



## **Subscription and Licence Agreement**

**By installing, downloading, accessing or otherwise using the Application or any Update of the Application you agree to be bound by this Agreement. If you DO NOT agree to the terms of this Agreement DO NOT install the Application or any Update or supplement to the Application.**

Once the Application has been installed on your computer or otherwise used, any person subsequently opening or using the Application will be deemed to be a User and be subject to the terms and conditions of this Subscription Agreement.

Argus Connecting Care Pty Ltd of Suite 4, Greenhill Enterprise Centre, Mt Helen 3350 ABN 25 143 576 881 (referred to in this Agreement as ARGUS) provides Argus software and all printed and electronic documentation, including any media, and instructional and operational manuals covering their use together with updates (referred to in this Agreement as the Application), on the terms set out in this Agreement. The User assumes responsibility for the selection of the Application to achieve its intended results and for the installation and use of, and results from, the Application.

All rights of ARGUS in this agreement will apply to any assignee of the intellectual Property rights of the Application and Content, any assignee of the business of ARGUS or any licensee or sub-contractor assigned the ARGUS rights under this agreement.

### **1. Licence**

ARGUS grants to User, and User accepts, a non-transferable and non-exclusive licence to use the Application and Content during the Subscription Period, subject to the following conditions.

- (a) Use is restricted to the number of Healthcare practitioners or Administrators or other persons or positions (if any) specified in the Documentation and only for the purposes of the User's medical practice or such other purpose expressly authorised in writing by ARGUS;
- (b) Unless otherwise specified in the Documentation the Application must only be used in a general practice, specialist practice or allied health provider practice;
- (c) User must not grant sub-licences of the Application;
- (d) User has no right to adapt, modify, disassemble or reverse engineer the Application nor may User make any copies of the Application, except copies specifically for backup or risk management purposes;
- (e) Use is in accordance with any user identification and password requirements stipulated by ARGUS; and
- (f) ARGUS has received payment in full of the Subscription Fee and any amounts due to ARGUS as set out in clause 6.1.

### **2. Support Services**

Provided User complies with its obligations under this Agreement and subject to clauses 2.4 and 7, ARGUS agrees to provide the Support Services for the Subscription Period:

#### **2.1 Availability of Support**

- (a) Support Services will be provided by ARGUS during the hours published by it from time to time as the Support Services Hours for the Application.

(b) ARGUS may provide emergency Support Services outside the hours published at its sole discretion. Supply of the emergency Support Services may be conditional on User paying an additional fee to ARGUS.

## **2.2 Provision of Support**

Where ARGUS is required to provide Support Services to User, these services will, at the sole option of ARGUS, take the form of telephone advice or error correction by means of modem or correction by other electronic means in accordance with ARGUS's then current procedures governing the performance of such services.

## **2.3 User's Obligations in relation to the Support Services**

(a) Where User requests Support Services involving alleged errors or defects in the Application, User must provide to ARGUS a documented example of the alleged error or defect.

(b) User will, if requested by ARGUS, provide to ARGUS a listing of output and any other data ARGUS reasonably requires in order to reproduce operating conditions similar to those existing when any alleged error or defect in the Application was discovered by User.

(c) User will, if requested by ARGUS, permit ARGUS remote desktop access by any reasonable means for the purpose of modification and viewing of the Application, or, subsequent modification and viewing of 3rd party software relating to the operation of the Application. This includes, but is not limited to; diagnosis of faults, software upgrades, software installation, application configuration, operating system configuration, network configuration, firewall configuration. The User agrees that if they do not permit ARGUS remote desktop access, ARGUS reserves the right to apply a surcharge on the subscription charge or apply an additional charge per episode which will be notified to the User prior to delivering any support service.

