

Hospital Emergency Lifestyle Products – HELP Pty Ltd

Terms of Service



When You Need It Most

September 2021 | Version 1.0

1. Introduction

These are the general terms of our relationship with you. They cover any transactions where we provide services to you. Under these terms:

- **we** are the service provider – Hospital Emergency Lifestyle Products - HELP (Pty) Ltd (Registration number: 2014/167409/07), also known as HELP; and
- **you** are the customer – a user of the HELP (<https://help-sa.co.za>) website, HELP browser interface and mobile apps.

An order is a separate document or form that contains the commercial terms of each specific transaction and incorporates these terms.

2. Agreement

2.1. Composition. The agreement consists of these terms of service and any orders or any other specific terms applicable to the services.

2.2. Definitions. In the agreement:

account means an account created by you, as a user of the app, you, as a parent, legal guardian or competent person on the HELP platform, who has the functionality to add their child or children under their profile on the said account.

business day means any day other than a Saturday, Sunday, or holiday (including a public or bank holiday) in the jurisdiction where we are organised;

business hours means our normal business hours on business days;

child means a person under the age of 18 years;

competent person means anyone that is legally competent to consent to anyone taking an action or making a decision concerning a child;

day means a day counted from midnight to midnight, including all days of the month, Saturdays, Sundays, and public holidays;

guardian means a parent or person who is legally recognised to have guardianship of a child in terms of section 18 of the Children's Act 38 of 2005;

HELP means Hospital Emergency Lifestyle Products – HELP Pty Ltd

our technology means any technology that we have created, acquired or otherwise have rights in and may, in connection with the performance of our obligations under this agreement, employ, provide, modify, create or otherwise acquire rights in and includes any:

- concepts or ideas;
- methods or methodologies;
- procedures or processes.
- know-how or techniques;
- function, process, system, application, data, or object models;
- templates;
- the generalised features of the structure, sequence and organisation of software, user interfaces and screen designs;
- general purpose consulting and software tools, utilities, routines or frameworks;
- logic, coherence and methods of operation of systems; and
- patches or enhancements to open source libraries;

sign means the handwritten signature or an electronic signature that the parties agree to use, of each of the parties' duly authorised representatives;

site means the HELP (<https://help-sa.co.za>) website as well as any related applications.

software means the software in the form of the specific software application referred to under this agreement and includes:

- any media that you receive it on;
- all upgrades, updates, or enhancements to the software application; and
- the documentation.

we, us, or our means our organisation, the owner of the website and includes our officers, agents, employees, owners, co-brands, and associates where the terms limit or exclude liability.

writing means the reproduction of information or data in physical form or any mode of reproducing information or data in electronic form that the parties agree to use, but excludes information or data in the form of email; and

you, you or your means any visitor to or other person who accesses or uses the website or mobile app, including any other person, website, business, or agent (including any virtual or robotic agent) associated with the visitor.

2.3. Interpretation. The following rules apply to the interpretation of the agreement:

- **reference headings** – clause and subclause headings are for reference only and do not affect interpretation;
- **non-exhaustive lists** – whenever a clause lists specific examples or items following a listing word, such as 'including', 'includes', 'excluding', or 'excludes', they will not limit its scope;
- **undefined words or phrases** – all words or phrases that the agreement does not define have their ordinary English meanings;
- **enactment references** – references to any enactment include it as re-enacted, amended, or extended;
- **person references** – references to a person includes a natural and juristic person;
- **party references** – references to a party includes their successors or permitted assigns;
- **number of days** – when any number of days is prescribed, the first day will be excluded and the last day included;
- **no interpretation against the draftsman** – the rule of construction that an agreement must be interpreted against the party responsible for its drafting or preparation does not apply; and
- **time calculations** – the parties will use GMT +2 to calculate any times.

2.4. Conflict. If there is a conflict of meaning between these terms and any word or phrase in an order or other specific terms, the meaning in the order or specific terms will prevail in respect of the relevant

services.

3. Registration

- 3.1. **General.** You must be at least 18 years of age to subscribe to our service.
- 3.2. **Parent or legal guardian.** You are only allowed to register your own child or children or child or children you are the legal guardian of to be capable of being identified and tracked by our service. You represent and warrant that you are the parent or legal guardian of the child specified and linked to your account.

