

**PERSONIFY CARE ORDER FORM – ID v180320**

Customer: <b>The Health Care Organisation Registered by the Contact</b>	Contact: Name of the individual registering for a Personify Care Account
	E-Mail: Email Address provided at Registration
<b>Services:</b> Provision of certain modules of the Personify Care mobile Platform to deliver preadmission, post-discharge and other treatment protocols for patients beyond their hospital stay or clinical visit (the “ <b>Service(s)</b> ”).	
<b>Licence Fee:</b> \$800 per month payable monthly in advance for the <b>COVID19 Rapid Assessment Small Plan;</b> OR \$1290 per month payable monthly in advance for the <b>COVID19 Rapid Assessment Medium Plan;</b> All fees are subject to the terms of clause 11 of the attached Terms of Service.	
<b>Setup Fee (one time):</b> Not Applicable	<b>Initial Service Term:</b> 3 months <b>Commencement Date:</b> At the end of Training Period
<b>COVID19 Small Plan Service Capacity:</b> The Services and the Licence Fee includes access solely to the following Platform modules and Clinical User Types: <ul style="list-style-type: none"> <li>• <b>Personify COVID19 Rapid Assessment Module – Small Plan:</b> <ul style="list-style-type: none"> <li>○ Access is included for up to 1 Patient Manager User and up to 500 registered patients per month;</li> </ul> </li> </ul> <p align="center"><b>OR</b></p> <b>COVID19 Medium Plan Service Capacity:</b> The Services and the Licence Fee includes access solely to the following Platform modules and Clinical User Types: <ul style="list-style-type: none"> <li>• <b>Personify COVID19 Rapid Assessment Module – Medium Plan:</b> <ul style="list-style-type: none"> <li>○ Access is included for up to 3 Patient Manager User and up to 1000 registered patients per month;</li> </ul> </li> </ul>	
Each Clinical User Type is subject to the restrictions specified with respect to that Clinical User Type in the Pricing Schedule. The Customer may request access to additional Platform modules and user licences in accordance with and subject to clause 11 of the Terms of Service.	
<b>Key Contacts:</b> The following individuals will be the key points of contact for the roll-out of the Platform: Customer: Contact name and email address provided at registration for a new account Personify Care: <a href="mailto:contact@personifycare.com">contact@personifycare.com</a>	
<b>Additional Services:</b> Personify Care will use commercially reasonable efforts to provide Customer custom development, integration, user induction and other services hereto (“ <b>Additional Services</b> ”). Additional Services can be requested by the Customer and will be quoted at the hourly rate of \$180. However, the Customer is under no obligation to proceed with or request Additional Services.	
<b>Training Use:</b> Check here <input checked="" type="checkbox"/> if Services use during the Training Period will be restricted to non-productive evaluation use. If so, then, notwithstanding anything else, in connection with such training use during the Training Period: (1) the Licence Fee will not apply during the Training Period; and (2) the Platform and Services are provided “AS IS” and, to the maximum extent permitted by law, no warranties with respect to the Services or the Platform will apply. At the end of the Training Period, this Agreement shall continue in effect for the Initial Service Term. <b>Training Period: Seven (7) days</b>	

**PERSONIFY CARE TERMS OF SERVICE - ID v180320**

These Terms of Service (“**Agreement**”) is entered into between **PERSONIFY CARE PTY LTD (ABN 95 601 519 573)** (“**Personify Care**”) and the Customer listed above (“**Customer**”), together “**the Parties**”. This Agreement includes and incorporates the above Order Form, as well as the attached Terms of Service and contains, among other things, warranty disclaimers, liability limitations and use limitations.

