

EYEONIC VISION TEST CLINICIAN PLATFORM TERMS AND CONDITIONS

1. INTRODUCTION

- 1.1 The Eyeonic Platform and the Services made available through the Eyeonic Platform are owned and operated by Eyeonic Pty Ltd (ACN 631 432 892) (**Eyeonic, we, our or us**).
- 1.2 By using, browsing or accessing the Eyeonic Platform and the Services, you acknowledge that you have read, understood and accept these Eyeonic Vision Test Clinician Platform Terms and Conditions (**agreement**), together with our Privacy Policy, and agree to abide by them. If you do not accept this agreement, you must not access and use the Eyeonic Platform and the Services.
- 1.3 In this agreement, **Clinician, you** and **your** means the medical practitioner, non-medical allied health professional, optometrist or optician (as the context permits) who accesses or uses the Eyeonic Platform and the Services, and whose details are listed in the User Access Portal (and includes anyone acting on your behalf or with your express or implied authority).

2. REGISTRATION AND ACCESS

- 2.1 To access and use the Eyeonic Platform and the Services, you must create and setup an account on the Eyeonic Platform (**Clinician Profile**). Your Clinician Profile will be operated by a username (**Clinician Name**) and password (**Password**) which can be changed any time by you accessing the Clinician Access Portal.
- 2.2 To setup a Clinician Profile on the Eyeonic Platform:
 - (a) you will be required to provide, and keep us up-to-date with, accurate registration information and Personal Information (including full name, email address, job title, qualification, clinical registration number, photographic identification and medical practice address). All Personal Information as well as the information you provide to setup your Clinician Profile is subject to our Privacy Policy; and
 - (b) Eyeonic will undertake a probity check to verify your identity and qualifications as a medical practitioner. You agree to provide Eyeonic with all information reasonably required by us to verify your identity and qualifications as a clinician. If you do not provide us with verification information or we are unable to verify your identity, we will not grant you access to, and use of, the Eyeonic Platform and Services (in your capacity as a medical practitioner).
- 2.3 You are responsible for:
 - (a) maintaining control over, and the confidentiality of, your Clinician Profile, Clinician Name and Password;

- (b) keeping your Clinician Profile registration information current, complete, accurate, and truthful. You must not impersonate another account holder or clinician or provide false identity information to gain access to or use the Eyeonic Platform or the Services;
- (c) notifying us in writing of any unauthorised access to, or use of, your Clinician Profile, Clinician Name or Password; and
- (d) for all activities or transactions that occur using your User Profile. We are not liable for any loss or damage arising out of, or in connection with, any unauthorised access or use of, your Clinician Profile, Clinician Name and Password.

2.4 At any time, you or the customer may edit, update, de-activate or change your Clinician Profile.

3. YOUR USERS

3.1 Your ability to access and use all of the functions and features of the Eyeonic Platform and Services in respect of a User will depend on whether you are the User's primary clinician or non-primary clinician. If you are the User's:

- (a) primary clinician you will be entitled to invite a User to undertake an Eye Vision Test (by sending the User a Token to Redeem), access and view the User's Eye Vision Results, schedule future Eye Visions Tests for the User through the Eyeonic Platform and bill third party healthcare providers (such as Medicare) for visual field services provided to the User; or
- (b) non-primary clinician you will only be entitled access and view the User's Eye Vision Results.

3.2 When you create your Clinician Profile or at any time during the Subscription Term, you may:

- (a) invite your Users (in your capacity as their primary clinician) to access and use the Eyeonic Platform and the Services, in which case, the User must create and setup a profile on the Eyeonic Platform (unless the User has already has a profile) in order to access and use the Eyeonic Platform and Services; or
- (b) receive an invitation from us (on behalf of a User) for you to access and view the Eye Vision Results of your Users as their primary clinician.

3.3 When Users are granted access to the Eyeonic Platform, the User Data will be made available to the Clinician for the Subscription Term, unless:

- (a) the User changes clinicians (and you are no longer a primary or non-primary clinician) for any reason; or
- (b) the User ceases to access and use the Eyeonic Platform and Services for any reason.

