End User Licence Agreement

Best Practice Software

1. Introduction

1.1 Your use of the Best Practice Software (**Software**) is conditional upon You agreeing to be bound by the terms and conditions set out in this End User Licence Agreement (**Agreement**). By installing, copying or otherwise using the Software, You accept and agree to be bound by this Agreement. Acceptance of this Agreement binds You and all of Your employees.

2. Licence

2.1 Best Practice Software Pty Ltd ACN 104 808 988 (**BPS**), as the exclusive licensee of the Software, grants You a non-exclusive, non-transferable licence to use the Software and related Documentation at the Location, on the terms and conditions of this End User Licence Agreement (**Licence**).

2.2 You must only use the Software for the number of servers and/or the number of users and at the Location specified by BPS in the Tax Invoice.

3. Your obligations

3.1 Without limiting clause 2, You must not and must not permit any third party to:

(1) use the Software during or after the expiry of Trial Evaluation except in accordance with the normal operating procedures or as otherwise advised by BPS;

(2) sub-license, in whole or in part, the Software;

(3) reverse compile, reverse engineer, modify, adapt or disassemble the Software (except to the extent permitted by law);

(4) reproduce or copy the Software, Documentation or User Manual or any part of it except as necessary for use in accordance with this Agreement or as expressly permitted in writing by BPS in its sole and absolute discretion;

(5) access, use, or modify the Software, Database, Documentation or User Manual without the prior written consent of BPS, provided at BPS' discretion. For the avoidance of doubt, this would include bots, scraping tools, and robotic process automation; or

(6) assign this Agreement to a third party without the prior written consent of BPS, which consent will be at BPS' discretion.

4. Installation

4.1 You are responsible for the proper installation of the Software. Before You install the Software, You must ensure all computer hardware and operating software required to use the Software is fully installed, operational and capable of running the Software (BPS Hosting Customers refer clause 27).

4.2 You may be charged for any time spent by BPS in the installation or adjustment of hardware or operating software, at BPS's prevailing rates.

5. Maintenance

5.1 BPS agrees to provide Support Services in relation to the Software during the Term of this Agreement.

5.2 BPS will provide Support Services at the hours published by BPS from time to time. Support Services may be available out of these hours (**Emergency Services**) at BPS's discretion. You may be required to pay an additional fee for Emergency Services.

5.3 You must if required by BPS, provide BPS with a documented example of any defect or error in the Software requiring Support Services.

5.4 Support Services do not include:

(1) correction of errors or defects caused in whole or in part by:
   A. operation of the Software in a manner other than that specified by BPS or by incorrect use of the Software;
   B. revision, translation or alteration of the Software not authorised by BPS;
   C. the use of computer programs other than the Software, and any third party communication protocols;
   D. the use of computer programs other than the Software;
   E. your failure to install Updates to the Software as required;
   F. virus, malware or similar;
   G. your failure to implement appropriate security and anti-virus measures;

(2) training of operating or programming staff and rectification of operator errors;

(3) equipment maintenance and rectification of errors caused by an equipment fault;

(4) furnishing or maintenance of accessories, attachments, supplies, consumables or associated items, whether or not manufactured or distributed by BPS;

(5) correction of errors arising directly or indirectly out of Your failure to comply with this Agreement or any other agreement with BPS; or

(6) correction of errors or defects which are the subject of a warranty under another agreement.

6. Updates

6.1 BPS may from time to time and at its discretion provide You with Updates.

6.2 You are responsible for ensuring that You nominate, at all times, one person on Your behalf to receive notification of Software Product and Service issues, and Product and Data Updates from BPS and that You notify Practice users of Software Product and Service issues/workarounds, and promptly install Updates notified to You by BPS and acknowledge that if you do not do so:

(1) Your failure to receive notification of, and to notify Practice users of Software Product and Service issues/workarounds, and to install, such Updates may adversely affect the functioning of the Software;

(2) You will indemnify BPS against any loss or damage incurred by You or any third party, directly or indirectly as a result of Your failure to receive notification of, and to notify Practice users of Software Product and Service issues/workarounds, and to install, the Updates; and

(3) any warranties made by BPS to You in relation to the Software will no longer apply and will become null and void.

You acknowledge that BPS provides notification of Software Product and Service issues, and Updates to persons who have been nominated by You to receive email communications from BPS through a central, electronic marketing system which includes an unsubscribe facility. Whilst persons may unsubscribe from receiving email communications using that unsubscribed facility, it is Your responsibility to ensure that, at all times, at least one person remains subscribed to receive on Your behalf email communications from BPS which may include notification of Updates. (BPS Hosting Customers refer clause 27).

