

These Terms and Conditions are effective from 1st September 2022.

The contractual agreement (“Agreement”) between us is governed by Your registration form (“Registration Form”) which will be provided to you separately from these terms and conditions (“Terms”), these Terms, and the privacy policy of Henry Schein One Australia ABN 91 413 599 (“HS1”), are available at <https://henryscheinone.com.au/privacy-policy/>.

This Agreement is between HS1 and you or the entity you represent (“You” and “Your”) and governs the manner in which HS1 will license (“License”) You to utilise the following:

- (a) the Dentrix Ascend service and websites at [www.dentrixascend.com](http://www.dentrixascend.com), <https://dentrixascend.com.au/>

and other related websites (“Websites”) including, without limitation, all content such as text, information, images, applications, templates, software, features, updates, and other information, patient communications services, and other services and materials (collectively, “Ascend”);

- (b) support services for Ascend (“Support”), together, the “Service”.

By accessing or using all or any portion of the Service, you acknowledge and warrant that:

- (a) You have read these Terms, and the Registration Form in their entirety;
- (b) You understand and accept the terms and conditions contained therein.
- (c) Your unconditional acceptance of this Agreement, as amended from time to time;
- (d) You are authorised to enter into this Agreement.

## 1. Service and Support

The Service is made available to you as a subscription based service. You are limited to the number of licensed users within your organisation (“Users”) that may utilise the Services. The number of Users that may utilise the Services is specified on Your Registration Form. The provision of Support is included as part of the Service.

## 2. Payment

2.1 In consideration of the grant of the License to you, you are required to pay us those payments (“Fees”) specified on the Registration Form in the manner specified in the Registration Form, or as otherwise notified to you by HS1 from time to time. You must pay such Fees to HS1 as and when they become due. All prices are in Australian dollars and are quoted exclusive of taxes, including without limitation Goods and Services Tax (“GST”). GST will be added to all the Fees in accordance with all applicable tax laws in the jurisdiction in which the Service is provided. You shall be responsible for the payment of any and all taxes related to this Agreement.

2.2 HS1 reserves the right to adjust the functionality of the Service, the number of Your Users that may use the Service, or modify the Fees at any time upon not less than 30 days’ notice in writing, and such changes or modifications may be provided by an email message to You, or in the form of an announcement on the Service. Any such Fee increase will not exceed 5% of the Fees for the Service in the immediately preceding term of this Agreement, unless the pricing in the prior term was

designated in the relevant Registration Form as a promotional or one-time offer, in which case the increase in Your Fee will not exceed 5% of our standard market rate for the provision of the same Services to You.

2.3 We will agree with you the manner by which you will pay us the Fees payable under this Agreement from the outset of this Agreement. The manner of payment will be delineated in the Registration Form. We may require you to pay Your Fees to HS1 in one of the following ways (i) monthly payment following receipt of an invoice issued by HS1 (“Invoice Payment”), or (ii) a monthly direct debit (“DD Payment”). If we elect the Invoice Payment method, we will issue you a tax invoice for Your Fees, and You must pay us those Fees not later than 30 days from the invoice Date. If we elect the DD Payment method, you hereby agree to provide HS1 with a direct debit form, and authorise HS1 to automatically collect all Fees hereunder as they become due via that direct debit authorisation. All monthly Fees by DD payment will be collected on the 20th of the month in which such fees were incurred. Set-up Fees and all additional charges shall be due on 14-day invoice terms.

2.4 If payment of any Fee is denied for any reason, or if You otherwise fail to make any payments owing to HS1, HS1 may, at HS1’s sole discretion, suspend or terminate the License and Your access to the Service, and/or terminate this Agreement at HS1’s absolute discretion. HS1 shall be entitled to charge you interest on all unpaid Fees at a rate of 12% per annum, calculated on a daily basis, from the date on which the payment of the Fees was due under this Agreement to the date upon which the Fee is ultimately paid. In the event that HS1 resolves to terminate your License for any reason under this Agreement, and subsequently agrees to grant you a new License, HS1 reserves the right to impose a reconnection fee, the quantum of such reconnection fee to be determined by HS1 at its sole discretion.

2.5 It is Your responsibility to keep Your contact and payment information under this Agreement current. If HS1 is unable to collect Fees as they become due for any reason, including due to being unable to locate you or contact you, You remain responsible for any uncollected or unpaid Fees due under this Agreement, and You will be responsible for all HS1 costs incurred in recovering such amounts from You.

