

HealthEngine Store Customer Terms and Conditions

These HealthEngine Store Customer Terms and Conditions ("T&Cs") apply to the supply of any and all Services by HealthEngine Pty Ltd (ACN 138 767 021) ("HealthEngine") whether those Services are provided through the Network or otherwise.

Anyone submitting a Form and/or otherwise utilising or accessing the Services is deemed to agree to these T&Cs and the other terms of the Agreement. A "Store Customer" includes a person or organisation named as a "Store Customer" and/or otherwise identified as a user of the Services in a Form. A Form in combination with these T&Cs constitutes the "Store Customer Agreement" (or the "Agreement") between HealthEngine and each applicable Store Customer. This Agreement binds each Store Customer referred to in a Form jointly and severally and each reference to a Store Customer is a reference to each of the Store Customers referred to in a Form and named as a user of the Services in that Form.

If you are utilising or accessing the Services on behalf of your employer or another entity, you confirm you have full legal authority to bind your employer or applicable entity to these T&Cs and the Agreement.

1. Definitions

Account

means an online account made available to a Store Customer by HealthEngine to enable the Store Customer to manage among other things its profile and Appointment Plugin and access other digital services provided by HealthEngine.

Affiliate

means in the case of HealthEngine, HealthEngine Pty Ltd and any entity that, from time to time, is directly or indirectly controlled by HealthEngine Pty Ltd; in the case of the Store Customer, any entity that, from time to time, is directly or indirectly controlling, controlled by, or under common control of the Store Customer. "Control" means the power to direct or cause the direction of the management or policies of such entity, whether through the ownership of voting securities, by contract, or otherwise.

Appointment Plugin

means the plugin provided by HealthEngine for embedding on Store Customer assets including, but not limited to, Store Customer Websites, Facebook profiles, and Store Customer Apps, through which the Store Customer publishes its available appointments and receives bookings.

Beta Services

means services identified as beta, pilot, developer preview, non-production, evaluation or by a description of similar import.

Claim

means, in relation to any person, a damage, loss, cost, fine, penalty, expense or liability incurred by the person or a claim, action, proceeding or demand made against the person, however arising and whether present or future, fixed or unascertained, actual or contingent.

Confidential Information

means all data and information in electronic or any other form including, without limitation, this Agreement and the terms of this Agreement, know how, trade secrets, information and data relating to a party or its related companies, its or their business or existing or potential customers or clients, Visitors including Visitor Information, technical and business information relating to a party's products or health services and health programs, research and development, employees or officers, price lists or pricing structures, marketing and sales information, business plans or dealings, financial information, plans, designs or product lines, any document marked "Confidential", or any information which a party has been informed is confidential or which a party might reasonably expect the other party to regard as confidential, and any proprietary and confidential information of Visitors including Visitor Information, clients, customers, suppliers or other third parties disclosed by either party to the other in the course of this Agreement.

Content

means any information or material of any kind published or made available to HealthEngine by the Store Customer in connection with the Services or the Network (including material provided by the Store Customer to HealthEngine for publishing on the Network including, without limitation, text, graphics, data, images, business, company or trade names, domain names and trade marks, whether registered or unregistered).

Data Incident

means an Eligible Data Breach that has, or is reasonably suspected to have, occurred in respect of any personal information collected, held, used or disclosed in the course of or relating to this agreement.

Eligible Data Breach

means an eligible data breach as that term is defined in the Privacy Amendment (Notifiable Data Breaches) Act 2016 (Cth), occurring on or after 22 February 2018.

Fees

means the fees payable on behalf of a Store Customer to HealthEngine for the Services, and includes Subscription Fees and Transaction Fees.

Form

means the online registration pages or other HealthEngine registration forms or agreement a Store Customer completes in signing up for the Services, together with the information provided in them, and also includes any HealthEngine form submitted by a Store Customer requesting services from HealthEngine.

Mobile Applications

means the HealthEngine IOS or Android mobile applications and any future version or replacement of those applications.

Network

means the Website and Mobile Applications and any future versions or replacements of same.

Network Booking

means an online booking made by a Network Visitor via the Network.

Network Visitor

means a member of the public who uses the Network or is a customer of HealthEngine and who books an appointment or submits a prescription request with the Store Customer via the Network.

