

OPERATIVE PROVISIONS:

1. BACKGROUND

- 1.1 Oqea Pty Ltd (ACN 628 016 491) (ABN 50 628 016 491) of 230 Rokeby Rd, Subiaco WA 6008 (**Oqea**) is the owner of the Platform.
- 1.2 This Agreement sets out the terms on which a Member, a person in a Member's Care Team or a Professional is granted the right to use the Platform.
- 1.3 Oqea is affiliated with Oqea Clinical Pty Ltd (ABN 73 653 194 640) (**Oqea Clinical**), a professional healthcare provider and a separate legal person.

2. LICENCE

In consideration of the User complying with the terms of this Agreement, Oqea grants to the User a non-exclusive, non-transferable, non-sublicensable, revocable licence to use and access the Platform as set out in this Agreement.

3. FEES AND PAYMENTS

3.1 Fees

- (a) There may be a fee payable by the User to Oqea on account of the grant of the licence in clause 2, depending on, amongst other things:
 - (i) whether the User is a Member, a person in a Member's Care Team, a Professional, or another kind of user; and
 - (ii) the access and features provided to the User.
- (b) In addition to the grant of the licence in clause 2 on the terms of this Agreement, Oqea offers to grant certain access and features provided via the Platform for a periodic term on a subscription basis in consideration for the payment of fees, which the User may accept using the Platform. The access and features, term and fees selected and accepted by the User form part of this Agreement.
- (c) The User agrees to pay the fee corresponding to their choice in the manner set out in this clause 3.

3.2 Free users

For such time that there is no fee to the User (including based on different or reduced access and features provided via the Platform compared to others), the User may use the Platform on the terms of this Agreement without charge, subject to clause 3.3(a).

3.3 Changes to the fees

- (a) The fee is valid at the time of accepting and is valid for the periodic term agreed to by the User.
- (b) Oqea will provide reasonable notice to the User of any changes to the fee of not less than the periodic term agreed to by the User.
- (c) If the User does not accept a change to the fee referred to in this clause 3.3(a), the User must cancel their subscription. If they do not cancel their subscription, and subject to the Australian Consumer Law, they are deemed to have agreed to the new fee.
- (d) Where the fee is an increase from a free licence, Oqea will provide at least one month's notice. If the User does not accept a change to the fee from a free licence, the User's access to the Platform may end at the end of that notice period and this Agreement terminates.
- (e) Cancelling a subscription takes place at the end of the then period of the subscription

and not before. The User may cancel their subscription using the Platform or by giving notice to Oqea by emailing info@oqea.com with sufficient information to enable Oqea to identify the User and their subscription.

- (f) The User's cancellation of a subscription may result in them continuing to have access to the Platform but with different or reduced access and features provided via the Platform. This Agreement applies to the User's use and access to the Platform.

3.4 Direct Debit

- (a) Oqea currently uses Stripe for managing payments from Users.
- (b) Payment processing services for the User on the Platform are provided by Stripe and are subject to the Stripe Connected Account Agreement (available from <https://stripe.com/au/legal/connect-account>), which includes the Stripe Terms of Service (available from <https://stripe.com/au/legal/ssa>) (collectively, the "**Stripe Services Agreement**"). By agreeing to this Agreement or continuing to operate as a User of the Service, the User agrees to be bound by the Stripe Services Agreement, as the same may be modified by Stripe from time to time. As a condition of the Platform enabling payment processing services through Stripe, the User agrees to provide Oqea accurate and complete information about the User, and the User authorises Oqea to share that information and transaction information related to its use of the payment processing services provided by Stripe.
- (c) Use of Stripe is subject to its fees, terms and conditions, which are accessible from Stripe or on request, and are subject to change, and requires the disclosure of personal information by the User to Stripe which is subject to Stripe's privacy policy and involves the User providing its personal information to an international recipient.
- (d) The User acknowledges that the contract that the User enters into with Stripe (or such other direct debit service provider) is a separate contract to this Agreement. Any problems or issues that the User have with the direct debit authority should be raised directly with Stripe.
- (e) The User must keep the payment authority in place until 30 days after the termination of this Agreement or the end of a subscription takes effect.
- (f) The User acknowledges that Oqea will continue to debit fees under the payment authority until the relevant subscription is cancelled in accordance with this Agreement.
- (g) It is the User's responsibility to ensure the payment authority is cancelled upon termination or expiry of the relevant subscription.
- (h) The User must ensure that the User's nominated credit card or bank account is able to accept direct debits and have sufficient funds available to pay any fees under this Agreement plus any other applicable fees as and when they are due to be debited.
- (i) Oqea will endeavour to notify the User of any dishonoured or overdue payments.
- (j) Additional fees and charges may be incurred by the User for any dishonoured payments by Stripe or the User's financial institution pursuant to the User's agreements with them.
- (k) The User will indemnify Oqea for any fee charged by Stripe on account of the User's payments, the User's missed payments or any other amount for the User's use of Stripe.
- (l) The User will indemnify Oqea in respect of any costs in seeking payment of fees under this Agreement and any other amount owing under this Agreement, including legal costs and debt collection costs.

