

Software Licence Agreement – Terms & Conditions

Permission to use NeoRehab is conditional upon You, the Customer, agreeing to the terms set out below. You must read this agreement carefully. By registering for an account or using all or any portion of NeoRehab, you accept all the terms and conditions of this Agreement. Acceptance will bind You and all of Your employees in terms of this License. This includes, in particular, any limitations on use, transferability, warranty and liability. You agree this Agreement is enforceable in the same manner as any written negotiated contract bearing your signature or seal. If You do not agree with these terms or do not have the authority to agree to them on behalf of your organisation, you must not register for an account with the Company and must not use NeoRehab.

Background

- A. Neo-Rehab Pty Ltd ACN 136 101 016 (**Company**) has the right to licence NeoRehab and provide services to customers relating to NeoRehab.
- B. The Customer wishes to utilise NeoRehab and engage the Company to provide these services.
- C. This Agreement records the arrangements between the Company and the Customer.

The Terms and Conditions of use are as follows:

1. Licence

1.1 Grant of Licence

In consideration of the payment of Fees by the Customer, and subject to the terms of this Agreement, the Company grants to the Customer a non-exclusive, non-transferrable licence to use NeoRehab on a computer or network used by the Customer.

1.2 Authorised Use

- (a) The Customer agrees that only Authorised Users may access and use NeoRehab.
- (b) The Customer must ensure that Authorised Users access and use NeoRehab in accordance with this Agreement.
- (c) The Customer and Authorised Users must only use NeoRehab for the purposes of operating the Customer's business.
- (d) To the extent that NeoRehab is accessible through a website, such access is subject to the terms and conditions of use that appear on that website and any click and accept end user licence terms, together with privacy and acceptable use standards.
- (e) An Authorised User may access NeoRehab online utilising a Logon ID allocated by the Customer to the Authorised User. The Customer:
 - (i) may not cause a Logon ID to be utilised by more than one Authorised User at any one time;
 - (ii) may cancel an Authorised User's Logon ID at any time and that Logon ID may then be allocated to another Authorised User.

- (f) The Customer must ensure that an Authorised User does not disclose their Logon ID to anyone else.
- (g) the Company may cancel any Logon ID at any time without providing reasons or limit the number of available Login IDs available to the Customer based on the Fee structure adopted.

1.3 Co-operation

Upon the reasonable request of the Company, the Customer will provide the Company with all information and co-operation reasonably necessary to enable the Company to perform its obligations under this Agreement.

1.4 Restrictions

The Customer must not:

- (a) use NeoRehab in any way that could damage the reputation of the Company or the goodwill or other rights associated with NeoRehab;
- (b) permit any third party to use NeoRehab other than as set out in this Agreement;
- (c) reproduce any part of NeoRehab for sale or incorporation in any product or service intended for sale or supply to third parties;
- (d) except as expressly permitted by this Agreement, and except to the extent that applicable laws, including the *Copyright Act 1968* (Cth), prevent the Company restraining the Customer from doing so:
 - (i) reproduce, make error corrections to or otherwise modify or adapt NeoRehab or create any derivative works based upon NeoRehab;
 - (ii) de-compile, disassemble or otherwise reverse engineer NeoRehab or permit any third party to do so.
- (e) The Customer must ensure that all usernames and passwords required to access NeoRehab are kept secure and confidential. The Customer must immediately notify the Company of any unauthorised use of the Customer's passwords or any other breach of security and the Company will reset the Customer's password and The Customer must take all other actions that the Company reasonably deems necessary to maintain or enhance the security of the Company' computing systems and networks and the Customer's access to NeoRehab.
- (f) When accessing and using NeoRehab, the Customer must not:
 - (i) attempt to undermine the security or integrity of the Company's computing systems or networks or, where NeoRehab is hosted by a third party, that third party's computing systems and networks;
 - (ii) use, or misuse, the Service in any way which may impair the functionality of NeoRehab or Website, or other systems used to deliver NeoRehab or impair the ability of any other user to use NeoRehab or Website;
 - (iii) attempt to gain unauthorised access to any materials other than those to which the Customer has been given express permission to access or to the computer system on which NeoRehab is hosted;

- (iv) transmit, or input into the Website, any files that may damage any other person's computing devices or software, content that may be offensive, or material or Customer Data in violation of any law (including Customer Data or other material protected by copyright or trade secrets which the Customer does not have the right to use);
- (v) attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver NeoRehab or to operate the Website except as is strictly necessary to use either of them for normal operation;
- (vi) remove or modify any program markings or any notice of proprietary rights, irrespective of whether such markings or notices are those of the Company or a third party;
- (vii) make any part of NeoRehab available in any manner to any third party for use in that third party's business operations, or otherwise sublicense, rent, assign, communicate to the public or otherwise deal (wholly or in part) with NeoRehab.

