

## TERMS AND CONDITIONS OF SAAS USE

*(Drafting note: this document is not part of the executed contract; it is incorporated by reference and available electronically)*

1. **Definitions.** For purposes of these Terms and Conditions of SaaS Use, the definitions in Exhibit A apply.

2. **Access and Use.**

(a) **Provision of Access.** Subject to and conditioned on Customer's payment of Fees and compliance with all the terms and conditions of the Agreement, Provider hereby grants Customer a non-exclusive, non-transferable (except in compliance with Section 11.b of the Agreement (Assignment)) right to access and use the Subscription Services and the Documentation during the Term, solely for use by Authorized Users as set forth herein. Such use is limited to Customer's internal use; no re-seller or re-distribution arrangements are permitted under the Agreement. Provider shall provide to Customer the necessary passwords and network links or connections to allow Customer to access the Subscription Services. The total number of Authorized Users will not exceed the number set forth in Section 5 of the Agreement, except as expressly agreed to in writing by the Parties and subject to any appropriate adjustment of the Fees payable hereunder.

(b) **Use Restrictions.** Customer shall not use the Subscription Services for any purposes beyond the scope of the access granted in the Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Subscription Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Subscription Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Subscription Services, in whole or in part; (iv) remove any proprietary notices from the Subscription Services or Documentation; or (v) use the Subscription Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law. Customer agrees that it and Authorized Users will not use the Subscription Services in a manner, or transmit any information or material through the Subscription Services, that violates (i) Provider's standard published Policies then in effect or (ii) applicable local, state or federal laws or regulations, including, but not limited to, the Telephone Consumer Protection Act (47 U.S.C. § 227) ("TCPA"), the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM"), and the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA").

(c) **Reservation of Rights.** Provider reserves all rights not expressly granted to Customer in the Agreement. Except for the limited rights and licenses expressly granted under the Agreement, nothing in the Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in

or to the Provider IP.

(d) Suspension. Notwithstanding anything to the contrary in the Agreement, Provider may temporarily suspend Customer's and any Authorized End User's access to any portion or all of the Subscription Services if: (i) Provider reasonably determines that (A) there is a threat or attack on any of the Provider IP; (B) Customer's or any Authorized End User's use of the Provider IP disrupts or poses a security risk to the Provider IP or to any other customer or vendor of Provider; (C) Customer, or any Authorized End User, is using the Provider IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Provider's provision of the Services to Customer or any Authorized End User is prohibited by applicable law; (ii) any vendor of Provider has suspended or terminated Provider's access to or use of any third-party services or products required to enable Customer to access the Subscription Services; or (iii) in accordance with Section 4.a of the Agreement (Fees) (any such suspension described in subclause (i), (ii), or (iii), a "Service Suspension"). Provider shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Subscription Services following any Service Suspension. Provider shall use commercially reasonable efforts to resume providing access to the Subscription Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Provider will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

(e) Aggregated Statistics. Notwithstanding anything to the contrary in the Agreement, Provider may monitor Customer's use of the Subscription Services and collect and compile Aggregated Statistics. As between Provider and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Provider. Customer acknowledges that Provider may compile Aggregated Statistics based on Customer Data input into the Services. Customer agrees that Provider may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law.

### 3. Customer Responsibilities.

(a) Access and Use. Customer is responsible and liable for all uses of the Subscription Services and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of the Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of the Agreement if taken by Customer will be deemed a breach of the Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of the Agreement's provisions as applicable to such Authorized User's use of the Subscription Services, and shall cause Authorized Users to comply with such provisions.