4. YOUR OBLIGATION

- 4.1 Subject to the terms of this agreement, we grant you a non-exclusive, personal, revocable, non-transferable and non-sub-licensable licence to access and use the Eyeonic Platform and the Services during the Subscription Term. You must only use the Eyeonic Platform and the Services for internal business purposes.
- 4.2 You will not acquire, or be entitled to, any rights other than those rights expressly set out in this agreement.
- 4.3 When accessing and using the Eyeonic Platform and the Services, you must at all times:
- (a) obtain and maintain all hardware, software and communications equipment necessary to access, and use the Eyeonic Platform and the Services (and in the event, Users are using your computer systems to undertake a Eye Vision Test, we recommend a fully functional webcam);
 - (b) comply with all Relevant Laws with respect to your obligations under this agreement; and
 - (c) comply with all of our directions, policies and guidelines (including our eye vision testing instructions) advised in writing to you or as displayed on the Eyeonic Platform from time to time.
- 4.4 Eyeonic will not be liable to you or anyone else if, for any reason, the Eyeonic Platform and the Services is unavailable at any time or for any period. From time to time, we may suspend or restrict access to all, or some parts of the Eyeonic Platform and the Services. You are responsible for making all arrangements necessary for you to access and use the Eyeonic Platform and the Services.
- 4.5 You must not:
- (a) introduce, access, store, distribute or transmit any viruses, worm, trojan or other malicious code into the Eyeonic Platform;
 - (b) violate any Eyeonic IP or any third party's Intellectual Property;
 - (c) copy, modify, duplicate, create derivative works from, frame, mirror, republish, transmit or distribute all or any portion of the Eyeonic Platform, or any other third party software that you may access or use through the Eyeonic Platform, in any way;
 - (d) access all or any part of the Eyeonic Platform and/or the Services in order to build a product, service or code which competes or reproduces the Eyeonic Platform and/or the Services (in full or part);
 - (e) modify, alter, adapt, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Eyeonic Platform in any way, or otherwise learn the source code or algorithms underlying the Eyeonic Platform;

- (f) license, sell, rent, lease, sub-let, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, encumber or otherwise make the Eyeonic Platform and the Services available to any third party who is not your User;
- (g) use the Eyeonic Platform or the Services for any unlawful purpose or other purpose not authorised by Eyeonic in writing; and
- (h) engage in any activity or conduct that is in breach of any Relevant Laws.

5. CLINICIAN DATA AND USER DATA

- 5.1 You acknowledge that the accuracy, quality, validity and completeness of the User Data (including the Users Eye Vision Results) created or generated by the Eyeonic Platform and Services is dependent on the User using the Eyeonic Platform and the Services strictly in accordance with Eyeonic's eye vision testing instructions.
- 5.2 We assume no responsibility for any Eye Vision Results obtained from, or outcomes arising from, your and your Users' access to, and use of, the Eyeonic Platform and Services (including any decision, act, or failure to act by you or your Users based on any results obtained from your and Users' access to, and use of, the Eyeonic Platform and Services). To the maximum extent permitted by Relevant Laws, we do not warrant that the User Data generated or created by the User using the Eyeonic Platform and/or Services (including any Eye Vision Results obtained by you from or through the Eyeonic Platform or the Services) are accurate, complete, valid, reliable, current or error-free or of a minimum quality or standard.
- 5.3 We disclaim all liability and responsibility arising from any reliance placed on such User Data, and any Eye Vision Results provided therefrom, by any user of the Eyeonic Platform (including Users) or third party. We make no representations or warranties that use of the User Data will not infringe any third party's Intellectual Property.
- 5.4 You agree to make your own enquiries and rely on your own professional judgement to verify the User Data, information, content or other data generated, created, displayed or published on, or via, the Eyeonic Platform, and to assess the accuracy, validity, completeness, reliability and currency of the User Data. If you choose to rely upon and use the User Data (including the results generated from the Eye Vision Tests), you do so at your own risk.

6. SUBSCRIPTION FEES

- 6.1 Except for during the Trial Period, to access and use the Eyeonic Platform and the Services, you must pay us the Subscription Fees and other amounts owing to us under this agreement during the Subscription Term. The Subscription Fees are payable in advance (on a monthly basis) as specified on the Eyeonic Platform.

