



License Agreement



This License Agreement is entered into between the party completing the Application ('you') and GuildLink Pty Limited ('GuildLink').

1. APPLICATION

- 1.1. By completing the Application, you accept this License Agreement as amended from time to time, and agree to be bound by them.
- 1.2. You are responsible for the supervision, use, management and control of each Licensed Technology which GuildLink licenses to you and for ensuring that your Personnel understand, agree and accept this License Agreement.
- 1.3. You must ensure that you and your Users undertake any training required by GuildLink from time to time relating to each Licensed Technology which GuildLink licenses to you, and any Service or Program you participate in, and that they use the Licensed Technology, receive Services and deliver Programs in accordance with the Program Rules.
- 1.4. The Administrator must ensure that it grants access to Users who have a genuine need to use the Licensed Technology, the Services and/or Programs and that their access is reviewed on a regular basis. In addition, you must ensure that Users' access is immediately revoked when their access to the Licensed Technology, the Services and/or the Programs is not required. This is a continuing obligation and survives termination.
- 1.5. When participating in a Program and/or using a Service you must comply with and observe, and ensure that your Personnel comply with and observe, all applicable Laws and industry codes, including applicable codes of practice and industry guidelines.
- 1.6. Your license to use the Licensed Technology and any participation in the Programs is at the sole discretion of GuildLink and GuildLink has the right to approve or reject your Application.
- 1.7. On the date you accept this License Agreement (being the date you submit your Application/s to GuildLink), an agreement will be formed between GuildLink and you on the terms and conditions set out in your Application together with this License Agreement and the Program Rules ("**Agreement**"), which will enable you to use the Licensed Technology and to participate in certain Programs in accordance with the Agreement.

2. VARIATION, SUSPENSION AND TERMINATION

- 2.1. You may terminate this Agreement or your participation in any Program/s by giving GuildLink not less than 14 days' written notice. For clarity, providing notice to GuildLink does not extinguish any obligation or commitment by you to pay GuildLink for any fixed term or subscription period as agreed by you and as set out in clause 2.6 and specifically, 2.6(d).
- 2.2. Unless otherwise prevented by law, GuildLink may, by at least 14 days' notice to you, alter or vary the Agreement, or any part of it, including any Program Rules and any Fees. GuildLink will do this by displaying a notice on the Licensed Technology or emailing you when any such revisions have been made or by any other such means as GuildLink deems appropriate.
- 2.3. GuildLink may, at any time, by 14 days' notice to you, terminate this Agreement and/or your participation in any Program/s and/or disable the Recruitment Function of a Licensed Technology in respect of any Program/s for any reason whatsoever. If GuildLink exercises this right it will refund to you a proportion of any annual license or subscription Fees that you have paid under clause 7.1(a), having regard to the date of termination and the period in respect of which those Fees were paid or, if you are paying any Fees on a monthly basis, release you from any further obligation to pay monthly Fees for the balance of the subscription period.
- 2.4. GuildLink may, at any time, by reasonable notice to you where reasonably possible, taking into account the circumstances, temporarily, or indefinitely, suspend or terminate this Agreement or your participation in any corresponding Programs, and/or your access to the Program, or your right to use a Licensed Technology, if any one or more of the following applies:
 - (a) such suspension or termination is, in GuildLink's opinion, reasonably required for the maintenance (including preventative and routine maintenance), support, operation or security of a Licensed Technology, Program or Service;
 - (b) GuildLink believes on reasonable grounds, as determined in its opinion, that you are in breach of any provision of this Agreement or any Program Rules;
 - (c) GuildLink believes, on reasonable grounds, as determined in its opinion, that you do not have all necessary Authorisations to perform your obligations under this Agreement;
 - (d) GuildLink believes, on reasonable grounds, as determined in its opinion, that you have engaged in any conduct which may bring GuildLink or any of GuildLink's Sponsors or Service Providers, any Program, Services or any Licensed Technology into disrepute;

- (e) a Network Operator, Service Provider and/or Government Agency requires it;
- (f) GuildLink or its Sponsors and/or Service Providers, no longer have the relevant authorisations and/or approvals to run the Program or Services;
- (g) GuildLink believes on reasonable grounds, as determined in its opinion, that your use of the Licensed Technology, Program or Service is adversely affecting, or is likely to adversely affect or disrupt, the operation of the Licensed Technology, Program or Service;
- (h) you withdraw your approval for GuildLink to access Your System and Business Files;
- (i) you withdraw your DDR or terminate your DDRSA, or you stop or defer a debit payment, or your direct debits are frequently rejected without giving GuildLink proper notice in accordance with the DDRSA, if applicable to this Agreement and/or any Program;
- (j) you withdraw your consent for GuildLink to charge your credit card for the Fees and/or Service Fees or if your payment of the Fees and/or Services Fees are declined;
- (k) your telephone, internet, electronic e-mail facilities and any other hardware and software systems are not adequate or do not meet the necessary minimum requirements for you to use the Licensed Technology; and
- (l) you do not pay the GuildLink invoice/s within 10 days of the invoice date.

2.5. Either party may also terminate this Agreement with immediate effect by written notice to the other party if:

- (a) the other party becomes insolvent, makes an arrangement with or for the benefit of its creditors, goes into compulsory or voluntary liquidation, has a receiver, liquidator, administrator or other similar official appointed over its assets, is subject to an administration or similar order or ceases trading;
- (b) the other party breaches this Agreement, the breach is capable of remedy and the other party fails to remedy it within 7 days of receiving written notice requiring it to be remedied; or
- (c) any licence or any part of a licence and/or authority that is required to enable GuildLink and/or any Service Provider to operate the Licensed Technology, Program and/or Service is revoked, terminated and/or modified.

