

GENERAL PRACTICE DIVISIONS VICTORIA - LIMITED

Hospital Name:

.....

.....

AGREEMENT

General Practitioner Register

TABLE OF CONTENTS

1	DEFINITIONS AND INTERPRETATION	4
1.1	Definitions	4
1.2	Interpretation	6
2	AGREEMENT	6
2.1	Authority	6
2.2	Non-exclusive grant	7
2.3	Application for Register	7
2.4	Risk	7
3	USE OF THE REGISTER	7
3.1	Only for Purpose	7
3.2	Password and User Name	8
3.3	Users of Register	8
3.4	Non-Disclosure	9
3.5	Merge with existing systems	9
3.6	Updates	9
4	CONSIDERATION	10
4.1	Consideration	10
5	INTELLECTUAL PROPERTY, COPYING AND MODIFICATIONS	10
5.1	Ownership of Intellectual Property	10
5.2	Copying Data	11
5.3	Application of agreement	11
6	WARRANTIES	11
6.1	GPDV's Warranty	11
6.2	No indemnity	11
6.3	Exclusion of Warranties	12
6.4	Hospital's Acknowledgment	12
6.5	General warranties	12
7	INDEMNITY	13
8	DISPUTE RESOLUTION	13
9	TERMINATION	14
9.1	Termination by GPDV	14
9.2	Termination by Hospital	14
9.3	Effects of Termination	14

10	CONFIDENTIAL INFORMATION	14
10.1	Confidentiality	15
10.2	Exceptions to confidentiality	15
10.3	Patient Information	15
10.4	Survival of clause	15
11	ASSIGNMENT	15
12	GENERAL PROVISIONS	15
12.1	Entire agreement	16
12.2	Variation	16
12.3	Notices	16
12.4	Severance	16
12.5	Preservation of existing rights	17
12.6	No merger	17

THIS AGREEMENT is between

GENERAL PRACTICE DIVISIONS VICTORIA - LIMITED (ABN 80 081 371 968) of 1st floor, 458 Swanston Street, Carlton, Victoria 3053 (**GPDV**)

and

Hospital Name:

ABN: **of**

Address:
(The Hospital)

INTRODUCTION:

- A** GPDV has developed the General Practitioner Register and is entitled to grant authority to use the data contained in the Register.
- B** The Hospital wishes to use the Register for the Purpose.
- C** GPDV has agreed to grant and the Hospital has agreed to accept authority to use the data contained in the Register for the Purpose on the terms and conditions set out in this agreement.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this agreement, unless the context clearly indicates otherwise:

Address for Service means the address of each party appearing in this agreement or any other address nominated by any party and notified in writing to all other parties as its new Address for Service;

Authorised Hospital Personnel means personnel who are authorised to access the Hospital's information system in relation to patient records;

Confidential Information means all confidential information (including the general practitioner information included in the Register), material and technology disclosed or provided in any form by GPDV to the Hospital in connection with the subject matter of this agreement;

Data means the general practitioner contact information and all other information included in the Register and includes any Updates;

Divisions means Victorian Divisions of General Practice;

Downloaded Version means any version of the Register which has been downloaded by the employees of the Hospital;

Intellectual Property means all intellectual property rights (including copyright) in and to the Register;

On-line Version means any version of the Register accessed by or for the Hospital on the Website;

Password means the password allocated to the Hospital by GPDV which must be used to access the Website and to download the Register;

Principal User means the employee of the Hospital named in Item 3 of the Schedule;

Purpose means for the purpose of transferring information from the Hospital to general practitioners about the current episode of care for their patients in the Hospital and including quality assurance measures to ascertain the satisfaction of general practitioners with the information provided to them and the processes undertaken by the Hospital using the Register;

Register means the Data and all software applications and other technology which comprise the register known as the General Practitioner Register;

Term means the term specified in Item 2 of the Schedule, subject to the earlier termination of this agreement under clause 8;

Updates means any updates to the Register made by GPDV from time to time to incorporate new or amended contact details for general practitioners or to improve the Register;

User Name means the user name to be allocated to the Hospital by GPDV and which will be used by the Hospital to log on to the Website;

Website means the Register website at www.gpdv.com.au (click on “GP Register”).