Patient Appointment Management System or PAMS

is the HealthEngine patient appointment management system, and includes the Appointment Plugin being the Visitor facing component of the PAMS.

Network Profile

means the Store Customer branded profile listed on the Network that allows Network Visitors to view Store Customer Content including contact information, and where enabled, allows Network Visitors to book appointments with the Store Customer via a HealthEngine booking flow.

Personal Information

has the meaning given to it in the Privacy Act.

Privacy Act

means the *Privacy Act 1988* (Cth).

Services

means the services provided by HealthEngine for use by the Store Customer specified in a Form, or otherwise requested by the Store Customer from time to time where such request is accepted by HealthEngine.

Store Customer App

means the Store Customer mobile applications and any future versions or replacements of same.

Store Customer Website

means the Store Customers website of such other URL as advised by the Store Customer from time to time.

Subscription Fees

means fees relating to Services provided to the Store Customer on a monthly fixed fee subscription basis, such as initial set up, PAMS licence fee, Patient Connect Profile and featured listings.

Term

means the period from commencement of the Store Customer Agreement until termination of the Store Customer Agreement in accordance with clause 10.

Third Party Intermediary

means a person who provides services to the Store Customer which are integrated with the PAMS, the Services or the Appointment Plugin and are designed to facilitate the provision of Services through the Network.

Transaction Fees

means fees relating to Services provided to the Store Customer calculated on the basis of the number and/or type of transaction, such as integrated payment processing, Network Bookings and ePrescriptions.

Visitor

means a member of the public who uses the Network, Store Customer Website, Store Customer App or is a customer of the Store Customer and who books an appointment or submits a prescription request with the Store Customer.

Visitor Information

means information provided by a Visitor, including booking details, any health information and other Personal Information of Visitors.

Website

means HealthEngine's website located at www.healthengine.com.au and any future version or replacement of that site.

2. HealthEngine key obligations

HealthEngine must:

- a. provide the Services in accordance with this Agreement;
- b. provide the Services in a competent and diligent manner; and
- c. collect, store and disclose all personal information received by HealthEngine from the Store Customer in accordance with the HealthEngine Privacy Policy.

3. Store Customer key obligations

The Store Customer must:

- a. pay the Fees;
- b. use the Services solely in accordance with this Agreement;
- c. hold throughout the Term all licences with all relevant regulatory boards and/or other bodies, councils or authorities necessary to enable the Store Customer to legally practice and deliver the relevant health services in the jurisdiction in which the Store Customer operates;
- d. maintain throughout the Term any and all qualifications, certifications, licences and permits necessary for it to provide the relevant health services to members of the public;
- e. ensure that the Content is accurate and up to date and remains accurate and up to date and it will indemnify HealthEngine for any Claim resulting from outdated or inaccurate Content;
- f. notify HealthEngine of any change to any of the Store Customer's qualifications, certifications, licences and permits necessary for it to provide the relevant health services to Visitors or of any breaches of any laws, rules, regulations, industry codes or serious claims for misconduct or professional negligence by the Store Customer which may impact its ability to provide health services to Visitors;
- g. when using the Services or the Appointment Plugin to manage appointments actively and consistently ensure its Content that is published on the Appointment Plugin is accurate and up to date by maintaining the Appointment Plugin on a regular basis and, in any event, as often as is reasonable so as to minimise the possibility of a Visitor booking an appointment through the Network, Store Customer Website or Store Customer App that does not exist in the Store Customer's practice schedule.
- h. if the Store Customer uses the ePrescription service the Store Customer must notify HealthEngine within 24 hours of the Store Customer enabling or disabling the ePrescription service with a Third Party Intermediary and ensure that the Store Customer:

