

Global Terms of Business

These Terms of Business together with the Employer Agreement govern access and use of the HealthNow Platform and the HealthNow Services.

1. Definitions

Account Holder means an individual who has received an invitation to activate an account on the HealthNow platform, and **Account Holders** has a corresponding meaning.

Administrator means a person that has administrator level authorisation sufficient to access or use the HealthNow Administration Dashboard on behalf of the Employer.

Business Day means a day on which banks are open for general banking business in Auckland, New Zealand, excluding Saturdays, Sundays or public holidays in Auckland, New Zealand.

Card Fee means \$10 per card, or as varied by HealthNow from time to time by notice in writing.

Commencement Date means the date specified in the Employer Agreement.

Employer means the client as specified in the Employer Agreement. **You** and **your** has a corresponding meaning.

Employer Agreement means the key terms issued under these Terms of Business agreed and executed by the Parties.

Enrolled Participant means any person notified by the Administrator as an enrolled participant who should be given access to the HealthNow Service and linked to the Employer.

Establishment Costs means the Implementation Fee, Card design fee, the initial Card Fee and the Float.

Fees means the fees specified by HealthNow to the Employer for access to and use of the HealthNow Service, and as varied by HealthNow from time to time by notice in writing.

Float means the amount equal to 10% of the HealthNow Credits applied to or credited to Account Holders accounts over the prior 12 month period, or such other amount as may be agreed between the parties.

HealthNow means Health Now Limited (NZBN: 9429048665674). **We**, **us** and **our** has a corresponding meaning.

HealthNow Card means a physical, digital or virtual card issued by a third party card program issuer in connection with the HealthNow Credits for Employers Programme that enables the redemption of HealthNow Credits by Account Holders.

HealthNow Contract means these Terms of Business and the Employer Agreement.

HealthNow Credits means credits acquired in connection with the HealthNow Credits for Employers Programme redeemable in connection for services provided by a Vendor.

HealthNow Platform means the web app or app based platform used to deliver the HealthNow Services.

HealthNow Services means the provision of the HealthNow Platform and any and all services provided to the Employer by HealthNow pursuant to this HealthNow Contract (unless otherwise agreed in writing between the Parties) in connection with the HealthNow Credits for Employers Programme.

Implementation Fee means the amount specified in the Employer Agreement, or as varied by HealthNow from time to time by notice in writing.

Monthly Account Holder Fee means \$4 per user per month, or as varied by HealthNow from time to time by notice in writing.

Payment Service means any and all processing (including data processing), technology, analytic services, and other products and services, in each case provided by any Payment Service Provider for purposes of or in connection with any purchase, sale, order or payment.

Payment Service Provider means any third party that is involved in providing or operating any product or service to enable or in support of the use of any payment method, including banks, other financial institutions, their service providers, merchants and issuers.

Parties means the parties to this HealthNow Contract, being HealthNow and the Employer, and **Party** means any one of them as the context requires.

Personal Information has the meaning given to it in the Privacy Act 2020.

Plan Period means the period specified in the Employer Agreement.

Replacement Card Fee means \$10 per card, or as varied by HealthNow from time to time by notice in writing.

Term collectively refers to the **Initial Term** and any subsequent **Renewal Term**.

Terms of Business means these HealthNow global terms of business.

Transaction means any purchase, sale, order, or other transaction involving a transfer of value made by or on behalf of an Account Holder through the HealthNow Card or any Payment Services, or other Payment Services, and **Transactions** has a corresponding meaning.

