

## **CAREGILITY TERMS AND CONDITIONS OF SALE OF SUBSCRIPTIONS, EQUIPMENT, AND SERVICES**

These standard TERMS AND CONDITIONS OF SALE OF SUBSCRIPTIONS, EQUIPMENT, AND SERVICES (the “**Terms and Conditions**”) are applicable to all purchase orders or other ordering document (a “**Purchase Order**”) that incorporate these Terms and Conditions by reference. These Terms and Conditions are between Caregility Corporation (“**Caregility**”) and other natural person, firm, organization or entity identified in the Purchase Order (“**You**” “**Your**” or “**Yours**”).

### **ARTICLE 1. DEFINITIONS**

The following terms shall have the meanings set forth below:

**"Acceptance Test(s)"** shall mean those tests which are intended to determine if First Beneficial Use of the Products has been established and meet any other criteria mutually agreed upon by you and Caregility in any SOW.

**"Access Credentials"** means any username, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual's authorization to access and use the SaaS Services.

**"Annual Subscription Renewal Term"** shall have the definition set forth in §10.1 (Term).

**"Authorized User"** means the individuals authorized to use the SaaS Services by You and who have been supplied with Access Credentials by You (or by Caregility at your request).

**"Caregility Platform"** means the information technology infrastructure used by or on behalf of Caregility in performing the SaaS Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Caregility or through the use of third-party services.

**"Confidential Information"** shall have the meaning ascribed to such term in §8.1 (Confidential Information).

**"Your Data"** means all information, data and other content, in any form or medium, that is provided by You or an Authorized User to Caregility or is input into the Caregility Platform by or on behalf of You or an Authorized User. For the avoidance of doubt, Your Data does not include any information or data (including, without limitation, meta-data) generated as a result of derived by or through the use of the SaaS Services.

**"Downloadable Software"** shall mean the software applications identified in a SOW, and all new versions, updates, revisions, improvements and modifications of the foregoing, other than the Service Software, that Caregility provides for download to You and your Authorized Users.

**"End User License Agreement"** means the software license agreement relating to your use of Equipment Software and any Downloadable Software hereunder and located at <https://caregility.com/wp-content/uploads/2024/01/Caregility-EULA-8-22-2022-FINAL.pdf>, which may be updated from time to time by Caregility.

**"Enhanced Professional Services"** shall mean technical and or clinical consulting services being provided for the purpose of knowledge transfer, workflow and room readiness assessment, training, third-party application implementation services, and other post go-live support identified in the SOW.

**"Equipment"** shall mean all physical items of machinery and other physical equipment, inclusive of any and all Equipment Software thereon, either provided as a subscription appliance or sold to You by Caregility and installed on your premises used to provide one or more Services and/or the Caregility and/or third-party provided services on which one or more Services may be dependent as referenced in SOWs, or other written memoranda agreed to by and between You and Caregility.

**"Equipment Documentation"** shall mean the written or other tangible media describing the Equipment and its operation (including instructions, listings, Specifications, manuals, and user's guides).

**"Equipment Software"** shall mean firmware, internal code and operating systems software, and other computer programs installed on the Equipment in object code only, including any updates, modifications, enhancements, or new release for the same.

**"First Beneficial Use"** shall occur when the first Equipment unit under the relevant SOW has been connected to the SaaS Service and tested and is fully capable of operating within the Caregility Platform irrespective of whether such unit is actively in use by You.

**"Initial Annual Subscription Term"** shall have the definition set forth in Article 15.2.

**"Losses"** means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

**"Managed Services"** shall mean any combination of on or off premise infrastructure and support providing various session support functions including, but not limited to administration, session connection, session quality monitoring, session support, Service Level Agreement monitoring and reporting, and Equipment maintenance, repair or replacement as set forth in a SOW.

**"OEM"** shall mean an original equipment manufacturer other than Caregility.

**"Privacy Policy"** Shall mean Caregility's then current Customer Data Privacy Policy located at <https://www.Caregility.com/privacy-policy/>

**"Products"** shall mean the SaaS Services, Managed Services, Equipment Software, and Downloadable Software, and related Equipment subscribed to or purchased by You pursuant to these Terms and Conditions.

**"Related Services"** shall mean any services other than SaaS Services, Standard Professional Services, Enhanced Professional Services, or Managed Services, relating to the SaaS Services, Equipment Software, Downloadable Software, and Equipment as set forth in a SOW. these Terms and Conditions

**"SaaS Services"** means the hosting, management, operation and maintenance of the Service Software for remote electronic access and use by You and its Authorized Users and other services more particularly described on the SOW.

**"Service Level Agreement"** means the service level agreement attached to the applicable SOW.

**"Service Software"** means the software applications identified in a SOW and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, to which Caregility provides access and use of as part of the SaaS Services.

**"Services"** means the SaaS Services, Standard Professional Services, Enhanced Professional Services, Managed Services, and Related Services.

**"Site"** shall mean Your general physical location where the Equipment and/or Software are to be delivered, installed, and maintained.

**"Software Documentation"** shall mean all tangible or intangible written and other media describing any of the Service Software, Equipment Software, and Downloadable Software, and their respective operation (including instructions, listings, Specifications, manuals, and user's guides) whether provided separately or embedded in the Service Software, Equipment Software, or Downloadable Software.

**"Specifications"** shall mean Caregility's and OEM's published specifications for Products and any specifications and performance capabilities of Products specified in the applicable SOW.

**"Standard Professional Services"** means all initial installation and implementation services, including set-up labor, related to the SaaS Services, Equipment Software, Downloadable Software, and Equipment as set forth in a SOW.

**"Statement of Work" or "SOW"** shall mean a document describing any and all Services and/or other work You request from Caregility.

