

### **Cgov PaaS and SaaS Subscription Conditions**

#### HAVING UNDERSTOOD

whereas Darjack offers TPSC Cloud™ Platform As A Service (PaaS) via Public Cloud Infrastructure to its Customers;

whereas Customer wishes to use the TPSC Cloud™ via Public Cloud Infrastructure and other Services delivered by Darjack and wishes to enter into this agreement with Darjack;

whereas Customer is permitted to license Applications from Darjack and third party Application Providers which can interoperate with the TPSC Cloud™.

## 1. DEFINITIONS

"**App Center**" means the online directory of Applications that interoperate with TPSC Cloud™, located at <http://www.patientsafety.com/AppCenter>.

"**Applications**" means both TPSC Applications and Cgov Applications.

"**TPSC Applications**" means online and offline software products that interoperate with TPSC Cloud™, limited to those listed on the App Center and limited to those licensed to Customer

"**Cgov Applications**" means online software products that interoperate with TPSC Cloud™, limited to those made available by Darjack.

"**Application Provider**" means TPSC or any other applicable third party licensor or owner of the Application licensed to Customer

"**Client Software**": means offline Applications, such as Cloud Connector, that are provided by TPSC and that interoperate with TPSC Cloud™.

"**Malicious Code**" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

"**Process Data**" means all electronic data or information submitted by Customer and/or third parties into the TPSC Cloud™, TPSC Applications and CGov Applications.

"**Public Cloud Infrastructure**": means computer infrastructure – typically a platform virtualization environment – as a service, along with storage and networking, provided by third---party provider as a Third Party Service

"**Services**": All TPSC Services and/or Third Party Services provided by TPSC, the resulting provisions and related activities. Regarding this Subscription it means Client Software, TPSC Cloud™, Applications, Public Cloud Infrastructure, as further described in the Work Order .

"**Third Party Services**": All products and services, such as the Public Cloud Infrastructure, provided by TPSC, the resulting provisions and related activities, which originate from third parties and whose intellectual property rights, industrial property rights and other rights are not held by TPSC.

"**Third Party General Conditions**": means the delivery conditions, license conditions, warranty conditions or other conditions regarding the relevant Third Party Services.

**TPSC (The Patient Safety Company)**: Grecom International B.V., having its principal place of business at Alkmaar, the Netherlands

"**TPSC Services**": All products and services, such as TPSC Cloud™ (software), provided by TPSC, and the resulting provisions and related activities which do not originate from third parties and whose rights are held by TPSC.

"**Users**" means individuals who are authorized by the Customer to use TPSC Cloud™ and who have been supplied user identifications and passwords by Customer. Users may include but are not limited to employees, consultants, contractors and agents, and third parties with which Customer transact business

"**User Guide**" means the online tutorials about TPSC Cloud™ as updated from time to time.

## 2. PURCHASED SERVICES

**2.1. Provision of Purchased Services.** Darjack shall make the Services purchased by the Customer available to the Customer pursuant to these Conditions during the subscription term as stated in the Work Order .

## 3. USE OF TPSC CLOUD™

**3.1. TPSC's Responsibilities** TPSC shall: (i) use commercially reasonable efforts to make TPSC Cloud™ and licensed Applications via Public Cloud Infrastructure available 24 hours a day, 7 days a week, except for: (a) planned downtime (which TPSC shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. Monday AEST), or (b) any unavailability caused by circumstances beyond the reasonable control of Darjack, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Customer's employees), failures or delays of Third Party Services, Internet service provider failures or delays, or denial of service attacks, explosions, electricity failures, network failures, lack of materials, theft and/or transportation problems.

**3.2. Protection of Process Data.** TPSC shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Process Data. We shall not (a) modify Your Data, (b) disclose Your Data except as compelled by law (Compelled Disclosure) or as expressly permitted in writing by You, or (c) access Your Data except to provide the Services and prevent or address service or technical problems, or at Your request in connection with customer support matters.

**3.3. Customer's Responsibilities.** Customer shall (i) be responsible for Users' compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Process Data and of the means by which Customer acquired Process Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of TPSC Cloud™, and notify TPSC promptly of any such unauthorized access or use, and (iv) use TPSC Cloud™ and Applications only in accordance with the User Guide and applicable laws and government regulations, (v) Customer will ensure and is entirely responsible for fulfilling the necessary license conditions in order to let installation and/or implementation of Applications take place legally. Customer shall not (a) make TPSC Cloud™ available to anyone other than Users, (b) sell, resell, rent or lease TPSC Cloud™, (c) use TPSC Cloud™ to store or transmit infringing, libelous, or otherwise unlawful or tortuous material, or to store or transmit material in violation of third---party privacy rights, (d) use TPSC Cloud™ to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of TPSC Cloud™ or third---party data contained therein, or (f) attempt to gain unauthorized access to TPSC Cloud™ or their related systems or networks.