4. USERS

4.1 Acceptance

The terms in this document constitute an offer by Oqea to a User. The User may accept this Agreement and create a binding agreement by:

- (a) conveying acceptance of these Terms (for example, via a tick box when accessing the Platform);
- (b) accessing the Platform; or
- (c) creating an account on the Platform.

4.2 User as a minor

- (a) Where a proposed User is under the age of 18 ("**Minor User**"), the Minor User will be required to procure their parent or guardian to enter into this Agreement on the Minor User's behalf and on their own behalf, and to ensure that the Minor User complies with this Agreement.
- (b) Where a parent or guardian is a User, that User will ensure that the Minor User complies with this Agreement. The parent or guardian User is then also a User in their own right.

4.3 User as an employee or representative

If the individual using or accessing the Platform does so on behalf of their employer or a business entity, the individual, in their individual capacity:

- (a) represents and warrants that they are authorised to act on behalf of that employer or the business entity;
- (b) represents and warrants that they are authorised to bind the employer or business entity, and its representatives, to this Agreement; and
- (c) agrees they are jointly and severally liable with that employer or business entity.

5. USER'S OBLIGATIONS

The User must strictly comply with all the obligations in this clause 5, and must not permit any third party to do anything prohibited by this clause 5.

5.1 Access, security and permitted use of the Platform

- (a) The User will only allow the Platform to be used by the User.
- (b) The Platform may only be used by a person as:
 - (i) a Member, to access helpful wellbeing resources, personal and professional expertise, connect and book with Professionals, allow the sharing of information on a granular basis between the Member's Care Team and Professionals;
 - (ii) a person (other than a Professional) who is part of a Care Team, to access helpful wellbeing resources, be provided with and provided information to assist with the Member's wellbeing; and
 - (iii) a Professional:
 - (A) as a secure online repository for Professionals to store and share their assessments, medical reports, recommendations and referrals, including as part of a Care Team;
 - (B) a platform to assist Professionals to automate onboarding sequences, email communications, assessments, referral reminders; and
 - (C) a platform to assist Professionals to streamline production of assessments, reports, and recommendations,

and for no other purposes.

- (c) The User must take all reasonable precautions to ensure the security of access to the Platform.
- (d) The User must not, under any circumstances, allow any third party or any person (other than as a User in their own right) to access or use the Platform for any purpose.
- (e) The User will inform Oqea immediately if it becomes aware of any unauthorised use or access of the Platform by any person.
- (f) The User is, at all times, responsible for the use of its account on the Platform, irrespective of who is using it, even if it is used without the User's permission.

5.2 Permitted Copies

- (a) The User may take a copy of the User Content for the sole purposes of its record keeping.
- (b) In no event or circumstances may the User make a copy (including as a backup) of the Platform or the Content (other than the User Content), including to circumvent the usage or other limitations set out in this Agreement or inherent in the Platform.

5.3 Integrity of the Platform

The User must not:

- (a) assign, sublicense, sell, distribute, transfer, pledge, lease, rent, lend, share or export the Platform, the Content or User's rights under this Agreement;
- (b) alter or circumvent any copy protection mechanisms in the Platform or Content;
- (c) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Platform;
- (d) implement or use any method or mechanism designed to enable product functionality not available in the Platform but available in:
 - (i) other Oqea products; or
 - (ii) other Oqea releases of the same product,
- (e) modify, adapt, translate or create derivative works based on the Platform or Content (including datasets, CSV files, tables, spreadsheets);
- (f) reverse engineer any part of the Platform in order to:
 - (i) build a competitive product or service;
 - (ii) build a product using similar ideas, features, functions or graphics of the Platform; or
 - (iii) copy any ideas, features, functions or graphics of the Platform;
- (g) use, or allow the use of, the Platform or the Content on any project or to provide a service (whether or not any charge is made) to any third party;
- (h) allow or permit anyone to use or have access to the Platform or Content;
- (i) copy or install the Platform other than as expressly provided for in this Agreement;
- (j) not to do anything which will have an adverse effect on the Platform or Oqea; or
- (k) take any action, or fail to take action, that could adversely affect the trademarks, service marks, patents, trade secrets, copyrights or other Intellectual Property Rights
- (l) of Oqea or any third party with Intellectual Property Rights in the Platform (each, a "**Third Party Licensor**").

5.4 Appropriate conduct

The User must not:

- (a) send spam or otherwise duplicative or unsolicited messages;

- (b) send or store infringing, obscene, threatening, libellous, or otherwise unlawful or tortuous material, including material harmful to children;
- (c) copy, scrape or data-mine the whole or any part of the Platform, including any screen or data scraping or other methods of taking any content from the Platform;
- (d) transmit, store, insert, or activate any virus, Trojan horse or other malware or computer programming code, including source and object code, which may impair, deny or otherwise adversely affect the use of, access to, or security of the Platform;
- (e) interfere with or disrupt the integrity, security or performance of the Platform or its related systems, networks or the data contained therein;
- (f) not to engage in or permit any form of deceptive, misleading, fraudulent or unlawful activity or conduct in relation to the use of the Platform or in relation to Oqea;
- (g) breach any Laws, or cause Oqea to breach any Laws;
- (h) not make any false, misleading or deceptive representations in connection with the Platform; or
- (i) not to publish or otherwise communicate any review of, or information about, the Platform (which is not publicly available) to any third party without the prior written consent of Oqea, except as specifically provided for in an agreement with Oqea, including this Agreement.