## ARTICLE 2. SERVICES

- 2.1 Services. Caregility shall use commercially reasonable efforts to provide the Services as specified from time to time in individual SOWs, which will be executed by the Parties and incorporated herein, or if there is no SOW entered into by the Parties, as specified in a Purchase Order accepted by Caregility. SOWs or the Purchase Order shall contain a description of the Services to be performed, Equipment to be provided, subscriptions and other charges, time schedules, and any other special terms and conditions applicable to the particular project. Each SOW shall become effective only upon acceptance by both parties hereto as evidenced by signature of an authorized representative of each party. No Purchase Order shall become effective until accepted by Caregility's written acceptance pursuant to these Terms and Conditions. Any changes to these Terms and Conditions must be must be agreed upon in a writing executed by Caregility. No sales representative of Caregility shall have the authority to modify, amend, or otherwise change these Terms and Conditions.
- 2.2 Local Software. You acknowledge that use of the SaaS Services may (now or in the future) require You to locally install software provided by Caregility. If such local software is required, the use of such software shall be subject to the terms and conditions of the EULA.
- 2.3 Equipment. Use of certain Services require You to install Equipment provided by Caregility at the Site. Caregility will provide You with one (1) set of all Equipment Documentation necessary for the effective operation of the Equipment. You may make a reasonable number of copies of such Equipment Documentation for your internal business purposes. You shall comply with all Specifications relating to the Equipment and any Equipment Software, including without limitation any and all physical environmental, power, or other requirements with respect to such Equipment. Depending on Your preferred model of Equipment and general needs, You may have the option to either purchase the Equipment (an "Equipment Purchase") or receive the Equipment as a part of its subscription to certain Services (an "Equipment Subscription").
- (a) Equipment Purchase. If You choose an Equipment model that Caregility does not offer as an appliance with Your subscription to the Services or otherwise prefers to purchase the Equipment, title of the Equipment and all of its contents and related data, not including the Equipment Software, shall be transferred to You for such Equipment upon Delivery hereunder.
- (b) Equipment Subscription. If You choose an Equipment model that Caregility offers as an appliance with Your subscription to the Services, the Equipment and all of its contents and related data, including the Equipment Software, shall be and remain the property of Caregility. You shall obtain no right, title or other interest therein. You are responsible for the reasonable care and safe keeping of the appliances. Caregility shall have the right, but not the obligation, to require You to replace the Equipment with any equivalent Caregility Equipment. Upon any expiration or termination of Services as to which these Terms and Conditions are applicable, You shall return to Caregility all Equipment within 14 days or, if so directed by Caregility, destroy all such Equipment and provide written confirmation of such destruction.
- 2.4 Equipment Software and Downloadable Software. You and Your Authorized Users shall receive a non-exclusive, non-transferable, revocable, and non-sublicensable license to receive and use the Equipment Software and Downloadable Software pursuant to the terms of the End User License Agreement, the terms of which are agreed to by You and incorporated into and made part of these Terms and Conditions. Caregility may update the End User License Agreement from time to time at its sole discretion. Caregility shall notify You of any updated End User License Agreement by email and any continued use by You or Your Authorized Users shall constitute Your and all Authorized Users' acceptance of any updated End User License Agreement, which shall be incorporated into and made a part of these Terms and Conditions.

- 2.5 Order of Precedence Individual SOWs may specify project unique terms and conditions that differ from the terms set forth in these Terms and Conditions. These terms (such as project specific payment terms, Security requirements, etc.) will be clearly identified in the individual SOW. In the event of a conflict between these Terms and Conditions and any fully-executed SOW, the terms and conditions of these Terms and Conditions shall prevail over the SOW, unless such provision in the SOW specifically states that such provision is intended to control with respect to a specific article of these Terms and Conditions and identifies such article of these Terms and Conditions by number and name, as applicable, in which case such provision of the SOW shall control only with respect to such conflict (“**Controlling Provision**”). If a SOW does include a Controlling Provision, such Controlling Provision shall only control with respect to applicable conflicts between such SOW and these Terms and Conditions (i.e., such provision shall not control with respect to any other conflict between such SOW and these Terms and Conditions or any other SOW and these Terms and Conditions).
- 2.6 Suspension/Termination. Caregility may, directly or indirectly, by any means, suspend, terminate or otherwise deny Your, any Authorized User's or any other Person's access to or use of all or any part of the Services, without incurring any resulting obligation or liability, if: (a) Caregility receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Caregility to do so; or (b) Caregility believes, in its discretion, that You or any Authorized User: (i) has violated §3.3 (Restrictions), or §8 (Confidentiality); or (ii) You or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities; or (c) these Terms and Conditions expires or is terminated.
- 2.7 Availability, Service Levels and Remedies. You agree and acknowledge that all SaaS Service uptime availability, service level requirements and remedies related to the same shall be governed by Caregility's standard Service Level Agreement, which, if applicable, shall be attached to each SOW, agreed to by You, and incorporated into and made a part of each SOW and these Terms and Conditions. **THE REMEDIES SET FORTH IN THE SERVICE LEVEL AGREEMENT RELATING TO SUPPLIER'S FAILURE TO MEET SERVICE LEVELS OR UPTIME AVAILABILITY OBLIGATIONS SHALL BE YOUR EXCLUSIVE REMEDIES AND CAREGILITY'S SOLE LIABILITY.**