- i. responds to requests from Visitors for prescription requests in accordance with the timeframes configured by the Store Customer (for clarification, it is solely a matter for the Store Customer to determine whether to fulfil such a prescription or decline to fulfil a prescription); and
 - ii. confirms the identity and patient details of any Visitor before dispensing any prescription product to a Visitor. HealthEngine will pass on the identity information provided by a Visitor, but the Store Customer is solely responsible for verifying that information (together with any other relevant information) and confirming the identity and patient details of the Visitor to whom a prescription product is to be dispensed.
- i. encourage patient use of the Network and the Services;
- j. notify HealthEngine of any complaints relating to the Services received by the Store Customer;
- k. maintain all insurance policies which a reasonably prudent company in the Store Customer's position would maintain, including but not limited to "Professional Indemnity" (including medical negligence if required) and "Public Liability" insurance in relation to the services offered by the Store Customer;
- l. maintain as confidential and keep secure all information regarding a Visitor and any other data received from HealthEngine, and not disclose or use any information regarding a Visitor or any other data received from HealthEngine other than for the purposes of this Agreement or the provision of the relevant health services (except, in the case of information regarding a Visitor, with the consent of that Visitor);
- m. maintain as confidential and keep secure any passwords or other security credentials relating to the Services;
- n. comply with all applicable privacy and information laws and regulations so far as they relate to the Store Customer's collection of Visitors' and other patients' personal and health information and will indemnify HealthEngine against Claims that result from the Store Customer's non-compliance with this provision;
- o. notify HealthEngine immediately of any unauthorised access of, or data breach relating to, the Services;
- p. comply with all applicable laws in relation to its use of the Services;
- q. ensure that all health information and health records of Visitors are stored on Store Customer systems and retained in accordance with applicable laws. HealthEngine is not responsible for retaining health information and health records collected via the Network for any prescribed period;
- r. use the Appointment Plugin in accordance with HealthEngine's guidelines or instructions;
- s. not use the Services to:
 - i. post, publish or transmit any Content which violates or infringes in any way upon the rights of others, which is unlawful, threatening, abusive, defamatory, invasive of privacy or publicity rights, vulgar, obscene, profane, hateful, or racially or ethnically or otherwise objectionable;
 - ii. encourage conduct that is criminal, would give rise to civil liability or would otherwise violate any law;

- iii. harm children in any way;
 - iv. impersonate a person or entity or falsely state their affiliation with a person or entity;
 - v. upload, post, transmit or otherwise make available any Content that infringes the rights of another party including but not limited to trademark, copyright and other intellectual property rights; or
 - vi. transmit or otherwise make available any material that contains software viruses or any other computer code, files designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- t. not use the Services to advertise or perform any commercial or other form of solicitation that is not authorised by HealthEngine, including by making the Appointment Plugin available on any websites, mobile apps or otherwise unless they are proprietary (specific) to the Store Customer or have otherwise been approved by HealthEngine in writing; and
- u. not treat Visitors who book appointments or request prescriptions through the Services differently to its other patients including by charging them additional fees that it does not charge its other patients.

4. The Services

- a. For the purpose of providing the Services and subject to the Store Customer's compliance with the terms and conditions of this Agreement, HealthEngine grants to the Store Customer a non-exclusive, non-transferrable and revocable right to access and use the HealthEngine Network during the Term.
- b. HealthEngine may make such changes to the Services, the Network, the Appointment Plugin, its internal processes and the interface of the Services with the Store Customer from time to time as HealthEngine considers appropriate in its sole discretion. Where HealthEngine makes such changes which it reasonably believes may be detrimental to the Store Customer, it will provide the Store Customer with at least 30 days prior notice of the change, and if the Store Customer does not wish to continue to use the Services, then it may terminate this Agreement by providing at least 30 days' notice to HealthEngine provided that the Store Customer exercises this right within the 30 days of receipt of the notice of the change to the Services, and no cancellation fee will apply.
- c. During the Initial Term, the Store Customer can upgrade its plan at any time provided it moves to another plan with a higher monthly access fee and will remain on the same contract duration. However, if the monthly access charge has a lower access fee than the plan the Store Customer is currently on, that change would be defined as a downgrade. If the Store Customer wishes to downgrade its plan at any time during the Initial Term, **HealthEngine reserves its right to charge the Store Customer an appropriate cancellation fee in HealthEngine's reasonable discretion.** If the Store Customer downgrades outside of the Initial Term or the Store Customer is on a month-to-month plan, there is no charge to downgrade the plan.
- d. HealthEngine may engage subcontractors or individuals on a consultancy basis to assist in the provision of the Services.

