

Smart Referrals As A Service - Terms of Use

In this document, the following expressions have the following meanings:

- (a) "we", "us" and "our" means the State of Queensland acting through Queensland Health ABN 66 329 169 412;
- (b) "you" and "your" means the Practice using the Service;
- (c) "users" means individuals who:
 - (i) have a right to use the Service in accordance with clause 2(b); and
 - (ii) are working for, on behalf of, or as part of the Practice, including where any such individuals are providing services under its name, as part of its services, or in connection with an arrangement where it is providing practice management services to such individuals, whether directly or indirectly (for example, through a corporate or trust entity that engages such individuals), in Australia.

Other words and phrases defined in this document are set out in clause 11.1 below.

The Service provides seamless and integrated capability allowing Practices to create and submit electronic referrals from existing practice software. In summary, the Service is a replacement for outdated modes (for example, facsimile transmission) of creating and communicating referrals in relation to which our role is to facilitate communication.

1. Access

By clicking accept, or by using the Service, you agree to be bound by these Terms of Use and to ensure that your users adhere to these Terms of Use where these Terms of Use impose obligations upon them.

You represent and warrant to us that the individual clicking accept has the authority to act on behalf of you and to bind you to these Terms of Use. If that individual does not have such authority or if you DO NOT agree to these Terms of Use, then you MUST NOT use, or allow others to use, the Service.

2. Right to Use

- (a) We grant you a non-transferable and non-exclusive right to use the Service within Australia during the Subscription Period. The Service is provided on private infrastructure and hosted in Australia.
- (b) Your right to use the Service is subject to the following conditions:
 - (i) use is restricted to individual users who have been allocated a right to login to the Service by you;
 - (ii) you must have a current licence to use any third party software which you integrate with the Service;
 - (iii) you must ensure that your IT system and network has up to date malware and virus protection software in place that is of an appropriate and reasonable standard for a Practice IT system and network that holds and communicates sensitive health information of patients;
 - (iv) you must not, and must ensure that your users do not, adapt, modify, disassemble or reverse engineer the Service, nor may you make any copies of the Service;

- (v) you must not, and must ensure that your users do not, remove, deface or destroy any copyright notice, patent notice, trademark, service mark, other proprietary markings or confidential legends placed on or within the Service; and
 - (vi) your IT system and network continuing to meet the minimum requirements approved by us as part of onboarding you to the Service.
- (c) You, including your users, acknowledge and agree that Practice Data, Confidential Information and Personal Information will be provided:
- (i) to the Service Provider, as a result of your, including your users, use of the Service and receipt of the Support Services; and
 - (ii) to us, in order for us to communicate with you about the Service and provide Support Services to you.
- (d) We are bound by the *Information Privacy Act 2009* (Qld) and the National Privacy Principles within it together with our applicable privacy and information security policies and those of the Queensland Government. While we will use reasonable endeavours to ensure the Service is error-free, virus and malware-free, and operates without interruption to the standards applicable to us, we cannot and do not guarantee that the Service will be so. We will not be in breach of our obligations to provide the Service to the extent that the breach arises as a result of (i) any event or circumstance outside our reasonable control or (ii) any failure by you, to comply with your obligations under the Terms of Use.

3. Support Services

- (a) We will use best endeavours to resolve, or facilitate the resolution of, any problems experienced by you in relation to your, including your users, use of the Service (**Support Services**).
- (b) To request Support Services, you need to contact us using the details provided below to lodge a ticket for the required Support Services.
 - (i) QH-SmartReferrals@health.qld.gov.au
 - (ii) 1300 478 439
- (c) You must provide reasonable assistance and information to us in order to assist us to identify and resolve the problem. We will then assess and categorise the ticket. If we are unable to resolve the problem, we will contact the Service Provider. The Service Provider may then contact you directly to provide the Support Services and you agree to cooperate with the Service Provider in relation to this.
- (d) Support Services do not include:
 - (i) rectification of errors arising from faults in the computer hardware on which the Service is installed by you or any device connected to that computer hardware; or
 - (ii) correction of faults or errors, including data errors, arising directly or indirectly out of your, including your users, use of the Service or failure to comply with these Terms of Use.

4. Service updates

- (a) We may make updates to the Service available to you. An update will not apply to any hardware or third party software used in conjunction with the Service.