6. THE PLATFORM

6.1 Subscription License and Platform Not Available Locally

- (a) The User agrees and accepts that the Platform may only be accessible using the Internet and the Platform (or any part of it) may not be either partially or fully accessible from the User's device.
- (b) The User agrees and accepts:
 - (i) the speed of response from the Platform is dependent on the User's internet connection and device, and the performance of the Platform may be affected by such external factors as bandwidth, latency, speed of connection, connection stability, and the User's compatible devices; and
 - (ii) it is solely responsible for ensuring it has, at all relevant times, sufficient internet-connectivity (including bandwidth, latency, speed and stability) and devices in order for them to use the Platform.
- (c) The User is solely responsible for supplying and maintaining the software, hardware, operating system, network connections and other operational requirements required to access the Platform.
- (d) The User acknowledges and agrees that its failure to comply with clause 6.1(c) may affect its ability to successfully use the Platform.

6.2 Parts of the Platform Controlled by Third Parties

The User agrees and accepts that the Platform is or may be from time to time operated from servers owned and controlled by a third party. As such, the User acknowledges that certain functions are out of Oqea's control, including:

- (a) third party software and services;
- (b) databases; and
- (c) Cloud-based infrastructure,

and that, unless contrary to the applicable law, Oqea is not responsible for any event or action caused by any third party contemplated in this clause 6.2.

6.3 Tools and Functionality

- (a) Oqea may, from time to time, introduce new tools, features or functionality on the Platform (**Additional Tools**). Your access to and use of any Additional Tools will be subject to the terms of this Agreement and any specific terms or policies that may supply to such Additional Tools.
- (b) The User acknowledges and agrees that Professionals may use AI tools and functionality in the course of delivering their service.
- (c) The User acknowledges and agrees that the Professionals' use of Oqea Frame is subject to the policy set out [here](#) (**Oqea Frame Policy**). By accessing or using Oqea Frame, you acknowledge that you have read, understood, and agree to be bound by the Oqea Frame Policy in addition to this EULA.

6.4 Maintenance, Updates, Changes, Inaccessibility and Errors

Subject also to clause 7:

- (a) Oqea reserves the right to make some or all of the Platform inaccessible from time to time as is required for updates, maintenance and/or upgrades. Oqea will use reasonable endeavours to schedule planned updates, maintenance and/or upgrades outside of key business operations' periods.
- (b) From time to time, without notice, access to all or part of the Platform may be disrupted or limited. During such an interruption, Oqea will use its reasonable endeavours to restore access to the Platform as soon as practicable.
- (c) Oqea reserve the right to correct any errors on the Platform, upgrade, maintain, tune, backup, amend, add to or remove features from, redesign, improve or otherwise alter the Platform at Oqea's sole and absolute discretion.
- (d) The User acknowledges and agrees that Oqea will not be liable for any loss or damage that the User or any other person incur by any changes made to the Platform and/or the User not being able to access the Platform or any part of it.

6.5 Collection of usage, system and other information

- (a) The Platform may include mechanisms:
 - (i) to collect limited data and information from the User's device which access the Platform and transmit it to Oqea; and
 - (ii) to locally cache such data and information on the User's computer.
- (b) The data in clause 6.4(a) ("**AM Info**") may include details of devices, network equipment, details of the operating systems in use on such computer equipment, the location of the User's devices and the profile and extent of the User's use of the different elements of the Platform.
- (c) Oqea may use the AM Info to:
 - (i) model the profiles of usage, hardware and operating Platforms in use collectively across its user base in order to focus development and support;
 - (ii) provide targeted support;
 - (iii) ensure that the usage of the Platform by the User is in accordance with the Agreement and does not exceed any user number or other limits on its use; and
 - (iv) advise the User about service issues such as available updates.
- (d) To the extent that any AM Info constitutes Personal Information, Oqea will handle that Personal Information in accordance with the Privacy Act and with Oqea's Privacy Policy, as may be updated by Oqea from time to time.

6.6 Security Responsibilities

Oqea will take reasonable steps to ensure the Platform is secure from unauthorised access consistent with generally accepted industry standards.

6.7 Third Party Content

The inclusion of any third-party link does not imply any endorsement or recommendation of a linked website by Oqea. Oqea will not be responsible for any third-party advertising content displayed in the Platform. Any link on the Platform to a third-party website, or decision to accept any third-party offer, is entirely at the User's own risk.

6.8 Third Party Integrations

- (a) Any integration, including be it programmatic or by linking, or by any other method to another software or hardware system of any kind does not imply endorsement or recommendation of that system.
- (b) Oqea will not be liable for any loss or damage that the User or any other person may incur by use of any other system.
- (c) Oqea accepts no responsibility for any aspect of any third-party system that may be integrated.