### **ARTICLE 3. AUTHORIZATION AND SUBSCRIBER RESTRICTIONS.**

- 3.1 Authorization. Subject to the terms and conditions of these Terms and Conditions, Caregility hereby authorizes You to access and use, solely during the Service Term, the SaaS Services, Equipment (other than the Equipment purchased by You) and Equipment Software as Caregility may supply or make available to You, solely by and through Authorized Users and solely pursuant to a mutually acceptable SOW setting forth the subscription and purchase terms. This authorization is non-exclusive and, other than as may be expressly permitted in §14.3 (Assignment), non-transferable.
- 3.2 Reservation of Rights. Nothing in these Terms and Conditions grants any right, title or interest in or to (including any license under) any intellectual property rights in or relating to the Services or Equipment, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to any intellectual property rights in or relating to the Services or Equipment are and will remain with Caregility and the respective rights holders therein.
- 3.3 Restrictions. You shall not, and shall not permit any other person or entity to, access or use the SaaS Services, Managed Services or Equipment (other than the Equipment purchased by You) and Equipment Software except as expressly permitted by these Terms and Conditions and any applicable SOW. For purposes of clarity and without limiting the generality of the foregoing, Subscriber shall not, except as these Terms and Conditions expressly permits:
- (a) copy, modify or create derivative works or improvements of the SaaS Services, Managed Services, Services Software, Equipment, or Equipment Software;

- (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any SaaS Services, Managed Services, Services Software, Equipment (other than the Equipment purchased by You), or Equipment Software to any person or entity, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
- (c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the SaaS Services, Managed Services, Services Software, Equipment, or Equipment Software, in whole or in part;
- (d) bypass or breach any security device or protection used by the SaaS Services, Services Software, Managed Services, Equipment, or Equipment Software or access or use SaaS Services, Managed Services, Services Software, Equipment, or Equipment Software other than by an Authorized User through the use of his or her own then valid Access Credentials;
- (e) input, upload, transmit or otherwise provide to or through the SaaS Services, Managed Services, or Caregility Platform, any information or materials that are unlawful or injurious, or contain, transmit or activate any harmful code;
- (f) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the SaaS Services, Managed Services, Caregility Platform or Caregility's provision of services to any third party, in whole or in part;
- (g) remove, delete, alter or obscure any trademarks, Documentation, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any SaaS Services, Services Software, Managed Services, Equipment, or Equipment Software, including any copy thereof;
- (h) access or use SaaS Services, Services Software, Managed Services, Equipment, or Equipment Software in any manner or for any purpose that infringes, misappropriates or otherwise violates any intellectual property right or other right of any third party, or that violates any applicable law;
- (i) access or use SaaS Services, Services Software, Managed Services, Equipment, or Equipment Software for purposes of competitive analysis of the SaaS Services, Managed Services, or Equipment, or the development, provision or use of a competing software service or product;
- (j) access or use SaaS Services, Services Software, Managed Services, Equipment, or Equipment Software in, or in association with, the design, construction, maintenance, operation of any hazardous environments, systems or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Services could lead to personal injury or severe physical or property damage;
- (k) otherwise access or use the SaaS Services, Services Software, Managed Services, Equipment, or Equipment Software beyond the scope of the authorization granted under §3.1 (Authorization); or
- (l) allow use of any SaaS Services, Services Software, Managed Services, Equipment, or Equipment Software by any person or entity (or affiliate of an entity) which is a competitor of Caregility who provides software, hardware, or services which are substantially similar to those offered by Caregility.

**3.4** Export. Subscriber shall not ship, transmit or otherwise export or re-export to any country, directly or indirectly (including, without limitation, any deemed export), separately or as part of a system, any SaaS Services, Managed Services, Equipment, Equipment Software or other materials provided by Caregility without, at its own cost, first complying with all applicable laws and regulations, including, without limitation, obtaining all licenses from, the appropriate agency of the United States and/or other applicable government.

**ARTICLE 4. PURCHASE ORDERS; DELIVERY TERMS; FEES AND PRICING**

**4.1 Purchase Orders.** In addition to and only after execution of a relevant SOW, You shall issue a Purchase Order to Caregility for all subscriptions to the Services governed by the relevant SOW, as well as any Equipment Purchases. Each Purchase Order shall include the following information:

- (a) Total units of Equipment and Services subscriptions;
- (b) Subscription term;
- (c) Fees and Equipment Purchase prices per unit;
- (d) Payment terms as set forth herein;
- (e) In the case of Equipment Purchases, the requested delivery date;
- (f) In the case of Services, the requested date of Service commencement; and
- (g) Any other terms as may be necessary.

All delivery and Services commencement dates must be during the term of these Terms and Conditions and in accordance with the schedule agreed upon by the Parties in the relevant SOW. Caregility shall have no liability for any delay in fulfilling or delivering on any Purchase Orders.

**4.2 Acceptance of Purchase Order by Caregility.** Purchase Orders submitted by You shall not be binding on Caregility until Caregility issues a written acceptance of the Purchase Order and countersigns the same. Notwithstanding the foregoing, Caregility reserves the right to refuse, cancel or delay any purchase order placed by You and accepted by Caregility when You are delinquent in any payments hereunder or when You have failed to perform any of its obligations under these Terms and Conditions. No Purchase Order shall be deemed accepted by Caregility unless and until the SOW relating to such Purchase Order is agreed upon and executed.

**4.3 Delivery of Purchased Equipment.** In the event You elect to purchase Equipment pursuant to these Terms and Conditions, the following delivery terms shall apply.

