

# Terms of Service

BEFORE USING (THE "SERVICE"), YOU SHOULD CAREFULLY READ THE FOLLOWING USER AGREEMENT THAT APPLIES TO THE SERVICE. CLICK "ACCEPT" IF YOU FULLY ACCEPT AND AGREE TO ALL OF THE PROVISIONS OF THIS USER AGREEMENT. OTHERWISE, CLICK "DO NOT ACCEPT." CLICKING "ACCEPT" ESTABLISHES A BINDING AGREEMENT BETWEEN YOU AS THE PERSON USING THE SERVICE (THE "USER") AND ("COMPANY"). ACCEPTANCE OF THIS USER AGREEMENT IS REQUIRED AS A CONDITION TO PROCEEDING WITH THE USE OF THE SERVICE.

## User Agreement

### 1. Description of Service

(the "Company") offers a proprietary software-as-a-service user portal, called (the "Service"). The Service is made available via the Internet. The portal is designed for users to authorize the Company to (a) retrieve certain of their medical records data and (b) generate certain related health indicators (the "Indicators"), in each case, for the benefit of a Requesting Party (as defined below). Indicators may include but are not limited to indicators of overall health, health risks and longevity, as generated by the Company's proprietary technology that processes and analyzes medical records data (the "HDAI Technology").

All use of the Service is subject to the terms and conditions contained in this User Agreement (the "Agreement"). Please read this Agreement carefully. By accessing, browsing or otherwise using the Service, the User acknowledges that the User has read, understands and agrees to be bound by this Agreement. If the User does not accept the terms and conditions of this Agreement, the User shall not access, browse or use the Service.

The User's access to and use of the Service is also subject to the Company's privacy policy located at [website], the terms and conditions of which are hereby incorporated herein by reference.

### 2. Access to the Service and User Account

In order to access the Service, the User will first need to (a) login to the User's account in a portal made available by the Centers for Medicare and Medicaid Services ("CMS") or may otherwise be prompted to create and/or login to an account in the Service (in either case, the "User Account") and (b) provide the requisite Authorization (as defined below). The User may be asked to provide certain contact information and other information in connection with logging into and/or creating the User Account (collectively, the "Registration Data"). The User will provide true, accurate and complete Registration Data.

The User is solely responsible for maintaining the confidentiality and security of the User Account, and is fully responsible for all activities that occur under the User Account. The User agrees to (a) immediately notify the Company of any unauthorized use of the User Account or any other breach of security, and (b) ensure that the User exits from the User Account at the end of each session. The Company shall not be liable for any loss or damage arising from the User's failure to comply with any of these terms and conditions.

### 3. Use of Data

The User understands and acknowledges that the

Company is accessing and using the User's medical records data (the "Health Data") for the benefit of a third party who has requested access to such Health Data and certain related Indicators (the "Requesting Party"). In all cases, the User will be made aware of the Requesting Party. Prior to generating and distributing the Indicators, the Company or the Requesting Party will send the User an email, a link to a website or other communication that will prompt the User to consent to CMS's sharing of the Health Data with the Company via the Blue Button Access App for the purpose of generating Indicators for the Requesting Party's use (the "Authorization"). The User will not be able to access the Service, and the Company will not be authorized to generate the Indicators for the Requesting Party, without providing the requisite Authorization.

Subject to the terms and conditions of this Agreement, the Authorization, the HDAI Blue Button Access App Privacy Policy and the terms and conditions governing the HDAI Blue Button Access App, the User hereby grants the Company (a) a nonexclusive, worldwide, royalty-free, fully paid up, nonsublicensable (except to affiliates and subcontractors performing services on behalf of the Company) and nontransferable (except as permitted herein) license and right, during the Term, to copy, create derivative works of, modify, distribute, display and otherwise use the Health Data solely to the extent necessary to provide the Service and Indicators to the Requesting Party in accordance with the Authorization, and (b) a nonexclusive, irrevocable, perpetual, royalty-free, fully paid up, worldwide, nonsublicensable (except to affiliates and subcontractors performing services on behalf of the Company) and nontransferable (except as permitted herein) license and right to create aggregated, anonymized, de-identified data from the Health Data, which shall not identify or enable the identification of any natural person (the "Aggregated Data"), and to freely use and disclose such Aggregated Data, during and after the Term.

