

TERMS & CONDITIONS

1. DEFINITIONS

- a. “**Authorized User**” means (a) the employees, consultants, agents and subcontractors of Customer that are authorized by Customer to access the Services.
- b. “**Customer Data**” means (a) all data and information Customer submits or transmits to SSC, including any PHI (as defined below) and/or Patient-Generated Health Data necessary for the Services; and (b) data, records and information SSC generates that relates directly to the Services for Customer under this Agreement, exclusive of information or documentation that SSC generates for use in SSC’s business generally or for use with multiple customers and exclusive of De-Identified Data as defined below.
- c. “**De-identified Data**” means personally identifiable information (PII) and PHI (defined below) that has been stripped of certain identifiable elements so as to render the individual’s data de-identified.
- d. “**SSC Data**” means: (a) all data, software (in any form) and information SSC submits or transmits to Customer regarding SSC; (b) all data, records and information generated in SSC’s business or operations, including any information relating to SSC’s subcontractors and/or affiliates; (c) all SSC Intellectual Property, together with all derivative works of the SSC Intellectual Property; and (d) data, records or information occurring in any form, including written, graphic, electronic, visual or fixed in any tangible medium of expression and whether developed, generated, stored, possessed or used by SSC, Customer, or a third party if related to the items described in (a) through (c) above. SSC Data does not include any data or information that relates exclusively to Customer or Customer’s business, operations or activities.
- e. “**Governmental Authority**” means the Federal government, any state, county, municipal or local government or any governmental department, political subdivision, agency, bureau, commission, authority, body or instrumentality or court that regulates the applicable party’s activities or operations.
- f. “**Helpdesk**” means the customer support line operated by SSC to assist customers with troubleshooting and questions regarding use of the Software.
- g. “**Intellectual Property Rights**” means any patent, invention, discovery, know-how, moral, technology, software, copyright, authorship, trade secret, trademark, trade dress, service mark, confidentiality, proprietary, privacy, intellectual property or similar rights that are now or hereafter protected or legally enforceable under state or Federal common laws or statutory laws or laws of foreign jurisdictions.
- h. “**Laws**” means all applicable common law and any and all state, Federal or local statutes, ordinances, codes, rules, regulations, or requirements enacted, adopted, followed or imposed by any Governmental Authority, as amended, interpreted or enforced by any Governmental Authority, as applicable to each respective Party.
- i. “**Order Form**” means the SSC License and Services Order Form provided to Customer for purposes of ordering SSC technology and services.
- j. “**Participating Patients**” means those patients of Customer’s practice/business that Customer has determined may benefit from use of the Services.
- k. “**Patient-Generated Health Data**” means self-reported physiologic data from a Patient User (as defined below).
- l. “**Patient Mobile App**” means the portion of the Software which allows Patient Users to report and track Patient-Generated Health Data.
- m. “**Patient User**” means any patient of Customer or any duly authorized representative or agent of a patient, who has registered to use the Services and has agreed to the End User Terms of Use.
- n. “**Protected Health Information**” or “**PHI**” shall have the meaning ascribed to such term in 45 C.F.R. 160.103.
- o. “**Provider-Facing Dashboard**” means the portion of the Software which allows healthcare providers to track and analyze patient-generated health data.
- p. “**Services**” shall mean those products and services offerings Customer has selected for purchase from SSC on the License and Services Order Form.
- q. “**Software**” means the Patient Mobile App, the Provider-Facing Dashboard, all of the capabilities and functionalities associated with the Patient Mobile App and Provider-Facing Dashboard, and user support services provided by Healthfirst.

