

**MDReference
CLINICAL INFORMATION ACCESS
AGREEMENT**

Health Communication Network Limited
ACN 068 458 515
Level 1, 40 Oxley Street, Crows Nest NSW 2065

and

**MDReference Subscriber
“Customer”**

1.0 Purpose

This Agreement provides Customer with the right to access certain integration and search software and biomedical and other databases from Health Communication Network Limited ("HCN").

2.0 Definitions

2.1 “**Customer**” is the person whose details are provided to HCN via the subscription page at the website www.mdreference.com.au;

2.2 “**GST**” means a goods and services tax, consumption tax, value-added tax, retail turnover tax or a tax of a similar nature.

2.3 “**Products**” means MDReference and its components and includes updates.

3.0 Access to the Products

3.1 HCN hereby grants to Customer the non-transferable, non-exclusive limited right to gain computerised access to the Products which are produced and copyrighted by certain database producers, subject to the terms and conditions of this Agreement. Customer will use the Products only for internal purposes or personal research or training in the manner of using the Products (the “**Permitted Use**”), will not use the Products as a component of, or basis for, a directory, database, or other publication prepared for sale or for another form of commercial distribution, and will not redistribute, duplicate or alter the Products in any way.

3.2 HCN will issue Customer with identification passwords to gain access to the Products.

3.3 The terms and conditions of this Agreement, including without limitation, the addition or withdrawal of products and modification of guidelines, use restrictions, access requirements, and any other modification to Product features, may be changed, from time to time, by HCN where the change does not materially diminish the use or value of the Products.

3.4 HCN may terminate this Agreement if the Customer is in breach of this Agreement. HCN may deny access to any Products if Customer is in breach of this Agreement.

3.5 Customer acknowledges that it is aware of the technology requirements to obtain the desired functionality from the Products and that these requirements may change from time to time.

3.6 Customer agrees to comply with the terms and conditions of this Agreement and any and all user guidelines or restrictions provided by HCN or Rights Owners, from time to time.

4.0 Use Restrictions of the Products

4.1 Material contained in the Products is the proprietary material of HCN, or is subject to license agreements between HCN and certain database Rights Owners (the “**Rights Owners**”) and is the proprietary material of such Rights Owners or their licensors. No provision of this Agreement conveys any ownership interest in the Products. Title, as well as applicable copyrights, trademarks, trade secrets or other intellectual proprietary rights of and to the material in the Products are, and remain, the property of HCN, the Rights Owners or their licensors, as applicable

4.2 Customers may view the Products on their terminal or may print the data by printer (and may make limited copies of such printout) solely for the Permitted Use. Customer must not, unless expressly permitted by this Agreement, sell, distribute, sublicense, provide access or transfer the Products, in whole or in part, to a third party. In no event may the Products in their entirety or in lengthy sequences be uploaded, downloaded or distributed in any way by Customer, except as permitted by this Agreement.

4.3 Customer must not, and must not permit a third party to, adapt, modify, disassemble, decompile or reverse engineer the Products, in whole or in part.

4.4 Some materials in the Products are from copyrighted publications of the respective copyright claimants. Customer will comply with any requirements relating to copyright referred to in the publication data appearing in the relevant bibliographic citations and in copyright notices appearing in the original publication.

4.5 Customer acknowledges that a Rights Owner may require it to enter into an end user agreement with the Rights Owner and, if so, that access to the Products of that Rights Owner may be denied until the end user agreement is entered into.

5.0 Customer Obligations

5.1 Customer agrees to the following:

- (a) costs of installation and maintenance of a communications link, including equipment, will be Customer's responsibility;
- (b) Customer will use its best endeavours to ensure the confidentiality and security of the identification passwords issued to it by HCN. If any such identification password(s) is lost or stolen, Customer must notify HCN immediately in writing.

6.0 Limited Warranties and Limited Liabilities

6.1 HCN represents and warrants that it has the complete right and authority to enter into this Agreement and to deliver the Products.

6.2 Nothing in this Agreement excludes, restricts or modifies a condition, warranty, right or remedy implied or imposed by any statute or regulation that cannot be lawfully excluded, restricted or modified.

6.3 Subject to Clause 6.2, HCN and the Rights Owners expressly disclaim and exclude all warranties (including without limitation, merchantability and fitness for a particular purpose) and representations, whether express or implied, in relation to the Products and their provision under this Agreement. Although due care is used in preparing the Products and providing the service, HCN and the Rights Owners make no warranties that the Products will be uninterrupted or will meet Customer's requirements, or that the content of any database(s) is accurate or complete or that the results obtained by any Customers will be error free. No HCN employee or agent is authorised to make any statement that adds to or amends the warranties or limitations contained in this Agreement. HCN makes no warranty whatsoever in connection with the method(s) adopted by Customers to access the Products.

6.4 Neither HCN nor the Rights Owners will be liable to Customer, or any third party for loss of profits, loss of use or for any indirect, special or consequential damages whether based upon a claim or action of contract, warranty, negligence, strict liability or other tort, even if they are aware of the possibility thereof. Customer agrees that the entire liability of HCN and the Rights Owners, and the exclusive remedy of Customer or any third party, will in no event exceed an amount equal to the fee paid for the use of the Products.

