

1. DEFINITIONS

Agreement means the agreement between Resonance, and you constituted by this document and the New User Registration, in which you are identified and in which your details are provided to us.

BAA means the form of Business Associates Agreement published on our website and updated from time to time.

DPA means the form of Data Protection Addendum published on our website and updated from time to time.

Fees means the fees specified in your New User Registration or as advised to or agreed in writing with you from time to time.

Intellectual Property means our Intellectual Property Rights in or relating to the Products and/or any materials arising from the Products, including all Reports and User Guides.

Intellectual Property Rights means all intellectual property rights throughout the world, including copyright (both present and future), trademark, design, patent, know-how, semi-conductor, or circuit layout rights.

Law includes any requirement of any statute, regulation, proclamation, ordinance, or by-law, present or future and whether State, Federal, local, or otherwise.

Loss means any loss, damage, liability, injury, claim, action, liability, cost, expense, charge, penalty, outgoing or payment and legal costs and expenses on a full indemnity basis.

New User Registration means the form signed by you in connection with your request for the supply of Products.

Patient means a person who will undergo or has undergone Scanning and/or is being treated by you and in respect of whom you request Products.

Patient Images means Scanner images of a Patient submitted to us through our User Portal for the generation of a Report.

Person means any individual, corporation, partnership, limited liability company, entity, other business organisation of any kind, association, trust, or Regulatory Body.

Personal Information means information relating to an identified or identifiable natural person such as name, date of birth, address, an identification number, or medical history, and including protected health information and patient information as defined under applicable Laws.

Privacy Legislation means the Law relating to collection, use and disclosure of Personal Information and the rights of a Person to access and correct Personal Information, including: (a) the *Privacy Act 1988* (Cth) (Aust); (b) the Health Insurance Portability and Accountability Act of 1996 (USA); (c) the Health Information Technology for Economic and Clinical Health Act (USA); and (d) the General Data Protection Regulation 2016/679, being a regulation in EU law on data protection and privacy for all individuals within the EU and the EEA including the export of personal data outside the EU and EEA.

Product means our devices, products, services and our User Portal.

Registered User means a Person authorised to access our User Portal, as designated in Annexure A to your New User Registration or in any subsequent User Portal access form.

Regulatory Approval means any permit, authorisation, registration, consent, action, waiver, exception, variance, order, judgment, decree, licence, exemption, publication, filing, notice to, or declaration of or with, or required by any Regulatory Body or governmental authority or applicable Law.

Regulatory Body means the Food and Drug Administration (USA), the Therapeutic Goods Administration (Aust), the CE Mark (EEA), or similar Regulatory Authority that regulates goods or services within the medical device field.

Report means any report generated by a Product.

Resonance, we or us means Resonance Health Analysis Services Pty Ltd ACN 092 813 244, a company incorporated in Australia and having its office at 141 Burswood Road, Burswood, Western Australia 6100, and its related bodies corporate.

Scanner means a Scanning machine for the purpose of medical imaging, including MRI and CT.

Scanning means the act of procuring Patient Images by means of medical imaging using a Scanner.

T&C's means these Terms & Conditions as amended by us from time to time with the most current version available on our website or on request from us.

User or you means any person, entity or organisation that uses any Product, including any of its or their employees, consultants, agents, contractors or other representatives.

User Guide means the manual of technical specifications, instructions, protocols, practices, and procedures applicable to a Product, as amended from time to time.

User Portal means our web-based user-interface system which enables Patient Image lodgement, queuing, tracking and Report deployment, or any other system by which we provide Reports to you from time to time.

2. YOUR OBLIGATIONS

You:

- (a) will use the Products in accordance with the User Guides and these T&Cs as amended by us from time-to-time and posted on our website;
- (b) will conduct Scanning and clinical review in accordance with the Law;
- (c) will ensure that you and any Person you engage or otherwise authorise to conduct Scanning and clinical review is appropriately qualified, trained, and skilled;
- (d) will assure verification of Scanners for the purposes of the Products (including by promptly notifying us of an upgrade to Scanner software or hardware); and
- (e) will have no obligation to purchase our Products.

3. OUR OBLIGATIONS

We:

- (a) will, where possible, provide a Report through our User Portal in respect of each Patient's Images;
- (b) will use reasonable efforts to provide Reports within two business days of receipt of Patient Images through our User Portal;
- (c) will provide training and support materials reasonably required by you;
- (d) will in accordance with the User Guides, and the New User Registration, provide Scanner verification (if applicable);
- (e) will where applicable, provide access to our User Portal to enable you to use our Products; and
- (f) may discontinue provision of our Products at any time.