The User may be presented with the option to receive emails, text messages or other electronic

communications in connection with the Service. If the User opts to receive such communications, the User acknowledges and agrees that the Company may be electronically transmitting certain of the User's protected health information ("PHI") as that term is defined under Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH). The User acknowledges and agrees that, while the Company takes commercially reasonable steps to protect the privacy and security of the User's PHI, no system is completely secure. The User may choose not to receive any such communications by updating the User Account or unsubscribing. The User acknowledges and agrees that the User is solely responsible for providing the Company with accurate contact information where the Company may send communications containing the User's PHI. The Company is not responsible for the User's errors or omissions.

#### **4. Proprietary Rights**

The Service, including any documentation, text, graphics and images (collectively, the "Content"), and the software that Company uses to make the Service available (the "Software") is subject to the protection of the copyright, trademark and other laws of the U.S. and foreign jurisdictions, which among other things prohibit unauthorized copying and distribution of copyrighted works and unauthorized use of the Content. The Service and Content incorporate Company's proprietary and confidential algorithms and techniques that are subject to legal protection as trade secrets. The Company may own the Software and Content or portions of the Software and Content may be made available to the Company through arrangements with third-parties. The User is granted only those rights expressly conferred by Section 5 of this Agreement.

#### **5. Grant of Rights; Reservation of Rights**

Company grants the User the right to use the Service for personal noncommercial purposes only. Company reserves any rights not expressly granted in this Section 5.

## 6. Restrictions on Use

The User may not:

- a. Copy the Service, Software or Content in any manner or for any purpose;
- b. Resell, reproduce, display, publicly perform or distribute the Service, Software, Content or any copy, by transfer, lease, assignment, license, sublicense, loan or any other means, or make it available for use by others in any time-sharing, service bureau or similar arrangement;
- c. Disassemble, decrypt, extract, reverse engineer or reverse compile the Service or Software, or otherwise attempt to discover the confidential algorithms and techniques incorporated in the Service or Software, or disclose or use any confidential information of Company in any manner other than as expressly authorized in this Agreement;
- d. Modify, translate, adapt, or create derivative works from the Service, Software or Content;
- e. Take any action that imposes an unreasonable load on the Service's infrastructure;
- f. Use any device, software or routine to interfere or attempt to interfere with the proper working of the Service or any activity being conducted by the Service; or
- g. Delete or alter any material posted by the Company or any third party on the Service.

For the avoidance of doubt, the restrictions on use set forth in this Section 6 shall not apply to permitted uses of the Indicators pursuant to Section 5 of this Agreement.

## 7. Compliance with Applicable Laws

This Service is hosted in the United States. Company makes no claims concerning whether the Content may be downloaded, viewed, or appropriate for use outside of the United States. If the User accesses the Service or the Content from outside of the United States, the User does so at his or her own risk. The User acknowledges that the privacy laws of the United States may

be different from and not as comprehensive or protective as those in other countries, and, if the User accesses the Service from outside the United States, the User agrees that the transfer of his or her Registration Data and Health Data, including as Aggregated Data, to the United States occurs with the User's consent. Whether inside or outside of the United States, the User is solely responsible for ensuring compliance with the applicable laws, regulations and ordinances of their specific jurisdiction. The User must be at least 18 years old to register and use the Service, or the User must be the legal guardian for an individual under age 18 whose Health Data is accessed by the Company and for whom Indicators are made available through the Service.

## 8. Third Party Services

The Service may contain links to third-party services and third party-owned content (e.g., articles, data feeds, abstracts, etc.) ("External Sites"). These links are provided solely as a convenience to the User and not as an endorsement by the Company of the content on such External Sites. The content of such External Sites is developed and provided by others. The User should contact the site administrator or webmaster for those External Sites if they have any concerns regarding such links or any content located on such External Sites.

The Company is not responsible for the content of any linked External Sites and does not make any representations regarding the content or accuracy of any materials on such External Sites. The User should take precautions when downloading files from all services to protect his or her computer from viruses and other destructive programs. If the User decides to access any External Sites, such entry is at the User's own risk.