- r. **“Terms of Use”** means the agreement between each of Customer’s individual users of the Software and SSC.
2. **TERM**
- a. **Term.** The Service Term indicated on the Order Form shall constitute the Term of this Agreement.
3. **PRODUCTS & SERVICES**
- a. **Services List.** Customer shall select the products and services Customer wishes to purchase through SSC on the Order Form. By selecting a particular product or service, Customer agrees to the relevant terms associated with that product or service set forth in the Services List and Additional Terms attached hereto as Exhibit A. The Services List and Additional Terms attachment is hereby incorporated into and made a part of this Agreement.
4. **LICENSE & CUSTOMER DATA**
- a. **Application Software.** If Customer selects to purchase the Software on the Order Form, and subject to Customer’s compliance with the terms of this Agreement, SSC will provide access to the Software to Customer and its Authorized Users. Customer and its Authorized Users may use the Software (a) to access and use the Software in accordance with the relevant End User Terms of Use and any other supporting documentation provided by SSC, (b) to upload and/or transmit Customer Data by and through the Software; and (c) to access and use reports generated from time to time by SSC.
- b. **Customer Data.** Customer hereby grants to SSC a limited, non-exclusive, royalty-free, worldwide license to:
- A. Use, reproduce, aggregate and modify the Customer Data and to perform all acts with respect to the Customer Data as may be necessary for SSC to provide the Services to Customer; and
 - B. Use Customer’s name, logo, and trademark for marketing purposes upon written consent of Customer; and
 - C. Use or modify the Customer Data for the purposes of creating De-identified Data from PII and PHI contained in the Customer Data. SSC intends to use De-identified Data, aggregated with the de-identified data of other SSC customers, to enable SSC to provide more targeted, accurate, and useful insights to its customers.
- D. As between SSC and Customer, Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. Customer Data will be included in and treated as Customer’s Confidential Information under this Agreement.
- c. **Intellectual Property.** Except as otherwise set forth in this Agreement, all inventions, works of authorship, and developments conceived, created, written, or generated by or on behalf of SSC, whether solely or jointly, including without limitation, in connection with the Software hereunder (“**SSC Developments**”) and all Intellectual Property Rights therein, shall be the sole and exclusive property of SSC. Customer agrees to execute any documents or take any actions as may reasonably be necessary, or as SSC may reasonably request, to perfect ownership of the SSC Developments. Customer shall not re-distribute the Software or Services other than as specifically provided for in this Agreement.
5. **CUSTOMER RESPONSIBILITIES**
- a. **System.** Customer is responsible for (a) obtaining, deploying and maintaining all computer hardware, software, modems, routers and other communications equipment necessary for Customer’s Authorized Users to access and use the Services via the Internet; (b) contracting with third party ISP, telecommunications and other service providers to access and use the Services via the Internet; and (c) paying all third party fees and access charges incurred in connection with the foregoing. Except as specifically set forth in this Agreement, SSC will not be responsible for supplying any software or other equipment to Customer under this Agreement.
- b. **Consents.** Customer shall obtain and document necessary patient consents from Participating Patients prior to commencing services to be provided via the Software. Unless otherwise agreed in writing, Customer will obtain all additional necessary consents and authorizations to enable SSC to use, upload, process and store Customer Data using the Services. Customer will not furnish any Customer Data that includes an individual’s

PHI to SSC in the event such individual objects. Customer acknowledges and accepts full responsibility and liability for all Customer Data.

- c. TOU. Customer will be solely responsible for its actions and the actions of its Authorized Users while using the Software. As a condition to Customer's and its Authorized Users' use of the Software, Customer shall require its Authorized Users to review and accept the SSC End User Terms of User ("**TOU**"), as updated by SSC from time to time, prior to accessing the Software. Customer shall abide by and Customer shall require its Authorized Users to abide by the TOU when using or accessing the Software.
- d. Patient Copays and Deductibles. Customer is responsible for collecting from a Participating Patient any applicable patient copays or deductible amount as required by Participating Patient's health insurance plan, whether commercial or government sponsored.
- e. Access to EHR. Customer shall provide access to its Electronic Health Record (EHR) to SSC as necessary to allow SSC to provide the Services.

6. PAYMENTS

- a. Fees. As compensation for the use of the Services, Customer shall pay SSC the Fees indicated on the License and Services Order Form.
- b. Payment.
 - a. SSC shall invoice Customer for fees owed to SSC on a monthly basis.
 - b. Customer shall pay SSC for invoiced amounts and any other amounts due under this Agreement via electronic transfer or credit card.
 - c. Customer shall pay all undisputed fees within 30 days of receipt of an invoice from SSC.
- c. Currency. All amounts set forth in this Agreement are denominated and shall be paid in U.S. dollars.
- d. Overdue Payments.
 - a. Any payment owed by Customer to SSC hereunder and not timely paid to SSC (an "**Overdue Payment**") may accrue, at SSC's discretion, late charges at the rate of two percent (2%) of the outstanding balance per month, or at the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.
 - b. If there are payments outstanding for more than sixty (60) days and such payments have not been disputed in good faith pursuant to Section 6e, SSC

will provide a thirty (30) day opportunity to cure. If, after the thirty (30) day cure period, payments remain overdue, SSC reserves the right to suspend Authorized Users' access to the Software until such amounts are paid in full. Customer shall continue to be obligated to pay all Fees during such suspension period.

