

These Terms of Use (**Terms**) apply to the Products and Services of Best Practice. By accessing or using the Products and Services, you acknowledge you have read, have understood and confirm your agreement to be bound by these Terms. If you do not agree to these Terms, you must refrain from accessing or using the Products and/or Services.

These Terms form a legally binding agreement between you, the individual, either in your own capacity or, where you are accessing or using the Products and/or Services on behalf of another individual, in your own capacity and on behalf of that other individual, and Best Practice Software Pty Ltd., 86 Woongarra Street, Bundaberg, Queensland 4670, Australia (**Best Practice**) and references to “we”, “us”, “our” are references to Best Practice. This agreement commences upon your access or use of the Products and/or Services and continues until this agreement is terminated under these Terms.

#### **1. Terms of Use**

Your access and use of the Products and/or Services is governed by these Terms. We may at our sole discretion change, add, or delete portions of these Terms at any time either by publication on our website at <https://bpsoftware.net/bh-terms-of-use/> or by notification to you. Any amendment shall be effective immediately upon publication or notification to you. Continued use of the Products and/or Services by you constitutes your acknowledgement to be bound by the Terms, as amended.

#### **2. Changes to the Products and/or Services**

We reserve, at our sole discretion, the right to make any changes from time to time to any of the Products and Services, including any changes to functionality of any of the Products and Services or services provided in conjunction with the Products, as considered by us necessary or desirable.

#### **3. User Accounts**

- 3.1 You are required to create a Best Health account (**Account**) and become registered as a user (**Registered User**) to use the Products and/or Services.
- 3.2 To become a Registered User, you must provide us with certain information (including, without limitation, your name, your email address, your mobile number and the medical practice which you attend). You agree that information you provide will be true and accurate and that you are responsible for ensuring the accuracy of any information provided to us. You are responsible for correctly setting up your Account and maintaining the confidentiality and security of your Account password and for all activities that occur under your Account. You may change your password at any time by following the instructions provided. You agree to immediately notify us upon becoming aware of any unauthorised use of your Account or any other breach of security.
- 3.3 In creating an Account and becoming a Registered User, you represent and warrant that:
  - (a) you are capable of forming a legally binding agreement;
  - (b) the Products and/or Services are to be used only by you (or, where you are authorised to do so on behalf of another person, by you as that person’s authorised representative) or, under your supervision, your dependents and/or children under 14 years of age (without any right to assign or subcontract that right to use to third parties); and
  - (c) you will ensure your access to, and use of, the Products and/or Services (and any access to, and use of, the Products and/or Services as an authorised representative, by your dependents and/or children as permitted under these Terms) is for lawful purposes only and is not illegal or prohibited by law.
- 3.4 Where you use access or use the Products and/or Services on behalf of another person, you represent and warrant that you are authorised and otherwise have the requisite legal authority to do so.

#### **4. Access Rights**

- 4.1 Subject to these Terms, we hereby grant to you a limited, non-exclusive, non-transferable right to access the Products and Services for your personal, non-commercial use on any compatible electronic device that you own or control.
- 4.2 You agree that you will not, will not attempt to, and will not cause, permit or assist any other person to:
  - (a) impersonate any person or entity, or otherwise misrepresent your affiliation with a person or entity when using the Products or Services;
  - (b) negatively impact or interfere with any other user’s ability to access and use the Products or Services;
  - (c) engage in conduct that is unlawful, defamatory, obscene, threatening, harassing, abusive, slanderous, hateful or embarrassing to any other person, or which is reasonably likely to damage our reputation or the reputation connected with the Products or Services;
  - (d) reverse engineer, disassemble or decompile the whole or any part of the Products or Services or otherwise insert or modify any form of code of the Products or Services;
  - (e) distribute viruses through the Products or Services; or
  - (f) otherwise use the Products or Services in any manner that exceeds the scope of use granted in these Terms.
- 4.3 You acknowledge that your access to, and use of, the Products and/or Services may be dependent on third party infrastructure and services. It is your responsibility to comply with any applicable terms and conditions of those third party providers.

