

# SOFTWARE LICENCE AND SUPPORT AGREEMENT

## GENERAL TERMS

### 1 THIS AGREEMENT

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- 1.1 This Agreement sets out the terms and conditions governing the provision of your Software Licence and associated support services and is entered into between DCA Direct Health Pty Ltd (ACN 163 077 236) (**us, we, our**) and you.
- 1.2 This Agreement consists of:
- (a) the Service Schedules (depending on which Services you purchase from us);
  - (b) these General Terms; and
  - (c) any Attachment.
- 1.3 If there is an inconsistency between the parts of this Agreement, the document listed earlier in clause 1.2 above prevails to the extent of the inconsistency.

### 2 SERVICES

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- 2.1 We agree to supply the Services to you, and you agree to acquire them from us, at the prices and on the terms of this Agreement.
- 2.2 The Services must be ordered, supplied and billed against the nominated accounts agreed by the parties.
- 2.3 We may at our discretion, periodically decide to discontinue the provision of certain Services, Software or certain versions of the Software and we will use commercially reasonable efforts to give you at least three months' notice prior to the effective date of discontinuation. In some instances we may offer and migrate you to a replacement product (and if requested by us you will provide reasonable assistance to enable us to do so).

### 3 TERM

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- 3.1 Subject to clause 3.2 below, this Agreement begins on the Start Date and continues for the Term unless it is terminated or cancelled earlier.
- 3.2 The Term automatically extends for further periods of 12 months on the existing terms and conditions (including terms relating to price), unless either party notifies the other (at least 30 days before any automatic extension) that it does not wish the Term to extend automatically.
- 3.3 For the avoidance of doubt, if you do not notify us at least 30 days prior to any automatic extension that you do not wish the Term to continue, we may require you to pay all applicable charges for the next 12 months.

### 4 OUR COMMITMENT TO YOU

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- 4.1 We will:
- (a) provide the Services with due care and skill, but do not guarantee that they will be

continuous or fault free;

- (b) ensure that any goods supplied in connection with the Services are reasonably fit for the purpose for which they are supplied;
- (c) ensure that all work we perform in connection with the Services is carried out by competent and suitably qualified personnel; and
- (d) comply with your reasonable safety and security requirements if we are required to access your Site.

### 5 YOUR COMMITMENT TO US

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- 5.1 You:
- (a) are solely responsible for selecting, supplying and maintaining your own facilities and equipment;
  - (b) are solely responsible for any use of the Services;
  - (c) must make available to us such remote access facilities as we require in order to update and manage the Software (subject to us complying with any reasonable security or access restrictions you notify to us in writing). These remote access facilities must be available and practical to enable us to provide the applicable Services;
  - (d) must ensure that any Personnel who are involved in the use and operation of the Software are appropriately trained (as may be described in a Service Schedule and/or otherwise as determined reasonably by us) in its use and operation;
  - (e) must make available to us your Personnel and other facilities as we reasonably require to perform the Services including providing assistance in diagnosis, providing access to the Site and facilities and assistance in connection with any subsequent testing of any corrections we make (subject to us complying with any reasonable security or access restrictions you notify to us in writing);
  - (f) must implement procedures that ensure the integrity of Personal Information (including, without limitation, by ensuring regular backups are in place, making provision for offsite backup storage and complying with such other tasks notified in writing by us to you);
  - (g) must provide our Personnel with a safe and proper working environment when attending your Site(s); and

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- (h) must monitor the number of users of the Software where your use of the Software is limited by user count and you must acquire additional licences where the number of users exceeds the licence grant.

### 6 PAYMENT AND INVOICES

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- 6.1 You must pay us the charges set out or referred to in this Agreement for the Services.
- 6.2 The charges for the Services will ordinarily be billed in advance, except where they are payable in arrears. All charges are payable within 30 days of the date of invoice.
- 6.3 If you genuinely dispute an invoice, you need not pay the disputed amount until the dispute is resolved, however you must pay all undisputed amounts by the due date.
- 6.4 If you do not pay any amount due under this Agreement on time:
- (a) we may charge you interest (calculated on a daily basis) on any unpaid amounts at an annual rate equivalent to the Official Cash Rate set by the Reserve Bank of Australia; and
- (b) we may choose to terminate this Agreement or a Service Schedule or suspend the Services you receive under a Service Schedule if the charges remain unpaid 60 days after the date of invoice.

### 7 TAXES

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- 7.1 Subject to clauses 7.2 and 7.3 below, you must pay all Taxes in connection with the Services.
- 7.2 Where GST is imposed on a taxable supply made in connection with this Agreement and the recipient of that supply receives a tax invoice for that supply, the recipient must pay the GST to the supplier (without deduction or set-off) by the tax invoice due date.
- 7.3 If one party is required to indemnify or reimburse another party (in this clause 7, the “Payee”) for any cost, loss or expense, the indemnity or reimbursement payable does not include any amount for which the Payee (or an entity grouped with the payee for GST purposes) is entitled to an input tax credit, but will be increased in accordance with clause 7.2 above if the amount payable is consideration for a taxable supply.

### 8 TERMINATION

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- 8.1 If a party commits a material breach and does not remedy the breach within 30 days of receiving a notice to do so, then the other party may terminate this Agreement (if the breach affects the Agreement) and/or terminate the Service Schedule (if the breach affects a Service provided under that Service Schedule). A material breach of this Agreement and/or Service Schedule includes a failure by you to comply with any applicable licence grant terms as may be set out in a Service Schedule.
- 8.2 A party may terminate this Agreement and/or any

Service Schedule if an administrator, receiver, liquidator or provisional liquidator is appointed to the other party, or the other party enters into any settlement, moratorium or similar arrangement for the benefit of that party’s creditors, or the other party is unable to pay its debts when they are due.