2.6. At the end of this Agreement or the end of your participation in any Program/s:

- (a) The Administrator must deactivate all Users' access to the Licensed Technology, the Services and all Programs and certify to GuildLink that all Users have been deactivated and that any information accessible by each User has been deleted and destroyed from any machine, hardware or software.
- (b) subject to any monies otherwise owed by you to GuildLink, GuildLink will pay you any outstanding Program Fees for any applicable Program, if applicable;
- (c) subject to any monies otherwise owed by you to GuildLink, GuildLink will refund to you a proportion of any Fees that you have paid under the Agreement, having regard to the date of termination and the period in respect of which those Fees were paid if you provide to us written notice of your intention to terminate this Agreement or your participation in any Program/s within 14 days of being notified by GuildLink of an amendment or variation to the Agreement or Program Rules/s that you are not satisfied about;
- (d) other than the circumstances set out in clause 2.6(c), GuildLink will not refund any Fees that you have already paid to it;

- (e) you must pay GuildLink any outstanding Fees in accordance with clause 7, including paying out the total balance of the Fees for the remainder of the then current term if you have elected to pay for the Licensed Technology or any Program/s or other Services on a monthly basis;
 - (f) the license set out in clause 5.1 will cease and you must cease, and must ensure that each of your Users ceases, to access and use each Program or Licensed Technology and any material and Intellectual Property Rights relating to a Service, Program or Licensed Technology, whichever is applicable;
 - (g) you must stop using and return to GuildLink all GuildLink's Confidential Information, and your obligations of confidence (but not the right to use and disclose) in clause 11 (Confidential Information) continues;
 - (h) GuildLink may either disable the Licensed Technology and/or remove the Licensed Technology from your computer hardware and software systems, if applicable, and for this purpose you hereby grant us authority to enter onto your premises during business hours to carry out such tasks, and you will facilitate access to your computers and systems to enable us to carry out such tasks;
 - (i) clauses 6 (**Intellectual Property**), 11 (**Confidential Information**), 12 (**Notification to Patients and Patient Privacy**), 13 (**Your Information**) (excluding clause 13.4), 14 (**Warranties and Liability**), 15 (**Insurance**), 2.6(a) (**Duty to deactivate**) and 2.6 (**Effect of Termination**) continue; and
 - (j) any accrued rights or remedies of either party are not affected.
- 2.7. You must not assign, dispose of, or otherwise deal with, this Agreement or any rights, entitlements and/or obligations under or arising from or out of the Agreement, without GuildLink's prior written consent, which will not be unreasonably withheld as long as:
- (a) the assignment, disposal or dealing occurs at the same time as a change in the ownership of the Pharmacy (including a change in the Constitution of a partnership that owns the Pharmacy) and that change has been approved by the Secretary under section 90 of the *National Health Act 1953* (Cth);
 - (b) the new owner (including any newly constituted partnership) lodges an application in GuildLink's then approved form to participate in its Programs and/or Services and otherwise complies with all of GuildLink's requirements and protocols relating to a change in pharmacy ownership (including in relation to training, Program participation and hand over of Patient cases); and
 - (c) you pay to GuildLink its then standard administration fee for processing the application referred to in clause 2.7(b) and ensure compliance with GuildLink's requirements and protocols.
- 2.8. You must give GuildLink 14 days' prior written notice of any proposed change in the ownership of the Pharmacy (including a change in the constitution of a partnership that owns the Pharmacy) or any other change in the Pharmacy or in the location of the Pharmacy that requires approval under section 90 of the *National Health Act 1953* (Cth) at the time you apply for that approval. The Agreement continues to apply to the Pharmacy as changed or relocated as long as the change or relocation is approved by the Secretary under that section and you comply with all GuildLink's requirements and protocols applicable to that change or relocation.

3. IMPLEMENTING AND VARYING PROGRAMS

- 3.1. If you wish to deliver a Program to your Patients, you must do so in accordance with the Program Rules for that Program and the terms of the Agreement, and successfully complete any training required by those Program Rules. This License Agreement prevail over the Program Rules to the extent of any inconsistency.
- 3.2. You must ensure that your Users undertake any training required by GuildLink from time to time relating to each Licensed Technology, Service or any Program, and that they deliver the Service and/or Program in accordance with the Program Rules.
- 3.3. When participating in a Program and/or Service or using a Service you must comply with and observe:
- (a) all applicable Laws and codes, including applicable codes of practice, guidelines, rulings or regulations of any telecommunications regulatory authority;
 - (b) any authorisation of a Government Agency, and the requirements, directions, recommendations and decisions of any Government Agency; and

- (c) all reasonable directions and instructions that GuildLink issues from time to time relating to the Program or the Service.
- 3.4. When participating in a Program and/or Service, you and your Personnel must comply with each and every obligation ascribed to you in relation to the Program and/or Service set out in the Licensed Technology on which that Program is administered and the applicable Program Rules, including but not limited to the making of truthful acknowledgements and declarations in relation to the administering of Programs and/or Services.
- 3.5. Without limiting the generality of clause 3.4, in respect of each Program and/or Service, you must:
- (a) not, and must ensure that your Personnel do not, conduct the Program and/or Service in respect of any person who has not given his or her Informed Consent to participate in that Program and/or Service, or has withdrawn or revoked his or her Informed Consent;
 - (b) not, and must ensure that your Personnel do not, request that GuildLink provides Services to you in respect of any Patient or person who has not given his or her Informed Consent to participate in the Program to which the Services relate, or has withdrawn or revoked his or her Informed Consent;
 - (c) where Program Rules require Informed Consent to be in writing, or where you are required by law to obtain Informed Consent in writing, to maintain legible and accurate copies of each Informed Consent for at least 7 years after the later of the date this Agreement ends and the date your participation in the relevant Program ends;
 - (d) deliver the Program and/or Services to Patients in accordance with all applicable Laws, codes of conduct, Authorisations, the requirements of relevant Government Agencies, quality care pharmacy program implementation information, professional rulings and standards;
 - (e) not, and must ensure that your Personnel do not, use the Program and/or Service for any improper, fraudulent, immoral or unlawful purpose, or in a manner likely to bring GuildLink and/or its related entities, the Program or Service or any Service Provider into disrepute; and
 - (f) not, and must ensure that your Personnel do not, use the Program and/or Service for the transmission of material which is defamatory, offensive, obscene or which is likely to cause offence having regard to generally prevailing standards of decency and propriety from time to time.
- 3.6. You must dispense Medicines, counsel Patients in respect of those Medicines and provide any other pharmacy services, in accordance with all applicable Laws, codes of conduct, Authorisations, requirements of relevant Government Agencies and quality care pharmacy program implementation information, professional rulings and standards.
- 3.7. You must not, and must ensure that your Personnel do not:
- (a) offer or give a Medical Practitioner, or an employer of the Medical Practitioner, a benefit as inducement, consideration or reward for the Medical Practitioner recommending to another person that the other person use any products or Medicine of the Sponsor;
 - (b) direct or incite a Medical Practitioner to do anything, in the course of providing health services, that would constitute unprofessional conduct or professional misconduct; or
 - (c) direct or incite any pharmacist employed or otherwise engaged by you, to do anything that would constitute unprofessional conduct or professional misconduct.
- 3.8. Nothing in this Agreement or your participation in any Program or Service prevents or relieves you or your Personnel from complying with, or in any way limits or prejudicially affects, any legal and ethical responsibilities as pharmacists and you agree that you will, and you will ensure that your Personnel, comply with any such legal and ethical responsibilities.