## 9. Term

This Agreement is effective until terminated in accordance with this Section 9 (the "Term"). The Agreement and the User's right to use the Service and Content will automatically terminate without notice in the event of

any failure by the User to comply with any of the above restrictions or any term of this Agreement. Either party may terminate this Agreement at any time without prior notice to the other party; provided that in order to terminate this Agreement, the User must revoke the Authorization in the Blue Button Access App or through any other process that CMS makes available to do so. Upon termination, the User will cease using the Service and destroy all copies of the Content in the User's possession. All provisions of Sections 3, 4, 5, 7, 9, 10, 11, 12, 13, 14, 15 and 16 of this Agreement will survive termination.

#### **10. No Medical Advice**

The Service is not intended or implied to be a substitute for medical or health care advice, diagnosis, treatment or recommendations. Any Content, including the Indicators, accessed through the Service is for informational purposes only, and is not intended to cover all possible uses, directions, or precautions. The Company makes no representation and assumes no responsibility for the accuracy of information contained on or available through the Service, and such information is subject to change without notice. The User should consult with his or her doctor or other qualified health care provider if they have any questions about a medical condition, or before taking any drug, changing their diet or commencing or discontinuing any course of treatment. THE USER SHOULD NEVER DISREGARD PROFESSIONAL MEDICAL ADVICE OR DELAY SEEKING MEDICAL TREATMENT BECAUSE OF SOMETHING THE USER HAS READ ON, OR ACCESSED THROUGH, THE SERVICE. IF THE USER IS EXPERIENCING A MEDICAL EMERGENCY THE USER SHOULD CALL HIS OR HER HEALTH CARE PROVIDER OR 911.

The Service is not intended to, and the Company does not, recommend, endorse or make any representation about the efficacy, appropriateness or suitability of any specific products, procedures, treatments, services, opinions, health care providers, health insurers, or other information that may be contained on or available through the Service.

The Company and its agents assume no responsibility for any consequence relating directly or indirectly to any action or inaction the User takes based on the information, the Service or other material on the Service. THE COMPANY IS NOT RESPONSIBLE NOR LIABLE FOR ANY ADVICE, COURSE OF TREATMENT, DIAGNOSIS OR ANY OTHER INFORMATION, SERVICES OR PRODUCTS THAT THE USER OBTAINS THROUGH THIS SERVICE.

#### **11. Use of Indicators by Third Parties**

The User acknowledges that, to the extent permissible under applicable state and federal law, the Indicators provided pursuant to the Authorization may be used by the Requesting Party for coverage determinations, life or long term care insurance underwriting, research purposes, rate setting, utilization management, and care management decisions. THE USER FURTHER ACKNOWLEDGES THAT ANY THIRD PARTY WHO USES THE INDICATORS PURSUANT TO THE AUTHORIZATION IS SOLELY RESPONSIBLE FOR ITS OWN CONDUCT. ANY THIRD PARTY WHO USES THE INDICATORS PURSUANT TO THE AUTHORIZATION TO MAKE COVERAGE DETERMINATIONS, INSURANCE UNDERWRITING DECISIONS, RATE SETTING DETERMINATIONS, UTILIZATION MANAGEMENT OR CARE MANAGEMENT DECISIONS DOES SO AT ITS OWN RISK AND IN ACCORDANCE WITH ITS OWN POLICIES. THE COMPANY IS NOT LIABLE FOR ANY ACTS OR OMISSIONS OF SUCH THIRD PARTIES, INCLUDING WITH RESPECT TO ANY DECISIONS MADE BY SUCH THIRD PARTIES THAT ARE BASED ON THE INDICATORS.

#### **12. Warranty Disclaimer**

The User acknowledges and agrees that the Service is provided "AS IS" without warranty of any kind. COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT OF THIRD PARTIES' INTELLECTUAL PROPERTY RIGHTS, OR ANY WARRANTY OR REPRESENTATION ABOUT THE

CONTENT, INCLUDING BUT NOT LIMITED TO ITS ACCURACY, RELIABILITY, COMPLETENESS, TIMELINESS OR RELIABILITY, AND ANY AND ALL WARRANTIES AND REPRESENTATIONS WITH RESPECT TO THE USER'S DECISIONS BASED ON THE CONTENT.