- 8.3 If this Agreement and/or a Service Schedule expires or is terminated for any reason:
- (a) you must pay us all outstanding invoices by the due date and within 30 days of request for payment, all other amounts outstanding as at the date of, or arising as a result of, expiry, termination or cancellation; and
- (b) all rights a party has accrued before expiry, termination or cancellation continue.
- 8.4 If this Agreement is terminated by us in accordance with clause 8.1 you must immediately cease using the Software.
- 8.5 If this Agreement and/or any Service Schedule expires or terminates for any reason, clauses 5 (Your commitment to us), 8.3 (Termination), 9 (Confidentiality and Privacy), 10 (Limitation of liability), 12 (Intellectual Property Rights) and 13 (Third Party IP claims) of these General Terms continue in full force and effect.

### 9 CONFIDENTIALITY AND PRIVACY

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#### CONFIDENTIALITY

- 9.1 Each party must treat as confidential information:
- (a) the provisions of this Agreement; and
- (b) all information provided by the other party under this Agreement, including our technical, operational, billing, pricing and commercial information in relation to the supply of Services.
- 9.2 A party must not disclose the other party’s confidential information to any person except:
- (a) to its employees, lawyers, accountants, related entities and our sub-contractors on a ‘need to know’ basis provided those persons first agree to observe the confidentiality of the information;
- (b) with the other party’s prior written consent;
- (c) if required by law, any regulatory authority or stock exchange; or
- (d) if it is in the public domain.

#### PRIVACY

- 9.3 Each Party must comply with all applicable Privacy Laws in relation to its collection and handling of Personal Information.
- 9.4 You agree and must ensure that your Personnel (including Authorised Users) are aware that we may:

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- (a) collect Personal Information from you, your Personnel and Authorised Users; and
- (b) use, disclose, store and transfer such Personal Information,

in accordance with our Privacy Policy (which may be viewed at:  
<http://healthconnex.com.au/general/privacy>).

### **10 LIMITATION OF LIABILITY**

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- 10.1 If we fail to meet any of our service level obligations as a result of any interruption or delay to your Service, we accept liability to you, but subject to any liability which cannot lawfully be excluded and to the maximum extent permitted by law, limit our liability to any applicable service level rebates or credits. Where you are not entitled to a service level rebate or credit, then subject to any liability which cannot lawfully be excluded and to the maximum extent permitted by law, we limit our liability to an amount equal to the charges billed for the affected Services for the period of the interruption or delay.
- 10.2 We accept liability arising from our breach of contract or negligence:
  - (a) for any personal injury or death to you, your employees, agents and contractors in relation to the supply of the Services;
  - (b) for any damage to your real or tangible property resulting from the supply of the Services, but subject to any liability which cannot lawfully be excluded and to the maximum extent permitted by law, we limit our liability to our choice of repairing or replacing the property or paying the cost of repairing or replacing it; and
  - (c) unless clause 10.1 above applies, and subject to any liability which cannot lawfully be excluded and to the maximum extent permitted by law, for any other cost or expense you reasonably incur that is a direct result of, and flows naturally from, such breach or negligence (but excludes loss of profits, revenue, business opportunities, likely savings and data), but we limit our liability for all such claims in aggregate to the total amount payable to us under this Agreement during the first year of this Agreement.
- 10.3 Other than for the liability we accept under clauses 10.1 and 10.2 above, we exclude all other warranties, rights, remedies and liability to you or a third party for breach of contract, negligence or breach of any other law. For any liability which cannot lawfully be excluded, but can be limited, our liability is limited to our choice of re-supplying or paying the cost of re-supplying services and repairing, replacing or paying the cost of repairing or replacing goods.
- 10.4 Notwithstanding anything else in this Agreement, our liability will be reduced to the extent the loss or damage is caused by you or your Personnel.

### **11 DISCLAIMER**

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- 11.1 You acknowledge that the Services and Software we provide to you under this Agreement are not designed or intended for use (and must not be relied on) in environments requiring fail-safe performance, including without limitation, as part of a life support, critical, emergency or acute system, process or service and are not a substitute or replacement for diagnosis, treatment recommendations and other professional and clinical decisions or judgment. The professional duty of the healthcare professional in providing patient care services remains paramount.

### **12 INTELLECTUAL PROPERTY RIGHTS**

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- 12.1 The Intellectual Property Rights, title and any other interest in the Software (including any modifications, derivative works or parts thereof) and Documentation is permanently and irrevocably vested in us or our licensors.
- 12.2 We reserve all Intellectual Property Rights and other interests embodied in the Software and Documentation. This includes:
  - (a) the right to modify, enhance or reengineer portions of the Software in subsequent releases;
  - (b) the right to resell copies of the Software to other third parties; and
  - (c) the right to sell the intellectual property embodied in the Software to a third party.
- 12.3 All Intellectual Property Rights, title and any other interest in Created Material will vest absolutely in us on its creation. To the extent that any rights in the Created Material do not vest in us on creation, you assign all Intellectual Property Rights, title and any other interest in the Created Material to us. You must sign all documents and do anything else reasonably necessary to give effect to this clause 12.3 when asked by us.

