the Application would have conformed to the warranty set forth in this Section but for such incorporation, attachment or engagement;
  - (iii) use of the Application outside the scope of its intended purpose, as described in the Documentation; or
  - (iv) the Licensee's failure to incorporate any update in usage instructions, as set out in the Documentation or otherwise, as specified previously released by HSChub that corrects such item.
- (d) HSChub reserves the right to:
- (i) modify any Licensed Materials or substitute any materials contained therein so long as the new materials do not materially affect the functionality of the Application; and
  - (ii) discontinue the licensing and/or support of any Licensed Materials.

## 11. Limitation of Warranties and Liability

- (a) The Licensee acknowledges that it has relied on its own skill and judgment in the selection, supervision and management of the Licensed Materials and in the results expected by it of the Application.
- (b) The provisions of various statutes, rules, and regulations in force from time to time may not, or may not except to a limited extent, be varied, modified or excluded. To the extent that it is not lawful to vary, modify or exclude them they shall, but only to the extent required by law, form part of this Agreement.
- (c) This Agreement contains certain express terms and warranties. To the extent permitted by law, there are no other terms, warranties or conditions, whether statutory, express, implied, collateral or otherwise, and such terms, warranties or conditions are hereby expressly excluded to the extent permitted by law.
- (d) In no event shall HSChub or any Third Party Licensor, or their respective affiliates, partners, officers, employees, directors, agents, contractors, representatives, successors or assigns, as such, be liable to Licensee or anyone claiming under or through the Licensee, for any punitive, exemplary, incidental, indirect, or special damages, or consequential loss, based on, arising out of or in connection with this Agreement, or any matter relating to this agreement, or error in information (whether negligent or not) supplied before or after the date of this Agreement in connection with its subject matter, or with the supply or use of the Licensed Materials, whether based on contract, tort (including but without limitation negligence), or any other legal or equitable grounds, even if HSChub knew or ought to have known of the possibility of such damages or consequential loss. 'Consequential loss' shall include but not be limited to loss or profits, interest revenue, use, or goodwill (or similar financial loss), loss of data, business interruption, or payments made or due to any third party.
- (e) Any liability of HSChub or any Third Party Licensor, or their respective affiliates, partners, officers, employees, directors, agents, contractors, representatives, successors or assigns, as such, to Licensee or anyone claiming under or through the Licensee for and all losses including without limitation, causes of action and claims based upon breach of contract, tort (including but not limited to negligence), breach of warranty, or any other legal or equitable grounds, under, based on, arising out of or in connection with this agreement, or any matter relating to this agreement, or for error of information supplied before or after the date of this agreement in connection with its subject matter, shall not exceed in total the amount of fees paid to HSChub by the Licensee during the consecutive twelve month period immediately preceding the occurrence of the first such event giving rise to such liability.

## 12. INTELLECTUAL PROPERTY INDEMNITY

- (a) Notwithstanding the provisions of **clause 11**, HSChub shall indemnify and hold harmless the Licensee and its affiliates, partners, officers, employees, directors, agents, contractors, representatives, successors and assigns, as such, from and against any direct Losses which arise out of or result from any third-party claim that HSChub does not have sufficient right, title or interest in the Licensed Materials to enter into the Agreement or that the Licensed Materials owned by HSChub infringe an Australian:
  - (i) patent in existence on the date of access;
  - (ii) copyright;
  - (iii) trade mark;
  - (iv) trade secret; or
  - (v) other Australian intellectual property right of any third party.
- (b) In the event that any such claim is made, or in HSChub's opinion is likely to be made, HSChub reserves the right, in its sole discretion, as applicable:
  - (i) to procure for the Licensee the right to continue to access and use the Application and/or the Documentation;

- (ii) to replace the Application and/or the Documentation to avoid infringement;
  - (iii) to modify the Application and/or the Documentation to avoid infringement; or
  - (iv) to terminate the relevant license(s) and Schedule(s) without further cost, charge, liability or penalty to HSChub relating to such termination.
- (c) HSChub and its Third-Party Licensors shall have no obligation to the extent that any claim of infringement is based upon the Licensee's:
- (i) access or use of the Application or the Documentation in violation of the Agreement;
  - (ii) integration, modification or marking of the Application or the Documentation, or any portion thereof, where, in the absence of such modification or marking, the Application or Documentation would not be infringing (unless such integration, modification or marking has been specifically authorised in writing by HSChub);
  - (iii) use of the Application or the Documentation in combination with other software, documentation, hardware or data, if use without such software, documentation, hardware or data would not be infringing;
  - (iv) use of the Application or the Documentation in practicing any infringing process;
  - (v) use of the Application in a manner for which it was not designed;
  - (vi) activities after HSChub has notified Licensee that HSChub believes such activities may result in such infringement; or
  - (vii) use of any marks, including without limitation HSChub's Marks, in violation of **clause 9**.
- (d) The provisions set forth in this **clause 12** shall be the Licensee's sole and exclusive remedies and HSChub's sole liabilities and obligations for any claims brought against licensee based upon intellectual property infringement, whether upon the theory of warranty, indemnity or otherwise.