## 3. Right of Use

You and Your Users are hereby granted a non-exclusive, non-transferable, revocable license to use the Service (“License”), solely for Your own internal business purposes, subject to the terms of this Agreement. All rights not expressly granted to You in writing under this Agreement are reserved by HS1. Your License is at all times conditional on compliance with the terms of this Agreement, and Your prompt and timely payment of all Fees payable under this Agreement.

## 4. Access

4.1 Access to the Service is available via a unique URL given at the time of registration. The Service supports both full and mobile webpage formats. HS1 will provide You and Your User(s) with a username and password for accessing the Service. Usernames and passwords are

personal, and are to be considered part of Confidential Information as that term is defined in clause 20.1.

4.2 As part of the implementation process, You will provide an email address of an individual who will manage Your subscription to the Service (the "Administrator"). The Administrator will have the authority to designate additional Users and/or Administrators. Any Administrator shall be deemed to have the authority to manage any Users. The Administrator shall be solely responsible for deactivating a User's log-in credentials if the Administrator wishes to terminate access to the Service for any User.

4.3 You shall be responsible for implementing policies and procedures to prevent unauthorised use of the Service, and You shall promptly notify HS1 upon suspicion that a username and password has been lost, stolen, compromised, or misused.

4.4 Any access to and use of the Service via mechanical, programmatic, robotic, scripted or any other automated means not provided as part of the Service is strictly prohibited.

## 5. Restrictions

5.1 The Service must not be used in any way that is illegal, or promotes illegal activity, or in a manner that might be libellous or defamatory, or otherwise malicious or harmful to any person or entity, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age or is otherwise indecent.

5.2 You shall not:

- (a) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service in any way;
- (b) modify or make derivative works based upon the Service;
- (c) create Internet "links" to the Service or "frame" or "mirror" any content on any other server or wireless or Internet-based device; or
- (d) reverse engineer or access the Service (other than as permitted by the *Copyright Act 1968* (Cth)) in order to:
  - (i) build a competitive product or service;
  - (ii) build a product using similar ideas, features, functions or graphics of the Service, or
  - (iii) copy any ideas, features, functions or graphics of the Service.

5.3 You may use the Service only for Your internal business purposes and shall not:

- (a) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs;
- (b) interfere with or disrupt the integrity, bandwidth or performance of the Service or the data contained therein;
- (c) attempt to gain unauthorized access to the Service or its related systems or networks;
- (d) use the Service in violation of the rights of any third party or applicable law, rule or regulation;
- (e) send spam, "junk mail" or otherwise unauthorized duplicative or unsolicited messages or other forms of solicitation in violation of applicable laws;
- (f) send or store obscene, vulgar, libellous, defamatory, tortuous, unlawful, misleading, inaccurate or false,

including material harmful to minors or violating of third party privacy rights;

- (g) promote illegal activities;
- (h) send or store material which infringes any patent, trademark, trade secret, copyright, or other proprietary rights or rights of publicity or privacy of any person or that You do not have a right to make available under any law or under contractual or fiduciary relationship;
- (i) send or store material that is malicious, threatening, abusive, harassing, hateful or harmful to any person or entity, discriminatory based on race, sex, religion, nationality, disability, sexual orientation, age or other basis established by law or is otherwise indecent;
- (j) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs;
- (k) interfere with or disrupt the Service or the data contained therein;
- (l) attempt to gain unauthorized access to the Service or its related systems or networks; or
- (m) use the Service, including the content, intellectual property, technology, trademarks or service marks for any commercial purposes (i.e. soliciting customers, resale, etc.) without HS1's prior written consent.

5.4 You must not allow the Service to be used by more Users than designated in the Registration Form (as amended from time to time).

5.5 HS1 will not send marketing material from third parties to You. HS1 may send product news relevant to Your use of the Service as HS1 sees fit from time to time. All data obtained from You shall be used only in accordance with the HS1 Privacy Policy.

## 6. Your Responsibilities

6.1 You are responsible for all activity occurring under Your account, and Your Users' account(s), and must abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Your use of the Service, including without limitation the *Privacy Act 1988* (Cth) ("Privacy Act"), Payment Card Industry Data Security Standards ("PCI DSS"), international communications and the transmission of technical data or personal information. In addition, You are responsible for abiding by any and all internal policies, procedures and regulations, which are required, by Your employer and/or the applicable administrators of Your account.