2. Availability

2.1 Availability

The Company shall provide the access to NeoRehab through the Website, provided however that the Company may, without notice, suspend all or part of any access to NeoRehab immediately, including where:

- (a) there is a malfunction or breakdown of any of the Company' equipment or if the Company is required to undertake the repair, maintenance or service of any part of NeoRehab;
- (b) it is reasonably required to reduce or prevent fraud or interference with NeoRehab;
- (c) the Company is required to comply with an order, instruction or request of a Government Agency, or other such competent body;
- (d) the Customer has failed to pay Fees that are due and payable to the Company;
- (e) there is a Force Majeure Event.

2.2 Downtime

The Customer acknowledges and agrees that access to NeoRehab is reliant upon various factors outside the control of the Company, including, without limitation, the Customer's internet service provider, telecommunications provider or equipment used to access NeoRehab or the Website, the Company' hosting and web server and other factors which may impact upon the delivery of NeoRehab to the Customer via the internet. While the Company shall use all reasonable endeavours to ensure the Customer has continuous access to NeoRehab, the Company shall not be liable to the Customer or any other person for any Claim or to any other extent for Loss or damage caused by such factors.

2.3 Viability

The Company may suspend access to NeoRehab if a Claim is made that:

- (a) alleges that the continued provision of NeoRehab infringes the rights of any person;

- (b) exposes the Company to liability prosecution for an offence or liability to a statutory penalty.

2.4 Notice

In the event that access to NeoRehab is discontinued in accordance with clause 2.3, the Company will endeavour to provide the Customer with prior written notice where it is reasonable and practicable in the Company' opinion to do so.

2.5 Notice of Maintenance

The Company will use its reasonable endeavours to, except in emergency situations:

- (a) provide the Customer with seven (7) days' notice of any scheduled maintenance of NeoRehab; and
- (b) undertake any scheduled maintenance between the hours of 7pm and 7am AEST on weekdays or on weekends.

2.6 Loss of Access

The Customer shall have no Claim against the Company in respect of loss of access or functionality to NeoRehab referred to in this clause.

2.7 Malfunctions

The Company does not warrant that NeoRehab is or will be completely error free or free of Defects.

3. Intellectual Property

3.1 Ownership

- (a) The Company warrants that, at the commencement of this Agreement, it is entitled to grant the rights in respect of NeoRehab subject to the terms and conditions of this Agreement.
- (b) The Customer acknowledges that all Intellectual Property Rights subsisting in NeoRehab are either owned or licensed from third parties (as the case may be) by the Company and that nothing in this Agreement has the effect of or should be construed as passing ownership of any Intellectual Property Rights of the Company to any person, including the Customer.

3.2 Customer Materials

- (a) The Company acknowledges that all Intellectual Property Rights subsisting in the Customer Materials are either owned or licensed from third parties (as the case may be) by the Customer and that nothing in this Agreement has the effect of or should be construed as passing ownership of any Intellectual Property Rights in the Customer Material to any person.
- (b) The Customer hereby grants to the the Company a perpetual, royalty free, non-exclusive, non-transferable licence to use, operate, modify, support and maintain the Customer Materials in order to support NeoRehab.

- (c) The Customer acknowledges that the Company retains ownership of all Intellectual Property Rights of NeoRehab created by or for the Company whether before or after the date of this Agreement and the Customer hereby irrevocably assigns any Intellectual Property Rights that may vest in the Customer, by operation of law or otherwise.

3.3 No Exclusivity

The Customer acknowledges and agrees that the Company may supply products or services similar to or the same as NeoRehab to its customers or other third parties and the Customer may not restrict the Company' use of NeoRehab. In using such material, the Company must ensure:

- (a) the Customer is not identifiable;
- (b) no personal information originating from the Customer about identifiable individuals is contained in that material;
- (c) the relevant material does not contain Confidential Information of the Customer.

