

# HealthLink Master Service Agreement

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## HealthLink Master Service Agreement

HealthLink means HealthLink Group Limited (NZBN 9429030014619) and HealthLink Group Pty Limited (ABN 44 600 665 183) (as applicable).

This HealthLink Master Service Agreement is between HealthLink, and the individual or entity (Customer) utilising the HealthLink applications and services (Services).

By using the Services, the Customer agrees to be bound by all of the terms and conditions of this HealthLink Master Service Agreement, the Customer's order form or the Service Schedule signed by the Customer and HealthLink (as applicable), the HealthLink Service Level Agreement and the HealthLink Terms of Use for Services (collectively, this Agreement), which are found at the HealthLink Website (<http://www.HealthLink.net>).

To the extent of any conflict or inconsistency between the documents comprising this Agreement they will rank in the following order of priority: (1) the Customer order form or the Service Schedule (as applicable) (2) this HealthLink Master Service Agreement, (3) the HealthLink Service Level Agreement and (4) the HealthLink Terms of Use for Services.

HealthLink and the Customer agree as follows:

### 1. Lawful Use of the Services

The Customer agrees to use the Services only for lawful purposes. In the event that the Customer's use of the Services violates any law, rule, regulation or professional standard, HealthLink shall have the right at its discretion to immediately suspend the Services or to terminate the Services and this Agreement.

### 2. Provision of Services

HealthLink agrees to provide the Services to the Customer in accordance with the Customer order form or Service Schedule (as applicable), the Service Level Agreement and any agreed variations to the order form or Service Schedule (as applicable) and the Service Level Agreement. The Customer hereby agrees to comply with the terms and conditions of this Agreement.

### 3. Term and Termination

#### 3.1. Term

The Agreement term comprises the Initial Term and any Renewal Term (each, a Term) as defined herein. The Initial Term is defined as the period from the date of the Customer's initial payment or execution of this Agreement, whichever occurs earlier, through the remainder of the calendar month in which this Agreement was executed. The Renewal Term is defined as one calendar month beginning at the end of the Initial Term and each subsequent calendar month thereafter.

#### 3.2. Automatic Renewal

This Agreement shall renew automatically at the end of each Term unless terminated in accordance with this Agreement either by the Customer or by HealthLink.

### 3.3. Termination Without Cause

- a. Either party may terminate this Agreement at any time without cause by providing thirty (30) days written notice to the other.
- b. If the Customer terminates this Agreement without cause, prior to the end of the then current Term, HealthLink shall not be required to refund to the Customer the fees already paid. Any fees previously waived or discounts applied may be reinstated if the Customer terminates the Agreement for no cause during the term or if the Customer breaches this Agreement.
- c. If HealthLink terminates this Agreement without cause, prior to the end of the then current Term, HealthLink shall refund to the Customer any portion of the unused recurring fees already paid, unless otherwise agreed to the contrary.

### 3.4. Termination for Cause

- a. Either party may terminate this Agreement immediately if:
  - i. the other party is in breach of this Agreement and has failed to remedy that breach (if capable of being remedied) within thirty (30) days after receipt of written notice providing details of the breach; or
  - ii. a liquidator, receiver or administrator is appointed in respect of the other party, the other party enters into any compromise or arrangement with its creditors, is unable to pay its debts when due and payable or has any judgment entered against it and fails to satisfy such judgment within 7 days or if the other party, being a natural person, commits an act of bankruptcy.
- b. HealthLink may terminate this Agreement immediately and without prior notice for any material breach of this Agreement by the Customer, which includes but is not limited to violation of HealthLink's Terms of Use for Services, breach of Intellectual Property rights or applicable laws.
- c. In the event of termination for cause by HealthLink, HealthLink shall not refund any paid fees. Termination for cause will not cancel or waive any fees owed to HealthLink prior to termination.

### 3.5. Following Termination

- a. On termination:
  - i. the Customer's right to use the Services shall cease immediately;
  - ii. the Customer's data and account settings may be immediately and irrevocably deleted, including but not limited to, web content, databases, and messages. It shall be solely the Customer's responsibility to secure all necessary data from the Customer account prior to termination; and
  - iii. the Customer shall promptly return, or at HealthLink's request destroy, all software and confidential information belonging to HealthLink.

- b. Termination of the Agreement will not cancel or waive any fees owed or payable to HealthLink prior to or upon termination.