6.2 You must:

- (a) notify HS1 immediately of any unauthorized use of any password or account or any other known or suspected breach of security;
- (b) report to HS1 immediately and use reasonable efforts to stop immediately any copying or distribution of content that is known or suspected by You or others to violate this Agreement or the intellectual property rights of third parties; and
- (c) not impersonate another user or provide false identity information to gain access to or use the Service. By accessing the Service, You represent and warrant that You have not falsely identified Yourself nor provided any false information to gain access to the Service and that Your billing information is correct.

## 7. Data

7.1 In the course of HS1's provision, and Your receipt and use, of the Services, HS1 will have access to data about Yours and Your clients and patients and other information and content through the Services (collectively, "Data"). In addition to HS1's receipt, use and disclosure of the Data for the purposes of providing the Services to You, You also grants HS1 the right to receive, use and disclose the Data for additional business purposes, provided that when disclosing the Data for purposes unrelated to the Services, the Data shall be de-identified so that it is not identifiable to any particular client or patient of Yours, but may be identifiable to Your practice. You represents and warrants that You have the right, permission and authority to grant the rights to HS1 granted hereunder, including without limitation any notices required to, or grants of rights required from, clients, patients and third party vendors for HS1 to perform the Services (including, to the extent applicable, to send communications to such clients and patients and to cause behaviourally targeted advertisements to be sent to them or displayed to them online) and to exercise HS1's rights with respect to Data hereunder, pursuant to all applicable laws, rules, regulations, Your own privacy policies and pursuant to any principles or guidelines promulgated by the Australian Federal Government or applicable State Governments. You shall not permit or enable a third party vendor to access or use the Services. To the extent HS1 contacts Your clients or patients on Your behalf as part of the Services, You shall:

(a) accurately code its database within the Services, accessible to HS1, to identify clients and patients who have elected not to receive such communications;

(b) honour opt-out requests received by HS1 from clients and patients, provided that such opt-out requests are reported by HS1 to You; and

(c) provide accurate information for HS1 to include in the communications that HS1 sends to Your clients and patients. Any limitation or disclaimer of Your liability set forth in this Agreement or in any other agreement between the parties shall not apply to Your breach of representation, warranty or covenant set forth in this Section. HS1 has unfettered rights to use and disclose information about its sales of products and services to its customers, including You, and nothing herein shall be interpreted to fetter that right.

If HS1 on its own or through any third party has notice that Data stored by You is in violation of any law or infringes third party rights, SOE shall have the right to immediately suspend Your access to the Service and the Data. You shall be notified by HS1 of any such action under this Section when reasonable and possible

7.2 HS1 does not own or control any data, information or material that You, Your Users or any parties related to you submit to the Service in the course of using the Service ("Uploaded Data"). You have the sole responsibility for, and agree to assume all liability related to, the collection, accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership of or right to use any and all Uploaded Data. HS1 shall have no responsibility for the Uploaded Data, including, without limitation, the

deletion, correction, destruction, damage, loss or failure to store any Uploaded Data.

7.3 If HS1 on its own or through any third party receives notice that Uploaded Data stored by You and/or Users is in violation of any law or infringes third party rights, HS1 has the right to, without liability to You or Your Users and without prior notice, immediately suspend Your access to the Service and the Uploaded Data. HS1 will notify You and/or Your User(s) of any such action under this clause, when reasonable and practicable in the circumstances.

7.4 You, or the administrator(s) designated by You ("Administrator"), shall have control over all applicable Uploaded Data submitted to the Service, and all Uploaded Data will be deemed to be owned by You. You or the Administrator may, in writing, request that HS1 remove, modify, edit or otherwise alter any Uploaded Data.

7.5 With respect to Uploaded Data that contains health information (as that meaning is defined in the Privacy Act), the parties must comply with their respective obligations under the Privacy Act.