## 2. BACKGROUND

- 2.1 Personify Care has developed a mobile Platform that allows clinical teams to capture, monitor, support and provide information to patients in relation to their surgery or treatment beyond their visit to the hospital or clinic.
- 2.2 The Customer wishes to provide its clinical teams with access to the Licensed Modules (which form part of the Platform) in order to support the delivery of their care protocols for their patients.
- 2.3 The Key Contacts listed in the Order Form will be key points of contact for the rollout and monitoring of the Platform Licensed Modules. They will hold scheduled meetings or calls to review and provide feedback on the performance of the Platform Licensed Modules.
- 2.4 Personify Care wishes to grant the Customer a non-exclusive, non-transferable licence to use the Licensed Modules (without a right to sub-licence), in accordance with, and subject to, clause 4.1 and the terms and conditions of this Agreement.
- 2.5 In these Terms of Service:
- (a) **“Additional Services”** has the meaning given in the Order Form;
  - (b) **“Agreement”** means the agreement between Personify Care and the Customer comprising these Terms of Service and the terms and conditions set out in the Order Form;
  - (c) **“Clinical Protocol”** means the content and timing of interactions with Clinical Users and Registered Patients via the Platform, including information, instructions, assessments and messages sent to Clinical Users and Registered Patients, and (where applicable) monitored by Clinical Team Members relating to a patient’s preparation for and recovery from their treatment;
  - (d) **“Clinical Team Members”** or **“Clinical Users”** means Customer Representatives who deliver clinical care to Registered Patients, and who may access and use the Licensed Modules subject to the Platform Licence (set out in clause 4) and the terms of these Terms of Service;
  - (e) **“Clinical User Type”** means the various types of Clinical User as set out and otherwise described in Item 2 of the Pricing Schedule;
  - (f) **“Commencement Date”** means the Commencement Date specified in the Order Form;
  - (g) **“Confidential Information”** means all information concerning or relating to a Party that comes into the possession of the other Party as a result of this Agreement or otherwise (whether deliberately or inadvertently) and that: is by its nature confidential or by the circumstances in which it is disclosed is confidential; or is designated by a Party as confidential or identified in terms connoting its confidentiality; or a Party knows or ought to know is confidential; but excluding any information that a Party can establish is in the public domain other than through a disclosure in breach of this Agreement; and for the avoidance of doubt, any information relating to this Agreement is Confidential Information;
  - (h) **“Customer Data”** means Registered Patient Data and any other data or information provided to Personify Care by the Customer or Clinical Team Members under this Agreement and which is contained in the Platform;
  - (i) **“Data Breach”** means any unauthorised access to or unauthorised disclosure of Personal Information contained in any Customer Data;
  - (j) **“Intellectual Property Rights”** means all intellectual or industrial property rights throughout the world and all associated goodwill, including without limitation all present and future rights in relation to inventions (including patents), copyright or rights analogous to copyright, trademarks (including service marks), domain names, designs, Confidential Information (including trade secrets), know-how, plant variety rights, eligible layouts and circuit layouts, whether unregistered, registered or registrable and for the entire life of those rights and any renewals;
  - (k) **“Key Contact”** means, with respect to each Party, the Key Contact(s) of the Party as specified in the Order Form, which Key Contacts may be updated from time to time by notice in writing to the other Party;

