

Online Emergency Response Planning Tool Terms of Use

These Terms of Use were last updated on 31 July 2015

Welcome to Healthpoint ANZ Pty Limited's ("Healthpoint") Emergency Response Planning Tool ("ERPT"), an online planning service that aims to facilitate a consistent approach to emergency response planning by primary care services. The ERPT assists primary care practices better prepare for, respond to and recover from the effects of events which threaten their ability to continue to care for their populations.

These Terms of Use ("Agreement") set out Healthpoint's, and Your, rights and obligations in relation to ERPT. Please read this Agreement carefully before registering to use ERPT. By clicking the "I accept" button and/or otherwise using ERPT you agree to follow and be bound by the terms and conditions of this Agreement. If you do not agree to all the terms and conditions in this Agreement, you must not use ERPT.

This Agreement may be varied by Healthpoint at any time, effective upon the posting of modified terms on the Website or as otherwise notified to You in writing (including by email). You will ensure that You have read, understood and agree to the most recent terms posted on the Website or as otherwise notified to You.

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires or is specified otherwise:

Agreement means these Terms of Use and includes the Support Services Schedule;

Business Day means a day other than a Saturday, Sunday or public holiday in Auckland, New Zealand;

Documentation means the documentation (if any) made available to You by Healthpoint (whether in hardcopy or electronic form) which sets out a description of the Subscription Services and the user instructions for the Subscription Services;

Intellectual Property Rights means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual property rights, whether registered, in the course of being registered or unregistered and any analogous rights worldwide;

Normal Business Hours means 9.00am – 4.00 pm local Australian Eastern standard Time, each Business Day, as may be amended by Healthpoint from time to time;

Services means the Subscription Services and Support Services;

Software means:

- (a) Healthpoint's Emergency Response Planning Tool, which assists primary care practices better prepare for, respond to and recover from the effects of events which threaten their ability to continue to care for their populations; and
- (b) the Templates;

Subscription Fee means the annual subscription fee payable by the RACGP (or other third party) or by You to Healthpoint for Your access and use of the Subscription Services, as set out on the Website or as otherwise agreed between the parties in writing;

Subscription Services means the subscription services provided by Healthpoint to You under this Agreement that allow access to the Software via the Website;

Support Services means the support services that Healthpoint will provide in relation to the Subscription Services, as set out in the Support Services Schedule;

Support Services Schedule means the schedule that appears at the end of this Agreement;

Templates means the templates created by Healthpoint to assist You to creation Your business continuity and emergency response plans;

Third Party Provider has the meaning set out in clause 11.5(a);

Virus means any thing or device (including any software, code, file or program) which may: (a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; (b) prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or (c) adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;

Website means www.erpt.racgp.com.au or any other URL address notified to You by Healthpoint from time to time;

You and **Your** refers to you, the individual or entity that registers to use or receive the Services;

Your Data means the data inputted by You or Healthpoint on Your behalf for the purpose of using the Subscription Services or facilitating Your use of the Subscription Services; and

Your Plans means the business continuity and emergency response plans created through the use of the Subscription Services and which are based on Your Data and the Templates.

1.2 In this Agreement, unless the context requires otherwise:

- (a) words importing one gender include the others;
- (b) words importing the singular or plural number include the plural and singular number respectively;
- (c) headings are inserted for the sake of convenience of reference only and do not affect the interpretation of this Agreement; and
- (d) a person includes any individual, corporation, unincorporated association, government department or municipal authority.

2. Licence

- 2.1 Healthpoint grants You a non-exclusive, non-transferable right to
- (a) access and use the Subscription Services and the Documentation;
 - (b) print and make copies of Your Plans,
- for the term of this Agreement solely for Your internal business operations, all on the terms and conditions set out in this Agreement.
- 2.2 You will:
- (a) ensure that only You access and use the Subscription Services and the Documentation;
 - (b) keep secure logins and passwords for Your access and use of the Subscription Services and Documentation and keep such logins and passwords confidential;
 - (c) permit Healthpoint, by giving at least 36 hours' prior notice, to audit the Subscription Services in order to establish whether the Subscription Services are being used in accordance with this Agreement;
 - (d) promptly disable any login account if Healthpoint discovers (through undertaking the audits referred to in clause 2.2(c)) that any login details have been provided to any third party; and
 - (e) on demand, pay to Healthpoint an amount of any underpayment of Subscription Fees discovered by Healthpoint through undertaking the audits referred to in clause 2.2(c).
- 2.3 You will not access, store, distribute or transmit any Viruses, and Healthpoint may, without liability to You, disable Your access to the Subscription Services if You are in breach of this clause.
- 2.4 You will not:
- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (i) and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
 - (b) access all or any part of the Subscription Services and Documentation in order to build a product or service which competes with the Subscription Services and/or the Documentation;