### **13 THIRD PARTY IP CLAIMS**

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- 13.1 We indemnify you against any direct loss, damage, liability, costs or expenses incurred by you as a result of a claim by a third party against you that the Services, Software or any material provided by us under this Agreement infringes the Intellectual Property Rights of the third party (excluding patents), subject to you allowing us to direct any defence and settlement of the claim. This indemnity does not apply to the extent the claim arises out of any modification of any materials provided by us, relates to services or materials provided by a third party in conjunction with the Services, or is caused or contributed to by you.
- 13.2 Where any person makes a claim for Intellectual Property Right infringement in connection with the provision of Services, Software or materials by us, we may modify, limit, suspend or cancel the provision of Services, Software or materials, if required, in response to the claim.

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### 14 DISPUTE RESOLUTION

- 14.1 The parties agree to use best endeavours to resolve in good faith any dispute concerning this Agreement. Each party must follow the procedures in this clause 14 before starting arbitration or court proceedings (except for urgent injunctive or declaratory relief).
- 14.2 If a dispute arises between the parties that cannot be resolved promptly between our Contact Person and your Contact Person, either party may notify the other party of a formal dispute. Each party must nominate a senior executive to meet within seven days of the notice (or another agreed period) to try and resolve the dispute.
- 14.3 If the dispute remains unresolved, the parties must try to resolve it by mediation administered by the Australian Commercial Disputes Centre in accordance with its Mediation Guidelines.

### 15 GENERAL

#### ENTIRE AGREEMENT

- 15.1 This Agreement constitutes the entire agreement between the parties about the Services, and supersedes any previous agreement or representation relating to the Services.

#### GOVERNING LAW

- 15.2 This Agreement is governed by the laws of the state of Victoria. Each party submits to the exclusive jurisdiction of the courts of that place and the courts of appeal from them.

#### INTERPRETATION

- 15.3 In this Agreement:
- (a) a reference to this Agreement includes all its parts described in clause 1.1 above, and includes any amendment to or replacement of them;
  - (b) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (c) terms used that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meaning given in that Act, unless the context makes it clear that a different meaning is intended;
  - (d) a reference to a party includes a reference to the party's executors, administrators, successors and assigns;
  - (e) the singular includes the plural, and vice versa; and
  - (f) "includes", "including", "for example", "such as" and similar terms are not words of limitation.

#### NOTICES

- 15.4 All notices and consents must be in writing and sent to the addresses or fax numbers for notices specified on the front page of the General Terms, or to your

officer or as otherwise agreed. Notices must not be sent by email.

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

#### VARIATIONS

- 15.6 We may vary this agreement upon notice in writing to you.

#### SEVERABILITY

- 15.7 If any clause or part of any clause is held by a court to be invalid or unenforceable, that clause or part of a clause is to be regarded as having been deleted from this Agreement and this Agreement otherwise remains in full force and effect.

#### WAIVER OF RIGHTS

- 15.8 A right created by this Agreement may only be waived in writing by the party giving the waiver, and the failure to exercise or any delay in exercising a right or remedy provided by this Agreement or by law does not waive the right or remedy.
- 15.9 A waiver of a breach of this Agreement does not waive any other breach.

#### WARRANTIES

- 15.10 Each party warrants to the other that entering into and performing its obligations under this Agreement does not breach any of its contractual obligations to any other person.
- 15.11 You warrant that you have not relied on any representations or warranties by us other than those in this Agreement.

#### ASSIGNMENT AND AGENCY

- 15.12 You must not assign your rights or novate your obligations under this Agreement without our prior written consent, which must not be unreasonably withheld.
- 15.13 You may appoint a third party to act on your behalf in relation to this Agreement with our prior written consent, which will not be unreasonably withheld. We may withdraw our consent on reasonable grounds relating to the conduct of the third party.

#### FORCE MAJEURE

- 15.14 If a party is unable to perform or is delayed in performing an obligation under this Agreement (other than an obligation to pay money) because of an event beyond that party's reasonable control (**Force Majeure Event**), that obligation is suspended

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but only so far and for so long as it is affected by the Force Majeure Event.

15.15 If a Force Majeure Event occurs, the non-performing party must:

- (a) promptly give the other party notice of the event and an estimate of the non-performance and delay;
- (b) take all reasonable steps to overcome the effects of the event (but this does not require the settlement of industrial disputes or other claims on unreasonable terms); and
- (c) resume compliance as soon as practicable after the event no longer affects either party.

### 16 DEFINITIONS

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16.1 In this Agreement, unless otherwise stated:

**Agreement** means the General Terms, Service Schedule and any Attachments.

**Attachment** means any Attachments annexed or attached to these General Terms or Service Schedules.

**Business Day** means any day other than a Saturday, Sunday or recognised public holiday in the jurisdiction in clause 15.2 of these General Terms.

**Contact Person** means the contact person of a party, whose details are provided on the first page of these General Terms, as amended from time to time.

**Created Material** means any material, whether in tangible or intangible form or format, that we or our contractors create, modify or adapt in the course of providing the Services.

**Documentation** means all support material including documentation, manuals, specifications, training materials and collateral.

**Intellectual Property Rights** means all current and future registered rights in respect of copyright, patents, designs, circuit layouts, trademarks, trade

secrets, domain names, database rights, know-how and confidential information and any other intellectual property rights as defined by Article 2 of the World Intellectual Property Organisation Convention of July 1967.

**Official Cash Rate** means the interest rate which authorised deposit-taking institutions (ADIs) pay or charge to borrow funds from or lend funds to other ADIs on an overnight unsecured basis as determined by the Reserve Bank of Australia.

