

DAQreporter Terms of Use

Last updated January, 2006

This is a binding agreement ("Agreement") between Antek Healthware, LLC ("We", "Us" or "Our") and: (a) the person who logs in to use the mednexus.net or daqreporter.com service; and (b) the practice or other organization that purchased services under the Subscription Agreement Order Form ("you" or "your"). This Agreement governs your use of the Mednexus.net and daqreporter.com Web Sites, including, without limitation, all content such as text, information, images, and audio (collectively, "Content") and all services ("Services") made available to you through the MEDnexus and DAQreporter Web Sites (these Sites and the Content and Services are collectively referred to herein as the "Site") by us and/or third parties.

1. Access. The Site will be accessible to your personnel identified in the member enrollment forms ("Users"). All User information provided to us, including without limitation the information on the member enrollment forms, must be current, accurate, and complete. If we at any time discover any error or omission in the information you provide to us, we may, at our option, terminate the right to access and use the Site by any User. You are responsible (and hereby agree to indemnify and defend Us) for the acts or omissions by your personnel's use of the Site, and for any damages incurred by you or Us as a result thereof. Users must abide by any Site Acceptable Use Policies as may be amended from time to time by us in our sole discretion.

2. Security. The Site requires a userID and password, and a current browser that supports all Site functionality. Certain Services may require additional authentication. You are solely responsible for:

(A) maintaining the strict confidentiality of the userIDs, passwords and other access information (collectively, "IDs") assigned to your personnel,

(B) instructing your personnel to not allow another person to use their IDs to access the Site,

(C) any charges, damages, or losses that may be incurred or suffered as a result of you or your personnel's failure to maintain the strict confidentiality of their IDs,

(D) promptly informing us in writing of any need to deactivate an ID due to security concerns. We are not liable for any harm related to the theft of your IDs, your disclosure of your IDs, or your authorization to allow another person or entity to access and use the Site using your IDs. You agree to immediately notify us of any unauthorized use of your IDs.

(E) Physicians. Certain Services are intended for access and use solely by physicians and authorized members of their staff. If you are a physician, or a physician's authorized representative, it is your sole responsibility to identify members of your staff who should be permitted to access and use such Services, and to authorize, monitor, and control access to and use such Services by your staff members.

(F) Medical Disclaimers. The Content available through the Site is for informational and educational purposes only and is not a substitute for the professional judgment of the health care professional in diagnosing and treating patients. We do not give medical

advice, nor do we provide medical or diagnostic services. Your reliance upon Content obtained by you at or through the Site is solely at your own risk. Any critical information should be confirmed from its source, not from this site, before action is taken.

(G) Patient Data and Legal Compliance. The Services provided through the Site may enable Users to transmit, store, and receive confidential patient information ("Patient Information"). State and Federal laws, as well as ethical and licensure requirements of your profession may impose obligations with respect to patient confidentiality that may limit the ability of physicians, health care providers, and persons acting on their behalf, to make use of certain Services or to transmit certain information to third parties. You represent and warrant that you will, at all times during the term of this Agreement and thereafter, comply with all laws directly or indirectly applicable to you that may now or hereafter govern the gathering, use, transmission, processing, receipt, reporting, disclosure, maintenance, and storage of the Patient Information, and use your best efforts to cause all persons or entities under your direction or control to comply with such laws. You are, at all times during the term of this Agreement and thereafter, solely responsible for obtaining and maintaining all patient consents and all other legally necessary consents or permissions required or advisable to disclose, process, retrieve, transmit, and view the Patient Information you transmit, store, or receive in connection with the Site and the Services. You agree that we, our licensors, and all other persons or entities involved in the operation of Services provided through the Site, have the right to monitor, retrieve, store and use Patient Information in connection with the operation of such Services, and are acting on your behalf in transmitting Patient Information. We agree to use commercially reasonable efforts to maintain the confidentiality of such information and prevent the disclosure of such information to third parties except in connection with the transmission, storage, retrieval, and disclosure of such information on your behalf and as may be required or permitted by law. WE CANNOT AND DO NOT ASSUME ANY RESPONSIBILITY FOR YOUR USE OR MISUSE OF PATIENT INFORMATION OR OTHER INFORMATION TRANSMITTED, MONITORED, STORED OR RECEIVED USING THE SITE OR THE SERVICES.