- (c) use the Subscription Services and/or Documentation to provide services to third parties except to the extent such use could reasonably be contemplated having regard to the nature and purpose of the Subscription Services;
- (d) attempt to undermine the integrity or security of:
 - (i) the Subscription Services; or
 - (ii) Healthpoint's, or any third party's, systems, networks or resources used in the provision of the Subscription Services;
- (e) attempt to gain unauthorised access to any information or materials other than those to which You have been given express permission to access as part of the Services;
- (f) make the Subscription Services and/or Documentation available to any third party;
- (g) attempt to obtain, or assist third parties in obtaining, access to the Subscription Services and/or Documentation, other than as provided under this clause 2.

2.5 You will use all reasonable endeavours to prevent any unauthorised access to, or use of, the Subscription Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Healthpoint.

3. **Independence from RACGP**

- 3.1 By entering this Agreement and taking the benefit of the Subscription Services and Documentation, You acknowledge:
- (a) You enter into this licence with Healthpoint independently of any relationship You may have with The Royal Australian College of General Practitioners ABN 34 000 223 807 (RACGP), and
 - (b) the RACGP has made no representations or warranties to You in connection with the capabilities or actions of Healthpoint or the application or adequacy of the Subscription Services or this Agreement.
- 3.2 You agree to waive all claims against the RACGP in connection with Your entry into this Agreement.
- 3.3 Healthpoint agrees to hold this waiver on trust for the benefit of the RACGP.

4. **Services**

- 4.1 Healthpoint will provide the Subscription Services and make available the Documentation to You on and subject to the terms of this Agreement.
- 4.2 Healthpoint will, as part of the Subscription Services and at no additional cost to You, provide You with Support Services during Normal Business Hours. Healthpoint may change the Support Services in its sole and absolute discretion from time to time.

- 4.3 You acknowledge that Healthpoint regularly upgrades and updates the Subscription Services and that the Subscription Services are continually evolving. Some of these changes will occur automatically, while others may require You to schedule and implement the changes.

5. **Your Data**

- 5.1 Healthpoint acknowledges and agrees that You will own all rights, title and interest in and to all of Your Data and will have sole responsibility for the legality, reliability, integrity, accuracy and quality of Your Data.
- 5.2 Each party will take appropriate technical and organisational measures against unauthorised or unlawful processing of Your Data or its accidental loss, destruction or damage and Healthpoint will, as part of these measures, use reasonable endeavours to back-up Your Data. You acknowledge that if there is any loss or damage to Your Data, Your sole and exclusive remedy will be for Healthpoint to use reasonable commercial endeavours to restore such lost or damaged data from the latest back-up of Your Data maintained by Healthpoint. Healthpoint will not be responsible for any loss, destruction, alteration or disclosure of Your Data caused by any third party.
- 5.3 You acknowledge and agree that Healthpoint may use Your Data for the purpose of:
- (a) performing Healthpoint's obligations under this Agreement;
 - (b) ensuring that You are complying with the terms and conditions of this Agreement;
 - (c) improving or enhancing the Subscription Services;
 - (d) performing data analysis on an aggregated and anonymous basis,
- provided that Healthpoint complies with its confidentiality obligations under clause 9.

6. **Your Obligations**

- 6.1 You will:
- (a) provide Healthpoint with all necessary co-operation in relation to this Agreement, and all necessary access to such information as may be required by Healthpoint, so that Healthpoint can provide the Services including but not limited to Your Data, security access information and configuration services;
 - (b) comply with all applicable laws (including the Privacy Act (Cth)), and regulations with respect to the use of the Subscription Service and Your activities under this Agreement;
 - (c) carry out all other of Your responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in Your provision of such assistance as agreed by the parties, Healthpoint may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - (d) use the Subscription Services and the Documentation in accordance with the terms and conditions of this Agreement;

- (e) ensure that Your network and systems comply with the relevant specifications as may be specified by Healthpoint from time to time; and
- (f) be solely responsible for procuring and maintaining Your network connections and telecommunications links from Your systems to Healthpoint's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Your network connections or telecommunications links or caused by the internet.