- 6.2 During the Trial Period, you will not be required to pay the Subscription Fees to access and use the Eyeonic Platform and the Services.
- 6.3 The Subscription Fees will vary depending on the Subscription Plan you agree to purchase as part of your subscription to access and use the Eyeonic Platform and the Services. Unused Tokens do not accrue over time and the Token Balance provided as part of your Subscription Plan each month will expire at the end of the billing cycle. Token Balance will reset at the beginning of the next billing cycle during the Subscription Term. If your Token Balance is exhausted during any given month, you will need to upgrade your Subscription Plan in order to access additional Tokens.
- 6.4 You may upgrade your Subscription Plan any time during the Subscription Term by paying the additional Subscription Fees as displayed on the Eyeonic Platform. To upgrade or downgrade your Subscription Plan you must access your Clinician Profile to select a new Subscription Plan.
- 6.5 When you pay the Subscription Fees, you will be provided with a number of Tokens which can be Redeemed by your Users for Eye Vision Tests. The number of Tokens you receive each month will depend on the Subscription Plan purchased by you.
- 6.6 All amounts payable under this agreement are in the currency displayed on the Eyeonic Platform and are exclusive of Taxes, which are payable in addition. The Clinician is responsible for exchange rate fluctuations and Eyeonic reserves the right, in our absolute discretion, to alter the Subscription Fees to offset exchange rate fluctuations.
- 6.7 To the maximum extent permitted by Relevant Laws and unless otherwise stipulated in this agreement, the Subscription Fees are non-refundable.
- 6.8 When setting up your Clinician Profile, you will be offered payment options to pay the Subscription Fees. We use a Third Party Payment Processor to process payments made to us. When making payment to Eyeonic of the Subscription Fees, you agree to provide Eyeonic with accurate and complete billing information, and you authorise us to share your billing information with our Third Party Payment Processor for the purpose of processing your payment. We recommend that you refer to the Third Party Payment Processor terms and conditions and privacy policy prior to using a Third Party Payment Processor to pay the Subscription Fees to us. You use the Third Party Payment Processors at your own risk.
- 6.9 We may, at our absolute discretion and without notice to you, change the payment methods that can be used to access and use the Eyeonic Platform and the Services at any time.
- 6.10 We may increase the Subscription Fees for each Subscription Plan or charge you additional fees to access premium or new functions or features of the Eyeonic Platform at any time upon 30 days' written notice to you. If you do not agree to these fee increases, you may

terminate this agreement by written notice to the us no later than 14 days after the date you received written notice of the fee increases.

7. TOKENS AND REDEMPTION

7.1 To undertake an Eye Vision Test through the Eyeonic Platform, your Users must Redeem one Token for each eye. Tokens Redeemed will be deducted from your Token Balance (if you issue Tokens to a User through the Eyeonic Platform as the User's primary clinician) or your User's Token Balance (if your User purchased the Tokens themselves on, or via, the Eyeonic Platform) (as the case may be).

7.2 As the User's primary clinician, you may schedule Eye Vision Tests through the Eyeonic Platform for your User to undertake on a regular basis. When your User is scheduled to take the Eye Vision Test through the Eyeonic Platform, your User will receive:

(a) two Tokens which can be Redeemed in return for Eye Vision Tests through the Eyeonic Platform; and

(b) reminder emails of the upcoming or overdue date for the User's Eye Vision Test.

8. INTELLECTUAL PROPERTY

8.1 You acknowledge that we, or our licensors, are the owners of the Eyeonic Platform (or any Intellectual Property contained therein) including any information, Content, Eye Vision Tests or technology that may be provided to, or accessed by, you in connection with your use of the Eyeonic Platform and the Services (including any modifications, enhancements of the foregoing) (collectively, **Eyeonic IP**). Accessing and using the Eyeonic Platform and the Services does not give you (or anyone else) ownership of, or any right, title or interest in Eyeonic IP.

8.2 Ownership of any Clinician Data or User Data (as the context permits) will vest in the creator of that Clinician Data or User Data (as the context permits), but excluding Eyeonic IP.

8.3 You grant us a worldwide, non-exclusive, royalty-free, perpetual and transferable licence to use, disclose, reproduce, store, distribute, publish, export, adapt, edit, delete, translate, produce derivative works from or copy Clinician Data and User Data (to extent of your ability to pass on such rights to us) (and all Intellectual Property contained therein) for the purpose of:

(a) enabling us to provide you with access to, and use of the Eyeonic Platform and the Services and otherwise perform our obligations and exercise our rights under this agreement;

(b) informing you of products, services or events that we may offer from time to time or in relation to Third Party Products;

- (c) identifying usage patterns, trends, and other statistical or behavioural data derived from use of the Eyeonic Platform, in aggregated anonymized form, for the purposes of providing, operating, maintaining, or improving the Eyeonic Platform and the Services, and for marketing purposes as further described in our Privacy Policy; and
- (d) sharing Clinician Data and User Data with an Affiliate or other third party (with whom we may contract or be affiliated with from time to time) for the purposes of performing or improving the Eyeonic Platform and the Services.