#### **5. Use of the Products and Services**

- 5.1 Your use of certain Products or Services may be subject to specific conditions which apply to those Products or Services. Where these specific conditions are referred to elsewhere, such as in other documentation relating to the Product or Service, those specific conditions are incorporated into these Terms.
- 5.2 The following specific conditions apply to the following Products:

##### **Best Health App (App)**

- (a) **(Acknowledgements relating to App Distributors)** We acknowledge and you acknowledge that this agreement is not concluded between you and Apple Inc. (“**Apple**”) or you and Google Inc. (“**Google**”) (as the case may be). In these Terms, Apple and Google are referred to as “**App Distributors**”. Where any terms set out under in these Terms are less restrictive than, or otherwise are in conflict with, applicable terms of the App Distributors (including Apple’s usage rules set forth in Apple’s App Store terms of service), the terms of the App Distributors will prevail. We acknowledge and you acknowledge and agree that the App Distributors (and the App Distributors’ subsidiaries) are third party beneficiaries of these Terms and that, upon your acceptance of these Terms, they will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third party beneficiary thereto.
- (b) **(Statutory warranties)** In the event of any failure of the Best Health App to conform to any applicable Statutory Warranty (as defined below), you may notify the applicable App Distributor and that App Distributor will refund any purchase price for the App to You (if applicable). To the maximum extent permitted by applicable law, the App Distributors will have no other warranty obligation whatsoever with respect to the Best Health App.
- (c) **(Product claims)** Subject these Terms, we acknowledge and you acknowledge that we, not the App Distributors, are responsible (to the extent set out under these Terms) for addressing any claims made by you or any third party relating to the Best Health App or your possession and/or use of the Best Health App, including but limited to:
  - (1) product liability claims;
  - (2) any claim that the App fails to conform to any applicable legal or regulatory requirement; and
  - (3) claims arising under consumer protection or similar legislation.
- (d) **(Maintenance and support)** We are responsible for providing any maintenance and support services with respect to this App as required under applicable law. We acknowledge and you acknowledge that the App Distributors have no obligation whatsoever to furnish any maintenance support services with respect to this App.
- (e) **(Push notifications)** Where you have enabled notifications, you consent to the App sending push notifications or other alerts to your mobile device relating to your use of the App or other messages, notification or alerts from us relating to our services. These notifications or alerts will be sent to any device on which you have installed and registered the App, including where you are not logged into your Account through the App. These notifications and alerts may be seen by third parties who have access to or use your device. You acknowledge that we are not responsible or liable for third parties seeing such notifications or alerts. You can manage your push notification settings or deactivate these notifications at any time by turning off the notifications through the applicable settings on your device.
- (f) **(Biometric Identifier access)** The App may permit you to use your fingerprint, facial recognition or other similar biometric identifiers on your device (**Biometric Identifier**) for access or authentication purposes. You do not need to use a Biometric Identifier to access your Account and may continue to use a password to access your Account on the Best Health App. If you choose to enable a Biometric Identifier on your device to access your Account:
  - (1) you are still required to set a password for your Account and keep the password secure;
  - (2) you must ensure that no Biometric Identifier of another individual is stored on your device. If another individual’s Biometric Identifier is stored on your device, you consent and authorise that person to have access to your Account and otherwise use the App on your behalf;
  - (3) you acknowledge that access to your Account through use of a Biometric Identifier will be disabled where the Biometric Identifier access settings on your device have been changed. You will need to access your Account using your password in order to re-enable Biometric Identifier access. You should only re-enable Biometric Identifier access where you are certain the settings have been changed by you; and
  - (4) you acknowledge that Biometric Identifier functionality is technology provided by third parties who make your device, such as Apple, Google and other mobile device manufacturers, and that we are not responsible for any error, fault or interruption of the Biometric Identifier functionality or changes made by those third parties to Biometric Identifier technology that adversely affects the availability of access to, or the way you access, the App.