- (l) **“Licence Fee”** means Licence Fee specified in the above Order Form as varied by Personify Care from time to time;
- (m) **“Licensed Modules”** means any distinct modules of the Platform that Personify Care has agreed to license to the Customer from time to time (including pursuant to clause 11.4), which may include Personify Patient Care, Personify Discharge, Personify Connect and/or Personify Connect Lite or any other modules that Personify Care may develop. As at the date of this Agreement, the Licensed Modules are as set out in the Order Form;
- (n) **“Order Form”** means the Personify Care Order Form to which these Terms of Service are attached;
- (o) **“Personal Information”** has the meaning given in the Privacy Act 1988 (Cth);
- (p) **“Personify Connect”** means the module of the Platform known as “Personify Connect”, which is provided as a fully supported integration service designed to integrate with other patient management system (PMS) or electronic medical record (EMR) systems as well as providing the Customer with the option of uploading clinical document to the Australian My Health Record;
- (q) **“Personify Connect Lite”** means the module of the Platform known as “Personify Connect Lite”, which is provided as a self-service integration module designed for basic integration with other patient or practice management systems;
- (r) **“Personify COVID19 Rapid Assessment”** means the module of the Platform known as “Personify COVID19 Rapid Assessment”, which is designed to deliver pre-admission screening protocols for COVID-19 to patients comprised of a mobile web accessible patient interface and a clinical dashboard with the features listed in Schedule A;
- (s) **“Personify Discharge”** means the module of the Platform known as “Personify Discharge”, which is designed to enable Clinical Users to electronically create and download patient discharge summaries, and (subject to Personify Care agreeing to grant the Customer access to Personify Connect in accordance with this Agreement) upload such summaries to the patient’s My Health Record;
- (t) **“Personify Patient Care”** means the module of the Platform known as “Personify Patient Care”, which is designed to deliver pre-admission and post-discharge care protocols to patients comprised of a mobile web accessible patient interface and a clinical dashboard with the features listed in Schedule A;
- (u) **“Platform”** means the overall mobile solution provided by Personify Care that enables clinical teams to capture, monitor and provide information to patients. As at the date of this Agreement, the Platform is comprised of the following modules: Personify Patient Care, Personify Discharge; Personify Connect; and Personify Connect Lite;
- (v) **“Pricing Schedule”** means the pricing schedule provided to the Customer;
- (w) **“Privacy Laws”** means:
- (i) the Privacy Act 1988 (Cth); and
  - (ii) any other applicable legislation, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to personal information;
- (x) **“Registered Patient”** means a patient whose information is entered into the Platform by that patient or an authorised Clinical User in accordance with these Terms of Service;
- (y) **“Registered Patient Data”** means any information about the identity of any Registered Patient or the medical condition of or the treatment received by any Registered Patient;
- (z) **“Representative/s”**, in relation to a Party, means the directors, officers, employees, agents and contractors of that Party and, with respect to the Customer, includes the Clinical Users;
- (aa) **“Setup Fee”** means the Setup Fee (if any) specified in the above Order Form; and
- (bb) **“Term”** has the meaning given in clause 3.1.

### 3. TERM

- 3.1 Subject to earlier termination in accordance with these Terms of Service, this Agreement commences on the Commencement Date and continues for the Initial Service Term as specified in the Order Form, and shall be automatically renewed for additional successive periods of three months (each, a “**Renewed Term**”), unless either party provides written notice at least thirty (30) days prior to the end of the then-current term that they wish to terminate the Agreement at the end of the then-current term. The Initial Service Term together with each Renewed Term is collectively referred to as the “**Term**”.
- 3.2 Either Party may terminate this Agreement immediately by written notice to the other Party in the event the other Party materially breaches any term of this Agreement and fails to rectify the breach within a period of ten (10) days of receipt of a written notice from the notifying Party.

### 4. GRANT OF PLATFORM LICENCE

- 4.1 In consideration of the payment of the Licence Fee by the Customer, Personify Care hereby grants the Customer a limited, non-exclusive, non-transferable licence (without a right to sub-licence) for the Customer and the approved Clinical Users to use the Licensed Modules for the Term in accordance with this Agreement and subject to any reasonable directions given by Personify Care from time to time (“**Platform Licence**”).
- 4.2 The Customer accepts the Platform Licence granted by Personify Care and undertakes to use the Licensed Modules during the Term in accordance with this Agreement.
- 4.3 Upon commencement of this Agreement, the Customer and its Clinical Team Members will access the Licensed Modules and register patients either by directly entering patient information into the Platform, or (if Personify Connect is a Licensed Module) by sending the patient information from the Customer’s applicable Patient Management System (“**PMS**”) or Electronic Medical Record system (“**EMR**”) via the Personify Connect module.
- 4.4 The Customer must ensure that Clinical Team Members will complete the registration of patients onto the Platform at the appropriate time and ensure the accuracy of the information being entered into the Platform.
- 4.5 The Customer will use the Licensed Modules to specify, approve and maintain Clinical Protocols and Clinical Assessments (such as preadmission assessments or discharge summaries) to be used by Clinical Team Members to provide care to Registered Patients.
- 4.6 The Customer is solely responsible for providing the clinical care associated with the information of Registered Patients captured via the Platform.
- 4.7 The Customer will use the Licensed Modules with Clinical Team Members (and Registered Patients for Personify Patient Care, if applicable) as per clauses 4.3, 4.4, and 4.5 and will facilitate Personify Care collecting Platform user feedback from Clinical Team Members and Registered Patients from time to time during the Term.
- 4.8 The Customer acknowledges that, subject to the Registered Patient providing their consent, the Licensed Modules can be used from time to time to share clinical information with the clinical team of the Registered Patient as part of that Registered Patient’s care. This may include clinicians or healthcare organisations that are not Representatives of the Customer.
- 4.9 Upon the Customer’s reasonable request, Personify Care will provide Clinical Team Members with such online induction and system support in the use of the Licensed Modules that Personify Care considers is appropriate.
- 4.10 The Customer warrants, represents and undertakes to Personify Care that:
- (a) the Customer and the Clinical Team Members are entitled to collect, disclose and provide any and all information (including the personal information of any Registered Patient) that the Customer or Clinical Team Member (as the case may be) uploads or otherwise provides in connection with its use of the Services or the Platform (“**Uploaded Information**”);

