



## Terms of Use for Clinicians

### 1 Welcome to [www.thiswayup.org.au](http://www.thiswayup.org.au)

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- 1.1 These terms set out your rights and obligations as a clinician user of [www.thiswayup.org.au](http://www.thiswayup.org.au) (the **Website**) which is owned jointly by the University of New South Wales (**UNSW**) and by St Vincent's Hospital Sydney Limited ACN 054 038 872 (**SVH**) a member of the St Vincent's Health Network and is operated by SVH.
- 1.2 Before using the Website please review these terms carefully and do not use the Website if you do not agree with the terms which explains how SVH collects, uses and discloses your personal information available at <https://thiswayup.org.au/clinic/clinicians/resources/privacy-policy/>, and which you should read before agreeing to these terms.

### 2 How to get access to the Website

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- 2.1 If you need technical assistance you can always contact us on +61 2 8382 1400 between 9am - 5pm AEST Monday to Friday (excluding public holidays) or email us from the Website.

### 3 Acknowledgments and Acceptance

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- 3.1 The Website provides an internet based service owned jointly by UNSW and SVH and operated by SVH ("we", "our" or "us"). "You" or "your" means a clinician user of the Website.
- 3.2 If you do not agree with any of these terms, do not use the Website.
- 3.3 We may alter these terms after providing you reasonable notice of the proposed alterations. Your continued use after any change indicates your acceptance of that alteration.
- 3.4 You agree:
  - (a) by placing an order for a [thiswayup.org.au/clinic](http://thiswayup.org.au/clinic) prescription pad(s) you are offering to enter into an agreement with us on these terms and conditions;
  - (b) upon receipt of your offer, we will send an email to you confirming acceptance of your offer.
- 3.5 We will not be responsible for any delay in delivery of the prescription pads. If the prescription pads are lost in transit, we have the sole discretion to deactivate the lost prescriptions and to dispatch replacement prescription pads at your cost.

### 4 Licence, Permitted Use and Restrictions on Use

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- 4.1 We grant to you a non-exclusive, non-transferrable licence to use the Website and for you to refer your patients to the Website.
- 4.2 You must ensure that the Website is protected from unauthorised access by third parties at all times.
- 4.3 You may not assign or grant a sublicense of or commercially exploit, grant a security interest over, or otherwise transfer, your rights to use the Website other than to refer your patients to the Website.
- 4.4 You may not, in any form, or by any means:



- (a) use the Website or its contents, except for your patients;
  - (b) copy, reproduce, store, transmit, publish, modify, create a derivative work from, reverse engineer, reverse assemble or otherwise create derivative works from any part of the Website or its content;
  - (c) cause any of the Website to be framed or embedded in another website;
  - (d) commercialise any content, products or services in the Website other than to authorise your patients to have access; or
  - (e) distribute any portion of the Website to any third party or make the Website available to any third party in any way other than in a manner specifically authorised under these terms.
- 4.5 We reserve the right to update and change the Website from time to time.

## **5 Your Obligations and Clinical Responsibility**

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- 5.1 In consideration of your agreement to these terms and conditions, the Website may be used (at your election) by patients:
- (a) under your supervision as clinician (**Independently Supervised Patients**); or
  - (b) under the supervision of clinicians selected by SVH who are employed or accredited to SVH (**SVH Supervised Patients**).
- 5.2 You must rely upon your own investigations as to whether the Website will meet your patient's needs.
- 5.3 If you elect for your patient to be an Independently Supervised Patient, and if SVH considers the patient is suitable for one of THIS WAY UP Clinic courses via referral and accepts the patient as an Independently Supervised Patient:
- (a) you accept clinical responsibility for assessing the patient for the Website;
  - (b) you prescribe a THIS WAY UP Clinic course for the patient with a "prescription" code;
  - (c) the patient must accept the relevant THIS WAY UP Clinic terms and conditions;
  - (d) you continue clinical responsibility for the patient;
  - (e) you warrant that you will supervise the patient with due care and skill; and
  - (f) SVH will inform you of your patient's progress through the Website, in particular their K10 scores.
- 5.4 If you refer your patient to SVH to be a SVH Supervised Patient, and if SVH considers the patient is suitable for a THIS WAY UP Clinic course via referral and accepts the patient as a SVH Supervised Patient, then SVH will manage the patient under the arrangements that apply to SVH patients, however:
- (a) SVH may refer the patient back to you at any time as clinically necessary;
  - (b) your referral does not prohibit your ongoing care for the patient outside of the patient's use of the Website; and
  - (c) on termination or withdrawal from the course, the patient is returned to your care.



