

# HealthEngine

## Practice Customer Service Form

### Service Details

Qty	Rate	Service - Description	Billing Cycle	Price (excl. GST)
1	N/A	HospitalEngage - St John of God Subiaco Hospital - Online Booking System, Professional Profile, Patient Connect	Monthly	N/A

St John of God Health Care Inc will pay the Fees required to be paid under this Agreement. HealthEngine will provide St John of God Health Care Inc with an invoice for the Fees on a monthly basis. No invoices will be provided to the Practice Customer.

Signed as an agreement:

1. By checking the box and opting in this HealthEngine Practice Customer Service Form ("Form") HealthEngine and the Practice Customer each agrees to be bound by the HealthEngine Practice Customer Terms and Conditions (T&Cs) contained at <http://www.healthengine.com.au/terms.php>
2. Each party acknowledges and agrees that this Form in combination with the T&Cs constitutes the "Practice Customer Agreement" (or the "Agreement") between HealthEngine and the Practice Customer.
3. You should carefully review the T&Cs, as they form part of the contract between us. If you do not wish to proceed on the basis of the T&Cs in effect on the date you sign this Form, you may terminate this Agreement by notifying us accordingly within 7 days after the date on which you sign this Form.
4. St John of God Health Care Inc (**SJGHC**) will pay the Fees required to be paid under this Agreement.
5. If SJGHC fails to make payment in accordance with the Partner Agreement between SJGHC and HealthEngine dated 8th October, 2019 (**Partner Agreement**) by the due date, HealthEngine may:
  - a. suspend the Services and SJGHC and any Practice Customer's use of the Appointment Plugin or the Practice Customer Account; and/or
  - b. cancel any discount, special pricing, promotional offers, priority ranking or similar benefits offered to SJGHC by HealthEngine.
6. The Practice Customer may procure from HealthEngine HospitalEngage at the rate of \$99 (excluding GST) per month in the event of any of the following occurring:
  - a. the Partner Agreement expires, this is dated to expire on 31 December 2020;
  - b. the Partner Agreement is terminated;
  - c. the Practice Customer wishes to procure the Services independently of SJGHC; or
  - d. the Practice Customer is removed from the approved list of SJGHC Specialists, as determined by SJGHC in its sole discretion.

## HealthEngine Practice Customer Terms and Conditions

These HealthEngine Practice 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 [HealthEngine.com.au](http://HealthEngine.com.au) (healthengine.com.au) ("**Website**") 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 "**Practice Customer**" includes a person or organisation named as a "**Practice**" and/or named as a "**Practitioner**" and/or otherwise identified as a practitioner user of the Services in a Form. A Form in combination with these T&Cs constitutes the "**Practice Customer Agreement**" (or the "**Agreement**") between HealthEngine and each applicable Practice Customer. This Agreement binds each Practice Customer referred to in a Form jointly and severally and each reference to a Practice Customer is a reference to each of the Practices referred to in a Form and each Practitioner 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 Practice Customer by HealthEngine to enable the Practice 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 Practice Customer, any entity that, from time to time, is directly or indirectly controlling, controlled by, or under common control of the Practice 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 Practice Customer assets including, but not limited to, practice websites, Facebook profiles, and practice apps, through which the Practice Customer publishes their available appointments and receives bookings.

### **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.

### **Content**

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

### **Fees**

means the fees payable by a Practice 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 Practice Customer completes in signing up for the Services, together with the information provided in them, and also includes any HealthEngine form submitted by a Practice Customer requesting services from HealthEngine.

### **Network**

means the Website and HealthEngine iOS and Android mobile applications and any future versions or replacements of same.

### **New Patient**

means a patient who indicates that they are a new patient of the Practice Customer at the time of making the applicable appointment.

### **PMS**

means a Practice Customer's Practice Management Software.

### **Practice**

means a healthcare practice, centre, clinic or office within which one or more Practitioners provide healthcare services (which could be a sole practitioner or an entity or other association).

### **Practitioner**

means an individual that is a provider of healthcare services (either as a sole practitioner or with other practitioners within a practice).

### **Services**

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

### **Subscription Fees**

means fees relating to Services provided to the Practice Customer on a monthly fixed fee subscription basis, such as initial set up, professional profiles and featured listings.

