

Cub Care Terms of Service

1 THIS AGREEMENT AND OUR SERVICE

- 1.1 The Cub Care service (**Service**), is owned and operated by Emerging Healthcare Operations Pty Ltd (**We/Us**).
- 1.2 When you click “I Agree” or “Ok” when signing up to or logging into this Service, you are, as the **Client**, agreeing to these terms (**Terms**), which will constitute a legally binding agreement between you and us which will continue to apply while you continue to use the Service.
- 1.3 If you do not wish to agree to and abide by these Terms, you must not click “I Agree” or “Ok” as the case may be nor use the Service in any way.
- 1.4 References in these Terms to **Patient** are references to whomever is receiving Clinical Services as part of the Service to you, which may include you or may include person(s) you nominate such as your children or person for whom you act as guardian.
- 1.5 We prefer only to enter into agreements with persons who are qualified to contract. As a Client (whether or not a Patient) you must be over the age of eighteen years. In the case of a Patient being under the age of eighteen years, you as the Client must:
- (a) be their parent or guardian;
 - (b) accept these Terms in that capacity; and
 - (c) be present at all consultations.
- 1.6 The Service is comprised of:
- (a) the **Cub Care Services** – which are services we provide directly to you, including providing our communication platform designed to connect you with Practitioners, facilitating the Clinical Services, as well as providing access to our website and/or our mobile telephony or internet based communications platform from your computer or mobile telephone; and
 - (b) the **Clinical Services** – which are services provided directly by Practitioners to the Patient and facilitated by us.
- 1.7 The **Practitioners** are independent medical practitioners or health care practitioners, engaged by us to provide Clinical Services to Patients.

2 PROVISION OF THE SERVICE TO YOU

- 2.1 In return for your compliance with the Terms, we will provide you with the Cub Care Services and will facilitate the provision of the Clinical Services to the Patient.
- 2.2 We are directly responsible to you for provision of the Cub Care Services, but this does not include any Clinical Services. We facilitate the provision of Clinical Services to the Patient by Practitioners but we do not provide Clinical Services to Patients directly ourselves.
- 2.3 The Practitioners alone and independently of us will decide specifically what Clinical Services to provide to Patients, what advices and recommendations

to give and referrals to make. We have no say in or control over any of those things.

- 2.4 Unless we specifically tell you otherwise, each Practitioner is directly responsible for the Clinical Services they provide to the Patient and we will not be responsible in any way for any such services.

3 FEES

- 3.1 We will invoice you for all fees for the Service, comprising fees for both the Cub Care Services and any Clinical Services.
- 3.2 Our fees for Cub Care Services will be as set out on our website www.cubcare.com.au from time to time unless we agree otherwise with you in writing.
- 3.3 The Practitioners have appointed us to invoice and collect all fees for Clinical Services provided to you. Fees for the Clinical Services will be as set out on our website www.cubcare.com.au from time to time unless we agree otherwise with you in writing.
- 3.4 Unless otherwise specified, fees for Cub Care Services and Clinical Services are exclusive of GST.
- 3.5 You must pay our invoices within 7 days of the invoice date using our Medipass facility (or other method) as specified in our platform. If you dispute any part of an invoice, you must pay the undisputed part within 7 days of the invoice date, and any disputed parts subsequently agreed or determined as being due no later than 5 days after settlement of the dispute.

4 USE OF THE SERVICE

- 4.1 All associated notices and materials are offered in the English language only unless we specify otherwise.
- 4.2 We may terminate your access to the Service at any time without notice and for any reason. All restrictions, licences granted by you and all disclaimers and limitations of our liability in these Terms will survive termination, although you will no longer be authorised to access the Service.
- 4.3 You will not, nor attempt to:
- (a) provide, publish, post or create a link to any page or part of our website, products or services without our express written permission;
 - (b) link directly to any page of our website or any part of our products or services other than via normal navigation of our website or normal usage of the products or services;
 - (c) transmit to or via the Service any unlawful, threatening, libellous, defamatory, obscene, dangerous, inflammatory, pornographic or profane material, any material that could constitute or encourage conduct that will be considered a criminal offence, give rise to civil liability or would otherwise violate any laws, nor any materials, malware, spyware, computer viruses or other materials which may adversely affect the security or content of the Service or that of anyone else connected to it;
 - (d) violate the security or any security measures of the Service nor that of any of our systems and networks;