9. OUR OBLIGATIONS

9.1 Subject to your compliance with the terms of this agreement, we will use reasonable endeavours to provide you with access to and use of the Eyeonic Platform and the Services for the Subscription Term.

9.2 The undertaking in clause 9.1 shall not apply in the event of:

- (a) any non-conformance which is caused, or contributed, by use of the Services and the Eyeonic Platform contrary to our instructions or the terms of this agreement;
- (b) modification or alteration of the Services and the Eyeonic Platform by any party other than us or our duly authorised Personnel;
- (c) the unsuitability or malfunction of the computer hardware or computer software used by you in conjunction with which the Eyeonic Platform and the Services are used;
- (d) Force Majeure Events; and
- (e) the unsuitability or malfunction of the Services when used in conjunction with any software, platforms, applications and tools supplied by a third party provider.

9.3 In the event that we fail to provide you with access and use of the Eyeonic Platform and the Services in accordance with clause 9.1, we will use reasonable endeavours to correct any such non-conformance, or provide you with an alternative means of accomplishing the desired performance. The foregoing constitutes your sole and exclusive remedy for any breach of clause 9.1.

10. NO WARRANTIES

10.1 You acknowledge that Eyeonic are not medical or healthcare professionals and we are not providing you or your Users with medical or other health care services. While the User Data (including Eye Vision Results) generated or created through the Eyeonic Platform are designed to provide helpful insights and information in relation to a User's peripheral or binocular vision, it is not a substitute for professional medical advice, diagnosis and treatment.

10.2 You acknowledge that any of the Services provided on, or via, the Eyeonic Platform does not constitute professional medical or healthcare advice or medical services of any kind. The

information and data contained in the User Data (including Eye Vision Results) are not intended to diagnose, cure, mitigate, treat or prevent visual or other health injuries or illnesses and it is not intended to provide a determination or assessment as to a User's peripheral or binocular vision or your general eye health. The Clinician must rely on their own professional judgement when interpreting the Eye Vision Results and when recommending treatment options to your Users. We have no involvement in the diagnosis and treatment of your Users. Reliance on, and use of, the User Data is at your own risk.

10.3 To the maximum extent permitted by Relevant Laws, we exclude all express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), in connection with the Eyeonic Platform and the Services.

10.4 Nothing contained in this agreement excludes, restricts or modifies the application of any condition, warranty or other obligation, the exercise of any right or remedy, or the imposition of any liability under the *Competition and Consumer Act 2010 (Cth)* or any other international, national, State or Territory legislation where to do so is unlawful.

10.5 You acknowledge, and agree that to the maximum extent permitted by Relevant Laws, we make no representation, warranty or guarantee in relation to the availability, continuity, reliability, accuracy, currency, validity or security of the Eyeonic Platform and the Services (or any Clinician Data, User Data, Eye Vision Tests or Eye Vision Results generated through the Eyeonic Platform or the Services) and we will not be liable if the Eyeonic Platform or the Services, or becomes unavailable for any reason, including directly, or indirectly as a result of:

- (a) telecommunications unavailability, interruption, delay, bottleneck, failure or fault;
- (b) negligent, malicious, willful acts or omissions of third parties (including third party service providers) or other users;
- (c) maintenance or repairs carried out by us or any third party service provider in respect of any of the systems used in connection with the provision of the Services or the Eyeonic Platform;
- (d) services provided by third parties (including internet service providers) ceasing or becoming unavailable; or
- (e) a Force Majeure Event.

10.6 You acknowledge that, to the maximum extent permitted by Relevant Laws, we do not make any warranty or representation that:

- (a) your access to, and use of, the Eyeonic Platform and the Services will be uninterrupted, virus-free or error-free; and/or
- (b) the Eyeonic Platform and the Services (or any Clinician Data, User Data, Eye Vision Tests or Eye Vision Results generated through the Eyeonic Platform or the Services), will

be accurate, complete, reliable, current or is suitable for any particular purpose or use under any specific conditions, and so is provided on an “as is” basis.

10.7 You acknowledge that your access to, and use of, the Eyeonic Platform and use may be interrupted or unavailable during scheduled or unscheduled maintenance.

11. LIMITATION OF LIABILITY

11.1 To the maximum extent permitted by Relevant Laws, we will not be liable to you, your User or any third party for:

- (a) any Claims or Losses (including Consequential Loss); or
- (b) loss of, or damage to, any property or any personal injury, illness or death to you or any third person,

arising out of, relating or connected to, the provision or use of the Eyeonic Platform and the Services (or any Clinician Data, User Data, Eye Vision Tests or Eye Vision Results generated through the Eyeonic Platform or the Services) and this agreement, regardless of the cause of action on which they are based, even if advised of the possibility of such damage occurring.