3.4 Continued Development

- (a) The Customer consents to the Company soliciting comments, information, requests, data, ideas, enhancement requests, recommendations, description of processes, or other information concerning NeoRehab from Authorised Users or the Customer (**Feedback**).
- (b) the Company owns all Intellectual Property Rights in any Feedback and may use such Feedback for purposes related to NeoRehab or the carrying out of services generally in its business activities without further approval or acknowledgement, and the Customer hereby assigns to the Company any Intellectual Property Rights in any such Feedback provided always that the Company complies with the general obligations in clause 3.3.

4. Customer Data

4.1 Provision of Information

Through the usage of NeoRehab, the Customer will provide and have stored on the Company' servers, Customer Data. Customer Data may be stored on servers owned by third parties pursuant to arrangements entered into by the Company.

4.2 Security

The Company shall use all reasonable endeavours to ensure that the Company's servants, agents and employees provide a secure environment for any Customer Data held on its systems as a result of use of NeoRehab. The Customer however acknowledges that no information which is available on the internet is completely secure and agrees that the Company will not be liable for any loss or damage or to any extent should such security measures be overcome or breached and the Customer hereby indemnifies the Company in respect of any such Claims.

4.3 Third Party Infringement

The Customer shall not knowingly do any act or thing in relation to data which would infringe any party's copyright or intellectual property rights and shall be responsible for obtaining consent, approval or license from the holders of any intellectual property rights required to enable the

Customer to deal with any relevant data or to do any act or thing in relation to those intellectual property rights.

4.4 Use of Customer Data

The Customer grants and the Company reserves the right to use, test, manipulate or put to any other application the Customer Data for the purpose of improving or marketing NeoRehab. The Company will not use the Customer Data for any other purpose without the consent in writing of the Customer.

4.5 Confidentiality

In making use of Customer Data in accordance with clause 4.4, the Company will use all reasonable endeavours to preserve the confidentiality of the Customer Data, including the amendment or alteration of information to cause it to be unidentifiable.

4.6 Other Customer Data

The Customer acknowledges that through the use of NeoRehab it may exchange or otherwise receive or disclose Customer Data to and from other customers. The Customer acknowledges and agrees that the Company has no control over any or all such information and makes no warranty or guarantee as to its accuracy or otherwise appropriateness of the data and all such data is used completely at the Customer's own risk.

5. Fees and Payment

5.1 Fees

The Customer must pay to the Company, the Fees on the date the invoice is provided to the Customer.

5.2 Payment

- (a) All Fees will be billed to the credit card or payment account designated by the Customer during the registration process.
- (b) The Customer authorises the Company to charge for NeoRehab using your payment method, as indicated to NeoRehab.
- (c) The Customer must keep all information regarding their billing account current. If the Customer wishes to designate a different credit card or payment account or if there is a change in credit card or payment account status, the Customer can access and modify their billing account information by notifying the Company in writing.
- (d) All payments made by the Customer are non-refundable and no credits or refunds will be provided in respect of partially used periods.

5.3 GST and other amounts

Unless otherwise expressly stated, the Fees are exclusive of GST, other taxes, duties and charges imposed or levied in Australia or overseas in connection with the License, such amounts being payable by the Customer. If GST is payable in respect of any Fees, then the amounts charged pursuant to this Agreement are to be increased so that the Company receives an amount (an Increased Amount) which, after subtracting the GST on the Increased Amount, results in the Company retaining an amount equal to the original Fee after payment of the GST.

Without limiting the foregoing, the Customer shall be liable for any new taxes, duties or charges imposed subsequent to the commencement of this Agreement.

5.4 Non-Payment

Should the Customer fail to pay the Fees in accordance with clause 5.1 or if the Company is unable to successfully charge the Customer's credit card or payment account for Fees due, the Company reserves the right to:

- (a) Discontinue or suspend the Customer's access to NeoRehab;
- (b) Alter the functionality or usability of NeoRehab for the Customer; or
- (c) Otherwise limit the Customer's access to NeoRehab;

and may charge additional fees for the reinstatement of such access or functionality.

6. Termination

6.1 Termination by Customer

At the end of each monthly billing period, this Agreement will automatically continue for another month provided the Customer continues to pay the Fees when due, unless the Customer terminates this Agreement by giving at least 30 days written notice to the Company prior to the end of the monthly billing period.