6.9 Suspension of Access

Oqea may terminate or suspend access to the Platform to the User indefinitely and without compensation if the User uses the Platform, or appears to Oqea to be intending to use the Platform, in a manner reasonably deemed inappropriate by Oqea or which breaches the terms of this Agreement.

7. MAINTENANCE, UPDATES, CHANGES TO THE PLATFORM

7.1 Platform Updates

- (a) Oqea may, in its sole discretion, make modification, enhancements, updates or new releases of the Platform from time to time in order to, amongst other matters, enhance or improve the functionality or operation of the Platform or comply with legislative requirements ("**Platform Updates**").
- (b) Oqea will use reasonable endeavours to ensure that any future version of the Platform is backwards-compatible with at least the most recent previous version, but the parties acknowledge that this may not always be possible or practicable with any or all Platform Updates.
- (c) Oqea may notify the User of Major Updates to the Platform prior to the updated Platform being released, published or, in the case of an emergency update, as soon as practicable.
- (d) Minor updates may occur to the Platform at any time and Oqea is not required to notify the User though may do so at its own discretion.
- (e) Oqea make any Platform Updates available for access and use by the User as soon as reasonably practicable following the creation and general release of such Platform Updates.
- (f) The User acknowledges there may be downtime for the Platform, including where Oqea is required to configure and upload a Platform Update.
- (g) Use of the Platform Updates by the User through the Platform will be subject to the same terms and conditions as use of the Platform under this Agreement.
- (h) The parties acknowledge that Oqea may be required to update the Platform to remain in compliance with either Apple Inc. and the App Store, and/or Google Inc. and the Google Play Store's standard (collectively "**the Third-Party App Standards**"). The User agrees that Oqea will not be liable for incompatibility of any Platform Updates to the Platform should that modification or update be required to remain compliant the Third-Party App Standards.

8. THE LICENSOR'S OBLIGATIONS

8.1 Oqea's Obligations

Subject to the User complying with its obligations set out in the Agreement, Oqea will endeavour to develop, host and maintain the Platform.

8.2 Representations and Warranties of Oqea

Oqea represents and warrants that:

- (a) the Platform is developed using a standard of care and skill expected of an entity who regularly acts in the capacity of an "app developer or software developer"; and
- (b) in providing access to the Platform, it will comply with the law and with industry standards in accordance with relevant Australian law.

9. CONTENT

- (a) The User retains all ownership rights in the User Content which it uploads to the Platform.
- (b) Nothing in this Agreement will transfer ownership of material and data inputted into the Platform by the User to Oqea.
- (c) The User grants Oqea a non-exclusive, royalty free, irrevocable license to use the User Content:
 - (i) as necessary for the operation of the Platform;
 - (ii) to maintain, evaluate, develop, and improve the Platform (unless it is Confidential Information);
 - (iii) to respond to a support request;
 - (iv) to fulfil its obligations under this Agreement; or
 - (v) to comply with any laws.
- (d) Oqea is not obliged to retain any material or data inputted into the Platform by the User.

10. PRIVACY

10.1 Privacy Policy

- (a) The User agrees and consents to Oqea handling Personal Information in accordance with Oqea's Privacy Policy.
- (b) Oqea may change the Privacy Policy at any time by giving notice to the User.
- (c) Oqea reserves the right to immediately terminate this Agreement if the User is in breach of clause 10.1(a).

10.2 Privacy Obligations

If Personal Information is disclosed to a User in the course of this Agreement or the use of the Platform, the User agrees that it will not:

- (a) sell the Personal Information to any third party; or
- (b) distribute or disclose Personal Information to any third party other than:
 - (i) to its personnel and/or related bodies corporate; or
 - (ii) onto third party servers which it controls;

who will only use the Personal Information for the purposes contemplated by this Agreement.

10.3 The Privacy Act

For the purposes of clause 10.2 the term "disclose" is to have the same meaning as defined in the Privacy Act.

11. INTELLECTUAL PROPERTY

11.1 Oqea's Intellectual Property

- (a) All title, ownership rights and Intellectual Property Rights, including copyright in relation to Platform is owned or used under licence by Oqea.
- (b) Without Oqea's express prior written consent, the User undertakes that it will not and will not permit any person to:
 - (i) directly or indirectly alter, replicate, copy, recreate, create derivative work from, decompile, reverse engineer, reserve assemble, reserve compile, enhance, interfere with or with part of the Platform and/or the Software or otherwise obtain, modify or use any source or object code, architecture, or algorithms contained in the Platform or any documentation associated with the Platform;
 - (ii) interact with any Oqea trademark (whether registered or not) that could cause any adverse effect to Oqea's ownership and/or rights to the intellectual property; or
 - (iii) copy or reproduce, or create an adaptation or translation of, all or part of the Platform in any way, except to the extent that reproduction occurs automatically through the ordinary use of the Platform and/or Software in accordance with this Agreement;
 - (iv) incorporate all or part of the Platform and/or Software in any other webpage, site, application or other digital or non-digital format for purposes other than marketing and/or training;
 - (v) (subject to other rights explicitly granted under this Agreement) sell, license, sublicense, lease, rent, distribute, disclose, permit access to, or transfer to any third party, whether for profit or without charge, any portion of the Platform and/or Software on any medium;
 - (vi) do anything that will infringe the Intellectual Property Rights of any third party; or
 - (vii) attempt to do any of the above.
- (c) Without limiting the foregoing, the User also acknowledges in any modifications, improvements or enhancements suggested by or contributed to or provided by the User in regard to the Platform shall immediately vest in Oqea.