2. HealthNow responsibilities

- 2.1. HealthNow provides you and your Account Holders with an interface or portal to access the HealthNow Service, and for your Account Holders to access services from merchants within the Employer approved categories, by using a HealthNow Card.
- 2.2. To enable the use and auditing of the HealthNow Service, HealthNow will:
 - (i) contact the Enrolled Participants to obtain on-boarding information required by law, including under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009;
 - (ii) make the HealthNow Platform available to the Administrator and Account Holders;
 - (iii) enable, and disable HealthNow Cards, as instructed by the Administrator;
 - (iv) undertake a monthly Account Holder count and notify the Employer of the Account Holder count; and
 - (v) on request, generate, and provide to the Employer (to the extent permitted by law), a summary of expenditure by the Account Holders in connection with the HealthNow Services and the HealthNow Platform.
- 2.3. HealthNow is not a bank, deposit taking institution, or money transmitting institution. Accordingly, all Payment Services made available through the HealthNow Services, are provided by or through the merchant's acquiring bank. The HealthNow Services rely upon equipment, devices, media, networks, and other hardware and software provided or controlled by third parties, including the card issuer (collectively, "**Third Party Systems**") and while HealthNow will use its reasonable endeavours to ensure that the HealthNow Platform does not have material downtime, HealthNow does not control or take responsibility for the operation of the Third Party Systems. Accordingly, except to the extent HealthNow materially breaches its obligations in these Terms of Business:
 - (i) your sole recourse for any and all claims, losses, and other issues associated with any Payment Service, including for late payments, chargebacks, fraud, security incidents, improper or unauthorised use of data, and otherwise associated with any activity or Transaction, shall be by you solely against your Account Holder, Administrator or the applicable Payment Service Provider directly; and
 - (ii) HealthNow has no responsibility or liability for any possession, deposit, safe keeping, or transmission of any funds, any Transaction or Activity, or as a result of any performance, function, operation, or failures of any Payment Service or Payment Service Provider.

3. Your responsibilities

- 3.1. **Administrators and accuracy of information:** the Employer acknowledges and agrees that it is responsible for:
 - (i) the acts and omissions of all Employee Administrators using the HealthNow Platform; and
 - (ii) the accuracy, quality and legality of all Enrolled Participant data.