- 5.5 A patient deemed not suitable for SVH supervision will be returned to your care.
- 5.6 You remain professionally responsible for the overall health and welfare of your patient.
- 5.7 You are responsible for all unauthorised usage that occurs on your account or via the prescription pads sent to you and you must:
  - (a) promptly notify us if there is any unauthorised usage of your account or the prescription pads sent to you;
  - (b) maintain and update the information supplied by you to us to ensure it is accurate at all times; and
  - (c) only have one active account, whether this is by use of name, email address or an alias.

## **6 Intellectual Property Rights**

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- 6.1 All rights (including intellectual property rights such as copyright and trade mark) now existing or in future arising in the Website and its content is owned by or licensed to UNSW and SVH.
- 6.2 You do not obtain any rights in the Website other than the user rights granted in this agreement.

## **7 Disclaimer and Limitation of Liability**

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- 7.1 Subject to clause 7.3:
  - (a) we do not promise that the Website can be used without interruption or will be virus free;
  - (b) we are not responsible for your loss arising out of or referable to:
    - (i) materials on the Website;
    - (ii) factors which can reasonably be considered to be outside our control, such as faults in third party equipment;
    - (iii) loss of data;
    - (iv) loss of income, loss of actual or anticipated profits, loss of business, loss of reputation, or
    - (v) loss caused by you acting negligently or in breach of these terms.
- 7.2 Links provided to other Internet sites are provided for your convenience and do not constitute endorsement of the information at those sites, or any associated person, organisation, product or service.
- 7.3 You may have rights under Australian Consumer Laws in the form of Consumer Guarantees which cannot be excluded. To the extent permitted by law, SVH excludes all other conditions and warranties implied by custom, law or statute. For liability that cannot by law be excluded, SVH's liability is limited to:
  - (a) resupplying or paying the cost of resupplying services; or
  - (b) repairing, replacing or paying the cost of repairing or replacing goods.



- 7.4 Any products that we sell or otherwise provide to you through the Website, will be provided on terms notified to you at the time of the sale or delivery.

## **8 Indemnity**

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- 8.1 You irrevocably indemnify us being SVH and UNSW and each of SVH's directors, officers and employees and the directors, officers and employees of UNSW (on whose behalf we accept this promise as their agent) against any liability, claim or proceeding that is made or commenced against us, and against any liability, loss (including consequential loss), damage or expense that is incurred or suffered by us or arising from a breach of these terms by you or as a result of your use of the Website.

## **9 Termination Cancellation by Us**

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- 9.1 If you fail to comply with a provision of these terms, and the failure can be remedied, we may send you a notice electronically requiring you to correct your failure within 7 days
- 9.2 If you don't correct your failure within the time provided in the notice under clause 9.1, or if your failure cannot be remedied, and provided you have no patients actively using the Website, we may terminate your access to the Website after sending you 7 days' notice advising of the intended termination.
- 9.3 Upon termination by us by written notice to you, you must immediately cease to use the Website.
- 9.4 Without limiting the operation of any other term, we will not be held liable for loss or damage arising from the exercising of these rights.

## **10 Survival**

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- 10.1 Upon the termination of this agreement, the clauses relating to intellectual property, disclaimer, limitation of liability and restrictions of use remain in force.

## **11 Applicable Law**

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- 11.1 These terms are governed by and must be construed in accordance with the laws of New South Wales, Australia and you irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia and all courts which have jurisdiction to hear appeals from those courts.