**Personal Information** has the meaning given to that term in the *Privacy Act 1988* (Cth).

**Personnel** of a party means an employee, officer, director, auditor, advisor, agent, contractor or subcontractor of that party (except that we will not be taken to be your Personnel).

**Privacy Laws** means the *Privacy Act 1988* (Cth), the *Spam Act 2003* (Cth) and the *Telecommunications Act 1997* (Cth).

**Service** means the service(s) set out, or referred to, in a Service Schedule.

**Service Schedules** means the Service Schedules attached or added to these General Terms.

**Software** means the software applications in either machine readable object code or machine executable code set out or referred to in a Service Schedule.

**Start Date** means the date you accept this Agreement or, if you are a new customer, the date that you start using the Software and/or Services (whichever is the earlier).

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

**Term** means 12 months.

# SCHEDULE 1 – THE CARE MANAGER (TCM) SOFTWARE LICENCE AND SUPPORT SERVICES

## SERVICE TERMS

### 1. INTRODUCTION

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- 1.1 This Service Schedule applies only if you have purchased the “The Care Manager (TCM) Software Licence and Support Services
- 1.2 The Care Manager (TCM) manages multiple funded programs simultaneously and enables organisations to process referrals, develop care plans, track client history, plan services, roster staff, manage debtors and standardise reporting, particularly in the aged and community care sector.
- 1.3 This Service Schedule describes the Software Licence and Support Services which we will provide to you under this Service Schedule and comprises:
- (a) A licence for an agreed number of Concurrent Authorised Users to use the Applications; and
  - (b) Support Services,
- on the terms set out in this Service Schedule.

### 2. SERVICE CHARGES

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- 2.1 The charges for the Software Licence and Support Services are set out in this clause 2 and detailed in your invoice.
- 2.2 On and from 1 July of each calendar year during the Term, you acknowledge and agree that, we:
- (a) may increase the Support Services Fee. We will use reasonable endeavours to notify you in writing of any such increase by no later than 1 May of each applicable calendar year during the Term; and
  - (b) will increase the Software Licence Fee (including retrospectively) in order to account for any discrepancy between the actual number of Authorised Users and the agreed number of Authorised Users and the software licence fees set out in our then current price list will apply.
- 2.3 The charges comprise:
- (a) a one-off Software Licence Fee based upon the actual number of Concurrent Authorised Users. The number of agreed Concurrent Authorised Users as at the Start Date is set out in your invoice; and
  - (b) a Support Services Fee payable annually in advance.
- 2.4 The Support Services Fee is calculated as a proportion of the then applicable software licence fees set out in our price list. All software licence

fees in our price list may be increased by us on and from 1 July of each calendar year and correspondingly, the Support Services Fee payable by you will also increase on and from 1 July of each calendar year during the Term.

- 2.5 You may increase the number of Concurrent Authorised Users and/or purchase additional Applications under this Agreement by paying an additional fee. Any variation to the then current number of Concurrent Authorised Users and/or then current Applications and the corresponding fee must be in writing and agreed between the parties.

### 3. LICENCE TERMS

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#### APPLICATIONS

- 3.1 We grant you a perpetual (subject to clause 3.3 below), non-transferable, non-sub licensable, revocable and non-exclusive right to use the Applications on the Designated System from a Site and to use the Application Documentation, subject to the following conditions (**Software Licence**):
- (a) we have received payment in full of the charges set out in this Service Schedule;
  - (c) that this Service Schedule and/or Agreement are not terminated in accordance with clause 8 of the General Terms;
  - (d) the number of Concurrent Authorised Users who are using the Applications at any time must not exceed the agreed number of Concurrent Authorised Users (which as at the Start Date is set out in your invoice); and
  - (e) you use the Applications solely to process the work of your business.

#### PROHIBITED USAGE

- 3.2 You must not (and you will ensure that each Concurrent Authorised User does not, nor allow any third party to):
- (a) use the Applications to process the work of any non-majority owned subsidiary, non-majority owned affiliate or third party;
  - (b) translate, reverse-engineer, decompile, disassemble or attempt to reconstruct or discover any source code or underlying ideas or algorithms of the Applications by any means;
  - (c) provide, rent, lease, licence, transfer or grant any rights in the Applications, in full or in part, to or for the benefit of third parties;
  - (d) remove, alter or obscure any product identification, copyright, trademark or other proprietary notices, labels or marks on or in the Applications and the Application Documentation;

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- (e) modify, adapt incorporate into or with other software, or create a derivative work of any part of the Applications; and
- (f) make any copies of the Applications other than, as necessary, for archival, testing, training, backup or disaster recovery purposes.

### CONSEQUENCES OF TERMINATION ON LICENCE GRANT

3.3 The licence we grant you to the Applications is perpetual and will survive termination or expiry of this Service Schedule and/or Agreement except where we terminate this Service Schedule and/or Agreement due to your default, in which case you and each Authorised User must immediately cease use of the Applications and the licence granted to you under this Service Schedule will terminate and be of no further force and effect as of the date of termination of this Service Schedule and/or Agreement.

### 4. IMPLEMENTATION SERVICES

4.1 If you require project management, training, implementation, consulting services or modifications to the Applications, these will be provided as Professional Services.

### 5. WARRANTY

5.1 We warrant that the Applications materially conform with our published product specification documents in effect at the Start Date.

5.2 We will provide you with Support Services for 30 calendar days without charge commencing from the first installation of the Licence Key (**Warranty Period**).

5.3 At the conclusion of the Warranty Period, Support Services will be provided for the Support Services Fee set out in your invoice.