4. ADDITIONAL PROGRAMS AND SERVICES

- 4.1. As and when new Programs and/or Services become available, GuildLink will offer these to you via the GuildLink subscription website, through the Licensed Technology itself and/or through any other mode determined by GuildLink.
- 4.2. GuildLink will, in its sole discretion, make a determination as to whether or not it will provide such Programs and/or Services to you and is not obliged to provide any explanation and/or justification for such determination.

5. LICENSED TECHNOLOGY

- 5.1. Subject to clause 5.3, to the extent that you need to use a Licensed Technology to either decide whether you want to deliver a Program, or to deliver a Service, GuildLink grants to you a limited, non-exclusive, non-transferable, non-assignable, non-sub-licensable license to:

- (a) access and use the Internet-based Technology through the Hosted Site;
- (b) access and use the Mobile Application Technology through the Hosted Site;
- (c) install and use the Find Application and the Extract Application solely on equipment located at the Pharmacy; and
- (d) reproduce any forms, documentation or materials that the Licensed Technology makes available to you in order to facilitate your participation in a Program,

for the purposes of deciding on and delivering Programs and/or receiving Services in accordance with this Agreement (including using such applications and materials in accordance with clauses 12 and 14).

- 5.2. You must not disclose any part of a Licensed Technology, any documentation relating to a Licensed Technology, or any other confidential or proprietary information relating to a Licensed Technology to any person, including the terms of this agreement, except to your Users.
- 5.3. Except to the extent expressly permitted by this Agreement, you must not, and must ensure that Users do not:
 - (a) decompile, delete, reverse engineer, modify, copy (save to the extent required solely for back-up purposes), reproduce, disassemble, adapt, translate, or create any derivative works of, a Licensed Technology, or any part of a Licensed Technology, and/or any intellectual property, products, and/or services obtained from GuildLink or its related entities, in respect of a Licensed Technology; or
 - (b) disseminate, distribute, transmit, display, perform, publish, directly or indirectly sell, transfer, offer for sale, license, assign, rent, timeshare or sublicense any part of a Licensed Technology or any copies of a Licensed Technology.
- 5.4. You are responsible for all access, data and other costs including acquiring and installing any telephone, internet, electronic e-mail facilities and any other hardware and software systems that GuildLink considers necessary for you to access and use a Licensed Technology. To get the most from the Licensed Technology, please refer to the FAQs on the GuildCare website for system requirements.
- 5.5. You acknowledge and agree that the availability and quality of the Licensed Technology, Program/s and/or Services, and the time it may take to load or use Program/s functionality, may vary from time to time based upon factors including but not limited to: your location; the availability of a dedicated internet connection; internet speed or bandwidth; what programs you run whilst the Licensed Technology is running; and the quality of your hardware and software systems. You acknowledge and agree that GuildLink does not claim, warrant, represent and/or guarantee that the Licensed Technology, Program and/or Service will be available to you at all times or be free from faults, errors and/or interruptions.
- 5.6. You acknowledge and agree to implement administrative, physical and technical safeguards to protect the Licensed Technology which GuildLink licenses to you at all times from unauthorised access or use and from physical misuse, damage or destruction by any person.

6. INTELLECTUAL PROPERTY

- 6.1. You acknowledge and agree that, except as expressly set out in the Agreement, neither you nor any of your employees or contractors have any rights, entitlement and/or interests in or to:
 - (a) the software, trade marks and any other Intellectual Property Rights in or to each of the Licensed Technology, each Hosted Site, each Program (including all Program content and documentation located on a Hosted Site) and any branding associated with each Licensed Technology, and Hosted Site, each Program and our business (including any goodwill or other benefits accruing from your use of the above software, trade marks and other Intellectual Property Rights) (collectively "**GuildLink's Technology**");
 - (b) any Program IPR and any material in which Program IPR is incorporated.
- 6.2. You must not take any action, or cause any third party to take any action, challenging, contesting or in any way impairing the rights, title, interest and/or ownership of GuildLink in and to the GuildLink Rights.
- 6.3. You must ensure that all copyright notices and other indications of ownership that appear in or on any Licensed Technology are not deleted or obscured by you or any User.
- 6.4. You must do all things reasonably requested by GuildLink to give effect to this clause 6.
- 6.5. You acknowledge and agree that all licenses, rights, and interests not specifically granted to you will be, and are specifically and entirely, reserved by GuildLink, and may be fully exploited by GuildLink without regard to the extent to which such rights may be competitive with this Agreement or the rights granted to you under this Agreement.

- 6.6. Without limiting the generality of clause 6.5, GuildLink reserves the right to make modifications and upgrades to each Licensed Technology and each Hosted Site from time to time.
- 6.7. You must promptly notify GuildLink of any claim that any Licensed Technology, the Program, the Program IPR, Hosted Site or any associated trade mark infringes the Intellectual Property Rights of any person.