4. Duration

- 4.1. **Commencement.** These terms start whenever you accept them by:
- **doing so explicitly** – such as by checking a checkbox saying that you do or agreeing to an order that incorporates them by reference;
 - **using the services in any way** – such as by creating an account, whether through a mobile device, mobile application or computer; or
 - exercising any rights granted to you under the agreement;

and continue until terminated.

- 4.2. **Automatic renewal.** If an order involves a subscription, the agreement will continue automatically from the end of the initial term or subsequent automatic renewal period for an automatic renewal period equivalent to the initial term.
- 4.3. **Renewal termination.** Either party may terminate the agreement before the end of the trial period or subsequent automatic renewal period by giving the other party at least 30 calendar days prior written notice.

5. Orders

- 5.1. **Placing orders.** You place orders with us whenever you order or start using the services through the website or application. These orders are offers to us to buy our services.
- 5.2. **Capacity and authority.** You promise that you have the legal capacity and authority to enter into the agreement.
- 5.3. **Invitation to do business.** Marketing is merely an invitation to do business and we only conclude the agreement when we actually provide the services to you. This happens when we accept your offer.
- 5.4. **Cancellation and refunds.** We may cancel any order, but we will provide a pro rata refund for any money paid for future services not yet provided in relation to that particular order if we do. You may change your subscription or terminate the services, subject to the terms in clause 13.4.
- 5.5. **Time and place.** We conclude the agreement when we accept the order and where we are domiciled when we do.
- 5.6. **Separate agreements.** Each order is a separate agreement, but you are deemed to have breached all of them if you breach one of them.

6. Services

- 6.1. **Right.** We grant you a right to use the services subject to the following limitations:
- **duration of agreement** – you may only use the services for the duration of the agreement;
 - **limited to terms** – you may only use the services according to these terms;

- **non-exclusive** – we may allow anyone else to use the services;
- **non-transferable** – you may not transfer the right to anyone else; and
- **specified purposes** – you may only use the services for the specified purposes that we've communicated to you in writing from time to time.

6.2. **Breach.** We may suspend or cancel your right if you breach the agreement.

7. Third-party service providers

7.1. We may provide you with access to third-party services over which we neither monitor nor have any control nor input. You acknowledge and agree that we provide access to such tools “as is” and “as available” without any warranties, representations, or conditions of any kind and without any endorsement. We shall have no liability whatsoever arising from or relating to your use of said third party services. Any use by you of optional tools offered through the site is entirely at your own risk and discretion and you should ensure that you are familiar with and approve of the terms on which the third-party services are provided.

8. Online services

8.1. **Basis.** We provide the online services to you on the following basis:

- you give us permission to monitor how you use them for security and stability purposes; and
- you agree that our records are undisputed evidence of the services provided to you.

8.2. **Access conditions.** We will only provide online service access to you or your authorised users (where you are a juristic person) on the conditions that you or each one of them will:

- accurately provide us with any information that we ask for on registration or account creation;
- create or have the necessary credentials (such as a username and password) assigned to them on registration or account creation;
- look after their credentials and not give them to anyone else;
- not interfere with or introduce any malicious software into the online services or otherwise misuse them;
- be responsible for any activity that happens under their account, even if someone else was actually acting under their credentials;
- have the necessary infrastructure, equipment, and software to access the online services; and
- abide by the agreement and any policies that we communicate to them in writing.

8.3. **Availability.** We will do our best to make the online services available at all times, however we cannot guarantee that they will always be available. We may make them unavailable for scheduled and emergency maintenance.

8.4. **Updates or changes.** We may update or change the site from time to time to reflect changes to our products, our users' needs and our business priorities.

9. Your data

9.1. **Definition.** Your data is any data belonging to you or your child that:

- you or your child (or any third party on your behalf) provide to us; or
- we generate, process, or supply to you or your customer in providing the services;

but excludes any derived data that we create for our own purposes or which is proprietary or confidential to us or our third party contractors.

9.2. **You own it.** You own all your data, but give us a right to use it to provide the services when you provide us with access to it.

9.3. **We do not own it.** We do not own any of your data. However, we do own our derived data. Your data does not include any derived data that we create for our own internal purposes. Derived data is any of our own data that we create from your data, such as through aggregation, de-identification, or anonymisation.