- (e) access any data on or via the Service which is not intended for you;
 - (f) probe, scan or test the vulnerability of the Service or any of our systems or networks;
 - (g) interfere with service to any other user of the Service; nor
 - (h) use any device, software or routine to interfere or attempt to interfere with the proper working of, any activity being conducted on or via, the Service.
- 4.4 If you are allocated any login details or other user codes or passwords for your identification or access to the Service, you must keep them private and confidential and must not allow anyone else to log into the Service using those details or codes unless we specifically permit otherwise.
- 4.5 You agree that:
- (a) the resources on our website or available within or via our products or services (other than advice given directly by Practitioners to you) are provided for your information only and do not constitute professional advice of any sort;
 - (b) our website, products or services might not at any given time be actively monitored whether during or outside business hours, and the information contained on the website and within or made available via our products or services is presented “as is” and has not in any way been tailored to suit your own personal circumstances; and
 - (c) we have absolute discretion to edit, decline to post or remove in whole or in part any information or material you provide or post to or via our website, products or services.
- 4.6 Material on, in or made available via our website, products or services may contain general information about us and our products and services, or those of other parties with whom we deal or do business. Unless expressly stated otherwise, this information:
- (a) does not constitute an offer or inducement to enter into any legally binding contract;
 - (b) other than these Terms, does not form part of the terms and conditions for any of our products or services or those of any other parties referred to on or in our website, products or services; and
 - (c) does not mean that we are in any way affiliated with any other parties or businesses referred to (if any).
- 4.7 While we have made every effort to ensure that the information on and available from our website, products or services (other than Clinical Services) is free from error, we do not warrant the accuracy, adequacy or completeness of that information.
- 4.8 As a convenience, our website, products or services may from time to time include links or references to other websites and/or materials, which are beyond our control (**Other Sites**). We do not review or monitor any websites linked to our website or to any Other Sites and we are not responsible for content on any websites outside our website, products or services.
- 4.9 If you access any Other Sites, you do so at your sole risk and subject to the terms and conditions of those sites.

- 4.10 The inclusion on or in our website, products or services of any links or references to Other Sites does not imply any endorsement by us of any of the Other Sites or the content contained on those sites. We do not warrant the safety or accuracy of the content on any Other Sites and will not be liable for any adverse consequences to you whatsoever arising out of your access to or use of any Other Sites.

5 **CLINICAL RECORDS**

- 5.1 All clinical or medical records or any other materials (**Records**) created by us, our staff or any Practitioners in the course of providing the Service to you, and all copyrights and any other intellectual property rights in or arising out of any of them, shall vest solely in Emerging Healthcare IP Pty Ltd ACN 637 569 585 (**EHIP**) upon their creation and you now, both on your own behalf and on behalf of any Patient, assign to EHIP all of your (and their) right title and interest in all Records.
- 5.2 For the avoidance of doubt, EHIP does not and will not purport to own any information or data contained in the Records, but instead will own the copies of such data/information as are contained in the Records.
- 5.3 Patients may request copies of such information or data to the extent that it constitutes personal information under the *Privacy Act 1988* (Cth).
- 5.4 The Records do not include any records you or the Patient create or already had (**Client Records**), and you (both on your own behalf and on behalf of any Patient) now license us to use and make reproductions of any Client Records for the purpose of, and any purposes incidental to:
- (a) providing Cub Care Services to you and/or Patients;
 - (b) providing Clinical Services to Patients;
 - (c) marketing and promotional activity.
- 5.5 We will comply with the *Privacy Act 1988* (Cth) in respect of all personal information (including sensitive information) collected in the course of providing the Service to you and Patients, and will adhere to the terms of our **Privacy Policy**.