**3.4. Usage Limitations.** Services are subject to other commercial limitations, such as, (i) limits on disk storage space, (ii) number of storage objects and (iii) traffic, as further described and agreed upon in the Work Order .

## 4. APPLICATIONS

**4.1. Acquisition of TPSC Applications.** TPSC may from time to time make Applications available to Customer through the App Center. Any acquisition of a license by Customer of such Applications, is solely between Customer and TPSC. Darjack do not warrant nor guarantee support for these TPSC Applications whether or not they are designated by TPSC as "certified" or otherwise, except as agreed up on in writing.

**4.2. Acquisition of Cgov Applications.** Cgov Applications licensed to the Customer shall be specified in the Work Order. Darjack may from time to time make additional Cgov Applications available to Customer under similar terms including the provision of support.

**4.3. Customer Developed Applications.** Customer's with Enterprise License Services may from time to time create new Applications under the Terms of the Work Order. Darjack does not warrant nor guarantee support for these new Applications except as agreed upon in writing.

**4.4. Applications and Process Data.** If Customer installs or enables Applications for use with TPSC Cloud™, Customer acknowledges that TPSC may allow those TPSC Applications to access Process Data as required for the interoperation of such Applications with TPSC Cloud™. TPSC shall not be responsible for any disclosure, modification or deletion of Process Data resulting from any such access by those TPSC Applications.

**4.5 Applications,TPSC Cloud™and Public Cloud Infrastructure.** If the Customer installs or enables applications for use with Services, Customer authorize TPSC to host, copy, transmit, display and adapt such applications and program code, solely as necessary for TPSC to provide TPSC Cloud™ in accordance with this Agreement. Subject to the above, TPSC acquire no right, title or interest from the relevant application Provider under this Agreement in or to such

applications, including any intellectual property rights therein.

**4.6. Integration.** The TPSC Cloud™ may contain features designed to interoperate with other applications. To use such features, Customer may be required to obtain access to such applications from their providers. If the provider of any such application ceases to make the application available for interoperation with the corresponding Application or TPSC Cloud™ on reasonable terms, TPSC may cease providing such features without entitling Customer to any refund, credit, or other compensation.

## 5. THIRD PARTY SERVICES

**5.1. Makeuse.** TPSC has the right to make use of Third Party Services, such as Public Cloud Infrastructure, in fulfilling its obligations flowing forth from the Agreement.

**5.2 Third Party General Conditions.** Regarding the Third Party Services delivered to Customer, the Third Party General Conditions will be applicable to the Agreement in addition to these conditions. Third Party General Conditions shall, when available to TPSC, be provided on request. Third Party General Conditions will be delivered in the same format and language as received by TPSC. Third Party General Conditions have priority over the other conditions of TPSC regarding the relevant Third Party Service unless indicated otherwise. When there is conflict between the other conditions of TPSC and Third Party General Conditions, TPSC has the right to declare the conflicting terms of the Third Party General Conditions inapplicable or applicable.

**5.3 Provision.** With regard to Third Party Services delivered, TPSC will provide these Third Party Services under, at most, the same conditions as provided for in the Third Party General Conditions; the warranty under the same terms and conditions as indicated in the Third Party General Conditions et cetera.

## 6. FEES AND PAYMENT FOR SERVICES PURCHASED

**6.1. Fees.** Customer shall pay all fees specified in the Work Order for Services. Payment obligations are non-cancelable and fees paid are non-refundable, except as required under 12.3 and 12.4, and the subscription purchased cannot be decreased during the relevant subscription term. Subscription fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof; therefore, fees for Subscriptions added in the middle of a monthly period, due to exceeding one of the limits (storage objects, storage or traffic) will be charged for that full monthly period and the monthly periods remaining in the subscription term.