- (a) Delivery Terms. All Equipment purchased by You under these Terms and Conditions will be suitably packaged for shipment in Caregility's standard containers, marked for shipment to You at the address specified in the Purchase Order or as determined by the filing of a Caregility shipping coordination form, which shall be You or the forwarding agent selected by You at a location that is within the forty-eight (48) contiguous United States and the District of Columbia. Delivery of Equipment purchased by You under these Terms and Conditions shall be Ex Works (Incoterms 2020) Origin Caregility's warehouse. You shall be responsible for arranging for its preferred to carrier to pick up all delivered Equipment within thirty (30) days after delivery. Failure to do so shall result in storage fees at Caregility standard rate ("Storage Fees"). Caregility shall use commercially reasonable efforts to deliver Equipment purchased to You on or before the requested delivery date designated in a Purchase Order. Caregility shall be permitted to deliver Equipment in installments of the total Purchase Order within its discretion (each an "Installment Delivery"). The Parties agree, however, that delivery of any Equipment ordered from Caregility under these Terms and Conditions may be delayed for a period of time sufficient to allow Caregility to manufacture and assemble or otherwise acquire necessary OEM parts for Equipment, and the Parties further agree that Caregility shall not be held liable to You or any other party for any delay in delivery of any Purchase Order. In the event that You request Caregility to provide for shipping on Purchaser's behalf ("Special Delivery Request") and Caregility accepts the same, the same must be specified in the relevant SOW. For the avoidance of doubt, You shall be solely

responsible for a Caregility service fee, all costs of shipment, and any other expenses for any special packaging or any Special Delivery Requested by You (“Special Delivery Fees”).

- (b) Title and Risk of Loss/Importer of Record. Title and risk of loss will pass Ex Works Origin Caregility’s warehouse (Incoterms 2020). You will shall arrange for and be responsible for any and all freight, shipment, export, import, and insurance charges associated with shipment of the Equipment purchased. In the event that Caregility provides written consent for shipment outside the United States, You shall be responsible for all United States export clearance, and any associated costs, tariffs, duties and other fees to the extent required, and You shall be the “Importer of Record” of all Equipment shipped outside of the United States. As the Importer of Record, You shall be responsible for all aspects of the Equipment export and import including, without limitation (a) customs and other regulatory clearance of such goods, (b) payment of all tariffs, duties, customs, fees, expenses and charges payable in connection with the importation and delivery of the Licensor Hardware, and (c) keeping all records, documents, correspondence and tracking information required by applicable laws, rules and regulations arising out of or in connection with the importation or shipping of the Equipment.
- (c) Company’s Right to Delay, Cancel or Allocate. Notwithstanding Caregility’s obligations in these Terms and Conditions, Caregility reserves the right to refuse, cancel or delay any delivery to You when You are delinquent in undisputed payments, or when You have failed to perform any of its obligations under these Terms and Conditions. Should any Purchase Order for Equipment exceed Caregility’s available inventory, Caregility shall in its sole discretion determine how to allocate its available inventory without liability to You on account of the method of allocation determined or its implementation.
- (d) Acceptance of Delivery. You shall have fifteen (15) days from the date of delivery of the Equipment purchased to inspect the Equipment and notify Caregility of any discrepancies with respect to delivery of Purchase Orders, including, but not limited to any discrepancies in the quantity or quality of the Equipment. Notices of any discrepancies shall be in writing and provided to Caregility via electronic mail and directed to [pm@caregility.com](mailto:pm@caregility.com). Unless a notice of a discrepancy is reported to Caregility as required in this Section 4.3(d), delivery of Equipment will be deemed accepted by the You.

**4.4 Fees and Pricing.** All prices for Equipment (“Equipment Prices”), fees for subscriptions to the SaaS Services (“Subscription Services Fees”), and other charges applicable to any other Products, Professional Services, or Related Services (collectively with Equipment Prices and Subscription Services Fees, “Fees and Pricing”) ordered by You shall be set forth in a written proposal, quotation and the related project SOW. Notwithstanding anything herein to the contrary, Caregility may increase Fees and Pricing at any time after expiration of the Initial Annual Subscription Term. Caregility will furnish to You upon written request the published Fees and Pricing. Increases in Fees and Pricing shall not apply to Equipment, Products, Professional Services, or Related Services for which Caregility has received an executed SOW and accepted a related Purchase Order from You prior to the date the increase is effective. All Fees and Pricing are exclusive of any Storage Fees and Special Delivery Fees, which shall be invoiced at Caregility’s then current rates and actual costs.

**4.5 Taxes.** All Fees and Pricing and other amounts payable by You under these Terms and Conditions are exclusive of taxes and similar assessments. You are responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by You hereunder, other than any taxes imposed on Caregility’s income. If Caregility pays any such taxes on behalf of You, Caregility shall invoice You for such taxes and You agree to pay such taxes in accordance with these Terms and Conditions. Such taxes will be separately stated on Caregility’s invoices and reported and paid to appropriate governmental authorities by Caregility. To the extent that any Services purchased under these Terms and Conditions are eligible for exemption from any sales and use taxes, You will provide an Exemption Certificate to Caregility, and Caregility agrees to accept such certificate in lieu of collecting taxes.

- 4.6** No Deductions or Setoffs. All amounts payable to Caregility under these Terms and Conditions shall be paid by You to Caregility in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable law).