7.6 HS1 acknowledges and agrees that:

- (a) as part of the Service, HS1 or its related bodies or their subcontractors ('Group Members'):
- (i) will hold or store Uploaded Data on Your behalf; and
  - (ii) may hold or store Content on Your behalf;
- (b) the use of Uploaded Data or Content in conjunction with the Service:
- (i) does not constitute disclosure of the Uploaded Data or Content for the purposes of the Privacy Act; and
  - (ii) to the extent that any such use constitutes disclosure for the purposes of the Privacy Act, HS1 will, and will use its reasonable commercial endeavours to ensure that each Group Member that holds or stores Uploaded Data or Content on Your behalf will:
    - (aa) comply with the Australian Privacy Principles established under the Privacy Act with respect to its use of any Uploaded Data or Content; and
    - (bb) take such steps as are reasonable in the circumstances to protect Uploaded Data and Content from misuse, interference and loss, and unauthorised access, modification or disclosure;
- (c) HS1 will promptly notify You about:
- (i) any legally binding request for disclosure of the Uploaded Data or Content by a law enforcement authority in Australia unless otherwise prohibited;
  - (ii) its accidental or unauthorised access or disclosure of Uploaded Data or Content; and
  - (iii) any request received directly from Uploaded Data or Content subjects without responding to that request, unless the Group Member has been otherwise authorised to do so.

**8. Support**

8.1 HS1 will provide support services to You in accordance with the provisions of Schedule B.

**9. Service Level**

9.1 Subject to the terms hereof, HS1 shall make the Service available to You for access and to the service levels specified in Schedule A.

9.2 If You experience loss of Uploaded Data, HS1 may use reasonable efforts to attempt to restore such data from the most recent working backup. Subject only to any Non-excludable Right, HS1 gives no warranties with respect to recovering or restoring any Uploaded Data.

**10. Intellectual Property Rights**

10.1 HS1 (and its successor or assigns, or its licensors, where applicable) own all right, title and interest, including all related intellectual property rights, in and to the Service, including all related technology and content (other than Uploaded Data), and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by You or any other party relating thereto. This Agreement is not a sale and does not convey to You any rights of ownership in or related to the Service. The Dentrix Ascend name, the Dentrix Ascend logo, and the product names associated with the Service are trademarks of HS1, or its affiliated companies, and no right or license is granted to use them.

10.2 All copyrights and/or other intellectual property rights, title and interests in a) software on which the Service is based and made available to You and/or User, b) source codes or other software components of the Service, c) content of the Websites and the Service including text and graphics, excluding Uploaded Data, d) trademarks, names, etc. are the sole property of HS1 and its affiliated companies, and/or third parties having granted HS1 license for its use, and You and Your User(s) shall gain no rights therein other than the limited right of use for Your internal business purposes as stipulated in this Agreement.

10.3 You and Your User(s) shall not reproduce or redistribute any software, content or trademarks, intellectual property in any form, except as allowed in this Agreement.

10.4 You and Your User(s) retain all intellectual property rights to Uploaded Data stored by You and Your User(s) on the Service.

**11. Indemnification**

11.1 You agree to defend, indemnify and hold HS1, Henry Schein, Inc., their licensors, subsidiaries, affiliates, stockholders, officers, directors, employees, solicitors and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including solicitors and barristers fees and costs) arising out of or in connection with:

(a) a claim alleging that use of the Service, whether by You or Users or Your end users, or any Uploaded Data, whether provided by You or Users, infringes the rights of, or has caused harm to, a third party or is otherwise in breach of any applicable law (including without limitation the Privacy Act);

(b) a claim, which if true, would constitute a violation by You of Your obligations, representations and warranties made herein; (iii) a claim arising from the breach by You

or Users of this Agreement (iv) Your, a User's, or Your end users' use of the Services; or (v) any act or omission of, or reliance by, Your end users on any material provided by You or services provided by HS1 at your direction.

11.2 Any indemnity in this Agreement is a continuing obligation, independent of other obligations under this Agreement and continues after this Agreement ends. It is not necessary for HS1 to incur expense or make payment before enforcing a right of indemnity under this Agreement

**12. Disclaimer of Warranties**

Other than in relation to a Non-excludable Right set out below, HS1 and its licensors make no representation, warranty, or guarantee as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of the Services or any content, and HS1 and its licensors do not represent or warrant that:

(a) the use of the Services will be secure, timely, uninterrupted or error-free or operate in combination with any other hardware, software, system or data;

(b) the Services will meet Your requirements or expectations;

(c) any stored data will be accurate or reliable;

(d) the quality or timeliness of any products, services, information, or other material purchased or obtained by You through the Services will meet Your requirements or expectations;

(e) errors or defects will be corrected; or

(f) the Services or the server(s) that make the Services available are free of viruses or other harmful components. Subject only to any Non-Excludable right, the Service and all content is provided to you strictly on an "as is" basis. Other than in relation to a Non-excludable Right set out below all conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third party rights, are hereby disclaimed to the maximum extent permitted by applicable law by HS1 and its licensors. Further, no advice or information given by an HS1 representative shall create a warranty or serve as an amendment to this agreement. HS1 is not responsible for any delays, delivery failures, or other damage resulting from limitations, delays, and other problems inherent in the use of the internet and electronic communications.