**6.2. Invoicing and Payment.** Unless other payment details are specified in the Work Order, the Customer will provide Darjack with valid and updated credit card information or with a valid purchase order or alternative document reasonably acceptable to Darjack. If Customer provides credit card information to Darjack, the Customer authorizes Darjack to charge such credit card for all Services listed in the Work Order for the initial subscription term and any renewal subscription term(s) as set forth in Section 12.2 (Term of Purchased Subscriptions). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Work Order. If the Work Order specifies that payment will be by a method other than a credit card, Darjack will invoice Customer in advance and otherwise in accordance with the relevant Work Order. Unless otherwise stated in the Work Order, invoiced charges are due 30 days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to Darjack and notifying Darjack of any changes to such information.

**6.3. Overdue Charges.** If any charges are not received from Customer by the due date, then at Darjack's discretion and a minimum of 14 days after written notice is provided to the Customer, (a) such charges may accrue late interest at the rate of 2% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) Darjack may condition future subscription renewals and Work Orders on payment terms shorter than those specified in Section 6.2 (Invoicing and Payment).

**6.4. Suspension of Service and Acceleration.** If any amount owing by Customer under this or any other agreement for TPSC's services is 30 or more days overdue (or 10 or more days overdue in the case of amounts Customer have authorized Darjack to charge to Customer's credit card), Darjack may, without limiting Darjack's other rights and remedies, accelerate Customer's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Darjack's services to Customer until such amounts are paid in full. Darjack will give Customer at least 14 days' prior notice that Customer's account is overdue, in accordance with Section 13.2 (Manner of Giving Notice), before suspending services to Customer.

**6.5. Payment Disputes.** Darjack shall not exercise Darjack's rights under Section 6.3 (Overdue Charges) or 6.4

(Suspension of Service and Acceleration) if Customer are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

**6.6. Taxes.** Unless otherwise stated, Darjack's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to GST, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with Customer's purchases hereunder. If Darjack have the legal obligation to pay or collect Taxes for which Customer are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Darjack with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Darjack are solely responsible for taxes assessable against it based on Darjack's income, property and employees.

## **7. PROPRIETARY RIGHTS**

**7.1. Reservation of Rights in Services.** Subject to the limited rights expressly granted hereunder, TPSC reserve all rights, title and interest in and to Services, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

**7.2. Restrictions.** Customer shall not (i) permit any third party to access Services except as permitted herein or in a Work Order, (ii) create derivative works based on TPSC Cloud™ except as authorized herein, (iii) copy, frame or mirror any part or content of TPSC Cloud™, other than copying or framing on Customer's own intranets or otherwise for Customer's own internal business purposes, (iv) reverse engineer TPSC Cloud™ or Applications (v) give other parties access to TPSC Cloud™ in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of TPSC Cloud™.

**7.3. Process Data.** Subject to the limited rights granted by Customer hereunder, neither TPSC or Darjack acquire any right, title or interest from Customer or Customer's licensors under this Agreement in or to Process Data, including any intellectual property rights therein.

**7.4 Suggestions.** TPSC shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into TPSC Cloud™ any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Users, relating to the operation of TPSC Cloud™.

## **8. CONFIDENTIALITY**

**8.1. Definition of Confidential Information.** As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's Confidential Information shall include Process Data; Darjack's Confidential Information shall include TPSC Cloud™ and other TPSC Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Work Orders, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Process Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

**8.2. Protection of Confidential Information.** The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party shall disclose the terms of this Agreement or any Work Order to any third party other than their legal counsel and accountants without the other party's prior written consent.

**8.3. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing

Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

## **9. WARRANTIES AND DISCLAIMERS**

**9.1. Darjack and TPSC Warranties.** Darjack warrants that (i) Darjack have validly entered into this Agreement and have the legal power to do so, (ii) TPSC Cloud™ shall perform materially in accordance with the User Guide, (iii) subject to Section 4.6 (Integration), the functionality of TPSC Cloud™ will not be materially decreased during a subscription term, and (iv) TPSC will not transmit Malicious Code to Customer, provided it is not a breach of this subpart (v) if Customer or a User uploads a file containing Malicious Code into TPSC Cloud™ and later downloads that file containing Malicious Code. For any breach of a warranty above, Customer's exclusive remedy shall be as provided in Section 12.3 (Termination for Cause) and Section 12.4 (Refund or Payment upon Termination) below.

**9.2. Disclaimer.** Except as expressly provided herein, neither party makes any Warranties of any kind, whether expressly implied, statutory or otherwise, and each party specifically disclaims all implied Warranties including any Warranties or merchantability or fitness for a particular purpose, to the maximum extent permitted by applicable law.