## **ARTICLE 5. YOUR OBLIGATIONS.**

- 5.1** Your Systems and Cooperation. You shall at all times during the Term hereof: (a) set up, maintain and operate in good repair all Your Systems necessary or desirable for the Services or which are required to provide information to or otherwise interact with the Caregility Platform in connection with the provision of the Services; (b) provide Caregility personnel with internet remote access to the Equipment; (c) provide all cooperation and assistance as Caregility may reasonably request to enable Caregility to exercise its rights and perform its obligations under and in connection with these Terms and Conditions; and (d) ensure that Your Systems conform to Caregility's reasonable requirements. Such requirements may be modified at any time from time to time upon reasonable advance notice to You. You have and will retain sole responsibility for the security and use of Your and Your Authorized Users' Access Credentials and any use of the Services thereunder.
- 5.2** Effect of Your Failure or Delay. Caregility is not responsible or liable for any delay or failure of performance caused in whole or in part by Your delay in performing, or failure to perform, any of its obligations under these Terms and Conditions.
- 5.3** Corrective Action and Notice. If You become aware of any actual or threatened activity prohibited by **§3.3** (Restrictions), You shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects and (b) notify Caregility of any such actual or threatened activity.
- 5.4** Sensitive Data/Personally Identifiable Information.
- (a)** You acknowledge that Caregility generally does not need or require access to or use of Sensitive Data, as defined herein, in order to perform its obligations under these Terms and Conditions and further acknowledges that any exposure by Caregility to any Sensitive Data, if any, is merely incidental to the fulfillment of its obligations the under agreements between the parties, is limited in nature, and occurs as a by-product of Caregility's duties and cannot be reasonably prevented. Unless otherwise provided for in the SOW, You agree that it shall not provide Sensitive Data to Caregility, whether directly or through use of the Services.
- (b)** To the extent that any of the Services requires Caregility to receive or otherwise process any of Your or Your Authorized User data that may be deemed to be Sensitive Data, as defined herein, You agree and accepts Caregility's privacy policy located at <https://www.Caregility.com/privacy-policy/> which shall govern Caregility's use of any disclosed Sensitive Data and may be updated from time to time by Caregility. You represent and warrant that: (1) You have obtained written consent from the owner of any such Sensitive Data to Caregility's use of such Sensitive Data in accordance with the terms of Caregility's privacy policy located at <https://www.Caregility.com/privacy-policy/>; (2) You have obtained all necessary consents as may be required under the laws of any relevant jurisdiction to collect, process and transmit such Sensitive Data; (3) Caregility's use of any disclosed Sensitive Data as may required to provide the Services hereunder and in accordance with the terms of Caregility's privacy policy available at <https://www.Caregility.com/privacy-policy/> shall not violate the rights of any third-party or the laws of any country, state or other governing body; and (4) any Sensitive Data You provide hereunder has been received from or transmitted to or through any location outside of the United States. You shall indemnify Caregility and hold Caregility harmless from and against any and all Losses arising out of any breach of the representations and warranties contained in this Section 5.4(b). To the extent that any Sensitive Data provided hereunder constitutes Protected Health Information as defined by 45 CFR §160.103, the Parties shall enter into a mutually acceptable Business Associate Agreement governing such Sensitive Data.



- (c) For the purposes hereof, “**Sensitive Data**” shall mean: (a) SaaS Service access credentials (other than solely for the purpose of logging into the SaaS Service); (b) financial information, or (c) personally identifiable data, including without limitation, Protected Health Information, as such term is defined by 45 CFR §160.103, under the Health Insurance Portability and Accountability Act, and Non-public Personal Information, as defined by 12 CFR §1016.3(p)(1), under the Gramm-Leach-Bliley Act.

## **ARTICLE 6. INVOICING AND PAYMENT**

- 6.1** All invoices will reference the applicable Purchase Order. Your payment shall be considered late if not received by Caregility within thirty (30) calendar days following Your receipt of the applicable invoice. After this thirty (30) day period, all unpaid charges will accrue interest at a rate of one and one-half percent (1.5%) per month, or the highest rate allowed by applicable law, whichever is lower, and You shall pay all collection costs incurred by Caregility (including, without limitation, reasonable attorney's fees). Caregility at its discretion may suspend any Services for overdue payment pursuant to §2.6. If You have a bona fide, good faith dispute with any of the amounts on an invoice, You must pay, in accordance with the foregoing terms, all amounts not in dispute and provide Caregility with a written request for a billing adjustment, together with all supporting documentation (in the form requested by Caregility), within sixty (60) days after Your receipt of the applicable invoice. If Caregility does not receive this information within this sixty (60) day period, Your right to a billing adjustment shall be waived. If You wish to pay by Credit Card, You will be assessed a 3.5% processing fee.
- 6.2** Except as otherwise specified in an applicable SOW, Caregility shall invoice You as follows:
- (a) For all Equipment Purchased and related warranty coverage: (i) fifty percent (50%) upon Caregility's written acceptance of the relevant Purchase Order, and (ii) either (x) fifty percent (50%) of the full Purchase Order upon delivery of such Equipment pursuant to the relevant Purchase Order if delivered in a single delivery or (y) fifty percent (50%) of each Equipment unit included in any Installment Delivery upon delivery of such Installment Delivery pursuant to the relevant Purchase Order;
  - (b) For all non-recurring fees for Standard Professional Services: (i) fifty percent (50%) upon Caregility's written acceptance of the relevant Purchase Order, (ii) thirty percent (30%) upon delivery of the related Equipment (whether purchased or provided pursuant to a subscription), and (iii) twenty percent (20%) upon First Beneficial Use established through Acceptance Tests;
  - (c) For all non-recurring fees for Enhanced Professional Services: (i) fifty percent (50%) upon Caregility's written acceptance of the relevant Purchase Order, (ii) fifty percent upon completion of the Enhanced Professional Service item;
  - (d) For all fees for subscriptions to the SaaS Service and any other recurring fees for Managed Services or any other recurring fees for Related Services pursuant to any SOW hereunder, (i) on an annual basis commencing upon Caregility's written acceptance of the relevant Purchase Order, for the Initial Annual Subscription Term, then again on the first (1<sup>st</sup>) day of any subsequent Annual Subscription Renewal Term as set forth in the applicable SOW.
  - (e) For all fees for Related Services, billed on a time-and-materials basis: (i) the full estimated fees upon commencement of the Related Services to be rendered, and (ii) any overages on a monthly basis commencing on the first month after which the estimated fees paid are exceeded for the Related Services rendered.
- 6.3** Travel Expenses. To the extent that You have agreed in any relevant SOW to reimburse Caregility for travel and lodging expenses incurred by Caregility while performing services at Your Site, Caregility will follow their standard travel guidelines, which are incorporated by reference herein. You and Caregility agree that all travel, whether or not reimbursed by You, will only occur with the mutual agreement of both parties.