7. LICENSE AND SERVICE FEES

- 7.1. You agree to pay GuildLink any:
- (a) Fees charged for the right to access and use the Licensed Technology;
 - (b) Fees charged for the right to use a Program, selected Programs or a bundle of Programs including the Mobile App;
 - (c) Fees charged to enable you to use a Program, selected Programs or a bundle of Programs on the Licensed Technology such as installation fees;
 - (d) support and/or training Fees charged to enable you to use a Program, selected Programs or a bundle of Programs or use the Licensed Technology;
 - (e) Service Fees for the delivery of Services in respect of this Agreement, or any Program;
 - (f) bank or credit card administration fees or other applicable merchant fees;
 - (g) default payment fees or dishonor fees;
 - (h) Interest on all overdue amounts under this Agreement calculated on the total amount overdue at the rate of 2% above the National Australia Bank Overdraft Base Rate; and
 - (i) any other Fees that GuildLink may charge from time to time,

of which GuildLink gives you notice from time to time, such payments to be made at the times and in the manner set out in this Agreement and/or the relevant Program Rules for the Program or on a Licensed Technology, or as advised by GuildLink.

- 7.2. You acknowledge and agree that GuildLink is not required to deliver any Program or perform any tasks under this Agreement or the Program Rules (including the Services) if you have not paid any amount that relates to that part of the Services or Program or those particular tasks.
- 7.3. Subject to clause 7.4, all payments by you to GuildLink must be made as and when they are due and without deduction or withholding (including set-off, counterclaim, duty, tax, administration fees, bank dishonor fees or charge).
- 7.4. Subject to clause 10 regarding GST, if you are compelled by law to make a deduction or withholding from any payment, you must promptly pay to GuildLink the additional amount necessary so that the net amount received by GuildLink equals the full amount which would have been received by GuildLink if no deduction or withholding had been made.
- 7.5. You acknowledge and agree that notwithstanding any other clause of the Agreement, where Fees charged are subscription based, on expiry of the period which is paid up under a subscription Fee, and no subsequent Fee is paid to renew the rights granted to you relating to that subscription Fee, including if your DDR has failed or if your credit card payment has been declined, all such rights immediately lapse upon expiry of the relevant period to which the last paid subscription Fee relates, and you must immediately cease use of all such rights and comply with clauses 2.6(e), (f), (g), (h), (i) and (j).
- 7.6. Not using the Licensed Technology, Programs and/or Services or terminating the Licensed Technology, Programs and/or Services will not, under any circumstances, entitle you to a discount off the Fees or refund of any Fees other than in the limited circumstance set out in clause 2.6(c).

8. PAYMENT METHODS

- 8.1. Upon approval by GuildLink, you may make payments of the Fees and Services by either EFT, cheque, a duly authorised DDR, credit card or a combination of these payment methods;
- 8.2. If paying by EFT or cheque, you agree to make payment of all Fees set out in the invoice within 10 days. You agree and acknowledge that Your license to use the Licensed Technology and any participation in the Programs will only commence once payment has been received in clear funds.
- 8.3. If paying by direct debit, the DDSA will govern the terms of payment.
- 8.4. If paying by credit card, the following terms will apply;
 - (a) You authorise GuildLink to debit your credit card for any Fees and Services Fees GuildLink has deemed payable in accordance with this Agreement relating to the GuildCare Licensed Technology, any Program/s and/or Services that you have elected to participate in, and any other products and/or services you may from time to time request from GuildLink, including those that are subscription based.
 - (b) You acknowledge and authorise that GuildLink may vary the amount, frequency and date of any such payments of these Fees and Service Fees in accordance with this Agreement and any other relevant agreement/s with GuildLink.
 - (c) You also acknowledge that GuildLink may also make periodic debits of your credit card in the event that you fail to meet your obligations to pay the Fees and Services Fees which are payable to GuildLink.
 - (d) Where applicable, GuildLink will automatically renew your subscription for the same term/period in order to provide you with convenient and continued access to the Licensed Technology, the Program/s and Services, and **you acknowledge and agree that GuildLink will continue to debit the Fees and Service Fees from your nominated payment method which you completed at the date of Application, unless you contact us and update your payment details or request to cancel your subscription within 30 days of the date when your subscription is due to renew;**
 - (e) It is your responsibility to ensure that the credit card details are current and correct.
 - (f) If payment of your Fees and Service Fees are declined due to the credit card or other payment method being cancelled, invalid, expired or having insufficient funds, GuildLink (or our collections service provider) will attempt to process your payment again approximately three days after the first decline. If the payment is declined for a second time, GuildLink will notify you via email of the declined payment/s and the dishonor fees that apply (if any), and request that you update your credit card details so that your payment can be promptly processed.
 - (g) If this attempt to contact you to provide a valid credit card or to update your direct debit is unsuccessful, clause 2.4(j) will apply and any monies owing to GuildLink will constitute a debt immediately owing to GuildLink and must be paid to GuildLink within 14 days from the date that GuildLink sends an invoice to you.

9. PROGRAM FEES

- 9.1. GuildLink will pay you the Program Fees (if any) for delivery by you of a Program at the times and in the manner set out in the Program Rules for the Program. You acknowledge and agree that either GuildLink or the relevant Sponsor has the discretion to determine if you are delivering the Program at the times and in the manner set out in the Program Rules.
- 9.2. GuildLink is entitled, in addition to any other right it may have, to delay or only pay in part any payment of Program Fees until you have completed to GuildLink's reasonable satisfaction that part of the Program to which the payment relates and to pay any administrative fees associated with your delay or failure to pay.

10. GOODS AND SERVICES TAX

10.1. In this clause:

- (a) 'GST' means GST as defined in the A New Tax System (Goods and Services Tax) Act 1999 as amended from time to time ('**GST Act**') or any replacement or other relevant legislation and regulations; and
- (b) words used in this clause which have a particular meaning in the '**GST law**' (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires.

10.2. Unless GST is expressly included, the consideration expressed to be payable under any other clause of this Agreement for any supply made under or in connection with this Agreement or any Program Rules does not include GST.

10.3. To the extent that any supply made under or in connection with this Agreement or any Program is a taxable supply, the GST exclusive consideration otherwise payable for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of the supply, and is payable at the same time.

10.4. Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this Agreement and any Program.

10.5. Each party warrants to the other party that it is registered for GST at the time this Agreement is entered into and will promptly notify the other party if this ceases to be the case.