## **10. MUTUAL INDEMNIFICATION**

**10.1. Indemnification by Darjack.** Darjack shall defend Customer against any claim, demand, suit, or proceeding made or brought against Customer by a third party alleging that the use of TPSC Cloud™ as permitted hereunder infringes or misappropriates the intellectual property rights of a third party (a "Claim Against Customer"), and shall indemnify Customer for any damages, attorney fees and costs finally awarded against Customer as a result of, and for amounts paid by Customer under a court---approved settlement of, a Claim Against Customer; provided that Customer (a) promptly give Darjack written notice of the Claim Against Customer; (b) give Darjack sole control of the defense and settlement of the Claim Against Customer (provided that Darjack may not settle any Claim Against Customer unless the settlement unconditionally releases Customer of all liability); and (c) provide to Darjack all reasonable assistance, at Darjack's expense. In the event of a Claim Against Customer, or if Darjack reasonably believe TPSC Cloud™ may infringe or misappropriate, Darjack may in Darjack's discretion and at no cost to Customer (i) modify TPSC Cloud™ so that they no longer infringe or misappropriate, without breaching Darjack's warranties under "Darjack's Warranties" above, (ii) obtain a license for Customer's continued use of TPSC Cloud™ in accordance with this Agreement, or (iii) terminate Customer's Subscriptions for such Services upon 30 days' written notice and refund to Customer any prepaid fees covering the remainder of the term of such Subscriptions after the effective date of termination.

**10.2. Indemnification by Customer.** Customer shall defend Darjack against any claim, demand, suit or proceeding made or brought against Darjack by a third party alleging that Process Data, or Customer's use of TPSC Cloud™ in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law (a "Claim Against Darjack"), and shall indemnify Darjack for any damages, attorney fees and costs finally awarded against Darjack as a result of, or for any amounts paid by Darjack under a court---approved settlement of, a Claim Against Darjack; provided that Darjack (a) promptly give Customer written notice of the Claim Against Darjack; (b) give Customer sole control of the defense and settlement of the Claim Against Darjack (provided that Customer may not settle any Claim Against Darjack unless the settlement unconditionally releases Darjack of all liability); and (c) provide to Customer all reasonable assistance, at Customer's expense.

**10.3. Exclusive Remedy.** This Section 10 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section.

## **11. LIMITATION OF LIABILITY**

**11.1. Limitation** NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL EXCEED THE AMOUNT PAID BY CUSTOMER TO DARJACK IN THE 24 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER UNDER THE AGREEMENT. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 6 (FEES AND PAYMENT FOR PURCHASED SERVICES).

**11.2. Exclusion of Consequential and Related Damages.** NOTHING IN THIS AGREEMENT EXCLUDES OR IN ANY WAY LIMITS A PARTY'S LIABILITY TO THE OTHER PARTY FOR PERSONAL INJURY, DEATH OR PROPERTY DAMAGE, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## 12. TERM AND TERMINATION

**12.1. Term of Agreement.** This Agreement commences on the date Customer accepts the Work Order it and continues until all Services in accordance with this Agreement have expired or been terminated.

**12.2. Term of Services Purchased.** Services purchased by Customer commence on the start date specified in the applicable Work Order and continue for the subscription term specified therein. Except as otherwise specified in the applicable Work Order, all Services shall automatically renew for additional periods equal to the expiring subscription term or one year (whichever is longer), unless either party gives the other notice of non-renewal at least 90 days before the end of the relevant subscription term. The per-unit pricing during any such renewal term shall be the same as that during the prior term unless specified in the Work Order or Darjack has given Customer written notice of a pricing increase at least 30 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter. If Customer does not agree with a price change, Customer will only be permitted to terminate the Agreement from the date the change in price becomes applicable, if the total price increase during 1 (one) year exceeds by 5% the pricing for the relevant Services in the immediate prior subscription term.

**12.3. Termination for Cause.** A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**12.4. Refund or Payment upon Termination.** Upon any termination for cause by Customer, Darjack shall refund Customer any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by Darjack, Customer shall pay any unpaid fees covering the remainder of the term of all Work Orders after the effective date of termination. In no event shall any termination relieve Customer of the obligation to pay any fees payable to Darjack for the period prior to the effective date of termination.

**12.5. Return of Process Data.** Upon request by Customer made within 60 days after the effective date of termination of a subscription, Darjack will make available to Customer a database dump, included attachments in their native format. After such 60 day period, Darjack shall have no obligation to maintain or provide any of Process Data and shall thereafter, unless legally prohibited, delete all of Process Data in Darjack or TPSC's systems or otherwise in Darjack or TPSC's possession or under Darjack or TPSC's control.