6 **WARRANTIES BY YOU**

- 6.1 You warrant that, at all times you access any part of the Service, you:
- (a) are aged 18 years or more;
 - (b) will at all times:
 - (i) provide (and will ensure any Patient over whom you have control also provides) only accurate and current information via the Service;
 - (ii) keep that information up to date when it is about you;
 - (iii) ensure any Patient over whom you have control keeps that information up to date when it is about them;
 - (c) will, if you are required to register to use the Service, provide us with certain personally information that can identify you, and you warrant further that you will keep this data up to date so that our records of that information remain current, complete and accurate;

- (d) will as a Patient contact your health provider immediately should your condition change or symptoms worsen, and contact your local emergency services immediately if you require emergency care;
- (e) acknowledge and understand that:
 - (i) you and the Patient respectively (or solely you if the Patient is aged under 18 years) are responsible for all communications between you or the Patient and the person(s) you are communicating with via the Service; and
 - (ii) we do not always record or keep any records of the content of the communications between health providers and patients via the Service, although the Practitioners may as part of the Clinical Services make such records of that service as they choose to make.

7 NETWORK & DATA SECURITY

- 7.1 We store any data used online on an Australian Signals Directorate (ASD) certified cloud service provider (Amazon Web Services) and use Secure Sockets Layer (SSL) protocols to provide users secure and private access to the Service.
- 7.2 You agree to your (and any Patients') information being stored in this location and accessed in this way and otherwise dealt with in accordance with these Terms and our Privacy Policy.
- 7.3 We may use any information stored for secondary purposes including internal clinical review, training and improvement of all or any part of the Service.
- 7.4 Video streaming data will be transmitted with end-to-end encryption. It may be transmitted through the cloud service provider (Amazon Web Services - Sydney Server) however no video streaming data is stored.
- 7.5 We seek your consent to record the audio of your video consultation for quality and safety improvement. Consent is given through a simple "yes" or "no" response before your call and can be changed for future consultations at any time. A copy of your call recordings can be requested by contacting the Service. If you consent, the recorded audio will be encrypted and stored in Amazon Web Services' Australian data centres. The audio may be transmitted and temporarily stored in Microsoft Azure's Australian data centres for the purposes of transcription and analysis by machine learning algorithms. Transcripts and summaries of the audio may also be stored. All of these data will be encrypted during transit and at rest. Microsoft asserts that your data will not be used for training their ML models. Your data will be used by the Service for quality and safety improvement. Access to these data is strictly limited to authorized Service personnel for the purpose of enhancing quality and safety in our services. The use of these data is strictly confined to the purposes stated, in line with our commitment to privacy and in compliance with the Privacy Act 1988 (Cth) and applicable health records legislation.
- 7.6 Further information on the types of data stored can be found in our **Privacy Policy**.

8 RECORDING POLICY

- 8.1 Recording consultations by any means is strictly prohibited, unless expressly agreed to by all parties to that consultation.
- 8.2 Unauthorised recording of consultations will be considered grounds for immediate cancellation of registration.
- 8.3 See section 7.5 for more detail on when and how we record consultations.

9 INTELLECTUAL PROPERTY

- 9.1 The Service and all technology used to deliver the Service are our sole property or that of our suppliers and are protected by laws relating to intellectual property, including copyright laws, and international treaty provisions.
- 9.2 The compilation, organization and display of the content as well as all software and inventions used on and in connection with the Service are and remain our exclusive property or that of our suppliers.
- 9.3 We reserve all rights in the Service and its content not specifically granted in any agreements with us or in these Terms.
- 9.4 Unless otherwise specified, all intellectual property rights in or arising out of provision of the Service will vest upon their creation solely in EHIP.
- 9.5 You will not attempt to copy, alter or reproduce in any form, whether in hard copy or electronically through any medium whatsoever, any part of the Service nor any materials we provide to you as part of the Service, including any text, images, audio or video content or other data contained on or within any part of the Service, without express written permission from us or unless expressly authorised by these Terms to do so.
- 9.6 Where (and only where) you are specifically invited on or by our website, products or services to do so, you may download and/or copy materials from our website, products or services for your own personal non-commercial use, but you must not distribute, modify, transmit, reuse, repost, or make use of any such materials in any way whatsoever for any other purpose without our express written permission.
- 9.7 All copyrights, trademark rights and other rights in or arising out of any part of our Service and any relevant materials, are either owned by or under licence to us. We reserve all of those rights.