- e. Disputed Payments. Customer must indicate that they are disputing any fees or expenses, in writing, to SSC within ten (10) business days of receipt of the invoice specifying such fees or expenses (a "**Dispute Notice**"). In the event Customer disputes any fees or expenses owed pursuant to this Agreement and withholds payment, SSC and Customer agree to attempt to resolve such dispute through informal meetings and discussions in good faith between appropriate representatives of the Parties within forty-five (45) days of receipt of the Dispute Notice before resorting to any other dispute resolution procedure.
- f. Taxes. All amounts payable by Customer to SSC pursuant to this Agreement are exclusive of all local, state, federal and foreign taxes, levies, or duties of any nature ("**Taxes**"), and all payments to SSC are payable in full without reduction for Taxes. Customer is responsible for payment of all Taxes, excluding taxes owed by SSC based on SSC's net income. If SSC has the legal obligation to pay or collect Taxes for which Customer is responsible pursuant to this Section, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides SSC with a valid tax exemption certificate authorized by the appropriate taxing authority.

7. PROPRIETARY RIGHTS

- a. SSC Intellectual Property. As between SSC and Customer, all right, title and interest, including all Intellectual Property Rights, in the Software, SSC Data, and any other SSC property or materials furnished or made available hereunder, and all modifications and enhancements thereof, belong to and are retained solely by SSC or SSC's licensors and providers, as applicable.
- b. Trademarks. Nothing in this Agreement shall grant any party any ownership interest, license or other right to any other party's trade names, trademarks or service marks, except as expressly provided herein.

- c. Customer Data. As between SSC and Customer, all right, title and interest in the Customer Data belong to and are retained solely by Customer.
 - d. Feedback License. SSC owns all right, title and interest in and to any suggestion, enhancement, request, recommendation, or other feedback related to the Software provided by Customer (any "**Feedback**"). Feedback shall not be considered Customer's Confidential Information pursuant to this Agreement.
 - e. De-identified Data. As permitted in Section 4(b)(C) above, SSC may use PII and PHI (a subset of Customer Data) to create De-identified Data. SSC may use, create, modify, aggregate, and disclose De-identified Data for any purposes not prohibited by law. SSC owns all rights, title and interest in such De-identified Data and any data, information and material created by SSC with such De-identified Data, including all Intellectual Property Rights therein. De-identified Data is NOT Customer Data. For the avoidance of doubt, the second and third sentences of this Section shall survive the expiration or earlier termination of this Agreement.
8. REPRESENTATIONS AND WARRANTIES; DISCLAIMER
- a. Mutual Representations and Warranties. Each Party represents, warrants and covenants that such Party has conducted reasonable inquiry and based thereon is informed and believes that: (a) it has the full power and authority to enter into this Agreement and to perform its obligations hereunder, without the need for any consents, approvals or immunities not yet obtained; (b) its acceptance of and performance under this Agreement will not breach any oral or written agreement with any third party or any obligation owed by it to any third party to keep any information or materials in confidence or in trust; and (c) it will comply with any and all applicable local, state, and/or national laws or regulations applicable to such party, including, without limitation, those related to PHI, Covered Entities, and Business Associates as each term is defined under HIPAA, and to any other laws or regulations regarding data privacy and transmission of personal data.
 - b. Practice of Medicine. CUSTOMER HEREBY AGREES AND ACKNOWLEDGES THAT SSC IS IN NO WAY ACTING AS A SUBSTITUTE

MEDICAL PROVIDER WITH RESPECT TO ANY PATIENT OR ANY OF CUSTOMER'S RELATED PARTIES AND PROVIDERS, NOR IS SSC PROVIDING 24/7 CONTINUOUS, SYNCHRONOUS, OR EMERGENCY ALERTING. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT THE TREATMENTS, PROCEDURES, WORKFLOW, INFORMATION, MEDICATIONS, PROCESSES, PRODUCTS AND OTHER ITEMS REFERENCED BY SSC OR ITS SOFTWARE ARE NOT INTENDED AS A RECOMMENDATION OR ENDORSEMENT OF ANY COURSE OF TREATMENT, PROCEDURE, INFORMATION, PRODUCT OR MEDICATION AND THAT THE ULTIMATE RESPONSIBILITY FOR DIAGNOSING AND TREATING ANY PATIENT RESTS WITH THE PHYSICIANS TREATING SUCH PATIENT.