### 13. INDEMNITY

- (a) Each party shall indemnify and hold the other party harmless against any and all damages, losses, costs, expenses and other liabilities of any kind proximately caused by reason of any breach of that party's obligations under this Agreement, or by any act or omission of that party, its employees or agents, which is negligent or beyond the scope of a party's contractual obligations as set out in this Agreement; consequential or incidental damages are excluded as are lost profits but costs of litigation or arbitration, including legal costs, shall be included.
- (b) HSChub shall indemnify and hold the Licensee harmless against any and all claims, damages, losses, costs, expenses, attorney fees, injury and other liabilities of any kind caused by the infringement by HSChub or the Application of any other party's copyright, patent or other proprietary rights. In the event of any such claim of infringement, the Licensee will promptly notify HSChub and HSChub will, at its expense, defend the claim or suit. In a case where the Licensee has modified the Product and has thus contributed to or caused the infringement, the indemnification liability of HSChub shall be pro rated on the basis of HSChub's contribution to the total liability.

### 14. TERM, TERMINATION AND SUSPENSION

#### 14.1 Term

The Agreement will remain in full force and effect until terminated as provided herein.

#### 14.2 Termination for Cause

- (a) Either party may terminate the Agreement and/or any Schedule(s) upon thirty (30) days' prior written notice describing a material breach by the other party of any term or condition of the Agreement or a Schedule, which breach has not been cured by the breaching party during such thirty (30) day notice period.
- (b) HSChub may terminate the Agreement and/or any Schedule(s), effective immediately, upon notice to Licensee in the event:
  - (i) of any material breach by the Licensee of the provisions of **clause 3**, **clauses 5.5** through **5.9** or **clause 8**; or
  - (ii) the Licensee becomes insolvent or enters into bankruptcy, suspension of payments, moratorium, reorganisation, or any other proceeding that relates to insolvency or protection of creditor's rights.

#### 14.3 Termination for Convenience

Either party may terminate the Agreement and/or any Schedule(s) without cause upon thirty (30) days' prior written notice to the other.

#### 14.4 Concurrent Termination

All Schedules will terminate automatically without notice upon termination of the Agreement.

#### 14.5 Survival

Neither party shall have any continuing obligations to the other upon the effective date of termination except that:

- (a) the Licensee shall pay HSChub all Subscription Fees accrued and owing prior to the date of termination and any late charges relating thereto; and
- (b) any provisions of the Agreement that contemplate their continuing effectiveness, including, without limitation, **clause 3.2, 4, 5.2 through 5.7, 5.9, 5.10, 7.3, 7.4, 8, 9, 10.2, 11, 12, 13, 14.5, 14.6 and 15**, shall survive any termination of the Agreement and/or a Schedule.

#### 14.6 Certain Licensee Termination Obligations

- (a) Upon termination of the Agreement or a Schedule, the Licensee shall be obligated to:
  - (i) immediately cease accessing and using the applicable Licensed Materials; and
  - (ii) to destroy all copies of the associated Documentation delivered (or made available) by the Licensee that are the subject thereof.
- (b) Upon request from HSChub, the Licensee shall provide HSChub with prompt written certification of its compliance with the foregoing, executed by a duly authorised officer of the Licensee.

#### 14.6 Suspension by the Licensee

##### (a) Violation by Authorised Users

- (i) If the Licensee becomes aware of a violation of this Agreement by an Authorised User, the Licensee may suspend that Authorised User's Authentication Credentials with written notice to HSChub, until the violation is cured to HSChub's satisfaction.
- (ii) The Licensee may suspend an Authorised User's Authentication Credentials for its own reasons by way of written request to HSChub.

##### (b) Failure to Suspend

In the event that HSChub, acting reasonably, deems that the Licensee has failed to suspend an Authorised User's Authentication Credentials in accordance with **clause 14.6(a)(i)** despite having knowledge, either express, implied or constructed, of such violation, HSChub may, in its absolute discretion:

- (i) request that the Licensee proceeds with suspension; or
- (ii) if the Licensee fails to authorise a suspension, proceed with suspension by itself; or
- (iii) if the Authorised User has materially violated the Agreement and the Licensee, despite fourteen (14) days' written notice by HSChub, has failed to rectify such violation to HSChub's reasonable satisfaction, terminate this Agreement; or
- (iv) proceed with suspension without notice to the Licensee in the event that HSChub becomes aware of a violation by an Authorised User which HSChub deems to constitute a Security Hazard.