4. CONFIDENTIALITY AND PRIVACY

- (a) The New User Registration (other than the Contracting Party/User name) is confidential to the Parties.
- (b) Each Party will maintain the confidentiality of Patient Images and Personal Information in accordance with the Law and will comply with applicable Privacy Legislation.
- (c) Our [Privacy Policy](#) on our website forms part of this Agreement.
- (d) Unless otherwise agreed in writing, our:
 - (i) **BAA** applies in respect of US domiciled Users and US resident Patients and forms part of this Agreement; and
 - (ii) **DPA** applies in respect of EEA domiciled Users and any EEA resident Patients and forms part of this Agreement.

5. FEES AND PAYMENT

- (a) You agree to pay or procure payment of our Fees and costs.
- (b) Our Fees are reviewed annually with effect from 1 January each year. We may increase our Fees at any other time on 60 days' notice to you.
- (c) Payment of Fees and costs must be made by electronic funds transfer within 30 days of receipt of an invoice.
- (d) We will charge interest on overdue amounts, calculated from the due date of an invoice, at the rate specified in the New User Registration.
- (e) Amounts charged by your bank are to be borne by you. If additional costs are deducted from the payment received by us, these amounts will be added to the next invoice.

6. TAXES

All amounts payable under this Agreement are exclusive of and payable without reduction for any taxes.

7. YOUR REPRESENTATIONS AND WARRANTIES

- (a) You represent and warrant that:

- (i) you have obtained the Regulatory Approvals required to conduct Scanning and clinical review, and to obtain and provide Patient Images, and that the Regulatory Approvals will be maintained in effect each time you access the User Portal;
- (ii) prior to undertaking any Scanning, you will obtain the Patient's written consent to Resonance sharing Patient Images directly with the Patient's clinician(s) in the event such clinician(s) determines or determine it is necessary to protect the Patient's vital interests; and
- (iii) the Scanning and clinical review will be conducted in accordance with applicable Law, guidelines, and protocols, including the User Guide (if applicable) and all Privacy Legislation.

- (b) US Users must not counsel activity that violates US State or Federal Law, including prohibitions against fraud and kickbacks and other prohibited activities (incl. in the USA, as set forth at 42 C.F.R. § 1001.951 et. seq.)

8. OUR REPRESENTATIONS AND WARRANTIES

- (a) For Products supplied to US Users, we represent and warrant that we have not been: (i) placed on the sanctions list issued by the Office of the Inspector General of the Dept of Health & Human Services; (ii) excluded from government contracts by the General Services Administration; or (iii) convicted of a felony or any crime relating to healthcare. If we are placed on the sanctions list, excluded from government contracts or convicted of a felony or any crime relating to healthcare, we will notify US Users. We will not breach prohibitions against fraud, kickbacks and other prohibited activities at Law.
- (b) To the maximum extent permitted by Law, we give no other representation or warranty of any kind and expressly disclaim all other warranties and representations of any kind, either express or implied, as to any matter concerning the Products or the Reports.

9. INTELLECTUAL PROPERTY

- (a) Subject to this Agreement, we grant you a limited, non-exclusive licence to provide a copy of a Report for the purpose of clinical review and treatment of the Patient. The licence expressly excludes any right to make copies, adaptations, modifications or translations of the Report for any other purpose.
- (b) You must not use our Products and Reports for or in connection with clinical trials or for comparative or research purposes without our prior written consent or to develop products to compete with our Products. You must obtain our written consent prior to the publication of any material which references our Products or Reports.
- (c) You will not file any patent application covering, referencing or claiming any of our Intellectual Property or use our Intellectual Property to challenge, oppose or otherwise seek to invalidate (whether directly or indirectly) any patent or patent application which we own or control.
- (d) If you develop or use a product or a process which, in our reasonable opinion, might have involved the use of any of our Intellectual Property, you shall, at our request, supply to us information reasonably necessary to establish that our Intellectual Property has not been used or disclosed.
- (e) You must not reverse engineer, re-engineer, analyse, sequence or otherwise attempt to replicate our Intellectual Property, or investigate detailed aspects of any Intellectual Property that have not been directly disclosed to you.
- (f) You absolutely and unconditionally assign and must procure that your personnel assign to us upon creation, all Intellectual Property Rights arising from a contravention of this clause 9, in all tangible and intangible information, documents, software, reports, data, inventions, processes, products and other materials in any media developed, created, written or otherwise brought into existence by or on your behalf using or with the benefit of any Intellectual Property (**Developed Material**). This assignment operates as an assignment of future Intellectual Property Rights to the extent that the Developed Material is not in existence on the date of this Agreement.

