

## HealthLink Terms of Use for Services

This HealthLink Terms of Use for Services defines the Customer responsibilities and obligations on the use of HealthLink Services (“Services”).

By using the Services, the Customer agrees to be bound by all of the terms and conditions of the HealthLink Master Service Agreement, the HealthLink Service Level Agreement and these HealthLink Terms of Use for Services (collectively, this “Agreement”), which are found at the HealthLink Website (<http://www.HealthLink.net>).

These Terms of Use are in two parts. Part A applies to all Services. Part B applies only to the provision and use of the Directory & Specialist Referral Services.

### Part A – Applies to all Services

#### 1. Use

- 1.1 The Customer will use the Services only in accordance with its rights and obligations under this Agreement and will not modify or use the Services in a manner which interferes with the reasonable use of the Services by any other entity, including HealthLink.
- 1.2 The Customer agrees to comply with all reasonable directions from HealthLink relating to the use of the Services and to work with HealthLink to maintain the integrity and quality of the Services.
- 1.3 The Customer will advise HealthLink immediately in the event that there are problems with the Service, and will provide such reasonable assistance as is requested by HealthLink to determine the cause of and remedy any such problems.
- 1.4 The Customer acknowledges that the Services may be unavailable from time to time, and may not be free of faults.
- 1.5 The Customer acknowledges that the Services do not offer any guarantees of protection against the transmission of viruses, hacking or other attempts to gain unauthorised access to the Customer’s network. The Customer agrees to install and maintain appropriate security solutions to avoid unauthorised access to its network, including without limitation adequate firewall, intrusion detection, anti-virus and security solutions.

#### 2. Security

- 2.1 The Customer shall ensure that all account passwords are stored securely and reasonable security measures are developed, enforced and used properly within its organisation.
- 2.2 The Customer will not allow unauthorised use of the Services or disclose to any person (except an authorised support or maintenance person) any password used to gain access to or authenticate the Services.

### 3. Information Privacy and Safety

- 3.1 The Customer agrees that HealthLink has no knowledge of, or control over, the content of messages transmitted via the Services. The Customer will comply with all applicable laws, regulations and codes relating to privacy of patient data and ensure that all staff who have access to the Services are aware of and comply with all applicable laws, regulations and codes relating to privacy of patient data.
- 3.2 The Customer agrees to obtain HealthLink's prior written approval of any information system that the Customer wishes to connect to the Services, to ensure that such information system exchanges information in a secure and robust manner, maintaining valid TLS/SSL certificates. Notwithstanding the foregoing, such approval shall not constitute any warranty by HealthLink relating to the security of the system.
- 3.3 The Customer acknowledges that use of the Services will or may require it to create a user identification including a unique identification code and password. The Customer agrees that it has sole responsibility for maintaining the confidentiality and security of all such passwords used to access the Services. HealthLink shall have no liability to the Customer or any third party for unauthorised access to the Services or any Customer data resulting from a failure of the Customer to maintain the confidentiality and security of its passwords.
- 3.4 If the Customer receives information via the Services which is not intended for it, the Customer will immediately notify HealthLink and comply with HealthLink's directions regarding the return or otherwise of such information.
- 3.5 Without undue delay and no later than 24 hours, notify HealthLink in writing of any reasonably suspected or actual Privacy or Security Breach, or any other issue involving or potentially jeopardising patient safety.
- 3.6 The customer will ensure that any mandatory breach notifications are made to the appropriate Privacy Commissioner (This is taking into consideration the proposed privacy reform in NZ, which will introduce mandatory breach reporting) and in accordance with the Australian Privacy Act Notifiable Data Breach obligations.

### 4. Testing, Personnel and Backup

- 4.1 The Customer may be requested by HealthLink from time to time to assist in testing and fine-tuning the Services. The Customer agrees to provide reasonable co-operation and assistance to HealthLink in response to such requests.  
The Customer will ensure that:
  - a. It has a person working within the organisation at all times who has a good working knowledge of the Services and system;
  - b. Its backup staff are trained so that the systems can be maintained in the absence of the system administrator;
- 4.2 The Customer acknowledges that the Services may be unavailable from time to time, and may not be free of faults. The Customer agrees to maintain appropriate backup of its system and data that shall allow printing of previous messages for archiving and reference, and printing of new messages for transmittal by alternative means (e.g., post, courier and fax) in the unlikely event that the Service has become unavailable for an extended period.

## 5. Account and Software

- 5.1 The Customer must ensure at all times that the Customer Account and the Software (“Licensed Product”) provided by HealthLink for the purposes of using the Services is:
- a. Treated in confidence;
  - b. Only used for the purposes of using the Services in accordance with these terms;
  - c. Not reproduced or copied except as authorised by the Agreement;
  - d. Made available only to those employees of the Customer who need to use the Services; and
  - e. Returned to the HealthLink, or in the case of the Licensed Product, destroyed when no longer needed or when the Agreement terminates.
- 5.2 The Customer agrees to update the Licensed Product every twelve (12) months or at a time less than twelve months as agreed with HealthLink. Failure to upgrade the Licensed Product to recommended version within the agreed time frame will void any service levels agreed with the Customer and may incur charges by HealthLink to remedy problems arising from failure to upgrade.