6.2 Termination by the Company

the Company may terminate this Agreement in whole or in part if:

- (a) the Customer fails to pay any invoice issued by the Company in accordance with the terms of any such invoice;
- (b) the Customer or an Authorised User commits a material breach of this Agreement which is capable of being remedied and does not remedy that breach within 14 days after receiving written notice of the breach from the Company; or
- (c) the Customer or an Authorised User commits a material breach of this Agreement which is not capable of being remedied;
- (d) the Customer becomes Insolvent; or
- (e) if the Customer or an Authorised User infringes the Company' Intellectual Property Rights,

or in any event upon twenty one (21) days' notice.

6.3 Preservation of Rights

Termination of this Agreement for any reason (including but not limited to termination pursuant to any provision of this clause 6 will not extinguish or otherwise affect:

- (a) any rights of either party against the other which:
 - (i) accrued prior to the time of the termination; or

- (ii) otherwise relate to or may arise at any future time from any breach or non-observance of obligations under this Agreement which arose prior to the time of the termination; or

(b) the provisions of this Agreement which by their nature survive termination.

6.4 Effect of termination

The termination of this Agreement will not affect any remedy of any party with respect to any breach of this Agreement. The parties agree that such rights and remedies will survive the termination of this Agreement.

6.5 Return of Data

The Company will return all Customer Data to the Customer within a reasonable time after termination of this Agreement

7. Warranties

The Company warrants that it:

- (a) is able to lawfully grant the licence contemplated by this Agreement; and
- (b) will develop, provide and deliver NeoRehab with due care and skill; and
- (c) shall provide and maintain help files and other appropriate user documentation.

8. Liability and Indemnity

8.1 Implied terms and warranties excluded

- (a) The provisions of various laws, statutes, rules or regulations in force from time to time might imply certain conditions, warranties, and obligations in this Agreement. All such conditions, warranties, and obligations are hereby expressly excluded from having any application to this Agreement, except to the extent that it is not lawful to do so.
- (b) Each party's liabilities under any condition, warranty, or obligation implied by law in this Agreement that cannot be excluded is limited:
 - (i) In the case of goods, to (at the supplying party's election):
 - (A) the replacement of the goods, or the supply of equivalent goods;
 - (B) the repair of the goods;
 - (C) paying the cost of replacing the goods or of acquiring equivalent goods; or
 - (D) paying the cost of having the goods replaced; and
 - (ii) in the case of services, to (at the supplying party's election):
 - (A) the supplying of the services again; or
 - (B) the payment of the cost of having the services supplied again.

8.2 Indirect losses excluded

In no event will any party be liable to another for:

- (a) a loss of profits, business, business opportunity, revenue, goodwill or anticipated savings; or
- (b) indirect or consequential Loss or damage.

8.3 Cap on Liability

Other than in relation to an obligation on the Customer to pay Fees to the Company, a party's liability to another party for all Claims made by that party under or in connection with this Agreement is, in aggregate, capped at the amount paid by the Customer to the Company under this Agreement.

9. Confidentiality, Privacy and Security

9.1 Treatment of Confidential Information

Each party acknowledges that the Confidential Information of the other party is valuable to the other party. Each party (a **Discloser**) undertakes to keep the Confidential Information of the other party (a **Recipient**) secret and to protect and preserve the confidential nature and secrecy of the Confidential Information of the other party.

9.2 Use of Confidential Information

A Recipient may only use or reproduce the Confidential Information of the Discloser for the purposes of performing the Recipient's obligations or exercising the Recipient's rights under this Agreement.

9.3 Disclosure by Recipient

A Recipient disclosing information under this Agreement must use all reasonable endeavours to ensure that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted under this Agreement.

9.4 Return of Confidential Information

At the request of a Discloser, a Recipient must:

- (a) return to the Discloser all Confidential Information of the Discloser; or
- (b) destroy the Discloser's Confidential Information and certify to the Discloser that it has been destroyed.