(H) General Disclaimers. THE SITE IS PROVIDED TO YOU ON AN "AS IS, WITH ALL FAULTS" BASIS, AND YOUR USE THEREOF IS AT YOUR OWN RISK. OTHER THAN THE EXPRESS WARRANTY ABOVE CONCERNING SECURITY, AND ANY EXPRESS OBLIGATIONS WE UNDERTAKE IN THE SUBSCRIPTION AGREEMENT ORDER FORM AND TERMS AND CONDITIONS THEREOF, WE MAKE NO, AND HEREBY DISCLAIM ALL, WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, OR WARRANTIES ARISING BY COURSE OF DEALING OR CUSTOM OF TRADE. WE MAKE NO REPRESENTATION OR WARRANTY THAT ANY CONTENT IS ACCURATE, COMPLETE, APPROPRIATE, RELIABLE, OR TIMELY. WE ALSO MAKE NO REPRESENTATIONS OR WARRANTIES THAT YOUR ACCESS TO AND USE OF THE SITE (1) WILL BE UNINTERRUPTED OR ERROR-FREE, (2) IS FREE OF VIRUSES, UNAUTHORIZED CODE, OR OTHER HARMFUL COMPONENTS, OR (3) IS SECURE. YOU ARE RESPONSIBLE FOR TAKING ALL PRECAUTIONS YOU BELIEVE NECESSARY OR ADVISABLE TO PROTECT

YOURSELF AGAINST ANY CLAIM, DAMAGE, LOSS OR HAZARD THAT MAY ARISE BY VIRTUE OF YOUR USE OF THE SITE. Some jurisdictions do not permit the exclusion or limitation of implied warranties. Therefore, only if required by applicable law, some or all of the exclusions or limitations above may not apply, however these exclusions will not prejudice the remainder of these conditions. You may have other rights from jurisdiction to jurisdiction.

(I) Exclusion of Damages. UNDER NO CIRCUMSTANCES WHATSOEVER WILL WE BE RESPONSIBLE OR LIABLE TO YOU OR ANY OTHER ENTITY FOR ANY DIRECT, COMPENSATORY, INDIRECT, INCIDENTAL, CONSEQUENTIAL (INCLUDING LOST PROFITS AND LOST BUSINESS OPPORTUNITIES), SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES THAT RESULT FROM OR RELATE IN ANY MANNER WHATSOEVER TO (1) YOUR USE OF THE SITE, OR RELIANCE ON THE CONTENT, OR (2) ERRORS, INACCURACIES, OMISSIONS, DEFECTS, UNTIMELINESS, SECURITY BREACHES, OR ANY OTHER FAILURE TO PERFORM BY US OR OUR CONTENT PROVIDERS. THE FOREGOING EXCLUSION SHALL APPLY REGARDLESS OF WHETHER WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Some jurisdictions do not permit the exclusion of certain types of damages. Therefore, only if required by applicable law, some or all of the exclusions or limitations above may not apply, however these exclusions will not prejudice the remainder of these conditions. You may have other rights from jurisdiction to jurisdiction.

(J) Limitation of Liability. IF, NOTWITHSTANDING THE OTHER TERMS OF THIS AGREEMENT, WE SHOULD HAVE ANY LIABILITY TO YOU OR ANY THIRD PARTY FOR ANY LOSS, HARM OR DAMAGE, YOU AND WE AGREE THAT SUCH LIABILITY SHALL UNDER NO CIRCUMSTANCES EXCEED THE LESSER OF \$1,000 OR THE FEES YOU PAID US DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE DAY THE ACT OR OMISSION OCCURRED THAT GAVE RISE TO YOUR CLAIM. YOU AND WE AGREE THAT THE FOREGOING LIMITATION OF LIABILITY IS AN AGREED ALLOCATION OF RISK BETWEEN YOU AND US AND REFLECTS THE FEES, IF ANY, WE CHARGE YOU TO USE THE SITE. YOU ACKNOWLEDGE THAT ABSENT YOUR AGREEMENT TO THIS LIMITATION OF LIABILITY, WE WOULD NOT PROVIDE THE SITE TO YOU.