7. Charges and Payment

- 7.1 You will pay, or will procure a third party agreed by Healthpoint to pay, the Subscription Fees to Healthpoint in accordance with this clause 7.
- 7.2 Healthpoint will invoice the Subscription Fees annually in advance. You will pay each invoice issued by Healthpoint under this Agreement within 10 days of the date of such invoice.
- 7.3 If You fail to pay any invoice when due then without prejudice to any other rights and remedies of Healthpoint:
 - (a) Healthpoint may, without liability to You disable access to all or part of the Subscription Services, and will be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and/or
 - (b) interest will accrue on such due amounts at an annual rate equal to 2% over the then current base overdraft rate of Healthpoint's bankers calculated from the due date until the date the amount is paid in full.
- 7.4 All amounts stated or referred to in this Agreement are:
 - (a) exclusive of GST (if any); and
 - (b) unless otherwise stated, specified in Australian dollars.
- 7.5 If You are required by law to deduct or withhold taxes or charges from the amounts due to Healthpoint under this Agreement, You will ensure that the amount due to Healthpoint is increased so that the payment actually made to Healthpoint equals the amount due to Healthpoint as if no such taxes or charges had been imposed.
- 7.6 Healthpoint may change the Subscription Fees at any time by giving You at least 30 days' prior written notice.

8. Intellectual Property Rights

- 8.1 You acknowledge and agree that Healthpoint and/or its licensors own all Intellectual Property Rights:
 - (a) in, or created during the performance of, the Services; and
 - (b) in the Software and the Documentation.

Except as expressly stated in this Agreement, this Agreement does not grant You any rights to, or in, the Intellectual Property Rights, or any other rights or licences in respect of the Services, Software or the Documentation.

- 8.2 Healthpoint acknowledges and agrees that, subject to clause 8.1, You own the Intellectual Property Rights in Your Plans. You grant to Healthpoint a non-exclusive right to use Your Plans to perform Healthpoint's obligations under this Agreement.
- 8.3 Healthpoint confirms that it has all the rights in relation to the Subscription Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

9. **Confidentiality**

- 9.1 Each party will treat as confidential all information obtained from the other pursuant to this Agreement. Neither party will divulge such information to any persons (except to their employees (for whom that party will be responsible) and then only to those employees who need to know) without the other party's prior written consent.
- 9.2 In relation to either party, confidential information means any information relating to the business or affairs of that party and includes, without limitation, its designs, drawings, manufacturing know how, object code, source code, planned modifications to hardware or software, planned enhancements to hardware or software, product knowledge, quality standards, research and development, unpublished specifications, technical information, pricing, manipulated data, business plans, business processes, methodologies, techniques, general know-how, costs and margins, customer lists, financial data, internal price information, market research, marketing plans, sales forecasts and trade secrets.
- 9.3 Clauses 9.1 and 9.2 do not extend to information which:
- (a) can be established by written records to be already known to the recipient at the time of disclosure; or
 - (b) which is in or enters the public domain through no fault of the recipient.
- 9.4 If the recipient of any confidential information is required by any applicable law, court or authority to disclose such confidential information to any person, it will:
- (a) give the disclosing party prompt written notice of the disclosure, where practicable before it occurs, so that the disclosing party has sufficient opportunity to prevent the disclosure through appropriate legal means;
 - (b) disclose only that part of the confidential information which the recipient's legal advisers consider is legally required to be disclosed; and
 - (c) use all reasonable endeavours to obtain an assurance that the confidential information disclosed will be treated confidentially by the recipient.
- 9.5 Each party will on demand and, in any event, on termination of this Agreement, deliver to the other party all confidential information and any other document supplied by or obtained from the other party.
- 9.6 This clause 9 will survive termination of this Agreement.

10. **Privacy**

- 10.1 In receiving the Services, You may provide personal information to Healthpoint, such as Your or Your Personnel's contact information. Healthpoint may use this

personal information for enhancing the delivery of the Services, or for contacting You or Your Personnel in relation to the use of the Services.

10.2 If so Healthpoint will:

- (a) comply, and must ensure its Personnel comply, with the *Privacy Act* (Cth);
- (b) not do or allow anything to be done that results in You breaching Your obligations under the *Privacy Act* (Cth)

10.3 Healthpoint warrants it will not use or disclose any personal information other than in accordance with this clause 10, and indemnifies and holds you harmless from and against any loss or damage incurred or suffered by You in connection with any claim, notice, demand, action, proceeding, litigation, investigation or judgment by any person in connection with an infringement of privacy by Healthpoint.

