

Nexxt Terms of Use

These Terms of Use were last updated on 01/07/2014

Welcome to Nexxt, an online service provided by Pathway Navigator Limited ("Pathway"), which guides health professionals through a best practice clinical pathway for specific patients at a particular point in their disease stage.

These Terms of Use ("Agreement") set out Pathway Navigator's, and Your, rights and obligations in relation to Nexxt. Please read this Agreement carefully before registering to use Nexxt. By clicking the "I accept" button and/or otherwise using Nexxt you agree to follow and be bound by the terms and conditions of this Agreement. If you do not agree to all the terms and conditions in this Agreement, you must click the "I decline" button and not use Nexxt.

This Agreement may be varied by Pathway Navigator at any time, effective upon the posting of modified terms on the Website or as otherwise notified to You in writing (including by email). You will ensure that You have read, understood and agree to the most recent terms posted on the Website or as otherwise notified to You.

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires or is specified otherwise:

Agreement means these Terms of Use and includes the Support Services Schedule;

Business Day means a day other than a Saturday, Sunday or public holiday in Auckland;

Documentation means the documentation (if any) made available to You by Pathway Navigator (whether in hardcopy or electronic form) which sets out a description of the Subscription Services and the user instructions for the Subscription Services;

Intellectual Property Rights means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual property rights, whether registered, in the course of being registered or unregistered and any analogous rights worldwide;

Normal Business Hours means 9.00am- 4.30pm local New Zealand Standard Time, each Business Day, as may be amended by Pathway Navigator from time to time;

Services means the Subscription Services and Support Services;

Software means the software known as Nexxt, which guides health professionals through a best practice clinical pathway for specific patients at a particular point in their disease stage;

Subscription Fee means the monthly subscription fee payable by You to Pathway Navigator for Your access and use of the Subscription Services, as set out on the Website or as otherwise agreed between the parties in writing;

Subscription Services means the subscription services provided by Pathway Navigator to You under this Agreement that allow access to the Software via the Website;

Support Services means the support services that Pathway Navigator will provide in relation to the Subscription Services, as set out in the Support Services Schedule;

Support Services Schedule means the schedule that appears at the end of this Agreement;

Third Party Provider has the meaning set out in clause 9.5(a);

Virus means any thing or device (including any software, code, file or program) which may: (a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; (b) prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or (c) adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;

Website means Nexxt website accessed from your practice management system.

You and **Your** refers to you, the individual or entity that registers to use or receive the Services; and

Your Data means the data inputted by You or Pathway Navigator on Your behalf for the purpose of using the Subscription Services or facilitating Your use of the Subscription Services.

1.2 In this Agreement, unless the context requires otherwise:

- (a) words importing one gender include the others;
- (b) words importing the singular or plural number include the plural and singular number respectively;
- (c) headings are inserted for the sake of convenience of reference only and do not affect the interpretation of this Agreement; and
- (d) a **person** includes any individual, corporation, unincorporated association, government department or municipal authority.

2. **Licence**

2.1 Pathway Navigator grants You a non-exclusive, non-transferable right to access and use the Subscription Services and the Documentation for the term of this Agreement solely for Your internal business operations, all on the terms and conditions set out in this Agreement.

2.2 You will:

- (a) ensure that only You access and use the Subscription Services and the Documentation;
- (b) keep secure logins and passwords for Your access and use of the Subscription Services and Documentation and keep such logins and passwords confidential;

- (c) permit Pathway Navigator, by giving at least 36 hours' prior notice, to audit the Subscription Services in order to establish whether the Subscription Services are being used in accordance with this Agreement;
- (d) promptly disable any login account if Pathway Navigator discovers (through undertaking the audits referred to in clause 2.2(c)) that any login details have been provided to any third party; and
- (e) on demand, pay to Pathway Navigator an amount of any underpayment of Subscription Fees discovered by Pathway Navigator through undertaking the audits referred to in clause 2.2(c).

2.3 You will not access, store, distribute or transmit any Viruses, and Pathway Navigator may, without liability to You, disable Your access to the Subscription Services if You are in breach of this clause.