(K) Indemnity. You agree to defend, indemnify and hold us harmless against any losses, expenses, costs or damages (including our reasonable attorneys' fees, expert fees' and other reasonable costs of litigation) arising from, incurred as a result of, or in any manner related to (1) your breach of the terms of this Agreement, (2) your unauthorized or unlawful use of the Site, and (3) the unauthorized or unlawful use of the Site by any other person using your IDs.

(L) Entire Agreement. This Agreement, the DAQreporter Privacy Statement, the Subscription Agreement Order Form (and Terms And Conditions thereof) (collectively, the "DAQreporter Agreements") contain the entire agreement between you and us relating to the subject matter hereof, and supersedes any other oral or written communications relating thereto. No conflict is intended between the DAQreporter Agreements, however, in the event of a conflict, the following order of priority shall apply, the Subscription Agreement Order Form (and Terms And Conditions thereof) shall

control over this Agreement, and both of those shall control over the DAQreporter Privacy Statement.

(M) None of the DAQreporter Agreements may be amended or supplemented by (1) any purchase order or similar form originated by you relating to the subject matter hereof (other than the Subscription Agreement Order Form that is countersigned by Antek), or (2) statements of any of our employees. We reserve the right to make changes to this Agreement and the DAQreporter Privacy Statement (but not the Subscription Agreement Order Form) at any time without advance notice. We agree to post all amended forms of this Agreement and the DAQreporter Privacy Statement on the Site and such amended forms shall be effective immediately upon their posting. It is at all times your responsibility to read the most current form of this Agreement and the DAQreporter Privacy Statement before using the Site to ensure that you agree to the terms and conditions of any amendments made to this Agreement. You agree that these standards for notice of amendments to this Agreement are reasonable. Notwithstanding the above, no modification that materially reduces or limits Your rights shall be effective until 30 calendar days after such modified terms have been posted on the Site, and we have sent you at least one email at your last known email address attempting to notify you of the modifications.

(N) Termination. Your right to access and use the Site immediately terminates without further notice upon your breach of any of the Agreements. We may terminate this Agreement and/or your right to use the Site at any time if You or anyone using your authentication credentials is violating any agreement or policy identified herein, and otherwise, we may terminate Your access to the Site and services in accordance with the Subscription Agreement Order Form. Upon any termination of the DAQreporter Agreements, all of the terms hereof shall survive. We reserve the right to discontinue or make changes to the Site at any time, however, except in the case of an emergency in our good faith determination, before we make any change that will discontinue or materially reduce the functionality of the Site, we shall provide you with 10 calendar days notice by email at your last known email address.

(O) Other. We may assign this Agreement, in whole or in part, in our sole discretion. You may not assign your rights under this Agreement without our prior written permission. Any attempt by you to assign your rights under this Agreement without our permission shall be void. The waiver by us of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other or a subsequent breach of the same or a different kind. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall remain in full force and effect. This Agreement is governed by the laws of the State of Maryland, without giving effect to any principles of conflicts of law.

3. Copyrights; Limited License to Information. All words, pictures, graphs, charts and other matters presented or made available on the Site are Copyright ©2004-2006 Antek Healthware, LLC (the "Information"). By accessing and/or making use of the Site, You agree that We are not offering for sale or selling the Information, but instead are granting You a limited, royalty free, non-exclusive, revocable license to make use of the Information presented on this Site for Your own personal or internal business purposes. Unless otherwise set forth in a separate written agreement signed by Us, You agree that this license does not permit You to: (i) download any Information on this Site; (ii) sell the

Information downloaded (or copied in another form) for money, barter, exchange or other consideration; (iii) redistribute the Information for free to anyone (except to Your bona fide employees who need the Information for internal business purposes); (iv) make any more than one print copy of the Information; (v) republish the Information for any prohibited purpose, including commercial gain; (vi) make any alterations, additions or other modifications to the Information; or (vii) reverse engineer, decompile, deconstruct or otherwise seek to discover the method of operation of the Site. All rights not expressly granted are reserved.