- e. The Store Customer is solely responsible for its provision of health services and managing its relationship with its patients (including a Visitor) including the collection of fees from those patients. HealthEngine is not a party to any dealings, arrangements, agreements or similar between the Store Customer and the Visitor and the Store Customer must not purport to bind HealthEngine in any way.
- f. Where the Services include Store Customer website development and build:
 - i. the Store Customer must give existing domain access (if applicable) to enable HealthEngine to build the website under the desired domain name. If needing to purchase a new domain name, the Store Customer agrees to pay any applicable fees and costs.
 - ii. the Store Customer agrees to pay any ongoing HealthEngine hosting fees.
 - iii. if wanting to transfer the website to a host other than HealthEngine, the Store Customer must provide HealthEngine a minimum of 30 days prior written notice, which will serve as notice of termination of the hosting services and any related obligations on HealthEngine.
 - iv. reasonable levels of technical support are included in the applicable fees. However, if HealthEngine in its sole discretion determines that technical support requested exceeds reasonable levels, HealthEngine may elect to charge for additional technical support at the rate of \$150/hour + GST. The Store Customer will be informed before any such fees are incurred.
- g. From time to time, HealthEngine may offer Beta Services. All Beta Services are subject to the terms of this Agreement unless otherwise advised by HealthEngine. The Store Customer may accept or decline Beta Services. If accepted by the Store Customer, Beta Services:
 - i. are provided only for evaluation purposes;
 - ii. may not be relied on by the Store Customer for production use;
 - iii. may not be supported; and
 - iv. may be subject to additional terms.

Unless otherwise stated, any Beta Services trial period will expire on the date that a version of the Beta Services becomes generally available or is discontinued. HealthEngine may discontinue Beta Services at any time in its sole discretion and may never make Beta Services generally available. All Beta Services are provided “as is” and “as available” without any warranty of any kind. Beta Services may be terminated at any time.

5. Third Party Intermediaries

- a. Some Services offered via HealthEngine may be provided to the Store Customer through integrations with Third Party Intermediaries (“**Integrated Services**”). For example, payment processing services, ePrescription services and pre-screening services.
- b. The Store Customer acknowledges and agree that its use of any Integrated Services will be subject to the Third Party Intermediary’s applicable terms and conditions.

- c. The Store Customer acknowledges and agrees that Third Party Intermediaries and HealthEngine may share Visitor Information and Confidential Information for the purposes of facilitating a Visitor or Store Customer's use of the Integrated Services. Where HealthEngine receives information from Third Party Intermediaries, HealthEngine must use the information in accordance with this Agreement and HealthEngine's Privacy Policy.
- d. HealthEngine is not responsible for the acts or omissions of any Third Party Intermediary in providing services to the Store Customer, or for any non-compliance by a Third Party Intermediary with the terms of the Store Customer's agreement with a Third Party Intermediary.

6. Payments

- a. Payment processing services for Store Customers offered by HealthEngine are provided by Stripe Payments Australia Pt Ltd ("Stripe") and are subject to the Stripe Connected Account Agreement, which includes the Stripe Terms of Service (collectively, the "Stripe Services Agreement"). By agreeing to these terms or continuing to operate as a Store Customer with a Connected Account, you agree to be bound by the Stripe Services Agreement, as the same may be modified by Stripe from time to time.
- b. As a condition of HealthEngine enabling payment processing services through Stripe, the Store Customer agrees to provide HealthEngine with accurate and complete information about it and its business, and the Store Customer authorises HealthEngine to share with Stripe that information and transaction information related to the Store Customer's use of the payment processing services provided by Stripe. For more information regarding Stripe's use of data, please review Stripe's Privacy Policy.
- c. The Stripe Connected Account Agreement is between Stripe and the Store Customer, and HealthEngine shall not have any liability or responsibility for any breach of the Stripe Connected Account Agreement, or any losses, damages, expenses or costs incurred by the Store Customer in connection with such agreement.
- d. The Store Customer is financially liable for Disputes, Chargebacks, Refunds, and any fines that arise from the Store Customer's use of the payment processing services. The Store Customer agrees that HealthEngine may recover any amounts it incurs in respect of Disputes, Chargebacks, Refunds and any associated fines and for which the Store Customer is liable, from the Store Customer. The Store Customer will pay HealthEngine the full amount of these amounts upon demand.
- e. The expressions "Connected Account", "Disputes", "Chargebacks" and "Refunds" as defined in the Stripe Services Agreement and used in this Agreement have the same meaning as set out in the Stripe Services Agreement.