10 OUR WARRANTIES, LIABILITY AND INDEMNITIES

- 10.1 The Service will be provided by us using reasonable care.
- 10.2 Other than as specifically set out in these Terms, all warranties, including any implied warranties for fitness for use or merchantability or any other duties required under common law are excluded to the extent permitted by law.
- 10.3 We will not be liable for any special, indirect or consequential damages or damages resulting in, any loss of profit, loss of goodwill, loss of business opportunity, loss of revenue or any other damage, costs, expenses or other claims even if such claims or damages arose as a result of our negligence or under any other tortious action while providing the Service to you or as a result of your use of the Service.

- 10.4 We do not warrant and are not liable for any actions, omissions or information provided by any other person using the Service or any Practitioner. Without limiting the previous sentence, we make no warranty and are not liable for the content or quality of any healthcare consultation that takes place via or is conducted through the Service.
- 10.5 We do not guarantee that a video consultation is the appropriate course of treatment for a particular healthcare problem.
- 10.6 We do not warrant that the materials on, in or available via our website will be suitable for any particular purpose. We cannot and do not make any warranties about any communications or information that might be made between or given to you by any person(s) with whom you use the Service to communicate as we are in no way in control of the content of any such communications.
- 10.7 Access to the Service and all parts of it is provided on a strictly “as is” basis.
- 10.8 We do not warrant that the Service will be fit for any specific purpose other than as a means of communication between individuals, including a patient and a health provider.
- 10.9 We do not warrant that your use of the Service will yield any particular result for you nor that it will meet any needs you may have.
- 10.10 In consideration for being given access to the Service, you release and forever discharge us, our employees, servants and agents and each of them from all and any liability to you of any nature whatsoever in respect of any losses, damages (whether direct, indirect, consequential or otherwise), liabilities, claims or expenses whatsoever arising directly or indirectly from use by you or any other person of any part of the Service, or reliance by you or any person upon information contained within or made available via the Service.
- 10.11 In further consideration for being given access to the Service, you further release and forever discharge us, our employees, servants and agents and each of them from any claim or demand of any nature whatsoever associated with or arising out of any part of the Service that you have, had or but for this clause would have had against any of the parties so released.
- 10.12 Subject to our compliance with these Terms, you will be liable for and indemnify us, our employees, servants and agents and each of them jointly and severally against any loss, damage, expense or cost of any nature, or any claim or liability of any nature brought against or incurred by any of them (including, without limitation, full solicitor and client legal costs on an indemnity basis), that any of them incurs or may incur (whether directly, indirectly or consequentially or otherwise) arising out of your use of the Service or from any breach by you of these Terms.
- 10.13 Provisions of the *Australian Consumer Law* and other statutes from time to time in force in Australia may imply warranties or conditions or impose obligations upon us which cannot be excluded or modified. These Terms must be read and interpreted subject to such statutory provisions or any other similar provisions.
- 10.14 Our liability and that of our employees, servants or agents for any breach of any condition or warranty implied by law or otherwise, and which cannot be excluded, is limited to the extent possible, at our option, to:
- (a) the supply of the relevant goods or services again; or

- (b) payment of the cost of having the goods or services supplied again or repaired.

11 **GENERAL MATTERS**

- 11.1 The headings set out in these Terms are for convenience only and shall not in any way affect the interpretation of these Terms.
- 11.2 These Terms may only be amended by a further written agreement entered into between the parties.
- 11.3 In these Terms, the words “include”, “includes” and “including” are not words of limitation.
- 11.4 If any provision of these Terms is determined to be void, illegal or unenforceable by any law or regulation of any government or by any court, such provision will be severed from these Terms and the remaining parts, terms and provisions will remain enforceable.
- 11.5 These Terms and your relationship with us pursuant to these Terms are governed by the laws of Queensland, Australia, and shall not be subject to or governed by *The United Nations Convention on Contracts for the International Sale of Goods* or any other similar or replacement Convention.
- 11.6 You unconditionally and irrevocably agree to submit to the exclusive jurisdiction of the courts of Queensland for the purpose of resolving any disputes pursuant to these Terms.
- 11.7 These Terms constitute the entire agreement of the parties and supersede all prior understandings, negotiations, agreements, written or oral, express or implied.
- 11.8 No waiver or breach of any of these Terms shall constitute a precedent or a waiver of any succeeding or other breach of the same.
- 11.9 When from time to time you log into or seek to access relevant parts of the Service, you may be asked to agree to our then current terms and conditions. We do not warrant that on any such occasion those terms and conditions will be the same as set out in this document.