## ARTICLE 7. INTELLECTUAL PROPERTY RIGHTS.

- 7.1 Services and Materials.** All right, title and interest in and to the Services, Service Software, Equipment provided with subscriptions, Equipment Software, Documentation, and all other materials, including all intellectual property rights therein, are and will remain with Caregility. You have no right, license or authorization with respect to any of the Services, Service Software, Equipment, Equipment Software, and all other materials except as expressly set forth in these Terms and Conditions. All other rights in and to the SaaS Services, Service Software, Equipment, Equipment Software, Documentation, and all other materials are expressly reserved by Caregility. Any Professional Services or other work as may be provided under these Terms and Conditions and all copies thereof and all intellectual property and other rights therein are proprietary to Caregility and all right, title and interest thereto remains in Caregility. The use by You thereof shall be subject to each of the terms and conditions set forth in these Terms and Conditions and any relevant SOW applicable to Service Software.
- 7.2 Customer Data.** As between You and Caregility, You are and will remain the sole and exclusive owner of all right, title and interest in and to all Your Data, including all intellectual property rights relating thereto, subject to the rights and permissions granted in **§7.3** (Consent to Use Your Data).
- 7.3 Consent to Use Your Data.** You hereby grant all such rights and permissions in or relating to Your Data: (a) to Caregility, its subcontractors and the Caregility personnel as are necessary or useful to perform the Services; and (b) to Caregility as are necessary or useful to enforce these Terms and Conditions and exercise its rights and perform its hereunder. Such rights and permissions with respect to Your Data shall be irrevocable for so long as Caregility may retain such data as permitted under these Terms and Conditions. You represent, warrant and covenant to Caregility that You own or otherwise have and will have the necessary rights and consents in and relating to Your Data so that, as received by Caregility and processed in accordance with these Terms and Conditions, they do not and will not infringe, misappropriate or otherwise violate any intellectual property rights, or any privacy or other rights of any third party or violate any applicable law.
- 7.4 Third Party Sites.** Caregility's website and customer portals may contain links to other websites of interest. However, once You have used these links to leave our site, You acknowledge and understands that Caregility does not have any control over external websites or applications and is therefore not responsible for the protection and privacy of any information which You provide whilst visiting such sites, and such sites or applications are not governed by Caregility's Customer Data Privacy Policy. Some services provided by Caregility may be used with third party applications or services not provided directly by Caregility. These services may be used by the use of a plug-in to a Caregility application, through a Caregility website or independently of any Caregility website or application and service. Therefore, we cannot be responsible for the protection and privacy of any information which You provide whilst visiting such sites and such sites are not governed by Caregility's Customer Data Privacy Policy. Information pertaining to the privacy of these application and services should be collected from the third party providing the work.

## ARTICLE 8. CONFIDENTIALITY.

- 8.1 Confidential Information.** In connection with these Terms and Conditions, each party (as the "**Discloser**") may disclose or make available Confidential Information to the other party (as the "**Recipient**"). Subject to **§8.2** (Exclusions), "**Confidential Information**" means information or material which is designated as confidential, trade secret or carries a similar designation by Discloser or which the Recipient knows or reasonably should know, is confidential to the Discloser.
- 8.2 Exclusions.** Notwithstanding the foregoing, " Confidential Information" shall not include: (i) information which is now or hereafter becomes generally available to the public other than as a result of a disclosure by Recipient or a disclosure known to Recipient to have been by any individual or entity to which Recipient has delivered such information, (ii) information which, prior to its disclosure to Recipient by Discloser, was made available to Recipient, provided that the source of such information was or is not known to Recipient to be bound by a confidentiality obligation to Discloser or otherwise prohibited from disclosing the information by

a contractual, legal, or fiduciary obligation, (iii) information which (after its disclosure to Recipient by Discloser) becomes available to Recipient from a source other than Discloser, provided that such source is not known to Recipient to be bound by a confidentiality obligation to Discloser or otherwise prohibited from disclosing the information by a contractual, legal, or fiduciary obligation, or (iv) information which the Recipient can demonstrate was or is independently developed by the Recipient without reference to or use of any Confidential Information.

**8.3** Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Recipient shall:

- (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with these Terms and Conditions;
- (b) except as may be permitted by and subject to its compliance with **§8.4** (Compelled Disclosures), not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Recipient's exercise of its rights or performance of its obligations under and in accordance with these Terms and Conditions; (ii) have been informed of the confidential nature of the Confidential Information and the Recipient's obligations under this **§8.3**; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this **§8.3**;
- (c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its confidential information and in no event less than a reasonable degree of care; and
- (d) ensure its Representatives' compliance with and be responsible and liable for any of its Representatives' non-compliance with, the terms of this **§8**.

**8.4** Compelled Disclosures. If the Recipient or any of its Representatives is compelled by applicable law to disclose any Confidential Information, then, to the extent permitted by applicable law, the Recipient shall: (a) promptly, and prior to such disclosure, notify the Discloser in writing of such requirement so that the Discloser can seek a protective order or other remedy or waive its rights under **§8.3** (Protection of Confidential Information); and (b) provide reasonable assistance to the Discloser, at the Discloser's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Discloser waives compliance or, after providing the notice and assistance required under this **§8.4**, the Recipient remains required by law to disclose any Confidential Information, the Recipient shall disclose only that portion of the Confidential Information that, on the advice of the Recipient's legal counsel, the Recipient is legally required to disclose.

## **ARTICLE 9. RELATIONSHIP OF THE PARTIES**

- 9.1** You and Caregility acknowledge and agree that Caregility is an independent contractor, and not Your employee. No partnership or joint venture is intended to be created by these Terms and Conditions, nor any principal-agent or employer-employee relationship. Neither party will have any express or implied rights or authority to assume or create any obligation or responsibility on behalf of or in the name of or otherwise incur liability on behalf of the other party, unless otherwise agreed in writing between You and Caregility.