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- 3.2. **Reporting:** The Employer acknowledges that any delay or failure to report a lost or stolen HealthNow Card to us may result in the fraudulent use of the HealthNow Card. If a HealthNow Card of an Enrolled Participant is lost or stolen, or you suspect an unauthorised transaction, the Administrator must immediately report this by submitting a request at support@healthnow.co.nz. The Employer will continue to be liable to pay for the redemption of any HealthNow Credits on a stolen HealthNow Card prior to the theft being reported to HealthNow.
- 3.3. **Fees and transactions:** The Employer agrees:
- to pay the Establishment Costs on the Commencement Date; and
 - to pay and that they are responsible to pay (a) all Fees under or in connection with the Employer Agreement, and (b) all amounts incurred by, or incurred in respect of HealthNow Cards issued to Enrolled Participants.
- 3.4. **Prohibited conduct:** The Employer agrees not to:
- use the HealthNow Services or the HealthNow Platform for any illegal or fraudulent purpose or in violation of any applicable laws;
 - interfere with security-related features of the HealthNow Platform, including by (a) disabling or circumventing features that prevent or limit use; or (b) attempting to discover or recreate the source code of any portion of the HealthNow Platform, except to the extent that the activity is expressly permitted by applicable law;
 - attempt to gain unauthorised access to the HealthNow Platform in whole or in part;
 - interfere or disrupt the integrity of the performance of the HealthNow Platform;
 - copy the HealthNow Platform or any part, feature, function, or user interface therefore or use the Service to access or use any of HealthNow's intellectual property except as permitted under this HealthNow Contract;
 - access the HealthNow Platform in whole or in part in order to build a competitive product or service or benchmark with a product or service not developed by HealthNow, or in any way modify, translate or create derivative works based on the HealthNow Platform; or
 - attempt to do any of the acts described in this clause 3.4 or assist or permit any Employee in engaging in any of the acts described in this clause 3.4.
4. **Float**
- 4.1. **Payment on Commencement Date:** On the Commencement Date the Employer will deposit the Float with HealthNow, to be held by HealthNow on trust and applied by HealthNow against the HealthNow Credits redeemed by Account Holders, and as surety for payment of all amounts under this HealthNow Contract.
- 4.2. **Replenishment of Float:** HealthNow will invoice the Employer monthly in arrears for an amount equal to the amounts incurred by Account Holders or HealthNow Credits redeemed by Account Holders in the preceding month, such that following payment, the Float will be an amount equal to the 10% of the annual HealthNow Credits loaded (or such other amount as may be specified in the Employer Agreement).
- 4.3. **Interest and repayment of funds held in trust:** The Parties agree that:
- the funds held by HealthNow on trust shall be paid back to the Employer on the later of the date this Agreement is terminated and the date on which no funds are owed to HealthNow in respect of the HealthNow Service; and
 - no interest shall accrue to the Employer on funds held in the Float.
- 4.4. **Depletion of Float:** HealthNow will notify the Employer if, at any time, the total number of HealthNow Credits redeemed by Account Holders exceeds 50% of the Float, and the Employer will either agree a "top-up" payment or agree restrictions on use of the HealthNow Cards for the remaining period. If in any month the Float is entirely depleted, the Employer acknowledges that the Cards of Account Holders will not permit further Transactions until the Float is reinstated to the agreed levels.
5. **Fees and disbursements**
- 5.1. **Invoices:** HealthNow will invoice the Employer monthly in arrears for Fees payable in connection with the HealthNow Services and the HealthNow Platform. Such invoice will include, but not be limited to fees rendered to the Employer for the month specified on such invoice in connection with:
- the amounts incurred by Account Holders or HealthNow Credits redeemed by Account Holders in the preceding month, in accordance with clause 2.2;
 - the Monthly Account Holder Fees; and
 - any Card Fees or Replacement Card Fees.
- 5.2. For the purposes of clause 5.1, the relevant Monthly Account Holder Fee will be equal to the greater of:
- the minimum Account Holder count; and
 - the Monthly Account Holder count calculated by HealthNow in accordance with clause 2.2, multiplied by the Monthly Account Holder Fee.
- 5.3. Invoices shall be paid [on the 20th of the month following invoice]. All amounts under this HealthNow Contract are exclusive of GST.
- 5.4. **Default in payment:** If the Employer does not pay an invoice by the due date, HealthNow may suspend the HealthNow Services, and/or charge interest on the outstanding amount at a rate of 5% above BNZ's base rate for commercial lending on overdue accounts as at the date of the relevant invoice from the due date until the date that the invoices are repaid in full and all costs associated with the collection process are recovered. HealthNow will not be liable for any loss or damage arising from the suspension of the HealthNow Services under this clause 5.4. The Employer shall remain liable for all Fees due under this HealthNow Contract, the Employer Agreement or terms otherwise agreed in writing between the Parties during the period of the suspension. Following resolution by the Employer of the issues that gave rise to the suspension, HealthNow will as soon as reasonably practicable reinstate the HealthNow Services.
6. **Term and termination**
- 6.1. **Term:** This HealthNow Contract commences on the Commencement Date and shall continue for the stated Plan Period in accordance with the Employer Agreement (the "**Initial Term**"). Unless otherwise terminated in accordance with clause 6.2 below, this HealthNow Contract shall automatically renew for additional one-year periods (each a "**Renewal Term**") following the expiration of the Initial Term or current Renewal Term. If either Party does not wish to automatically extend the Term, it must notify the other Party at least 20 Business Days prior to the end of the then current Term by email. HealthNow may renegotiate Fees between the Initial Term and any subsequent Renewal Term.
- 6.2. **Termination** HealthNow may terminate the HealthNow Contract in the event the Employer fails to pay any amount due under this HealthNow Contract on the due date for payment and remains in default for not less than 20 Business Days after being notified in writing to make such payment.
- Either Party may also terminate this HealthNow Contract:
- in accordance with clause 6.1 at the end of the Initial Term or any subsequent Renewal Term;
 - upon 20 Business Days' prior written notice to the other Party of a material breach by the other Party if such breach remains uncured at the expiration of such notice period; or
 - immediately upon written notice in the event the other Party becomes the subject to petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 6.3. **Reservation of rights:** Termination of this HealthNow Contract under clause 6.2 shall be without prejudice to a Party's rights arising from a breach of these Terms of Business or in negligence or other cause of action that arises prior to the date of termination, and in particular shall not relieve the Employer of the obligation to pay invoices due and payable and outstanding on the date of termination.
7. **Suspension**
- 7.1. HealthNow is entitled to immediately and without notice suspend the HealthNow Services where:
- HealthNow reasonably believes that your actions threaten the security, integrity or availability of the HealthNow Services.