- c. Third Party Materials. CUSTOMER UNDERSTANDS AND AGREES THAT USING, ACCESSING, DOWNLOADING, OR OTHERWISE OBTAINING INFORMATION, MATERIALS, OR DATA THROUGH THE SOFTWARE FROM A SOURCE OTHER THAN SSC ("**Third Party Materials**") IS AT ITS OWN DISCRETION AND RISK AND THAT IT WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO ITS OR ITS AUTHORIZED USERS' PROPERTY OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OR USE OF SUCH MATERIAL OR DATA.
- d. Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 8, THE SOFTWARE IS PROVIDED ON AN AS-IS BASIS. CUSTOMER'S USE OF THE SOFTWARE IS AT ITS OWN RISK. SSC DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS, STATUTORY AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND ACCURACY (OF DATA OR ANY OTHER INFORMATION OR CONTENT), AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. ANY WARRANTIES MADE BY SSC ARE FOR THE BENEFIT OF CUSTOMER ONLY AND NOT FOR

THE BENEFIT OF ANY THIRD PARTY. THE SOFTWARE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. SSC IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS.

THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE SOFTWARE, INCLUDING WITHOUT LIMITATION ANY INFORMATION, DATA, PRODUCTS, PROCESSES, AND OTHER MATTERS REFERENCED BY THE SERVICES REMAINS WITH THE CUSTOMER.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, SSC DOES NOT GUARANTEE CONTINUOUS, ERROR-FREE, VIRUS-FREE OR SECURE OPERATION AND ACCESS TO THE SOFTWARE.

e. Basis of the Bargain. CUSTOMER ACKNOWLEDGES AND AGREES THAT SSC HAS OFFERED ITS SERVICES AND SOFTWARE AND ENTERED INTO THIS AGREEMENT TO WHICH IT IS A PARTY IN RELIANCE UPON THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN, THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN CUSTOMER AND SSC, AND THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN CUSTOMER AND SSC. CUSTOMER ACKNOWLEDGES AND AGREES THAT SSC WOULD NOT BE ABLE TO PROVIDE THE SOFTWARE TO CUSTOMER ON AN ECONOMICALLY REASONABLE BASIS WITHOUT THESE LIMITATIONS.

f. Monitoring. Company is not liable for any claims, including third party claims, arising out of or in connection with or relating to data or other health-related information concerning Customer or Participating Patients any other data to which Company has access under this Agreement. Company is not making medical interpretations,

evaluations, or medical judgments for treatment. Company does not provide medical or clinical advice. Company's products and services are not intended as a substitute for professional and/or clinical medical care. Customer assumes full responsibility and risk for any consequences or claims, including third party claims, arising out of in connection with or relating to such data or information.

g. Fall Detection Technology. Company may use fall detection technology to serve Participating Patients. Customer acknowledges and agrees that fall detection technology is not 100% reliable, that the technology may not send a signal to Company in the event of a fall and/or may send a false alarm.

h. Forceable Entry. To the extent applicable, Customer authorizes Company in its sole discretion to send responders to Participating Patients' residence in response to the use of the Services or a signal from the technology. If Customer does not respond or is unable to respond, this may result in responder's forcible entry into your Participating Patient's residence, which may cause damage. Customer relieves Company from any and all liability whatsoever as a result of said dispatch and/or entry, including damages to property from forcible entry by responders, government fees, ambulance fees, etc. and will indemnify, defend, and hold harmless Company from any third party claim or complaint related to forceable entry, including but not limited to Participating Patients' claims or complaints.

i. Device Warranty. Company provides a manufacturer warranty for devices, based on the terms of the signed contract, so long as Customer is not in breach of this Agreement. Under this warranty, defective and malfunctioning devices shall be replaced by Company at Company's own expense. However, if Company reasonably determines that the cause of the defective or malfunctioning device stemmed from the abuse or neglect of Customer, then Customer will be charged for the device and Company's warranty obligation does not apply.