11. CONFIDENTIAL INFORMATION

11.1. You must in relation to GuildLink's Confidential Information:

- (a) keep it confidential using the same degree of care normally exercised by you to protect your own proprietary or confidential information and Patient data (and in any event at least a reasonable degree of care);
- (b) use it only for the Program for which it was provided and only to perform your obligations under the Agreement;
- (c) not disclose it to any person other than those of your Personnel ('**Representatives**') who have a legitimate need to know (and only to the extent of that need to know) and who are bound by an obligation to keep it confidential and to use it only as permitted under this Agreement ('**Confidentiality Undertaking**');
- (d) advise all of your Representatives of their obligations with respect to the Confidential Information;
- (e) use your best endeavours to enforce each Confidentiality Undertaking at your cost;
- (f) not copy or duplicate it or any part of it other than as reasonably necessary in connection with a Program or the performance of your obligations under this Agreement and where possible mark any such copy 'Confidential – GuildLink Pty Ltd';
- (g) implement security practices against any unauthorised copying, use and disclosure (in any form);
- (h) notify GuildLink immediately of any suspected or actual unauthorised copying, use or disclosure; and
- (i) comply with any direction issued by GuildLink regarding a suspected or actual breach.

11.2. Any and all information provided by you to GuildLink that could or might relate to the Program IPR or GuildLink's proprietary technology (including without limitation any other Licensed Technology), its use, capabilities, features, functionality, methodology, or implementation, or other processes or transactions will not constitute your confidential information and will be information that GuildLink shall be free to use without restriction, and which you hereby authorise GuildLink to use, in our business.

11.3. The obligations in clause 11.1 will not apply to any information that:

- (a) was previously known to you free of any obligation to keep it confidential before GuildLink disclosed the Confidential Information to you;
- (b) is or becomes generally available to the public other than as a result of a breach by you of the Agreement;
- (c) is received from a third party whose disclosure would not violate any confidentiality obligation to GuildLink, direct or indirect, express or implied;

- (d) is information that GuildLink has explicitly approved for release.
- 11.4. Notwithstanding the obligations in clause 10.1, you may disclose GuildLink's Confidential Information to the extent required by an order of a court of competent jurisdiction or other Government Agency, but only after you have notified GuildLink of the required disclosure and have had the opportunity, if possible, to obtain reasonable protection for the information. Any Confidential Information disclosed pursuant to this clause shall remain Confidential Information and the exclusions set out in clause 11.3 will not apply as a result of that disclosure alone.
- 11.5. On request from GuildLink, you will return to GuildLink, or destroy, all Confidential Information and copies made of it, including all videotapes, photographs, paper, recordings on electronic media, and all compilations, notes, reports, or other reproductions containing Confidential Information. You must certify to GuildLink the return or destruction of all Confidential Information.

12. NOTIFICATION TO PATIENTS & PATIENT PRIVACY

- 12.1. The parties will comply with the Privacy Laws in performing their respective obligations under the Agreement and any Program Rules.
- 12.2. You must, as far as reasonably possible, notify all patients prior to any script, professional services or sale being entered into or transacted, that GuildLink and, without limitation, any of our Service Providers, will have access to your patient's Personal Information in order for you to use the Licensed Technology in delivering the Programs and/or Services required by your patients.
- 12.3. You must obtain a Patient's Informed Consent before collecting any Personal Information and/or recruiting a Patient to a Program and/or delivering services to the Patient under that Program. Without limiting the generality of this paragraph, and subject to clause 12.4, you acknowledge that the Informed Consent you secure must include consent from the Patient for the following:
 - (a) for you to pass the Patient's Personal Information to GuildLink in either an identified or de-identified form;
 - (b) for GuildLink and/or its associated and/or related entities to de-identify such Personal Information and to pass such de-identified Personal Information ('**DPI**') to third parties ('**Third Parties**'); and
 - (c) for the Third Parties to deal with the DPI in such manner as they see fit, including collating, sorting and re-organising the DPI and using it for business purposes.
- 12.4. When obtaining a Patient's Informed Consent to participate in the Mobile Application Program (and any other Programs specified by GuildLink from time to time), you must do the following:
 - (a) check the Patient's and, where relevant, their parent's, guardian's or authorised carer's (as applicable) identification as specified in the Program Rules to verify the Patient's identity and, where relevant, the identity of the parent, guardian or authorised carer;
 - (b) where the Patient requires a parent, guardian or authorised carer to use and access the Mobile Application on their behalf, obtain the appropriate consent or declaration as specified in the Program Rules; and
 - (c) register the Patient's sign-up to the Mobile Application Program using the GuildCare software, which will generate a unique sign-up token to enable the Patient or their parent, guardian or authorised carer (as applicable) to access the Mobile Application.
- 12.5. You must not do anything, and must ensure that your Personnel do not do anything, that would cause GuildLink or any of its employees, officers or Service Providers to be in breach of a Privacy Law.
- 12.6. Each party must, with respect to Personal Information that it receives from the other party in connection with the Agreement or any Program:
 - (a) protect the confidentiality of that Personal Information;
 - (b) comply with all applicable Privacy Laws; and
 - (c) implement policies and procedures to protect the privacy and security of that Personal Information.
- 12.7. You must ensure that your Personnel who will or may have access to any Personal Information in connection with this Agreement or a Program is (before being given access to the Personal Information) briefed on or otherwise made aware of the restrictions on the use and disclosure of Personal Information imposed by applicable Privacy Laws and by your obligations under this Agreement and any Program Rules in relation to Confidential Information and Personal Information.
- 12.8. You must promptly comply with any reasonable direction GuildLink gives you regarding Personal Information including but not limited to any guidelines, directions or policies issued by a Government Agency.