11.2 Threats and action

If the User becomes aware of any infringement or threatened infringement of any Intellectual Property Rights, the User must give notice pursuant to clause 18.1 to Oqea including full particulars of the infringement. Oqea may, in its absolute discretion, institute and prosecute an action against the infringer.

11.3 Provide all assistance

The User must each execute all documents and do all things reasonably necessary to aid and co-operate in the prosecution of any actions brought by Oqea under this clause.

11.4 Survival of Obligation

The operation of this clause 11 survives the termination of this Agreement.

12. CONFIDENTIALITY

- 12.1 Subject to clause 12.2, Oqea will keep the User's Confidential Information secret and preserve its confidential nature and will not use the Confidential Information other than for the purpose of the Platform.

- 12.2 This Agreement does not prohibit the disclosure of Confidential Information by Oqea to the extent that any of the following terms apply:
- (a) the disclosure is required for, or apparent from, the operation of the Platform;
 - (b) the User has consented to such disclosure (including via controls on the Platform);
 - (c) the disclosure is to a representative of Oqea who needs to know the Confidential Information necessary for the operation of the Platform;
 - (d) the disclosure is to a third party engaged by Oqea who supplies services which are necessary for the operation of the Platform, and only on the basis that Oqea will disclose the minimum information required and where the third party agrees it will keep the Confidential Information secret and confidential;
 - (e) it is unreasonable or impracticable to obtain consent to the use or disclosure, and Oqea reasonably believes the use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety; or
 - (f) the disclosure is required by law.

13. LIABILITY

13.1 Relationships with third parties

Oqea is not liable to a User, and the User accordingly releases Oqea and indemnifies and holds Oqea harmless, in respect of any loss or claim arising from:

- (a) services provided by a Professional;
- (b) any payment arrangements between a Professional or other service provider and a customer, client, patient or other consumer; or
- (c) the performance of any agreement or relationship between two or more third parties, including where those services were provided via, or the parties used, the Platform.

13.2 Exclusion of express warranties

- (a) Nothing in this Agreement is intended to exclude or displace any guarantees or warranties afforded to you under the Consumer Law. Under the Consumer Law, the User may be entitled to a repair or replacement service, or other similar rights in accordance with the Consumer Law from time to time, in respect of the Platform.
- (b) Subject to the obligations of Oqea in respect of the provision of the Platform under this Agreement, Oqea makes no warranties or guarantees to a User, and provides no warranty or guarantee:
 - (i) that the Platform will be accessible at all times, uninterrupted or error free;
 - (ii) that the Output is fit for purpose, or of a particular quality;
 - (iii) that any part of the Platform is without bugs or viruses;
 - (iv) that the Platform is immune to unauthorised access or security breach; and
 - (v) in respect of the retention of, or continued accessibility of, any data.

13.3 User Acknowledgements

The User acknowledges and agrees that:

- (a) Oqea is not responsible for the conduct or activities of any other user of the Platform;
- (b) Oqea is not a medical practitioner, and the Platform is not a substitute for medical advice;
- (c) Oqea is not an accounting firm, legal firm or financial advisor, and the use of the Platform or the Output does not constitute the provision of accounting, tax, legal or financial advice

(including insurance advice); and

- (d) The User is solely responsible for complying with all applicable accounting, tax, financial advice, and other laws.

13.4 Consumer and small business laws

- (a) If the User is a “consumer” or “small business” within the meaning of the Consumer Law, there are certain rights (such as the consumer guarantees implied by the Consumer Law, which cannot by law be excluded (**Non-Excludable Conditions**’). This clause is subject to those Non-Excludable Conditions.
- (b) Subject to the application of any applicable Non-Excludable Conditions and to the maximum extent permitted by law, Oqea:
 - (i) excludes from this Agreement all guarantees, conditions and warranties that might but for this clause be implied into this Agreement;
 - (ii) excludes all liability to the User for any Costs, expenses, losses and damages suffered or incurred directly or indirectly by the User in connection with this Agreement, including using the Platform, whether that liability arises in contract, tort or under statute; and
 - (iii) will not, under any circumstances, be liable to the User for any Consequential Loss.
- (c) If Oqea’s liability under this Agreement cannot be lawfully excluded, to the maximum extent permitted by law, Oqea’s liability for breach of any Non- Excludable Condition is limited:
 - (i) in the case of services, to (at Oqea’s option) the supplying of the services again; or the payment of the cost of having the services supplied again.