1.2 Interpretation

In this agreement unless the context clearly indicates otherwise:

- (a) a reference to this **agreement** means this agreement and any document which varies, supplements or novates this agreement;
- (b) a reference to a person includes a natural person, company, statutory corporation, partnership, the Crown and any other organisation or type of legal entity;
- (c) a requirement to do any thing includes a requirement to cause that thing to be done;
- (d) a requirement not to do any thing includes a requirement to prevent that thing being done;
- (e) a reference to a natural person includes their personal representatives, successors and permitted assigns;
- (f) a reference to a company includes its successors and permitted assigns;
- (g) a reference to a body or authority which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority, or failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (h) any reference to a breach of warranty includes that warranty not being complete, true or accurate; and
- (i) neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2 AGREEMENT

2.1 Authority

- (a) GPDV agrees to authorise the Hospital to use the Register for the Purpose for the Term on the terms and conditions set out in this agreement.
- (b) The Hospital agrees to use the Register for the Purpose for the Term on the terms and conditions set out in this agreement.

2.2 Non-exclusive grant

The Hospital acknowledges that the use permitted under clause 2.1 is non-exclusive and that GPDV is fully entitled to use and authorise the use of the Register by any person on such terms and conditions as GPDV may consider appropriate in its sole and absolute discretion.

2.3 Application for Register

- (a) The Hospital has registered its interest in using the Register by completing an on-line application form (**Application**).
- (b) The Hospital warrants to GPDV that the information included in the Application is complete, true and accurate.

2.4 Risk

Any risk of loss or damage to or associated with the use of the Register by the Hospital will pass to the Hospital upon its first use of or access to the Register or the date of this agreement, whichever is the earlier.

3 USE OF THE REGISTER

3.1 Only for Purpose

The Hospital acknowledges and agrees that:

- (a) the general practitioners have agreed that their contact details may be included in the Register on the basis that those details must only be used for the Purpose;
- (b) it is only entitled to use the Register for the Purpose;
- (c) GPDV will survey general practitioners from time to time to ensure that the Register has only been used for the Purpose and has not been used for the purposes of providing general practitioners with promotional or marketing material; and
- (d) if it wishes to use the Register for any purpose other than the Purpose, it must seek the prior written consent of GPDV and the relevant Divisions.

3.2 Password and User Name

- (a) The Hospital will be allocated the Password and the User Name.
- (b) The Password and the User Name may only be used by the Principal User and the Authorised Hospital Personnel.
- (c) The Password and the User Name will be required to access the Website, the mailbox, any Updates and the On-line Version.
- (d) The Hospital must ensure that the Principal User and the Authorised Hospital Personnel will keep the Password and the User Name confidential.

3.3 Users of Register

- (a) The Hospital acknowledges and agrees that the Register (and any version of it) and the Website may only be used and accessed by the Principal User or Authorised Hospital Personnel.
- (b) The Hospital must ensure that the Principal User is the only person who uses the Register or the Website for the purposes of creating a Downloaded Version. Only the Principal User will be entitled to have access to the mailbox for the Hospital on the Website.
- (c) GPDV will liaise with the Principal User in relation to matters relating to the Register.
- (d) The Principal User will be responsible for the management of the use of the Register within the Hospital.
- (e) The Hospital may change the Principal User from time to time with 7 days prior written notice to GPDV.
- (f) The Hospital must ensure that any Principal User or Authorised Hospital Personnel are fully aware of and comply with the Hospital's obligations under this agreement in relation to the use of the Register.

3.4 Non-Disclosure

- (a) Hospital acknowledges and agrees that any disclosure or use of the Register, other than in accordance with this agreement, will cause GPDV significant loss and damage which will not be compensated by an award of damages only.
- (b) If the Hospital breaches its obligations under this agreement and in addition to any other rights GPDV may have, GPDV may issue proceedings seeking injunctive relief to prevent, restrain or stop the continuance of the breach by the Hospital. In those circumstances, GPDV may plead and produce, and the Hospital will not seek to prevent GPDV from pleading or producing, this agreement in any proceedings issued.

3.5 Merge with existing systems

- (a) The Hospital may merge the Data with any computer system or other database.
- (b) If the Hospital does merge the Data with any other computer system or database, its obligations under this agreement will continue in respect of the merged Data.