**13. Limitation of Liability**

13.1 A "Non-excludable Right" means an implied condition, warranty or guarantee, the exclusion of which from a contract would contravene any statute (including without limitation the Australian Consumer Law in Schedule 2 to the *Competition and Consumer Act 2010* (Cth)) or cause part or all of this Agreement to be void. Our total liability to You for a breach of any Non-excludable Right (other than a breach of a Non-excludable Right that by law cannot be limited) is limited, at HS1's option to any one of resupplying, replacing or repairing, or paying the cost of resupplying, replacing or repairing goods in respect of which the breach occurred, or supplying again or paying the cost of

supplying again, services in respect of which the breach occurred.

13.2 In no event shall HS1 be liable for any indirect, special, consequential or incidental loss, exemplary or other damages related to this agreement or whether direct or indirect, including but not limited to:

- (a) loss, alteration, destruction, damage, corruption or recovery of data;
- (b) loss of income;
- (c) loss of opportunity;
- (d) lost of profits; or
- (e) costs of recovery or any other damages,

however caused and based on any theory of liability, and including, but not limited to, breach of contract, tort (including negligence), statute, or otherwise, and whether or not HS1 has been advised of the possibility of such damages. To the extent permitted by applicable law, and except for liability in relation to breach of any Non-excludable Right, HS1's liability hereunder is limited to the total amount that you have paid to HS1 for the Service pursuant to this Agreement within the 12 month period immediately prior to the date that Your claim arose.

13.3 Where Non-excludable Rights mandatorily apply to this Agreement under Australian Consumer Law, the Services provided shall only be provided subject to those guarantees and/or warranties that cannot be excluded by Australian Consumer Law. You are entitled to a replacement or refund for a major failure, and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods, if any goods are provided to you, repaired or replaced if those goods fail to be of acceptable quality, and the failure does not amount to a major failure.

#### 14. Force Majeure

HS1 will not be responsible for any delay, interruption or other failure to perform under this Agreement due to acts beyond its reasonable control. Force majeure events include, but are not limited to: natural disasters (e.g., lightning, earthquakes, hurricanes, pest damage, floods); power surges or failures, wars, acts of military authorities, riots, terrorist activities, and civil commotions; activities of local exchange carriers, inability to secure raw materials, transportation facilities, fuel or energy shortages, unauthorised use of this Service, telephone carriers, wireless carriers, Internet service providers, and other third parties; explosions and fires; embargoes, strikes, and labour disputes; governmental decrees; and any other cause beyond the reasonable control of HS1 whether similar to the foregoing or not.

#### 15. Personal Information.

15.1 You are solely responsible for the collection, use, disclosure, control and management of, and access to, any personal information (as that term is defined in the Privacy Act) included in the Uploaded Data or Content (defined below). HS1 will only deal with such personal information for the limited purpose of providing the Services to You and Your Users, and will require any subcontractors to deal with such personal information for the same limited purpose.

15.2 HS1 shall abide by the terms of its Privacy Policy, the Privacy Act, and the PCI DSS.

#### 16. Responsibility for Content, Transmitting Messages, and Accounts

16.1 You are solely responsible for the information or content submitted, posted, transmitted or made available through Your use of the Services ("Content"). You may use the Services to transmit Content or direct HS1 to make contacts via any channel (in either case "Messages") to, or with, recipients (the "Recipients"). You are responsible for maintaining the confidentiality of Your accounts and owner numbers and necessary codes, passwords and personal identification numbers used in conjunction with the Services and for all uses of the Services in association with Your accounts whether or not authorized by You including unintended usage due to holidays, daylight savings, computer clock errors or similar circumstances. You acknowledge and agree that HS1 does not control nor monitor Your Content nor guarantee the accuracy, integrity, security or quality of such Content. Use of recording or taping any use of the Services by You may subject You to laws or regulations and You are solely responsible for and obligated to provide any required notification to those being recorded or taped.