### **Term**

means the period from commencement of the Practice Customer Agreement until termination of the Practice Customer Agreement in accordance with clause 9.

### **Transaction Fees**

means fees relating to Services provided to the Practice Customer calculated on the basis of the number and/or type of transaction, such as New Patients, appointment marketing, online prescriptions and the recall product.

### **User**

means a Practitioner named in the Form as a permitted user of the Services.

### **Visitor**

means a member of the public who uses the Website Network and includes a member of the public who books an appointment with the Practice Customer.

## **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 Practice Customer in accordance with the HealthEngine Privacy Policy.

### **3. Practice Customer key obligations**

The Practice Customer must:

- a. pay the Fees;
- b. use the Services solely in accordance with this Agreement for the purpose of promoting its Practice, managing appointments and referrals, and receiving prescription requests;
- c. hold throughout the Term all licences with all relevant regulatory boards and/or other bodies, councils or authorities necessary to enable the Practice Customer to legally practice and deliver the relevant healthcare services in the jurisdiction in which the Practice Customer operates;
- d. maintain throughout the Term any and all qualifications, certifications, licences and permits necessary for it to provide the relevant healthcare 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 Practice Customer's qualifications, certifications, licences and permits necessary for it to provide the relevant healthcare services to Visitors or of any breaches of any laws, rules, regulations, industry codes or serious claims for misconduct or professional negligence by the Practice Customer which may impact its ability to provide healthcare services to Visitors;
- g. when using the Services or the Appointment Plugin to manage appointments and referrals:
  - i. 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 WebsiteNetwork that does not exist in the Practice Customer's practice schedule;
  - ii. promptly contact directly each Visitor upon receiving a booking or query (whether through the WebsiteNetwork or Appointment Plugin), and as otherwise necessary for the Practice Customer to provide services to the Visitor; and
  - iii. not use the Appointment Plugin to arrange appointments with non-Users;
- h. if the Practice Customer uses the online prescription service:
  - i. respond to requests from Visitors for prescriptions in accordance with the timeframes configured by the Practice Customer (for clarification, it is solely a matter for the Practice Customer to determine whether to provide such a prescription, require an appointment before determining whether to provide such a prescription, or decline to provide a prescription); and
  - ii. ensure that it confirms the identity of any Visitor before issuing the Visitor with any prescription. HealthEngine will pass on the identity information provided by a Visitor, but the Practice Customer is solely responsible for verifying that information (together with any other relevant information) and confirming the identity of the Visitor to whom a prescription is provided;
- i. encourage patient and client use of the WebsiteNetwork and the Services;

- j. ensure that only the Users are permitted to access the Services. Other Practitioners, even if they work in the same Practice as a Practice Customer, are not entitled to access the Services until they are named as a User in a Form;
- k. notify HealthEngine of any complaints relating to the Services received by the Practice Customer;
- l. maintain all insurance policies which a reasonably prudent healthcare provider in the Practice 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 Practice Customer;
- m. 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 healthcare services (except, in the case of information regarding a Visitor, with the consent of that Visitor);
- n. maintain as confidential and keep secure any passwords or other security credentials relating to the Services;
- o. comply with all applicable privacy and information laws and regulations so far as they relate to the Practice Customer's collection of Visitors' and other patients' personal and health information and will indemnify HealthEngine against Claims that result from the Practice Customer's non-compliance with this provision;
- p. notify HealthEngine immediately of any unauthorised access of, or data breach relating to, the Services;
- q. comply with all applicable laws in relation to its use of the Services;
- 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 Practice Customer or have otherwise been approved by HealthEngine in writing; and
- u. not treat patients 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**