9. CONFIDENTIALITY

a. Confidential Information Defined. "**Confidential Information**" means any and all non-public technical and non-technical information disclosed

by one Party (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”) in any form or medium, whether oral, written, graphical or electronic, pursuant to this Agreement, that is marked confidential and proprietary, or that the Disclosing Party identifies as confidential and proprietary, or that by the nature of the circumstances surrounding the disclosure and/or receipt ought to be treated as confidential and proprietary information, including but not limited to: (a) techniques, sketches, drawings, models, inventions (whether or not patented or patentable), know-how, processes, apparatuses, formulae, equipment, algorithms, software programs, software source and object codes and documents, APIs, and other creative works (whether or not copyrighted or copyrightable); (b) information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, business forecasts, sales and merchandising and marketing plans and information; (c) the business relationships and affairs of either party and its clients, patients, and referral sources; (d) the internal policies and procedures of either Party; (e) proprietary or confidential information of any third party who may disclose such information to Disclosing Party or Receiving Party in the course of Disclosing Party’s business; and (f) the terms of this Agreement. SSC’s Confidential Information includes the Software and SSC Data. Confidential Information of Customer includes Customer Data. Confidential Information also includes all summaries and abstracts of Confidential Information. In addition, Confidential Information excludes PHI, which must be protected according to the Business Associate Agreement.

b. Confidential Information Terms. Each Party acknowledges that, in the course of the performance of this Agreement, it may obtain the Confidential Information of the other Party. The Receiving Party will, at all times, both during the term and thereafter, keep in confidence and trust all of the Disclosing Party’s Confidential Information. The Receiving Party will not use the Confidential Information of the Disclosing Party other than as

necessary to fulfill the Receiving Party’s obligations or to exercise the Receiving Party’s rights under this Agreement. Notwithstanding the above, either Party may disclose the other Party’s Confidential Information upon the order of any competent court or government agency; provided that, prior to disclosure, to the extent possible, the receiving Party shall (i) assert the confidential nature of the Confidential Information to the agency; (ii) immediately notify the Disclosing Party in writing of the agency’s order or request to disclose; and (iii) cooperate fully with the Disclosing Party in protecting against any such disclosure and in obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality. Each Party agrees to secure and protect the other Party’s Confidential Information with the same degree of care and in a manner consistent with the maintenance of such Party’s own Confidential Information (but in no event less than reasonable care), and to appropriate action by instruction or agreement with its employees or other agents who are permitted access to the other Party’s Confidential Information to satisfy its obligations under this Section 9. The Receiving Party will not disclose Confidential Information of the Disclosing Party to any person or entity other than its officers, employees, affiliates and agents who need access to such Confidential Information in order to effect the intent of this Agreement and who are subject to confidentiality obligations at least as stringent as the obligations set forth in this Agreement.

c. Exceptions. The term “Confidential Information” shall not include any information which: (i) was known by the Receiving Party prior to receipt from the Disclosing Party either itself or through receipt directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party, as evidenced by Receiving Party’s written records; (ii) was developed by the Receiving Party without use of the Disclosing Party’s Confidential Information, as evidenced by Receiving Party’s written records; or (iii) becomes publicly known or otherwise ceases to be secret or confidential, except as a result of a breach of this Agreement or any obligation of confidentiality by the Receiving Party.