### 6. APPLICATION SUPPORT SERVICES

6.1 We will provide the following support services (**Support Services**):

- (a) the support, issue classification, notification and response services described in clauses 6.4 and 6.5 below; and
- (b) consultation by telephone or email with your Contact Person during Business Hours.

6.2 Where as part of the Support Services you request onsite attendance by our staff, you will be charged the cost of travel, accommodation and labour at our standard rate as notified at the time of request for these services.

6.3 Support Services may be provided during After Hours as Professional Services upon request.

### SUPPORT, ISSUE CLASSIFICATION, NOTIFICATION AND RESPONSE

6.4 In connection with your receipt of the Support Services, you agree to:

(a) report Issues to us by telephone or email during Business Hours according to your initial assessment of its severity in accordance with the Issue Reporting Method described in Table A – Issue Classification and Service Response of this Service Schedule; and

(b) provide further details upon request by us to assist us in our determination of the Issue classification.

6.5 Following a report of an Issue by you, we will:

(a) log the Issue on our problem management system and allocate an Issue number for tracking in accordance with the Target Issue Acknowledgement Time set out in Table A – Issue Classification and Service Response of this Service Schedule;

(b) determine the Issue classification in accordance with the Issue classifications set out in Table A – Issue Classification and Service Response of this Service Schedule;

(c) inform your Contact Person of our determination of the Issue classification by email or telephone; and

(d) undertake an Issue Response.

### APPLICATION UPDATES

6.6 As part of the Support Services, we agree to provide you with three levels of update to the Applications being Major Version Releases, Minor Releases and Dot Revisions (**Application Updates**).

6.7 You acknowledge that Major Version Releases may require data migration (and, if requested by us, you will provide reasonable assistance to enable us to do so) which may incur additional charges. We will advise you of and obtain your agreement to any such additional charges prior to undertaking any data migration.

6.8 Application Updates include documentation that describes the content of the release and updates to user documentation. We will keep you informed of upcoming Application Updates and advise you of any high impact Issues that have been reported by other users.

6.9 We reserve the right to charge you an additional licence fee and/or support fee where we provide you with any new application or module in addition to the Applications provided to you under this Service Schedule.

6.10 If you require any additional installation, training, data migration services, enhancements or consultancy services relating to any Application Update, these will be provided as Professional Services.

### SUPPORT EXCLUSIONS

6.11 This Service Schedule and the Support Services do not cover Issues:

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- (a) where you have not accepted an Application Update and the Application version you are using has been decommissioned by us;
- (b) caused by using the Applications in a manner other than its permitted use;
- (c) caused by modification of the Applications by you or any other third party not authorised by us in writing;
- (d) reported to us, and following problem determination, determined to be caused by failure of any hardware or third party software; or
- (e) reported if you are more than 60 days (after the date of invoice) in arrears of payments owed to us under this Agreement.

### 7. DEFINITIONS

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7.1 In this Service Schedule, unless otherwise stated:

**After Hours** means:

- (a) 7:00 am to 9:00am (AEST) Monday to Friday;
- (b) 5:00 pm to 8:00 pm (AEST) Monday to Friday; and
- (c) 8:00am to 1:00pm (AEST) on Saturday, excluding Victorian public holidays.

**Application Documentation** means all printed and electronic documentation provided to you in connection with the Applications, including manuals, specifications, training materials and collateral.

**Applications** mean those components of the TCM software licensed to you, as set out in your invoice.

**Authorised User** means each person permitted to concurrently use the Applications in accordance with this Service Schedule.

**Business Hours** mean between 9:00am and 5:00pm (AEST) Monday to Friday, excluding Victorian public holidays.

**Concurrent Authorised User** means the number of Authorised Users that can be logged onto the relevant Application and have access to its database concurrently.

**Consumer Price Index** means the All Groups Consumer Price Index (being the weighted average of 8 capital cities) as published by the Australian Bureau of Statistics.

**Dot Revisions** mean software patches which will be issued between Minor Releases to implement evolutionary changes to the Applications, rectify bugs in response to issues raised in support of the Applications.

**Issue** means any operational problem, bug, feature request, anomaly, or enquiry pertaining to the usage of the Applications.

**Issue Response** means work to investigate and rectify an Issue as soon as possible by:

- (a) closing the Issue following provision of Support Services;
- (b) for Partial System Failure or Technical Problems, closing the Issue as being corrected in a future release of the Application;
- (c) agreeing with your Contact Person on a time to perform rectification/action; or
- (d) for Total System Failure or Partial System Failure, providing a workaround which will allow the Issue to be reclassified.

**Licence Key** means the alphanumeric code which allows the Applications to commence and maintain operation.

**Major Version Release** means a release of an Application that includes major changes and improvements in the Application and may include support for new databases or platforms (e.g. MS SQL), substantial revisions of the user interface, significant groups of enhancements across the application suite or underlying structural or programming changes that increase the functionality of the Applications. Unless we communicate otherwise, Major Version Releases are usually designated by the number “0” to the right of the decimal point (e.g., 8.0) and a change in the number to the left of the decimal point (e.g., 8.x to 9.x).

**Minor Releases** means a release of an Application that is associated with the then most current Major Version Release and which may include new functionality or revisions to existing functionality, patches or patch bundles and which do not involve major database changes, changes in technology or changes in architecture. Unless we communicate otherwise, Minor Releases are usually designated by the numbers 1-9 to the right of the decimal point (e.g. 8.1).