## **2.4 Exclusions**

For the avoidance of doubt, the Support Services do not include:

- (a) initial installation of the Application;
- (b) correction of errors or defects caused by Users' operation of the Application in a manner other than as authorised by ARGUS;
- (c) correction of errors or defects caused by modification, revision, variation, translation or alteration of the Application not authorised by ARGUS;
- (d) correction of errors or defects caused by the use of the Application by a person not authorised by ARGUS;
- (e) correction of errors caused in whole or part by the use of software other than the Application;
- (f) correction of errors which, in the opinion of ARGUS, were caused by the failure of User to provide suitably qualified and adequately trained staff to operate the Application;
- (g) training of User's staff or subsequent IT service contractors;
- (h) rectification of operator or User errors;
- (i) rectification of errors arising from faults in the computer hardware on which the Application is running or any device connected to that computer hardware;
- (j) maintenance of User's computer network; or
- (k) correction of errors, including data errors, arising directly or indirectly out of User's failure to comply with this Agreement or any other agreement between User and ARGUS.

## **3. Application Updates**

Provided User complies with its obligations under this Agreement, and subject to clause

5, ARGUS agrees to make available to the User during the Subscription Period any Updates of the Application published by ARGUS from time to time, subject to the following conditions:

(a) ARGUS does not warrant that any Updates of the Application will be released during the Subscription Period.

(b) ARGUS's obligations to provide Updates relate only to the Application, and not to any hardware or third party software used in conjunction with the Application, nor to the extent the Application has been modified by User.

#### **4. Intellectual Property Rights and Non-Disclosure**

##### **4.1 Title to the Application and Updates**

All Intellectual Property Rights and other proprietary rights in or related to the Application and Updates or supplements are and remain ARGUS's exclusive property, whether or not specifically recognised, registered or perfected under local applicable law and User must not do anything that jeopardises ARGUS's proprietary rights. Other than to the extent of the licence granted in clause 1, no licence, right or interest in any of ARGUS's trade marks, service marks or trade names is granted to User under this Agreement. User agrees that ARGUS retains all intellectual property rights in relation to any modifications, updates and supplements to the Application made by ARGUS at the request of User and that ARGUS may provide such modifications to its other customers without notice to the User.

##### **4.2 Copyright and Trademarks**

User agrees not to remove, deface or destroy any copyright notice, patent notice, trademark, service mark, other proprietary markings or confidential legends placed on or within the Application.

##### **4.3 Non-Disclosure**

(a) User agrees not to sell, rent, licence, distribute, transfer, or, directly or indirectly, disclose or permit the sale, rental, licensing, distribution, transfer, reverse engineer or disclose the Application or the Documentation to any other party at any time except as permitted under this Agreement; otherwise permitted in writing by ARGUS or where disclosure is required by law. In the event that User is required to disclose the Application or the Documentation by law, User must give prior notice to ARGUS of its intention to disclose.

(b) User agrees that any disclosure of the Application or the Documentation to a third party in contravention of this clause 4.3 constitutes a material breach of this Agreement, and that in such a case, the licence granted by this Agreement immediately terminates without further notice and User shall be strictly liable for all loss or damage to ARGUS or a third party that results from such disclosure.

(c) The obligation of non-disclosure under this clause 4.3 survives termination of this Agreement.

#### **5. Disclaimer**

(a) ARGUS makes no representations or warranties with regard to information authored by any third party and transmitted by Argus to the User. In no circumstances will ARGUS be liable for any direct, indirect, consequential, special, exemplary or other damages arising therefrom.

(b) User acknowledges and agrees that messages, data, images or documents (each called a "message") sent or received utilising any of the Application's messaging facilities (where messages can be sent or received by the Application to or from the internet and external software or systems) are sent or received at User's risk. ARGUS will not be liable for any loss, claim, damage or injury arising from the non-receipt of or a failure to

deliver a message or if any message is incomplete, corrupted or in error. User should communicate separately with external message/data senders or recipients to verify the receipt of messages utilising any of the Application's messaging facilities.