## 6. Message Exchange

- 6.1 The Customer will maintain and support the current standards used within the health sector as it relates to security, messaging and clinical coding.
- 6.2 The Customer agrees that at all times it is the responsibility of the sender to ensure that electronic messages are acknowledged by recipient, and that the message delivery process is not complete until this occurs.
- 6.3 The Customer will ensure that its message generation, receiving and acknowledgement tracking system works reliably and consistently.
- 6.4 The sending Customer will ensure that:
- a. Any electronic messages which it sends to other organisations are acknowledged successfully;
  - b. It resends unacknowledged messages to the recipient at regular intervals for up to one week;
  - c. If after one week a message is not acknowledged, it will take action to ascertain why the message has not been acknowledged;
  - d. In the event that the recipient’s computer system has a malfunction affecting its ability to receive messages, the sending Customer will provide reasonable assistance to the recipient to reinstate that function; and
  - e. When the Customer receives a negative acknowledgement, it will remedy the cause and resend the message as swiftly as possible.
- 6.5 The receiving Customer will ensure that it properly sends correctly formatted acknowledgements of any messages it receives via the HealthLink to the sender.

## 7. Licensed Product

- 7.1 The use of the Services includes the Licensed Product. The Licensed Product is provided to the Customer on a limited, non-exclusive licence (“Licence”) with the right to sublicense on the same terms to any entities falling within the class of persons eligible to be a customer. This Licence shall be transferable only with the prior written consent of HealthLink and shall terminate on the expiry or earlier termination of the Agreement.
- 7.2 The Customer or its authorised third party IT Provider may use the Licensed Product solely in object-code form for the purposes of making use of HealthLink’s Services, subject to any restrictions set out in the Agreement.
- 7.3 This Licence entitles the Customer to:
  - a. Copy or translate the Licensed Product into machine readable form and into printed form to the extent necessary to operate the Licensed Product for the Customer's use in accordance with these terms of use;
  - b. Use the Licensed Product on a backup system when the processor specified for use of the Licensed Product or an associated unit is temporarily inoperable until operable status is restored and processing on the backup system is completed; or any replacement processor that has substantially the same capacity and binary compatible operating system characteristics as the processor specified above for use of the Licensed Product, provided that the Customer provides notice in writing to the HealthLink of that replacement processor (if HealthLink so requires this) and that the Licensed Product shall not continue to be used on the previous processor once it is in use on the replacement processor;
  - c. Use the product documentation in support of the Customer's use of the Licensed Product.
- 7.4 The Customer agrees that by using the Licensed Product, the Customer accepts the terms and conditions of the Agreement and agrees to pay the applicable Service fees to HealthLink.
- 7.5 The Customer accepts that the Licensed Product contains technology which may automatically verify from time to time the version of the Licensed Product on the Customer’s system and may update the Licensed Product in that system if updates are available.
- 7.6 Where HealthLink deems it appropriate, any modifications or enhancements to the Licensed Product developed shall be made available to the Customer in accordance with this Agreement at no additional cost. Notwithstanding the foregoing, nothing herein shall oblige HealthLink to make such customisations, enhancements or modifications.
- 7.7 Customer requests for enhancements to the Licensed Product may be considered by HealthLink subject to the following:
  - a. Where enhancements are deemed by HealthLink to fit within its overall product and business strategy, these enhancements may be incorporated into the Licensed Product at no cost to the Customer.
  - b. Where enhancement requests are for very specific functionality that would not be widely useful to HealthLink’s overall business, or where Customer’s timeframes do not fit with HealthLink’s general product development cycles, such development services will be deemed to be Discretionary Services and may be subject to applicable fees.

- c. Notwithstanding the foregoing, any enhancements to the Licensed Product developed pursuant to this Agreement shall be the sole property of HealthLink and HealthLink shall be free to make use of them as it sees fit, including without limitation offering them to other customers.

7.8 The Customer and its authorised users and agents shall not:

- a. In contravention of all applicable laws, regulations and codes relating to copyright, reverse assemble, reverse compile, otherwise reverse engineer or attempt to derive the source code of the Licensed Product in whole or in part;
- b. Site, locate, install or otherwise configure the Licensed Product other than in accordance with the software configuration restrictions provided by HealthLink;
- c. Modify, enhance or create derivative works of the Licensed Product without HealthLink's prior written consent; or
- d. Remove any proprietary notices or labels or remove or alter any designation or marks on the Licensed Product;
- e. Defeat, avoid, bypass, remove, deactivate or otherwise circumvent any software protection mechanisms in the Licensed Product;
- f. Use the Licensed Product for any activity which is contrary to the law in any jurisdiction, including without limitation, activities such as spamming or collection of personal information for purposes other than as permitted by law;
- g. Engage in rental, leasing or time-sharing arrangements with respect to the Licensed Product; and
- h. Otherwise use the Licensed Product in a manner inconsistent with the rights granted under the Agreement.