9.5 Privacy

If, as a result of this Agreement, a party is able to access any personal information about identifiable individuals, then that party:

- (a) must comply with the *Privacy Act 1988* (Cth) and all other applicable privacy laws and such other data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of information, as if it were regulated by these laws;

- (b) must comply with any privacy code or policy which has been adopted by the Customer (if provided by the Customer to the Company) as if it were bound by that code or policy;
- (c) must take all reasonable measures to ensure that such information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only authorised representatives, employees and officers have access to it;
- (d) must immediately notify the other party upon it becoming aware of a breach of this agreement by itself or any representative, employee or officer;
- (e) must co-operate with the other party in the resolution of any complaint under or relating to, any of the laws, codes or policies referred to in (a) and (b) above.

9.6 Exceptions

Nothing in this Agreement prohibits the use or disclosure of any Confidential Information to the extent that the Recipient can demonstrate that:

- (a) the information is received by the Recipient from a third party who is not under an obligation of confidence in relation to such information;
- (b) the information is generally and publicly available other than as a result of a breach of confidence by the person disclosing or receiving the information;
- (c) the information is independently developed by the Recipient's Personnel who do not have access to any of the Discloser's Confidential Information; or
- (d) the Information was lawfully known to the Recipient prior to receipt of the information from the Discloser.

9.7 Damage and other Remedies

Each party acknowledges that a breach of this clause 9 may cause the other party irreparable damage for which monetary damages may not be an adequate remedy. Accordingly, in addition to other remedies that may be available, each party may seek and obtain injunctive relief against such a breach or threatened breach.

10. Customer Representations and Warranties

The Customer represents and warrants to the Company (except as expressly disclosed in this Agreement) each of the following statements insofar as they are applicable to the Customer is true and correct:

- (a) if it is a corporation or trust it has been duly incorporated or created as the case may be and is validly existing under the laws of the place of its incorporation or creation;
- (b) it has the power to enter into and perform its obligations under this Agreement, to carry out the transactions contemplated by this Agreement and to carry on its business as now conducted or contemplated;
- (c) it has taken all necessary action to authorise the entry into and performance of this Agreement and to carry out the transactions contemplated by this Agreement;
- (d) this Agreement creates valid and binding obligations enforceable in accordance with their terms, subject to any necessary stamping and registration;

- (e) the execution and performance by it of this Agreement and each transaction contemplated under this Agreement did not and will not violate in any respect a provision of:
 - (i) a law or treaty or a judgment, ruling, order or decree of a Government Agency;
 - (ii) its constituent documents; or
 - (iii) any other document or agreement which is binding on it or its assets; and
 - (iv) it has had sufficient opportunity to seek independent legal advice regarding this Agreement and all surrounding matters.

11. Dispute Resolution

11.1 Dispute Resolution Process

- (a) The parties undertake to use all reasonable efforts in good faith to resolve any dispute which arises between them in connection with this Agreement.
- (b) A party may give the other party a notice of dispute in connection with this Agreement.
- (c) Any dispute shall be referred:
 - (i) initially to the Customer's representative and the Company's representative, who will endeavour to resolve the dispute within five (5) Business Days of the giving of the notice; and
 - (ii) if the Customer's representative and the Company's representative do not resolve the dispute within that time, to a member of the Executive Committee of the Customer and a director of the Company, who will endeavour to resolve the dispute within a further five (5) Business Days or such other period as is agreed by the parties.
- (d) If after a period of 20 Business Days after delivery of a dispute notice under clause (b), the parties have not been able to resolve or agree on a process to resolve (whether by mediation, arbitration, alternative dispute resolution or otherwise) a dispute, the dispute shall be referred to mediation. Either party may at any time terminate the mediation in relation to that dispute.
- (e) A party may not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless:
 - (i) the dispute has first been referred for resolution in accordance with the dispute resolution procedure set out in this clause 11; and
 - (ii) a notice terminating any mediation commenced under clause (d) has been issued by either party in accordance with that clause (d).
- (f) If in the course of the dispute resolution procedure set out in clause 11, the parties agree to refer a dispute for resolution by an agreed process, neither party will oppose any application for a stay of any legal proceedings in respect of that dispute pending the completion of that agreed process.

11.2 Obligations continue during dispute resolution process

Until a dispute is resolved, whether by agreement between the parties or by a court order, the parties are obliged to continue to perform their obligations under this Agreement.

12. Assignment and Subcontracting

12.1 By the Company

The Company may assign or otherwise transfer the benefit of all or any part of this Agreement or its rights under this Agreement to any other person or entity without the prior written consent of the Customer.