3.6 Updates

- (a) GPDV will make regular Updates to the Register. Those Updates will be available to the Hospital on the Website.
- (b) The Hospital will be solely responsible for incorporating any Updates into the Register if the Hospital is using the Downloaded Version.
- (c) GPDV will not be responsible for any loss, damage, cost or expense suffered or incurred by the Hospital as a result of or arising from the Hospital's failure to access or use any Update.

4 CONSIDERATION

4.1 Consideration

In consideration of the Hospital agreeing to comply with all of its obligations under this agreement, GPDV agrees that the Licence will be granted to the Hospital free of charge for as long as GPDV receives funding from the Department of Human Services (DHS) for the Register. GPDV will receive funding from DHS until 30 June 2003 or such later date as may be notified to the Hospital from time to time.

5 INTELLECTUAL PROPERTY, COPYING AND MODIFICATIONS

5.1 Ownership of Intellectual Property

- (a) GPDV is the owner of all data and information contained in the Register.
- (b) GPDV is entitled to grant the right to use the data contained in the Register to the Hospital in accordance with clause 2.1.
- (c) The grant of the authority to use the data under clause 2.1 does not confer upon the Hospital any rights of ownership in or to the Intellectual Property.

5.2 Copying Data

The Hospital may copy the Data only for the purposes of using the Register in accordance with this agreement.

5.3 Application of agreement

This agreement will apply to the Register as modified or altered, whether modified or altered by the Hospital, GPDV or a third party and whether or not the modifications or alterations are authorised under this agreement.

6 WARRANTIES

6.1 GPDV's Warranty

GPDV warrants that it is fully entitled to authorise the Hospital to use the Register in accordance with this agreement.

6.2 No indemnity

- (a) The Hospital acknowledges and agrees that GPDV has used and will use all reasonable endeavours to ensure that the information contained in the Register is complete and accurate. To that end, GPDV has endeavoured to confirm with each general practitioner his or her own contact information about them contained in the Register.
- (b) GPDV makes no warranty in respect of the accuracy of the information contained in the Register.
- (c) ~~GPDV will not be responsible for or indemnify the Hospital in respect of any loss, damage, cost or expense suffered or incurred by the Hospital as a result of (directly or indirectly) any mistake or error in or exclusion from the Register. (Clause removed by GPDV 26 April 2001)~~

6.3 Exclusion of Warranties

The Hospital acknowledges and agrees that:

- (a) the Register is provided to the Hospital by GPDV without warranty of any kind;
- (b) it has not relied on any representation made by GPDV which has not been stated expressly in this agreement;
- (c) GPDV does not warrant, guarantee or make any representation regarding the use, or the results of the use, of the Register in terms of correctness, accuracy, reliability, functionality or otherwise; ~~and~~
- (d) ~~the entire risk as to the results and performance of the Register is assumed by the Hospital; (Clause removed by GPDV 26 April 2001)~~
- (e) ~~GPDV will not be liable for any direct, indirect, consequential or incidental damages arising out of the use, inability to use or failure of the Register or the Associated Materials. (Clause removed by GPDV 26 April 2001)~~

6.4 Hospital's Acknowledgment

To the maximum extent permitted by law, any covenant or warranty (other than the warranty given in clause 6.1) that, but for this clause 6.4, would or may be impliedly incorporated in this agreement or impliedly given or made by GPDV in respect of the Register is expressly excluded.

6.5 General warranties

Each party warrants to each other party that:

- (a) this agreement creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this agreement in the capacity of trustee of any trust.

7 INDEMNITY

The Hospital will at all times indemnify and hold harmless GPDV and its officers, employees and agents (**those indemnified**) from and against any loss (including reasonable costs and expenses) or liability incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:

- (a) a breach by the Hospital of its obligations under this agreement;
- (b) the failure by the Hospital or any of its officers, agents or employees (including the Nominated Users and the Principal User) to properly use the Register in accordance with this agreement;
- (c) ~~any errors in or omissions from the contact details included in the Register; and (Clause removed by GPDV 26 April 2001)~~
- (d) any wilful, unlawful or negligent act or omission of the Hospital or its officers, agents or employees.