- (b) Personify Care is entitled to use such Uploaded Information in the manner contemplated by this Agreement and to otherwise provide the Services;
- (c) each Registered Patient has consented to the collection, use and disclosure of the Registered Patient's personal information for the purposes of this Agreement and the Services;
- (d) the Customer will provide each patient, or cause to be provided to each patient, with the Personify Care privacy policy (which is available at [www.personifycare.com](http://www.personifycare.com)), and any personal information collection statements provided by Personify Care from time to time, prior to the registration of any such patients onto the Platform; and
- (e) the Customer will otherwise comply (and will procure that all Clinical Team Members comply) with all applicable Privacy Laws (including without limitation the Australian Privacy Principles) with respect to the collection, use, disclosure, storage and transmission of the personal information of any person in connection with this Agreement.

## **5. CHANGES TO THE PLATFORM**

Personify Care reserves the right to make any changes to the Platform as considered by Personify Care to be necessary or desirable, at any time without notice. Personify Care will use all reasonable endeavours to give prior notice of such changes, however the Customer acknowledges that prior notice may not be able to be given in respect of all changes (including, without limitation, any urgently necessary changes to remedy certain circumstances encountered with the Platform).

## **6. ADDITIONAL SERVICES**

- 6.1 Additional Services can be requested by the Customer. However, the Customer is under no obligation to proceed with or request Additional Services.
- 6.2 Additional Services requested by the Customer (which may include additional project support or the development of functionality not already provided by the Platform's existing functionality) will be quoted at the hourly rate specified in the Order Form.
- 6.3 Proceeding with such a request is subject to written confirmation by the Customer and agreement of Personify Care.

## **7. INTELLECTUAL PROPERTY OWNERSHIP**

- 7.1 All the Intellectual Property Rights subsisting in the Platform are the absolute property of Personify Care or its licensors (as the case may be), and nothing in this Agreement transfers any of Personify Care's Intellectual Property Rights to the Customer or to any other person.
- 7.2 All Intellectual Property Rights created or developed with respect to the Platform (including without limitation through the use of the Platform or the Services by the Customer) ("**New Platform IP**") will automatically vest in Personify Care upon creation and will be the absolute property of Personify Care. The Customer assigns to Personify Care any and all New Platform IP that the Customer may have or acquire.
- 7.3 The Customer must not (and the Customer must not permit anyone else to) copy, modify, create a derivative work of, reverse engineer, decompile or otherwise attempt to extract the source code or the data that forms any part of the Platform.
- 7.4 Personify Care does not claim ownership of any Customer Data.
- 7.5 Personify Care shall have the right to collect, aggregate and analyse data and other information relating to, or generated through, the provision, use or performance of the Services and/or various aspects of the Platform and related systems and technologies (including, without limitation, information concerning Uploaded Information and/or Customer Data, and any data derived therefrom). Personify Care may use such information and data to improve and enhance the Platform and for other development, diagnostic and corrective purposes and may disclose such information and data in aggregate or other de-identified form in connection with its business.