12.2 By the Customer

The Customer must not assign this Agreement or its rights under this Agreement without the prior written consent of the Company. Any attempted assignment without the Company's consent is void.

12.3 Subcontracting

- (a) The Company may subcontract the performance of any of its obligations under this Agreement.
- (b) The Company must ensure that any subcontract entered into by the Company is consistent with the provisions of this Agreement relating to confidentiality.

13. Force Majeure Events

- (a) If a Force Majeure Event occurs, the party affected (**Affected Party**) must give written notice to the other party of particulars of the Force Majeure Event and the extent to which the Affected Party is unable to carry out its obligations.
- (b) If the Affected Party provides the notice referred to above:
 - (i) the obligations of the Affected Party will be suspended from the time the notice is received by the other party until the Affected Party is no longer prevented from or delayed in complying with those obligations by the Force Majeure Event; and
 - (ii) the Affected Party must take reasonable steps to remove or mitigate the relevant Force Majeure Event; and
 - (iii) if the Company is the Affected Party, the Customer will have the right to suspend all payments to the Company during that time in respect of the obligations that are affected by the Force Majeure Event; and
 - (iv) the term of this Agreement will be extended for that period of time.
- (c) A party cannot claim a Force Majeure Event continues to apply to the extent that it can be rectified by a disaster recovery plan or business continuity plan. The Company must prepare and implement a disaster recovery plan or business continuity plan unless the Force Majeure Event prevents it from doing so.

14. Support Services

14.1 Nature of Services

- (a) During the currency of this Agreement, the Company will perform such services as it considers reasonable for the Customer in order to ensure NeoRehab remains in substantial conformity with its specifications (**Support Services**).
- (b) Where the Company is providing Support Services, such support shall, at the sole option of the Company, take the form of:
 - (i) telephone advice;
 - (ii) email transmission correspondence;
 - (iii) error correction by means of Patches or New Releases; and
 - (iv) such services as the Company considers are effectively provided off-site.
- (c) the Company will deal only and exclusively with the Customer or any of its authorised, suitably qualified or informed representatives when performing the Support Services.
- (d) The Customer must appoint a suitably qualified or informed representative to deal with and be the first point of contact in relation to the Support Services.
- (e) The Company shall provide the Support Services in response to a report or request by the Customer to the Company:
 - (i) of a suspected defect or error in NeoRehab, which defect or error allegedly causes NeoRehab to deviate from its specifications; or
 - (ii) for assistance or guidance from the Company.
- (f) Immediately after making a request for Support Services, which may involve error correction or program modification, the Customer shall give the Company a documented example of the defect or error which it alleges prevents conformity of NeoRehab with its specifications. The Customer shall, if so requested by the Company, give the Company a listing of output and any other data which the Company requires in order to reproduce operating conditions similar to those present when any alleged defect or error in NeoRehab was discovered.

14.2 Service Response

- (a) When providing the report contemplated by clause 14.1(e), the Customer must designate the Priority of the issue, in its reasonable opinion.
- (b) The Priority of an issue for which the Customer requests the Company to provide Support Services must be one of the following:
 - (i) **Critical**, which means NeoRehab is inoperable and fails catastrophically;
 - (ii) **High**, which means a part of NeoRehab function is unavailable, the system crashes for some end users or there is material and adverse loss of function or degraded performance for important activities but work can continue;
 - (iii) **Medium**, which means a part of NeoRehab is not operating efficiently, and causing inconvenience but workarounds are available; and

- (iv) **Low**, which means a training or educational issue with users generally not related to a defect in NeoRehab.
- (c) After the Company receives the report contemplated by clause 14.1(e), the Company will use its best endeavours to respond to the report by the Target Response Time listed in clause 14.2(e) during the hours set out in clause 14.3, but not to provide a resolution to the issue.
- (d) After the Company receives the report contemplated by clause 14.1(e), the Company will use its best endeavours to provide a resolution to the issue by the Target Resolution Time listed in clause 14.2(e).
- (e) Targets:

Priority	Target Response Time	Target Resolution Time
Critical	1 Hour	2 Business Days
Urgent	4 hours	1 Week
Medium	8 Hours	2 Weeks
Low	Next Business Day	Training / Educational Issue – response within 7 days as part of support services but Fee likely charged on time/materials basis.