## **6. User's Obligations**

### **6.1 Payment of Subscription and other fees**

In consideration for the licence granted to User under this Agreement, User shall pay ARGUS the Subscription Fee and any other fees as specified in the Documentation. Unless otherwise specified in the Documentation the Subscription Fee and any other fees do not include any freight or insurance, sales tax, customs duty, consumption tax, withholding tax, goods and services tax, value added tax or similar tax, or other taxes payable at law, all of which the User must pay in addition to the Subscription Fee if assessed on the Application or its use.

### **6.2 Other Obligations**

(a) User must provide all reasonable assistance to ARGUS in performance of its obligations under this Agreement (including the provision of the Support Services), including without limitation ensuring that ARGUS's personnel are provided with all information, facilities, assistance and access (to User's premises and equipment) reasonably required to enable ARGUS to comply with its obligations under this Agreement. In this respect User acknowledges that if it does not provide ARGUS with remote access to User's network, ARGUS will not be able to provide as extensive a range of Support Services as if remote access were made available.

(b) User shall be exclusively responsible for the supervision, management, and control of its use of the Application, including, but not limited to:

(i) maintaining proper configuration of the equipment or devices on which the Application is used;

(ii) maintaining the integrity of the data and databases used with and within the Application;

(iii) establishing adequate operating methods;

(iv) implementing procedures sufficient to satisfy its obligations for security and licensed use under this Agreement, including appropriate action between it and its officers, employees and contractors to prevent unauthorised access, misuse, unauthorised copying, modification, reverse engineering or disclosure of the Application;

(v) compliance with all relevant laws and in particular but not limited to, relevant state and federal privacy laws including the Privacy Act (Cwlth) 1988.

(c) User must comply with the licence agreements and terms of use associated with all Utilities Products and all risk arising out of any use or performance of the Utilities Products is the Users. ARGUS is not the manufacturer or owner of the Utilities Products and does not warrant the suitability, performance or use of the Utilities Products.

(d) User acknowledges that the Application at the User's direction may by operation or configuration interact with third parties, to for example, but not limited to, sending pathology requests and receiving results, sending or receiving messages, and receiving hospital discharge summaries.

(e) User must not modify or use the Application in a manner which interferes with the reasonable enjoyment or use of the Application and related services by any other party, for example but not limited to sending spam or unsolicited messages bulk messages.

## **7. Termination**

### **7.1 Cause for Termination**

User will have committed an event of default, and this Agreement and the licence granted under it will terminate automatically and without further notice upon the occurrence of any of the following:

- (a) User attempts to or does use, copy, licence, modify, reverse engineer or convey or deals with the Application, Content or Documentation in any manner contrary to the terms of this Agreement or in derogation of ARGUS's Intellectual Property Rights;
- (b) User fails or neglects to perform or observe any of its existing or future obligations under this Agreement, including without limitation, the timely payment of any amounts due to ARGUS (including but not limited to payment of the Subscription Fee); or
- (c) User becomes Insolvent or ceases to carry on business.

### **7.2 Termination without cause**

In the case of Users of the Application where no Subscription Fee is payable, for example but not limited to trial users of the Application, ARGUS may immediately terminate this Agreement and the licence granted under it by notice to the User.

### **7.3 Effect of Termination**

User agrees that immediately upon an event described in clause 7.1, whether or not User receives notice of termination, or 7.2 it will immediately destroy all copies of the Application and certify that fact to ARGUS. User further agrees that in the event of termination under clause 7.1 all fees or charges due for the remainder of the Subscription Period of this Agreement will immediately become due and payable. Upon termination of the licence granted under this Agreement, ARGUS's obligations under this Agreement will cease.

## **8. Warranties**

### **8.1 Limited Software Warranty**

(a) Subject to this Agreement, ARGUS warrants that to the best of its knowledge and belief it has good title to the Application and the right and authority to grant the licence in clause 1.