7. Intellectual Property

- a. All intellectual property rights in the Services, and in all HealthEngine know how, software, materials and methodologies used in providing or incorporated into the Services, the Appointment

Plugin or the Network (collectively the "IPR") remain vested in HealthEngine, and the Store Customer has no rights in relation to that IPR.

- b. The Store Customer must use the Services solely for the purposes set out in this Agreement and not make any commercial use of the Services, including by reselling the Services to any party.
- c. The Store Customer must not to copy, alter, modify, reproduce, reverse-engineer, derive or develop the Services, any software used by HealthEngine to provide the Services or any IPR or any part of them or attempt to do any of those things.
- d. The Store Customer must not use any HealthEngine logo or trade mark (other than as specifically authorised under this Agreement and in materials specifically approved by HealthEngine) without the prior written consent of HealthEngine.
- e. The Store Customer grants HealthEngine a licence to use, reproduce, publish, modify, translate, adapt and otherwise exploit the Content for the purpose of providing the Services.

8. Fees and Invoices

- a. The Fees payable for the Services are set out in the Form (or are as agreed separately in writing with HealthEngine), as may be amended from time to time in accordance with clause 14(h).
- b. Unless otherwise agreed in writing with HealthEngine, all Subscription Fees are payable monthly in advance from commencement of the Agreement. HealthEngine will provide the Store Customer with an invoice for the Subscription Fees on a monthly basis.
- c. Except as described in paragraph (d) and unless otherwise agreed in writing with HealthEngine, Transaction Fees are payable monthly in arrears from the commencement of the Agreement. HealthEngine will provide the Store Customer with an invoice for Transaction Fees on a monthly basis.
- d. For some Transaction Fees, HealthEngine will collect the fee configured by the Store Customer and remit such fee, less the amount of the associated Transaction Fee, to the Store Customer. If a Visitor fails to pay the fee configured by the Store Customer, HealthEngine will not be responsible or liable for recovering that fee on behalf of the Customer.
- e. If a trial period has been agreed in the Form, the payment and related terms applicable to any trial period will be as specified in the Form or otherwise as agreed in writing with HealthEngine.
- f. The Store Customer must pay all Fees required to be paid under the Agreement in accordance with the requirements, and on or before the due date, or as otherwise agreed in writing with HealthEngine.
- g. Unless otherwise agreed in writing with HealthEngine, Fees must be paid online by credit card or, if the Store Customer has provided the required direct debit authority signed by the Store Customer, by direct debit.
- h. If requested by HealthEngine, the Store Customer must provide valid credit card details to HealthEngine for payment of any Fees. Subject to any other payment arrangements expressly agreed in writing with HealthEngine, the Store Customer authorises deduction from the card with any Fees when due and payable. If the Store Customer is paying by direct debit and its financial

institution fails to honour payment, the Store Customer must pay the amount owing directly to HealthEngine and an additional administration fee may apply.