9.4. **Responsibility.** We will

- comply with all relevant laws that affect your data, including data protection, retention, and destruction laws;
- comply with any of your policies or procedures relating to your data that you communicate to us timeously in writing;
- have due regard to leading industry information security management codes of practice, where appropriate;
- have an individual to oversee compliance with relevant data protection laws;
- not sell, dispose of, or encumber any of your data or try to do any of those things;
- be able to identify any of your data separately from any other data under our control; and
- not disclose any personal information from your data, other than in terms of the agreement.

9.5. **Subcontracting.** Subcontracting involves engaging a subcontractor outside our organisation to do work as part of providing the services. We may subcontract work involving your data, provided that we:

- get your written permission to do so beforehand;
- notify you in writing of: (i) the purpose of sharing your data with the subcontractor; and (ii) how we have carried out due diligence on them;
- do so only through a written agreement with the subcontractor which imposes the same obligations on them as are imposed on us; and
- remain fully liable for any processing of your data under the agreement by our subcontractor.

9.6. **Location.** You consent to us transferring it to our group of companies, associated companies, service providers, or agents who may be located in other countries for the purpose of providing the services.

10. Confidential information

10.1. **Definition.** Confidential information is any information that the parties share with one another in terms of this agreement with the intention that the other party should keep it secret, such as personal information, business records, or customer details.

10.2. **Responsibilities.** Each party will keep any confidential information it receives from the other party under the agreement confidential and the receiving party will:

- protect the other party's interests;
- only use it to comply with their responsibilities under the agreement;
- only give it to their employees or agents that need it (and only as much as they need);
- use reasonable security procedures to make sure their employees or agents keep it confidential;
- get promises of confidentiality from those employees or agents who need access to the information;
- not reveal the information to anyone else; and
- not use it for any purpose other than under this agreement.

10.3. **End of agreement.** The parties will give back to the other all confidential information of the other that they have at the end of the agreement, unless:

- the other party agrees that they may destroy or retain it instead; or
- it is lawfully in the public domain;
- someone else who is allowed to reveal it gives it to them;
- someone gives it to them to comply with a court order or other legal duty.

- 10.4. **Indemnity.** Each party indemnifies the other against any loss or damage that the other may suffer because of a breach of this clause by a party or its employees or agents.
- 10.5. **Survival.** This clause about confidential information is separate from the rest of this agreement and remains valid for five years after the end of this agreement.

11. Intellectual property

- 11.1. **Ownership.** We or our third party licensors own all proprietary rights in our services and we or they may prosecute you for any violations of those rights.
- 11.2. **Our technology.** Our technology is anything that we have or acquire rights in and may use to perform our obligations under the agreement.
- 11.3. **Retention of rights.** We own all intellectual property rights in our technology and you may not use those rights without our permission. You do not acquire any rights in our technology if we use it to provide services to you.
- 11.4. **Our trademarks.** Our trademarks are our property and you may not use them without our permission. All other trademarks are their respective owners' property.
- 11.5. **Restrictions.** You may not change, hire out, reverse engineer, or copy the services without our permission.
- 11.6. **Your intellectual property.** You grant us a non-exclusive and royalty-free licence to use any of your trademarks and copyright works which you deliver to us for the purposes of providing the services. We may not use them for any other purpose without your prior written permission. The licence expires automatically when the agreement ends. You retain all rights in your trademarks and copyright works despite this licence.

12. Non-solicitation

You will not contract with any of our personnel or third-party licensors, other than through us, who were involved in providing services under an order for the duration of that order or for 12 calendar months after its termination.

