

## **HESKA® Australia Pty Ltd Master Warranty and General Terms and Conditions of Sale or Use ("MWTC")**

### **General Terms & Conditions.**

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All Products and Services (as such terms are defined below) furnished by Heska Australia Pty Ltd its subsidiaries and affiliates ("Heska") are delivered pursuant to these Master Warranty and General Terms and Conditions of Sale or Use ("MWTC") and the terms set forth in any agreement between Heska and the customer specified therein ("Customer") including, but not limited to, Heska's use agreement, rental agreement, or purchase agreement, if any, signed by the Customer and accepted by Heska ("Agreement").

Heska and Customer may be referred to collectively herein as the "Parties." No other terms or conditions in any Customer documentation that conflicts with or adds to the Agreement or these MWTC shall be binding on Heska. Customer's placement of an Order for Products or Services constitutes an offer to Heska by the Customer on the terms of the Agreement and these MWTC ("Order"), except that radiographic and ultrasound imaging Equipment Purchase Orders containing Master Warranty Support Terms and Conditions ("MWSTC") shall take precedence in the event of conflict with these MWTC.

Heska reserves the right to conduct credit checks and accept or decline any Orders or Agreements, in its sole discretion. In any Agreement between Heska and Customer, the term or period of time for such Agreement, Customer's promise to use Heska Products and/or Services during such term, and the quantity of Products committed to, if any, is not subject to cancellation, offset, further negotiation, or suspension by the Customer, except as expressly provided in such written Agreement.

Customer acknowledges and agrees that different or additional terms in Customer's Purchase Orders or any other Customer document shall be considered material alterations of the Agreement or these MWTC and are expressly rejected and shall not be effective without the written approval of an authorised Heska officer.

Hardware, such as chemistry, blood gas, haematology, urine, fecal, microscopic devices, radiographic, ultrasound, rapid test readers, other clinical hardware analysers or instruments, and infusion pumps shall be referred to as "Equipment". The tests, reagents, tips, cups, calibration consumables, control consumables, start-up consumables, slides, panels, cards, and other such consumable items that are used in the normal operation of Equipment and dietary supplements, pharmaceuticals, vaccines, diagnostic tests and related parts, shall be referred to as "Supplies".

Any software provided by Heska is licensed to Customer on a non-exclusive basis and may only be installed and used for the intended purpose with and only with Equipment with which it was delivered ("Software"). Software is not assignable. Any Software provided shall also be subject to the MWTC and any software license provided with the Software or Equipment.

Without waiving any other rights, Heska may terminate a license to Software if Customer fails to comply with these MWTC or any software license.

"Products" include one of any stand-alone or combination of Equipment, Supplies, and Software. Product connected to any network or power source ("Connected Product") is a Product. Products, where applicable, carry a serial and/or lot control number and expiration date from which a manufacturing history of the Product can be derived.

Customer shall not supplement, modify, reverse engineer, decompile, disassemble or otherwise alter, use for competitive benchmark, make available for competitor evaluation, or expose to such activity, any Product. "Services" are any service provided by Heska, including but not limited to laboratory services, diagnostic services, testing services, pathological services, clinical services and consultation services.

"ACL" means the Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth) and its associated Regulations as amended.

## **Lab Equipment Terms and Conditions**

The following additional terms and conditions shall apply to Software, Equipment and related Supplies designed to quantitatively analyse and/or measure and/or visualize the components of blood or blood components, urine, fecal, or other biological samples (chemistry, haematology, electrolytes, blood gases, haemostasis, blood typing, immunochemistry and/or cellular) (collectively, "Lab Equipment").

### **1. Delivery, Inspection and Acceptance.**

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- 1.1 Lab Equipment delivery, and installation and delivery of Supplies, is included in the shipping and handling charges, defined below.
- 1.2 Customer agrees to receive Product when it is delivered and Customer shall inspect Product immediately upon receipt. Damage or inconsistencies with an Order shall be reported immediately to Heska in writing.
- 1.3 If Customer fails to notify Heska in writing of any such damage or inconsistency in the Product or Order, such Product and Order is deemed accepted by Customer.
- 1.4 Customer further agrees that its first clinical use of the Lab Equipment or other Product is an unconditional acknowledgement that the Lab Equipment and Product is in proper working order (subject to the statutory guarantees under the ACL and Limited Warranty as defined herein) and such acceptance is irrevocable.
- 1.5 ALL SALES ARE FINAL. UNLESS THE PRODUCT IS FAULTY OR DEFECTIVE, HESKA WILL NOT ACCEPT RETURNS OF PRODUCT FOR REFUND OR CREDIT (subject to statutory guarantees or Heska's Limited Warranty).
- 1.6 Heska shall not bear any liability or responsibility for any delay or for the non-delivery by the carrier. Should Customer have any questions concerning the temperature of Supplies upon receipt, Customer shall immediately notify Heska's Customer Service Center at 1300 HESKA AU.

### **2. Shortage, Damage or Loss in Shipment.**

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- 2.1 Customer must follow the Defective Product Procedures set forth herein for return requests for defective Product that is not the result of shipping damage. Except as otherwise provided herein and subject to its obligations pursuant to the ACL,
- 2.2 Heska will not be responsible for any damage to or loss of Product. Customer shall not open containers that are visibly damaged on arrival and shall immediately notify Heska and the carrier of the damage in writing.
- 2.3 Upon receipt and inspection of the Product by Customer, if the amount of Product is not the amount ordered or if the Product is damaged (not in transit), Customer shall immediately notify Heska at 1300 HESKA AU.
- 2.4 Any period or date for delivery of Product stated by Heska is an estimate only and not a contractual commitment. Heska will use its reasonable endeavours to meet any estimated dates for delivery of the Product but will not be liable for any loss or damage suffered by Customer or any third party for failure to meet any estimated date.
- 2.5 If it is shown by documentation that Heska shipped less than the ordered amount, Heska will ship the remaining balance of Product Ordered when available. Heska will replace any Product determined to be damaged at the time of shipping. Customer shall cooperate fully and at no charge to assist Heska in pursuing a claim of damaged Product against the carrier where Heska provided shipping.

### **3. Transportation, Title and Risk of Loss.**

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- 3.1 Unless specifically agreed in writing, signed by Heska on an agreement, otherwise, shipping and handling charges for outbound Orders are charged at a rate of (i) twenty-five dollars (\$25) per shipment for non-Equipment shipments (including refrigerated Supplies) and (ii) the applicable reasonable preparation and shipping charge for each article of Lab Equipment shipments, as agreed to in the Agreement in writing prior to shipment, between the Customer and Heska.
- 3.2 For Orders purchased through or shipped by authorised third parties, the third party's policy regarding transportation charges will apply and the Customer's recourse regarding transportation is solely through the distributor.
- 3.3 Actual costs of any special or expedited shipping and handling requested by the Customer will be invoiced to and paid by the Customer. C.O.D. Orders will be billed at list price plus an additional \$10.00 C.O.D. service fee. Where the standard shipping and handling charges are not applicable, the shipping terms for all sales are Ex Works (EXW), Incoterms 2010, Heska's designated location.
- 3.4 Title to Products (subject to Heska's rights as an unpaid seller) and risk of loss shall pass to Customer upon delivery to the carrier for shipment to Customer, unless shipped pursuant to a use or rental agreement or other agreement accepted by Heska that specifies that Heska shall hold title, in which case Heska shall maintain title. Heska reserves the right to make delivery of Products ordered by Customer in instalments, with each shipment being treated as a separate transaction hereunder.

### **4. Product Handling.**

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- 4.1 Customer must store, handle and use Products in strict compliance with the labelling, package insert instructions, user manuals, industry best practices, applicable laws and regulations, and any other instructions or guidelines Heska may publish or communicate now or in the future.
- 4.2 Customer is responsible for direction, supervision, training, certification, and qualification of Customer staff using Products. Products must be used only under environmental conditions normal and customary in a veterinary hospital, and by trained professionals under Customer's supervision that have knowledge and training to use them properly and safely. For Connected Product, no Limited Warranty shall apply for issues directly or indirectly originating outside of the Connected Product. Customer will not modify, add, or combine any hardware or software to a Product without the advanced express written permission and direct assistance and oversight of Heska.

### **5. Quotations and Pricing.**

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- 5.1 Prices are agreed to by the Parties when they are:

- (a) set forth in the Agreement,
- (b) signed by the Customer, and
- (c) accepted by Heska.

All prices, including but not limited to prices for Products, Services, shipping and returned checks are in Australian dollars and subject to change solely by Heska, unless otherwise agreed to in prior writing by Heska and the

Customer.

5.2 Where Heska proposes to increase its price, it must provide 30 days notice to the Customer; however the Customer may accept the change in price within this 30 day period, and continue under the Agreement.

5.3 Prices of any type do not include applicable Taxes and Fees (as defined below).

## **6. Orders.**

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6.1 Customer may submit Orders for Supplies via email, on-line, fax, or phone by referencing the Supplies part number, the applicable Price to be paid by Customer, as set forth and represented by Customer as in a valid, paid-up, in force Agreement, or List Price, as applicable, indicating the quantity, requested delivery date that is at least 10 business days in the future, and terms consistent with the Agreement.

6.2 Heska will verbally or in writing confirm with Customer Purchase Order details. Heska will ship and bill Customer for the Supplies in the quantity identified on the Purchase Order, according to the terms of the Agreement and these MWTC.

6.3 Heska will make commercially reasonable efforts to deliver to Customer ordered Supplies using industry standard methods, refrigeration, and carriers. Each shipment of Supplies will incur a shipping charge as provided herein.