2.4 You will not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (i) and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
- (b) access all or any part of the Subscription Services and Documentation in order to build a product or service which competes with the Subscription Services and/or the Documentation;
- (c) use the Subscription Services and/or Documentation to provide services to third parties except to the extent such use could reasonably be contemplated having regard to the nature and purpose of the Subscription Services;
- (d) attempt to undermine the integrity or security of:
 - (i) the Subscription Services; or
 - (ii) Pathway Navigator's, or any third party's, systems, networks or resources used in the provision of the Subscription Services;
- (e) attempt to gain unauthorised access to any information or materials other than those to which You have been given express permission to access as part of the Services;
- (f) make the Subscription Services and/or Documentation available to any third party;
- (g) attempt to obtain, or assist third parties in obtaining, access to the Subscription Services and/or Documentation, other than as provided under this clause 2.

- 2.5 You will use all reasonable endeavours to prevent any unauthorised access to, or use of, the Subscription Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Pathway Navigator.

3. **Services**

- 3.1 Pathway Navigator will provide the Subscription Services and make available the Documentation to You on and subject to the terms of this Agreement.
- 3.2 Pathway Navigator will, as part of the Subscription Services and at no additional cost to You, provide You with Support Services during Normal Business Hours. Pathway Navigator may change the Support Services in its sole and absolute discretion from time to time.
- 3.3 You acknowledge that Pathway Navigator regularly upgrades and updates the Subscription Services and that the Subscription Services are continually evolving. Some of these changes will occur automatically, while others may require You to schedule and implement the changes. You will, where required, upgrade Your software and/or equipment in order to make efficient use of the Subscription Services. Pathway Navigator will provide You with reasonable notice of any such changes.

4. **Your Data**

- 4.1 Pathway Navigator acknowledges and agrees that You will own all rights, title and interest in and to all of Your Data and will have sole responsibility for the legality, reliability, integrity, accuracy and quality of Your Data.
- 4.2 Each party will take appropriate technical and organisational measures against unauthorised or unlawful processing of Your Data or its accidental loss, destruction or damage and Pathway Navigator will, as part of these measures, use reasonable endeavours to back-up Your Data. You acknowledge that if there is any loss or damage to Your Data, Your sole and exclusive remedy will be for Pathway Navigator to use reasonable commercial endeavours to restore such lost or damaged data from the latest back-up of Your Data maintained by Pathway Navigator. Pathway Navigator will not be responsible for any loss, destruction, alteration or disclosure of Your Data caused by any third party.
- 4.3 You acknowledge and agree that Pathway Navigator may use Your Data for the purpose of:
- (a) performing Pathway Navigator's obligations under this Agreement;
 - (b) ensuring that You are complying with the terms and conditions of this Agreement;
 - (c) improving or enhancing the Subscription Services;
 - (d) performing data analysis on an aggregated and anonymous basis,
- provided that Pathway Navigator complies with its confidentiality obligations under clause 8.

5. **Your Obligations**

5.1 You will:

- (a) provide Pathway Navigator with all necessary co-operation in relation to this Agreement, and all necessary access to such information as may be required by Pathway Navigator, so that Pathway Navigator can provide the Services including but not limited to Your Data, security access information and configuration services;
- (b) comply with all applicable laws (including the Privacy Act 1993), regulations and health information privacy codes (including the Health Information Privacy Code 1994) with respect to the use of the Subscription Service and Your activities under this Agreement;
- (c) carry out all other of Your responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in Your provision of such assistance as agreed by the parties, Pathway Navigator may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) use the Subscription Services and the Documentation in accordance with the terms and conditions of this Agreement;
- (e) ensure that Your network and systems comply with the relevant specifications as may be specified by Pathway Navigator from time to time; and
- (f) be solely responsible for procuring and maintaining Your network connections and telecommunications links from Your systems to Pathway Navigator's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Your network connections or telecommunications links or caused by the internet.