(b) Subject to clause 9 and to the extent permitted by law ARGUS excludes all express warranties and representations other the warranty in clause 8.1(a) and all implied warranties and representations and in particular does not warrant that:

- (i) the Application or Content is error free or that all errors can or will be corrected; or
- (ii) use of the Application will be uninterrupted or will not result in loss of data; or
- (iii) the Application will meet User's particular requirements, whether known to ARGUS or not; or
- (iv) the Application will function correctly on the User's particular computer equipment; or
- (v) the Application will provide any function not designated in the Software Documentation; or
- (vi) the Application is of merchantable quality or fit for a particular purpose, whether the purpose is known to ARGUS or not.

### **8.2 Limited Software Warranty Remedy**

ARGUS's liability and User's sole and exclusive remedy for any breach of the warranties in clause 8.1 is limited to the re-supply of the Application; re-supply of the Support Services, or at ARGUS's option, a refund of the Subscription Fee.

## **9. Limitation of Liability**

(a) In the event that this Agreement constitutes a supply of goods and services to a consumer as defined in the Trade Practices Act 1974 (Cwlth), or relevant State legislation (the "Acts") nothing contained in this Agreement excludes, restricts or modifies any condition, warranty, right or remedy which pursuant to the Acts is applicable or is conferred on the User or any third party where to do so is unlawful.

(b) In the event of a breach by ARGUS of a condition, warranty or right referred to in this clause, ARGUS's liability for such breach shall be limited (except to the extent specifically set out in this Agreement) to:

(i) In the case of goods, at the option of ARGUS:

- I. The replacement of the goods or the supply of equivalent goods; or
- II. Payment of the cost of replacing the goods or acquiring equivalent goods; or
- III. Refund of the Subscription Fee.

(ii) In the case of services:

- I. The supplying of the services again; or
- II. The payment of the cost of having the services supplied again; or.
- III. Refund of the fees paid for services.

(c) Subject to this clause, all conditions and warranties which would or might otherwise be implied in this Agreement are hereby excluded to the extent permitted by law.

(d) Other than as set out in this clause, under no circumstances will ARGUS be liable for any loss, damage or injury (including without limitation any loss of profits, indirect, incidental or consequential loss, damage or injury) arising from the supply or use of the Application or Content, or any other applications or services supplied under this Agreement, any failure by ARGUS to perform any obligation or observe any term of this Agreement or any loss of data suffered by the User in connection with use of the Application. ARGUS shall not be liable in any circumstances whatsoever for any failure to perform any obligations to be performed by ARGUS where such failure is due to any cause beyond the reasonable control of ARGUS.

(e) The Application and Content contain information intended for use in Australia only. If User uses the Application or Content outside Australia, User does so at its own risk and, to the extent permitted by law, ARGUS disclaims all and any liability to User or any third party for such use.

(f) User agrees to indemnify, defend and hold ARGUS harmless against any claims, liabilities, proceedings, costs, losses, expenses or damages incurred by ARGUS in connection with User's use of the Application or Content or use of the Application or Content outside Australia, breach of this Agreement or any other negligent or wrongful act or omission by User.

## **10. General**

### **10.1 Definitions**

In this Agreement:

"Administrator" means a person employed by or otherwise associated with User's medical practice who is not a Healthcare practitioner;

"Agreement" means this agreement, and incorporates where appropriate matters referred to in any Documentation;

"Application" means the Argus software program in machine readable object code as well as any registration number or other means to access the program as provided by ARGUS and where the context admits, includes the Application Collateral, Content and Updates to the Application and where a Subscription Fee has been paid in respect of each program includes both programs;

"Application Collateral" means all printed and electronic documentation provided to User in connection with the Application, including any media, and instructional and operational manuals covering the use of Application;

"Content" means all information, text, material, graphics, software and advertisements within the Application whether owned by ARGUS, its suppliers, sponsors and/or licensors.