6.4 Heska may make partial shipments of Supplies against a single Purchase Order, but Heska will not charge an extra shipping fee for additional shipments required to fulfill that Purchase Order.

## **7. Taxes/Fees.**

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7.1 Any sales tax, excise tax, use tax, GST, assessment, inspection or testing fee, transportation costs, shipping fees, customs, export compliance, insurance or any other tax, fee, or charge of any nature whatsoever imposed currently or in the future on Heska or by any federal, state, local or other governmental authority, upon or with respect to the sale, rental, possession, purchase, delivery, shipment, storage, processing, use, or consumption of any of the Products or Services covered by the Agreement and these MWTC, including taxes, fees or charges including those measured by the receipts from the sale of such Products or Services (individually or collectively, "Taxes and Fees") shall be paid by Customer.

7.2 Except as expressly provided to the contrary in the Agreement, in addition to the prices quoted or invoiced all Taxes and Fees shall be the Customer's responsibility. Customer agrees to pay, without delay, and to hold Heska harmless from all of the Taxes and Fees and any penalties for Customer's failure to timely pay Taxes and Fees. Customer hereby indemnifies on a net after-tax basis, against the loss of (including recapture), inability to claim, or disallowance or deferral of, as determined in good faith by Heska, any Lab Equipment ownership or lease or rental related income tax benefits anticipated by Heska at the effective date ("Tax Benefit"), if such Tax Benefit loss results from any of Customer's acts or omissions or any inaccuracy of Customer's statements or information. In the event Heska is required to pay any Taxes and Fees, the Customer shall upon demand immediately reimburse Heska for any such amount paid by Heska.

7.3 Where applicable, Customer must provide Heska with a current tax exemption certificate, a resale certificate and any other documentation required by the appropriate taxing authority.

## **8. Resale and Export; No Conflict.**

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8.1 Customer agrees that the purchase of the Products is solely for Customer's use and benefit for the normal and

ordinary use and intended purpose and Customer acknowledges and agrees that Customer shall not sell, rent, lease, loan, or export any Product to any other person including distributors.

- 8.2 Customer represents and warrants to Heska that its execution and delivery of the Agreement will not conflict with or result in a breach of, constitute a default, or require any notice under any contract or other arrangement to which Customer is a party or by which it is bound.

## **9. Terms of Payment.**

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- 9.1 Unless otherwise defined in the Agreement, the following terms of payment shall apply:

- (a) Heska will generate and mail or otherwise deliver to Customer an invoice upon shipment of each Order.
- (b) Payment is due from Customer thirty (30) days from the invoice date.
- (c) Payments shall be made by check, money order, credit card or electronic funds transfer in Australian dollars, provided however that under certain programs or agreements for use or rental, selection of non-EFT methods may incur an additional convenience fee to the Customer.

- 9.2 If a Customer's account becomes delinquent, Heska, at its sole option, will stop shipments until the account is brought current, charge Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983 (Vic)* plus 2% for the period from the due date until the date of payment in full and/or change any credit terms provided to Customer or require prepayment on Orders.

- 9.3 Non-payment of any invoice for over thirty (30) days constitutes Customer's breach of this Agreement, accelerates the amounts due by Customer pursuant to any Agreement, and relieves Heska of the responsibilities defined herein including for delivery.

- 9.4 The Customer indemnifies Heska against, and must pay Heska an amount equal to, any loss or liability suffered or incurred by Heska in connection with retaining a collection agency and/or attorney to collect overdue amounts, all collection costs, including all attorney's fees and court costs.

- 9.5 Once all amounts due have been brought current, Heska reserves the right, at its sole option, to make the account C.O.D. or require pre-payment on Orders for one full year from last collection payment received. Customer will pay all additional costs for C.O.D. shipment. Payments shall be remitted to the address shown on the statement or invoice, including Customer account number and/or invoice number to ensure appropriate application. A thirty-five dollar (\$35.00) fee will be charged for all returned checks.

- 9.6 Heska shall have no liability or other responsibility to Customer for any financing arrangements (including, but not limited to, loans or lease arrangements) made by Customer with third party lenders to purchase Products from Heska.

- 9.7 Please submit written billing disputes to: Heska Corporation, Attention: Accounts Receivable, at the address specified on the invoice. For questions about remitting payment or written billing disputes, Customer should contact Heska's Accounts Receivable department at 1300 HESKA AU.

## **10. Limited Warranty.**

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- 10.1 Heska warrants that, subject to the exclusions and limitations below, all Lab Equipment and Supplies supplied by it will conform to the manufacturer's general standards of quality of materials and workmanship under normal

use and service, and will be free from defects in materials and workmanship for the Term of the Agreement.

- 10.2 If a defect appears in Heska's supply, manufacture or assembly of the Lab Equipment and Supplies before the end of the Warranty Period and Heska finds the Lab Equipment or Supplies to be defective in materials or workmanship, Heska will, in its sole discretion, either:
- (a) replace or repair the Lab Equipment or Supplies or the defective part of the Lab Equipment or Supplies free of charge; or
  - (b) cause the Lab Equipment or Supplies or the defective part of the Lab Equipment or Supplies to be replaced or repaired by a qualified repairer free of charge (together referred to as "Warranty Work").
- 10.3 Heska reserves the right to replace defective parts of the Lab Equipment or Supplies with parts and components of similar quality, grade and composition where an identical part or component is not available.
- 10.4 Lab Equipment or Supplies presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the Lab Equipment or Supplies.
- 10.5 Customer will ensure all Products are used solely in accordance with reasonable care and caution, by properly qualified and licensed personnel who are supervised and trained by Customer. For Connected Product, Customer agrees to: (1) Provide and maintain a broadband connection to the Equipment, with open firewall and network access for Heska's remote access at all times requiring service or, failing which, (i) SERVICE AND SUPPORT SHALL BE DELAYED, LIMITED, OR PRECLUDED, AND (ii) CUSTOMER MAY INCUR ADDITIONAL COSTS, (2) provide all assistance reasonably requested by Heska to assist in gathering data from the Equipment, Software and other equipment, and use best efforts to provide accurate and complete data, information regarding service, and troubleshooting assistance, (3) Comply with the requirements of any implementation guidelines, security procedures, or other instructions provided by Heska, including having access to commercially available software and internet browsers, at Customer's expense, selected by Heska that are reasonably necessary for access to or use of Equipment or Software information, and (4) ensure the security of Connected Product by taking appropriate measures to prevent unauthorized access to Connected Product and interception of communications between Heska and the Connected Product, including isolating Connected Product from other networks, setting up firewalls, preventing introduction of malware and spyware, and other measures to ensure security of Products and Connected Product.

## **11. Defective Products Return and Warranty Claims Procedure.**

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- 11.1 Customer must inspect the Lab Equipment or Supplies immediately upon delivery. The Customer must inspect the Lab Equipment immediately after the Lab Equipment is commissioned.
- 11.2 Within fourteen days from the date of delivery of the Supplies or the commissioning of the Lab Equipment, the customer must give written notice to Heska of any defect claim or allegation that the Lab Equipment or Supplies is not in compliance with the terms of the agreement with Heska.
- 11.3 Any warranty claim must be accompanied by:
- (a) proof of contract; and
  - (b) full details of the alleged defect.
- 11.4 Customer must make the Lab Equipment or Supplies available to Heska or its authorised repair agent for inspection and testing. If such inspection and testing finds no defect in the Lab Equipment or Supplies, the

Customer must pay Heska's reasonable costs of service work and testing.

- 11.5 The Customer must, if requested by Heska, send any defective part/s, freight paid, to the location nominated by Heska.
- 11.6 Heska will return the refurbished or replaced part to the customer's location, freight forward.
- 11.7 Unless otherwise agreed, all Warranty Work will be carried out only during Heska's normal working hours, being 9.00am - 5.30pm, Monday to Friday excluding public holidays. All Warranty Work outside of metropolitan areas of capital cities are subject to the customer incurring reasonable travel and accommodation charges.
- 11.8 The warranty will not apply where:
- (a) the Lab Equipment or Supplies has been repaired, altered or modified by someone other than Heska or an authorised repair agent;
  - (b) the alleged defect in the Lab Equipment or Supplies is within acceptable industry variances;
  - (c) Heska cannot establish any fault in the Lab Equipment or Supplies after testing and inspection;
  - (d) The Lab Equipment was not installed, used, operated, maintained or serviced in accordance with Heska's instructions, recommendations or specifications;
  - (e) the Lab Equipment or Supplies were used for purposes other than stated in the quotation or used for purposes other than which the Lab Equipment or Supplies was designed;
  - (f) the defect in the Lab Equipment or Supplies occurred due to the Customer's request to customise the Lab Equipment or Supplies;
  - (g) the Lab Equipment or Supplies has been subject to abnormal conditions, including environment, temperature, water, fire, humidity, pressure, stress or similar, heat, dust, sand, hair, fur, fluids, moisture, chemicals, debris, power surge, power outage, malicious software, ransomware, or code of any type from any source not Heska; or
  - (h) the defect has arisen due to abuse, misuse, neglect or accident; or unauthorised parts or accessories have been used on or in relation to the Lab Equipment or Supplies.

Heska makes no express warranties or representations other than set out in this warranty.

- 11.9 The repair or replacement of the Lab Equipment or Supplies or part of the Lab Equipment or Supplies is the absolute limit of Heska's liability under this express warranty.
- 11.10 Where the Customer is a "consumer" as defined in the Australian Consumer Law, then Heska also provides the following information:

**Mandatory warranty statement:** Our Goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled to cancel your service contract with us and to a refund for the unused portion, or to compensation for its reduced value. You are also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the Goods and

to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

The benefits of this warranty are in addition to any rights and remedies imposed by Australian State and Federal legislation that cannot be excluded. Nothing in this warranty is to be interpreted as excluding, restricting or modifying any State or Federal legislation applicable to the supply of goods and services which cannot be excluded, restricted or modified.