7. Payment

7.1 You must pay BPS the Licence Fee and Support Fee as indicated on the applicable Tax Invoice within 30 days from the date of invoice or as otherwise agreed by BPS in writing.

7.2 In addition to any amount expressly payable by You under these terms and conditions, BPS may, subject to issuing a valid tax invoice, recover from You an additional amount on account of the imposition of any amount of GST, sales tax or similar payable under, as applicable, the *A New Tax System (Goods and Services Tax) Act 1999* (**GST Act**), as amended from time to time.

8. Payment Default

8.1 If You default in payment by the due date of any amount payable to BPS, then all money which would become payable by the You at a later date on any account, becomes immediately due and payable without the requirement of any notice and BPS may, without prejudice to any of its other accrued or contingent rights:

(1) charge You interest on any sum due at the rate of 13.5% per annum for the period from the due date until the date of payment in full;

(2) charge You for, and You must indemnify BPS from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default;

(3) cease or suspend the supply of any further Software or Support Services to You; and

(4) by written notice, terminate any uncompleted contract with You.

9. Training

9.1 If specified in the Tax Invoice, BPS will provide You with training in the use of the Software, for the number of users and administrators and at the Location specified.

9.2 You must pay the Training Fee to BPS as specified in the Tax Invoice.

10. Travel

10.1 Travel expenses incurred by BPS to provide You with the Support Services will be billed to You at BPS's prevailing rates, unless otherwise agreed by BPS in writing. If You cancel services that would have otherwise required travel, BPS may charge You for any non-refundable travel expenses that BPS has incurred in that regard.

11. Access

11.1 You must have computer equipment and internet connection to facilitate provision of the Support Services by BPS.

11.2 Subject to clause 5 You must provide BPS with access to Your premises (including the Location) and computer equipment, as reasonably necessary for BPS to provide You with the Support Services. You must provide BPS with all reasonable assistance it requires in performing the Support Services.

12. Security

12.1 You are solely responsible for the use, supervision, management and control of the Software and must ensure that the Software and any related data is protected from unauthorised access, use, modification, damage or destruction (BPS Hosting Customers refer clause 27).

12.2 You must keep complete and accurate records relating to the use, copying, modification, merging and disclosure of the Software and its data (BPS Hosting Customers refer clause 27).

13. User Manual

13.1 You may only copy, change, or use the User Manual as required for Your own use and as permitted under this Agreement. User Manuals are intended for reference only and do not preclude the need for training.

13.2 The information contained in the User Manual is intended to be a guide only. BPS does not provide any warranty in relation to its currency, accuracy or completeness and, unless otherwise required by law, will not accept any liability in relation to any loss or damage suffered by You or any third party in reliance on the information contained in the User Manual.

14. Intellectual Property Rights

14.1 BPS retains all title and Intellectual Property Rights in the Software and Documentation (with the exception of data from pharmaceutical companies, government departments and other clinical sources), including improvements or modifications made to the Software. Subject to clause 14.5, any Intellectual Property Rights that arise directly or indirectly from Your use of the Software belongs exclusively to BPS, including any use that is in breach of this Agreement. You assign to BPS any such Intellectual Property Rights that arise directly or indirectly from the use of the Software.

14.2 You must not do or permit any act which infringes BPS's Intellectual Property Rights in the Software or Documentation, including reverse assembling or reverse engineering any part of the Software, or directly or indirectly allowing anyone else to do so.

14.3 You must immediately report to BPS any breach, suspected or otherwise of BPS's Intellectual Property Rights in respect of the Software or Documentation, including any:

(1) unauthorised copying or use of the Software or the Documentation; and
(2) breach of confidence by any person to which You have disclosed part or all of the Software and Documentation.

14.4 You must not make any copy of the Software, other than retaining one copy for backup and archival purposes. Such copy will be subject to the terms and conditions of this Agreement. All title, ownership and Intellectual Property Rights in the back up copy remain with BPS. You must ensure that the backup copy of the Software includes all proprietary notices from the original copy, including notice of confidentiality and BPS's ownership of the Intellectual Property Rights.

14.5 BPS acknowledges and agrees that You are the sole and exclusive owner of all right, title and interest in and to the Customer Data, including all related Intellectual Property Rights. BPS has access to the Customer Data only for the purpose of providing the Support Services in accordance with the Agreement.