11.2 All risk in using the Eyeonic Platform and the Services passes to you upon creating a Clinician Profile, or otherwise using the Eyeonic Platform and the Services (whichever is earlier). We assume no responsibility and we have no liability to you or anyone else for any User Data, Eye Vision Results or any other information, findings, recommendations or results obtained from, or outcomes arising from your access to, and use of, the Eyeonic Platform and the Services (including, but not limited to, any reliance on such Vision Tests by you, the User, other clinicians or any road authority who is responsible for granting a driver's licence to the User).

11.3 To the maximum extent permitted by Relevant Laws, under no circumstances will our aggregate liability to you or anyone else, whether based upon warranty, contract, statute, tort (including negligence) or otherwise, exceed the Subscription Fees paid by you to us under this agreement in the 1 month immediately preceding the date on which the Claim giving rise to such liability arose.

11.4 You agree to defend, indemnify and hold Eyeonic, our Affiliates and our Personnel (collectively, the **Indemnified**) harmless from and against any and all Claims or Losses, that may be brought against the Indemnified or which the Indemnified may pay, sustain or incur as a direct or indirect result of or arising out of:

- (a) your access to, and use of, or reliance on the Eyeonic Platform or the Services (including the User Clinician, Eye Vision Tests and Eye Vision Results);
- (b) the use by you, your User or any third party of the Eyeonic Platform or the Services;

- (c) any breach of our or any third party's Intellectual Property or other rights caused by you or your Personnel; or
- (d) any breach by you or your Personnel of this agreement.

12. THIRD PARTY PRODUCTS

- 12.1 You acknowledge that we may use Third Party Providers to enable us to provide you with access to, and use of, the Eyeonic Platform, and that your use of and reliance on it, is solely at your own risk.
- 12.2 We do not endorse, sponsor or approve any Third Party Products or Third Party Providers made available on or via the Eyeonic Platform. It is your sole responsibility to determine that specific products or services used by you which may be offered through the Eyeonic Platform, meet your personal or medical needs and/or are suitable for the purposes for which they are used.
- 12.3 Any rights you may have to access Third Party Products or Third Party Providers shall be limited to:
- (a) the extent of our ability to pass on such rights to you; or
 - (b) the relevant Third Party Provider's terms.

13. PRIVACY

All Personal Information you provide to open a Clinician Profile, any User Data and/or Clinician Data you or your Users' upload, generate, share, or publish on, or via, the Eyeonic Platform, is subject to our Privacy Policy, which is incorporated into this agreement. You warrant that, in relation to any Personal Information comprising Clinician Data, User Data or any other information disclosed to us on, or via, the Eyeonic Platform:

- (a) it has been collected in accordance with Privacy Laws;
- (b) you have the authority to upload, post, publish or otherwise transmit such information on, or via, the Eyeonic Platform; and
- (c) you have obtained the informed consent of the individuals who are the subject of such Personal Information in order for us to use, disclose, store, transfer, process or handle it.

14. SUBSCRIPTION TERM AND TERMINATION

- 14.1 This agreement will commence on the date you create a Clinician Profile and unless otherwise terminated in accordance with its terms, shall continue for the Trial Period, and thereafter (in the event that you elect to continue to use and access the Eyeonic Platform and Services), shall continue until terminated in accordance with clause 14 (**Subscription Term**).

- 14.2 During the Subscription Term you may terminate this agreement at any time by selecting the 'cancel subscription' function in your Clinician Profile, in which case, the agreement will automatically terminate at the end of the current billing cycle. If you terminate the agreement in accordance with clause 14.2, you will not be entitled to a pro rata refund of the Subscription Fees for the unused portion of the Subscription Term.
- 14.3 Eyeonic may terminate this agreement any time (without liability to you except we will provide you with a pro rata refund of the Subscription Fees for the unused portion of the Subscription Term) by giving you 14 days' written notice.
- 14.4 Either party may terminate this agreement by giving notice with immediate effect if the other party:
- (a) commits a breach of any of its material obligations under this agreement, and if the breach is capable of remedy, does not remedy that breach within 14 days after receipt of notice of the breach or any further time allowed by the party; or
 - (b) suffers an Insolvency Event.
- 14.5 You agree that Eyeonic may, at any time and at our sole discretion, with or without cause or any notice to you, terminate, suspend or block your access to (either temporarily or permanently):
- (a) your Clinician Profile and/or the Clinician Access Portal; and/or
 - (b) the Eyeonic Platform and/or Services.
- 14.6 Cause for such suspension or termination under clause 14.5 may include, but are not be limited to:
- (a) any serious or repeated breaches or violations of this agreement, our policies and guidelines (including our Privacy Policy) and any other agreements entered into between the parties;
 - (b) serious or repeated breaches or violations of our or another person's Intellectual Property or privacy rights;
 - (c) your failure to pay the Subscription Fees;
 - (d) you cease to hold and maintain all accreditation and registrations required to perform the medical services, including registration with the medical board or relevant healthcare authority in the jurisdiction in which you provide medical services (or you are suspended by any of the foregoing authorities and bodies);
 - (e) you cease to be legally entitled to perform the medical services in the jurisdiction in which your business operates;
 - (f) you fail a probity check;