- (b) Where we make an update available, you will follow our reasonable directions and assist in implementing the update promptly.

5. Confidentiality

- (a) Each Recipient must keep confidential all Confidential Information of the Discloser, not use the Confidential Information except for the purposes of this document and not disclose Confidential Information directly or indirectly to any third party (except if the Recipient is or becomes required to do so by statute, rule (including the listing rules of a stock exchange), regulation, judicial process or the like) unless the disclosure is made:
 - (i) with the Discloser's prior written consent;
 - (ii) to its personnel on a need to know basis for the purpose of performing its obligations under this document; or
 - (iii) in our case, to our professional advisors (including external procurement advisors), Queensland Treasury, a Minister, or their advisors or Parliament.
- (b) If the Recipient becomes aware of a suspected or actual breach of this clause by the Recipient, the Recipient will immediately notify the Discloser and take reasonable steps required to prevent or stop the suspected or actual breach.
- (c) The Recipient will return or destroy (at the Discloser's direction) materials containing the Discloser's Confidential Information when they are no longer required by the Recipient, or otherwise when directed by the Discloser.
- (d) For clarity, this clause 5 does not apply to information that is Personal Information about any patient that is submitted in electronic referrals through the Service.

6. Privacy

You, including your users, and we must:

- (a) comply with applicable Privacy Laws;
- (b) take reasonable steps to ensure that Personal Information (as defined in the Privacy Laws) held by each of us is protected against misuse, interference, loss, unauthorised access, unauthorised modification and unauthorised disclosure;
- (c) ensure that only personnel who have a need to deal with Personal Information in connection with the Service are given access, only use the Personal Information for the purposes set out in these Terms of Use and are aware of, and comply with, that each of our obligations under these Terms of Use;
- (d) immediately notify the each other if you, including your users, or we become aware of a suspected or actual breach of our obligations in relation to Personal Information under these Terms of Use and immediately:
 - (i) take such steps as each other requires to resolve or otherwise deal with the breach or possible breach; and
 - (ii) follow any reasonable direction from each other in relation to the breach or alleged breach.

Note: We are bound by the *Information Privacy Act 2009* (Qld) and the National Privacy Principles within it together with our applicable privacy and information security policies and those of the Queensland Government.

7. Content and links within the Service

- (a) The Service and all parts of it are the intellectual property of the Service Provider, its suppliers, sponsors and/or licensors unless expressly indicated otherwise in the Service. The Service is protected by Australian and international copyright and trade mark laws.
- (b) You are and will remain responsible for, and retain ownership of, the Practice Data, your Confidential Information and Personal Information.
- (c) We retain ownership of our Confidential Information and Personal Information.
- (d) The Service may contain hyperlinks and other pointers or buttons to web sites operated by third parties. These linked web sites are not under our control and we are not responsible for the content of any linked web site or any hyperlink contained in the linked web site. Inclusion of any such link is not and should not be construed as an endorsement by us of the linked web site. Your, including your users, access of any such web site is entirely at your own risk.

8. Disclaimer

- (a) You acknowledge and agree that the Service does not constitute professional medical or healthcare advice, diagnosis or recommendation of treatment and is not intended to, nor should be used to, replace professional medical advice. In no circumstances should the Service be relied upon without independent consideration and confirmation by a qualified medical practitioner.
- (b) We make no representations or warranties with respect to any treatment, action, suitability or application of medication or preparation by any person whether in accordance with the Service or not.

9. Termination

9.1. Termination for cause

You or we may terminate these Terms of Use in whole by notice in writing immediately if the other, including its users:

- (a) commits a breach of the Terms of Use and, if the breach is capable of remedy, a period of 30 business days has expired from being notified of the breach without remedying that breach;
- (b) commits a material breach of the Terms of Use, which is not capable of remedy; or
- (c) becomes, threatens to become, or is in jeopardy of becoming, insolvent.

9.2. Termination with notice

You or we may terminate these Terms of Use in whole by notice in writing immediately, including, in our case, if our contract with the Service Provider for the Service expires or is terminated.

9.3. Suspension

In addition to our termination rights under this clause, we may suspend the Terms of Use in whole or in part immediately on written notice to you for the period specified in the notice at our absolute discretion. We will have no liability to you for the period of the suspension.