#### 4. Fees, Taxes, Invoicing and Payment

##### 4.1. Fees

The fees provided in the Order form created at the outset of the Agreement shall be effective for the Initial Term and each Renewal Term of this Agreement, provided that HealthLink shall have the right to increase these fees at any time upon thirty (30) days written notice to the Customer. In the event that the Customer does not agree with such a fee increase, the Customer shall have the right to terminate the relevant Services upon thirty (30) days written notice, provided that such notice of termination must be received within thirty (30) days of the date of notice of the fee increase.

##### 4.2. Taxes

The Customer shall be liable for all applicable taxes (including, without limitation, goods and services tax), governmental fees and assessments payable in relation to fees and charges arising under this Agreement or in connection with the Services. The Customer shall also pay all taxes, fees, and assessments of any nature associated with products or services sold through the use of, or with the aid of, the Services.

##### 4.3. Invoicing

HealthLink will use reasonable endeavours to send an invoice to the Customer for fees and services incurred during a calendar month within ten (10) days of that month's end.

- a. One time fees, including but not limited to installation or establishment fees, late payment fees, invoice processing fees and returned cheque fees may be invoiced at any time.
- b. All Service plans or feature changes may be billed within a seven (7) day period. No refunds or adjustment shall be issued for one time fees.
- c. For recurring fees, no refund or adjustment for plan downgrades or elimination of plan features within the current monthly Term shall be issued.

##### 4.4. Payment

- a. Invoices rendered by HealthLink to the Customer shall be paid by the 20th of the month following the date of invoice or, where the Customer has enrolled in HealthLink's Direct Debit facility, payment shall be made by way of automatic deduction from the nominated bank account of the Customer on or about the 23rd day from that month's end (in each case, the Due Date+).
- b. HealthLink may at its discretion require that Customer use electronic payment methods and or enter into a specific charging agreement for the Services with an organisation of which a Customer is a member, in which case Customer agrees to comply with such charging agreement.
- c. Except solely as permitted under clause 4.6, 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.

##### 4.5. Default Interest

Without prejudice to HealthLink's other legal remedies at law or under this Agreement, HealthLink may charge the Customer interest on any amount due and payable under the Agreement which has not been paid by the Due Date. Interest will be charged from the due date until the date of payment at the rate of 2% per month. Interest shall be compounded monthly. HealthLink may recover from the Customer any fees, costs or expenses (including legal fees) incurred by HealthLink in recovery of any amounts due and payable by the Customer to HealthLink.

#### 4.6. Invoice Disputes

If any invoice, or part thereof, submitted by HealthLink is disputed by the Customer:

- a. The Customer must within ten (10) days of the date of the invoice (time being of the essence) notify HealthLink in writing of the reasons why such invoice, or part, is disputed. If the Customer does not notify HealthLink within this period, the invoice shall be deemed to have been accepted by the Customer as being correct and payable;
- b. The Customer must pay to HealthLink the undisputed amount of the invoice but may withhold payment of the disputed sum until the dispute is resolved in accordance with this clause;
- c. Shall engage with HealthLink to resolve the dispute in good faith provided that if the parties are unable to resolve the dispute within ten (10) days, clause 12 will apply; and
- d. Upon resolution of the dispute, whether by agreement under this clause or under clause 12, the agreed or determined amount must be paid by the Customer within ten (10) days together with interest on the amount withheld at the rate set out in clause 4.5 from the Due Date until the date of actual payment.

#### 5. Modification of Terms

HealthLink may update, amend, modify or supplement the terms and conditions of this Agreement from time to time with no less than thirty (30) days prior notice to the Customer, which notice may be given by HealthLink posting the new, amended or supplemental terms and conditions on its website or by otherwise notifying the Customer in writing. The Customer's continued use of the Services after the notice period shall be deemed to be acceptance of the new, amended or supplemental terms and conditions. The Customer can review the most current version of this Agreement at any time on the HealthLink Website.

#### 6. Beta Products and Services

##### 6.1. Provided "As Is"

This section applies only to Customers with accounts created for "Beta" products and services such as but not limited to demonstration, test and pilot systems. Beta services are provided to the Customer on an "as is" basis in which case the HealthLink Service Level Agreement shall not apply. Notwithstanding anything else set forth in this Agreement, HealthLink does not make any representations or warranties regarding the Beta products and services nor does it make any representations or warranties regarding the integrity of data stored on Beta platforms. Customers are strongly discouraged from using accounts on Beta plans or platforms for its production applications or for storing sensitive data.