15. Confidentiality

15.1 Each party must not disclose any of the other party's Confidential Information except in any of the following circumstances:

(1) the disclosure is necessary to comply with the disclosing party's obligations under this Agreement or under another agreement between the parties;

(2) the disclosure is to an officer, employee, agent or consultant of the disclosing party, to the extent that he or she needs to know the Confidential Information in order to perform a function and where the disclosing party has taken all reasonable steps to ensure that its officer, employees, agents or consultants do not make a disclosure which, if the disclosing party disclosed it, would be a breach of this clause;

(3) the disclosure is reasonably made to a professional legal adviser or professional auditor;

(4) the party to whom the Confidential Information belongs consents in writing to the disclosure;

(5) the disclosure is required by law.

16. Term

16.1 The Licence is effective from the time You accept these terms and conditions until termination in accordance with clause 17.

17. Termination

17.1 Either party may terminate this Agreement by providing 90 days' written notice to the other party.

17.2 BPS may terminate this Agreement immediately by notice in writing to You if:

(1) You become bankrupt, insolvent or similar;

(2) You do any of the following without the written consent of BPS:
A. use, copy, modify or merge the Software in breach of this Agreement;
B. allow anyone else to use the Software or the Documentation in breach of this Agreement;

(3) You dispose of the Software;

(4) in BPS's reasonable opinion, You become unable to use the Software or to comply with Your obligations under this Agreement;

(5) You fail, for at least 14 days, to pay an amount that is due to BPS under this Agreement, without the requirement for written notice from BPS;

(6) You fail, for at least 14 days, to remedy a breach of this Agreement after receiving a written notice from BPS identifying the breach and requiring it to be remedied;

(7) You breach this Agreement and the breach is not capable of being remedied.

17.3 Where BPS terminates this Agreement in accordance with clause 17.1 & clause 17.2, BPS may, without prejudice to its other legal and equitable rights:

(1) retain all monies paid to it, regardless of whether the period in respect of which the monies have been paid has not yet ended; and

(2) charge You a reasonable amount in respect of any Support Services provided to You but not yet paid for.

18. Warranties

18.1 BPS warrants that:

(1) it has the right and authority to license the Software to You; and
(2) there are no outstanding restrictions or constraints on its right and authority to license the Software to You.

18.2 BPS does not provide any warranty in relation to loss of data as a result of Your use of the Software.

19. Disclaimer

19.1 You acknowledge that You are responsible for Your use of the Software and for determining whether the Software is suitable for use by You, Your practice and Your business.

19.2 BPS and its officers, employees and agents make no warranty:

(1) that the Software is suitable for use by You, Your practice or Your business; or
(2) that the Software will be error free or will operate without interruption.

19.3 You acknowledge that BPS makes no representations or warranties in relation to the Database, including without limitation any references to treatments, actions or medications (**Treatment**). You are responsible for the appropriateness of Treatment through a qualified medical practitioner.

19.4 You acknowledge that BPS endeavours to ensure the currency of its Database and obtains its data from pharmaceutical companies, government departments and other clinical sources, which BPS at its discretion considers to be reliable (**Information**). You may not challenge the validity of the Information and accept that BPS makes no warranties in relation to the Information, including without limitation any data in the Database or data, warnings or alerts presented to You through Your use of the Software. You accept full responsibility on Your behalf and on behalf of any third party to abide by the directions of BPS with respect to access and usage of Database. You accept full responsibility for Your reliance on the Documentation, Information and the Software and do so at Your own risk.

19.5 You indemnify BPS and its officers, employees and agents against any loss, liabilities or damage that You or any third party may incur directly or indirectly:

(1) from Your use of the Software, Documentation and Information; or
(2) as a result of Your breach of this Agreement.

19.6 To the extent permitted by law, BPS expressly excludes all implied warranties and offers no warranties other than any express warranty provided in this Agreement.

19.7 Except to the extent under law that liability cannot be excluded or limited, BPS and its officers, employees and agents, exclude any liability in contract, negligence or otherwise for any loss or damage (including economic or consequential loss or damage) which results directly or indirectly from the use by You or any other person, or the inability to use the Software, Documentation or Information.

19.8 Where applicable law prohibits the exclusion of damages or implies a warranty which cannot be excluded, to the extent permitted by law, the entire liability of BPS and its officers, employees and agents under this Agreement:

(1) will be limited (at BPS's discretion) to replacement or repair of the Software or the cost of replacement or repair; and
(2) in any event, will not exceed the amount paid by You under this Agreement.

19.9 The Software may contain links or enable access to services or websites of third party providers meant for your convenience only. Third party providers are not under BPS control and BPS shall not be responsible or liable in any way for availability, interruptions or support services of third party providers.

20. Excusable Delay

20.1 Except as otherwise expressly provided in this Agreement, a party will not be liable for a breach of this Agreement (other than in relation to the obligation to pay monies), to the extent that the breach is caused by circumstances outside that party's direct control and for the period that those circumstances continue, if that party:

(1) immediately notifies the other party; and
(2) tries to remedy the cause quickly.