#### CONTACT

Heska Australia Pty Ltd  
149 Rooks Road  
Vermont, VIC 3133  
Phone: 1300 HESKA AU

## **12. Limit of Liability.**

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- 12.1 Except as the MWTC specifically state, or as contained in any express warranty provided in relation to the Lab Equipment or Supplies, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Lab Equipment, Supplies or any contractual remedy for their failure.
- 12.2 If the Customer is a consumer nothing in the MWTC restricts, limits or modifies the Customer's rights or remedies against Heska for failure of a statutory guarantee under the ACL.
- 12.3 Except as where specifically agreed, the Customer acknowledges that Heska is not responsible for the installation, use or incorporation of the Lab Equipment and Supplies.
- 12.4 In the event that the Customer amends, manipulates, adapts or otherwise uses the Lab Equipment or Supplies in a manner that is contrary to the designed purpose as specified by Heska, the Customer:
- (a) immediately releases Heska from any liability howsoever arising in connection to the Lab Equipment; and
  - (b) to the extent permitted by law, is barred from bringing any claim against Heska in connection with the Lab Equipment.

Heska is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.

- 12.5 The Customer acknowledges that:
- (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by Heska in relation to the Lab Equipment or its selection, use, application or location; and
  - (b) it has not made known, either expressly or by implication, to Heska any purpose for which it requires the Lab Equipment and it has the sole responsibility of satisfying itself that the Lab Equipment is suitable for the Customer's use.



To the extent permitted by law, the Customer will indemnify Heska and keep it harmless from all costs, actions, claims, demands, loss or damage (including all legal costs) arising from or in connection with the Lab Equipment or as a result of its selection, use, application or location.

- 12.6 In circumstances where a consumer guarantee under the ACL applies to the supply of the Lab Equipment or Supplies, to the extent Heska is permitted to do so under the ACL, Heska limits its liability for any failure to comply with that consumer guarantee, to the resupply of the Lab Equipment or Supplies (or at its discretion the payment of the cost of the Lab Equipment or Supplies).
- 12.7 Nothing in the Terms is to be interpreted as excluding, restricting or modifying the application of any State or Federal legislation applicable to the lease of Lab Equipment which cannot be excluded, restricted or modified.
- 12.8 Customer represents that Customer: (i) has, as of the time of any use of any Product or Services, the necessary training, licenses, and regulatory approval (if any) necessary or prudent for safe and correct use of such Product(s) and, (ii) is solely and exclusively responsible for clinical, medical, diagnostic, and therapeutic decisions and courses of action or inaction and disclaims and holds Heska harmless from any claims arising from or in any way related to these decisions. Unless expressly obligated by another written Agreement signed by Heska, Heska shall not, but may in its sole discretion, accept, maintain, backup, or otherwise protect data arising from the use of any Product.

### **Imaging Equipment Terms and Conditions**

The following additional terms and conditions shall apply to the following Equipment and related Supplies and Software: Cuattro DR HD ("Imaging Equipment"). Terms defined elsewhere in the MWTC/MWSTC have the same meaning herein unless otherwise specified.

#### **1. Benefits Summary.**

- a. Contact. 1-800-709-4515 (24 hours per day / 7 days per week / 365 days per year) or [imaging support@heska.com](mailto:imaging support@heska.com).
- b. Co-Pilot™. Monday through Friday 8:00am to 6:00pm CST, excluding holidays, for in-depth, expert advice and Co-Pilot (with your on-screen acceptance) of your DR for support, optimization, technical advice, image critique, and tips by a trained Co-Pilot technician.
- c. SupportCloud™. 24/7 Call-center voice and remote diagnostics, recovery, Service available Monday through Friday 8:00am to 6:00pm CST by staffed USA Call Center (excluding holidays). Emergency and after-hours call-back (generally under 20 minutes) by USA specialist.
- d. 99% Uptime. Included.
- e. ViewCloud™ PACS. User Customized viewing on any device at [www.heska.com/login-heska-Heska.aspx](http://www.heska.com/login-heska-Heska.aspx) "Login".
- f. CloudBank™. Secure Cloud-Based DICOM storage and PACS by medical grade level centers.
- g. Updates/Fixes. Free.
- h. Software Upgrades. Free Software Feature Upgrades to PACS and Acquire. Does not include Hardware Updates.
- i. Advanced Loaner. Included.

#### **2. Definitions.**

Unless otherwise specified all references to dollars and \$ are references to Australian Dollars (AUD)

- a. "Call Center" means the telephone or remote software support center, with normal business hours (non-holidays) initial response target of 20 minutes.
- b. "Data" means Customer originated DICOM metadata, images, study information, patient information, and data directly related to them received by Heska.
- c. "Data Hosting" means when Customer sends Data to Heska designated data center(s) and Heska receives and accepts such Data for storage and access by Customer, as provided for and limited by the terms and conditions of this MWSTC and other agreement or Schedule that may provide for Data Hosting.

d. "Data Format" DICOM Store to Data Hosting in uncompressed format, .90, or .91 compression or in the case of alphanumeric data, in HL7.

e. "EUSLA" means the most recent End User Software License Agreement as measured from Software's last use, as available for download or review at [www.heska.com](http://www.heska.com) and as provided with each Software, and available by request by calling Call Center or by email to [imaging support@heska.com](mailto:imaging support@heska.com).

f. "Fix" means Software generally available release that includes repair(s), removal(s), or modification(s) to Software with regard to Level 1 issues.

g. "Level 1" means any issue with the Software or Imaging Equipment that renders Software or Imaging Equipment unfit or non-working, for its intended use in the most basic functions of capturing, rendering, displaying, and locally storing digital radiographic images on clinical patients.

h. "Level 2" means any issue with the Software or Imaging Equipment that results in Software or Imaging Equipment performance that is substantially outside of Heska's written specifications, but does not fall within the severity of Level 1.

i. "Level 3" means any issue with the Software or Imaging Equipment that is not Level 1 or Level 2, but has performance or "bugs" that are not defined in Heska's written specifications, including, but not limited to interoperability issues with third party supplied items.

j. "Personal Information" means information or an opinion (including information or an opinion forming part of a database), whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

k. "Privacy Act" means the *Privacy Act 1988* (Cth) and any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued there under, as amended from time to time.

l. "Privacy Laws" means:

1. the Privacy Act;
2. the Australian Privacy Principles (or APPs) contained in schedule 1 of the Privacy Act; and  
all other applicable laws, regulations, registered privacy codes, privacy policies and contractual terms in respect of the processing of Personal Information.

m. "Site" means the geographic location, or in the case of mobile use, the geographic region, where the Customer and Imaging Equipment is located for patient care.

n. "Study" means an instance of Data from a single patient, from a single DICOM Node, from a single Site, received by Heska for Data Hosting.

k. "Support" means the technical assistance for Software provided under these MWTC, as described in Section "Software Support in Warranty Term". Software is Supported and not warrantied. Warranty may include Support. Support does not include Warranty.

o. "Update" means Software generally available release that includes repair(s), removal(s), or modification(s) to Software with regard to Level 2/3 issues.

p. "Upgrade" means Software generally available release that includes new or incremental feature(s), function(s), improvement(s) repair(s), removal(s), or modification(s), major and/or minor, to Software, and may also include Update or Fix for Level 1, Level 2, and Level 3 issues.

q. "Warranty" means the Service(s) validly due under the in force Warranty Agreement pursuant to these MWTC. Warranty may include Support.

r. "Warranty Agreement" means the terms and conditions related to the warranty of the Imaging Equipment in Sections 2-5 of these MWTC.

s. "Warranty Term" means the term of a specified Warranty Agreement

t. "You/Your" means Customer, or end user customer who is or makes a claim for Service(s) under these MWTC.

**2. Terms for Warranty Agreement.** The Warranty Agreement term for Products rented to Customer shall be the term of the Agreement. For Products containing Software, during the Warranty Term, Heska shall Support the Software. No Warranty Agreement, Service, Support, or Software is transferrable, without the express written permission of Heska. Upon the end of Warranty Term, Warranty Agreement and all Services shall end.