##### 6.2. Upgrades

HealthLink shall upgrade software on Beta programs when and as HealthLink deems necessary at its sole discretion. HealthLink does not represent or warrant that new versions of the software installed on Beta programs will be compatible with the currently installed version or that loss of functionality or interruption of service will not occur as a result of such upgrades.

## 7. Materials, Data, Software or Products

### 7.1. Server Ready

Any material, data, software or products that the Customer provides to HealthLink in connection with HealthLink's Services shall be Server Ready, meaning that they shall be in a condition and form, as determined solely by HealthLink, which does not require additional manipulation or verification on the part of HealthLink. Placing or attempting to place Non Server Ready material, data, software or products on HealthLink's servers shall be a breach of this Agreement.

### 7.2. Rejection

HealthLink may, at its sole discretion, reject or discard material, data, software or products that the Customer has placed, attempted to place, or has requested be placed on HealthLink's servers or otherwise included with any of the Services. HealthLink shall notify the Customer of its rejection and provide the Customer with an opportunity to amend or modify such material, data, software or products to meet the requirements of HealthLink.

### 7.3. Malicious Code

Any material, data, software or products placed on HealthLink's servers by or through the Customer shall be free of any and all malicious code, including without limitation, disabling devices, drop dead devices, time bombs, trap doors, trojan horses, worms, computer viruses and mechanisms that may disable or negatively impact the servers or the use of the Services by others.

## 8. Limited Warranty, Limitation and Exclusion of Liability

- 8.1. HealthLink provides the Services ~~as is~~. The Customer expressly agrees that use of HealthLink Services is at the Customer's sole risk. HealthLink and its subsidiaries, affiliates, officers, employees, agents, partners, vendors and licensors expressly exclude to the fullest extent permitted by law, all conditions, warranties, representations, undertakings, terms and stipulations, express or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in the Customer's favour including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. To the extent that the Services are purchased by the Customer for the purpose of a business, the provisions of the Consumer Guarantees Act 1993 do not apply.
- 8.2. The fees are determined on the basis of the limitation and exclusions of liability in this Agreement. The Customer agrees that the limitations and exclusions are reasonable. Nothing in this clause 8 however, is intended to exclude or limit HealthLink's liability to the Customer for liabilities which cannot be limited or excluded by law.
- 8.3. Subject to clause 8.2, HealthLink's total liability to the Customer under this Agreement, whether in contract, tort (including negligence), breach of statutory duty or under any other legal claim shall be limited to any one or more of the following, as determined by HealthLink in its sole discretion:

- a. The repair, rectification or replacement of the Services;
  - b. a refund of the fees paid by the Customer to HealthLink for the faulty Services during the period for which the Services were faulty; or
  - c. a refund of the fees paid by the Customer under this Agreement during the month in which the event giving rise to liability occurred, or if more than one event, the first of such events.
- 8.4. All claims for damages under this Agreement must be notified to HealthLink within 12 months of the cause of action arising. HealthLink shall have no liability to the Customer whatsoever for claims notified or commenced after this period.
- 8.5. Subject to clause 8.2, HealthLink and its subsidiaries, affiliates, officers, employees, agents, partners, vendors and licensors shall not in any event be liable to the Customer for any indirect or consequential loss, loss of profits, contracts, business, revenue, goodwill or anticipated savings (whether in each case direct or indirect), or any other indirect, consequential or special losses or damages howsoever caused. HealthLink will not be liable for any loss or corruption of data, software or database configuration held by the Customer (whether before or after termination of this Agreement), or any problems of any nature arising from the use of the Services for purposes other than the express purpose they were supplied for regardless of whether HealthLink has been advised of the possibility of such damages or loss, and whether such claim is made in contract, tort (including negligence), breach of statutory duty or under any other legal claim.
- 8.6. HealthLink will exercise no control over the content of the information passing through HealthLink's network except those controls expressly provided herein.