**12.6. Surviving Provisions.** Section 6 (Fees and Payment for Purchased Services), 7 (Proprietary Rights), 8 (Confidentiality), 9.2 (Disclaimer), 10 (Mutual Indemnification), 11 (Limitation of Liability), 12.4 (Refund or Payment upon Termination), 12.5 (Return of Process Data), 13 (Governing Law and Jurisdiction) and 14 (General Provisions) shall survive any termination or expiration of this Agreement.

## 13. GOVERNING LAW AND JURISDICTION

**13.1. General.** What law will apply in any lawsuit arising out of or in connection with this Agreement, and which courts can adjudicate any such lawsuit, depend on where Customer are domiciled.

If Customer are domiciled in:	The Governing Law is:	The courts having exclusive jurisdiction are:
Australia and NZ countries	Australia	Queensland, Australia



**13.2. Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to Customer shall be addressed to the relevant billing contact designated by Customer. All other notices to Customer shall be addressed to the relevant Services system administrator designated by Customer.

**13.3. Agreement to Governing Law and Jurisdiction.** Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

**13.4. Waiver of Jury Trial.** Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

## **14. GENERAL PROVISIONS**

**14.1. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

**14.2. Waiver.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

**14.3. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

**14.4. Attorney Fees.** Customer shall pay on demand all of Darjack's reasonable attorney fees and other costs incurred by Darjack to collect any fees or charges due Darjack under this Agreement following Customer's breach of Section 6.2 (Invoicing and Payment).

**14.5. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Work Order s), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, Darjack shall refund to Customer any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**14.6. Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all Work Order s, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Work Order , the terms of such exhibit, addendum or Work Order shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Customer's purchase order or other order documentation (excluding Work Order s) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

## **15. Recommended and Minimum standards for access to TPSC Cloud V7**

**15.1. Computer Requirements.**

- A computer, minimal Intel Core 2 Duo processor and 4 Gb memory.
- An internet connection, we recommend a 4 Mb/s connection.
- Minimum screen resolution of 1024 x 768 for the best possible user experience



**15.2. Browser Requirements “Online Forms”**

- Internet Explorer 10 or higher, Google Chrome, Safari or Firefox.
- As new browser releases are available the latest 2 versions are supported. Earlier versions will remain compatible with pre-existing features.

**15.3. Browser Requirements “Back office”**

- Internet Explorer 10 or higher, Google Chrome, Safari or Firefox.
- As new browser releases are available the latest 2 versions are supported. Earlier versions will remain compatible with pre-existing features.

**15.4. Smart Phone Requirements “Online Forms”**

- Smartphones with supported version of iOS or Android.
- As operating system releases are available the latest 2 versions are supported. Earlier versions will remain compatible with pre-existing features.

## Annex 1. Software Support Services Terms and Conditions for Cgov Solutions

### 1. DEFINITIONS

- 1.1 Bypass:** An emergency solution or work around solution on the basis of which business processes can continue wholly or partially.
- 1.2 Coordinator:** A contact person appointed by Customer. The Coordinator operates as the sole contact between Cgov and the Customer.
- 1.3 Defect:** has the meaning of a defect, error or malfunction which caused the relevant component of the Product to not comply, perform or operate in accordance with the relevant Cgov User Guide or Cgov Application User Manual when operated in accordance with the IPS Specifications.
- 1.4 Disaster Recovery:** The ability to continue businesses processes with an alternative system.
- 1.5 Object Code:** The computer programming code substantially in binary form. It is directly executable by a computer after processing, but without reverse engineering, compilation or assembly.
- 1.6 Maintenance:**
- a) **Preventive Maintenance:** The prevention of potential Defects in the Products.
  - b) **Corrective Maintenance:** The correction of Defects in the Products which arise during normal use of the Products.
  - c) **Constructive Maintenance:** Providing new Releases and/or new Versions of the licensed Products delivered to Customer. The Contractor is not obliged to actively keep Customer up to date concerning possible new Releases or new Versions of the Products.
- 1.7 Priority Code:** Codes used to determine the urgency of a reported Defect
- 1.8 Products:** All Cgov Products and/or Third Party Products.
- 1.9 Release:** Minor updates in the Products and corresponding documentation. This will generally include qualitative improvements in the Products such as Defect fixes. A new Release will be indicated by a higher number after the decimal point i.e., Release X.1 will be followed by Release X.2, etc.
- 1.10 Service Level:** The time and manner in which Cgov will strive to respond to Customer.
- 1.11 Source Code:** The computer programming code that may be displayed in a form readable and understandable by a programmer of ordinary skill. It includes related Source Code level system documentation, comments and procedural code. Source Code does not include Object Code.
- 1.12 Subsequent Calculation:** On conclusion of the activities carried out, all costs and expenses actually incurred related to the activities will be calculated and charged.
- 1.13 Support:** Software Support Services, being:
- a) **First Line Support:** Verbal and/or written advice by Customer to users of the Products with reference to the technical and functional capabilities of the Products. First Line Support includes the reporting of Defects by users to Customer's Coordinator; and
  - b) **Second Line Support:** Verbal and/or written advice by Cgov to Customer's Coordinator with reference to the technical and functional aspects of the Products. Second Line Support includes the reporting of Defects by Customer's Coordinator to Cgov.
- 1.14 Third Party Products:** All products and services provided by Cgov, the resulting provisions and related activities, which originate from third parties and whose intellectual property rights, industrial property rights and other rights are not held by Cgov.