- 3. Customer Responsibilities to Obtain Benefits.** To limit potential Software and Imaging Equipment downtime, Customer agrees, unless instructed otherwise in writing, by Heska, to:
- a. Provide and maintain a broadband connection to the Imaging Equipment, with open firewall and network access for Heska's remote access at all times requiring Service or, failing which, (i) SERVICE AND SUPPORT SHALL BE DELAYED, LIMITED, OR PRECLUDED, (ii) SYSTEM UPTIME AND UPTIME COMMITMENT MAY BE REDUCED WITHOUT LIABILITY TO HESKA; AND (iii) CUSTOMER MAY INCUR ADDITIONAL COSTS.
  - b. Provide all assistance reasonably requested by Heska to assist in gathering data from the Imaging Equipment, Software and other equipment, and use best efforts to provide accurate and complete data, information regarding Service, and troubleshooting assistance, subject to parts 16-23 of this Article 3 (Privacy).
  - c. Comply with the requirements of any implementation guidelines, security procedures, or other instructions provided by Heska, including having access to commercially available software and internet browsers, at Customer's expense, selected by Heska that are reasonably necessary for access to or use of Customer, Imaging Equipment, or Software information. Provide Heska with up-to-date email addresses for Product bulletins, Updates, and Fixes.
  - d. Ensure the security of networked Imaging Equipment and Customer supplied equipment, by taking appropriate measures to prevent unauthorized access to Imaging Equipment and interception of communications between Heska and the networked Imaging Equipment, including isolating networked Imaging Equipment from other networks, setting up firewalls, preventing introduction of malware and spyware, and other measures to ensure security of Imaging Equipment and Software.
  - e. Ensure the Imaging Equipment is used solely in accordance with reasonable care and caution, pursuant to operation manuals and the Agreement, by properly qualified and licensed personnel who are supervised and trained by Customer.
  - f. Provide a suitable environment for the Imaging Equipment. Maintain the temperature, cleanliness, debris-free nature and safety of that environment consistent with best care of the Imaging Equipment (including without limitation, protection from Site structural deficiency; power surge, fluctuation or failure; or dust, sand, hair, fluids, moisture, chemicals or other particles or debris).
  - g. Promptly notify Heska of the occurrence of a Warranty or Support event. Additional damage or Service(s) arising from delay in notifying Heska of a claim may result in refusal, delay, or additional costs invoiced to Customer for Service arising or as a consequence of such delay.
  - h. Promptly cease using any Imaging Equipment or Software which may cause, has been identified as likely to cause, or does cause danger to patients, users, or any person, data loss, or data confidentiality breach, and to immediately notify Heska of such occurrence or likelihood of occurrence.
  - i. Reasonably assist Heska with customer serviceable parts removal, packaging, shipment, tracking and re-install, under the direct guidance and assistance of Heska, using (and not deviating from) Heska prepared written instructions and/or verbal instructions.
  - j. In the case of return of Imaging Equipment for Service, to return the Imaging Equipment to Heska with a completed Return Material Authorization (RMA) describing the reason for return, date of removal, end user contact information, RMA # issued by Heska, and other pertinent information.
  - k. Take reasonable care and diligence in packaging. In all cases in which Customer ships any item to Heska, Customer is solely responsible for freight damage and all costs due to inadequate Customer packaging; if unsure whether an item is packaged properly, contact Heska prior to shipment.
  - l. Refrain from modifying, adding or combining any hardware or software to the Imaging Equipment or Software. If You want to connect any devices made by other companies to Imaging Equipment or Software, ask Heska for assistance. Connecting non-approved items may void the Warranty and Support.

m. Pay all sales, GST, use, ad valorem, excise, personal property or other tax or levy arising out of these MWTC, except income taxes.

#### PRIVACY

n. The Customer must process all Personal Information in connection with this Agreement in accordance with the Privacy Laws (regardless of whether or not the Customer is otherwise obliged to comply with the Privacy Laws) and only for the purposes of performing its obligations under this Agreement.

o. The Customer must comply with all reasonable requests or directions of Heska in connection with the obligations of the Customer under the Privacy Laws or in connection with policies developed by Heska from time to time for the purpose of complying with the Privacy Laws.

p. The Customer must not disclose Personal Information collected for the purposes of this Agreement without the prior authority of Heska unless the disclosure is required:

- i) for the purposes of performing its obligations under this Agreement; or
- ii) by law.

q. The Customer must immediately notify Heska where it becomes aware that a disclosure of Personal Information may be required by law.

r. The Customer must not transfer outside Australia Personal Information collected for the purposes of this Agreement, or allow parties outside Australia to have access to such Personal Information, without the prior consent of Heska.

s. The Customer must take all necessary steps to ensure that Personal Information collected for the purposes of this Agreement is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only personnel authorised by the Customer have access to the Personal Information.

t. The Customer must notify Heska immediately if it becomes aware of a breach of this clause

u. The Customer must take all necessary steps to ensure that Personal Information collected for the purposes of this Agreement is protected against loss and against unauthorised access, use, modification, disclosure or other misuse.

**4. Exclusions from Coverage and Coverage Limitations.** Services under the Agreement and any rental involving a trade-in of Customer property DO NOT include (i) the provision and maintenance of a broadband connection to the Products; (ii) the provision of security measures to protect Site network from unauthorized access or virus; (iii) support for remote connectivity solutions not installed by Heska; (iv) support, counseling, recommendation or instruction for the repair, replacement, removal, or disposal of accessories, power supply equipment or consumable items, including without limitation batteries, cassettes, computers, monitors, x-ray generators, tables, magnets, radiation sources, x-ray tubes, software, hard drives, bulbs, glassware, storage media, or any item that is not Imaging Equipment; (v) the provision, support, counseling recommendation, instruction, payment, or reimbursement of any rigging, removal or facility cost (or damage thereby caused), including monitor or computer mounting, cable installation, network cabling, and/or other activities related to information technology or moving or removal of pre-existing items; (vi) material and labor costs associated with existing facilities (wire, termination fields, network facilities, electrical infrastructure, equipment room, peripherals, adjuncts); or (vii) temporary installation of equipment for testing, training, and other purposes. No Agreement or agreement(s) shall cover, to the extent that malfunction or request for Service is caused by, in Heska's reasonable opinion, (i) accident, abuse, alteration, misuse, neglect, or use of Imaging Equipment for high-energy applications (ii) failure to use Products under normal operating conditions or environment or within Heska specified ratings or according to Heska operation instructions (including damage from liquid or temperatures outside of environmental and duty cycle ranges), (iii) lack of routine care or maintenance, (iv) failure to use or take any proper or reasonable precautions or failure to use Products for their intended use, (v) user modification of any Product, (vi) connection of any device or peripheral to the Products that has not been approved in writing by Heska prior to use, (vii) latent defects discovered after expiration of the applicable warranty period, (viii) consultation or training to assist your modification of any

software, workflow, protocols, or interoperability of such to third parties, or (ix) material and labor costs associated with reusing existing facilities (wire, termination fields, network facilities, equipment, peripherals, adjuncts, existing x-ray generators or their components). No Warranty or Support includes coverage for (i) Customer-supplied software, (ii) equipment warranted by another manufacturer, (iii) replacement of expendable, consumable or limited life items, including detector tunnels, grids, synchronization cables, data cables, carry bags, detector covers, hand clickers, foot pedals, containers, batteries, bulbs, radiation sources, storage media, and/or additional protective or patient positioning devices used with the Products, or (iv) new personnel training, continuing education, or professional or regulatory accreditation. Services NEVER extend beyond the Imaging Equipment or to devices not provided by Heska or to any facilities connected to, providing power or data to, drawing power or data from, or in any way associated or linked to the Imaging Equipment or Software. To be eligible for Service(s), all Imaging Equipment and Software, from the time of delivery to Customer, must have been used under normal operating conditions, for the intended use, within the limits of this Warranty Agreement. Misuse, abuse, including dropping of Products or other physical damage, improper installation by anyone other than Heska, or improper environmental conditions will void all Service(s). Heska shall make the final determination in its sole discretion as to whether failure occurred under normal operation (thereby covered for Service(s)) or whether the Product(s) were subjected to other than normal operation or environment (thereby excluded from Service(s)), in which case Service(s) will be billable as not under Warranty. Repairs and adjustments of Imaging Equipment or Software must be made (or directed in writing) by authorized Heska personnel only. Unauthorized repairs or adjustments will void all Warranty and Support. Heska's records shall determine the remaining Warranty Term with respect to Products and eligibility for Service. Heska's determination shall be final, unless Customer presents reliable, written evidence that a Service claim is covered by Warranty Agreement. Heska reserves the right to change the duration, frequency, type, nature, form, providing party, Data Hosting, and any other aspect of the Service, Support, Warranty, or Product without the prior approval of or notification to Customer, so long as such changes do not have a material and permanent adverse effect on the overall Customer's benefits hereunder. Heska may (Subject to any Non-Excludable Obligations referred to in Article 8 below) fulfill its obligations by obtaining the benefit of any original equipment manufacturer warranty available to Heska, and in so doing, the remedies available hereunder shall be subject to the limits, terms and conditions of such original equipment manufacturer warranty or support.

**5. Warranty Remedies, Advanced Loaner, 99% Uptime Guarantee, Service Materials, Fees, Software Support.**

a. Warranty Remedies. If Customer promptly notifies Heska of a warranty claim for Service, makes the Imaging Equipment available for Heska inspection, provides a valid Imaging Equipment serial number, and uses best efforts to assist Heska with inspection and troubleshooting of the Products, and Heska confirms that, through no fault of Customer, a Product has failed during the Warranty Term and is eligible for Services, Heska will, upon Customer's return of the failed Imaging Equipment to Heska, repair, adjust, or replace, in Heska's sole discretion, with new, reconditioned, or exchange replacement parts of like or similar level and condition ("Replacement Parts"), as determined solely by Heska, the non-conforming Imaging Equipment or parts of the Imaging Equipment, via freight exchange, contractor, repair at Heska's facility or repair at Customer Site. Subject to any Non-Excludable Obligations referred to in Article 8 below, Heska's repair or replacement with like or similar level and condition parts (and if necessary reperformance of same) is Customer's sole remedy for Imaging Equipment under this Warranty Agreement.