6. **Charges and Payment**

6.1 You will pay, or will procure a third party agreed by Pathway Navigator to pay, the Subscription Fees to Pathway Navigator in accordance with this clause 6.

6.2 Pathway Navigator will invoice the Subscription Fees monthly in advance. You will pay each invoice issued by Pathway Navigator under this Agreement within 10 days of the date of such invoice.

6.3 If You fail to pay any invoice when due then without prejudice to any other rights and remedies of Pathway Navigator:

- (a) Pathway Navigator may, without liability to You disable access to all or part of the Subscription Services, and will be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and/or
- (b) interest will accrue on such due amounts at an annual rate equal to 2% over the then current base overdraft rate of Pathway Navigator's bankers calculated from the due date until the date the amount is paid in full.

6.4 All amounts stated or referred to in this Agreement are:

- (a) exclusive of GST (if any); and

(b) unless otherwise stated, procured by third party.

6.5 If You are required by law to deduct or withhold taxes or charges from the amounts due to Pathway Navigator under this Agreement, You will ensure that the amount due to Pathway Navigator is increased so that the payment actually made to Pathway Navigator equals the amount due to Pathway Navigator as if no such taxes or charges had been imposed.

6.6 Pathway Navigator may change the Subscription Fees at any time by giving You at least 30 days' prior written notice.

7. **Intellectual Property Rights**

7.1 You acknowledge and agree that Pathway Navigator and/or its licensors own all Intellectual Property Rights:

(a) in, or created during the performance of, the Services; and

(b) in the Documentation.

Except as expressly stated in this Agreement, this Agreement does not grant You any rights to, or in, the Intellectual Property Rights, or any other rights or licences in respect of the Services or the Documentation.

7.2 Pathway Navigator confirms that it has all the rights in relation to the Subscription Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

7.3 Pathway Navigator will indemnify You against any claim that the Subscription Services or Documentation infringes the New Zealand Intellectual Property Rights of any third party, and will indemnify You for any amounts awarded against You in judgment or settlement of such claims, provided that:

(a) Pathway Navigator is given prompt notice of any such claim;

(b) You provide reasonable co-operation to Pathway Navigator in the defence and settlement of such claim, at Pathway Navigator's expense; and

(c) Pathway Navigator is given sole authority to defend or settle the claim.

7.4 In the defence or settlement of any claim, Pathway Navigator may procure the right for You to continue using the Subscription Services, replace or modify the Subscription Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on five Business Days' notice to You without any additional liability.

7.5 In no event will Pathway Navigator, its employees, agents and sub-contractors be liable to You to the extent that the alleged infringement is based on:

(a) a modification of the Subscription Services or Documentation by anyone other than Pathway Navigator; or

(b) Your use of the Subscription Services or Documentation in a manner contrary to the instructions given to You by Pathway Navigator; or

- (c) Your use of the Subscription Services or Documentation after notice of the alleged or actual infringement from Pathway Navigator or any appropriate authority.

7.6 The foregoing states Your sole and exclusive rights and remedies, and Pathway Navigator's entire obligations and liability, for infringement of the Intellectual Property Rights of any third party.

8. Confidentiality

8.1 Each party will treat as confidential all information obtained from the other pursuant to this Agreement. Neither party will divulge such information to any persons (except to their employees (for whom that party will be responsible) and then only to those employees who need to know) without the other party's prior written consent.

8.2 In addition, each party agrees that it will not disclose any clinical content relating to a patient to any unauthorised party.

8.3 In relation to either party, confidential information means any information relating to the business or affairs of that party and includes, without limitation, its designs, drawings, manufacturing know how, object code, source code, planned modifications to hardware or software, planned enhancements to hardware or software, product knowledge, quality standards, research and development, unpublished specifications, technical information, pricing, manipulated data, business plans, business processes, methodologies, techniques, general know-how, costs and margins, customer lists, financial data, internal price information, market research, marketing plans, sales forecasts and trade secrets.

8.4 Clauses 8.1 and 8.3 do not extend to information which:

- (a) can be established by written records to be already known to the recipient at the time of disclosure; or
- (b) which is in or enters the public domain through no fault of the recipient.