## **8. SECURITY AND INTEGRITY**

- 8.1 Personify Care acknowledges that Customer Data may contain Personal Information and sensitive information (as that term is defined in the Privacy Act 1998 (Cth)) and that the law imposes strict obligations in relation to the collection, use and storage of such information. Personify Care will ensure that all Customer Data is managed in accordance with Personify Care's privacy policy and that the Platform and all Customer Data will be managed in accordance with applicable Privacy Laws (including the Australian Privacy Principles).
- 8.2 Personify Care agrees to backup and export all Customer Data on a weekly basis and provide copies of these backups to the Customer upon the Customer's request in a format reasonably required by the Customer.
- 8.3 Personify Care agrees to:
- (a) notify the Customer of any Data Breach as soon as practicable after it becomes aware of that Data Breach;
  - (b) act in accordance with the reasonable directions given to it by the Customer in relation to any Data Breach; and
  - (c) without limiting the obligations outlined in clauses (a) and (b) above, comply with the notifiable data breach scheme set out in the Privacy Act 1988 (Cth).
- 8.4 The Customer is responsible for all activities that occur under the Customer's accounts. The Customer agrees to promptly notify Personify Care of any unauthorised use of the Customer's accounts or any other breach of security. To the maximum extent permitted by law, Personify Care is not liable for any loss that results from any such unauthorised use of the Customer's account.
- 8.5 The Customer must not violate the security of the Platform in any way. Personify Care may suspend or cancel the Customer's account or the Customer's access to the Platform if Personify Care suspects any security violation. Personify Care may also inform any law enforcement body of any suspected unauthorised criminal activity. Without limitation, some examples of such security violations include:
- (a) attempting to gain unauthorised access to any part of the Platform, servers or system infrastructure the Customer was not intended to have access to (including specifically any servers or system infrastructure where Customer Data is stored or may be accessible);
  - (b) attempting to gain unauthorised access to any data or information that Personify Care has not specifically provided to the Customer;
  - (c) interfering with or disrupting (or attempting to interfere or disrupt) any servers or networks connected to Personify Care or the Platform;
  - (d) sending or storing any harmful code (including, for example, any computer virus, Trojan, worm or other code that is harmful or disabling or which assists in or enables unauthorised access to or corruption of data).

## **9. CONFIDENTIALITY**

- 9.1 Each Party and its Representatives must:
- (a) keep the Confidential Information secret and confidential; and
  - (b) use the Confidential Information solely for the purpose of performing its obligations or exercising its rights under this Agreement, or as otherwise expressly authorised in writing by the other Party.
- 9.2 A Party is permitted to disclose the Confidential Information:
- (a) to its Representatives who have a need to know the Confidential Information in order to perform the Party's obligations under these Terms of Service, provided that such Representatives are aware of the confidential nature of the Confidential Information and are bound by equivalent contractual obligations of confidentiality;
  - (b) to such of its professional advisers as are strictly necessary for the purpose of this Agreement; and

- (c) where a Party is required by law or under the rules of any stock exchange to disclose the Confidential Information, provided that Party gives the other Party reasonable advance notice and opportunity to object to the requirement to disclose such information or obtain an appropriate order to protect the Confidential Information.

9.3 A Party is liable for any breach of this clause 9 by any of its Representatives.

9.4 The Customer must not publish any information, make any public statement or make any representation (whether of a confidential nature or otherwise) in relation to this Agreement, the Platform, any Platform Intellectual Property Rights or the Confidential Information without the prior consent of Personify Care. The Parties shall work together in good faith to issue at least one mutually agreed upon press release within 90 days of the Commencement Date, and the Customer otherwise agrees to reasonably cooperate with Personify Care to serve as a reference account upon request.