### 15. GENERAL PROVISIONS

#### 15.1 Assignment

The Agreement may not be assigned by the Licensee without the prior express written consent of HSChub, and any attempt to assign without such consent shall be void and shall be deemed to be a material breach of the Agreement.

#### 15.2 Notices

- (a) Notices to be given by a party must be in writing and issued by way of email, facsimile or post with reference to the details set out in the Schedule for each party.
- (b) A notice given to a party is to be treated as being received as follows:
  - (i) if a notice by facsimile or email – one (1) business day following the date on which the facsimile was issued;
  - (ii) if a notice by post – on the third business day after postage; and
  - (iii) if a notice by hand – on the day on which it is received at the registered offices of a party, subject to that receipt being during Normal Business Hours, failing which the notice will be deemed to have been given on the next business day.

**15.4 Governing Law and Severability**

The Agreement shall be governed by and construed solely and exclusively in accordance with the laws of New South Wales, without reference to or application of its conflicts of law principles.

**15.5 Force Majeure**

Neither party shall be responsible for delays or failure of performance (other than the payment of money) resulting from acts beyond the reasonable control of such party. Such acts shall include, but not be limited to, acts of God, strikes, walkouts, riots, acts of war, epidemics, pandemics, failure of vendors to perform, governmental regulations, power failures, earthquakes, or other disasters.

**15.6 Headings**

The titles and headings of the various sections and paragraphs in the Agreement are intended solely for convenience of reference and are not intended to explain, modify or place any construction or limitation upon any of the provisions of the Agreement.

**15.7 Entire Agreement and Priority**

(a) Except as expressly provided in the Agreement, no representations or statements of any kind made by either party that are not expressly stated in the Agreement shall be binding on such party regarding the subject matter in this Agreement.

(b) In the event of a conflict, terms and/or conditions contained in the relevant Schedule shall take precedence over terms and/or conditions contained in the Agreement, but only with respect to the subject matter of such Schedule.

**15.8 Third-Party Beneficiaries**

The parties acknowledge and agree that applicable Third-Party Licensors are intended beneficiaries of the Agreement and shall be entitled to rely upon and directly enforce the terms and conditions hereof. Except as provided in the foregoing sentence, nothing in the Agreement is intended to, or shall, create any third-party beneficiaries, whether intended or incidental, and neither party shall make any representations to the contrary.

**15.9 No Implied Waiver**

The Licensee agrees that a failure by HSChub to enforce any provisions of this Agreement shall not operate as a waiver of HSChub's rights in relation to enforcement of those provisions.



## **Schedule 1**

Rate Sheet

### **Item 1 Subscription Agreement Options**

#### **1. Monthly Subscription Agreement**

**(a) Payment**

The Subscription Fee is AUD\$41.31 per month:

- (i) payable in advance;
- (ii) per Authorised User;
- (iii) prorated if the Subscription commences after the previous Billing Cycle; and
- (iv) is not refundable.

**(b) Access**

An Authorised User is granted access to a maximum of seven (7) of the subjects that are available on the Application.

#### **2. Yearly (12 month) Subscription Agreement**

**(a) Payment**

The Subscription Fee is AUD\$421.33 for a period of twelve (12) months:

- (i) payable in advance;
- (ii) per Authorised User;
- (iii) prorated if the Subscription commences after the previous Billing Cycle; and
- (iv) is not refundable.

**(b) Access**

An Authorised User is granted access to a maximum of seven (7) of the subjects that are available on the Application.

### **Item 2 Optional Usage Fees**

The parties agree that in the event a Licensee requires functionality in the Application which exceeds that set out in Item 1(b), the Licensee must request such functionality from HSChub in writing. In the event that HSChub grants such functionality, HSChub may, in its absolute discretion, charge further Subscription Fees.

**Schedule 2**

Execution Clauses

**SIGNED ON BEHALF OF HSCUB**

**HSCTUTE OPS CO PTY. LTD.**  
**(ACN 157 892 969)**

\_\_\_\_\_  
Signature of Representative

\_\_\_\_\_  
Name of Representative  
(PLEASE PRINT)

\_\_\_\_\_  
Position of Representative  
(PLEASE PRINT)

**SIGNED ON BEHALF OF THE LICENSEE**

\_\_\_\_\_  
Name and ACN/ABN of Licensee  
(PLEASE PRINT)

\_\_\_\_\_  
Signature of Licensee's Representative

\_\_\_\_\_  
Name of Licensee's Representative  
(PLEASE PRINT)

\_\_\_\_\_  
Position of Licensee's Representative  
(PLEASE PRINT)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness  
(PLEASE PRINT)

\_\_\_\_\_  
Address of Witness  
(PLEASE PRINT)

**Schedule 3**

Licensee Details

Name: \_\_\_\_\_

ACN/ABN:  
(If applicable) \_\_\_\_\_

Registered  
Office: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Mobile: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Address for  
Service (if not the same as above):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_