13. Billing and payment

- 13.1. **Billing.** If you elect our premium services, you will pay us the fees on the due date in the manner agreed between the parties in writing. You may not withhold payment of any amount due to us for any reason.
- 13.2. **Subscription.** Our premium services are offered on a subscription basis only. You may choose a monthly subscription or a yearly subscription.
- 13.3. **Payment gateway.** Paystack performs technical services to support payments on our platform. When you checkout on our app, Paystack may collect and store your card information, your email address, your mobile phone number, and billing and shipping address. To ensure your card information is kept safe and secure on Paystack's servers, Paystack implement access control measures (physical and virtual), security protocols, policies and standards, including the use of encryption and firewall technologies, in compliance with the PCI DSS requirements. Paystack also implement periodical security updates to ensure that their security infrastructures are in compliance with reasonable industry standards. You can read more about Paystack and their terms at: <https://paystack.com/za/terms>.
- 13.4. **Auto-renewal for subscription services.** Unless you opt out of auto-renewal, any subscription services you have signed up for will be automatically extended for successive renewal periods of the same duration as the subscription term originally selected, at the then-current non-promotional rate. If you want

to change or terminate your subscription, you will need to log in to your account at on the HELP App and follow instructions to terminate or cancel your subscription. If you terminate a subscription service, you may use your subscription until the end of your then-current term; your subscription will not be renewed after your then-current term expires. However, you won't be eligible for a prorated refund of any portion of the subscription fee paid for the then-current subscription period.

- 13.5. *Free trials and other promotions.*** Any free trial or other promotion that provides access to our application must be used within the specified time of the trial. You must stop using a paid service before the trial ends to avoid being charged.
- 13.6. *Late payments.*** Additional charges agreed between the parties in writing apply to any payment we receive after the due date and you must pay them to us on demand. We may stop providing any services until you have paid all amounts due.
- 13.7. *Interest.*** Overdue amounts on any outstanding invoice will bear interest for our benefit from its due date until you pay it at whichever rate is higher between:
- 2% above the prime (or prime lending) rate; or
 - 15%.

Interest will be payable on a claim for damages from when the damages were suffered.

- 13.8. *Appropriation.*** We may use any money you pay us to settle your indebtedness under the agreement, despite any particular reason you may have paid it to us.
- 13.9. *Certificate.*** We may appoint an accountant to sign a certificate that will be proof of the amount due by you and the date on which it is payable.
- 13.10. *Tax.*** All fees exclude any tax (unless indicated otherwise). You will be liable to pay applicable taxes in addition to the fees.
- 13.11. *Payment profile.*** We may provide any registered credit bureau with information about your payment of amounts.

14. Our warranties

- 14.1. *Service warranties.*** We warrant that we will:
- employ enough trained personnel with the knowledge and expertise to provide the services;
 - use reasonable efforts consistent with prevailing industry standards to maintain the services; and
 - provide the services in accordance with all applicable laws.
- 14.2. *General warranties.*** We warrant further that we:
- have the legal right and authority to perform our obligations under the agreement; and
 - will not intentionally introduce any malicious software into your systems.

15. Disclaimer of warranties

- 15.1. *Disclaimer.*** You use the services at your own risk and we disclaim all other warranties to the extent allowed by applicable law. We are not liable for any defect that you cause or a third party causes. We have no special relationship with or fiduciary duty to you. You acknowledge that we have no duty to take any action regarding:
- which users gain access to our services;
 - what content you access via the services; or
 - how you may interpret or use the content.
- 15.2. *Representations. We do not represent that:***

- we will be responsible or liable for the legality of material or content contained in or accessed through our services;
- the service will be uninterrupted, secure or error free;
- any defects or errors in the service will be corrected; and
- that any content or information you obtain on or through the service will be accurate.

15.3. *Exclusion of liability.* Despite our warranties, we are not liable for any defects that your negligence, failure to follow our instructions, or misuse causes.

16. Your warranties

16.1. *Agreement warranties.* You warrant that:

- no one has induced you to enter into the agreement by any prior representations, warranties, or guarantees; and
- you are not breaching any other agreement by entering into the agreement.

16.2. *Indemnity.* You indemnify us against any claim for damages by any third party resulting from a breach of your warranties, including all legal costs. Legal costs means the costs that a lawyer may recover from their client for their disbursements and professional services if permissible under applicable law.

17. Limitation of liability

17.1. *Direct damages limited.* We are not liable to you for any direct damages to the extent allowed under applicable law.

17.2. *Indirect damages excluded.* We are not liable for any other damages or losses that the services may cause you.

17.3. *Your default.* We are not liable for any damage or loss that your breach, misrepresentation, or mistake causes.

17.4. This clause is separate from the rest of the agreement and remains valid for five years after the end of the agreement.