13.5 Costs

Oqea excludes all other liability to the User for any Costs, including Consequential Loss, suffered or incurred directly or indirectly by the User in connection with the Agreement, or the Platform, in connection with:

- (a) the occurrence of an “unforeseen event” as described in clause 18.2;
- (b) reliance on technical advice, modelling or calculations provided by Oqea;
- (c) The infringement or claimed infringement by any person other than Oqea of the Intellectual Property Rights including moral rights of any person in connection with the Agreement;
- (d) any unauthorised activity in relation to the Platform by the User;
- (e) any breach of this Agreement by the User;
- (f) the User’s use of or reliance on the Platform for a purpose other than the business purposes of the User or the reasonably expected purpose of the Platform; or
- (g) the User’s failure to fulfil its obligations under the Agreement. The foregoing limitation applies however the Costs are caused whether they arise in contract, tort (including by Oqea’s negligence), or under statute.

13.6 Consequential Loss

Neither party is liable under this Agreement for any Consequential Loss arising out of a breach by either of them of this Agreement, including (without limitation) any liability under the indemnity in clause 14.

14. INDEMNITY

14.1 Indemnity

The User indemnifies and will keep Oqea and its representatives indemnified against all liability arising from claims for:

- (a) libel, slander, defamation, product disparagement or indecent, false, misleading or deceptive conduct;
- (b) any breach of clause 5 (User's Obligations);
- (c) any breach of clause 10 (Privacy);
- (d) infringement of Intellectual Property Rights;
- (e) piracy, counterfeiting, plagiarism, or unfair competition;
- (f) invasion of the right of Privacy; and
- (g) any incorrect, fraudulent or false information provided by the User.

15. TERMINATION

15.1 Immediate Termination by Oqea for Default

Oqea may terminate this Agreement immediately by notice to the User if:

- (a) an Insolvency Event occurs in relation to the User; or
- (b) the User commits any breach of any of its obligations under this Agreement and:
 - (i) the breach is incapable of being remedied; or
 - (ii) if the breach is capable of being remedied, the User has failed to remedy the breach within ten (10) Business Days after the receipt of the notice; or
 - (iii) the User has been issued a notice of default more than two (2) times during a twelve (12) month period, or
- (c) it gives 14 days' written notice to the email address associated with the User's account.

15.2 Immediate Termination by User for Default

The User may terminate this Agreement immediately by notice to Oqea:

- (a) by closing their account on the Platform via any provided method or by writing to Oqea with sufficient information to identify the User and their account on the Platform;
- (b) if an Insolvency Event occurs in relation to Oqea; or
- (c) if Oqea commits any breach of any of its obligations under this Agreement and:
 - (i) The breach is incapable of being remedied; or
 - (ii) if the breach is capable of being remedied, Oqea has failed to remedy the breach within thirty (30) Business Days after the receipt of the notice; or
 - (iii) Oqea has been issued a notice of default more than three (3) times during a twelve (12) month period.

15.3 Effects of Termination

On termination of this Agreement, the licence will terminate and:

- (a) The User must immediately:
 - (i) cease all activities related to the use of the Platform;
 - (ii) destroy all Content and other materials (including all electronic or physical copies) in its possession relating to the Platform; and
 - (iii) do any further things as may be reasonably required by Oqea to protect its right, title and interest in the Platform.

- (b) Oqea may, in addition to terminating the Agreement:
 - (i) deactivate the User's access and use of the Platform (without being liable in trespass or detainee);
 - (ii) repossess any of Oqea's property in the possession, custody or control of the User;
 - (iii) terminate or suspend access to the Platform;
 - (iv) refuse to disclose any passwords (recognising it may not be able to disclose any unhashed passwords);
 - (v) be regarded as discharged from any further obligations under this Agreement; and
 - (vi) pursue any additional or alternative remedies provided by law.

16. DISPUTE RESOLUTION

- (a) Subject to clause 16(f), any dispute which arises between the parties in connection with this Agreement (dispute) must be dealt with in accordance with the requirements of this clause 16, before either party will be entitled to commence proceedings against the other party in respect of the dispute.
- (b) The party claiming that a dispute has arisen (complainant) must give the other party a written notice setting out:
 - (i) a detailed explanation of the nature of the dispute; and
 - (ii) what action the complainant thinks will resolve the dispute (dispute notice).
- (c) Within ten (10) Business Days of the dispute notice being received by the other party, a nominated senior executive of each party must meet, act in good faith and use best endeavours to resolve the dispute at that meeting, or such subsequent meetings as may be reasonably required.
- (d) If the dispute is not resolved pursuant to clause 16(c) within thirty (30) days of the dispute notice being received by the other party, the parties agree to attend a privately held mediation with a mediator appointed by the nominated senior executive or both parties and in the absence of agreement within seven (7) days of disagreement by such mediator as appointed by the President, or person in like office of the Australian Disputes Centre.
- (e) If the dispute is not resolved within a further thirty (30) days pursuant to clause 16(d) then either party may commence proceedings against the other party in respect of the dispute.
- (f) Nothing in this clause 16 prevents a party from seeking urgent injunctive or similar relief from a court.