## 9. Patents, Copyrights, Trademarks, and Other Intellectual and Proprietary Rights

- 9.1. Except for rights expressly granted herein, this Agreement does not transfer any intellectual or other property or proprietary right to the Customer. All right, title, and interest in any product or service provided to the Customer, including without limitation any copyright, trade secret and vested or potential trademark and patent rights, is solely the property of HealthLink and its vendors and licensors. The Customer shall not reverse engineer, transfer, assign, copy, modify, reproduce or use any of product or service, hardware, software or otherwise which is provided in connection with the Services for purposes other than in conjunction with the permitted use of the Services.
- 9.2. The Customer hereby represents and warrants to HealthLink that the Customer has the right to use any patented, copyrighted, trademarked or proprietary material which the Customer uses, posts, or otherwise transfers to or by way of HealthLink servers and that such material does not infringe any third party intellectual property rights.

## 10. Hardware, Equipment, and Software

The Customer is responsible for and must at the Customer's own cost provide all phones, phone services, computers, software, hardware, and other services necessary to access the Services. HealthLink makes no representations, warranties, or assurances that the Customer's equipment will be compatible with HealthLink Services.

## 11. Indemnification

The Customer shall defend, indemnify, save, and hold HealthLink and its subsidiaries, affiliates, officers, employees, agents, partners, vendors and licensors harmless from and against any and all liability,



losses, claims, demands, disputes, damages or costs of any kind (including reasonable legal costs), directly or indirectly arising from or resulting from or in any way connected with:

- 11.1. the Customer's breach of this Agreement;
- 11.2. the Customer's negligence or wilful misconduct;
- 11.3. any of the Customer's services or products;
- 11.4. any information or material posted or transmitted by or on behalf of the Customer (including the Work as defined in Part B of the Terms of Use) and any use or misuse of such information or material; and
- 11.5. any breach or infringement by the Customer of any legal rights (including the intellectual property rights) of any third party.

## 12. Disputes

- 12.1. Subject to clause 12.6, where any question, dispute or difference (dispute) arises between the parties concerning or in any way arising out of this Agreement or the performance of either party of this Agreement, or of the circumstances, representations, and conduct giving rise thereto, no party may commence any court or arbitration proceedings relating to any question, dispute or difference unless that party has first complied with the procedures set out in this clause.
- 12.2. Where any dispute arises between the parties, the party initiating the dispute must provide written notice of the same to the other party and the parties' relationship managers must meet forthwith and negotiate in good faith with a view to resolving the dispute.
- 12.3. Where the Customer is primarily based in New Zealand:
  - a. If the parties are unable to resolve the dispute by negotiation within fourteen (14) days of receipt of the written notice from the first party, then either party may refer the dispute to mediation by giving written notice to the other;
  - b. If a dispute is referred to mediation, the mediation must be conducted on the terms of the LEADR New Zealand Inc Standard Mediation Agreement subject to any variations agreed by the parties. The mediator must be agreed by the parties but failing agreement between the parties within seven (7) days of the notice, the mediator will be selected by the Chair for the time being of LEADR New Zealand Inc or the Chair's nominee. The costs of mediation shall be shared equally by the parties;
  - c. If the dispute remains unresolved after the mediation, then at the election of either party, the dispute may be submitted to the arbitration of a single arbitrator agreed on between the parties, or if the parties are unable to agree on an arbitrator within fourteen (14) days, to be nominated by the President of the New Zealand Law Society or his or her nominee. The arbitration will be conducted in accordance with the Arbitration Act 1996. The parties reserve the right to appeal to the High Court on any question of law arising out of an award;
  - d. Unless otherwise agreed, any internal dispute resolution or mediation shall be held in Auckland, New Zealand.
- 12.4. Where the Customer is primarily based in Australia:
  - a. The parties shall endeavour to settle any dispute arising out of or relating to this agreement, including with regard to its existence, validity or termination, by mediation administered by the Australian Disputes Centre (**ADC**).

- b. The mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the dispute is referred to ADC (**the Guidelines**) and shall be held in Sydney, New South Wales.
  - c. The terms of the Guidelines are hereby deemed incorporated into this Agreement.
  - d. In the event that the dispute has not settled within twenty-eight (28) days following referral to ADC, or such other period as agreed to in writing between the parties, the parties shall submit the dispute to arbitration in Sydney, New South Wales.
  - e. The arbitration shall be administered by ADC and conducted in accordance with the ADC Rules for Domestic Arbitration operating at the time the dispute is referred to arbitration (**the Rules**).
  - f. The terms of the Rules are hereby deemed incorporated into this Agreement.
  - g. The arbitrator shall not be the same person as the mediator unless the parties each consent in writing to the arbitrator so acting.
- 12.5. While any dispute remains unresolved, the parties must continue to perform this Agreement to the extent that such performance is possible, given the nature of the dispute. If either party cannot meet any obligation under this Agreement because of events beyond that party's control, the parties will discuss in good faith the reasonable steps that can be taken to fix or lessen the effect of those events.
- 12.6. Nothing in this clause shall preclude either party from taking immediate steps to seek urgent equitable relief before a court of competent jurisdiction.