13. YOUR INFORMATION

- 13.1. You acknowledge and agree that GuildLink may:
- (a) use, commercialise and/or disclose to our Service Providers, Government Agencies, Pharmacy Groups, Network Pharmacies, Sponsors, Patients or other third parties information relating to you, your Pharmacy, your Pharmacy Group and your participation in and delivery of any Program, including rewards programs, loyalty programs, point of sale and dispensary transactions acquired through any use by you of the Licensed Technology and/or the Mobile Application for a variety of purposes, including but not limited to internal management, administration, dash boarding, side by side comparisons against other pharmacies at a local and group level, analytical, reporting and evaluation purposes, and to keep you and other parties informed about and promote GuildLink's Programs and Services; and
 - (b) store, and engage GuildLink's Service Providers to store, the information referred to in paragraph (a) on servers in Australia.
- 13.2. Other than the Personal Information of Patients, the information referred to in this clause 13 is not Personal Information as it pertains to the operation and business of your Pharmacy.
- 13.3. You acknowledge and agree that GuildLink may aggregate and then de-identify the information referred to in clause 13.1, with de-identified information of other Network Pharmacies, and use that aggregated and de-identified data to evaluate amongst other things the effectiveness and efficacy of Programs and pharmacy intervention generally, and commercialise and disclose this data to any person including but not limited to Patients, Pharmacy Groups, Sponsors and Government Agencies involved in subscribing to, funding or sponsoring Programs.
- 13.4. You agree to allow GuildLink to access Your System, data that is held on Your System including dispense and point of sale data and any other data or materials which you provide to GuildLink ("Business Files"). You acknowledge and agree that you will provide GuildLink with uninterrupted access to your System and any Business Files which you provide will be unencrypted. Nothing in this Agreement affects the ownership of your Business Files and you remain solely responsible for the content of your Business Files. You warrant that you own the Business Files and/or have all necessary licenses, rights and consents to grant the rights to GuildLink as set out in this Agreement.
- 13.5. In addition and without prejudice to clause 13.4, you grant GuildLink and its Personnel the right to retrieve, transmit, use, store, copy and modify your Business Files, including without limitation:
- (a) sales of goods and services by your business, specifically including point of sale data;
 - (b) demographic information of any prescribing doctor relating to pharmaceutical sales (but excluding any Personal Information of the doctor); and
 - (c) your customers, including general demographic information such as customers' age and postcode (but excluding customers' names and credit card details).
- 13.6. In relation to supply chain dashboarding, rewards and loyalty programs, GuildLink will provide notice to you in order for you to opt in or opt out of these additional programs.

14. WARRANTIES AND LIABILITY

- 14.1. Whilst GuildLink will provide the Licensed Technology and Program or Service to you using reasonable care and skill, you acknowledge that the availability of the Licensed Technology and Program, and your ability to access the Licensed Technology and Program and use any Services, may depend on factors and circumstances beyond GuildLink's control including telecommunications network issues (such as network capacity restrictions, physical and environmental conditions, technical constraints and network operator issues), Service Provider issues and factors that prevent intended recipients from receiving messages, voice calls and other communications (for example, device failure, device not switched on, service provider and account issues). Consequently you acknowledge and agree that GuildLink does not claim, warrant, represent and/or guarantee that the Licensed Technology, Program and/or Service will be available to you at all times or be free from faults, errors and/or interruptions.
- 14.2. You acknowledge and agree that:
- (a) any material downloaded or otherwise obtained through the Licensed Technology or Program is so downloaded or obtained at your discretion and risk, and you are solely responsible for any damage you or any related company may suffer, including to your computer system and/or for loss of data that results from any such download;

- (b) no advice or information, whether oral or written, obtained by you from GuildLink and/or its Service Providers, or through the Licensed Technology or Program (including any Service) will create any warranty and/or representation not expressly included in the Agreement or required by law; and
 - (c) the Licensed Technology, Program or Service is provided on an 'as is' and 'as available' basis. Except for any Non-excludable Guarantee (as defined in clause 14.4), we and our Service Providers exclude all terms, conditions, warranties and guarantees implied by custom, the general law and/or statute.
- 14.3. Without in any way limiting the above, you expressly acknowledge and agree that neither GuildLink, its Service Providers and/or its licensors make any warranty and/or representation that:
- (a) the Licensed Technology, Program or Service will meet your requirements, or will be uninterrupted, timely, secure, or error-free;
 - (b) the results that may be obtained from your use of the Licensed Technology, Program or Service will be accurate or reliable; or
 - (c) the information or other material downloaded or obtained by you through the Licensed Technology, Program or Service will meet your expectations or requirements.
- 14.4. Any condition, warranty or guarantee that legislation applies to the supply by GuildLink to you of any goods or services under the Agreement is taken to be included in the Agreement, if that legislation renders void or prohibits contractual provisions which:
- (a) exclude, restrict or modify; or
 - (b) which have the effect of excluding, restricting or modifying,
- the application of, exercise of a right conferred by, or any liability under, such condition, warranty or guarantee (**Non-excludable Guarantee**).
- 14.5. To the maximum extent permitted by law, GuildLink limits its liability for any breach of any Non-excludable Guarantee, at its option to one or more of the following:
- (a) in respect of the supply of goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired;
 - (b) in respect of supply of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- 14.6. You acknowledge and agree that, to the maximum extent permitted by law:
- (a) GuildLink and each of its Service Providers, exclude all liability to you for consequential and/or indirect damage or loss of any kind (including but not limited to, lost revenue, business, profit, goodwill or data) suffered by you in any way relating to this Agreement, the Licensed Technology, any Program Rules, any Services, any Program or the delivery of, or your participation in, any Program or the delivery of any Services, regardless of the basis of such liability and even if advised of the likelihood of such damage; and
 - (b) GuildLink and each of its Service Providers, limit its aggregate liability to you in connection with this Agreement, all Program Rules, the Licensed Technology and all Programs and Services, to an amount of \$1,500.
- 14.7. You must indemnify and defend GuildLink and its Personnel and them harmless (collectively the **Indemnified**) from any loss, cost, damage and expense (including legal costs on a full indemnity basis and whether incurred by or awarded against an Indemnified) suffered or incurred by any of the Indemnified arising from or in connection with:
- (a) a breach of Privacy Laws including but not limited to data breaches and the misuse, loss or interference with Personal Information;
 - (b) a breach by you or any of your Personnel of the Agreement, a Program or any Program Rules or Laws;

- (c) the negligent, unlawful, or wilfully wrong, act or omission of you or any of your Personnel in connection with this Agreement, any Program Rules, any Program, the Licensed Technology or the delivery of, or your participation in, any Program; or
- (d) any claim made or threatened by a third party arising out of or in connection with any negligent, unlawful, or wilfully wrong, act or omission of you or any of your Personnel.