17. VARIATION

- (a) Oqea may propose to amend this Agreement from time to time to be accepted by Permitted Users. If it does so, Oqea will give reasonable written notice to the Customer of the terms of the amended Agreement. The amended Agreement will replace the terms of this Agreement.
- (b) The User acknowledges and agrees that Oqea may amend or vary this Agreement at any time by either posting the changes on its website, by making the replacement terms available when logging into the Platform, or by electronic notification to the User, at Oqea's sole election.
- (c) If the Customer does not agree to the terms of the amended Agreement, the Customer must close their account on the Platform via any provided method or by writing to Oqea with sufficient information to identify the User and their account on the Platform, and not use the Platform for any purpose other than to close their

account. This Agreement then terminates immediately in accordance with clause 15.2(a).

- (d) The User is responsible for regularly reviewing the website and log in to the Platform to obtain timely notice of such amendments or variations.
- (e) The User's continued use of the Platform after amendments or variations are made by Oqea constitutes the User's acceptance of this Agreement being as modified by the amendments or variations.

18. GENERAL

18.1 Notices

Any communication under or in connection with this Agreement:

- (a) must be to the addressee from time to time;
- (b) must be in writing;
- (c) must be delivered or posted by prepaid post to the address, or sent by email to the addressee, in accordance with clause 18.1(d); and
- (d) If a notice is sent or delivered in the manner provided in 18.1(c) it must be treated as given to or received by the addressee in the case of:
 - (i) delivery in person, when delivered;
 - (ii) delivery by post, on the third (3rd) Business Day after posting; and
 - (iii) delivery by email, at the earlier of the time stated in a read receipt sent by the recipient's computer or when the message has been delivered to the email address of the addressee, but if delivery is made after 5.00pm on a Business Day it must be treated as received on the next Business Day in that place.

18.2 Unforeseen Event

A party is not responsible for any loss arising out of any occurrences or condition beyond its control, including acts of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government, a failure of a supplier,

public utility, power, internet infrastructure (including hardware) or common carrier or computer disruption due to the effects of a computer virus, trojan, worm, malware or other malicious code.

18.3 Assignment

- (a) Subject to clause 18.3(b), a party may only assign, novate encumber, declare a trust over or otherwise create an interest in its rights under this document with the prior written consent of the other party, which it may withhold in the other party's absolute discretion.
- (b) Oqea may assign, novate, encumber, declare a trust over or otherwise create an interest in its rights under this Agreement without the consent of the User, and may disclose to any potential holder of the right or interest any information relating to this Agreement or any party to it, as part of a sale of all or part of its business or assets.

18.4 Liability for expenses

Each party must pay its own expenses incurred in reviewing, negotiating, executing, and performing this Agreement.

18.5 Giving effect to this Agreement

Each party must do anything (including execute any document) and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this Agreement.

18.6 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) The exercise of a right does not prevent any further exercise of that right or of any other right.

18.7 Relationship

Nothing in this Agreement is intended to create or be construed as creating a relationship of agency, joint venture or partnership between any of the parties. Unless expressly stated in this Agreement, no party may act as agent of or in any way bind another party to any obligation.

18.8 Operation of this Agreement

- (a) This Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect. Any condition, warranty, representation or other term concerning the supply of the Platform and Content which might otherwise be implied into, or incorporated in, the Agreement, whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.
- (b) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

18.9 Inconsistency with other documents

If this Agreement is inconsistent with any other document or agreement between the parties, this Agreement prevails to the extent of the inconsistency.

18.10 Reliance

Neither party has entered into any contract under this Agreement in reliance on or as a result of any representation, promise, statement, conduct or inducement by the other otherwise than as set out in this Agreement.

18.11 Consents

Where this Agreement states that the consent or approval of Oqea is required, Oqea may:

- (a) give or withhold that consent or approval in its absolute discretion; and
- (b) give that consent or approval subject to conditions, unless this Agreement expressly states otherwise.

18.12 Liability of Parties

If a party consists of more than one person:

- (a) an obligation of that party is a joint obligation of all of those persons and a several

obligation of each of them; a right given to that party is a right given jointly and severally to each of those persons, and if exercised by one of them, is deemed to be exercised jointly; and

- (b) a representation, warranty or undertaking made by that party is made by each of those persons.