- d. Injunctive Relief. The Parties agree that any unauthorized disclosure of Confidential Information may cause immediate and irreparable injury to the Disclosing Party and that, in the event of such breach, the Receiving Party will be entitled, in addition to any other available remedies, to seek immediate injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damage.
- e. HIPAA Compliance. Each Party, to the extent applicable, will comply with laws and regulations applicable to the privacy and security of individually identifiable health information, including but not limited to state laws and regulations and the Health Insurance Portability and Accountability Act (“**HIPAA**”), the Health Information Technology for Economic and Clinical Health Act (“**HITECH**”), and/or regulations promulgated thereunder (“**HIPAA Regulations**”). State law, HIPAA, HITECH, HIPAA Regulations and other federal laws and regulations are hereafter referred to collectively as “**Privacy Laws**”. Customer shall represent and warrant to Company in writing whether or not Customer is a covered entity under the HIPAA Regulations, and will hold harmless, indemnify, and defend Company from any claim or complaint, whether brought by a Government agency or other public or private third party, due to Customer’s misrepresentation or inaccuracy of its determination as to whether it’s a covered entity. The Business Associate Agreement executed between the Parties, attached hereto as Exhibit B and hereby incorporated by reference, further describes the parties’ obligations with respect to compliance with HIPAA, HITECH, and HIPAA Regulations, and is hereby incorporated into this Agreement by reference.
- f. Security. Each of Customer’s Authorized Users authorized will create a unique user login and passwords to be used to access and use the Software. Customer will be, and will ensure that its Authorized Users are, responsible for maintaining the confidentiality of all User logins and passwords and for ensuring that each User login and password is used only by the Authorized User to which it was issued. Customer shall restrict its Authorized Users from sharing passwords. Customer agrees to immediately notify SSC of any unauthorized use of any account or login and password issued to its Authorized Users, or any other breach of security known to Customer. SSC will have no liability for any loss or damage arising from Customer’s failure to comply with the terms set forth in this Section. Customer will ensure its Authorized Users do not circumvent or otherwise interfere with any user authentication or security of the Software.
10. INDEMNIFICATION
- a. Indemnification by Customer. Customer shall indemnify and hold harmless SSC and its officers, directors, employees and agents (“**SSC Indemnified Parties**”), from and against any and all damages, liabilities, penalties, interest, fines, losses, costs and expenses (including reasonable attorneys’ fees and expenses) (“**Losses**”), arising, directly or indirectly, out of or relating to any claim, action or proceeding (a “**Claim**”) brought by a third party based on (i) the improper use or operation of the Services (and any third party software provided to Customer pursuant to this Agreement) by Patient Users, Customer and/or Authorized Users, including, without limitation, any non-authorized use of Customer’s user logins, provided, however, that Customer shall have no indemnification obligation for any claim for which the proximate cause was the gross negligence or willful misconduct of SSC; (ii) a breach of the Agreement by Customer or any of its Authorized Users, (iii) the accuracy, quality, integrity, legality, reliability or appropriateness of Customer Data or any other content or data introduced to the Software and Services by any Authorized User; (iv) violation of any applicable law, rule or regulation by Customer or any of the Authorized Users, (v) the diagnosis and/or treatment of any of Customer’s patients; and/or (vi) the negligent acts or willful misconduct of Customer or its personnel. Customer will pay all Losses (whether by settlement or award of by a final judicial judgment) incurred by the SSC Indemnified Parties from any such Claim.
- b. Indemnification by SSC. Subject to limitations of liability as set forth in Section 11, SSC agrees to defend Customer and its officers, directors, employees and agents (a “**Customer Indemnified Party**”) from and against any Claims brought by a third party resulting from or arising out of (i) the unauthorized disclosure by SSC of PHI in breach of

the Business Associate Agreement by SSC; and (ii) a successful claim that the Software infringes or misappropriates the patent, trade secret, trademark, copyright or other Intellectual Property Rights of any third party (an “**Infringement Claim**”). SSC will pay all Losses (whether by settlement or award of by a final judicial judgment) incurred by the Customer Indemnified Parties from any such Claim.

- a. In the event of an unauthorized disclosure by SSC of PHI in breach of the Business Associate Agreement, SSC shall undertake, and shall bear its own costs or third party expenses incurred by SSC with respect to, providing such credit monitoring services and notice to Customer’s affected patients as are required by applicable privacy and data security laws, including, but not limited to, 45 CFR 164.400 et seq.
- b. In the event of an Infringement Claim, SSC may, at its election, and sole expense, (i) modify the Software so that such Software is non-infringing and functionally equivalent; or (ii) obtain the right for Customer and Customer’s patients to continue using the Software at no additional cost to Customer. If none of the foregoing is commercially practicable, SSC may terminate this Agreement.
- c. Procedure. Each Party shall provide to the other Party prompt notice of any Claim for which they are seeking indemnification. The indemnified Party may have counsel reasonably acceptable to the indemnifying party observe the proceedings at the indemnified party’s expense, provided the indemnifying party retains sole control of the defense of the Claim. The indemnified party has the right to approve any settlement that affirmatively places on the indemnified party an obligation that has a material adverse effect on the indemnified party other than requiring the indemnified party to cease using the Services or to pay sums indemnified hereunder. Such approval shall not be unreasonably withheld.

11. LIMITATIONS OF LIABILITY

- a. No Consequential Damages. NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOST DATA, BUSINESS INTERRUPTION, LOST PROFITS, LOST REVENUE OR LOST BUSINESS, ARISING OUT OF OR IN

CONNECTION WITH THIS AGREEMENT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION, ANY SUCH DAMAGES ARISING OUT OF SSC’S PROVISION OR CUSTOMER’S USE OF THE SOFTWARE OR THE RESULTS THEREOF. IN NO EVENT WILL SSCBE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES.