## 6. Information provided by us; no medical advice

- 6.1 We do not warrant or represent the accuracy, completeness, currency or suitability of any information available made through the Products or Services. You are responsible for the use of any information available through the Products or Services.
- 6.2 Some Products and Services provide a means to book medical services with independent medical practitioners and may provide you with access to general health information and ability to manage and track your medical appointments, notes and health data.
- 6.3 The Products and Services do not provide any medical advice or opinion and no information available through the Products or Services should be interpreted as medical advice or opinion nor as a substitute or replacement for independent medical advice or opinion by a qualified and licensed medical professional. Your use of the Products or Services do not create a doctor-patient relationship between you and us. You should always consult a qualified and licensed medical professional for any medication or treatment that is appropriate or effective for you.

## 7. Information provided by you

- 7.1 You consent to our collection, disclosure, use and keeping of personal information that you provide to us in accordance with the terms of our privacy policy, a copy of which is available at: [https://bpsoftware.net/privacy-policy/\(Privacy Policy\)](https://bpsoftware.net/privacy-policy/(Privacy Policy)).
- 7.2 You shall be solely responsible for the accuracy of any information that you submit to us in the course of using the Products and/or Services. You grant us the non-exclusive right to use, reproduce and distribute such information for the purpose of providing you with the Products and/or Services.
- 7.3 By using the Products and/or Services, you acknowledge and agree that:
  - (a) We may collect, use, disclose, keep and handle your Personal Information in accordance with Our Privacy Policy, available at <https://bpsoftware.net/privacy-policy/>, we may also collect information about your interactions with the Products and/or Services to improve the services we offer;
  - (b) the Medical Practice you engage with, or otherwise communicate to for access to their services, via the Products and/or Services may have its own policy governing access to this information. Our Privacy Policy does not govern, and we make no representations in

relation to, how your Medical Practice or practitioner handles your personal information, including your health information, and you should direct any such enquiries to them directly; and

- (c) any consent given by you through the Products and/or Services is valid and binding unless and until revoked by you, and a Medical Practice or practitioner may rely on a consent given through the Products and/or Services without any need to further verify that consent.
- 7.4 Where you access or use the Products and/or Services on behalf of another person, you represent and warrant that you have obtained the consent of that other person to our collection, disclosure, use and keeping of that person's personal information and our right to use, reproduce and distribute such information in accordance with the preceding Terms.
- 7.5 No data transmission over the internet can be guaranteed as totally secure. Whilst we strive to protect such information, we do not warrant and cannot ensure the security of any information which you transmit to us.
- 7.6 Any information which you transmit to us is transmitted at your own risk. Once we receive your transmission, we will take reasonable steps to preserve the security of such information.

## 8. Third Party Services

The Products and Services may contain links or enable access to services or websites of third party providers ("**Third Party Services**"). These Third Party Services are provided for your convenience only. Third Party Services are not under our control and we are not responsible for Third Party Services (including, without limitation, the suitability for your intended use of the Third Party Services). We do not endorse or recommend any Third Party Services or any associated provider organisation or their product or services. You should make your enquiries as to the suitability of any Third Party Service.