8.5 If the recipient of any confidential information is required by any applicable law, court or authority to disclose such confidential information to any person, it will:

- (a) give the disclosing party prompt written notice of the disclosure, where practicable before it occurs, so that the disclosing party has sufficient opportunity to prevent the disclosure through appropriate legal means;
- (b) disclose only that part of the confidential information which the recipient's legal advisers consider is legally required to be disclosed; and
- (c) use all reasonable endeavours to obtain an assurance that the confidential information disclosed will be treated confidentially by the recipient.

8.6 Each party will on demand and, in any event, on termination of this Agreement, deliver to the other party all confidential information and any other document supplied by or obtained from the other party.

8.7 This clause 8 will survive termination of this Agreement.

9. Warranties and Liability

9.1 Pathway Navigator warrants that:

- (a) the Subscription Services will function substantially as described in the Documentation; and
- (b) the Services will be provided with reasonable skill and care.

9.2 If the Subscription Services do not function substantially in accordance with the Documentation, Pathway Navigator will, at its option, either:

- (a) modify the Subscription Services to conform to the Documentation; or
- (b) provide a workaround solution.

If neither of the options in paragraphs (a) or (b) is commercially feasible, either party may terminate this Agreement by giving written notice to the other party, in which case Pathway Navigator will refund to You all Subscription Fees pre-paid to Pathway Navigator for unused Subscription Services. Such correction or substitution constitutes Your sole and exclusive remedy for any breach of the warranty set out in clause 9.1.

9.3 Pathway Navigator will not be liable for a breach of the warranty in clause 9.1 to the extent of any non-conformance which is caused by use of the Subscription Services contrary to the Documentation and any other Pathway Navigator instructions, or modification or alteration of the Subscription Services by any party other than Pathway Navigator or Pathway Navigator's duly authorised contractors or agents.

9.4 Notwithstanding clause 9.2, Pathway Navigator does not warrant:

- (a) that Your use of the Subscription Services will be uninterrupted or error-free;
- (b) that the Subscription Services, Documentation and/or the information obtained by You through the Subscription Services will meet Your requirements; and
- (c) the accuracy, correctness, reliability and completeness of any medical or health care advice, diagnostic path, treatment path, formulae, calculation or any other information provided through the use of the Subscription Services (together referred to as **Healthcare Information**). You acknowledge that the Healthcare Information:
 - (i) is provided for informational purposes only, and that any assumptions used and figures generated are for purposes of illustration and reference only, and are subject to change depending on a variety of factors, which may not have been taken into account;
 - (ii) should not be considered complete, nor should it be relied on to suggest a course of treatment for a particular individual; and
 - (iii) is not intended as a substitute for, nor does it replace, a medical practitioner's independent medical advice, diagnosis, treatment, or judgment about the appropriateness or risks of treatment, for a particular patient.

To the maximum extent permitted by law, Pathway Navigator will not be liable for any form of loss or damage, arising out of or in connection with Your reliance on and use of the Healthcare Information and Subscription Services. You agree that You will not rely solely on the Healthcare Information and will carry out Your own assessment of Your patients and all relevant factors (other than by using the Subscription Services) to verify the accuracy, correctness, reliability and completeness of the Healthcare Information.

9.5 You acknowledge that:

- (a) Pathway Navigator may rely on the provision of services by third parties (including data centre, electricity, telecommunications and outsourcing providers) in order to provide the Services (**Third Party Providers**) and that the Services may be subject to limitations, delays and other problems inherent in the use of such services provided by Third Party Providers. Pathway Navigator, will where commercially feasible and practically available, use reputable Third Party Providers to provide such services; and
- (b) Pathway Navigator will not be responsible for any delays, delivery failures, or any other loss or damage arising out of or is in connection with any services provided by Third Party Providers, including any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet.

9.6 Except as expressly set out in this Agreement, the Services and the Documentation are provided on an “as is” basis and all representations, conditions or warranties (whether express or implied, statutory or otherwise, and including warranties of merchantability and fitness for a particular purpose) in respect of the Services and Documentation are expressly excluded.