## 10. **LAWFUL USE**

10.1 The Customer must use the Licensed Modules for lawful purposes only and must ensure that the Customer's, the Customer's Representatives, and the Registered Patients' access to, and use of, the Platform is not illegal or prohibited by law. It is the Customer's responsibility to ensure that the Customer and its Representatives' and Registered Patients' comply with all applicable laws in using the Platform.

## 11. **PAYMENT**

11.1 Personify Care shall charge the credit card nominated by the Customer (or otherwise via electronic transfer of funds transfer, including any Setup Fees, Licence Fees and any Additional Services fees where applicable) within 7 days of the Commencement Date. Subject to clauses 11.3 and 11.4, subsequent payments for Licence Fees and any other fees payable by the Customer under this Agreement will be made by the Customer:

- (a) where the applicable fees are payable monthly, on the 15th of each calendar month; or
- (b) where the applicable fees are payable annually, on each anniversary of the Commencement Date,

(each a "**Fee Payment Date**").

11.2 The Customer acknowledges and agrees that, unless otherwise agreed in writing:

- (a) all fees payable by the Customer under this Agreement are payable in advance; and
- (b) to the extent permitted by law, Personify Care is not obliged to provide any refunds for any fees paid by the Customer, including if this Agreement is terminated before the end of the period to which the fees relate.

11.3 If the Customer wishes to be granted access for additional Clinical Users to use the Personify Patient Care module, the Customer or its Key Contact must make such request to Personify Care via the Platform or otherwise in writing (including by specifying the applicable Clinical User Type requested). If Personify Care (in its sole discretion) agrees to grant such access, the Customer must:

- (a) immediately pay Personify Care the fee applicable to the additional Clinical User(s) at the rate specified in Item 2 of the Pricing Schedule, on a pro rata basis based on the number of days between the date access is granted to the Clinical User(s) and the next Fee Payment Date; and
- (b) on each Fee Payment Date, pay Personify Care the fee applicable to the additional Clinical User(s) at the rate specified in Item 2 of the Pricing Schedule and otherwise in the manner provided in this clause 11.

The Customer or its Key Contact must notify Personify Care whether the Customer will pay the applicable fees monthly or annually at the time of making the request under this clause 11.3.

11.4 Subject to clause 11.5, if the Customer wishes to be granted access to Personify Connect, Personify Connect Lite and/or Personify Discharge (to the extent that such modules are not already Licensed Modules) (each a "**Requested Module**"), the Customer or its Key Contact must make such request to Personify Care via the Platform or otherwise in writing. If Personify Care (in its sole discretion) agrees to grant such access, the Customer must:

- (a) immediately pay Personify Care the fee applicable to the Requested Module(s) at the rate specified in Item 1 of the Pricing Schedule, on a pro rata basis based on the number of days between the date access is granted to the Requested Module(s) and the next Fee Payment Date; and
- (b) on each Fee Payment Date, pay Personify Care the fee applicable to the Requested Module(s) at the rate specified in Item 1 of the Pricing Schedule and otherwise in the manner provided in this clause 11.

The Customer or its Key Contact must notify Personify Care whether the Customer will pay the applicable fees monthly or annually at the time of making the request under this clause 11.4.

- 11.5 The Customer acknowledges that access to the Personify Discharge module is not available if Personify Patient Care and Personify Connect are not Licensed Modules. The Customer may only request access to Personify Discharge for the purposes of clause 11.4 if Personify Patient Care and Personify Connect are Licensed Modules at the time of the request.
- 11.6 The Customer agrees to pay Personify Care for any Additional Services provided by Personify Care at the rate specified in the Order Form (or such other rate that the Parties may agree in writing from time to time). Unless agrees otherwise in writing, all fees for Additional Services will be invoiced on the 15<sup>th</sup> day of the following calendar month after the services are performed.
- 11.7 Without limiting anything else in this clause 11, if the Customer's use of the Services exceeds the Service Capacity set forth on the Order Form, then the Customer acknowledges that such use of Services or provision of additional services will be subject to additional fees and conditions as agreed between the Parties, acting reasonably.
- 11.8 The Customer must pay all applicable fees under this Agreement (including without limitation the Licence Fee and any other fees incurred under this clause 11) by direct debit to a credit card nominated by the Customer or otherwise via electronic transfer of funds (or such other method of payment agreed by Personify Care) within fourteen (14) days of Personify Care's invoice being issued, into the account nominated by Personify Care in writing from time to time. All amounts owing in respect of this Agreement must be paid in full by the Customer without any setoff, withholdings or deductions. Any late payment attracts interest. Interest will be calculated at 1.5% per month (or if a lower maximum rate is prescribed by law, that amount). That interest will accrue and be recoverable from day to day.
- 11.9 All fees (including the fees specified in the Pricing Schedule) are exclusive of GST, sales tax, duties and other similar taxes. Should such taxes become payable with respect to any supply made by Personify Care, the Customer will be required to pay Personify Care for such tax upon the presentation by Personify Care of an appropriate tax invoice.