15. INSURANCE

- 15.1. You must take out and maintain, with reputable insurers, appropriate professional indemnity and public and products liability insurance policies (which must note GuildLink's interests under the Agreement) to cover any liability you might incur to GuildLink in connection with the Agreement, and workers compensation insurance as required by law.
- 15.2. You must, if requested to do so by GuildLink, produce sufficient evidence that the insurances required under clause 15.1 have been obtained, are current and comply with clause 15.1.

16. NOTICES

- 16.1. A party notifying or giving notice under this Agreement or in accordance with any Program Rules must give notice in writing left at or sent by prepaid post, e-mail or by fax to the address set out in the Application or such other address as may be notified to the other party from time to time.
- 16.2. A notice given in accordance with this clause 16 will be deemed received:
 - (a) if left at the recipient's address, on the date of delivery;
 - (b) if sent by prepaid post, 5 days after the date of posting;
 - (c) if sent by e-mail, on the business day after it is sent; and
 - (d) if sent by fax, when the sender's facsimile system generates a message confirming successful transmission to the recipient of the total number of pages of the notice.
- 16.3. GuildLink may nominate any other electronic means of giving you notice under this Agreement or in accordance with any Program Rules, in which case GuildLink may give you notices by using that electronic means. A notice given to you in this way is taken to be given on the business day after it is sent.
- 16.4. If GuildLink nominates an electronic means by which you may be notified that notices are available, and an electronic means you may use to access such notices, GuildLink may notify you that the notice is available and how you may use the nominated electronic access means to access the notice. A notice given to you in this way is taken to be given on the business day after the day on which you are notified that the notice is available.

17. GENERAL

- 17.1. If the whole or any part of any clause of this Agreement is found to be illegal or unenforceable, it will be severed from this Agreement and will not affect the continued operation of the remaining provisions of this Agreement.
- 17.2. This Agreement and the Program Rules for a Program:
 - (a) accurately reflects the agreement between the parties as to their subject matter;
 - (b) record the entire agreement between the parties with respect to the subject matter of this Agreement and the Programs; and
 - (c) supersede all prior representations and agreements in connection with that subject matter.
- 17.3. Any failure by GuildLink at any time to insist on your performance of any obligation under this Agreement or any Program Rules is not a waiver of its rights or any of them, including:
 - (a) to insist on performance of, or claim damages for breach of, that obligation unless GuildLink acknowledges in writing that the failure is a waiver; and
 - (b) at any other time to insist on performance of that or any other obligation under this Agreement.
- 17.4. This Agreement does not create a relationship of employment, agency or partnership between the parties.
- 17.5. Neither party will be liable for any delay in the performance of or any failure to perform any of its obligations under this Agreement (except an obligation to pay fees) that is caused by any event which is beyond its reasonable control, including the failure, malfunction or unavailability of necessary telecommunications, data communications and/or

computer services, power supply failure or shortages, acts or omissions of third parties (including Service Providers and Network Operators), acts of government or Government Agencies, or telecommunications network congestion.

- 17.6. GuildLink may, without the need to obtain your consent, transfer all or any part of its rights, interests, obligations and/or liabilities under the Agreement by assignment or by novation as the case may be.
- 17.7. GuildLink may subcontract the performance of the whole or any part of its obligations under the Agreement or any part of it.
- 17.8. The Agreement is governed by the laws and the parties submit to the non-exclusive jurisdiction, of the courts of New South Wales, Australia.

18. DICTIONARY AND INTERPRETATION

- 18.1. In this Agreement:

Agreement has the meaning ascribed to that term in clause 1.7.

Administrator means your key point of contact with GuildLink and the person with the responsibility to authorise and deactivate Users to access the Licensed Technology.

Application means your application to use the Licensed Technology and any Program/s.

Authorisations means:

- (a) any consent, registration, filing, agreement, certificate, notarisation, licence, approval, permit, authority or exemption from, by or with a Government Agency; or
- (b) any consent or authorisation regarded as given by a Government Agency due to the expiration of the period specified by statute within which the Government Agency should have acted if it wished to proscribe or limit anything already lodged, registered or notified under that statute.

Business Files has the meaning ascribed to that term in clause 13.4.

Confidential Information means GuildLink's information that:

- (c) is by its nature confidential;
- (d) is treated by GuildLink as confidential; or
- (e) you know or ought to know is confidential,

and is disclosed by GuildLink to, or obtained by, you under this Agreement or in relation to a Program (including without limitation, the Program Rules any part of the Program IPR, any part of the Licensed Technology, any IPR relating to the Licensed Technology, any information relating to the Licensed Technology and any other information set out in each of the Program Rules).

DDR means the Direct Debit Request under which you authorise GuildLink or a related entity to arrange, through its financial institution, for the payment of Fees under this Agreement or any Program Rules by a debit to your nominated account.

DDSA means your Direct Debit Service Agreement with GuildLink, formed when you provided GuildLink with your signed and completed DDR.

Extract Application means the software (consisting of a set of instructions or statements in machine readable form) licensed by GuildLink to you in accordance with clause 5.1(b) which, amongst other things, monitors dispensing system data and provides updates to prescription fill data for Patients in an Internet-based Technology, and includes any copies of that software and any Updates or New Releases of that software (or any part of it) provided by GuildLink to you under this Agreement.

Fees means the fees paid to GuildLink for use of Licensed Technology, being once off payments and/or recurring subscription payments, as determined by GuildLink from time to time, including Service Fees.

Find Application means the software (consisting of a set of instructions or statements in machine readable form) licensed by GuildLink to you in accordance with clause 5.1(b) which, amongst other things, qualifies Patients for an Internet-based Technology by applying Program specific rules to data from dispensing system data and includes any

copies of that software and any Updates or New Releases of that software (or any part of it) provided by GuildLink to you under this Agreement.