(g) your activities, conduct or transactions on, or, via, the Eyeonic Platform, which brings, or has the capacity to bring, us into disrepute; or

(h) requests by law enforcement or other government agencies.

14.7 In the event this agreement is terminated in accordance with clause 14.6, you will not be entitled to a refund of the Subscription Fees.

14.8 You agree that all such suspensions or terminations shall be made at our sole discretion and that we shall not be liable to you or any third party for any such suspension or termination.

15. EFFECT OF TERMINATION

15.1 On termination of this agreement for any reason:

(a) Eyeonic will disable your Clinician Profile, and your Clinician Data and the User Data will no longer be accessible by you or your Users through the Eyeonic Platform. All information that is no longer needed will be securely destroyed or de-identified; however, in accordance with our obligations under Privacy Laws, Eyeonic will retain:

- (i) the registration information and Personal Information used to create your Clinician Profile; and
- (ii) the User's registration and Personal Information (including health information and Eye Vision Test Results),

in accordance with the documentation retention and destruction laws in the jurisdiction in which you operate your business; and

(b) all licences to use the Services and rights of access to the Eyeonic Platform granted under this agreement will terminate at the end of the then current billing cycle.

16. FORCE MAJEURE

Eyeonic shall not be responsible to you (or anyone else) if we are prevented from or delayed in performing our obligations, by acts, events, omissions or accidents beyond our reasonable control, including but not limited to, acts of God, governmental actions, shipping, postal or other relevant transport strike, failure or accident, lockouts or other labour difficulty, war or national emergency, acts of terrorism, fire, explosion, flood, an act or omission of a third party, epidemic, pandemic, mandatory government shutdown or lockdown, shortage of or inability to obtain any necessary materials, equipment, facilities or services, the failure of performance provided by others, hacker attacks, denial of service attacks, internet interruption or virus, accidents or breakdown of plant, machinery, software, hardware or communication network, or default of hosting or data centre providers (**Force Majeure Event**).

17. DISPUTE RESOLUTION

- 17.1 Any party claiming a dispute exists under the agreement must notify the other party in writing of the nature of the dispute (**Dispute Notice**), except where urgent interlocutory relief is being sought.
- 17.2 The parties must in good faith attempt to resolve any dispute between them.
- 17.3 If the dispute cannot be resolved within 30 days of receipt of a Dispute Notice, either party may commence legal proceedings in relation to the dispute.
- 17.4 Each party must continue to perform its obligations under this agreement notwithstanding the existence of any unresolved dispute (except Eyeonic is not obligated to provide you with access to, and use of, the Eyeonic Platform and Services in the event the dispute relates to the non-payment of the Subscription Fees).

18. UPDATES AND VARIATIONS

- 18.1 Without notice to you, we may, at our absolute discretion, from time to time:
- (a) change, add or delete the functions, features, performance, or other characteristics of the Eyeonic Platform; or
 - (b) apply or install updates to, or new versions of, the Eyeonic Platform.
- 18.2 You acknowledge that the Content and Eye Vision Tests on the Eyeonic Platform are subject to change at any time and may be out of date at any given time. We are under no obligation to:
- (a) provide support services, update, correct or fix any Content or the Eyeonic Platform to you; or
 - (b) notify you of any changes to the Content or the Eyeonic Platform unless required by a Relevant Law to do so.
- 18.3 Some of the provisions contained in this agreement may also be superseded by provisions or notices published elsewhere on the Eyeonic Platform. Any changes are effective immediately upon posting to the Eyeonic Platform. Your continued use of the Eyeonic Platform thereafter constitutes your acceptance of all such changes to the agreement.
- 18.4 Please read this agreement before using the Eyeonic Platform as the agreement may have changed since the last time you accessed and used the Eyeonic Platform. If you do not agree to any change, then you must immediately stop using the Eyeonic Platform and the Services.