## **12. WARRANTY AND DISCLAIMER**

- 12.1 Personify Care endeavours to ensure that the Platform functions consistently without disruptions, errors or delays. However, Personify Care cannot guarantee and does not make any representation that the Platform will always function without disruptions, errors or delays. To the maximum extent allowed by law, the Customer releases Personify Care from any claims for any loss (either pecuniary or non-pecuniary) that directly or consequentially results from any such disruptions, errors or delays.
- 12.2 To the maximum extent allowed at law, Personify Care provides no guarantees as to any outcomes from the Services or the Platform. It is the Customer's responsibility to ensure that any action taken in reliance on the Services or the Platform will comply with all relevant laws and regulatory requirements that apply to the Customer. All reliance on the Services or the Platform is at the Customer's own risk.
- 12.3 Notwithstanding any other provision of this Agreement, to the fullest extent permitted by law:
  - (a) Personify Care's liability to the Customer is limited (at Personify Care's option) to the re-supply of the relevant Services, or the payment of the cost of having the Services provided again;
  - (b) neither Party is liable (however such liability arises, including without limitation for breach of contract or negligence) for any incidental, special and/or consequential damages or loss of profits suffered or incurred by the other Party or any third party (either directly or indirectly) in connection with this Agreement; and

- (c) notwithstanding clause 12.1, and to the maximum extent permitted by law, the Customer agrees that Personify Care's total aggregate liability for any claims, expenses, losses, damages and costs (however such liability arises, including without limitation for breach of contract or negligence) suffered or incurred by Customer or any third party (either directly or indirectly) in connection with this Agreement is limited to the amount the Customer paid to Personify Care under this Agreement in the 12 months prior to the event that gave rise to the liability.

### **13. INDEMNITY**

- 13.1 Each Party agrees to indemnify each other Party and its Representatives ("**Indemnified Parties**") from and against any law suits, claims, losses, costs, damages or liabilities (or actions or proceedings in respect thereof) that the Indemnified Parties incur or may incur related to or arising from:
- (a) any breach by the Indemnifying Party or any of its Representatives of clause 7 or clause 9;
  - (b) any personal injury or damage to property caused by the acts or omission of the Indemnifying Party; or
  - (c) any wilful misconduct or negligence of the Indemnifying Party or any of its Representatives.
- 13.2 Each indemnity provided under this clause 13 will be reduced to the extent that the loss or damage was caused or contributed to by the acts or omissions of the Indemnified Parties.

### **14. FURTHER TERMS AND CONDITIONS**

- 14.1 The parties agree to comply with the additional provision specified in Item 1 of Schedule C (if any) (**Additional Provisions**) and the special conditions specified in Item 2 of Schedule C (if any) (**Special Conditions**).
- 14.2 To the extent of any inconsistency between the Special Conditions, the Additional Provisions and the provisions of these Terms of Service, the provisions prevail to the extent of the inconsistency in the following order of priority:
- (a) Special Conditions;
  - (b) these Terms of Service; and
  - (c) Additional Provisions.