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HealthNow shall not be liable for any loss arising from the suspension under this clause 7.1 and you remain liable for all Fees and Transactions under this HealthNow Contract during the period of suspension; or

- (ii) Failure to pay any Fees or amounts due under or in connection with this HealthNow Contract on the due date for payment.

Following resolution of the issues that gave rise to suspension, HealthNow shall as soon as reasonably practicable reinstate the provision of the HealthNow Services.

8. Intellectual property rights

8.1. Intellectual property rights in all documentation, systems, materials, methodologies, deliverables and processes (tools) brought to and utilised by us in relation to the HealthNow Services or created in the course of providing the HealthNow Services, and in all working papers and reports, will at all times vest in and be owned by us.

8.2. Nothing in this HealthNow Contract transfers or shall be deemed to transfer any intellectual property developed by us in connection with the HealthNow Services to you.

9. Warranties and contracting-out

9.1. You agree that in relation to the HealthNow Services and this HealthNow Contract the client relationship is solely between the Employer and HealthNow, and not with the Account Holder.

9.2. To the fullest extent permissible at law, other than those expressly set out in this HealthNow Contract, all representations, terms, warranties, guarantees, or conditions whether implied by statute, common law or custom of the trade or otherwise, including, but not limited to, implied warranties, guarantees or conditions of merchantability and/or fitness for a particular purpose, are excluded.

9.3. The Parties agree to contract out of the provisions of the Consumer Guarantees Act 1993 (“CGA”) and the Fair Trading Act 1986 (“FTA”) to the extent permitted by the CGA and the FTA (including the statutory guarantees and implied terms, covenants and conditions contained in the CGA and sections 9, 12A and 13 of the FTA) and acknowledge that the Parties are “in trade” and you acquire the HealthNow Services for business purposes and all provisions of the Contract shall be read as modified to the extent necessary to give effect to that intention.

10. Liability limitation

10.1. **Limitation of liability:** HealthNow’s maximum aggregate liability is limited to the lower of:

- (i) the aggregate of Fees paid or payable under this HealthNow Contract by the Employer during the 12 months before the cause of action arose; or
- (ii) NZD \$500,000.

10.2. **Consequential loss:** Except to the extent excluded by law, HealthNow shall have no liability to you for any consequential or indirect loss or loss of profit that the Employer suffers caused by our breach of contract, tort (including negligence), or other actionable wrong of any kind.

10.3. **Force majeure:** A Party shall not be liable to the other Party, nor shall it be deemed to be in default for any failure to delay to observe or perform any of the terms and conditions applicable to the Party under this HealthNow Contract cause or arising out of any act beyond the reasonable control of that Party including (but not limited to) fire, flood, lightning, storm and tempest, earthquake, strikes, lockouts or other industrial disputes, epidemic or pandemic, acts of war, riots, explosion, government restriction, unavailability of equipment or other causes (whether the kind listed above or otherwise) (each a “**Force Majeure Event**”) and, where such failure or delay is caused by a Force Majeure Event or Events, then, all performance times provided for in this HealthNow Contract shall be extended by deemed agreement for a period commensurate with the period of failure or delay to observe or perform such terms and conditions applicable to a Party under this HealthNow Contract.