- (f) The Company provides no warranty that it will meet either the Target Response Time or the Target Resolution Time.
- (g) The Company may use any method, system, process, Patch or New Release to resolve any issue, in its sole discretion.

14.3 Support Availability

The Company shall provide the Support Services between 0900 hours and 1700 hours on every day except Saturday, Sunday or a public holiday in the State of Queensland. The Company does not warrant that it will be capable of promptly receiving, processing or otherwise acting upon a request for Support Services which is made outside these hours or that it can provide on-site Support Services outside these hours.

14.4 Exclusions

Services to be provided by the Company under this Agreement do not include:

- (a) correction of errors or defects caused by operation of NeoRehab in a manner other than that currently specified by the Company;
- (b) correction of errors resulting from data migration or transformation, whether performed by the Company or third parties;
- (c) correction of errors or defects caused by modification, revision, variation, translation or alteration of NeoRehab not authorised by the Company;
- (d) correction of errors caused in whole or in part by the use of computer programs other than NeoRehab;

- (e) correction of errors caused by the failure of the Customer to provide suitably qualified and adequately trained operating staff for the operation of NeoRehab;
- (f) training of operating staff;
- (g) rectification of operator errors;
- (h) rectification of errors caused by incorrect use of NeoRehab;
- (i) rectification of errors caused by the Customer or third party equipment fault;
- (j) the Customer or third party equipment maintenance;
- (k) diagnosis or rectification of faults not associated with NeoRehab;
- (l) third party materials;
- (m) rectification of errors in the Customer's or third party's data;
- (n) furnishing or maintenance of accessories, attachments, supplies, consumables or associated items, whether or not manufactured or distributed by the Company;
- (o) correction of errors arising directly or indirectly out of the Customer's failure to comply with this Agreement or any other agreement with the Company;
- (p) correction of errors arising directly or indirectly out of any third party's failure to comply with any agreement between that third party and the Company;
- (q) correction of errors or defects which are the subject of a warranty under another agreement ; or
- (r) to provide Support Services:
 - (i) "on-site"; or
 - (ii) to any third party, at any location,

the “**Excluded Services**”.

14.5 Access

- (a) **Personnel:** If reasonably requested by the Company, the Customer shall provide a suitably qualified or informed representative to the Company' personnel and to provide such advice or assistance to those personnel as may be necessary in order to enable the Company to access NeoRehab and relevant equipment and to otherwise effectively perform the Support Services or the Excluded Services.
- (b) **Remote Access:** The Customer shall ensure the Company is provided with full and safe access to any and all equipment in order to provide the Support Services or the Excluded Services and is provided free of charge with all information, facilities and services reasonably required to enable the Support Services or the Excluded Services to be performed effectively. This includes allowing the Company to access through telecommunications infrastructure any equipment or hardware from a remote location.

15. General

15.1 Amendments

- (a) The Company reserves the right to vary the terms of this Agreement in its absolute and unfettered discretion.
- (b) For the avoidance of doubt, the Company is not required to provide to the Customer notice of any variations to the terms in this Agreement, although the Company may do so from time to time.
- (c) Your continued access or use of any part of NeoRehab constitutes your acceptance of such changes. If you do not agree to any of the changes the Company is not obligated to keep providing NeoRehab and you must cancel and stop using NeoRehab.

15.2 Entire Agreement

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.

15.3 Jurisdiction

- (a) This Agreement is governed by the law in force in the State of Queensland.
- (b) Each party submits to the non-exclusive jurisdiction of the courts of Queensland and the courts competent to determine appeals from those courts, in relation to any proceedings that may be brought at any time relating to this Agreement.
- (c) Each party irrevocably waives any objection it may have now or in the future to the venue of any proceedings where that venue falls within Queensland.

15.4 No Merger

No right or obligation of any party will merge on completion of any transaction contemplated by this Agreement.

15.5 Severability

Any provision of this Agreement that is illegal, void or unenforceable will be severed without prejudice to the balance of the provisions of this Agreement which shall remain in force.

15.6 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Agreement by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this Agreement.
- (b) Any waiver or consent given by any party under this Agreement will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this Agreement will operate as a waiver of another breach of that term or of a breach of any other term of this Agreement.

16. Definitions and Interpretation

16.1 Definitions

In this Agreement the following definitions apply unless the context requires otherwise:

Agreement means these general terms and conditions as amended from time to time.