- (b) At all times during the Term, Customer shall:
- (i) Set up, maintain and operate the internal computing environment, internet access, and telephony systems to the extent necessary to support the provision and operation of services by Company;
  - (ii) Upon request, provide Company personnel with such access to Customer's premises and Customer systems as is necessary for Company to provide the Subscription Services;
  - (iii) Commit the necessary staff and management resources to support the Subscription Services and perform agreed upon acceptance procedures in a timely manner;
  - (iv) Provide feedback, approvals or decisions to support project milestones within agreed upon time frames;
  - (v) Determine whether services, products and materials meet Customer business objectives and are consistent with Customer policy; and
  - (vi) Be responsible for determining whether to use or refrain from using any recommendations made by Company.

(c) Consents. Customer is responsible for obtaining any and all consents and authorizations (collectively, "Consents") from patients required by applicable laws or regulations before collecting and transmitting Customer Data. Company is not responsible for obtaining Consents or verifying that Customer has obtained Consents. Laws and regulations requiring Consents include, without limitation, HIPAA, state data privacy laws, the Telephone Consumer Protection Act ("TCPA") and the CAN-SPAM Act. Customer represents and warrants that Customer will transmit Customer Data using the Subscription Services only if it is permitted by applicable laws and regulations. Any protected health information ("PHI") is subject to the Business Associate Agreement.

(d) Data Transmission. Customer is responsible for the transmission of Customer Data through the Subscription Services, including transmitting Customer Data in the form and manner that Company requires and communicates from time to time. Customer Data must be readable, accurate, and complete, and will be deemed to be the "source of truth" for Company's provision of the Subscription Services. Customer agrees that Company will not be responsible or liable under any circumstances for any consequences of incomplete or inaccurate Customer Data. Inaccurate or incomplete Customer Data could result in data breaches, such as texts or e-mails being delivered to the wrong party. Customer is solely responsible and liable for the content of Customer Data and its use by Authorized Users, employees, contractors, and agents. Customer is also responsible for any unauthorized or unintentional transmission through the Subscription Services as a result of the acts or omissions of Authorized Users, employees, contractors, and agents.

4. **Confidential Information.** From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media, and whether or not marked, designated or otherwise identified as “confidential” (collectively, “Confidential Information”). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. Confidential Information does not include individually identifiable health information or information which is PHI, as such terms are defined in HIPAA, the Health Information Technology for Clinical Health Act (“HITECH”) and the regulations issued under HIPAA and HITECH. The receiving Party shall not disclose the disclosing Party’s Confidential Information to any person or entity, except to the receiving Party’s employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party’s rights under the Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party’s Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party’s obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of the Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

5. **Intellectual Property Ownership; Feedback.**

(a) **Provider IP.** Customer acknowledges that, as between Customer and Provider, Provider owns all right, title, and interest, including all intellectual property rights, in and to the Provider IP.

(b) **Customer Data.** Provider acknowledges that, as between Provider and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Provider a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Provider to provide the Subscription Services to Customer, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data

incorporated within the Aggregated Statistics.

(c) Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to Provider by mail, email, telephone, or otherwise, suggesting or recommending changes to the Provider IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("Feedback"), Provider is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Provider on Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Provider is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Provider is not required to use any Feedback.

(d) Limited Warranty and Warranty Disclaimer.

(i) Provider warrants that the Subscription Services will conform in all material respects to the service levels set forth in the Service Levels and Support Agreement when accessed and used in accordance with the Documentation. Provider does not make any representations or guarantees regarding uptime or availability of the Subscription Services unless specifically identified in Service Levels and Support Agreement. The remedies set forth in Service Levels and Support Agreement are Customer's sole remedies and Provider's sole liability under the limited warranty set forth in this Section 5.d(i).

(ii) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 5.d(i), THE PROVIDER IP IS PROVIDED "AS IS" AND PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 5.d(i), PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE PROVIDER IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

## 6. Indemnification.

(a) Provider Indemnification.

(i) Provider shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("Losses") incurred by Customer resulting from any third-party

claim, suit, action, or proceeding ("Third-Party Claim") that the Subscription Services, or any use of the Subscription Services in accordance with the Agreement, infringes or misappropriates such third party's US intellectual property rights, provided that Customer promptly notifies Provider in writing of the claim, cooperates with Provider, and allows Provider sole authority to control the defense and settlement of such claim.