19. SEVERABILITY

If any provision in this agreement is found to be invalid or unenforceable by a court of law, such invalidity or unenforceability will not affect the remainder of this agreement which will continue in full force and effect.

20. RELATIONSHIP

No agency, principal-agent, partnership, joint venture, employee-employer or franchisor-franchisee relationship is intended or created between you and us by this agreement.

21. ENTIRE AGREEMENT

This agreement and any other documents referred to in it, represent the entire agreement between us and you in relation to the subject matter and supersedes any previous arrangements, agreements, representations, understandings or statements (whether verbal, in writing, or in some other format).

22. JURISDICTION AND APPLICABLE LAW

The laws of the State of Victoria, Australia govern this agreement. The Clinician agrees to submit to the exclusive jurisdiction of the Courts of Victoria, Australia.

23. DEFINITIONS

In this agreement, the following words shall have the following meanings:

- (a) **Affiliate** means in relation to any party, a person which, directly or indirectly, (i) is Controlled by that party; or (ii) Controls that party; or (iii) is Controlled by a person referred to in (ii) above, and for this purpose **Control** means the power of a person to secure (whether by the holding of shares, possession of voting rights or by virtue of any powers conferred by articles of association, constitution, partnership agreement or other document regulating such person) that the affairs of another are conducted in accordance with its wishes.
- (b) **Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature whether present or future, fixed or unascertained, actual or contingent, at law, in equity, under statute or otherwise.
- (c) **Clinician, you** or **your** has the meaning in clause 1.3, and where the context permits, includes your Personnel and Affiliates.
- (d) **Clinician Access Portal** means the portal provided to the Clinician to access and use the Eyeonic Platform and the Services.

- (e) **Clinician Data** means all data, information (including Personal Information), meta-data and materials uploaded to and stored on the Eyeonic Platform by the Clinician (including information contained in the Clinician Profile) but excluding User Data and Eyeonic IP.
- (f) **Clinician Name** means the unique name chosen by the Clinician when the Clinician creates a Clinician Profile.
- (g) **Clinician Profile** has the meaning in clause 2.1.
- (h) **Content** means all the information, text, materials, graphics, logos, button icons, images, video and audio clips, trade marks (whether registered or not), advertisements, layout, arrangement, graphical user interface, look and feel, databases, functionality and control features of the Eyeonic Platform.
- (i) **Consequential Loss** means the following, however arising and even if it is reasonably contemplated by the parties on the date you created a Clinician Profile as a likely result of breach of the agreement:
 - (i) direct, indirect, consequential, incidental, special, remote or unforeseeable loss, damage, cost or expense;
 - (ii) loss of revenue, profit, income, bargain, opportunity (including marketing or advertising opportunity), use, production, customers, business, contract, goodwill, or anticipated savings, loss caused by business interruption, or the cost of obtaining new financing or maintaining existing financing, loss of or corruption to data, loss of use of data;
 - (iii) costs or expenses incurred to prevent or reduce loss or damage which otherwise may be incurred or suffered by a third party; or
 - (iv) loss or damage of the nature set out above in clauses (i) to (iii) (inclusive) that is incurred or suffered by or to a third party.
- (j) **Eyeonic, we, our or us** has the meaning in clause 1.1, and where the context permits, includes our Personnel and Affiliates.
- (k) **Eyeonic IP** has the meaning given to it by clause 6.1.
- (l) **Eyeonic Platform** means the software platform made available through the Website, and used by us to provide the Services to the Clinician and your Users, including the application and database software for the Services, the system and server software used to provide the Services, the computer hardware on which that application, database, system and server software is installed, and all Intellectual Property contained therein, provided or otherwise made available by us on, or via, the Eyeonic Platform.
- (m) **Eye Vision Results** means the findings or results of an Eye Vision Test performed through the Eyeonic Platform.
- (n) **Eye Vision Test** means the self-administered diagnostic test made available to Clinician and Users through the Eyeonic Platform for the purpose of assessing either:
 - (i) a User's peripheral vision sensitivity; and/or
 - (ii) testing whether there are any defects in the User's binocular vision.
- (o) **Force Majeure Event** has the meaning in clause 16.