- i. Except in relation to disputes, in no circumstances shall the Store Customer make any deduction or withhold payment.
- j. Subject to clause 8(k) in the case of disputes, if any payment is not made by the due date HealthEngine must notify the Store Customer and, in the event that the Store Customer does not make payment itself within 7 days, may:
 - i. suspend the Services and the Store Customer's use of the Appointment Plugin or its Account;
 - ii. charge interest at the rate of 5% per annum above the cash rate target published by the RBA from time to time, or the maximum rate permitted by law, whichever is lower, calculated daily on all amounts not paid to HealthEngine from the due date until the date of payment in full;
 - iii. recover from the Store Customer any reasonable costs which HealthEngine incurs in recovering any outstanding amounts from the Store Customer including but not limited to debt collection, commission, solicitor's fees and any out of pocket expenses; and/or;
 - iv. cancel any discount, special pricing, promotional offers, priority ranking or similar benefits offered to the Store Customer by HealthEngine.
- k. HealthEngine will not suspend the Services while the Store Customer is disputing the applicable Fees reasonably and in good faith and is cooperating diligently to resolve the dispute. If the Services are suspended for non-payment, HealthEngine may charge a re-activation fee to reinstate the Services.
- l. All Fees stated are exclusive of GST and other applicable taxes, which must be paid by the Store Customer.
- m. Certain optional Services such as SMS notification and reminder services may require the Store Customer to pay additional fees and/or purchase SMS credits in advance. The terms of any such additional services, and the payments for them, will be provided in the Form or agreed separately in writing with HealthEngine.
- n. For the avoidance of doubt, Fees are payable by the Store Customer for Network Visitors who make a Network Booking via the Store Customer's Network Profile during the Term (including any notice period), but whose appointment is scheduled subsequent to the date of termination of the Agreement. HealthEngine will provide the Store Customer with an invoice with respect to these fees following the date of the Network Visitor's relevant appointment.
- o. In respect of fees and costs relating to a Search Marketing campaign, the Store Customer acknowledges that:
 - i. not all of the monthly budget is allocated directly to media services to HealthEngine Search Partners (e.g. Google AdWords);
 - ii. after deduction of HealthEngine service fees, the target percentage spent on media services is 70% of the total campaign monthly budget; and

- iii. that this is an estimate only and actual media services spend will vary from campaign to campaign.

9. Third Party Websites and Advertising

The Network may contain information and advertising from third parties and links to third party websites ("**Third Party Content**"). HealthEngine does not endorse or assume any responsibility for Third Party Content, including its accuracy, and will not be liable for any reliance the Store Customer places on Third Party Content. HealthEngine may engage third parties to provide Third Party Content at its sole discretion.

10. Term, Renewal & Termination

- a. This Agreement commences on the date that the Form is signed on behalf of both parties and continues for a period of 12 months (**Initial Period**) save for:
 - i. a Featured Listing if included in the Services, which must run for a minimum period of 3 months from the date of activation of the Featured Listing; and/or
 - ii. a Search Marketing campaign if included in the Services, which must run for a minimum period of 4 months from the date of activation of the Search Marketing campaign.
- b. At the expiry of the Initial Period, the Agreement will continue on a month to month basis (each a "**Renewal Term**") unless and until either party elects not to renew the Agreement by giving at least 30 days' notice to the other party. As used in this Agreement, the "Term" means the Initial Term and each Renewal Term.
- c. If a trial period is applicable, then either party may terminate this Agreement immediately upon notice during the trial period, and no cancellation fee will apply.
- d. Notices of termination under paragraphs (b) and (c) above can only be accepted in writing from the store owner or person whose credit card and authority was used to authorise payment.
- e. If HealthEngine terminates this Agreement pursuant to clause 10(c), then it will provide a refund of any pre-paid Fees for which Services will not be provided by HealthEngine.
- f. In addition, HealthEngine may immediately upon notice in writing to a Store Customer terminate this Agreement in the event that a Store Customer:
 - i. materially breaches this Agreement;
 - ii. ceases to be able to pay its debts as they become due, or becomes or is in jeopardy of becoming subject to any form of insolvency or bankruptcy administration;
 - iii. loses its relevant regulatory or other licence or authority to deliver the relevant healthcare services;
 - iv. behaves in a way which would clearly detract from the good name and reputation of HealthEngine; or
 - v. is abusive to HealthEngine staff members,

and HealthEngine will not be obliged to provide the Store Customer with any refund or credit of Fees paid.

- g. Unless otherwise stated, if the Store Customer terminates this Agreement:
 - i. the Store customer must pay HealthEngine any Transaction Fees incurred up to and including the date of termination.
 - ii. before the expiry of the Initial Term, HealthEngine reserves its right to charge an appropriate cancellation fee in HealthEngine's reasonable discretion. For the avoidance of doubt, if the Store Customer is on a month-to-month contract, there will be no early cancellation charges.
- h. Termination of this Agreement will be without prejudice to any rights of the parties which accrued prior to the date of termination.