- 1.15 Cgov Products:** All products and services provided by Cgov, and the resulting provisions and related activities which do not originate from third parties and whose intellectual property rights, industrial property rights and other rights are held by The Patient Safety Company (and/or Cgov insofar as these rights are not held by The Patient Safety Company).
- 1.16 Version:** Major updates in the Products and corresponding documentation. This will generally include new functionality in the Products. A new Version will be indicated by a higher number before the decimal point i.e., Version 1.X will be followed by Version 2.X, etc.
- 1.17** Any of the above words and expressions shown in the singular shall have the same meaning when used in the plural and vice-versa.
- 1.18** Words used in these terms and conditions and defined in the Work Order , including the Schedules have the same meaning in this document unless the context indicates otherwise, except that any reference to 'this document' in these terms and conditions is a reference to the terms and conditions in these Subscription Conditions in the Work Order only.

## **2. OBJECT OF THE SERVICES**

- 2.1** The Contractor shall directly provide Maintenance and Support on the Products as specified herein.

## **3. MAINTENANCE AND SUPPORT IN GENERAL**

- 3.1** The Contractor shall provide Maintenance on the current Versions of the Products as installed at the Site.
- 3.2** The Contractor will provide Second Line Support to Customer on current Versions of the Products. Customer is obligated to provide First Line Support
- 3.3** Unless specified to the contrary in the Service Levels, the Software Support Services do not include services involving correction of faults, errors or Defects caused by:
- (a) operation of the Supported Software in a manner which contravenes the Customer's obligations as specified in the Work Order ;
  - (b) failure by the Customer to operate the Supported Software in accordance with the IPS Specifications as described in Schedule 3, which have been made known by Cgov to the Customer;
  - (c) use by the Customer of the Supported Software in an information technology environment other than that provided for in the Work Order;
  - (d) failure by the Customer to use the Supported Software in conformity with the Cgov User Guide or Cgov Documentation prepared by Cgov and accepted by the Customer in accordance with the Installation Activities in the Work Order;
  - (e) any other service expressly excluded in the Work Order;
  - (f) modifications to the Support Software made by the Customer or a third party, unless authorised by Cgov; and
  - (g) circumstances which may endanger the safety of Cgov's employees or those of a third party acting on behalf of Cgov.
- 3.4** In the event of a circumstance as set out in article 3.3 (a) to (f) Cgov can offer to provide Maintenance and Support on the basis of Subsequent Calculation.
- 3.5** Customer can contact Cgov regarding Maintenance and Support during local business hours. Contact can be established through the communication channels as described in Appendix 2. Any activities performed by Cgov on the basis of the Work Order will be performed during Business Days. At the Customer's request activities can be performed outside of Business Days against an additional fee.

## **4. PREVENTIVE MAINTENANCE**

- 4.1 Preventive Maintenance will only take place on initiative of Cgov.
- 4.2 If Cgov determines that Preventive Maintenance is necessary, Cgov and Customer will mutually agree on the place, time and extent of Preventive Maintenance.
- 4.3 If Customer refuses Preventive Maintenance as reasonably required by Cgov, then Cgov may issue to the Customer a Notice for additional fees to establish a separate environment under a previous version of the Products acceptable to the Customer. The Contract may also issue a Notice to Show Cause why Cgov should not terminate the Work Order in accordance with the Subscription Agreement.