## **ARTICLE 10. TERM AND TERMINATION**

- 10.1** Term. These Terms and Conditions shall commence as of the Effective Date and, unless terminated earlier pursuant any of the Agreement's express provisions, will continue in effect until the expiration of the term for Services set forth in the last applicable SOW (the "Term"). Each SOW shall set forth the specific Services term (each a "**Subscription Term**"). The first year of the Subscription Term shall commence when First

Beneficial Use is established through Acceptance Tests and shall continue for a period of twelve (12) months thereafter (“**Initial Annual Subscription Term**”). Each additional twelve (12) month period of the Subscription Term after the Initial Annual Subscription Term as provided for under a SOW (each a “**Annual Subscription Renewal Term**”) shall commence upon expiration of the Initial Annual Subscription Term or Annual Subscription Renewal Term, whatever the case may be, and continue for additional twelve (12) month periods until expiration of the Subscription Term in such SOW.

**10.2** Termination. In addition to any other express termination right set forth elsewhere in these Terms and Conditions or an applicable SOW:

- (a) Caregility may terminate these Terms and Conditions or any SOW or Service, effective on written notice to You, if You: (i) fail to pay any amount when due hereunder, and such failure continues more than ten (10) days after Caregility’s delivery of written notice thereof; or (ii) breach any of its obligations under **§3.3** (Restrictions), **§5.4** (Sensitive Data) or **§8** (Confidentiality);
- (b) either party may terminate these Terms and Conditions or any SOW or Service, effective on written notice to the other party, if the other party materially breaches these Terms and Conditions and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach; and
- (c) Either party may terminate these Terms and Conditions by written notice to the other party if the other party (a) institutes insolvency, receivership, or bankruptcy proceeding or any other proceeding for the settlement of its debts, (b) institution of such proceedings are not dismissed or otherwise resolved in such party’s favor within sixty (60) days thereafter, (c) makes a general assignment for the benefit of its creditors, or (d) dissolves or ceases to conduct business in the normal course.

**10.3** Effect of Expiration or Termination. Upon any expiration or termination of these Terms and Conditions or any SOW, except as expressly otherwise provided in these Terms and Conditions: (a) all rights, licenses, consents and authorizations granted by either party to the other hereunder or under the expired or terminated SOW, will immediately terminate, provided, however that Caregility may retain any of Your Data provided, further that such data shall remain subject to all confidentiality obligations with respect thereto contained in these Terms and Conditions and that such data shall be used solely to evidence the parties’ performance, non-performance, compliance with or breach of these Terms and Conditions; (b) Caregility may disable all Your and Your Authorized User access to and You shall immediately cease all use of the Services; and (c) all fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable; and (d) except as otherwise provided in this §10 or as otherwise necessary for purposes of meeting applicable professional standards and/or legal requirements, each Receiving Party shall promptly destroy the Confidential Information of the Disclosing Party, and upon the request of the Disclosing Party, the Receiving Party shall certify to the other in writing that it has destroyed such Confidential Information.

**ARTICLE 11. EQUIPMENT WARRANTY; WARRANTY DISCLAIMER**

**11.1** Purchased Equipment Warranty. **WITH RESPECT TO ANY EQUIPMENT PURCHASED BY YOU HEREUNDER, CAREGILITY MAKES NO WARRANTIES OR REPRESENTATIONS TO YOU OR ANY OTHER PERSON WITH RESPECT TO THE EQUIPMENT EXCEPT AS SET FORTH IN SUPPLIER’S LIMITED WARRANTY FORM ACCOMPANYING THE EQUIPMENT UPON DELIVERY (THE “LIMITED WARRANTY”).** If any Equipment is not accompanied by warranty forms, Caregility’s then-current warranty applicable to such Equipment shall apply, which shall include the following for twelve (12) months after delivery of the Equipment (the “Warranty Period”):

- (a) Except as otherwise disclosed by Caregility in writing or specified on an applicable SOW prior to the placing of a Purchase Order, either all Equipment sold to You is newly manufactured from new parts or components or if any used parts or components are incorporated in the Equipment, they are serviceable and will be equivalent to new in performance.
- (b) Upon delivery, the Equipment will be free and clear of all liens and encumbrances of any kind.

To the extent permissible, Caregility will flow down/transfer any OEM warranties to You from the applicable delivery date or such other warranty period set forth in the applicable SOW.

- (c) On the delivery date the Equipment is, and will be during the Warranty Period, merchantable and in good operating condition and repair, free of defects in design, workmanship and material, including such defects as would create a hazard to life or property, and in conformity in all respects to and functioning properly in accordance with the associated Equipment Documentation. If any or all of the Equipment components are grouped together in a configuration (as defined in the applicable SOW or Specifications), such configuration is on the delivery date, and during any Warranty Period will be, capable of performing the functions described for it in the applicable SOW or Specifications. If the Equipment does not function as warranted above during the Warranty Period, Caregility will promptly repair or replace the Equipment or any part or component thereof without charge.

All sales to You shall be subject to Caregility's standard Limited Warranty, all warranty disclaimers, and all limitations on liability in effect for the Equipment at the time of delivery of the Equipment to You, unless expressly agreed otherwise in a separate document referencing these Terms and Conditions and signed by authorized representatives of the Parties. Caregility reserves the right to change any of the terms of the Limited Warranty at any time, upon written notice to You.