## 9. Intellectual Property Rights

- 9.1 All right, title and interest in and to the Products and Services (including, without limitation, copyright in and to the text, graphics, logos, icons, sound recordings and software in connection with the Products and Services) is owned by us or our licensors. Except as expressly authorised, and subject to the conditions prescribed under, the Copyright Act 1968 (Cth) or except as expressly permitted by these Terms, you may not, in any form or by any means:
- (a) copy, adapt, reproduce, store, distribute, print, display, perform, publish, communicate to the public, make available to public or create derivative works of the whole or any part of the materials or information available on the Products or Services except as expressly permitted by, or as is reasonably contemplated by, the normal use of the Products or Services; or
  - (b) commercialise the whole or any part of the information provided on the Products or Services, without our express written permission or, in the case of third party material, from the owner of the copyright in that third party material. You must immediately notify us upon becoming aware of any breach, suspected or otherwise, of our intellectual property rights in respect of the Products or Services.
- 9.2 You acknowledge that to the extent that any improvements or modifications are made to the Products or Services:
- (a) all intellectual property rights in the Products or Services so modified shall vest in or remain with us;
  - (b) to the extent you have any rights or interest in the Products or Services so modified, you assign to us all intellectual property rights arising out of any modifications to the Products or Services; and
  - (c) you agree to execute all such documents, and perform such other acts, as are necessary or desirable to give effect to this clause.
- 9.3 Trade marks used in connection with the Products and Services, including the Best Practice logo are our trade marks in Australia and New Zealand (registered or unregistered) or the trade marks of third party licensors. If you use any trade marks owned, or licensed, by us in reference to us or the Products or Services, you must include a statement attributing that trade mark to us or our licensor (as the case may be). You must not use any of our or our licensor's trade marks:
- (a) in, or as the whole or part of, your own trade marks;
  - (b) in connection with any business, products or services which are not ours or our licensors;
  - (c) in a manner which may be confusing, misleading or deceptive to any person; or
  - (d) in a manner that disparages us, the third party owners of the trade marks or the Products or Services.
- 9.4 Subject to these Terms, we acknowledge and you acknowledge that, in the event of any third party claim that the Products and/or Services or your possession and use of the Products and/or Services infringes that third party's intellectual property rights, we will be solely responsible for the investigation, defence, settlement and discharge of any such intellectual property infringement claim (to the extent set out under these Terms).

## 10. Limitation of Liability

- 10.1 Nothing under these Terms, and in particular this clause, shall attempt to exclude liability that cannot be excluded under applicable law.
- 10.2 To the extent permitted by law, you acknowledge and agree that:
- (a) your use of the Products and/or Services is at your own risk;
  - (b) you are solely responsible for your use of the Products and/or Services and for the accuracy and suitability of any information or data that you upload to, or obtain from, the Products and/or Services, including any Third Party Services facilitated by the Products and/or Services;
  - (c) the Products and/or Services are not designed for, and must not be relied upon in relation to, any critical, emergency or acute care medical circumstances; and
  - (d) we provide and operate the Products and Services only, and are not responsible or liable for the conduct or activities of other third parties, including any third party service provider, medical practice or practitioner.
- 10.3 To the maximum extent permitted under applicable law, we will not be liable for any loss, damage, cost, expense or liability of any kind including, without limitation, any direct loss or any indirect, consequential, incidental special exemplary or punitive loss or damage (**Loss**), howsoever caused (whether in contract, tort or otherwise at law and whether we knew or should have known of the possibility of such Loss) suffered or incurred by you arising from or in connection with:
- (a) your access to, and use of, or inability to access or use the Products and/or Services or any information available through the Products and/or Services;
  - (b) any decision or action take by you in reliance on information available through the Products and/or Services;

- (c) any illness, injury, or death resulting from use of the Products and/or Services;
- (d) any unauthorised access to, or alteration of, transmissions of data or information to or from your electronic device or available through the Products and/or Services;
- (e) loss of any data or data breaches in connection with access to or use of the Products and/or Services; or
- (f) any interruption, error or defect in the Products and/or Services or information available through the Products and/or Services.