18.13 Governing law

The laws of Western Australia, Australia govern this Agreement. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

19. INTERPRETATION

19.1 Definitions

Unless this Agreement explicitly states otherwise, expressions used in the Agreement have the following meanings:

- (a) **Agreement** means this these terms and conditions.
- (b) **Business Day** means any day which is not a Saturday, Sunday or public holiday in Perth, Western Australia.
- (c) **Care Team** means an individual who uses the Platform to provide and support a Member with healthcare services.
- (d) **Confidential Information** means information that is by its nature confidential, including information relating to the:
 - (i) any health or sensitive information (as that term is defined under the Privacy Act);
 - (ii) personnel, policies, practices, User or business strategies of the parties; and
 - (iii) Intellectual Property Rights of either party;
 but does not include information:
 - (iv) already rightfully known to the receiving party at the time of disclosure by the other party; or
 - (v) in the public domain (including information made publicly available via a mechanism in the Software by the User) other than as a result of disclosure by a party in breach of its obligations of confidentiality under the Agreement.
- (e) **Content** means the information made available via the Platform, which may be written, video, audio, or in another form, and may be static content or Output.
- (f) **Consequential Loss** means loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than the cost of repair), loss of opportunity or expectation loss, loss of goodwill, and any other form of consequential, special, indirect, punitive or exemplary loss or damages.
- (g) **Cost** means any costs, expenses, losses, damages, claims, demands, proceedings, and other liability.
- (h) **Consumer Law** means the *Competition and Consumer Act 2010* (Cth) as amended from time to time including the Australian Consumer Law set out in Schedule 2, and all related regulations.
- (i) **Insolvency Event** means in respect of a party:
 - (j) The appointment of an administrator, a receiver or receiver and manager in respect of that party;
 - (ii) an application to a court or an order for the winding up of the party; or
 - (iii) The occurrence of anything analogous or having a substantially similar

effect to any of the preceding events.

- (i) **Intellectual Property Right** means all present and future rights conferred by statute, common law or equity in or in relation to business names, circuit layouts, computer software, confidential information, copyright, designs, domain names, formulas, inventions, knowhow, patents, recipes, trademarks, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.
- (j) **Law** means any applicable statute, regulation, by-law, ordinance, policy or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth or a local government, and includes the common law and equity as applicable from time to time, and any mandatory standards or industry codes of conduct.
- (k) **Member** means an individual who uses the Platform to access or receive mental healthcare services provided through the Platform. For the avoidance of doubt, patients and clients are included within this definition of Member.
- (l) **Oqea** means Oqea Pty Ltd (ACN 628 016 491) (ABN 50 628 016 491) of 1/292 Rokeby Road, Subiaco WA 6008.
- (m) **Oqea.health** means a platform owned and operated by Oqea through which new development occurs and which hosts an expanding suite of clinical AI tools.
- (n) **Oqea.me** means a two-sided marketplace, digital and AI platform for Members to facilitate an on-demand hybrid mental healthcare between the Member's Care Team and Professionals.
- (o) **Oqea.net** means a secure online digital and AI platform for Professionals that supports a hybrid model of care coordination of a Member to store, administer and share information.
- (p) **Oqea Frame** means the AI-powered functionality provided on the Platform designed to support clinical reasoning and decision-making by Practitioners.
- (q) **Output** means any responses, information, data, results, analysis and other output of the Platform in response to the User's inputs to the Platform.
- (r) **Platform** means Oqea platforms and related services' platform (including any cloud-based version) for the Users (and includes all material (including tangible and intangible information), software (in source and object code forms), web applications, images, files, manuals, documents, devices, data, databases, supplied, created, written, developed or otherwise brought into existence (whether before, on or after the date of this Agreement) by Oqea or on its behalf, and all their subsequent versions, updates and enhancements, and includes the Content and any Output. As at the date of this Agreement, this includes Oqea.me, Oqea.net and Oqea.health, together with any other platforms introduced by Oqea from time to time.
- (s) **Personal Information** has the meaning given to that term in the Privacy Act.
- (t) **Privacy Act** means the *Privacy Act 1988* (Cth) and includes any code registered under the Privacy Act and the Australian Privacy Principles.
- (u) **Privacy Policy** means Oqea's privacy policy which is available on Oqea's website at <https://www.oqea.com/oqea-privacy-policy>, as amended by Oqea from time to time.
- (v) **Professionals** means an individual who is licensed, registered or otherwise authorised to provide healthcare services under applicable law.
- (w) **Services** means any service provided by Oqea in connection with the installing, configuring, deployment, installation, development (if any) and licensing of the

Software and (as the case may be).

(x) **User** means:

- (i) the person or entity registered with an account on the Platform as a User; or
- (ii) the individual accessing or using the Platform as the case may be.

(y) **User Content** means Content provided by the User.

19.2 Interpretation

In this Agreement:

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention:
- (b) an obligation or liability assumed by, or a right conferred on, two or more parties binds or benefits all of them jointly and each of them severally;
- (c) The expression “person” includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to any party includes that party’s executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (e) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (f) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (g) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Agreement, and a reference to this Agreement includes any schedule, exhibit or annexure to this Agreement;
- (h) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) references to payments to any party to this Agreement include payments to another person upon the direction of such party;
- (j) all payments to be made under this Agreement will be made by unendorsed bank cheque or other immediately available funds;
- (k) The words “includes” or “including”, in any form, is not a word of limitation
- (l) When the date or last day for doing an act is not a Business Day, the day or last day for doing the act will be the next following Business Day; and
- (m) In the interpretation of this Agreement, no rule of contract interpretation applies to the disadvantage of a party on the basis that it put forward this Agreement or any part of it.