**Partial System Failure** means an occasional failure of Application functionality which causes significant user inconvenience or operational difficulties but not preventing a user from continuing to process core business with the Application.

**Professional Services** means Services provided under Schedule 3 – Professional Services.

**Server** means a computer system comprising one or more computer processors running an administrative program that controls access to all or part of a group of interconnected computers and associated devices.

**Software Licence Fee** means the fee set out in your invoice as adjusted on and from every 1 July of each



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calendar year during the Term, in accordance with this Service Schedule.

**Support Services Fee** means the fee set out in your invoice as adjusted on and from every 1 July of each calendar year during the Term, in accordance with this Service Schedule.

**Technical Problem** means requests for enhancements or fixing bugs affecting non-essential Application functions.

**Total System Failure** means the Issue prevents use of a core function of the Applications essential for the performance of your business.

**SOFTWARE SUPPLY AND SUPPORT AGREEMENT – THE CARE MANAGER SERVICE SCHEDULE**

**TABLE A – ISSUE CLASSIFICATION AND SERVICE RESPONSE**

<b>Issue Classification</b>	<b>Issue Reporting Method</b>	<b>Target Issue Acknowledgment Time</b>	<b>Target Issue Response Time</b>
Total System Failure – High impact	By telephone followed by email detailing the Total System Failure	4 Business Hours	2 Business Days
Partial System Failure – Medium impact	Email or telephone	4 Business Hours	5 Business Days
Technical Problem – Low impact	Email or telephone	2 Business Days	20 Business Days

**NOTES:**

**ISSUE REPORTING:**       **TELEPHONE:** 1800 300 012 (if a Support Services operator is not available your call may be put on hold or you may select to leave a voicemail message)

**EMAIL:** tcmsupport@healthconnex.com.au

When reporting an Issue either by telephone or email please provide your customer number, identify the Site name and who is calling, call-back number and a description of the problem.

**ISSUE RESPONSE:**       The parties may agree a change in Issue Response for the following circumstances:

- (a)       Despite using our best efforts to respond to your Issue, we may need further time to resolve your Issue. In such cases we will provide you with an action plan for resolution and will continue working with urgency on the Issue until it is resolved in accordance with the approved action plan.
- (b)       We (i) cannot reproduce the Issue; (ii) require further information to be provided by you before being able to diagnose the Issue; or (iii) require a third party to perform diagnosis where the Issue is reasonably suspected to be related to a third party product.

If either party believes that the other repeatedly and unreasonably misrepresents an Issue Classification or status, or fails to meet their obligations in accordance with the procedures noted in clause 6 and Table A, that party may notify the other in writing. The parties will meet within 10 Business Days of such notification to resolve the matter in dispute. If no agreement is reached within 30 days, then the matter will be referred to dispute resolution in accordance with 14 of the General Terms.

## SCHEDULE 2 – PROFESSIONAL SERVICES

### SERVICE TERMS

#### 1. INTRODUCTION

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- 1.1 This Service Schedule only applies if you purchase “Professional Services” from us.

#### 2. PROFESSIONAL SERVICES

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- 2.1 At any time during the Term, you may request us to provide Professional Services to you.
- 2.2 Within a reasonable period of time of receiving your request, we will prepare a quote, setting out:
- (a) the scope of the Professional Services;
  - (b) any deliverables; and
  - (c) an estimate of the Professional Services charges, and the proposed basis of charging (such as a fixed fee or on a 'time and materials' basis),
- (in this Service Schedule, a “Quote”).
- 2.3 Upon receipt of your signed acceptance of a Quote, we will use reasonable endeavours to provide the Professional Services in accordance with the Quote.
- 2.4 You must reimburse us for any reasonable Out-of-Pocket Expenses that we, or our Personnel, incur in performing the Professional Services, provided we:
- (a) obtain your prior written approval for each Out-of-Pocket Expense; and
  - (b) when claiming an expense, produce documentary evidence of that Out-of-Pocket Expense.
- 2.5 For the purpose of clause 2.4 above, “**Out-of-Pocket Expenses**” include travel, accommodation and other incidental expenses incurred by us, or our Personnel, during the performance of the Professional Services

## SCHEDULE 3 – CONNECTING CARE WORKER SUBSCRIPTION AND SUPPORT SERVICES

### SERVICE TERMS

#### 1. INTRODUCTION

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- 1.1 This Service Schedule applies only if you have purchased “Connecting Care Worker Subscription and Support Services”.
- 1.2 Connecting Care Worker is a subscription web service designed for a mobile workforce which enables users to log in via a web browser and access up to date work information such as rosters and which also allows users to submit timesheets from an internet enabled capable device. The Connecting Care Worker product is compatible with and synchronises information held in The Care Manager (TCM) product.
- 1.3 This Service Schedule describes the subscriptions and Support Services which we will provide to you under the terms set out in this Service Schedule, and comprises:
- (a) a subscription for an agreed Maximum Authorised User Count to access and use the Application; and
  - (b) Support Services.

#### 2. SERVICE CHARGES

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- 2.1 The Software subscriptions and Support Fee is payable annually in advance and which is calculated based on the Maximum Authorised User Count.
- 2.2 On and from 1 July of each calendar year during the Term, you acknowledge and agree that, we:
- (a) may increase the Subscriptions and Support Fee by an amount which is equal to any percentage increase in the Consumer Price Index for the previous 12 months; and
  - (b) may also increase the Subscription Fee (including retrospectively) in order to account for any discrepancy between the actual number of Authorised Users and the agreed Maximum Authorised User Count and the software licence fees set out in our then current price list will apply.
- The charges comprise:
- 2.3 a Subscription and Support Fee based on the Maximum Authorised User Count. The Maximum Authorised User Count as at the Start Date is set out in your invoice. The Subscription and Support Fee is payable annually in advance. The Subscription and Support Fee in our price list may be increased by us on and from 1 July of each calendar year.
- 2.4 You may increase the Maximum Authorised User

Count by paying an additional fee. Any variation to the Maximum Authorised User Count and the corresponding fee must be in writing and agreed between the parties.