## 5. CORRECTIVE MAINTENANCE

- 5.1 The Customer is required to immediately report Defects to Cgov.
- 5.2 In order to determine the extent of the Defect and the Service Level to be provided by Cgov the Priority Codes as detailed in Appendix 1 will be used.
- 5.3 The Customer is obligated to actively report any requested and un-requested information useful for Cgov to repair a Defect.
- 5.4 When reporting the Defect the Customer must at a minimum include the information as detailed in Appendix 1. The Contractor can require Customer to provide the required information in writing if necessary. If no Priority Codes are used when reporting the Defect, Cgov will be permitted to assign a Priority Code. The Contractor will not be liable when an incorrect Priority Code is assigned to a Defect.

## 6. CONSTRUCTIVE MAINTENANCE

- 6.1 If Customer refuses to accept a new Releases or new Versions of the Products that are offered by Cgov to Customer, then Cgov may issue to the Customer a Notice for additional fees to establish a separate environment under a previous version of the Products acceptable to the Customer.
- 6.2 Customer is aware of the fact that a new Release or new Versions may affect their current business process. Upon the request of Customer Cgov will inform Customer what the advantages and disadvantages are of the new Release or new Version.
- 6.3 Documentation regarding new Releases or new Versions will be provided.
- 6.4 Constructive Maintenance does not include qualitative or functional improvements made on request by Customer. Improvements made on request by Customer will be performed on the basis of Subsequent Calculation and against terms and conditions specified in each instance.
- 6.5 When providing qualitative or functional improvements made on request by Customer the implementation, conversion and/or other costs, will be for the account of Customer. The provision of new Releases and Versions is included in the Managed Service Fee.
- 6.6 For the avoidance of doubt, Cgov confirms that in no event will any new Release or new Version
  - 6.6.1 require any Customer implementation or Customer IT support – except for First Line Support; and
  - 6.6.2 impose any other cost on the Customer other than at the request of the Customer.
- 6.7 Any loss or material change to system functionality as described in the Cgov User Guide, Cgov Applications User Manual due to Constructive Maintenance will be rectified as a Defect under the terms of this document. For the avoidance of doubt, this will include any additional training that may be required.

## 7. REQUIREMENTS CUSTOMER

- 7.1 Customer will provide Cgov reasonable access to its premises and the environment in which the Products operate such as but not limited to data, programs, computers and servers.
- 7.2 Customer will appoint a Coordinator and a substitute Coordinator that will provide First Line Support and will

operate as the sole contact persons for Cgov for Second Line Support and Maintenance.

**7.3** Customer will ensure that the Coordinators have an adequate level of knowledge. If it appears, in Cgov's reasonable discretion, that the Coordinators do not have adequate knowledge and this results in unnecessary Support and/or Maintenance, Cgov is authorized to charge additional costs for Maintenance and/or Support on the basis of Subsequent Calculation.

**7.4** Customer will ensure that it has acquired all the necessary licenses or other rights to the Products and other products in the environment within which the Products operate.

## **8. PRICES**

**8.1** The Price for the Software Support Services is included in the Cgov Subscription Fees set out in the Work Order.

## **9. PAYMENT**

**9.1** Payment arrangements for the Software Support Services are in accordance with the Work Order.

## **10. MAINTENANCE AND SUPPORT DELIVERY DATES**

**10.1** All maintenance delivery dates which may be named by and may be applicable to Cgov are determined to the best of Cgov's knowledge on the basis of information made known to Cgov and will be taken into consideration as much as possible.

**10.2** Delivery dates shall therefore not be considered to be absolute (delivery) dates within which must be delivered, but a time period within which Cgov shall strive with best efforts to deliver the agreed upon items. If it is not possible to keep to the (delivery) date, then Cgov and the Customer will consult with each other to agree on a substitute delivery date.

**10.3** Exceeding a given delivery date which may be applicable never constitutes an attributable shortcoming by Cgov. The Contractor does not accept liability under any circumstances in cases where the delivery date may be exceeded.

## **11. CONFIDENTIALITY**

**11.1** The Contractor and the Customer will comply with the confidentiality obligations described in the Work Order in the course of providing and receiving the Software Support Services.

## **12. LIABILITY**

**12.1** The liability of Cgov and the Customer in relation to the Software Support Services will be determined in accordance with the terms of the Work Order .

## **13. INTELLECTUAL PROPERTY**

**13.1** The Intellectual Property Rights of the Parties will be determined in accordance with the terms of the Work Order or as otherwise agreed by the Parties.

## **14. TRANSFER**

**14.1** The rights of the Parties to transfer their rights and obligations in relation to the Software Support Services will be determined in accordance with the terms of the Work Order .

