

HEALTHLINK SERVICE AGREEMENT – NEW ZEALAND



1. INTERPRETATION

1.1. In this Agreement, the following words shall mean:

Agreement means this agreement, together with all schedules;

Charges means the amount payable by the Customer for the Services as set out the Service Schedule;

Customer means individual or organization that has entered into a Service Schedule for the provision of Services;

Services means the services to be provided by Healthlink to Customer as described in the attached Service Schedule;

Service Schedule means the schedule setting out the Services to be provided to the Customer from time to time; and

Software means the software provided by HealthLink in order to enable the Customer to use the Services.

2. SERVICES

2.1. **Provision of Services.** HealthLink will provide the Services to Customer in accordance with laws and codes of practice applicable within the New Zealand health sector.

2.2. **Provision of equipment.** HealthLink may upon request from Customer provide certain equipment to facilitate the use of the Services. Any such equipment remains the property of HealthLink at all times, and the Customer shall be solely responsible for any loss of, or damage to, such equipment.

2.3. **Use of the Services.** Customer agrees to use the Services only in accordance with the directions provided by HealthLink from time to time. Customer will not modify or use the Services in any way that interferes with the reasonable enjoyment or use of the Services by any other person or organisation.

2.4. **Acknowledgements.** Customer agrees that it is the responsibility of the sender to ensure that electronic messages are acknowledged, and that the electronic reporting process is not complete until this occurs. Customer must send correctly formatted acknowledgements of any messages it receives via HealthLink to the transmitter immediately upon receipt. Customer agrees to resend unacknowledged messages at regular intervals for up to one week, and if no acknowledgement is received after one week, to take action to ascertain why the message has not been acknowledged. If Customer receives a negative acknowledgement it will remedy the cause and resend the message as swiftly as possible.

2.5. **Understanding of the Services.** HealthLink may from time to time request the assistance of the Customer to test, service and maintain the Service. Customer agrees to ensure that it has appropriately qualified staff with a good working knowledge of the Services to provide assistance to Customer's staff and HealthLink upon request.

3. CHARGES

3.1. **Charges.** Customer will pay Healthlink the Charges for provision of the Services. HealthLink reserves the right to vary the Charges from time to time by giving the Customer 4 weeks notice in writing. Customer acknowledges that additional charges will be payable if Customer requests that HealthLink provide onsite services relating to the Services.

3.2. **Payment.** All Charges must be paid within 30 days of the date of the invoice issued by Healthlink, unless otherwise specified in the Service Schedule. HealthLink may, at its discretion: (a) require that Customers use electronic payment methods; and/or (b) enter into a specific charging agreement for the Services with an organisation of which Customer is a member, in which case Customer agrees to comply with such charging agreement.

3.3. **Overdue payments.** All payments to be made by Customer under this agreement shall be made free of any deduction, set-off or counter claim. HealthLink shall be permitted to suspend any Services being provided to the Customer until such time as overdue Charges have been paid.

3.4. **Third party services.** Customer acknowledges that the Services are provided via networks that are proprietary to third parties. Customer agrees that obtaining and paying for any such third party services are Customer's sole responsibility.

4. SOFTWARE AND INTELLECTUAL PROPERTY

4.1. **Software license.** HealthLink hereby grants to the Customer a non-exclusive right for the term of this agreement to use the Software solely for the purposes of using the Services. If HealthLink provides any third party software to Customer as part of the Services, such third party software will be licensed to Customer in accordance with the third party licensor's standard terms and conditions.

4.2. **Ownership.** All copies of the Software remain the property of HealthLink. Except for license rights expressly granted in these terms, HealthLink retains all right, title and interest in and to the Software and all other intellectual property relating to the Services, including trademarks. The Customer shall not sub-license, assign, lease, market, transfer, encumber or suffer to exist any lien or security interest in the Software. If the Customer suggests new features or functionality that HealthLink incorporates into the Software or Services, such new features or functionality will be the sole and exclusive property of HealthLink.

5. USE OF THE SERVICES

5.1. **Paper records.** Customer acknowledges that the Services may be unavailable from time to time, and may not be free of faults. Customer agrees to maintain appropriate backup paper documentation of all information transmitted via the Services.

5.2. **Protection against viruses.** Customer acknowledges that the Services do not offer protection against the transmission of viruses, hacking or other attempts to gain unauthorised access to the Customer's network. 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.

6. SECURIT SERVICES

6.1. **Specific terms.** If Customer has subscribed for the SecurIT Service, the terms of this clause 6 apply in addition to the rest of this agreement.

6.2. **Accessibility.** Customer acknowledges that HealthLink retains final discretion of which Internet addresses and websites will be accessible via the SecurIT Service, after discussions with Customer. Customer agrees to ensure that HealthLink is advised of any remote access to the Customer network, that HealthLink shall be entitled to set parameters for such access to preserve the integrity of the SecurIT Service. Hosting of web services by Customer will only be permitted when the Customer obtains a Health Intranet connection and has subscribed to the appropriate SECURIT package.

6.3. **Configuration.** Where HealthLink provides configuration services to Customer, Customer agrees not to interfere with or modify such configuration, including changing equipment provided by HealthLink without HealthLink's prior written authorization. HealthLink reserves the right to charge a fee for configuration changes required by Customer.

6.4. **Compliance with Health Intranet Governance Board.** The Customer will comply with the requirements of the Health Intranet Governance Board (HIGB), including without limitation, the security requirements of the HIGB.