#### 3. SUBSCRIPTION TERMS

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##### APPLICATION

- 3.1 As part of your subscription, we grant you a non-transferable, non-sub licensable and non-exclusive right to access and use the Application and the Application Documentation within Australia during the Term for your own business purposes (including for the purpose of publishing the work rosters of the Authorised Users into the Application and permitting Authorised Users to access those rosters via a web browser), subject to the following conditions (**Software Subscription Licence**):
- (a) you continue to have current Support Services and we have received payment in full of the Software Subscription and Support Fee;
  - (b) that this Service Schedule and/or Agreement are not terminated in accordance with clause 8 of the General Terms;
  - (c) the number of Authorised Users who are using the Applications at any time must not exceed the Maximum User Count (which as at the Start Date is set out in your invoice); and
  - (d) the Application must only be used in accordance with any user identification and password requirements notified by us in writing to you.

##### PROHIBITED USAGE

- 3.2 You must not (and you will ensure that each Authorised User does not, nor allow any third party to):
- (a) use the Application to process the work of any non-majority owned subsidiary, affiliate or a third party;
  - (b) translate, reverse-engineer, decompile, disassemble or attempt to reconstruct or discover any source code or underlying ideas or algorithms of the Application by any means;
  - (c) provide, rent, lease, licence, transfer or grant any rights in the Application, in full or in part, to or for the benefit of third parties;
  - (d) remove, alter or obscure any product identification, copyright, trademark or other proprietary notices, labels or marks on or in the Application and the Application Documentation;
  - (e) modify, adapt incorporate into or with other software, or create a derivative work of any part of the Applications; and

## SOFTWARE SUPPLY AND SUPPORT AGREEMENT - CONNECTINGACARE WORKER SCHEDULE

- (f) make any copies of the Application other than, as necessary, for archival, testing, training, backup or disaster recovery purposes.

### CONSEQUENCES OF TERMINATION ON SUBSCRIPTION

3.3 The licence we grant you to the Applications as part of your subscription is perpetual and will survive termination or expiry of this Service Schedule and/or Agreement except where we terminate this Service Schedule and/or Agreement due to your default, in which case you and each Authorised User must immediately cease use of the Applications and the licence granted to you under this Service Schedule will terminate and be of no further force and effect as of the date of termination of this Service Schedule and/or Agreement.

## 4. APPLICATION SUPPORT SERVICES

- 4.1 We will provide the following support services during Business Hours (**Support Services**):
- (a) support for and correction of Issues; and
  - (b) consultation by telephone or email (at our option) between our Contact Person and your Contact Person.
- 4.2 We may, at our option, provide Support Services outside Business Hours in the case of a Total System Failure (**Emergency Support Services**). We reserve the right to charge you an additional fee for such Emergency Support Services.

### SUPPORT, ISSUE CLASSIFICATION, NOTIFICATION AND RESPONSE

- 4.3 In connection with your receipt of the Support Services, you agree to:
- (a) report Issues to us by telephone or email during Business Hours according to your initial assessment of its severity in accordance with the Issue Reporting Method described in Table A – Issue Classification and Service Response of this Service Schedule; and
  - (b) provide further details upon request by us to assist us in our determination of the Issue classification.
- 4.4 Following a report of an Issue by you, we will:
- (a) log the Issue on our problem management system and allocate an Issue number for tracking in accordance with the Target Issue Acknowledgement Time set out in Table A – Issue Classification and Service Response of this Service Schedule;
  - (b) determine the Issue classification in accordance with the Issue classifications set out in Table A – Issue Classification and Service Response of this Service Schedule;
  - (c) inform your Contact Person of our determination of the Issue classification by email or telephone; and
  - (d) undertake an Issue Response.

### APPLICATION UPDATES

- 4.5 As part of the Support Services, we agree to provide you with three levels of update to the Applications being Major Version Releases, Minor Releases and Dot Revisions (**Application Updates**).
- 4.6 You acknowledge that Major Version Releases may require data migration (and, if requested by us, you will provide reasonable assistance to enable us to do so) which may incur additional charges. We will advise you of and obtain your agreement to any such additional charges prior to undertaking any data migration.
- 4.7 Application Updates include documentation that describes the content of the release and updates to user documentation. We will keep you informed of upcoming Application Updates and advise you of any high impact Issues that have been reported by other users.
- 4.8 We reserve the right to charge you an additional subscription fee and/or support fee where we provide you with any new application or module in addition to the Applications provided to you under this Service Schedule.
- 4.9 If you require any additional installation, training, data migration services, enhancements or consultancy services relating to any Application Update, these will be provided as Professional Services.

### SUPPORT EXCLUSIONS

- 4.10 This Service Schedule and the Support Services do not cover Issues:
- (a) where you have not accepted an Application Update and the Application version you are using has been decommissioned by us;
  - (b) caused by using the Application in a manner other than its permitted use;
  - (c) caused by modification of the Application by you or any other third party not authorised by us in writing;
  - (d) reported to us, and following problem determination, determined to be caused by failure of any hardware or third party software;
  - (e) reported if you are more than 60 days (after the date of invoice) in arrears of any payments under this Service Schedule; or
  - (f) caused by the use of the Applications by persons other than the Authorised Users.
- 4.11 You will be responsible for the initial installation and configuration of the Applications which is not included in the Support Services. If you require initial installation services these will be provided as Professional Services.