18. Breach and termination

18.1. *Breach.* If either party

- does not fix a breach within seven days of receiving written notice from the other party;
- breaches the agreement materially twice or more in six months;
- is bankrupt or has some legal disability;
- takes steps to or is closed down (such as becoming insolvent or entering sequestration);
- makes any settlement or arrangement with their creditors; or
- fails to pay a court order against themselves for a significant amount within 21 days;

then the other party may:

- make the party comply with the agreement; or
- immediately cancel the agreement in writing and claim damages from the other party, including fees already due.

18.2. *Suspension.* We may immediately suspend your right to use the services if:

- you try to gain unauthorised access to them;
- we decide that your use poses a security threat to us or another user other than you;
- there is evidence of fraud on your account; or

- we believe you are using them for an illegal purpose or in way that infringes a third party's rights.

19. Termination

19.1. **Termination for good cause.** We may need to terminate the agreement immediately if:

- we discontinue or stop providing the services;
- believe providing the services could burden or pose a risk to us;
- have to terminate to comply with a law; or
- determine that providing the services has become impractical.

If we need to terminate, we will give you as much notice as reasonably possible in writing.

19.2. **Termination for convenience.** You may terminate the agreement or a specific order on at least 60 days written notice to us.

19.3. **Duties on termination.** We will stop providing the services, you will no longer be able to access them, and we may erase your data on termination, cancellation, or expiry of the agreement.

20. Effect of termination

20.1. **Acceleration.** All amounts due to us for the services become due and payable on termination, cancellation, or expiry of the agreement.

20.2. **Assistance.** We may provide you with post termination assistance (such as data retrieval) subject to additional fees and conditions.

20.3. **No expectation.** The agreement does not create any expectation of continued service, agreement renewal, or any further agreement between the parties.

21. General

21.1. **Resolving disputes.** Either party may inform the other in writing if there is a dispute. The parties must first try to negotiate to end the dispute, then enter into mediation if negotiation fails, and finally go to arbitration if mediation fails. If they go to arbitration, they will agree in writing on a recognised and appropriate forum for arbitration that is accessible to both parties.

21.2. **Notices and domicile.** The parties will send all notices to each others' email addresses and choose their respective street addresses as their service addresses for all legal documents. Our email and street addresses are available on our website, while you provide your email and street addresses to us when concluding the agreement. The parties may change either address on 14 calendar days written notice to the other.

21.3. **Beyond human control.** Neither party is responsible for breach of the agreement caused by circumstances beyond human control, but the other party may cancel the agreement on written notice to the other if the circumstances persist for more than 60 calendar days.

21.4. **Assignment.** You may not assign the agreement to anyone. We may assign it to any successor or purchaser of our business or some of our assets.

21.5. **Relationship.** The agreement does not create an employment relationship between the parties.

21.6. **Entire agreement.** The agreement is the entire agreement between the parties on the subject.

21.7. **Changes.** We will notify you of any changes to the agreement by email. Those changes will only apply to future services orders. If you do not agree with the changes, you must stop using the services. If you continue to use the services following notification of a change, the changed terms will apply to you and

you will be deemed to have accepted them.

- 21.8. Waiver.** Any favour we may allow you will not affect any of our rights against you.
- 21.9. Severability.** Any term that is invalid, unenforceable, or illegal may be removed from the agreement without affecting the rest of it.
- 21.10. Governing law.** South African law governs this agreement.
- 21.11. Mediation.** If negotiation fails, the parties must refer the dispute to mediation under AFSA's rules. AFSA means the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead).
- 21.12. Arbitration.** If mediation fails, the parties must refer the dispute within 15 business days to arbitration (including any appeal against the arbitrator's decision) under AFSA's latest rules for expedited arbitrations. The arbitration will be held in English in Johannesburg. The parties will agree to appoint one arbitrator. If the parties cannot agree on the arbitrator within 10 business days after the referral, the Secretariat of AFSA will appoint the arbitrator.
- 21.13. Jurisdiction.** You consent to the jurisdiction of the Magistrate's Court in respect of any action or proceedings that we may bring against you in connection with this agreement, even if the action or proceedings would otherwise be beyond its jurisdiction without prejudice to our right to institute any action in any other court having jurisdiction.