Authorised User means an employee, agent, customer, client or contractor of the Customer who is authorised by the Customer to access and use NeoRehab.

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Brisbane, Australia.

Claim means, in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent.

Confidential Information means all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, exchanged between the parties before, on or after the date of this Agreement relating to the business, technology or other affairs of the discloser of the information.

Content means the files and documents contained within the Software, including the Manual.

Controller has the meaning it has in section 9 of the *Corporations Act*.

Corporations Act means the *Corporations Act 2001* (Cth).

Customer means You, the user or if you are agreeing to this Agreement on behalf of your company, your company, as does any reference to "You" or "Your".

Customer Data means data owned or supplied by the Customer and stored on the Company's systems through the Customer's usage of NeoRehab.

Customer Materials means any trademarks, images, content or other materials developed by the Customer prior to the commencement or independently of this Agreement and includes any Customer Data.

Defect means a material failure of NeoRehab to meet any stated specifications.

Documentation means operating manuals and other materials which are designed to assist in understanding the Software, including user manuals, programming manuals, modification manuals, flow charts, drawings and software listings.

Fees means the fees for the access to and continued use of NeoRehab, as set out on the Website in accordance with the plan signed up to by Customer.

Force Majeure Event means any event beyond the reasonable control of the non-performing party and which the party could not have prevented by reasonable precautions or could not have remedied by the exercise of reasonable efforts or could not have prevented by taking steps specifically required under this Agreement, including but not limited to the extent that a disaster recovery plan or business continuity plan is able to prevent or remedy such event, which is limited to the following:

- (a) fire, flood, earthquake, elements of nature or act of God;

- (b) acts of way, terrorism, riot, civil disorder, rebellion or revolution, all by a third party; or
- (c) strikes, lockouts or labour disputes of a general nature that extend beyond the non-performing party's Personnel (such as a general or industry-wide strike),

but does not include an act, omission or event caused or contributed to by a Related Entity of the non-performing party.

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

NeoRehab means the services and material supplied by the Company to the Customer, known as "NeoRehab", from time to time, including:

- (a) Software;
- (b) Documentation; and
- (c) Content.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the *Corporations Act*);
- (b) it has had a Controller appointed, or is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this Agreement);
- (d) an application or order has been made, resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;
- (e) it is taken (under section 459(F)(1) of the *Corporations Act*) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459(C)(2)(b) or section 585 of the *Corporations Act* (or it makes a statement from which another party to this Agreement reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to any or all of (a) to (g) happens in connection with that person under the law of any jurisdiction.

Intellectual Property Rights means all intellectual property rights of whatever nature including all rights conferred under statute, common law or equity, including all copyrights, patent rights, trade mark rights (including any goodwill associated with those trade mark rights), design rights and trade secrets.

Logon ID means username and password generated by the Company.

Loss means claims, liability, loss, damage costs and expenses including but not limited to legal costs on a full indemnity basis.

Manual means the training, coaching, operating and other manuals created from time to time relevant to the business carried on by the Company, including modification manuals, flow charts, templates, checklists, forms and drawings.

New Release means an update to NeoRehab which is provided primarily to implement an extension, alteration, improvement or additional functionality to NeoRehab or otherwise improve functionality or correct an error in NeoRehab.

Patch means software which has been produced primarily to overcome defects in NeoRehab.

Personnel includes officers, employees, agents, contractors, consultants and representatives.

Receiver has the meaning it has in the *Corporations Act*.

Software means the software application supplied by the Company consisting of a set of instructions or statements in machine readable medium including any enhancements, upgrades or modifications to that software.

Support Services means the training, coaching and maintenance services, as specified in this agreement, provided by the Company to the Customer pursuant to this agreement, in respect of NeoRehab.

Website means www.neorehab.com or any other site operated by the Company and notified to the Customer from time to time.

16.2 General Interpretation

The following rules also apply in interpreting this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a rule, paragraph or schedule is to a rule or paragraph of, or schedule to, this document, and a reference to this document includes any schedule;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **dollar** or **\$** is to that currency as stipulated on the Website;
- (f) a reference to time is to Australian Eastern Standard Time (AEST);
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) a word or expression defined in the *Corporations Act* has the meaning given to it in the *Corporations Act*;

- (j) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (k) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this document or any part of it;
- (l) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (m) headings are for ease of reference only and do not affect interpretation.