10.4 To view Healthpoint's full privacy statement please use the following link, <https://erpt.racgp.org.au/static/documents/privacyStatement.pdf>

11. **Warranties and Liability**

11.1 Healthpoint warrants that:

- (a) the Subscription Services will function substantially as described in the Documentation; and
- (b) the Services will be provided with reasonable skill and care.

11.2 If the Subscription Services do not function substantially in accordance with the Documentation, Healthpoint will, at its option, either:

- (a) modify the Subscription Services to conform to the Documentation; or
- (b) provide a workaround solution.

If neither of the options in paragraphs (a) or (b) is commercially feasible, either party may terminate this Agreement by giving written notice to the other party, in which case Healthpoint will refund to You all Subscription Fees pre-paid to Healthpoint for unused Subscription Services. Such correction or substitution constitutes Your sole and exclusive remedy for any breach of the warranty set out in clause 11.1.

11.3 Healthpoint will not be liable for a breach of the warranty in clause 11.1 to the extent of any non-conformance which is caused by use of the Subscription Services contrary to the Documentation and any other Healthpoint instructions, or modification or alteration of the Subscription Services by any party other than Healthpoint or Healthpoint's duly authorised contractors or agents.

11.4 Notwithstanding clause 11.2, Healthpoint does not warrant:

- (a) that Your use of the Subscription Services will be uninterrupted or error-free;
- (b) the accuracy, correctness, reliability and completeness of any emergency response plan, disaster recovery plan, Your Plans, formulae, calculation or any other information provided through the use of the Subscription Services (together referred to as ERPT Information). You acknowledge that the ERPT Information:

- (i) is provided for informational purposes only, and that any assumptions used and figures generated are for purposes of illustration and reference only, and are subject to change depending on a variety of factors, which may not have been taken into account; and
- (ii) should not be considered complete, nor should it be relied on to suggest a course of action in the event of a disaster, an emergency or otherwise.

To the maximum extent permitted by law, Healthpoint will not be liable for any form of loss or damage, arising out of or in connection with Your reliance on and use of the ERPT Information and Subscription Services. You agree that You will not rely solely on the ERPT Information and will carry out Your own assessment of the appropriateness of the ERPT Information and all relevant factors (other than by using the Subscription Services) to verify the accuracy, correctness, reliability and completeness of the ERPT Information.

11.5 You acknowledge that:

- (a) Healthpoint may rely on the provision of services by third parties (including data centre, electricity, telecommunications and outsourcing providers) in order to provide the Services (Third Party Providers) and that the Services may be subject to limitations, delays and other problems inherent in the use of such services provided by Third Party Providers. Healthpoint, will where commercially feasible and practically available, use reputable Third Party Providers to provide such services; and
- (b) Healthpoint will not be responsible for any delays, delivery failures, or any other loss or damage arising out of or is in connection with any services provided by Third Party Providers, including any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet.

11.6 Except as expressly set out in this Agreement, the Services and the Documentation are provided on an "as is" basis and all representations, conditions or warranties (whether express or implied, statutory or otherwise, and including warranties of merchantability and fitness for a particular purpose) in respect of the Services and Documentation are expressly excluded.

11.7 You will indemnify Healthpoint against all costs, losses, expenses and damages incurred through any claims against Healthpoint resulting from Your use of the Services, the Documentation and Your Plans.

11.8 Except for a breach by either party of its confidentiality obligations or an infringement by You of Healthpoint's Intellectual Property Rights:

- (a) neither party will be liable to the other party for loss of profits, loss of revenue, loss of data, or any indirect, consequential or special loss or damage suffered or incurred by the other party as a result of anything done by the first party under this Agreement; and
- (b) Healthpoint's liability arising out of all claims for loss or damage under this Agreement will not exceed in aggregate an amount equal to the Subscription Fees actually paid by You to Healthpoint in the six months prior to time the liability arises.