b. Advanced Loaner Program. For Service(s) for Level 1 issues (cannot acquire and display x-rays) that Heska cannot complete, as reasonably pre-estimated by Heska, within twenty-four (24) hours of receipt of Imaging Equipment from Customer, Advanced Loaner(s) may be available, if initiated by 1:00PM Australian Eastern Daylight Time, within twenty-four (24) hours following Heska's acceptance of a qualified claim for Service and identification of the part(s) determined by Heska to be appropriate for Advanced Loaner remedy. In those cases that Heska authorizes sending of Advanced Loaner(s) before Heska's receipt of Customer's non-working Level 1 Imaging Equipment, Customer's rented Imaging Equipment for which Advanced Loaner(s) are sent, must be shipped to Heska, within forty-eight (48) hours of Customer receipt of Advanced Loaner(s) or Customer shall incur a \$250 per day late fee, until items are returned to Heska. Upon return to Customer of repaired or

replaced Imaging Equipment for which Advanced Loaner(s) were sent, Advanced Loaner(s) must be shipped to Heska, within forty-eight (48) hours or Customer shall incur a \$250 per day late fee, until items are received by Heska. Advance Loaner(s) delay or unavailability shall be solely remedied by Uptime Commitment. At Heska's sole discretion, Advanced Loaner may be offered as a permanent Advanced Replacement for a fee of \$950

c. 99% Uptime Guarantee Program. Subject to the terms of this MWTC and more specifically these Imaging Equipment Terms and Conditions, Heska guarantees that Imaging Equipment will be operable 99% of all Site operating hours (the "Uptime Commitment"). Imaging Equipment is considered inoperable under the Uptime Commitment if, due to Heska's design, manufacturing, material, Support or Warranty failure or delay ("Heska Delay"), the Imaging Equipment is unavailable for Level 1 use during normal daytime operating hours. Any inoperability time due to Customer Responsibilities not being met or for excluded services or Support or not solely attributable to Heska Delay is excluded from the Uptime Commitment calculation. If the Imaging Equipment is inoperable due to Heska Delay, the Imaging Equipment will be timed as out of service from the time the request for Service was received by Heska's designated facility until the Imaging Equipment is returned to Customer control for Level 1 use, except that the following shall be excluded from any downtime calculation: (i) time outside Customer's ordinary business hours, (ii) time prior to failure to achieve Level 1 use, and (iii) time during which the Customer fails to assist Heska or to provide Heska with immediate and unfettered access to the Imaging Equipment. The number of hours Customer's business is open during normal business hours, excluding nighttime hours and weekend/holiday hours equals the "Base Hours" on which Uptime Commitment is calculated. Uptime is measured on a 26-week cycle; provided however, that in the event Customer's Warranty coverage is less than 26 weeks, all calculations will be prorated accordingly. If the Uptime Commitment is not achieved, Customer's sole and exclusive remedy shall be a payment as calculated below:

(i) If excess downtime is less than 1.1% of the Uptime Commitment, then Heska pays no refund to Customer;

(ii) If excess downtime is 1.1% to 3.0% of the Uptime Commitment, Heska will pay Customer one-thousand-dollars (\$1,000);

(iii) If excess downtime is 3.0% to 8.0% of the Uptime Commitment, Heska will pay Customer two-thousand-dollars (\$2,000);

(iv) If excess downtime is greater than 8.0% of the Uptime Commitment, Heska will pay Customer two-thousand-five-hundred-dollars (\$2,500).

Subject to any Non-Excludable Obligations referred to in Article 8 below, the amount provided for and calculated (i)-(iv) above describes Customer's sole and exclusive monetary remedy and Heska's sole monetary liability for any warranty or Service claim related to Imaging Equipment or Software downtime, unavailability, or failure to operate at any Level.

d. Service Materials. In connection with the Service(s), installation, configuration, maintenance, repair, and/or de-installation of the Imaging Equipment or Software, we may deliver to the Site items or materials that are not Yours. The presence of this property within the Site will not give you any right or title to it or any license or other right to ongoing access, ongoing use, to keep or to decompile this property. Any access to or use of this property by anyone other than You, as limited by the Agreement, or Heska personnel, is prohibited. You agree to provide Heska unrestricted access to this property during business hours, and to assist Heska with its return or recovery, without condition, delay, payment, charge, or assertion of any right to borrow, keep, use or own this property.

e. Fees and Payment. For out of warranty Service(s) **not** included as part of valid, current Warranty Agreement, fees will be Heska's then current fee rate per hour plus the costs of materials if Heska performs work or Services. Heska may, without obligation or liability decline to provide Service(s) or assistance for Products not covered by Warranty Agreement.

1. All amounts are net of taxes and exclusive of GST, which shall be added, if any, to final invoices. Current rates (subject to change) are:

a. Hourly Rate (Prorated per ½ hour blocks only): \$250 per Hour

b. Travel Rate (Per Day, plus actual transit, lodging, dining expenses): Lesser of \$2,000 per Day / \$250 per Hour – 4 Hour Minimum

2. Advanced Replacement Loaners for non-covered events may be available for \$750 per week (plus Shipping Charges).
3. Service(s) will be performed from 9:00 am to 6:00 pm, Monday-Friday (EST), excluding Heska's regular holidays, and outside those hours at our prevailing service rates and subject to the availability of personnel, at Heska's facility. Repaired or replaced Imaging Equipment shall have the benefit of the longer of (i) the remaining Warranty Term; or (ii) a forty-five (45) day warranty, subject to the terms and conditions set forth herein.
4. Service(s), that in Heska's reasonable estimation can be provided for remotely, but Customer requests be delivered by Heska personnel deployed to Customer's Site, shall incur an On-Site Copayment of **five-hundred (\$500) dollars**, payable in advance of Heska personnel travel. Heska retains sole discretion and decision authority on whether to send Heska personnel to Customer Site, and may authorize or deny, without penalty or liability, Heska personnel travel to Customer Site. Heska will use reasonable efforts to meet Customer request(s) for on-site Service.
5. For Customers in Australia, Heska shall pay economy freight charges for covered Service validly processed under RMA and these MWTC. When Customer ships any item to Heska, Customer is solely responsible for freight damage and all costs due to inadequate Customer packaging. If unsure whether an item is packaged properly, contact Heska prior to shipment.

f. Software Support in Warranty Term. For Software, licensed in conjunction with Imaging Equipment, where such Software is covered by these MWTC and by a current, in force, paid up Warranty Agreement within the Warranty Term, Heska will provide the following ("Support"):

<b>Generally Available Release Updates and Fixes:</b>	No Charge
<b>Generally Available Release Software Upgrades:</b>	No Charge
<b>Data Hosting (up to Data Monthly Limit):</b>	No Charge (Subject to Article 6 Data Hosting)
<b>General Technical Support and Troubleshooting of Software:</b>	No Charge

To be eligible for Support, all Software must have, from the time of license from Heska; (i) been covered under a valid Warranty Agreement, continuously, without interruption or void incident or have been pre-approved by Heska prior to entry into an Extended Warranty Agreement, (ii) been validly used under Heska's EUSLA accompanying the Software, and (iii) been used only in accordance with the limits of the Agreement. Service(s) (including Support) covered by these MWTC are strictly limited to those specifically identified in these MWTC. Delays or inability to obtain Service(s) and/or the benefits of Imaging Equipment or Software may occur, in the event of technical difficulties with broadband services, firewalls or other matters reasonably beyond the full control of Heska, including Customer's failure to meet the conditions in these MWTC. Software is not represented or warranted as fit for any purpose and Customer's use of or reliance on Software is based upon Customer's informed professional choice.

Nothing in the Agreement or these MWTC shall obligate Heska to develop, create, test, release, support or provide for use, or sell any new software, Software, Upgrades, Updates, Fixes, or functionality ("Software Enhancements"). Software Enhancements are limited to generally available releases only. HESKA IS UNDER NO OBLIGATION TO; (1) PRODUCE SOFTWARE ENHANCEMENT(S) THAT IS REVERSE OR RETROACTIVELY COMPATIBLE WITH IMAGING EQUIPMENT OR (2) UPGRADE IMAGING EQUIPMENT OR CUSTOMER SUPPLIED ITEMS IN ORDER TO FACILITATE A SOFTWARE ENHANCEMENT. Software Enhancements may require hardware purchases, including possible necessary upgrades to Customer's rented Imaging Equipment ("Hardware Updates"). Hardware Updates that may be needed to make Software Enhancements operable to specifications are specifically excluded and are Customer's responsibility. In the event that the Imaging Equipment or Customer's Site cannot support features of a generally available released Software Enhancement, Customer may; (i) choose to upgrade Imaging Equipment at Heska's current pricing or (ii) choose to forego Software Enhancement while retaining the balance of the obligations and benefits of under the Warranty Agreement then in effect. Customer acknowledges it is not reasonable, nor feasible for Heska to upgrade, update, fix or support Software versions that are older than two generations (as defined as a version number x.y.z where x or y advances by at least one numeral) from the most recent generally available release of the Software. In the event of a lapse in Warranty Agreement coverage or Customer's refusal or failure to cooperate to upgrade or update Software, to

resume the benefit of obtaining Support, Updates, Fixes, and Upgrades, Customer may be required to bring Customer’s Software to the most recent generally available release, for a fee determined solely by Heska. Customer and Heska agree to use commercially reasonable efforts to Update or Fix Software covered under a valid, in force, fully paid up Warranty Agreement, no later than twelve (12) months after each generally available release of Software.

The Customer acknowledges and accepts that Software is not sold, it is merely licensed to the Customer, and such licence is subject to and based upon Customer’s uninterrupted adherence to the EUSLA, this MWTC these Imaging Equipment Terms and Conditions, and Software license most recently in effect on (i) in the case of a one-time, non-upgraded, non-updated, local CPU installed, Software license, the date of the Software delivery to Customer, or (ii) in the case of an upgraded, updated, remote hosted, ASP, thin client Software license, or web service, on the date of Customer’s most recent use or access of the Software. Software excludes Equipment and Windows™ operating system. Although Software may also be part of a Product, the Customer expressly acknowledges and agrees that Heska provides Support, but no representation or warranty whatsoever, in relation to the Software.