8 DISPUTE RESOLUTION

If any dispute should arise between the Hospital and GPDV in connection with this agreement (including the use of the Register by the Hospital):

- (a) the parties will endeavour to resolve that dispute by mutual negotiation;
- (b) if the parties are unable to resolve that dispute within 2 weeks, either party may refer the dispute to a mediator acceptable to both parties;
- (c) the parties must attend the meeting and make a genuine effort to resolve the dispute; and
- (d) the parties will share the costs of the mediation equally.

9 TERMINATION

9.1 Termination by GPDV

GPDV may terminate this agreement and any licence granted under this agreement immediately by notice in writing to the Hospital if:

- (a) the Hospital breaches any term of this agreement (other than those relating to the use of the Register) and fails to rectify that breach within 14 days after being directed to do so by GPDV;
- (b) the Hospital uses the Register for any purpose other than the Purpose;
- (c) the Hospital resolves or is forced to cease operating.

9.2 Termination by Hospital

The Hospital may terminate this agreement upon 14 days' written notice to GPDV if GPDV is in material breach of this agreement and fails to rectify that breach within 14 days after being requested to do so by the Hospital.

9.3 Effects of Termination

Upon termination of this agreement under clauses 9.1 or 9.2:

- (a) the authority to use the Register will be terminated with effect from the date of termination;
- (b) the Hospital must return all copies of the System and Associated Material (including any Downloaded Version) to GPDV;
- (c) GPDV may:
 - (i) repossess any copies of the Register or Associated Material in the possession, custody or control of the Hospital;
 - (ii) be regarded as discharged from any further obligations under this agreement; and
 - (iii) pursue any additional or alternative remedies provided by law.

10 CONFIDENTIAL INFORMATION

10.1 Confidentiality

Subject to this clause, the Hospital must maintain in confidence all Confidential Information and ensure that the Confidential Information is kept confidential.

10.2 Exceptions to confidentiality

The Hospital may reveal Confidential Information which:

- (a) the Hospital is required by law or by any stock exchange to disclose, provided that the Hospital must immediately notify GPDV of the requirement and must take lawful steps and permit GPDV to oppose or restrict the disclosure to preserve, as far as possible, the confidentiality of the Confidential Information;
- (b) is in or enters the public domain for reasons other than a breach of this agreement; or
- (c) is disclosed to the Hospital by a third party legally entitled to disclose that information and who is not under an obligation of confidentiality to GPDV.

10.3 Patient Information

- (a) The Hospital acknowledges and agrees that the details regarding the admission, discharge and treatment of patients **to** are of a highly confidential and sensitive nature.

- (b) ~~The Hospital will indemnify GPDV in respect of any action or claim taken or made against GPDV or the Hospital as a result of any disclosure of any patient information however any such disclosure may arise. (Clause removed by GPDV 26 April 2001)~~

10.4 Survival of clause

This clause will survive the termination of this agreement.

11 ASSIGNMENT

The benefit of this agreement may not be assigned by the Hospital without GPDV's written consent. GPDV may consent to the assignment or novation of this agreement by the Hospital subject to any conditions as it chooses to impose.

12 GENERAL PROVISIONS

12.1 Entire agreement

This agreement constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements between the parties, whether oral or written.

12.2 Variation

This agreement must not be varied except by a later written document executed by all parties.

12.3 Notices

Any notice, demand, consent, approval, request or other communication (**notice**) to be given under this agreement must be in writing and must be given to the recipient at its Address for Service by being:

- (a) hand delivered;
- (b) sent by facsimile transmission;
- (c) sent by prepaid ordinary mail; or
- (d) sent by prepaid Express Post.

12.4 Severance

If any clause or any part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

12.5 Preservation of existing rights

The expiration or termination of this agreement does not affect any right that has accrued to a party before the expiration or termination date.

12.6 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

EXECUTED as an agreement

2001.

**SIGNED for GENERAL)
PRACTICE DIVISIONS VICTORIA)
LIMITED)**

.....
Director

.....
Director/Secretary

.....
Print name

.....
Print name

**SIGNED for)
Hospital:)
.....)
.....)**

.....
Title:

.....
Title:

.....
Print name

.....
Print name

SCHEDULE

Item 1 – Hospital

Name:

Address:

ACN:

ABN:

Telephone:

Facsimile

Email:

Contact name:

Position:

Item 2 – Term

The term of this agreement is two years from the date of this agreement and may be extended with the agreement of both parties.

Item 3 – Principal User

.....