## 5. DATA INTEGRITY AND DATA COLLECTION

- 5.1 We will not have any interest in or rights to any

## SOFTWARE SUPPLY AND SUPPORT AGREEMENT - CONNECTINGACARE WORKER SCHEDULE

content or data which you and/or the Authorised Users enter into and which is transmitted by or stored or otherwise retained in the Application (**Your Data**). You are entirely responsible for:

- (a) Your Data and ensuring that it is accurate and up to date; and
- (b) all use and activity that occurs in connection with use of the Application using the Account Information.

5.2 You agree:

- (a) to grant us a non-exclusive, non-transferable licence to use Your Data for the sole purpose of enabling us to perform our obligations under this Agreement including handling Your Data in accordance with any instructions you may give to us;
- (b) to allow us, during the Term, to collect certain Personal Information and other de-identified and aggregated resource usage data related to use of the Application and receipt of the Support Services under this Service Schedule to administer and monitor your use of the Application and Support Services and for our own internal business improvement purposes. In the case of de-identified and aggregated resource usage data we agree not to take any deliberate steps (whether through data analytics or otherwise) which will cause the de-identified information to become Personal Information;
- (c) that we own all Intellectual Property Rights in all data generated and produced by us in connection with the performance of our obligations under this Service Schedule, including the de-identified and aggregated resource usage data referred to in clause 5.2(a) above (**Our Data**); and
- (d) prior to the first use of the Application by the Authorised Users, to ensure that each Authorised User is notified of the collection of Personal Information in compliance with Privacy Laws and you agree to indemnify us against any loss, damage, liability, costs or expenses incurred by us as a result of your failure to do so.

## 6. DEFINITIONS

6.1 In this Service Schedule, unless otherwise stated:

**Application Documentation** means all printed and electronic documentation provided to you in connection with the Application, including manuals, specifications, training materials and collateral.

**Application** means the Connecting Care Worker Software accessible via the internet and licensed to you, as set out in your invoice.

**Authorised User** means each person within your organisation which you have authorised and assigned to use the Application for managing their roster and other Application functionality, in accordance with this Service Schedule.

**Business Hours** mean between 9:00am and 5:00pm (AEST) Monday to Friday, excluding national public holidays.

**Consumer Price Index** means the All Groups Consumer Price Index (being the weighted average of 8 capital cities) as published by the Australian Bureau of Statistics.

**Dot Revisions** mean software patches which will be issued between Minor Releases to implement evolutionary changes to the Applications, rectify bugs in response to issues raised in support of the Applications.

**Issue** means any operational problem, bug, feature request, anomaly, or enquiry pertaining to the usage of the Application.

**Issue Response** means work to investigate and rectify an Issue as soon as possible by:

- (a) closing the Issue following provision of Support Services;
- (b) for Partial System Failure or Technical Problems, closing the Issue as being corrected in a future release of the Application;
- (c) agreeing with your Contact Person on a time to perform rectification/action; or
- (d) for Total System Failure or Partial System Failure, providing a workaround which will allow the Issue to be reclassified.

**Major Version Release** means a release of an Application that includes major changes and improvements in the Application and may include support for new databases or platforms (e.g. MS SQL), substantial revisions of the user interface, significant groups of enhancements across the application suite or underlying structural or programming changes that increase the functionality of the Applications. Unless we communicate otherwise, Major Version Releases are usually designated by the number "0" to the right of the decimal point (e.g.,8.0) and a change in the number to the left of the decimal point (e.g.,8.x to 9.x).

**Maximum Authorised User Count** means the maximum number of Authorised Users permitted to user the Application for its intended purposes, at any time.

**Minor Releases** means a release of an Application that is associated with the then most current Major Version Release and which may include new functionality or revisions to existing functionality, patches or patch bundles and which do not involve major database changes, changes in technology or changes in architecture. Unless we communicate

## SOFTWARE SUPPLY AND SUPPORT AGREEMENT - CONNECTINGACARE WORKER SCHEDULE

otherwise, Minor Releases are usually designated by the numbers 1-9 to the right of the decimal point (e.g. 8.1).

**Partial System Failure** means an occasional failure of Application functionality which causes significant user inconvenience or operational difficulties but not preventing a user from continuing to process core business with the Application.

**Professional Services** means Services provided under Schedule 3 – Professional Services.

**Software Subscription and Support Fee** means the fee set out in your invoice as adjusted on and from

every 1 July of each calendar year during the Term, in accordance with this Service Schedule.

**Technical Problem** means requests for enhancements or fixing bugs affecting non-essential Application functions.

**Total System Failure** means the Application has ceased to operate preventing Authorised Users from using the core functionality of the Application (for example, the website is down) but (without limitation) does not include Issues relating to third party authentication services being unavailable.

## SOFTWARE SUPPLY AND SUPPORT AGREEMENT - CONNECTINGACARE WORKER SCHEDULE

### TABLE A – ISSUE CLASSIFICATION AND SERVICE RESPONSE

Issue Classification	Issue Reporting Method	Target Issue Acknowledgment Time	Target Issue Response Time
Total System Failure – High impact	By telephone followed by email detailing the Total System Failure	4 Business Hours	2 Business Days
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#### NOTES:

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