9.4. Effect of expiry or termination

- (a) If these Terms of Use terminate for any reason, then:
 - (i) our obligations under these Terms of Use will cease; and
 - (ii) you must immediately stop, and ensure all your users stop, using the Service and if we so request, you must certify that fact to us.
- (b) Termination or expiry of these Terms of Use will not affect the operation of clauses 6, 10, and 11 or any rights or remedies already accrued to either you or us under, or in respect of any breach of, these Terms of Use.

10. Liability

- (a) Other than as set out in these Terms of Use, and to the extent permitted by law:
 - (i) we exclude all express warranties and representations;
 - (ii) any condition or warranty which would otherwise be implied in these Terms of Use, whether by statute or otherwise, is excluded;
 - (iii) we are not liable for indirect or consequential loss not arising as a natural consequence of a breach or other event giving rise to liability of a party, or any loss of profits, loss of revenue, loss of any contract value, loss of anticipated profit or damages for lost opportunity, or loss of data, other than loss of data arising out of any obligation of the Service Provider to us with respect to the hosting, storage, migration, conversion, cleansing or back-up of data in providing the Service or harmful code;
 - (iv) our maximum liability to you, and your maximum liability to us, whether in contract, tort (including negligence) or otherwise in connection with these Terms of Use, is limited to \$100,000; and
 - (v) we are not liable to you for any:
 - a. interruption, suspension or termination of the Service in whole or in part for whatever reason, including failure of or suspension of public or private telecommunications network;
 - b. unavailability, unsuitability or connectivity problems and/or failures of the Service, its associated websites, information repositories or applications;
 - c. decision to remove or amend any content input into the Service; or
 - d. loss, damage, corruption or degradation of any information, data or other material as a result of accessing the Service, using the Service, viruses or any other technologically harmful material that may infect your, including your users, computer or mobile device due to your, including your users, access to, or use of, the Service.
- (b) Clause 10(a) is not intended to have the effect of excluding, restricting or modifying the guarantees in the Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

11. General

11.1. Definitions

In these Terms of Use:

Confidential Information means all information disclosed by, on behalf of you (including your users) or us (**Discloser**) to the other party (**Recipient**) in connection with the use or provision of the Service, or created using that information, which is confidential in nature and designated as confidential, or which a reasonable person receiving the information would realise is sensitive or confidential, and all information to the extent it is derived from that information. Confidential Information does not include any information which: (a) is or becomes public, except through breach of a confidentiality obligation; (b) the Recipient can demonstrate was already in its possession or was independently developed by the Recipient; or (c) the Recipient receives from another person on a non-confidential basis, except through breach of a confidentiality obligation. Confidential Information does not include information that is Personal Information about any patient that is submitted in electronic referrals through the Service.

Practice means a business delivering general practice and/or health services including but not limited to specialists, optometrists and allied health workers at one or more locations (whether in Queensland, Norfolk Island or in close bordering towns of Queensland delivering care to Queensland residents)..

Practice Data means any information, material, data, dataset or database (a) provided by or on behalf of you, including your users, to us or the Service Provider for use, processing, storing or hosting by us or the Service Provider in the provision of the Services, and (b) created, produced or derived from the use, processing, storing or hosting of that information, material, data, dataset or database in the provision or use of the Service.

Personal Information, as defined in the *Information Privacy Act 2009* (Qld), is information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Privacy Laws means, in our case, the *Information Privacy Act 2009* (Qld), and, in your case, the *Privacy Act 1988* (Cth).

Service Provider means BPAC Informatics Pty Ltd.

Subscription Period means the period which commences on the date you agree to these Terms of Use and continues until this Agreement is terminated in accordance with clause 9.

11.2. Interpretation

In these Terms of Use, headings and boldings are for convenience only and do not affect the interpretation of these Terms of Use and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) where a word or phrase is defined in these Terms of Use, other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;
- (c) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;

- (d) a reference to any statute includes all statutes varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (e) no provision of these Terms of Use will be construed adversely to a party solely on the ground that the party was responsible for the preparation of these Terms of Use or that provision;

11.3. Severability

Any provision of these Terms of Use which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make these Terms of Use enforceable, unless this would materially change the intended effect of the Terms of Use.

11.4. Governing law

The laws of Queensland govern these Terms of Use, and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland.

11.5. Entire agreement

You and we acknowledge and agree that these Terms of Use are a complete and exclusive statement of the mutual understanding between you and us and that it supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of the Terms of Use.