## **15. TERM**

**15.1** The term of the Support is in accordance with the Work Order.

## **16. TERMINATION**

**16.1** Other than as expressly stated in this document, termination of Support Services will be in accordance with the terms of the Work Order.

**17. GOVERNING LAW AND DISPUTE RESOLUTION**

**17.1** The governing law and dispute resolution procedures relevant to the Customer Support Services are in accordance with the terms of the Work Order.

## APPENDIX 1 - SERVICE LEVELS

### SUPPORT

The Customer shall receive unlimited Warranty support for the resolution of agreed Defects for Corrective Maintenance. Support requests will be received by phone, email or online report and may be fulfilled by phone, email, online meeting and/or approved remote access to the Customers Products. All Support will be provided by qualified staff from Cgov's premises or by 3rd Parties approved by Cgov from 3rd party premises.

The Contractor provide Customer an annual budget (See Schedule 1 - Item 12) helpdesk and consulting support each year prior to the Contractor applying Subsequent Calculation.

Any requirement to provide support by Subsequent Calculation will incur costs and expenses:

- Hourly rates for Subsequent Calculation shall be \$250 per hour
- Time will be accounted for in 12 minute increments.
- Fully itemized invoices for Subsequent Calculation will be submitted monthly to the Customer.

### CORRECTIVE MAINTENANCE

The following Priority Codes and Service Levels apply to Corrective Maintenance and the reporting of Errors.

Priority Code	Description	Service Levels	Comments
Critical System Failure	The Cgov PaaS Platform, database server or webserver is at risk or cannot be accessed by users. The situation requires an immediate solution.	Cgov will respond and assign this task within 30 minutes.  Cgov will use its best endeavours to provide a solution within 4 business hours. An interim solution may be provided to give the error a lower priority code.	Critical system failure: <ul style="list-style-type: none"> <li>• System not available.</li> <li>• Data corruption or reportable security breach</li> <li>• Users unable to submit online forms.</li> </ul>
1	The Product cannot be used; the Error has a significant impact on the business processes.  A bypass is not available; the situation requires an immediate solution.	Cgov will respond and assign this task within 4 hours  Cgov will use its best endeavours to provide a solution within 1 business day.  An interim solution may be provided to give the error a lower priority code.	Users unable to perform primary workflows for a solution.  Process queue does not run, limited to SOAP messages.  Errors caused by Constructive or Preventative Maintenance
2	The use of the Product is limited; certain features/workflows cannot be used.  A Bypass is available; the situation requires a solution as soon as possible.	Cgov will respond and assign this task within 1 business day  Cgov will use its best endeavours to provide a solution within 5 business days.  If a Bypass is provided parties will give the Error a lower Priority Code.  Cgov must pause work and notify The Customer before proceeding if >3 hours effort is expended.	<ul style="list-style-type: none"> <li>• File cannot be closed</li> <li>• E-mails not being send</li> <li>• Empty dashboard</li> <li>• Errors in Reports</li> </ul>
3	The Product is operational; the use of some features/workflows have minor restrictions. A Bypass is available allowing business processes to continue.	Cgov will take those actions, which will possibly lead to a solution as soon as possible. Cgov will use its best endeavours to provide a solution to be included in the next release for Constructive Maintenance.	Other, i.e.: <ul style="list-style-type: none"> <li>• Unable to open file from dashboard, but can be opened through data grid</li> <li>• Form only accessible through direct link</li> <li>• Audit trail not displayed</li> </ul>



**Required information when reporting Errors:**

The following information must be provided at a minimum when reporting Errors:

- Coordinator contact details.
- Customer details: contact, name, email and telephone number.
- Environment details: domain, url.
- Version of the Product.
- The Priority Code initially applicable to the Error (not binding).
- Detailed description of the Error and the conditions under which it occurred.
- Expected process result and actual process result.
- Description how the Error can be reproduced.
- Description (or dump) of the Error-message or Error-log.
- Part of the application where the Error occurred (i.e. a app-, window-, menu- or procedure name.).
- Clear screenshot(s).
- If there are multiple Errors, for each individual error a separate report must be made.
- In case of multiple Errors Customer must indicate, in addition to the Priority Code, the order of priority in which Customer desires the Errors to be resolved.
- In case of supplements or response to existing cases, the case number must be included in the subject of the e-mail.
- Further details that might help to isolate the problem (for instance regarding recently installed other applications that may cause the problem).