## 13. Miscellaneous

### 13.1. Governing Law, Jurisdiction, Forum

Where the Customer is primarily based in New Zealand, this Agreement shall be governed by and construed in accordance with the laws of New Zealand without regard to its conflicts of laws or its principles. The Customer agrees, in the event that any claim or suit is brought in connection with this Agreement, to the exclusive jurisdiction and venue of Courts of New Zealand.

Where the Customer is primarily based in Australia, this Agreement shall be governed by and construed in accordance with the laws of New South Wales without regard to its conflicts of laws or its principles. The Customer agrees, in the event that any claim or suit is brought in connection with this Agreement, to the exclusive jurisdiction and venue of the Courts of New South Wales.

### 13.2. Age and Capacity

The Customer hereby represents and warrants that any person to whom the Customer grants access to the Customer's HealthLink account has reached the age of eighteen and that the Customer is not subject to a limitation on the Customer's ability to enter into this Agreement.

### 13.3. Severability

If any term or provision of this Agreement, or its application to any person or circumstances is, to any extent, held to be invalid or unenforceable:

- a. the remainder of this Agreement or the application of such term or provision to any other persons or circumstances will not be affected; and

- b. each term and provision of this Agreement will be valid and enforceable to the maximum extent permitted by law.

#### 13.4. Waiver

No waiver by HealthLink of any breach by the Customer of any of the provisions of this Agreement shall be deemed a waiver of any preceding or succeeding breach of this Agreement. No such waiver shall be effective unless it is in writing signed by HealthLink, and then only to the extent expressly set forth in such writing.

#### 13.5. Assignments

The Customer shall not assign any or all of its rights or its obligations under this Agreement without HealthLink's prior written consent. HealthLink may assign any or all of its rights and/or subcontract any of its obligations under this Agreement by notice in writing to the Customer at any time.

#### 13.6. Force Majeure

Except for the Customer's obligation to pay the fees and charges, neither party will be liable for any delay in meeting, or failure to meet, its obligations under this Agreement to the extent that such a delay or failure is caused by any event outside their reasonable control and which that party is unable to overcome by using reasonable diligence and at a reasonable cost, such as acts of God, act of a public enemy, declared or undeclared war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, epidemics, quarantines, public demonstration or requirement or restriction of, or failure to act by, any government, semi-governmental or judicial entity, inability to procure materials or transportation facilities, failure of power, restrictive governmental laws or regulations, condemnation, acts of third parties, failure of the Internet (~~Force Majeure~~).

If a party is prevented from meeting its obligations under this Agreement due to Force Majeure, it will give written notice to the other party of the circumstances (including the nature of the occurrence and the expected duration) and that other party will grant a reasonable extension of time for the performance of the obligation, provided that the party not affected by the Force Majeure event may terminate this Agreement on written notice to the other if that event continues for more than 30 days.

#### 13.7. Survival

Sections 3.5, 4.2, 8, 9, 11, 12 and this Section 13 of this Agreement shall survive termination.

#### 13.8. Entire Agreement, Third Party Beneficiaries

This Agreement constitutes the entire agreement for provision of the Services to the Customer and supersedes all other prior agreements and understandings, both written and oral, between Customer and HealthLink with respect to the Services.

Where the Customer is based in New Zealand, the Customer understands and agrees that HealthLink and the Customer intend to include, as the sole third party beneficiaries of this Agreement for the purposes of the Contract and Commercial Law Act 1982, HealthLink's vendors and licensors, with all rights and remedies available as if such vendors and licensors were a party to this Agreement.

New Zealand

Phone toll free: 0800 288 887

8.00am – 6.00 pm Monday-Friday  
(AEST)

Australia

Phone toll free: 1800 125 036

8.00am – 6.00 pm Monday-Friday  
(AEST)

Canada

Phone toll free: 1800 254 5762

11.00am – 6.00 pm Monday-Thursday  
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