9.7 You will indemnify Pathway Navigator against all costs, losses, expenses and damages incurred through any claims against Pathway Navigator resulting from the use of the Services and the Documentation by You.

9.8 Except for a breach by either party of its confidentiality obligations or an infringement by You of Pathway Navigator’s Intellectual Property Rights:

- (a) neither party will be liable to the other party for loss of profits, loss of revenue, loss of data, or any indirect, consequential or special loss or damage suffered or incurred by the other party as a result of anything done by the first party under this Agreement; and
- (b) Pathway Navigator’s liability arising out of all claims for loss or damage under this Agreement will not exceed in aggregate an amount equal to the Subscription Fees actually paid by You to Pathway Navigator in the six months prior to time the liability arises.

10. **Termination**

10.1 Either party may terminate this Agreement without cause by giving the other party at least 30 days’ prior written notice.

10.2 Either party may terminate this Agreement if the other party:

- (a) is in material breach of this Agreement and fails to remedy such breach within 30 days of receiving notice from the other party specifying the breach and requiring it to be remedied; or

- (b) goes into liquidation or has a receiver or statutory manager appointed of any of its assets, becomes insolvent or makes any arrangement with creditors.

10.3 On termination of this Agreement for any reason:

- (a) all licences granted under this Agreement will immediately terminate;
- (b) each party will return, and make no further use of, any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) Pathway Navigator may destroy or otherwise dispose of any of Your Data in its possession unless Pathway Navigator receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to You of the then most recent back-up of Your Data. Pathway Navigator will use reasonable commercial endeavours to deliver the back-up to You within 30 days of its receipt of such a written request, provided that You have, at that time, paid all Subscription Fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). You will pay all reasonable expenses incurred by Pathway Navigator in returning or disposing of Your Data; and
- (d) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, will not be affected or prejudiced.

10.4 If You terminate this Agreement under clause 10.1 or Pathway Navigator terminates this Agreement under clause 10.2, You will:

- (a) not be entitled to a refund of any Subscription Fees pre-paid to Pathway Navigator for unused Subscription Services; and
- (b) be liable to pay the Subscription Fees on a pro-rata basis for each day up to and including the date of termination of this Agreement to the extent that You have not paid for the use of the Subscription Services on those days.

11. **Sub-contracting**

11.1 Pathway Navigator may sub-contract any of its obligations under this Agreement without obtaining Your prior written consent.

11.2 If Pathway Navigator uses a sub-contractor, Pathway Navigator is not relieved of any of its liabilities or obligations under this Agreement.

12. **Disputes**

12.1 If a dispute arises out of or relates to this Agreement (**Dispute**), a party may not commence any court or arbitration proceedings relating to the Dispute unless it has complied with the following paragraphs of this clause, except where the party seeks urgent interlocutory relief.

12.2 A party claiming the Dispute has arisen must give written notice to the other party specifying the nature of the Dispute.

12.3 On receipt of that notice, the parties will use all reasonable endeavours to resolve the Dispute by discussion, consultation, negotiation or other informal means.

12.4 If the Dispute is not resolved within 15 Business Days of the notice being given pursuant to clause 12.2 (or within such further period agreed in writing by the parties), either party may, by giving written notice to the other party, require the Dispute to be determined by the arbitration of a single arbitrator. The arbitrator will be appointed by the parties or, failing agreement within five Business Days of the notice requiring arbitration, by the President of the New Zealand Law Society on application of either party. The arbitration will be conducted as soon as possible and in accordance with the provisions of the Arbitration Act 1996.

13. **Force Majeure**

13.1 Pathway Navigator will have no liability to You under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Pathway Navigator or any other party), failure of a utility service or transport or telecommunications network or service of a Third Party Provider, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that You are notified of such an event and its expected duration.

14. **General**

14.1 This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes any previous understanding or agreements on that subject matter.

14.2 This Agreement will not be deemed to create a partnership, joint venture or agency relationship of any kind between the parties.