# HealthEngine

## Practice Customer Service Form

- a. HealthEngine may make such changes to the Services, the WebsiteNetwork, the Appointment Plugin, its internal processes and the interface of the Services with the Practice 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 Practice Customer, it will provide the Practice Customer with at least 30 days prior notice of the change, and if the Practice Customer does not wish to continue to use the Services, then it may terminate this Agreement in accordance with clause 9.
- b. HealthEngine may engage subcontractors or individuals on a consultancy basis to assist in the provision of the Services.
- c. The Services do not include any support required to integrate the Services with the Practice Customer's PMS, other than as agreed in the Service Details of a Form.
- d. The Practice Customer is solely responsible for its provision of healthcare 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 Practice Customer and the Visitor and the Practice Customer must not purport to bind HealthEngine in any way.
- e. Where the Services include Practice website Development and Build:
  - i. The Practice 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 Practice agrees to pay any applicable fees and costs.
  - ii. The Practice Customer agrees to pay any ongoing HealthEngine hosting fees.
  - iii. If wanting to transfer the website to a host other than HealthEngine, the Practice 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 Practice Customer will be informed before any such fees are incurred.
- f. A fair use policy applies to HealthEngine's rRecalls, rReminders, Reach and other Services as notified by HealthEngine from time to time, in its absolute discretion.
- g. From time to time, HealthEngine may offer services identified as beta, pilot, developer preview, non-production, evaluation or by a description of similar import ("**Beta Services**"). All Beta Services are subject to the terms of this Agreement unless otherwise advised by HealthEngine. The Practice Customer may accept or decline Beta Services. If accepted by the Practice Customer, Beta Services:
  - i. are provided only for evaluation purposes;
  - ii. may not be relied on by the Practice 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. Payments

- a. Payment processing services for Practice Customers for the prescriptions service 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 Practice 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 Practice Customer agrees to provide HealthEngine with accurate and complete information about it and its business, and the Practice Customer authorises HealthEngine to share with Stripe that information and transaction information related to the Practice 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 Practice 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 Practice Customer in connection with such agreement.
- d. The Practice Customer may only use the integrated payment processing service for the online prescription service.
- e. The Practice Customer is solely responsible for, and HealthEngine disclaims all liability for, the provision of any prescription sold to the Practice Customer's patients through the prescription service, and any obligations the Practice Customer may owe to its patients.
- f. The Practice Customer is financially liable for Disputes, Chargebacks, Refunds, and any fines that arise from the Practice Customer's use of the payment processing services. The Practice Customer agrees that HealthEngine may recover any amounts it incurs in respect of Disputes, Chargebacks, Refunds and any associated fines and for which the Practice Customer is liable, from the Practice Customer. The Practice Customer will pay HealthEngine the full amount of these amounts upon demand.
- g. 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.

## 6. 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 WebsiteNetwork (collectively the "IPR") remain vested in HealthEngine, and the Practice Customer has no rights in relation to that IPR.
- b. The Practice 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 Practice 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 Practice 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 Practice Customer grants HealthEngine a licence to use, reproduce, publish, modify, translate, adapt and otherwise exploit the Content for the purpose of providing the Services. Practice Customers agree that HealthEngine may place any Content on any third party websites



or infrastructure or supply to third parties any Content in order to offer the Services through a different website or through a partner organisation.

### 7. 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 13(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 Practice 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 commencement of the Agreement. HealthEngine will provide the Practice Customer with an invoice for Transaction Fees on a monthly basis.
- d. For some Transaction Fees, such as those for the online prescription service, HealthEngine will collect the fee configured by the Practice Customer and remit such fee, less the amount of the associated Transaction Fee, to the Practice Customer. If a Visitor fails to pay the fee configured by the Practice Customer, HealthEngine will not be responsible or liable for recovering that fee on behalf of the Practice 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 Practice 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 Practice Customer has provided the required direct debit authority signed by the Practice Customer, by direct debit.
- h. If requested by HealthEngine, the Practice 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 Practice Customer authorises deduction from the card with any Fees when due and payable. If the Practice Customer is paying by direct debit and its financial institution fails to honour payment, the Practice 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 Practice Customer make any deduction or withhold payment for any reason whatsoever.
- j. If any payment is not made by the due date HealthEngine may:
  - i. suspend the Services and the Practice Customer's use of the Appointment Plugin or its Account; and/or
  - 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 Practice Customer any reasonable costs which HealthEngine incurs in recovering any outstanding amounts from the Practice 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 Practice Customer by HealthEngine.

HealthEngine will not suspend the Services while the Practice Customer is disputing the applicable Fees reasonably and in good faith and are 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.