21. Personnel

21.1 You and BPS, or any related bodies corporate, must not solicit or employ, directly or indirectly, any employees of each other for a period of 2 years after the termination of this Agreement.

22. Privacy

22.1 You warrant that You have complied with the Privacy Act in relation to any personal information (including health and sensitive information) collected by You and entered into the Software.

22.2 You acknowledge that from time to time it may be necessary for You to disclose to BPS personal information held by You in order to enable BPS to provide the Support Services. In this regard, You warrant that You have obtained all necessary consents to any such disclosure of the information to BPS in accordance with the Privacy Act and the Privacy Principles and indemnify BPS from any loss and damage it suffers as a result of Your breach of the Privacy Act or this clause 22.

22.3 BPS must ensure that it complies with all applicable laws including the Privacy Act.

23. Variation

23.1 BPS reserves the right to amend this Agreement from time to time. All such amendments become binding on You 3 days after notification to You unless You reject the amendments by providing written notification to BPS prior to the expiration of that period. If You reject any amendments, BPS may immediately terminate this Agreement.

24. Waiver

24.1 Failure or neglect by BPS to enforce any term of this Agreement does not amount to a waiver of BPS's rights.

25. Governing Law

25.1 The law of the State of Queensland governs these terms and conditions and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.

26. Definitions

26.1 In this Agreement:

(1) **BPS Hosting Customers** means customers who have a BPS Hosting agreement with BPS to manage the hosting of their Software and Database;

(2) **Privacy Principles** means the Australian Privacy Principles or the Information Privacy Principles (as applicable) as set out in the Privacy Act;

(3) **Confidential Information** means any information in relation to a party's:
A. business, operations or strategies;
B. intellectual or other property; or
C. actual or prospective customers, suppliers or competitors;
but excluding information that:
D. is publicly available other than as a result of a breach of this Agreement;
E. the recipient is able to show was in its lawful possession prior to the date of this Agreement; and
F. is required to be disclosed by law, and then only to the extent and for the purposes so required;

(4) **Database** means the database and the database schema, containing medical or pharmaceutical information required for the functioning of the Software;

(5) **Documentation** means the User Manual, operating manuals, training manuals and associated documentation whether in electronic or hard copy form;

(6) **Intellectual Property Rights** means all and any copyright; registered and unregistered designs, patents, patent applications, trademarks, semiconductor, or circuit layout rights service marks, trade names, know how, trade secrets, domain names, internet addresses, rights in Confidential Information, and all and any other intellectual property rights (whether registered or registrable) and including all applications and rights to apply for any of the same and any such intellectual property rights in any information technology, hardware or the Software;

(7) **Licence Fee** means the Licence Fee specified by BPS in the Tax Invoice;

(8) **Location** means the site/sites to which BPS provides the Software and Support Services to You as specified in the Tax Invoice;

(9) **Privacy Act** means, as applicable, the *Privacy Act 1988* (Cth) and any associated regulations, as amended;

(10) **Software** means the Best Practice Software product described in the Tax Invoice;

(11) **Support Fee** means the Support Fee specified by BPS in the Tax Invoice;

(12) **Support Services** means the support and maintenance services in relation to the Software, excluding any third party software not licensed to You by BPS;

(13) **Tax Invoice** means the invoice provided by BPS;

(14) **Term** means the term of this Agreement from the date that this Agreement is executed (or any other date as agreed between the parties in writing) until the date that it is terminated in accordance with clause 17;

(15) **Training Fee** means the Training Fee specified by BPS in the Tax Invoice;

(16) **Updates** means new major Software releases and minor Software updates;

(17) **Trial Evaluation** means the limited version of the Software which can be installed and trialled for a period of 90 days (30 days for Bp Allied) or the extended period permitted by BPS in its sole discretion;

(18) **User Manual** means the Knowledge Base and other user materials provided by BPS to You in accordance with this Agreement; &

(19) **You** and **Your** means the person, or entity to whom BPS provides the Software and/or the Support Services in accordance with the terms and conditions of this Agreement and, where applicable, includes Your employees, agents and contractors.

27. **BPS Hosting Customers**

27.1 Clause 4.1 is not applicable.

27.2 Clause 6.2 is not applicable.

27.3 Clause 12.1 – replacement clause. You are responsible for the use of the Software and You must ensure that You control and authorise user access to the Software and any related data to protect it from unauthorised access, use, modification, damage or destruction.

27.4 Clause 12.2 is not applicable.