"Healthcare practitioner" means an individual with User's healthcare practice who provides healthcare services or clinical services to patients or clients;

"Documentation" means any document or documentation (if any) provided by ARGUS in conjunction with provision of the Application specifying, but not limited to, any matter anticipated to be specified under this Agreement including one or more of: the Subscription Fee; any other fees in respect of the User's licensing of the Application or optional components of the Application or services used in conjunction with the Application; and the matters referred to in clause 1;

"Insolvent" means, in relation to a party, that a liquidator, receiver, manager, receiver and manager, special investigator, administrator, statutory manager or similar person is appointed (whether by a Court or other persons) concerning any of the party's property, assets, business or affairs or the party assigns its property, assets, business or affairs for the benefit of its creditors;

"Intellectual Property Rights" in relation to the Application includes, both in Australia and throughout the world, any copyright, trade or service mark, design, patent, semiconductor or circuit layout right, trade, business or company name, indication of source or appellation of origin, or other proprietary right, or any right to registration of such rights;

"Argus" means ARGUS's secure messaging software program known as Argus;

"Software Documentation" means the documentation setting out the specifications of the Software forming part of the Application;

"Subscription Fee" means the amount (if any) specified as such in the Documentation for a Subscription Period;

"Subscription Period" means the period, usually 12 months, set out in the Documentation;

"Support Services" means best endeavours to assist User in the manner indicated in clause 2.2 during the Support Services Hours to resolve any problems experienced by User in relation to use of the Application;

"Support Services Hours" means the times Support Services for the Application will be available as published by ARGUS from time to time;

"Update" means any new release of or supplement to the Application issued by ARGUS and designed to correct errors identified in the Application, comply with legislative requirements, reflect changes to NeHTA or other Standards, or add extra program features or functionality, but specifically excludes any new release of the Application designated by ARGUS as a new version.

"User" mean any person who opens or uses the Application, Application Collateral, Content, Documentation, or any Update.

"Utilities Products" means any third party products which:

- (a) are subject to their own terms and conditions; and
- (b) are either provided with the Application; or
- (c) User is required to download and/or install in order to use the Application.

## **10.2 Interpretation**

In this agreement, headings and boldings are for convenience only and do not affect the interpretation of this agreement and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) where a word or phrase is defined in this agreement, other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
- (e) a reference to any thing (including, but not limited to, any right) includes a part of that thing but nothing in this clause implies that performance of part of an obligation constitutes performance of the obligation;
- (f) a reference to any statute includes all statutes varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (g) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (h) a reference to a party to a document includes that party's successors and permitted assigns;
- (i) no provision of this agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this agreement or that provision;

(j) a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;

(k) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind; and

### **10.3 Assignment of Agreement**

User shall not assign or otherwise transfer its rights under this Agreement, including the licence granted hereunder, or the Application obtained pursuant to this Agreement without the prior written consent of ARGUS. Any attempt to make such an assignment without ARGUS's consent shall be void and result in immediate termination of this Agreement without notice.

### **10.4 Nonwaiver**

ARGUS and User agree that no failure to exercise, and no delay in exercising, any right, power, or privilege hereunder, on the part of either party shall operate as a waiver of any right, power, or privilege. ARGUS and User further agree that no single or partial exercise of any right, power, or privilege hereunder shall preclude its further exercise.

### **10.5 Severability**

If any part of this Agreement is adjudged by any court of competent jurisdiction to be invalid, void or illegal, that judgment shall not affect or nullify the remainder of this Agreement, and the effect shall be confined to sever the part immediately involved in the matter adjudged.

### **10.6 Governing Law**

The laws of Victoria govern this Agreement, and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that state.

### **10.7 Entire Agreement**

User acknowledges and agrees that this Agreement, the Software Documentation and the Documentation are the complete and exclusive statement of the mutual understanding of the parties and that it supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement and supersedes any previous licence or subscription agreements between the User and ARGUS in relation to the Application and the Content.

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