### **15. CHANGES TO AND BREACHES OF THESE TERMS OF SERVICE**

- 15.1 Personify Care may change these Terms of Service at any time. Personify Care will try to give the Customer notice before making any such changes, although again this may not always be possible. If the Customer continues to use the Platform after any changes to these Terms of Service take effect, the Customer is taken to have agreed to the changes.
- 15.2 If the Customer does not comply with these Terms of Service (and, as applicable, any revised or updated version of these Terms of Service), Personify Care may suspend or cancel the Customer's account or the Customer's access to the Platform, or take action against the Customer.

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**16. GENERAL**

- 16.1 This document contains the entire agreement between the Parties with respect to its subject matter and supersedes all prior agreements and understandings between the Parties in connection with it.
- 16.2 Without limiting the ways in which a notice can be deemed to be served under applicable law, a notice given by a Party under or in connection with this Agreement will be deemed to be served if it is:
- (a) in writing and signed by a Key Contact of the Party; and
  - (b) addressed and delivered to a Key Contact of the other Party by hand, by prepaid post, by fax or by email at the address, fax number or email address last notified.
- 16.3 Any waiver, in whole or in part, of any rights available to Personify Care under this Agreement shall only be valid if it is signed by Personify Care in writing, and is limited to the instance referred to in the writing (or if no instance is referred to in the writing, then to past breaches only).
- 16.4 The courts of South Australia or the Federal Court of Australia (Adelaide Registry) have non-exclusive jurisdiction in connection with this Agreement and each Party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Agreement.
- 16.5 If any dispute or difference arises in connection with this Agreement, then the Parties will negotiate in good faith, using their best endeavours to resolve the dispute or difference in accordance with this clause before initiating any court proceedings. Nothing in this clause 16.5 prevents a Party from seeking urgent interlocutory relief.
- 16.6 Clauses 6, 8, 13 and this clause 16 survive the termination or expiry of this Agreement.
- 16.7 This Agreement may be executed in any number of counterparts (including facsimile or electronic counterparts) and all counterparts when exchanged will be taken to constitute one document.
- 16.8 The Parties acknowledge and agree that this Agreement may be executed and binding by way of electronic communication. The words in this clause 16.8 that are defined in the *Electronic Transactions Act 1999 (Cth)* have the same meaning.
- 16.9 A person signing this Agreement on behalf of a Party warrants that they have authority to bind that Party for that purpose.
- 16.10 If and to the extent any provision (or any part of a provision) of this Agreement is void, voidable or unenforceable, such provision (or part of a provision, as the case may be) will be severed from this Agreement and will not affect the continued operation of the remaining terms of this Agreement.

**SCHEDULE A**
**Personify COVID19 Rapid Assessment Module Licence**
**Included:**

Initial Personify Care setup support – 1 protocol	Yes
Online user induction	Yes
Live chat support from the Australian support team	Yes
Access to all features (below)	Yes

**Personify Patient Care Functionality**

	<b>Clinical team desktop and mobile dashboard</b> Deliver patient information and forms. Identify patients not properly prepared for their procedure. Monitor complication risks after their procedure via mobile or desktop dashboard.
	<b>Patient mobile web application</b> Patients access their patient checklist from their clinical team. Things they need to do, need to know and assessments to complete for the day.
	<b>Mobile registration</b> Patients are assigned to their individual protocol in the lead up to their procedure based on their mobile number, procedure type and procedure date.
	<b>Smart assessments</b> Allow patients to complete their forms and assessments before they come in for an appointment or procedure. Auto-skip questions that don't apply to them. Save time transcribing their information.
	<b>Auto tags to avoid cancelations</b> Setup auto tags to detect issues with patient preparation or pre-existing conditions /mediations that would otherwise cause delays or cancelations on the day of the procedure.
	<b>Flag risks and complications</b> Detect risks early by allowing patients to track their recovery. Use red flags to identify patients that require follow up. With a click see the patients that need follow up today.
	<b>Team alerts</b> Automatically notify staff via alerts and tags when a patient status requires their attention.

**Schedule C**

**Item 1 – Additional Provisions**

**Not applicable.**

**Item 2 – Special Conditions**

**Not applicable.**