11. Warranties, Liability & Indemnities

- a. The Store Customer acknowledges and agrees that HealthEngine is not a health provider and is not liable in any respect for the care of a Visitor. As between the Store Customer and HealthEngine, the Store Customer is solely responsible for the care of its Visitors.
- b. The Store Customer indemnifies HealthEngine against any and all Claims arising from or related to any treatment provided (or which was failed to be provided) by the Store Customer to a Visitor or patient, or arising from or related to the Store Customer's wrongful use of the Services, or arising from or related to a breach of applicable privacy laws.
- c. HealthEngine acknowledges that certain laws imply terms, conditions or warranties into contracts for the supply of goods or services that cannot be excluded. Nothing in this Agreement is intended to exclude or unlawfully restrict the application of such laws.
- d. Subject to paragraph (c) above, HealthEngine excludes to the fullest extent permitted by law all rights, remedies, guarantees, conditions and warranties of or in favour of any Store Customer or third party implied or imposed in respect of goods and services related to the Store Customer's use of the Services and in particular:
 - i. HealthEngine does not warrant that provision of the Services will be free of delays, uninterrupted, error free or free of viruses or bugs;
 - ii. HealthEngine will have no responsibility or liability for any loss or damage that a Store Customer incurs as a result of any failure to backup data stored on its own systems, including data of appointments made and Visitor records;
 - iii. HealthEngine will have no responsibility for any loss caused by the Store Customer's negligence; the Store Customer's breach of the Agreement; or their failure to follow reasonable instructions; and
 - iv. HealthEngine does not guarantee the security of any information sent via the internet and is not responsible for any loss, corruption or interception of data which occurs outside of HealthEngine's digital systems (such as those which occur while being sent over the internet).

- e. If any term, condition, warranty or guarantee is implied or imposed into this Agreement and cannot be excluded, then to the extent permitted by law the liability of HealthEngine for a breach of the implied term, condition, warranty or guarantee will be limited as determined by HealthEngine in its sole discretion to:
 - i. in the case of goods, any one or more of the replacement of the goods or the supply of equivalent goods or the payment of the cost of replacing the goods or of acquiring equivalent goods; and
 - ii. in the case of services, the supplying of the services again or the payment of the cost of having the services supplied again.
- f. To the fullest extent permitted by law, HealthEngine:
 - i. excludes any and all liability for any consequential or indirect loss, or any loss of profits, loss of opportunity, loss of goodwill or business reputation; and
 - ii. limits its aggregate liability for all Claims arising under or in connection with this Agreement or the Services in each successive 12 month period from the date of commencement of this Agreement, to the Fees paid under this Agreement during that 12 month period,whether for breach of contract, in tort (including without limitation negligence), under statute or on any other basis.

12. Privacy Policy and Network use

- a. Each party warrants that it complies with and will continue to comply with the Privacy Act and all other applicable privacy laws.
- b. The Store Customer agrees that HealthEngine has made them aware of HealthEngine's practices and policies related to the collection, use and storage of personal data, further detail of which can be found in HealthEngine's Privacy Policy set out at <https://healthengine.com.au/privacy.php>. The Store Customer consents to the use, in accordance with HealthEngine's Privacy Policy, of any personal information provided to HealthEngine.
- c. The use of the Network by the Store Customer is subject to the terms and conditions that apply to the use of and access to the Network, and the Store Customer agrees to comply with and be bound by those terms and conditions.
- d. Where a Store Customer is using the Services to collect (or initiate the collection of) personal or health information from a patient or Visitor, the Store Customer warrants that it has made all necessary disclosures and obtained express or implied consent from that person in relation to the collection and disclosure of that information.
- e. If either party becomes aware, or there are reasonable grounds to suspect, that a Data Incident has occurred, that party must:
 - i. immediately take reasonable steps to contain the Data Incident and prevent any further serious harm to affected individuals;
 - ii. immediately notify the other party in writing stating the:
 - a. nature and details of the Data Incident;

- b. specific personal information affected; and
 - c. actions taken by the relevant party at clause 12(e)(i);
- iii. identify whether the Data Incident is an Eligible Data Breach by conducting a thorough investigation of the Data Incident within 20 days of becoming aware of the Data Incident ("**Data Breach Investigation**");
- iv. provide a copy of the report of the Data Breach Investigation in clause 12(e)(ii) to the other party on completion;
- v. engage in discussions with the other party regarding:
 - a. the conduct and outcomes of the Data Breach Investigation; and
 - b. in the case of an Eligible Data Breach, which party will make the relevant notifications under the *Privacy Act 1988* (Cth); and
 - c. where it is agreed by the parties that the other party will make the relevant notifications, approve the notifications before they are made (such approval to be given promptly and not to be unreasonably withheld).