THE COMPANY DOES NOT WARRANT THAT THE SERVICE WILL OPERATE ERROR FREE OR THAT THE SERVICE, ITS SERVER, OR THE CONTENT ARE FREE OF COMPUTER VIRUSES OR SIMILAR CONTAMINATION OR DESTRUCTIVE FEATURES. IF THE USER'S USE OF THE SERVICE OR THE CONTENT RESULTS IN THE NEED FOR SERVICING OR REPLACING EQUIPMENT OR DATA, THE COMPANY SHALL NOT BE RESPONSIBLE FOR THOSE COSTS.

### **13. Limitation of Liability**

In no event will Company be liable for any damages whatsoever including, without limitation, any lost profits or other incidental, special, punitive, exemplary, direct, indirect or consequential damages, arising out of or related to the Service, Content or the use thereof, even if Company has been advised, or is otherwise aware, of the possibility of such damages. The User and Company agree that the Disclaimer of Warranties of Section 12 and the Limited Liability of Section 13 are reasonable in light of the fact that the User has not paid any fee for the Service.

Some states do not allow exclusion of implied warranties or limitation of liability for incidental, special, punitive, or other indirect or consequential damages, so the limitations or exclusions of Sections 12 and 13 of this Agreement may not apply to the User. IN SUCH STATES, THE LIABILITY OF COMPANY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

CMS and its respective agents, directors, officers, shareholders, employees, insurers, servants, parents, subsidiaries, divisions, affiliates, predecessors, successors, representatives, advertising, promotion and fulfillment agencies and legal advisors (the "CMS Parties")

are not responsible for, shall not be liable for and hereby disclaim all liability arising from or relating to this Agreement and the Service. By using the Service, the User hereby releases, discharges and holds harmless the CMS Parties against any and all losses, damages, rights, claims and actions of any kind arising out of or relating to this Agreement and the Service.

### **14. Indemnification**

The User agrees to defend, indemnify, and hold harmless the HDAI Parties from and against any claims, actions or demands, including, without limitation, reasonable legal and accounting fees, arising or resulting from the User's breach of this Agreement or their access to, use or misuse of the Content or the Service. The Company shall provide notice to the User of any such claim, suit, or proceeding. The Company reserves the right to assume the exclusive defense and control of any matter which is subject to indemnification under this section. In such case, the User agrees to cooperate with any reasonable requests assisting Company's defense of such matter.

### **15. Feedback**

The User may from time to time provide suggestions, comments for enhancements or functionality or other feedback ("Feedback") to Company with respect to the Service. Company will have full discretion to determine whether or not to proceed with the development of the requested enhancements, new features or functionality. The User hereby grants to Company a royalty-free, fully paid up, worldwide, transferable, sublicenseable, irrevocable, perpetual license to (a) copy, distribute, transmit, display, perform, and create derivative works of the Feedback, and (b) use the Feedback and/or any subject matter thereof, including without limitation, the right to develop, manufacture, have manufactured, market, promote, sell, have sold, offer for sale, have offered for sale, import, have imported, rent, provide and/or lease products or services which practice or embody, or are configured for use in practicing, the Feedback and/or any subject matter of the Feedback.

## 16. Miscellaneous

This Agreement does not create any agency or partnership relationship between the parties hereto. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts governing such agreements, without regard to conflicts-of-law principles. Each of the Company and the User hereby irrevocably and unconditionally agrees that all disputes arising out of or in connection with this Agreement will be determined by binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association by a single arbitrator appointed in accordance with said Rules. The sole and exclusive place of arbitration will be Boston, Massachusetts (United States), and the parties agree not to raise, and waive, any objections or defenses based upon venue or forum non conveniens. The User may not assign this Agreement or assign or delegate its rights or obligations under the Agreement.

This Agreement contains the complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings whether written or oral, express or implied. If any provision of this Agreement is held invalid, illegal or unenforceable by a court of competent jurisdiction, such shall not affect any other provision of this Agreement, which shall remain in full force and effect. No amendment or alteration of the terms of this Agreement shall be effective unless made in writing and executed by both parties hereto. A failure or delay in exercising any right in respect to this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right will not be presumed to preclude any subsequent or further exercise of that right or the exercise of any other right. Any modification or waiver of any provision of this Agreement shall not be effective unless made in writing. Any such waiver shall be effective only in the specific instance and for the purpose given.

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