(ii) If such a claim is made or appears possible, Customer agrees to permit Provider, at Provider's sole discretion, to (A) modify or replace the Subscription Services, or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use. If Provider determines that neither alternative is reasonably available, Provider may terminate the Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer.

(iii) This Section 6.a will not apply to the extent that the alleged infringement arises from: (A) use of the Subscription Services in combination with data, software, hardware, equipment, or technology not provided by Provider or authorized by Provider in writing; (B) modifications to the Subscription Services not made by Provider; or (C) Customer Data.

(b) Customer Indemnification. Customer shall indemnify, hold harmless, and, at Provider's option, defend Provider from and against any Losses resulting from any Third-Party Claim that the Customer Data, or any use of the Customer Data in accordance with the Agreement, infringes or misappropriates such third party's US intellectual property rights and any Third-Party Claims based on Customer's or any Authorized User's (i) negligence or willful misconduct; (ii) use of the Subscription Services in a manner not authorized by the Agreement; (iii) use of the Subscription Services in combination with data, software, hardware, equipment or technology not provided by Provider or authorized by Provider in writing; or (iv) modifications to the Subscription Services not made by Provider, provided that Customer may not settle any Third-Party Claim against Provider unless Provider consents to such settlement, and further provided that Provider will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

(c) Sole Remedy. THIS SECTION 6 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SUBSCRIPTION SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

7. Limitations of Liability. IN NO EVENT WILL PROVIDER BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE,

INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID AND AMOUNTS ACCRUED BUT NOT YET PAID TO PROVIDER UNDER THIS AGREEMENT IN THE ONE YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

8. **Miscellaneous**

(a) **Force Majeure**. In no event shall either Party be liable to the other Party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

(b) **Amendment and Modification; Waiver**. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(c) **Severability**. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(d) **Governing Law; Submission to Jurisdiction**. This Agreement is governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Delaware. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Illinois

in each case located in the city of Chicago and County of Cook, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

(e) Export Regulation. The Subscription Services use software and technology that may be subject to US export control laws, including the US Export Administration Act and its associated regulations. Customer shall not, directly or indirectly, export, re-export, or release the Subscription Services or the underlying software or technology to, or make the Subscription Services or the underlying software or technology accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Subscription Services or the underlying software or technology available outside the US.

(f) Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 4(Confidential Information) of the Terms and Conditions of SaaS Use or, in the case of Customer, Section 2.b (Use Restrictions) of the Terms and Conditions of SaaS Use, would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

[End of Terms and Conditions of SaaS Use]

**EXHIBIT A**  
**Definitions**

1. “Aggregated Statistics” means data and information related to Customer’s use of the Services that is used by Provider in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.
2. “Authorized User” means Customer’s employees, consultants, contractors, and agents (a) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement and (b) for whom access to the Services has been purchased hereunder.
3. “Consents” means any consents or authorizations from patients or individuals as required by applicable laws or regulations.
4. “Company Platform” means Company’s proprietary software as a service platform for health care professionals and recipients of health care services, as described in the Agreement.
5. “Customer Data” means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Services.
6. “Customer Failure” refers to instances where Company is unable to deliver a deliverable that materially conforms to contract requirements because of (a) critical dependencies controlled by Customer or a third party under Customer’s direction or control, or (b) Customer’s failure to deliver readable data.
7. “Documentation” means Provider’s user manuals, handbooks, and guides relating to the Services provided by Provider to Customer either electronically or in hard copy form relating to the Services.
8. “Provider IP” means the Services, the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Provider IP includes Aggregated Statistics and any information, data, or other content derived from Provider’s monitoring of Customer’s access to or use of the Services, but does not include Customer Data.
9. “Subscription Services” means the: (a) the Company Platform and (b) technical support services relating to the Company Platform.