Government Agency means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

Hosted Site means the internet site on which an Internet-based Technology may be accessed, of which GuildLink gives you notice from time to time.

Informed Consent of a Patient in relation to their participation in a Program or the disclosure of the Patient's Personal Information, means that the Patient, having been given sufficient information by the Pharmacist to enable the Patient to make an informed decision about the matter and having the capacity to provide such consent (or such consent is provided through a parent, guardian, authorised carer or responsible person in accordance with the Program Rules), has voluntarily consented to participate in the Program or to the disclosure of the Patient's Personal Information (as the case may be).

Intellectual Property Rights or **IPR** means all intellectual property rights, including but not limited to the following rights:

(f) patents, copyright, registered designs, trade marks and any right to have confidential information kept confidential; and

(g) any application or right to apply for registration of any of the rights referred to in paragraph (a),

including, without limitation, any error corrections or translations to that material or intellectual property and derivatives of that material where such derivative work cannot be used without infringing the IPR in the underlying material.

Internet-based Technology means any Internet-based technology through which GuildLink provides a platform which enables it to provide Pharmacies with one or more Programs that provide various patient-related services, communications and other programs, which GuildLink gives you notice of from time to time.

Laws include any requirement of any statute, rule, regulation, proclamation, order in council, ordinance or by-law whether Commonwealth, state, territorial or local.

Licensed Technology means the Internet-based Technology (either standalone Classic GuildCare or standalone next Generation GuildCare, or GuildCare Lite or any combination during the transition phase), the Mobile Application Technology, the Find Application and the Extract Application that is part of the GuildCare platform, and a Licensed Technology means any one of these technologies.

Medical Practitioner means a person who is entitled to practice as a medical practitioner under Laws applicable to medical practitioners, or the practice of medicine, in the state or territory where that person practices as a medical practitioner.

Medicines means, in respect of a Program, the medicines, if any, described in the relevant Program Rules.

Mobile Application (myPharmacyLink) means the mobile application made available and licensed to Patients through the Licensed Technology (specifically MemoCare) that enables interactions between Patients and Network Pharmacies through medication history and management functionality and linking health assessment outcomes to pharmacy consultation.

Mobile Application Program means the Program associated with the Mobile Application.

Mobile Application Technology means the Internet-based technology through which GuildLink provides a platform which enables it to provide Pharmacies with the Mobile Application Program.

Network Operator means the operator of any telecommunications network on which the Program(s) relies.

Network Pharmacy means a pharmacy licensed by GuildLink to deliver Programs.

New Release means the software which GuildLink makes generally available from time to time to its licensees of a Licensed Technology produced primarily to provide an extension, alteration, improvement or additional functionality to the Licensed Technology.

Patient means a patient who obtains Medicines or information in relation to which a Program exists.

Personal Information means all information about a person that is 'personal information' as defined in the *Privacy Act 1988* (Cth) which is collected or held by any of the parties in connection with this Agreement or any Program.

Personnel of a party are the employees, officers, consultants, contractors, representatives and agents of the party, including, in your case, the Administrator and Users.

Pharmacy means the pharmacy described in your Application as changed or relocated from time to time subject to clause 2.8.

Pharmacy Group is, in relation to a group of Network Pharmacies, the entity that manages and administers the group by providing a range of wholesale, retail and business services to the group (including branding and store design), and includes any franchisor or wholesaler or their related bodies corporate.

Privacy Laws means the *Privacy Act 1988* (Cth), together with the Australian Privacy Principles issued under that Act, and any other Laws that regulate the collection and use of Personal Information in Australia.

Program means any services program using the Licensed Technology to assist Network Pharmacies to provide patient care services, including but not limited to medication management, dashboarding, scorecarding, medication education and patient screening services.

Program Fees for a Program, means the fees (if any) payable by GuildLink to you for your active participation in the Program as set out in the relevant Program Rules.

Program Rules for a Program means the specific rules, protocols and requirements for the delivery of the Program.

Program IPR means any IPR that arises during and as a result of you or your Personnel carrying out a Program, or using a Licensed Technology including, without limitation, any information or data (excluding Patient data) entered into or incorporated into a Licensed Technology (regardless of whether that information or data is entered or incorporated by you or your Personnel or otherwise).

Recruitment Function means the function within a Licensed Technology which enables Patients to be recruited by you to a particular Program.

Services means any services provided to you from time to time, including those provided in relation to any Program, and includes any services described in the Program Rules for that Program.

Service Fees means the fees payable from time to time for the supply of the Services pursuant to the Agreement.

Service Provider means any of GuildLink's agents, contractors and/or licensors who provide GuildLink with services and technology enabling it to deliver the Licensed Technology or the Program.

Sponsor means, in respect of a Program, any person or organisation that has agreed with GuildLink to sponsor a Program, including, without limitation, manufacturers of Medicines.

Update means software which GuildLink makes generally available from time to time to licensees of the Licensed Technology produced primarily to overcome defects, errors or limitations in, or to improve the operation of, the Licensed Technology.

Users means your employees and contractors including pharmacists or technicians who have a legitimate business need to access and use the Licensed Technology and who have been authorised to have access to the Licensed Technology by the Administrator.

you, your or derivatives of any of those terms, means the applicant set out in the Application.

Your System means the computers, dispensary software or other point of sale software used or operated in connection with your business from time to time.

we, us, or derivatives of any of those terms, means GuildLink Pty Limited (ABN 83 090 249 960) of Level 3, Suite 301/151 Castlereagh Street, Sydney NSW 2000.

18.2. All other words starting with a capital letter have the meaning ascribed to them in the Application.

18.3. Provisions that are expressed to apply to this Agreement apply equally to any Program Rules.

- 18.4. A reference to any legislation or statutory instrument or regulation in this Agreement or any Program Rules is a reference to that legislation or statutory instrument or regulation as amended or replaced from time to time.
- 18.5. No provision of the Agreement or any Program Rules will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement, any Program Rules or that provision.
- 18.6. If a party consists of more than 1 person, this agreement binds each of them separately and any 2 or more of them jointly.
- 18.7. An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- 18.8. A party, which is a trustee, is bound both personally and in its capacity as a trustee.