16.2 You represent and warrant that:

- (a) You have the legal right to use all Content and send all Messages to the Recipients (including obtaining any required consents from the Recipients) and the content, timing and purpose of all Messages, campaigns and programs are in compliance with all applicable laws, rules and regulations;
- (b) You are the transmitter of all Content and Messages and HS1 is merely acting at Your direction as a technology conduit for the transmission of the Content and the Messages;
- (c) HS1's use of the Content shall not violate the rights of any third party or any law, rule or regulation; and
- (d) You will not transmit or allow to be transmitted any Content or Messages that:
  - (i) You do not have a right to make available under any law or under contractual or fiduciary relationship;
  - (ii) are false, inaccurate, misleading, out of date, unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, offensive, obscene, libellous, invasive of another's privacy, hateful, racially, ethnically, or otherwise objectionable, or harmful to minors in any way;
  - (iii) infringe any patent, trademark, trade secret, copyright, or other proprietary rights or rights of publicity or privacy of any party;
  - (iv) utilise any unsolicited or unauthorized advertising, promotional materials, "junk mail", "spam", or any other forms of solicitation;
  - (v) interfere with or disrupt the Services or servers or network operator networks;
  - (vi) promote, instruct, describe or incite violence, criminal conduct or unlawful sexual activity;
  - (vii) provide advice for which You do not have the appropriate authorisations including without limitation financial advice;

(e) You have obtained prior consent to contact each phone number or electronic address delivered by You to HS1 in connection with the provision of any Services delivering a pre-recorded message or electronic communication, and that the intended contact recipient is the current subscriber to the phone number or electronic address ("Notification Services");

(f) You have incorporated a simple and prominent opt-out mechanism as part of any program relating to any Notification Services;

(g) any direct marketing (as defined in the Privacy Act) or commercial electronic message (as defined in the *Spam Act 2003* (Cth) ("Spam Act")) that You cause to be sent via the Services complies with the requirements for direct marketing and/or commercial electronic messages, as set out in the Privacy Act and/or the Spam Act; and (d) any contact with any phone number complies with the Do Not Call Register Act 2006.

16.3 You acknowledge and agree that HS1 may audit your compliance with the obligations set out in this Section 16. Where HS1 reasonably believes that You may not have complied with all laws, rules and regulations applicable to the performance of Notification Services, HS1 may, at its option and without notice to You:

- (a) at Your cost scrub all personal information or electronic addresses against any appropriate data base deemed necessary to remove all of that information;
- (b) at Your cost insert simple and prominent opt-out mechanism and pass the resulting data to client;
- (c) not provide any Notification Services with no further liability to You; or
- (d) immediately terminate this Agreement with no further no liability to You in accordance with Section 17.3(b).

16.4 You must comply with HS1's reasonable instructions from time to time in relation to any Content, Message or Notification Services.

16.5 You shall indemnify, defend and hold HS1, its affiliates and their officers, directors, employees and agents harmless from and against any and all claims of loss, damages, liability, costs, and expenses (including reasonable attorneys' fees and expenses) arising out of or resulting from HS1 following Your instructions in sending the Messages or Your breach of any applicable law, and any representation and warranty set forth in this Section 16.

#### 17. Term and Termination

17.1 This Agreement shall commence on the date the Services are made available to You and will remain in effect for 12 months (the "Initial Term"). Upon the expiration of the Initial Term, this Agreement will automatically renew for successive monthly periods unless terminated by You in that instance by You giving HS1 not less than 60 days' notice in writing of Your intention to terminate this Agreement.

17.2 The Service is pre-paid and all Fees associated with the Service are non-refundable, subject only to any Non-excludable Rights. HS1 does not provide refunds or credits for any partial months of use of the Service. .

17.3 HS1 may terminate this Agreement and terminate the License immediately if You:

(a) breach any term of this Agreement that is capable of remedy and fail to remedy such breach within 30 days of being notified of the breach;

(b) breach any term of this Agreement that is not capable of remedy, including without limitation a breach of Sections 16.1 to 16.3;

(c) suspend payment of Your debts;

(d) become an externally administered body corporate under the *Corporations Act 2001* ("**Corporations Act**");

(e) have a controller (as defined in section 9 of the Corporations Act) appointed in respect of any property You own;

(f) fail to comply with a statutory demand within the meaning of section 459F of the Corporations Act; or

(g) You enter liquidation, become insolvent, or if You are a natural person, commit an act of bankruptcy.