Support and Service(s) are expressly limited to and conditioned upon Customer’s acceptance of the terms and conditions of these MWTC. Breach of EUSLA or conditions of these MWTC may, in Heska’s sole determination, void Customer’s rights to obtain Service(s). Subject to any Non-Excludable Obligations referred to in Article 8 below, re-performance of Support and/or Service(s) is Customer’s sole and exclusive remedy and Heska’s sole liability and obligation for any Software related claims.

**6. Data Hosting.** CUSTOMER IS THE OWNER OF THE DATA. HESKA SHALL NOT USE DATA TO CONTACT, SOLICIT, OR MARKET TO CUSTOMER’S PATIENTS OR THEIR RESPONSIBLE PARTIES. HESKA MAY RETAIN POSSESSION OF ONE OR MORE COPIES OF DATA AND SHALL HAVE UNLIMITED RIGHTS OF BACKUP, COPY, DATABASE MANAGEMENT, AND ANONYMIZED DATA USE. A COPY OF CUSTOMER DATA IN HESKA’S POSSESSION SHALL BE RETURNED TO CUSTOMER IN GOOD STANDING, PURSUANT TO TERMINATION OF AGREEMENT FOR DATA HOSTING OR AT ANY TIME FOR A PREPAID FEE OF 5.5 US CENTS PER STUDY.

a. Data Hosting General Terms and Limits. In addition to the obligations set out above in Article 3 (Privacy), Customer is solely responsible for meeting the regulations of the authorities over the Site and Customer that govern medical records and nothing in these MWTC replaces Customer’s obligations with respect to laws regarding handling of medical records. Customer shall indemnify and hold harmless Heska, and Heska shall not be liable to Customer or anyone for Customer’s failure to adhere to regulations regarding retention of medical records, whether or not Heska has been advised of the actual or possible Customer deficiency or violation of such regulations. Customer agrees that Heska may, for all Data Hosting, virtualize server technology and database and Data, store Data with other data from sources other than Customer, and use any DICOM .90, .91, or other data compression schemes in DICOM or the medical imaging industry generally, as determined and chosen solely by Heska. Unless specifically authorized in writing by Heska prior to Data Hosting of Data, Customer shall send to Heska all Data only in the Data Format. Failure to adhere to the requirement to send Data for Data Hosting in Data Format shall result in cancellation of a capability to send Data for Data Hosting from the DICOM Node, device or Site not complying. Heska may cease, without liability, upon thirty (30) days’ prior written notice, Data Hosting. Heska shall have no obligation, explicit, express, or implied, now or in the future, to offer or to receive, store, host, serve, maintain, provide access to, or protect Data or for Data Hosting, except; (i) as specifically required by law, or (ii) as provided for by a written and countersigned, in-force, paid-up Agreement (or written, countersigned extension of Agreement), that includes the provision of Data Hosting, in which case Heska shall provide, directly or indirectly, through one or more intermediaries or assigns, Data Hosting for the time period and at the costs explicitly required. In no case shall Heska’s obligation of Data Hosting; (i) in each instance of Data or Study, exceed seven (7) years from time of Study Acquisition Date on the original modality, of each instance of Data by Heska; (ii) cover any Data or period for which a valid, in-force, paid-up agreement for Data Hosting was not in force, had lapsed, or was interrupted for “acts of God” or was under dispute over failure to pay amounts due Heska; or (iii) Data from any equipment, or software that is not a prior approved DICOM Node (as defined below). Customer agrees that Heska is not liable for any Study or Data not proved by evidence to have been received by Heska.

Each unit of Data Hosting, is calculated to be a Study that includes the medical images of one exam on one patient, billable per such unit, at a rate per Study (one time, paid in full), as listed herein, and a minimum of **one hundred (\$100.00) dollars** per month (unless expressly agreed otherwise in a paid up agreement providing for other fees), expressly under the limitations, exclusions, and terms in Section 7 “Exclusions of Implied Warranties and Limitations on Damages and Liabilities” of these MWTC. Future Data Hosting charges may be revised up or down in the sole discretion of Heska, but not retroactively to Studies already received and Data Host(ed).

DICOM Node (Modality)	Data Hosting Customer Price
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DX / CR:	\$3.30
MRI:	\$4.00
CT:	\$4.00
US:	\$4.00 (Limited to 150 frames)

Each Study proved to have been received by Heska for Data Hosting is deemed to be an individual transaction giving rise to an individual, separate agreed price for that Study, not to exceed the schedule above. In no event shall Heska's liability claimed by anyone for Data or Data Hosting, whether by failure, loss, negligence or non-performance, exceed the lesser of Section 7 or as provided in the above schedule, for the individual Study for which Data Hosting was or was to have been provided. Any Data Hosting that are at billed \$0/£0/€0 per Study, such as for sales or trial demonstrations, Service, Data Hosting, and/or Support are secondary services and, in such cases, Customer is solely responsible for storing and protecting Customer's own primary copies of such Data and maintaining copies of Data for retrieval by Customer's own labor and equipment.

For discounted Data Hosting included as part of any agreement, monthly Data transfer limit of **5 GB** apply for the Site (including Equipment and all DICOM Node(s) if any) ("Data Monthly Limit"). Data over the Data Monthly Limit may incur a fee of **four (\$4.00) dollars** per Study.

Heska may fix, upgrade, service, or update Software used in Data Hosting at any time, without notice, and without obligation or liability to Customer (subject to any Non-Excludable Obligations referred to in Part 8 below).

b. Data Migration. Upon Customer provision to Heska of a hard drive media containing uncorrupted, standard, uncompressed DICOM data and database (or other formats acceptable for Data Host in .91 DICOM), and upon payment by Customer of the greater of **5 Cents per Study** or **three-thousand-five-hundred-dollars (\$3,500)** data migration fee, Heska shall upload the qualifying portion of the data for Data Hosting, subject to these MWTC (which must be signed by Customer prior to Heska's acceptance of hard drive media with Customer data) ("Data Migration"). Heska shall not return media on which data is provided to Heska and Customer is responsible for retaining a copy of all such data for permanent archival and safe keeping by Customer. Heska is not responsible for lost data incurred by Customer while copying data. Until data is proven by documentation to have been received by Heska by signature of receipt from a national overnight delivery service, Heska shall have neither liability for nor duty to protect the data. Following notification of successful Data Migration (after which data sent pursuant to this Article shall become Data), Customer shall have thirty (30) days to provide to Heska a complete, written accounting, including Study date, patient, and number of images, for each instance of Data for which Customer claims is not stored with Data Hosting, and after thirty (30) days, if no such accounting is submitted by Customer, Customer shall be deemed to have acknowledged the sufficiency and completeness of Data Migration, Data, and Data Hosting and shall release Heska from any past, current, and future obligation or liability with regard to any data that Customer or another entity might subsequently claim is missing from Data Hosting for the data from the Data Migration.

c. DICOM Node Acceptance and Fee. DICOM devices attempting to store Data for Data Hosting (such as third party ultrasounds or other modalities not purchased from Heska) (each a "DICOM Node") must be pre-authorized in writing by Heska and shall each incur a one-time verification and connect fee of **two thousand-dollars (\$2,000)**. Heska, in its sole discretion, reserves the right to decline to receive, to block, or to disconnect DICOM Node(s) and their Data from Data Hosting, at any time, without notice, permanently or temporarily, provided however that if Heska does so, Heska shall return to Customer a copy of DICOM Node Data in Heska's possession, at no charge. Customer agrees DICOM Nodes may only send in the Data Format, that ultrasound "clips" will be no longer than 150 frames, and to use Heska recommended protocols to DICOM store Data. For Data accepted by Heska for Data Hosting from DICOM Node, Customer shall be charged per the schedule of fees herein, and no DICOM Node shall be eligible for free or no charge Data Hosting.

d. End of Data Hosting. Upon termination of Data Hosting, Heska shall have no further obligation to Customer for Data, Data Hosting, or Data retention, except as expressly agreed to in these MWTC. Upon termination or non-renewal of Data Hosting, Customer shall pay, within twenty-one (21) days of invoice, the greater of 5.5 US Cents per Study or \$750, and within ninety (90) days thereafter Heska will return to Customer a copy of the Customer's Data in Heska's possession. Upon receipt of returned Data, Customer shall; (i) for each instance of Data for which Customer claims loss, provide to Heska a complete, written accounting, including Study date, patient, and number of images, and proof of Heska receipt of the Data, or (ii) by written, signed release drafted by Heska; (1) acknowledge the sufficiency and completeness of returned Data and (2) release Heska from any past, current, and future obligation or liability relating to any Data or data, whether received or not by Heska. In the event Customer refuses to pay the invoice for return of Data, Customer shall within thirty (30) days from termination,

by written, signed release drafted by Heska, release Heska from any past, current, and future obligation or liability related in any way to any Data or data, whether received or not by Heska. By executing the Agreement, Customer agrees that Customer releases Heska from any obligation or liability for Data, Data Hosting, or data incurred before Heska's written acceptance of agreement that includes Data Hosting, and after termination of each agreement that includes Data Hosting. If Heska cancels or substantially curtails any Data Hosting prepaid for by Customer, Heska shall return to Customer a copy of Data, at no charge, within sixty (60) days of cessation that specific Data Hosting and refund to Customer any prepaid amounts, less proration for the period(s) used.

#### **7. Exclusion of Implied Warranties and Limitations on Damages and Liabilities.**

Words and phrases capitalized in this clause have the same meaning as given to them in the Australian Consumer Law, which is set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) (**ACL**).