HEALTHLINK SERVICE AGREEMENT – NEW ZEALAND



7. PRIVACY AND SAFETY

7.1. **Privacy of content.** The Customer agrees that HealthLink has no control over the content of messages transmitted via the Services. Customer will comply with the Privacy Act 1993 (New Zealand) and that all staff who have access to the Services are aware of and agree to comply with all applicable laws, regulations and codes relating to privacy of patient data.

7.2. **Connections to other systems.** Customer agrees to obtain HealthLink's prior approval of any information system that Customer wishes to connect to HealthLink, to ensure that such information system exchanges information in a secure and robust manner. Notwithstanding the foregoing, such approval shall not constitute any warranty by HealthLink relating to the security of the system.

7.3. **Passwords.** Customer acknowledges that use of the Services will require it to create a user identification including an unique identification code and password. Customer agrees that it has sole responsibility for maintaining the confidentiality and security of the passwords used to access the Services. HealthLink shall have no liability to Customer or any third party for unauthorised access to the Services or any Customer data resulting from a failure of Customer to maintain the confidentiality and security of its passwords.

7.4. **Information received in error.** 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.

7.5. **Inadvertent disclosure.** Customer will immediately notifies HealthLink in writing of any breach of security or other issue involving or potentially jeopardising patient safety or privacy.

7.6. **Problems.** 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.

8. TERM AND TERMINATION OF AGREEMENT

8.1. **Term.** This Agreement will continue in force until it is terminated in accordance with this section 8.

8.2. **Termination by Customer.** This Agreement may be terminated by the Customer at any time by giving HealthLink not less than one month's notice in writing, or such longer notice period as may be specified in the Service Schedule. Customer acknowledges that an early termination fee will apply to termination of the SecurIT Service prior to the end of the applicable term.

8.3. **Termination by HealthLink.** HealthLink may terminate this Agreement in respect of all or any part of the Services at any time if: (a) the Customer commits any breach of this Agreement and fails to remedy such breach within 14 days of receiving notice from HealthLink requiring such remedy; or (b) the Customer is adjudged bankrupt or takes any proceedings for the benefit of its creditors.

8.4. **Effect of termination.** Termination of this Agreement does not affect the accrued rights or liabilities of the Customer or HealthLink. Upon termination of this Agreement, the Customer agrees to return any equipment supplied by HealthLink, and remove all copies of the Software from systems under its control.

9. WARRANTY AND LIMITATION OF LIABILITY

9.1. **Warranty.** HealthLink warrants that all services performed by HealthLink in relation to the Services will be carried out with due care and attention by suitably qualified personnel.

9.2. **Exclusion of warranty.** The Services and Software are provided "as is" with all faults and HealthLink disclaims any and all express or implied representations and warranties with respect to the Software and Services, including any express or implied warranty of merchantability, fitness for a party purpose, accuracy,

non-infringement or that that Software or Services will operate error-free or be free of viruses. HealthLink shall have no liability for inability to use, or delays in, the Services caused by (a) any failure or insufficiency within Customer's technical environment, including without limitation hardware faults and network conditions; or (b) any failure by Customer to comply with these terms and conditions.

9.3. **Indirect damages.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL HEALTHLINK, ITS SUPPLIERS OR ITS THIRD PARTY LICENSORS BE LIABLE UNDER ANY LEGAL THEORY TO CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES (INCLUDING DAMAGES RELATED TO DELAYS, LOSS OF DATA, INTERRUPTION OF SERVICE OR LOSS OF USE, BUSINESS, REVENUE, OR PROFITS) IN CONNECTION WITH THIS AGREEMENT, USE OR INABILITY TO USE THE SERVICES, EVEN IF HEALTHLINK, ITS SUPPLIERS OR THIRD PARTY LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL ANY OF HEALTHLINK, IT'S SUPPLIERS OR THIRD PARTY LICENSORS BE LIABLE FOR ANY THIRD PARTY CLAIM.

9.4. **Limit of liability.** HEALTHLINK'S TOTAL LIABILITY TO CUSTOMER AND CUSTOMER'S EXCLUSIVE REMEDY FOR ANY ACTUAL OR ALLEGED DAMAGES ARISING OUT OF, BASED ON OR RELATING TO THIS AGREEMENT WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR ANY OTHER LEGAL THEORY, SHALL BE LIMITED TO THE AMOUNT OF CHARGES ACTUALLY PAID BY CUSTOMER DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM. Certain statutes, rules and regulations may imply certain non-excludable warranties or conditions. To the extent such are not permitted to be excluded, HealthLink's liability for breach of such conditions or warranties shall be limited to correction or substitution of the non-conforming Software or Services.

10. GENERAL

10.1. **Force Majeure.** Neither party will be liable for any delay or failure to perform its obligations under this Agreement (except an obligation to pay money) if the delay or failure is caused by an event of force majeure.

10.2. **Entire Agreement.** Together with the Service Schedule, this agreement constitutes the entire agreement between the parties relating to the Services. If there is any inconsistency between the terms of this Agreement and the Service Schedule, the Service Schedule shall govern. This agreement may not be assigned by Customer without HealthLink's prior consent.

10.3. **Waiver and variation.** Any waiver of any terms of this Agreement must be in writing and shall not operate as a waiver of any other term or preclude any other exercise of such term. These terms may be varied by HealthLink from time to time by posting new terms and conditions on the HealthLink website. Customer agrees to review such terms periodically and to terminate this Agreement pursuant to clause 8.2 if Customer does not accept the then-current terms of this Agreement.

10.4. **Governing Law.** This Agreement shall be governed in all respects by the laws of New Zealand without giving effect to its principles of conflicts of laws. The Parties submit to the non-exclusive jurisdiction of the courts of New Zealand.