14.3 If any part or a provision of this Agreement is judged invalid or unenforceable in a jurisdiction it is severed for that jurisdiction and the remainder of this Agreement will continue to operate.

14.4 A provision or a right under this Agreement may not be waived except in writing signed by the party granting the waiver.

14.5 A party may exercise a right, power or remedy under this Agreement at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party under this Agreement does not prevent a further exercise of that or of any other right, power or remedy.

14.6 This Agreement may be varied by Pathway Navigator at any time, effective upon the posting of modified terms on the Website or as otherwise notified to You in writing (including by email). You will ensure that You have read, understood and agree to the most recent terms posted on the Website or as otherwise notified to You.

14.7 You will not assign, transfer or otherwise deal with this Agreement or any of Your rights or obligations under this Agreement, whether in whole or in part, without the prior written consent of Pathway Navigator.

14.8 Notices and other communications under this Agreement are to be given in writing by email, facsimile, personal delivery or by post and must be:

- (a) sent to the correct email, facsimile number or address designated in writing by each party for that purpose from time to time; and
- (b) marked for the attention of the designated person or office holder (if any).

14.9 A notice or communication in relation to this Agreement will be deemed to be received:

- (a) in the case of a letter, on the third Business Day after posting;
- (b) in the case of email, on the Business Day on which the email is successfully delivered;
- (c) in the case of a facsimile, on the Business Day on which it is dispatched or, if dispatched after 5.00 p.m. (in the place of receipt) on the next Business Day after the date of dispatch; and
- (d) in the case of personal delivery, when delivered.

14.10 This Agreement will be governed by and construed in accordance with the laws of New Zealand.

Support Services Schedule

1. For the purposes of this Support Services Schedule:

Fault means a failure of the Subscription Service to function substantially as described in the Documentation;

Fault Classification means the classifications specified in the table below:

Fault Classification	Description
Priority 1	The Subscription Service is down or unavailable. The Subscription Service is inoperable, seriously impacted or data is lost or destroyed.
Priority 2	Performance or availability is critically degraded, with major disruption to operation. A Subscription Service feature is inoperable or the Subscription Service is severely restricted in its use.
Priority 3	Performance or availability is non-critically degraded, with minor disruption to operation.
Priority 4	A minor problem causing minimal disruption to operation.

Support Services means:

- (a) advice on:
 - (i) operating the Subscription Service;
 - (ii) rectifying bugs or deficiencies of an inherent nature in the Subscription Service;
 - (b) other advice as may be reasonably required by You to obtain the full benefit and use of the Subscription Service;
 - (c) the investigation and diagnosis of Faults;
 - (d) the repair and correction of Faults.
2. Pathway Navigator will provide the Support Services by e-mail or telephone during Normal Business Hours. Fault logging facilities via email will be provided in normal business times.
 3. The Support Services do not include services provided by Pathway Navigator relating to or resulting from:
 - (a) time travelling to Your site where the Subscription Services are being used;
 - (b) misuse of the Subscription Services or failure to use the Subscription Services in accordance with the Documentation or this Agreement;

- (c) unauthorised attempts to repair, replace, modify or maintain the Subscription Services by persons other than Pathway Navigator;
- (d) support provided outside Normal Business Hours;
- (e) fluctuations in external power supplies or faults in communications networks;
- (f) failure by You to operate the Subscription Services in accordance with any environmental conditions specified by Pathway Navigator.

4. You will:

- (a) promptly report to Pathway Navigator all Faults which You discover;
- (b) ensure that:
 - (i) a system administrator is available to be the prime point of contact with Pathway Navigator in the event of any Faults or queries;
 - (ii) the system administrator has a good understanding of the Subscription Services and its operation;
- (c) make all reasonable efforts at investigation and diagnosis of Faults before contacting Pathway Navigator;
- (d) maintain a list of all Subscription Services problems to assist with the diagnosis and resolution of Faults;
- (e) when notifying Pathway Navigator of Faults, correctly classify the nature and severity of the Fault in accordance with the Fault Classifications.