- k. All Fees stated are exclusive of GST and other applicable taxes, which must be paid by the Practice Customer.
- l. Certain optional Services such as SMS notification and reminder services may require the Practice 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.
- m. The Practice Customer must submit any credit requests (for example those relating to a patient not attending an appointment or an Existing Patient booking as a new patient) within 3 days of the date of invoice, failing which HealthEngine will be under no obligation to provide a credit to the Practice Customer. For the purposes of this provision, an Existing Patient is a patient who has been treated by the Practice Customer no more than 3 years prior to the applicable appointment.
- n. For the avoidance of doubt, in respect of Fees relating to Patient Match, Fees are payable by the Practice Customer for Visitors New Patients who book an appointment during the Term (including any notice period), and but whose subsequently attend the appointment is scheduled subsequent to the date of post termination of the Agreement. HealthEngine will provide the Practice Customer with an invoice with respect to these fees following the date of the Visitor's New Patient's attendance at the relevant appointment.
- o. In respect of fees and costs relating to a Search Marketing campaign, the Practice 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.

## 8. Third Party Websites and Advertising

The WebsiteNetwork 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 Practice Customer places on Third Party Content. HealthEngine may engage third parties to provide Third Party Content at its sole discretion.

## 9. Term, Renewal & Termination

- a. This Agreement commences on the date that the Form is signed on behalf of both parties.
- b. If a trial period is applicable, then either party may terminate this Agreement immediately upon notice during the trial period.
- c. If there is no trial period, or a trial period has concluded without either party terminating this Agreement, then either party may terminate this Agreement by providing at least 30 days' notice to the other party, 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.

For the avoidance of doubt, Fees will be payable by the Practice Customer up to the date of termination, which includes any notice period.

- d. Notices of termination under paragraphs (b) and (c) above can only be accepted in writing from the practice owner or person whose credit card and authority was used to authorise payment.
- e. If HealthEngine terminates the Practice Customer Agreement pursuant to clause 9(b), 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 Practice Customer terminate this Agreement in the event that a Practice 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 Practice Customer with any refund or credit of Fees paid.

## 9. Warranties, Liability & Indemnities

- a. The Practice Customer acknowledges and agrees that HealthEngine is not a healthcare provider and is not liable in any respect for the care of a Visitor. As between the Practice Customer and HealthEngine, the Practice Customer is solely responsible for the care of its Visitors.
- b. The Practice 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 Practice Customer to a Visitor or patient, or arising from or related to the Practice 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 Practice Customer or third party implied or imposed in respect of goods and services related to the Practice 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 Practice 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 Practice Customer's negligence; the Practice 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.

## 10. Privacy Policy and WebsiteNetwork use

- a. The Practice 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>. The Practice Customer consents to the use, in accordance with HealthEngine's Privacy Policy, of any personal information provided to HealthEngine.
- b. The use of the WebsiteNetwork by the Practice Customer is subject to the terms and conditions that apply to the use of and access to the WebsiteNetwork, and the Practice Customer agrees to comply with and be bound by those terms and conditions.
- c. Where a Practice Customer is using the Services to collect (or initiate the collection of) personal or health information from a patient or Visitor, the Practice Customer warrants that it has obtained express or implied consent from that person to collect the information.

## 12. 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 12 applies to an obligation to pay money.

### 13. 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 Practice 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 Practice Customer Agreement and matters relating to its performance are confidential and shall not be disclosed to third parties unless the parties to this Practice 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 Practitioner nor to constitute either party as the agent of the other.
- e. Notice may be given by email or posting an electronic message to the Account. The Practice 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 Practice Customer as part of the sign-up or account set-up process, or as later notified by the Practice Customer. The Practice Customer may send notices to HealthEngine at [support@HealthEngine.com.au](mailto: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 Practice 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 Practice 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 the Practice Customer Agreement, including, but not limited to, adding or amending any fees and charges for the Services (**Variation of Terms**). HealthEngine will provide the Practice 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 Practice Customer does not wish to continue to receive the Services after the Variation of Terms, then it may terminate this Agreement in accordance with clause 9(b). The Practice Customer's continued use of the Services or the WebsiteNetwork 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 Practice Customer's consent, assign the Agreement or any rights granted in the Agreement, in whole or part, either
  - i. to an Affiliate;

# HealthEngine

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- 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