To the extent the Customer acquires goods or services from Heska as a Consumer (within the meaning of the ACL), the Customer may have certain rights and remedies (including, without limitation, consumer guarantee rights) that cannot be excluded, restricted or modified by agreement. Nothing in this agreement operates to exclude, restrict or modify the application of any implied condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability, implied or conferred under the ACL or any other statute, the exclusion, restriction or modification of which would:

- (i) contravene that statute; or
- (ii) cause any term of this agreement to be void,

(each a **Non-excludable Obligation**).

In relation to Non-excludable Obligations, Heska's liability to the Customer, and the liability of any manufacturer of the Products supplied to the Customer and any other person for a failure to comply with any Non-excludable Obligation is limited to the cost of supplying the defective Products or Services again or payment of the cost of having the defecting Products or Services supplied again, pursuant to Part V of this Agreement (Remedies for Warranty).

Heska will not be liable to the Customer or any other party for any indirect, special, economic or consequential loss or damage arising out of or relating to this agreement or the supply of the Products or Services including lost revenue, loss of business profits, business interruption, loss of goodwill, bargain, opportunities or other pecuniary loss, loss of anticipated savings incurred or suffered by the other party in any circumstances whatsoever. This clause prevails over any other clause in this agreement.

The Customer agrees that, although not party to this agreement, any manufacturer of the Products supplied to the Customer may enforce the terms of this clause against the Customer.

**EXCEPT AS EXPRESSLY REPRESENTED IN THESE MWTC, AND TO THE EXTENT NOT PROHIBITED BY LAW (INCLUDING RELATION TO NON\_EXCLUDABLE OBLIGATIONS), ALL SERVICES AND DATA HOSTING ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING FOR QUALITY, RELIABILITY, TIMELINESS, USEFULNESS, SUFFICIENCY AND ACCURACY. THE LIMITED WARRANTIES SET FORTH HEREIN ARE EXPRESSLY IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, USE, OR APPLICATION. HESKA'S TOTAL LIABILITY IN DAMAGES AND YOUR EXCLUSIVE REMEDY SHALL BE FOR HESKA TO RE-PERFORM SERVICES IN FULL SATISFACTION OF HESKA'S OBLIGATIONS. SUCH REPERFORMANCE SHALL CONSTITUTE HESKA'S ENTIRE LIABILITY FOR A DEFAULT OR BREACH. IN NO CASE WILL HESKA'S LIABILITY EXCEED THE AMOUNT OF PAYMENT RECEIVED BY HESKA FOR THE RENTAL OF IMAGING EQUIPMENT, SOFTWARE, SERVICE, WARRANTY AGREEMENT OR DATA HOSTING, FROM WHICH THE SPECIFIC LOSS CLAIMED ARISES. IN NO EVENT SHALL HESKA BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR SPECIAL LOSS OR DAMAGES OF ANY KIND, INCLUDING CLAIMS OF ANY THIRD PARTY, SUCH AS, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, LOST REPUTATION, OR BUSINESS INTERRUPTION, THAT RESULT FROM SERVICE(S), THESE MWTC, IMAGING EQUIPMENT, DATA HOSTING, OR SOFTWARE, HOWEVER CAUSED, WHETHER BASED ON CONTRACT, TORT OR OTHER THEORY, OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES, WHETHER ARISING FROM BREACH OF THE AGREEMENT OR THESE MWTC, BREACH OF WARRANTY, NEGLIGENCE, GROSS**

NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER TORT. HESKA SHALL HAVE NO LIABILITY FOR ANY GRATUITOUS ADVICE. TO THE EXTENT ALLOWABLE UNDER LAW, HESKA SHALL NOT BE LIABLE, FOR ANY REASON, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, WHETHER OR NOT HESKA IS, WAS, OR SHOULD HAVE BEEN ADVISED OF THE POSSIBILITY, FOR THE LOSS OF OR INABILITY TO ACCESS DATA OR FOR YOUR OR ANY PARTY'S FAILURE TO MEET THE REQUIREMENTS OF ANY STATUTE. NO CLAIMS, REGARDLESS OF FORM, ARISING OUT OF OR IN ANY WAY CONNECTED WITH IMAGING EQUIPMENT, SOFTWARE, SUPPORT, WARRANTY, AGREEMENT, OR SERVICES FURNISHED BY HESKA MAY BE BROUGHT BY ANY PARTY MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS OCCURRED OR HESKA'S PERFORMANCE HAS BEEN COMPLETED OR TERMINATED, WHICHEVER IS EARLIER. YOU AGREE AND ACKNOWLEDGE THAT THE PRICE PAID BY YOU FOR THE SERVICE(S), SOFTWARE, IMAGING EQUIPMENT AND WARRANTY IS BASED UPON AND CONTINGENT UPON THESE LIMITATIONS OF LIABILITY, THAT THESE LIMITATIONS ARE A CRITICAL PART OF OUR BARGAIN, THAT EACH PRICE CHARGED WOULD HAVE BEEN FAR GREATER HAD NOT ALL PARTIES AGREED TO THESE STRICT LIMITS OF LIABILITY, EXCLUSIONS OF WARRANTIES, PROVISIONS FOR DISPUTE RESOLUTION, AND THE LAWFULNESS, REASONABLENESS, AND MUTUAL ACCEPTANCE OF EACH, AND THAT THE EFFECTS OF THESE LIMITATIONS ARE REASONABLE AND FORSEEABLE.

**8. PROVISIONS GOVERNING SOFTWARE LICENSE.** Software is licensed, not sold. You are granted a limited license for any Software associated with the Imaging Equipment ordered and delivered by us to you. This license allows you to use the Software only on the Imaging Equipment, only at a single Site, only in accordance with the Agreement. **Heska reserves the right to deactivate Software and access to Software, Data, Data Hosting, and Service(s) until all payments due from you to us are received, and you agree that this remedy is reasonable, and you disclaim any complaint, damage, or liability related to our exercise of this remedy.** Software is protected by the copyright laws of the United States and international treaties. No rights under copyrights are transferred to you, except as specifically provided for in these MWTC. You may not distribute copies of the Software to others or electronically transfer the Software from one computer to another over a network. The Software contains trade secrets. You may not decompile, reverse engineer, disassemble, or otherwise reduce the Software to a human-perceivable form. YOU MAY NOT MODIFY, ADAPT, TRANSLATE, RENT, LEASE, LOAN, RESELL, DISTRIBUTE, NETWORK, OR CREATE DERIVATIVE WORKS BASED UPON THE SOFTWARE OR ANY PART THEREOF. Software EUSLA will apply and will be delivered as part of Software and with Imaging Equipment, and use of Software indicates EUSLA acceptance by You. All Software and documentation related to the Software or to Imaging Equipment remain Heska's property. The media on which the Software is recorded or fixed is your property. With respect to Software recorded on your media, you may request that we erase our Software. If you receive Software that renders Software that you then have redundant, you must return the redundant Software to us or certify in writing that you have erased all copies of it. EUSLA is available for review and acceptance by going to [www.vet.Heska.com](http://www.vet.Heska.com), in the About section of Software, by email request to [imagingsupport@heska.com](mailto:imagingsupport@heska.com), and by contacting the Call Center. Services are conditioned upon continuous adherence to EUSLA.

**9. PERSONAL PROPERTY SECURITY.**

- a. *Defined Terms.*** For the purposes of this clause, the terms used in this clause have the same meaning as contained in the *Personal Property Security Act 2009* (Cth) and associated regulations as amended from time to time ("**PPSA**").
- b. *Registrations.*** If Heska determines that this agreement is or contains a security interest for the purposes of the PPSA, the Customer must, at its own cost and immediately upon Heska's request: (a) do all things reasonably required (including execution of documents) to ensure that Heska has a continuously perfected security interest (as defined in the **PPSA**) created in the Products pursuant to this agreement. This includes, but is not limited to: (i) providing details of any item of collateral sufficient to complete registration of the security interest in accordance with the requirements of the PPSA; (ii) enabling Heska to apply for registration of or give any notification in relation to the security interest; and (iii) enabling Heska to exercise rights in relation to the security interest; (b) procure from any person considered by Heska to be relevant to its security position, such agreements and waivers as Heska may at any time require to ensure Heska attains the highest ranking security possible in respect of the security interest.
- c. *Exceptions.*** Where permitted by the PPSA, the Customer waives any right to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA. Heska and the Customer agree to contract out of and nothing in the provisions of sections 96, 125, 129,

142 and 143 of the PPSA shall apply to this agreement. To the extent permitted by the PPSA: (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on Heska will apply only to the extent that they are mandatory or Heska agrees to their application in writing; (b) where Heska has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply. For the purposes of section 275(6) of the PPSA, Heska and the Customer agree and undertake that this agreement and any information pertaining to the sale of the Products shall be kept confidential at all times. Neither party may disclose any information pertaining to this agreement or the appointment of the Distributor or the Products, except as otherwise required by law or that is already in the public domain. The Customer hereby consents and appoints Heska as an interested person and the Customer's authorised representative for the purposes of section 275(9) of the PPSA.

### **General Terms & Conditions.**

The following additional terms and conditions shall apply to all Products and Services provided under the Agreement.

#### **1. Term and Termination.**

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The Term is set forth in the Agreement. The Agreement is not cancellable by Customer. Heska may terminate the Agreement as specified in the Agreement or on default.