6.5 Neither HCN nor its employees and agents will be liable for assistance provided to Customers in performing research using the Products and any such assistance received from HCN employees or agents will be solely at Customer's risk.

6.6 Customers, including physicians, health care workers and other professional persons using the Products may not rely on the information contained in the Products, but must rely on their clinical discretion, judgement and expertise in diagnosis and treatment.

6.7 Any cause of action whether brought by HCN, Customer or any third party concerning the Products must be commenced within one (1) year after such cause of action has accrued.

7.0 Indemnification

- 7.1** With the exception of any claims arising out of the infringement of any third party's copyright by HCN or the Right Owners, the Customer indemnifies HCN, its officers and employees against any loss, cost, expense or demand, whether direct or indirect, arising out of a claim brought by a third party against HCN alleging infringement of any person's intellectual property rights, including copyright, if the claim arises from:
- (a) the use of or access to the Products in breach of this Agreement;
 - (b) modification or alteration of the Products or any material provided to the Customer under this Agreement; or
 - (c) any transaction entered into by the Customer in breach of this Agreement or relating to the Product without HCN's prior written consent.
- 7.2** Notwithstanding subclause 7.1, the Customer will not be liable to HCN if the use or access to the Products giving rise to such a claim, was unauthorised by the Customer, provided that:
- (a) the Customer has put in place reasonable security measures to prevent any unauthorised use or infringement of the Products and complies with any other security requirement of HCN as notified in writing by HCN to the Customer from time to time;
 - (b) the Customer uses all reasonable endeavours to comply with the security measures and requirements specified in paragraph 7.2(a);
 - (c) if the Customer suspects or becomes aware of any unauthorised use or infringement of the Products (Unauthorised Use) it must;
 - (i) notify HCN immediately
 - (ii) use its best endeavours to ensure that such Unauthorised Use ceases;
 - (iii) uses its best endeavours to prevent any further Unauthorised Use; and
 - (iv) at HCN's sole discretion, conduct or co-operate fully with any investigation of such Unauthorised Use and any further action HCN may elect to take in respect of that investigation.
- 7.3** The Customer must;
- (a) notify HCN as soon as practicable of the infringement or alleged infringement referred to in subclause 7.1;
 - (b) assume sole control and conduct of the claim and any resulting settlement negotiations, unless HCN requests, by giving notice to the Customer, to defend or settle itself, at the Customer's cost, any claim which in HCN's reasonable opinion is not being conducted promptly or being fully defended; and
 - (c) obtain HCN's written approval to any proposed settlement terms before accepting them.
- 7.4** This clause 7 will survive termination or expiry of this Agreement.
- 8.0 Price and Payment**
- 8.1** The price for the Subscription for the right to access and use the Products and other services under this Agreement is;
- (a) non-refundable and payable annually in advance
 - (b) as posted on the www.mdreference.com.au website
 - i. at the date of subscribing, or
 - ii. at the date of renewal in subsequent years.
- 8.2** The subscription will terminate immediately without notice if the annual renewal payment is not received by the due date
- 8.3** The price for any supply made under or in connection with this Agreement does not include GST.

8.4 Customer must pay to HCN an amount in respect of any GST that HCN is required to pay for that supply at the same time and in the same manner as Customer is required to pay for the supply in respect to which the amount of GST relates.

8.5 HCN must issue to Customer a tax invoice in accordance with the requirements of the law relating to GST.

8.6 If HCN refunds to Customer any amount under this Agreement, HCN must refund to the Customer an amount in respect of any GST that Customer has paid in respect of the amount.

9.0 Term

9.1 The right to access and use the Products shall be for the term of one year from the date of Subscription. Other services to be supplied under this Agreement shall commence as appropriate upon execution of this Agreement.

9.2 The term shall be extended for consecutive periods of one year for so long as neither party gives notice that it wishes to terminate this Agreement, such notice to be given to the other party at least 30 days prior to the expiration of the then current term.

10.0 Entire Agreement

10.1 This Agreement represents the entire understanding of the parties with respect to the subject hereof. It is expressly agreed that the terms of any purchase order or similar instrument issued by Customer with respect to this Agreement or the Products will not affect the terms and conditions of this Agreement. No modification of or amendment to this Agreement will be binding unless in writing and signed by the parties.

11.0 Force Majeure

11.1 HCN will not be liable for any delay, failure in performance or interruption of service due to any unforeseen circumstances or circumstances beyond its control, including, without limitation, war, strikes, civil disturbances and acts of God

12.0 Severability

12.1 If a term or condition of this Agreement is found by a court or administrative agency to be unenforceable, the remaining terms and conditions hereof will remain in full force and effect.

13.1 General

13.1 This Agreement supersedes all other agreements between the parties about its subject matter and Customer acknowledges that it has not relied on any prior agreements with HCN about its subject matter in entering into this Agreement.