17.4 If HS1 is in material breach of this Agreement, You are entitled to terminate this Agreement for cause after having given HS1 a written notice of no less than thirty (30) days, if HS1 has not remedied the breach within that notice period. You may also have termination rights under the Australia Consumer Law in Schedule 2 to the *Competition and Consumer Act 2010* if we breach a Non-excludable Right and the breach amounts to a major failure.

17.5 You may terminate this Agreement upon notice if You do not agree to a modification or variation of this Agreement, where such modification or variation requires Your express approval of, or consent to.

17.6 The rights and obligations in this paragraph and Sections 2, 5-7, 9-13, 16, 20 and 21 shall survive termination of this Agreement.

17.7 Upon termination of this Agreement for any reason, You must immediately cease using the Service. Termination does not affect Your obligation to pay any applicable Fees owing by You to HS1 under this Agreement.

17.8 HS1 acknowledges and agrees that You have the right to recover or delete any Uploaded data held within the Ascend system at your sole cost and expense within a period of 90 days of termination of this Agreement. You agree and acknowledge that HS1 has no obligation to

retain the Uploaded Data and may delete such Uploaded Data within 90 days of termination of this Agreement in accordance with its terms without prior notice, or at any other time without notice if You have materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within thirty (30) days' notice of such breach. If You and/or your Users request HS1 to assist in restoring Uploaded Data that has been deleted in accordance with this paragraph, HS1 will determine whether such recovery is possible and You must pay to HS1 any fees applicable to such work at HS1's standard rates.

#### 18. Notice

HS1 may give notice by means of a general notice on the Service, electronic mail to Your e-mail address on record, or by written communication sent by registered mail to Your address on record. Such notice shall be deemed to have been given upon the expiration of 48

hours after mailing (if sent by registered mail) or 12 hours after sending (if sent by email).

**19. Modification to Terms**

HS1 reserves the right to modify or vary this Agreement, including these Terms, its privacy policy or other policies relating to the Service at any time, effective upon posting of an updated version of this Agreement on the Websites. You are responsible for regularly reviewing this Agreement and any relevant policies. Continued use of the Service after any such changes shall constitute Your consent or variation to such changes.

**20. Confidentiality**

20.1 Unless expressly authorised in writing by the other Party, neither Party shall disclose to any third party any Confidential Information of the other Party, nor use such Confidential Information in any manner other than to perform its obligations under this Agreement. For the purposes of this Agreement, the term “Confidential Information” means any non-public information and/or materials provided by a Party under this Agreement to the other Party and reasonably understood to be confidential.

20.2 The foregoing restrictions do not apply to any information that:

- (a) is publicly disclosed through no fault of the receiving Party;
- (b) is already lawfully in the receiving Party’s possession and not subject to a confidentiality obligation to the disclosing Party;
- (c) becomes known to the receiving Party from a third party having an apparent bona fide right to disclose the information; or
- (d) is Confidential Information that the receiving Party is obligated to produce pursuant to an order of a court of competent jurisdiction, provided receiving Party supplies disclosing Party with timely notice of such court order.

20.3 You acknowledge, on behalf of You and Your Users, that HS1 and its licensors retain all intellectual property rights and title, in and to, all of their Confidential Information and/or other proprietary information. This shall include, but not be limited to: products, services, and the ideas, concepts, techniques, inventions, processes, software or works of authorship developed, embodied in, or practiced in connection with the Services provided by HS1 hereunder.

20.4 Where the Service is hosted by a subcontractor of HS1’s choice. HS1 shall ensure that any such subcontractor agrees to be bound by the provisions of this Agreement protecting Confidential Information and Data.

**21. General.**

(a) Entire Agreement. You agree that this Agreement, together with the Registration Form, and any Schedules to these Terms, constitutes the entire agreement between You and HS1, and shall supersede any prior agreement or any other communications relating to the use of the Services or any portion thereof.

(b) Severability. If any provision contained in these Terms or in the Agreement are determined by any Court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any

way. The parties agree to replace any invalid provision with a valid provision (c) Governing Law. This Agreement is governed by the laws of Victoria, Australia. The courts of Victoria, Australia shall have non-exclusive jurisdiction to adjudicate any dispute arising under or out of this Agreement.