#### **2. Default.**

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2.1 Customer shall be in default of the Agreement if any of the following occurs during the Term:

- (a) Customer fails to pay any Payment or other sum when due under the Agreement or any other agreement with Heska;
- (b) Customer breaches any warranty, representation, or other obligation or term of these MWTC, the Agreement or any agreement with Heska;
- (c) Subject to any statutory stay of proceedings, Customer becomes insolvent or unable to pay Customer's obligations when due; Customer stops doing business as a going concern; Customer merges, consolidates, or transfers all or substantially all of its assets; Customer makes an assignment for the benefit of creditors; or Customer undergoes a substantial deterioration in Customer's financial condition; or
- (d) Subject to any statutory stay of proceedings Customer, any guarantor, or any partner or member voluntarily files or has filed against it involuntarily, a petition for liquidation, reorganization, adjustment of debt or similar relief, or a trustee, receiver, or liquidator is appointed for Customer.

2.2 Upon Customer's default, Heska may, if Customer fails to remedy the default under 2.1(a) or (b) within a reasonable period of notice from Heska (being not less than 7 days) or in the case of a default under 2.1(c) or (d) immediately, terminate the Agreement and/or pursue any and all remedies available at law or in equity and/or as specified in the Agreement.

#### **3. Indemnification.**

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3.1 Customer agrees that it shall indemnify, protect, defend, and hold harmless Heska, its officers, directors, employees, customers, and agents from and against any and all claims, losses, liabilities, damages, expenses, and costs (including reasonable attorneys' fees and court costs) related to Customer's or its agents' or employees' (1) acts or omissions, (2) use or misuse of the Products or Services, (3) non-compliance with applicable laws and regulations, (4) Customers use of any Product which may cause, has been identified as likely to cause, or does

cause danger to patients, users, or any person, data loss, or data confidentiality breach and of any liability arising from or related to any failure or delay in immediately notifying Heska of such occurrence or likelihood of occurrence, and (5) Customer's breach of or default under the Agreement, the Order, or these MWTC.

- 3.2 Customer agrees that in connection with Customer's obligations, Heska may, in its sole and absolute discretion, engage legal counsel at Customer's expense.

#### **4. Insurance Requirements.**

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- 4.1 Customer agrees to maintain worker's compensation and liability insurance in amounts sufficient to protect the financial security of Customer and to provide copies of the policies or satisfactory insurance certificates upon request by Heska.
- 4.2 Without limiting the generality of the foregoing, Customer shall, at its own expense, maintain in force with reputable insurers policies of commercial general liability insurance with policy limits of at least Two Million Australian Dollars (AUD \$2,000,000.00) each occurrence including without limitation for bodily injury and blanket contractual liability, Two Million Australian Dollars (AUD \$2,000,000.00) each occurrence for damage to property, or, alternatively, Two Million Australian Dollars (AUD \$2,000,000.00) combined single limit each occurrence for injury and property damage combined.
- 4.3 Heska shall be named as an additional insured on Customer's liability insurance and Customer's insurance shall be primary for any claim made by a third party. Customer's insurer shall waive any and all subrogation rights against Heska or its insurers. The fact that Customer maintains such insurance shall not limit Customer's other obligations under this Agreement, including without limitation its indemnification obligations.

#### **5. Trademarks.**

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- 5.1 Customer agrees that the trademarks and any other intellectual property of Heska are and will remain the sole and exclusive property of Heska and Customer agrees not to do anything, or allow any other party to do anything, inconsistent with such ownership or to contest Heska's ownership of its trademarks.
- 5.2 Except as expressly set forth herein, Customer shall have no right, title or interest in any intellectual property, including but not limited to patents, trademarks, trade names, or trade dress, relating to the Products or Services sold hereunder.
- 5.3 Customer shall not tamper with any Products or remove, cover or alter, any trademarks, insignia, markings, or serial number or any configuration that identifies the origin of Products or allows Equipment to use Supplies from anyone other than Heska.

#### **6. Confidential Information.**

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- 6.1 Customer shall maintain as confidential and not disclose to others without Heska's prior written consent the existence of or the terms of the Agreement, Orders or any trade secrets, processes, techniques, designs, know-how or other Confidential Information obtained from Heska.
- 6.2 "Confidential Information" shall include all information that Heska designates in writing to be "CONFIDENTIAL" and all other information Customer knows, or should reasonably know, is considered by Heska to be confidential, including the terms of any Agreement and the associated pricing.
- 6.3 Customer agrees that a breach of this obligation to protect Confidential Information will result in irreparable and continuing damage to Heska for which there may be no adequate remedy at law, and Heska is therefore entitled

to seek injunctive relief as well as such other and further relief as may be appropriate.

- 6.4 These terms of Confidential Information shall survive any expiration or termination of the Agreement, are in addition to and shall not supersede or replace any confidentiality, non-disturbance or similar agreement between the Parties executed previously.

## **7. Force Majeure.**

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- 7.1 Neither party is liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, epidemic or pandemic illness and its effects, acts of God, acts or threats of terrorism or war.
- 7.2 If an event of force majeure occurs, either party may suspend or terminate the Agreement by written notice to the other party.

## **8. Governing Law; Venue.**

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- 8.1 Except as otherwise expressly provided in the Agreement, the Agreement, including any personal guaranty, related Purchase Orders, and these MWTC shall be governed by and construed in all respects with the laws of Victoria, Australia.
- 8.2 In the event it becomes necessary to institute any legal proceedings to enforce this Agreement or any of its provisions, the parties shall submit themselves to the exclusive jurisdiction of the courts of Victoria, Australia, the Federal Court of Australia, and the courts entitled to hear appeals from those courts

## **9. Waiver; Severability.**

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- 9.1 Heska's waiver of any term or breach herein or in the Agreement shall not be deemed a waiver of Heska's right to seek compliance of that term or any other term thereafter.
- 9.2 If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the Terms, without affecting the enforceability of the remaining terms.

## **10. Counterparts; Amendments.**

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- 10.1 These MWTC supersede all prior agreements and understanding, written or oral, between the Parties that relate to the subject matter.
- 10.2 Any change or modification to the MWTC specified herein must be in writing and signed by an authorised officer of Heska.
- 10.3 Except as expressly specified herein, any other terms or conditions, including any documents provided by Customer, or any verbal assurances by sales representatives or distributors, shall not serve to vary any term or condition specified herein and shall be expressly rejected.

## **11. Independent Contractors.**

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The relationship of the Parties established under the Agreement is that of independent contractors and neither

Party is a partner, employee, agent or joint venture of or with the other and nothing in the Agreement or these MWTC shall preclude Heska from contracting to provide Products or Services to others.

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**12. Survival.**

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The provisions of the Agreement and these MWTC that, by their sense and context, are intended to survive performance by either or both Parties shall also survive the completion, expiration, termination or cancellation of the Agreement.

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**13. Customer Authorisation.**

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- 13.1 Customer authorises Heska to supply missing information, correct obvious errors in the Agreement and associated documentation, correct typographical errors in Customer's name, and/or modify Customer's name to reflect Customer's true and correct legal name.
- 13.2 Customer agrees to execute revisions, prepared in good faith by Heska, to the Agreement to correct any errors or deficiencies.
- 13.3 CUSTOMER REPRESENTS THAT CUSTOMER IS AUTHORISED TO ENTER INTO THIS AGREEMENT AND THAT IT IS NOT SUBJECT TO ADDITIONAL NEGOTIATION, CONSENT, DELAY, INTERFERENCE, OR CANCELLATION AND SHALL NOT CONSTITUTE A BREACH OR VIOLATION OF ANY OTHER AGREEMENT TO WHICH CUSTOMER MAY BE A PARTY. Heska may use in furtherance of Limited Warranty and other reasonable research and commercial uses, without limitation, any data arising from use of a Product, provided that such data shall be anonymized with regard to patient, patient owner and Customer origin for any use or access by a third party not controlled by Heska.

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**14. No Assignment.**

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- 14.1 Customer agrees not to transfer, sell, sublease, assign, pledge, or encumber any rights under the Agreement or an Order without Heska's prior written consent. Any such attempted assignment shall be void and of no effect.
- 14.2 Customer agrees that Heska may sell, assign or transfer the Agreement and/or Orders for any part of the Term, and if Heska does, the new owner will have the same rights and benefits that Heska has now or in the future, but will not have to perform any of Heska's obligations; provided, however, if Heska assigns the Agreement, Heska will meet its remaining obligations directly or by assignment. The rights of the new owner will not be subject to any claims, defenses or set-offs that Customer may have against Heska.

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**15. Notices.**

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Any notice, demand or request required or permitted under the Agreement shall be in writing and shall be sent as specified in the Agreement; provided, however, notices to Heska shall be sent by a nationally recognized overnight courier service or prepaid certified or registered mail return receipt requested and delivery confirmed to: Heska Australia Pty Ltd, 149 Rooks Road, Vermont, VIC 3133.

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**16. Modification of MWTC.**

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- 16.1 Heska reserves the right to modify, amend, alter and change these MWTC of Sale or Use at any time, upon reasonable notice to Customer.
- 16.2 Customer's authorisation for, or acceptance of, use of, or delivery of Product or Services hereunder shall be deemed acceptance of the MWTC in effect at such time.

**17. Disputes.**

- 17.1 If any party alleges a breach of the terms of this Agreement, then the party alleging will inform the other party in writing. Upon receipt of such notice, the receiving party will have 20 days to cure the alleged breach. If the parties do not agree that effective cure has been accomplished by the end of the 20-day period, then a senior manager from each party will meet in person and confer in good faith to resolve the dispute within 21 days of the expiration of the prior 20 day period.
- 17.2 If, the dispute still remains unresolved, after 21 days of the expiration of the prior 20 day period in Article 17.2, either party may commence proceedings or take other steps appropriate to resolve the dispute. Strict compliance with the timeframes in this Article is a precondition to either party being entitled to commence proceedings.
- 17.3 Nothing in this article limits or prevents Heska exercising rights under Article 1 and 2