- b. Limits on Liability. SSC SHALL NOT BE LIABLE FOR CUMULATIVE, AGGREGATE DAMAGES GREATER THAN THE AMOUNTS PAID AND PAYABLE BY CUSTOMER TO SSC UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM FIRST ACCRUED, WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE.
- c. Essential Purpose. CUSTOMER ACKNOWLEDGES THAT THE TERMS IN THIS SECTION 11 (LIMITATION OF LIABILITY) ARE A BARGAINED FOR REASONABLE ALLOCATION OF THE RISK BETWEEN THE PARTIES AND WILL APPLY (A) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND (B) EVEN IF AN EXCLUSIVE OR LIMITED REMEDY STATED HEREIN FAILS OF ITS ESSENTIAL PURPOSE.
- d. Exceptions. The limitations and exclusions of certain damages set forth in Section 11a and 11b will not apply to injury or damage caused by a Party’s gross negligence or willful misconduct.
- e. Limitation of Action. No action (regardless of form) arising out of this Agreement may be commenced by Customer against SSC more than two (2) years after the cause of action arose.

12. TERMINATION

- a. Mutual Agreement. This Agreement shall terminate upon the mutual written agreement of Customer and SSC as of the date of signature or other effective date set forth on the written instrument.
- b. For Cause.
 - a. Material Breach. Either Party may terminate this Agreement following a material breach of this Agreement by the other Party which is not cured

during the Cure Period. The non-breaching Party shall notify the breaching Party of the breach in writing and the breaching party shall have thirty (30) days (the “**Cure Period**”) to cure the breach following receipt of the notification. If the breaching Party fails to cure the breach within the Cure Period, then the non-breaching Party may terminate this Agreement upon written notice to the breaching party.

- b. **Other Cause.** SSC may terminate this Agreement immediately by providing written notice to Customer upon the occurrence of any of the following events:
 - A. SSC reasonably determines that Customer and/or its Authorized User(s) have been or are engaged in unlawful activity associated with the use of the Software and/or the Services;
 - B. The indictment or conviction of Customer or its principals, employees, or agents for any felony or misdemeanor involving moral turpitude;
 - C. The filing, with respect to Customer, of a voluntary or involuntary petition in bankruptcy if such petition is not dismissed within thirty (30) days of such filing;
 - D. Upon the appointment of a receiver or trustee to take possession of all, or substantially all, of Customer’s assets, if such appointment is not terminated within thirty (30) days;
 - E. Customer’s exclusion from participation in Medicare; and/or
 - F. For any other reason SSC believes could reasonably jeopardize the integrity or reputation of its operations or systems.
 - G. For any reason provided by legal counsel that termination is required to avoid a violation of law if the arrangement were to continue under the existing terms of the Agreement, to the extent the Parties are unable to mutually agree to reformation terms.
- c. **Bankruptcy.** Either Party may terminate this Agreement immediately upon written notice to the other Party in the event the other party becomes insolvent or enters into bankruptcy or other reorganization proceedings.
- d. **Effect of Termination.**
 - a. Unless otherwise stated below, upon expiration or termination of this Agreement for any reason, (a) the License shall terminate and the Customer shall not use or access, directly or indirectly, the

Software; (b) SSC’s obligation to perform support services shall cease; and (c) all fees and other amounts owed to SSC will be immediately due and payable by Customer up through the effective date of termination for any support services completed.

- b. If Customer has made any copies of any SSC property or materials furnished or made available hereunder, including without limitation the Software, Customer shall either destroy or return to SSC all such copies along with a certificate signed by Customer that all such copies have been either destroyed or returned, respectively, and that no copy or any part of the aforementioned software, data or materials has been retained by Customer in any form.
 - c. Within thirty (30) days after the effective date of applicable termination or expiration, SSC will make any Customer Data stored on the Software available upon written request to Customer in its native form.
 - d. Upon any termination For Cause by SSC, Customer will pay any unpaid fees earned up to the effective date of termination. In no event will any termination relieve Customer of the obligation to pay any fees payable to SSC for the period prior to the effective date of termination.
 - e. Upon termination without cause by SSC, or termination For Cause by Customer, Customer shall be entitled to a refund of any fees pre-paid but unearned as of the effective date of termination.
13. **MISCELLANEOUS**
- a. **Insurance.** Customer shall maintain, at its own expense and in the minimum amounts specified herein, and SSC shall be named as an additional insured on each policy:
 - a. Professional Errors & Omissions insurance with limits of Three Million Dollars (\$3,000,000) per occurrence and Three Million Dollars (\$3,000,000) in aggregate.
 - b. Commercial General Liability insurance with limits of One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) in aggregate.
 - b. **Subcontractors.** SSC may use its affiliates or subcontractors to perform its obligations hereunder.
 - c. **Notices.** Any notices, requests, consents, demands or other communications required or permitted under this Agreement will be in writing and deemed to have been duly given either: (a)