(d) Assignment. You shall not have the right to assign (by operation of law or otherwise), transfer, or sublicense any obligations or benefit under this Agreement without the prior written consent of HS1. Any purported assignment in violation of this section shall be void. Except as otherwise provided herein, this Agreement shall be binding on and inure to the benefit of the respective successors and permitted assigns of the parties. HS1 may assign and/or subcontract any part of this Agreement without Your consent.

(e) Export Restrictions. You acknowledge that the Services, or any portion thereof, may be subject to U.S. export restrictions. You agree to comply with all applicable international and national laws that apply to the Services, or any portion thereof, including the U.S. Export Administration Regulations, as well as destination and all other restrictions issued by U.S. and other governments.

(f) No Waiver. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights.

(g) Independent Contractor. Notwithstanding any provision hereof, for all purposes of this Agreement each party shall be, and act as, an independent contractor and not as a partner, joint venturer or agent of the other party, and shall not bind nor attempt to bind the other party to any contract.

(h) Headings; Sections. Headings herein are for convenience of reference only and shall in no way affect interpretation of the Agreement

**Schedule A SERVICE LEVEL AND SUPPORT SERVICES**

In the event of any conflict between the Agreement and this Schedule A, this Schedule A will prevail.

1. Schedule Definitions

“Downtime” means any period greater than ten consecutive minutes within the Scheduled Available Time during which You are unable to access or use the Service, excluding any such period that occurs during any Scheduled Downtime and/or Recurring Downtime (as defined below).

“Scheduled Available Time” means 24 hours a day, 7 days a week.

“Scheduled Downtime” means the time period (which shall not be during regular business hours) identified by HS1 in which it intends to perform any planned upgrades and/or maintenance on the Service or related systems and any overrun beyond the planned completion time.

“Uptime Percentage” means the total number of minutes of Scheduled Available Time for a calendar month excluding Scheduled Downtime minus the number of minutes of Downtime suffered in such calendar month, divided by the total number of minutes of Scheduled Available Time in such calendar month.

Uptime Percentage will be calculated by HS1 in its sole discretion.

2. Scope of Service Level Services. Downtime does not include:

- i. any modification of the Service made by any person or third party entity other than HS1;
- ii. any errors in the software that do not cause critical failure
- iii. any third party hardware or software used by You unless otherwise specified in the Agreement
- iv. improper operation of the Service by You;
- v. accidental or deliberate damage to, or intrusion or interference with, the Service;
- vi. use of the Service other than in accordance with any user documentation or the reasonable instructions of HS1;
- vii. ongoing test or training instances of the Service provided to You; or
- viii. services, circumstances, or events beyond the reasonable control of HS1, including, without limitation, any force majeure events as defined in Section 14 of the Agreement, the performance and/or availability of local ISPs employed by You, or any network beyond the demarcation or control of HS1.

3. Scheduled Downtime and Guaranteed Up Times

HS1 will use commercially reasonable efforts to provide at least 24 hours’ prior notice before implementing any Scheduled Downtime. If the Service experiences an Uptime Percentage of less than 99.7% in any calendar month during the Term, You may be eligible for a credit (“SLA Credit”) equal to the percentage identified in the “SLA Credits Table” below, multiplied by Your Fees paid to HS1 for the Service that are attributable to such month (calculated on a straight line pro-rated basis with respect to any Fees paid in advance). The SLA Credit is Your sole and exclusive remedy for any failure by HS1 to

meet any performance obligations pertaining to the Service, including, without limitation, any support obligations except as provided in the Agreement. Notwithstanding any provision of this Agreement, notice of Scheduled Downtime shall be deemed to have been given to You by posting within the Service and on the HS1 Service support website.

HS1 reserves the right to temporarily suspend Your access to the Service as set forth in the Agreement. Any such suspensions based on repairs, technical problems and outages will be subject to the SLA.

SLA Credits Table:

Uptime Percentage	Credit Percentage
Equal to or greater than 99% but less than 99.7%	10%
Less than 99%	25%

4. Availability of SLA Credits

If You are “past due” on any payments owed to SOE, You are not eligible to receive SLA Credits. SOE will issue SLA Credits, as determined in its sole discretion, either on future billing cycles or as a refund against fees paid. In order to receive any SLA Credit, You must notify SOE within 30 days from the time You become eligible to receive a SLA Credit, or forfeit Your right to receive such SLA Credit. In no event will the total amount of SLA Credits if any, exceed the fees paid by You for the corresponding month.