12. Termination

- 12.1 Either party may terminate this Agreement by providing 30 days of written notice to the other.
- 12.2 Either party may terminate this Agreement immediately if the other party goes into liquidation or has a receiver or statutory manager appointed of any of its assets, becomes insolvent or makes any arrangement with creditors.
- 12.3 On termination of this Agreement for any reason:
- (a) all licences granted under this Agreement will immediately terminate except that Healthpoint will make available a copy of Your Plan and You may continue to use any hardcopies of Your Plan;
 - (b) each party will return, and make no further use of, any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
 - (c) Healthpoint may destroy or otherwise dispose of any of Your Data in its possession unless Healthpoint receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to You of the then most recent back-up of Your Data. Healthpoint will use reasonable commercial endeavours to deliver the back-up to You within 30 days of its receipt of such a written request, provided that You have, at that time, paid all Subscription Fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). You will pay all reasonable expenses incurred by Healthpoint in returning or disposing of Your Data; and
 - (d) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, will not be affected or prejudiced.
- 12.4 If Healthpoint terminates this Agreement under clause 12.2, You will:
- (a) not be entitled to a refund of any Subscription Fees pre-paid to Healthpoint for unused Subscription Services; and
 - (b) be liable to pay the Subscription Fees on a pro-rata basis for each day up to and including the date of termination of this Agreement to the extent that You have not paid for the use of the Subscription Services on those days.

13. Sub-contracting

- 13.1 Healthpoint may sub-contract any of its obligations under this Agreement without obtaining Your prior written consent.
- 13.2 If Healthpoint uses a sub-contractor, Healthpoint is not relieved of any of its liabilities or obligations under this Agreement.

14. Disputes

- 14.1 If a dispute arises out of or relates to this Agreement (Dispute), a party may not commence any court or arbitration proceedings relating to the Dispute unless it has

complied with the following paragraphs of this clause, except where the party seeks urgent interlocutory relief.

- 14.2 A party claiming the Dispute has arisen must give written notice to the other party specifying the nature of the Dispute.
- 14.3 On receipt of that notice, the parties will use all reasonable endeavours to resolve the Dispute by discussion, consultation, negotiation or other informal means.
- 14.4 If the Dispute is not resolved within 15 Business Days of the notice being given pursuant to clause 14.2 (or within such further period agreed in writing by the parties), either party may, by giving written notice to the other party, require the Dispute to be determined by the arbitration of a single arbitrator. The arbitrator will be appointed by the parties or, failing agreement within five Business Days of the notice requiring arbitration, by the President of the New Zealand Law Society on application of either party. The arbitration will be conducted as soon as possible and in accordance with the provisions of the Arbitration Act 1996.

15. **Force Majeure**

- 15.1 Healthpoint will have no liability to You under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Healthpoint or any other party), failure of a utility service or transport or telecommunications network or service of a Third Party Provider, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that You are notified of such an event and its expected duration.

16. **General**

- 16.1 This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes any previous understanding or agreements on that subject matter.
- 16.2 This Agreement will not be deemed to create a partnership, joint venture or agency relationship of any kind between the parties.
- 16.3 If any part or a provision of this Agreement is judged invalid or unenforceable in a jurisdiction it is severed for that jurisdiction and the remainder of this Agreement will continue to operate.
- 16.4 A provision or a right under this Agreement may not be waived except in writing signed by the party granting the waiver.
- 16.5 A party may exercise a right, power or remedy under this Agreement at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party under this Agreement does not prevent a further exercise of that or of any other right, power or remedy.
- 16.6 This Agreement may be varied by Healthpoint at any time, effective upon the posting of modified terms on the Website or as otherwise notified to You in writing

(including by email). You will ensure that You have read, understood and agree to the most recent terms posted on the Website or as otherwise notified to You.

- 16.7 You will not assign, transfer or otherwise deal with this Agreement or any of Your rights or obligations under this Agreement, whether in whole or in part, without the prior written consent of Healthpoint.
- 16.8 Notices and other communications under this Agreement are to be given in writing by email, facsimile, personal delivery or by post and must be:
- (a) sent to the correct email, facsimile number or address designated in writing by each party for that purpose from time to time; and
 - (b) marked for the attention of the designated person or office holder (if any).
- 16.9 A notice or communication in relation to this Agreement will be deemed to be received:
- (a) in the case of a letter, on the third Business Day after posting;
 - (b) in the case of email, on the Business Day on which the email is successfully delivered;
 - (c) in the case of a facsimile, on the Business Day on which it is dispatched or, if dispatched after 5.00 p.m. (in the place of receipt) on the next Business Day after the date of dispatch; and
 - (d) in the case of personal delivery, when delivered.
- 16.10 This Agreement will be governed by and construed in accordance with the laws of Australia.