when delivered, if delivered by hand, sent by United States registered or certified mail (return receipt requested), delivered personally by commercial courier, or (b) on the second following business day, if sent by United States Express Mail or a nationally recognized commercial overnight courier; and in each case to the parties at the following addresses (or at other addresses as specified by a notice) with applicable postage or delivery charges prepaid. Notices to SSC shall be sent to the following address: Stay Smart Care, Inc., 324 Industrial Park Road, Franklin, NC 28734, Attention: CEO. Notices to Customer shall be sent to the address specified in the Order Form.

- d. Amendment. Except as may otherwise be specified in this Agreement, this Agreement may be modified, changed or amended only by a dated written instrument executed by a duly authorized person of each party.
- e. Waiver; Severability. The failure of any Party to insist in any one or more instances upon performance of any term of this Agreement will not be construed as a waiver of future performance of the term, and the Party's obligations for the term will continue in full force and effect. The provisions of this Agreement are severable. The invalidity or unenforceability of any term or provision in any jurisdiction will be construed and enforced as if it has been narrowly drawn so as not to be invalid, illegal or unenforceable to the extent possible and will in no way affect the validity or enforceability of any other terms or provisions in that jurisdiction or of this entire Agreement in that jurisdiction.
- f. Governing Law. This Agreement and each Party's rights and obligations under it will be governed by and construed in accordance with the laws of the State of North Carolina without giving effect to conflicts of law principles.
- g. Assignment. Neither Party may assign or transfer this Agreement without the prior written consent of the other Party; provided, however, that SSC may assign or transfer this Agreement, without Customer's consent, to any of SSC's affiliates, subsidiaries, entities controlled by or under common control with SSC, or in the event of a merger, change of control or sale of substantially all of its assets. This Agreement will bind the Parties and their respective successors and assigns and will inure to the benefit of the Parties and their respective permitted successors and assigns.
- h. Force Majeure. If any Party is unable to perform any of its obligations under this Agreement (other than payment obligations) because of any cause beyond the reasonable control of and not the fault of the Party invoking this section, including any act of God, fire, pandemic, casualty, flood, earthquake, war, strike, lockout, epidemic, destruction of production facilities, riot, insurrection or material unavailability, and if the non-performing Party has been unable to avoid or overcome its effects through the exercise of commercially reasonable efforts, such non-performing Party will give prompt notice to the other Party, its performance will be excused, and the time for its performance will be extended for the period of delay or inability to perform due to such occurrences. If performance is extended under this section for more than sixty (60) days, then at any time before reinstatement of the performance, the other Party may terminate this Agreement upon notice to the non-performing Party.
- i. Relationship of the Parties. The sole relationship between the Parties is that of independent contractors. This Agreement will not create a joint venture, partnership, agency, employment or other relationship between the Parties. Nothing in this Agreement will be construed to create any rights or obligations except among the Parties; and no person or entity will be regarded as a third-party beneficiary of this Agreement, except as otherwise provided in this Agreement.
- j. Survival. Any term of this Agreement that contemplates performance after termination of this Agreement will survive expiration or termination and continue until fully satisfied.
- k. Dispute Resolution. In case of disputes in connection with the negotiation, execution, interpretation, performance or non-performance of this Agreement, the Parties agree to seek non-binding mediation, which shall be conducted remotely by a single mediator selected by the Parties. The mediator shall conduct the proceedings pursuant to the rules of the American Health Law Association, as now or hereafter amended. In the event that any such mediation does not produce a settlement, unless the dispute

is otherwise settled, the dispute shall be determined by binding and final arbitration in Franklin, North Carolina (at Company's sole discretion), by an arbitrator selected by the Parties (or by the American Health Law Association if the Parties cannot agree) in accordance with the law of the State of North Carolina and the rules of the American Health Law Association. If the Parties fail to agree on the arbitrator within thirty (30) days of the date one of them invokes this dispute resolution provision, either Party may apply to the American Health Law Association to make the appointment.

- l. Entire Agreement. This Agreement, including all applicable Attachments, constitutes the entire agreement between the Parties relating to this subject matter and supersedes all prior or simultaneous understandings, representations, discussions, negotiations, and agreements, whether written or oral.
- m. Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.