10. LIABILITY AND INDEMNITY

- (a) No Party is liable to the other or any other Person for any Loss not expressly provided for in this Agreement. No Party is liable to the other Party or any other Person for consequential, indirect, punitive, incidental, or special damages, including damages for lost revenues, income, or profits, except in respect of the breach of clause 9 by you. Our maximum aggregate liability in respect of any Loss you, a Patient or Person suffers in connection with this Agreement is limited to US\$1m.

- (b) Each Party acknowledges that damages may be inadequate to remedy any breach or violation of this Agreement, and further agrees that the other Party, in addition to all other available remedies, shall be entitled as a matter of right, to injunctive relief, including specific performance, with respect to any such breach or violation, in any court of competent jurisdiction. If any of the provisions are held to be in any respect an unreasonable restriction upon either Party to whom such provision otherwise would apply, then such provision shall be deemed to extend only over the maximum time, geographic area, and/or range of activities to which it otherwise would be enforceable.

- (c) You are liable for all Scanning and clinical review and indemnify and hold us harmless against Loss we sustain or incur as a result of: (i) the Scanning and/or clinical review; (ii) any claim by a Patient or a Patient's advisers or any Person claiming through any of them, to the extent such claim results from or arises out of Scanning and/or clinical review (or any portion thereof); or (iii) any use of Products or Reports in breach of this Agreement.

11. USER PORTAL

- (a) Only Registered Users may access our User Portal. You must keep your login and password secure.
- (b) Our Terms & Conditions may be updated from time to time and are available on our website. By accessing our User Portal, you agree to be bound by our Terms & Conditions (including our User Portal terms and conditions) as current at the time of access.
- (c) You are liable for all acts or omissions in relation to your use of our User Portal and those of your Registered Users. You must comply with the Law when using our User Portal.
- (d) We are not liable for any Loss to Registered Users or third parties resulting from: (i) access to or inability to access our User Portal; or (ii) viruses or other detrimental codes or impediments that infect computer equipment or other property on account of access to our User Portal or from the downloading of any content from our website.
- (e) We own all Intellectual Property Rights in relation to our User Portal. You may not use our trademarks or trade names without our consent.
- (f) Our User Portal may be withdrawn, modified or updated in whole or in part at any time without notice.
- (g) All information you receive via or with respect to our User Portal is confidential. You must not use or disclose that information other than in connection with your access and use of our User Portal and in compliance with the Law.

12. GENERAL

- (a) This Agreement is governed by, and construed according to, the laws of Western Australia and each Party submits to the jurisdiction of the courts of Western Australia. Each Party irrevocably and unconditionally waives any defence of an inconvenient forum, or any limitation on jurisdiction on account of the place of residence or domicile of such Party.
- (b) The non-exercise of or delay in exercising any power or right of does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the Party to be bound by the waiver.
- (c) Any provision that may be invalid or unenforceable in any applicable jurisdiction is to be interpreted in such manner for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, but if such provision is held to be invalid or unenforceable under applicable law of such jurisdiction, then it shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in other jurisdiction.
- (d) This Agreement constitutes the entire agreement between the Parties and supersedes any other agreements, arrangements, and representations, written or oral.
- (e) Any special conditions in the New User Registration apply to this Agreement and, in the event of inconsistency or conflict between the two, the special conditions shall prevail.
- (f) Clauses 4 to 13 inc. survive expiration or termination of this Agreement.

13. INTERPRETATION

Headings are for convenience and do not affect interpretation. The following rules also apply in interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply.

- (a) a reference to statute, regulation, proclamation, ordinance, by-law or guideline includes all statutes, regulations, proclamations, ordinances, by-laws or guidelines varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances, by-laws or guidelines issued under that statute;
- (b) a reference to a document (including any User Guide and any information on our website) including this Agreement includes a reference to that document as amended, supplemented, varied or replaced from time to time;
- (c) any reference to any Person includes its successors and permitted assigns; and
- (d) the term "including" when used in this Agreement means "including but not limited to".