## 11. Disclaimer of warranties

- 11.1 To the fullest extent permitted by law, our liability under any guarantee, condition or warranty (including, without limitation, any guarantee, condition or warranty of merchantability, acceptable quality, fitness for purpose or fitness for disclosed result), or any other right or remedy, under any legislation or implied into these Terms by any legislation ("**Statutory Warranties**") is hereby excluded. To the maximum extent permitted by applicable law, we will have no other warranty obligation whatsoever with respect to the Products or Services. Any other claims, losses, damages, costs or expenses attributable to any failure to conform to any warranty, will be our sole responsibility, subject to any exclusions specified in this clause.
- 11.2 Where we are liable under any Statutory Warranties, and any legislation avoids or prohibits provisions in a contract excluding or modifying the application of, or exercise of, or liability under, such Statutory Warranties, our liability for any breach of such Statutory Warranties shall be limited, at our option, to one or more of the following:
- (a) if the breach relates to goods: the replacement of the goods or the supply of equivalent goods; the repair of such goods; the cost of replacing the goods or of acquiring equivalent goods; or the cost of having the goods repaired; and
  - (b) if the breach relates to services: the supplying of the services again or the cost of having the services supplied again.
- 11.3 You acknowledge and agree that reliance by us on this limitation of liability is fair and reasonable in all the circumstances.

## 12. Indemnity

To the maximum extent permitted by law, you agree to indemnify, and keep indemnified, us, our officers, employees and agents (**those indemnified**) from and against any and all loss, damage, cost, expense or liability of any kind suffered or incurred by those indemnified arising from, in connection with:

- (a) any breach by you of these Terms (including, without limitation any misuse of your Account or Account password, or the misuse of the content or services of the Products and/or Services);
- (b) any wilful misconduct by you; or
- (c) any negligent act or omission by you.

## 13. Availability

- 13.1 While we take all reasonable steps to limit any interruptions to your access to the Products and/or Services, you acknowledge and agree that:
- (a) your access to the the Products and/or Services may be prevented by issues outside of our control;
  - (b) we do not promise continuous, interrupted or error-free access to the the Products and/or Services, including in relation to any Third Party Services facilitated by the Services;
  - (c) the functionality of the the Products and/or Services may change or be improved from time to time;
  - (d) while we will use reasonable endeavours to provide prior notification to you of any scheduled maintenance and minimise the impact of such maintenance, your access to the the Products and/or Services may be interrupted or prevented due to scheduled or unscheduled maintenance of the Products and/or Services from time to time.
- 13.2 You are responsible for ensuring you keep a separate, accessible copy of all personal information or other data that you upload to, or obtain from, access to and use of the Products and/or Services.

## 14. Assignment

These Terms are personal to you and cannot be assigned or novated to any third party (either in whole or in part). We reserve the right to assign our rights under these Terms to any third party without notice to you.

## 15. Termination

We may suspend or terminate your access to and use of the Products and/or Services, your Account and/or registration as a Registered User at any time, without need to provide reasons. These Terms will terminate if your access to and use of the Products and/or Services is terminated by us. To the extent you continue to access or use any of the Products and/or Services, these Terms will continue in respect of those Products and/or Services. To the maximum extent permitted by law, we reserve the right to maintain, delete or destroy any and all data relating to your Account pursuant to our internal record retention and/or content destruction policies (as updated from time to time) upon the deactivation of your Account and you ceasing to be a Registered User. Termination of these Terms will not end those provisions that are capable of surviving the ending of these Terms.

## 16. General provisions

We shall not be liable for any delay or failure to perform our obligations under these Terms if such a delay or failure is due to circumstances beyond our reasonable control. If we waive, in whole or part, any rights available to us under these Terms on one occasion, this does not mean that those rights will automatically be waived on any other occasion. If any provision of these Terms is held to be invalid, unenforceable or illegal for any reason, it is to be read down to give it as much effect as possible, or if it is not capable of having any effect at all, it is to be severed from these Terms, in which case, the remainder of these Terms shall nevertheless continue in full force. The laws of the State of Queensland, Australia governs these Terms and the parties submit to the non-exclusive jurisdiction of the courts of the State of Queensland, Australia.

**17. Contact us**

If you are required to notify us of any matter under these Terms or if you have any queries regarding these Terms, please contact us at 1300 40 1111.

Best Practice Software Pty Ltd ABN 92 104 808 988

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