7.9 HealthLink warrants and undertakes that it has the right and authority to grant this Licence to the Customer. HealthLink does not warrant the accuracy, currency or validity of any messages transmitted using the Licensed Product or Services, nor accepts responsibility for activities carried out by the Customer or other subscribers of the Services.

7.10 Protection and Security of Licensed Product

- a. The Customer will ensure that it and its customers take appropriate action in accordance with this section to satisfy its obligations for the protection and security of the Licensed Product.
- b. All copies of the Licensed Product provided by HealthLink to the Customer are, and remain, the property of HealthLink. Except for the licence rights expressly granted in clause 7.1, HealthLink and its third party licensors retain all right, title and interest in and to the Licensed Product. Except as permitted in this clause 7, Customer shall not sub-license, assign, lease, market, transfer, encumber or suffer to exist, any lien or security interest in the Licensed Product, nor shall the Customer take any action that would cause the Licensed Product to be placed in the public domain. If the Customer suggests new features or functionality that the HealthLink incorporates into the Licensed Product, such new features or functionality (including all intellectual property rights therein) shall be the sole and exclusive property of HealthLink.

- c. If required by HealthLink in writing, the Customer shall keep records of the number and location of copies of the Licensed Product and make these records available to HealthLink on request.
- d. The Customer shall ensure that prior to disposing of any media, any Licensed Product contained on that media has been erased or otherwise destroyed.
- e. The Customer shall not, without HealthLink's prior written consent, provide or otherwise make available any Licensed Product in any form to any persons other than to the employees or agents of the Customer or other persons engaged by the Customer to support the Licensed Product, and that such persons have signed a Deed of Confidentiality which is in all the circumstances reasonable.
- f. None of the Customer or its customers is granted any right, title or license to, or interest in, any of HealthLink's trademarks.

## **Part B – Applies only to the Directory & Specialist Referral Services**

### **8. Definitions**

8.1 Unless the context otherwise requires, in this Part B:

- a. "Directory" means a searchable database of people, organizations, products, services and information consisting of computer software and associated data files, including any subsequent modifications, versions or upgrades thereof, as published and maintained by HealthLink.
- b. "Work" means the documents and information submitted by the Customer for inclusion in the Directory.

### **9. Grant of Licence and rights to HealthLink**

9.1 In consideration of the inclusion of the Work in the Directory, the Customer, as the author of the Work:

- a. Grants HealthLink a non-exclusive license to produce, publish and sell the Work and all revisions and future editions of it in the Directory for the period of this Agreement;
- b. Grants HealthLink the authority to modify the Work as required, for the purpose of inclusion in the Directory and HealthLink agrees to return the edited Work to the Customer for the Customer's final approval prior to publication;
- c. Gives permission to HealthLink to use the Work for new client demonstration purposes for the period of the Agreement; and
- d. Irrevocably gives permission to HealthLink to use the Work in perpetuity for HealthLink's internal research and development purposes.

### **10. Intellectual Property and Accuracy Warranties**

10.1 The Customer warrants that:

- a. The Work is original and the Customer and the Customer's officers, employees and agents have not infringed any person's intellectual property rights, including copyright and trademark law;



- b. Any references to or inclusion of third parties or their products, services, trademarks or original works are with the express permission of the third party involved. The Customer acknowledges it is the Customer's sole responsibility to obtain such permission and agrees to promptly forward a copy of this permission to HealthLink if so requested;
- c. All statements in the Work are truthful and accurate, the Customer or the Customer's relevant officers, employees or agents are duly qualified to make all statements contained in the Work, and all statements in the Work fully comply with all requirements of all applicable laws and/or all appropriate professional standards;
- d. By issuing final approval, it accepts full responsibility for the accuracy and the continued currency of the Work, and for any errors, omissions or inaccuracies in the Work; and
- e. The accessibility of the Work for the end user groups (as defined by HealthLink and selected by the Customer) is as intended by the Customer and is appropriate.

## 11. HealthLink's Rights & Obligations

- 11.1 Subject to receiving payment of the fees as notified to the Customer and the Customer's final approval of the Work, HealthLink will include the Work in the Directory for the period of the Agreement.
- 11.2 HealthLink will use all reasonable care, skill and endeavours to ensure the information submitted by the Customer at any time (including the Work or any changes to the Work) is processed in accordance with the Customer's instructions, including post-editing submission back to the Customer for the Customer's final approval prior to inclusion of the Work in the Directory.
- 11.3 HealthLink reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Directory (or any part thereof) with or without notice. You agree that HealthLink shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Directory.

## 12. Customer Acknowledgements

- 12.1 The Customer acknowledges and agrees that:
  - a. The inclusion of the Work in the Directory in no way constitutes endorsement of the Customer or its products or services by HealthLink;
  - b. HealthLink is not responsible or liable to the Customer for any consequences relating directly or indirectly to any action or inaction any persons whatsoever may take based on the information, services or other material supplied by the Customer for inclusion in the Directory including the Work and any changes to the Work; and
  - c. HealthLink has no responsibility for any delay in the inclusion of the Work in the Directory to the extent that such delay is caused or contributed to by the Customer including, without limitation, non-payment of fees and delays in providing the Work, other required information or final approval of the Work.