- (p) **Insolvency Event** means a liquidation or winding up, the appointment of a controller, administrator, receiver, manager or similar insolvency administrator to a party or any substantial part of its assets or any event that has a substantially similar effect to the above events.
- (q) **Intellectual Property** means designs, copyright, trade marks, patents, operations, software or systems, trade names and domain names, rights in goodwill, rights in confidential information or other intellectual property rights, whether under statute, common law, equity, and whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights and all similar rights which subsist or will subsist now or in future in any part of the world.
- (r) **Loss** means loss, damage, liability, charge, expense, outgoing, payment or cost of any nature or kind, including all legal and other professional costs including Consequential Loss.
- (s) **Password** has the meaning given to it by clause 2.1.
- (t) **Personnel** means any person acting for or on behalf of a Clinician and includes any director, officer, or employee or contractor, of the party.
- (u) **Personal Information** means data by which a person may be personally identified, including a person's name, postal address, email address, telephone number and any other information a party collects, including that which is defined as personal or personally identifiable information under any applicable Privacy Laws.
- (v) **Privacy Laws** means any applicable laws and codes of practice dealing with privacy, including the *Privacy Act 1988 (Cth)* (as amended), the Australian Privacy Principles and *Health Records Act 2001 (Vic)*, the *General Data Protection Regulation (EU 2016/679)* and any other legislation, codes and policies relating to the handling of Personal Information applicable to the jurisdiction in which the Clinician is located.
- (w) **Privacy Policy** means our privacy policy available on the Website or such other web address notified by us to you from time to time, which is incorporated into this agreement.
- (x) **Redeem** means to the reduce the Token Balance by using the Eyeonic Platform to purchase Eye Vision Tests and **Redeemed** has the corresponding meaning.
- (y) **Relevant Laws** means any relevant rules of common law, principles of equity, international, federal, state and local laws, statutes, rules, regulations, proclamations, ordinances and by-laws and other subordinate legislation, rulings, or legal requirements and Privacy laws, anywhere in the world.
- (z) **Services** mean:
- (i) the provision of Eye Vision Tests made available through the Eyeonic Platform; and/or
 - (ii) Support Services (where applicable).

- (aa) **Subscription Fees** means the fees payable by the Clinician to access and Use the Eyeonic Platform and Services during the Subscription Term as further described on the Eyeonic Platform.
- (bb) **Subscription Plan** means the specific Token Balance you purchase monthly during the Subscription Term as part of your subscription to access and use the Eyeonic Platform and Services.
- (cc) **Subscription Term** has the meaning in clause 14.1.
- (dd) **Taxes** means any local taxes of any kind, including duties, levies, tariffs, charges, contribution, imposts or any similar charges (including without limitation, sales taxes, goods and services taxes, use taxes and value added taxes), whether in force now or in the future and whether imposed by a local, municipal, governmental, state, federal or other body or authority in any of the countries to which this agreement applies.
- (ee) **Third Party Products** means software, products, services or content (including all Intellectual Property contained therein) that: (i) are provided by third parties; (ii) interoperate with the Services and/or the Eyeonic Platform; and/or (iii) may be identified as third party products.
- (ff) **Third Party Providers** means a supplier of Third Party Products.
- (gg) **Third Party Payment Processor** means Stripe and any other a third party payment processor permitted by Eyeonic from time to time.
- (hh) **Token** means the credit amount recorded on the Eyeonic Platform which can be Redeemed in exchange for Eye Vision Tests.
- (ii) **Token Balance** means the number of Tokens recorded on the Eyeonic Platform at any time as owned by a Clinician or User (as the context permits), which cannot be a negative value.
- (jj) **Trial Period** means 30 consecutive days from the date you register and setup your Clinician Profile.
- (kk) **User** means an individual who:
- (i) is a patient of the Clinician for the purposes of medical treatment; and
 - (ii) accesses and uses the Eyeonic Platform and Services.
- (ll) **User Data** means all data, information (including Personal Information), meta-data, materials and health records:
- (i) uploaded to or stored on the Eyeonic Platform by the Clinician and/or a User;
 - (ii) transmitted by or through the Eyeonic Platform at the instigation of the Clinician and/or User;
 - (iii) supplied by a Clinician or a User for uploading to, transmission by, or storage on, the Eyeonic Platform; or
 - (iv) generated by the Eyeonic Platform as a result of the use of the Services by the Clinician and/or User (including, but not limited to Eye Vision Results), but excluding Clinician Data and Eyeonic IP.

(mm) **Website** means the website located at <https://eyeonic.com> and any other website notified by us from time to time