11. Privacy

11.1. Personal Information is collected by and will be held by us in connection with the provision of the HealthNow Services. Such Personal Information (whether contained in the Employer

Agreement or otherwise obtained) is provided and may be held, used and disclosed for the following purposes:

- (i) administering, whether directly or indirectly, our contracts and enforcing our rights thereunder;
- (ii) communicating goods and service offerings to Account Holders;
- (iii) ascertaining at any time your creditworthiness and obtaining at any credit reports, character references or credit statements; and
- (iv) enabling us to notify any credit agency of any application for credit or default of any obligation of the customer to us and enabling us to provide that Personal Information to any credit agency so that the credit agency can maintain effective accounting records.

11.2. You agree to comply with the Privacy Act 2020 and with any legislation governing the use of the information, when providing us with such information. We agree to cooperate with each other in addressing our respective privacy obligations in connection with the HealthNow Services.

11.3. We each agree to take reasonable precautions to protect our own information technology systems, including implementing reasonable procedures to guard against viruses and unauthorised interception, access, use, corruption, loss or delay of electronic communications.

11.4. We use contractors or suppliers located in New Zealand and overseas to assist us in providing the HealthNow Services to you and in our internal functions. You agree that we may transfer information provided to us by you or on your behalf (including Personal Information and confidential information) to those contractors and suppliers, provided they are bound by confidentiality obligations.

12. Resolving disputes

12.1. **Informal resolution:** Following the receipt of notice from one Party to the other Party of a dispute arising out of or otherwise relating to this HealthNow Contract, the Parties agree to promptly meet in good faith to attempt to resolve the dispute prior commencement of proceedings under clause 12.2.

12.2. Notwithstanding the existence of a dispute, each Party shall continue to perform the HealthNow Services contemplated by this HealthNow Contract, except to the extent such performance is excused due to the nature of the disputes and the applicable dispute resolution process. If a dispute is not resolved within 20 Business Days of the date of receipt of the notice provided under clause 12.1 (unless otherwise agreed between the Parties in writing) a Party may bring proceedings in the courts of New Zealand.

12.3. Each Party hereby irrevocably waives any claim that an action is brought in an inconvenient forum, or that the New Zealand Courts do not have jurisdiction.

13. Miscellaneous

13.1. **Severability:** If any provision of this HealthNow Contract is or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from this HealthNow Contract without affecting the validity of the remainder of this HealthNow Contract and shall not affect the enforceability, legality, validity or application of any other provision of this HealthNow Contract.

13.2. **Notice:** Notices under this HealthNow Contract must be in writing and must be via email to the email address specified in the Employer Agreement, or an updated email address provided by a Party to the other by notice under this clause 13.2.

13.3. **Survival:** The provisions of this HealthNow Contract which expressly or by implication are intended to survive its termination or expiry will survive and continue to bind both Parties, including clause 5 (Fees).

13.4. **Assignment and sub-contracting:** The Employer may not assign, transfer, charge or otherwise deal with its rights or obligations under this HealthNow Contract, or in respect of HealthNow Credits, without the prior written consent of HealthNow. HealthNow may assign its legal and beneficial rights, title and interest in respect of any amounts owing from the Employer to HealthNow, and in the event of such assignment will advise the Employer of, among other things, the assignee’s bank account number and the effective date of such assignment.

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- 13.5. **Publicity:** HealthNow may use the Employer's logo, trademark or name on its website and promotional materials to indicate that the Employer is a customer of HealthNow.
- 13.6. **Further assurances:** Each Party must, at its own cost, do all things reasonably necessary to give full effect to this HealthNow Contract and the Transactions contemplated by this HealthNow Contract.
- 13.7. **Entire agreement:** This HealthNow Contract forms the entire agreement between the Parties. To the extent permissible by law all warranties, conditions, representations and liabilities or terms other than those expressly stated are excluded.
- 13.8. **Governing law:** Unless agreed otherwise in writing between the Parties this HealthNow Contract is governed by New Zealand law.