13. Force Majeure

- a. A party to this Agreement is not liable for any delay or failure to perform its obligations pursuant to the Agreement if such delay is due to Force Majeure. In this Agreement, "Force Majeure" means a circumstance beyond the reasonable control of the non-performing party.
- b. If any delay or failure of a party to perform its obligations is caused by Force Majeure, the performance of that party's obligations will be suspended for the period of the delay.
- c. Nothing in this Clause 13 applies to an obligation to pay money.

14. General

- a. If there is any inconsistency between any of the documents that comprise this Agreement, the order of priority for the purposes of construction is as follows (where the provisions of the Form prevail over the other documents to the extent of the inconsistency, and so on):
 - i. the Form;
 - ii. these T&Cs; and
 - iii. any other document referenced or comprised in the Agreement.
- b. The Store Customer warrants and represents that it has not relied on any term, undertaking, inducement or representation made by, or on behalf of, HealthEngine which has not been expressly stated in this Agreement.
- c. The parties agree that the terms and conditions of this Store Customer Agreement and matters relating to its performance are confidential and shall not be disclosed to third parties unless the parties to this Store Customer Agreement agree, except where such disclosure is required by law or is to the respective parties' advisors, who shall in turn be required to keep the disclosed information confidential.

- d. Nothing in these T&Cs is to be construed as creating a partnership between HealthEngine and the Store Customer nor to constitute either party as the agent of the other.
- e. The Store Customer agrees that HealthEngine may give notice by posting an electronic message to the Account or by sending an email to the address provided by the Store Customer as part of the sign-up or account set-up process, or as later notified by the Store Customer. The Store Customer may send notices to HealthEngine at support@HealthEngine.com.au. Notice by email is regarded as given and received at the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.
- f. Except as otherwise agreed in writing this Store Customer Agreement forms the entire agreement between the parties and supersedes any prior agreement covering the same subject matter and any prior written or oral representations.
- g. The Store Customer Agreement will be governed by and construed in accordance with the laws of the jurisdiction in which it operates (or, if that is more than one jurisdiction, the State of Western Australia) and the parties submit to the non-exclusive jurisdiction of the courts of that jurisdiction.
- h. HealthEngine may, at any time, amend this Agreement, including, but not limited to, adding or amending any fees and charges for the Services (**Variation of Terms**). HealthEngine will provide the Store Customer with at least 30 days' notice of any Variation of Terms. A Variation of Terms takes effect on the date set out in the notice given by HealthEngine. If the Store Customer does not wish to continue to receive the Services after the Variation of Terms, then it may terminate this Agreement by providing at least 30 days' notice to HealthEngine, and no cancellation fee will apply. The Store Customer's continued use of the Services or the Network after the effective date of the Variation of Terms shall be deemed to constitute acceptance by the member of such amendments. Any rights or liabilities arises prior to the effective date of any amendment to this Agreement will be unaffected by the Variation of Terms.
- i. Neither party may assign or transfer (by operation of law or otherwise) any right or obligation under the Agreement without the other party's prior written consent, which may not be unreasonably withheld or delayed. Any assignment in violation of this clause shall be null and void. However, HealthEngine may, without the Store Customer's consent, assign the Agreement or any rights granted in the Agreement, in whole or part, either
 - i. to an Affiliate;
 - ii. in connection with HealthEngine's or an Affiliates' sale of a division, product or service; or
 - iii. in connection with a reorganisation, merger, acquisition or divestiture of HealthEngine or any similar business transaction.
- j. If any provision of this Agreement for any reason is declared invalid, such declaration will not affect the validity of any remaining portion of the Agreement, which remaining portion will remain in full force and effect as if this Agreement had been executed with the invalid portion thereof eliminated.