- 11.2 EXCEPT AS OTHERWISE PROVIDED FOR HEREIN, ALL SERVICES AND EQUIPMENT ARE PROVIDED "AS IS" AND SUPPLIER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND SUPPLIER 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. WITHOUT LIMITING THE FOREGOING, SUPPLIER MAKES NO WARRANTY OF ANY KIND THAT THE SERVICE OR EQUIPMENT, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET YOUR 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. MOREOVER, IN NO EVENT WILL WARRANTIES PROVIDED BY LAW, IF ANY, APPLY UNLESS THEY ARE REQUIRED TO APPLY BY STATUTE NOTWITHSTANDING THEIR EXCLUSION BY CONTRACT. NO DEALER, AGENT, OR EMPLOYEE OF SUPPLIER IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS, OR ADDITIONS TO THIS WARRANTY LIMITATION. THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE EQUIPMENT, SERVICES, SOFTWARE AND PLATFORM REMAINS WITH YOU. THE SERVICE IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE IN THE CONNECTION WITH NUCLEAR FACILITIES, AIRCRAFT SYSTEMS, AIR TRAFFIC CONTROL, WEAPONS SYSTEMS, DIRECT LIFE-SUPPORT MACHINES OR ANY OTHER APPLICATION IN WHICH THE FAILURE OF THE SERVICE COULD LEAD TO THE DEATH, PERSONAL INJURY OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE. SUPPLIER EXPRESSLY DISCLAIMS ANY WARRANTY WITH RESPECT TO SUCH ACTIVITIES NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY. WHILE SUPPLIER DOES NOT PROHIBIT ACCESS TO THE SERVICE BASED SOLELY ON THE LOCATION OF THE AUTHORIZED USER, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS AND CONDITIONS OR ANY OTHER AGREEMENT BETWEEN THE PARTIES, SUPPLIER DOES NOT WARRANT THAT IT HAS OBTAINED ALL RIGHTS AND LICENSES TO ALLOW AUTHORIZED USERS TO ACCESS THE SERVICE OUTSIDE OF THE U.S. OR THAT AUTHORIZED USERS WILL BE ABLE OR PERMITTED TO ACCESS FROM ANYWHERE OUTSIDE THE U.S. THE SERVICE CANNOT ENSURE THAT ALL UNAUTHORIZED ACCESS WILL BE PREVENTED OR DETECTED.**
- 11.3 WHILE THE SERVICES AND EQUIPMENT ARE INTENDED TO BE USED IN THE CONTEXT OF CERTAIN HEALTHCARE ENVIRONMENTS, YOU ACKNOWLEDGE AND AGREE THAT THE SERVICES AND EQUIPMENT SHALL BE USED BY YOU SOLELY AS A SUPPLEMENTAL RESOURCE TO STANDARD IN-PERSON MEDICAL CARE AND ARE NOT A SUBSTITUTE FOR IN-PERSON**

**CONSULTATION, IN-PERSON MONITORING OF PATIENTS, OR ANY OTHER HEALTH CARE SERVICES PROVIDED BY YOU. WHEN USED IN HEALTHCARE SETTINGS, YOU AND YOUR AUTHORIZED USERS ARE ULTIMATELY AND SOLELY RESPONSIBLE FOR ALL COMPLIANCE WITH AND FOR FOLLOWING ALL APPLICABLE MEDICAL PROTOCOLS AND POLICIES AND FOR ANY MEDICAL CARE AND HEALTHCARE SERVICES RENDERED TO INDIVIDUALS. SUPPLIER DOES NOT WARRANT THAT THE SERVICES AND/OR EQUIPMENT CAN OR SHALL BE A SUBSTITUTE FOR DIRECT IN-PERSON MEDICAL CONSULTATIONS, DIRECT IN-PERSON PATIENT MONITORING; OR DIRECT IN-PERSON TREATMENT RELATED TO A MEDICAL CONDITION. SUPPLIER EXPRESSLY DISCLAIMS, AND YOU EXPRESSLY RELEASE SUPPLIER FROM, ANY AND ALL LIABILITY RELATING TO PERSONAL INJURY, THIRD PARTY MEDICAL MALPRACTICE CLAIMS, OR OTHER CLAIMS RELATING TO ADHERENCE TO AND COMPLIANCE WITH APPLICABLE MEDICAL PROTOCOLS AND POLICIES AND MEDICAL CARE AND HEALTHCARE SERVICES RENDERED TO INDIVIDUALS IRRESEPECTIVE OF WHETHER THE SERVICES AND EQUIPMENT ARE BEING USED BY YOU AT THE TIME.**

**ARTICLE 12. LIMITATION OF LIABILITY.**

- 12.1 IN NO EVENT WILL SUPPLIER OR ANY OF ITS LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THESE TERMS AND CONDITIONS OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES OR EQUIPMENT, (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**
- 12.2 EXCEPT AS SET FORTH HEREIN AND IN THE SERVICE LEVEL AGREEMENT, YOU EXPRESSLY WAIVE ANY AND ALL LIABILITY RELATING TO THE FUNCTION OF THE SERVICES AND/OR EQUIPMENT. SUPPLIER SHALL UNDER NO CIRCUMSTANCES BE LIABLE FOR ANY LOSS INCURRED BY YOU DUE TO FAILURE OF THE SERVICES OR EQUIPMENT, CONNECTIVITY, OR TRANSMISSION, INCLUDING BUT NOT LIMITED TO, BLANK SCREENS, SOFTWARE FAILURE, OR UNSATISFACTORY TRANSMISSIONS.**
- 12.3 IN NO EVENT WILL THE AGGREGATE LIABILITY OF SUPPLIER UNDER OR IN CONNECTION WITH THESE TERMS AND CONDITIONS OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE FEES PAID BY YOU TO SUPPLIER DURING THE 12 MONTH PERIOD PRIOR TO THE DATE ON WHICH SUCH LIABILITY ACCRUED. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

**ARTICLE 13. INDMENIFICATION AND INFRINGEMENT REMEDY**

- 13.1 Your Indemnification. You shall indemnify, defend and hold harmless Caregility and its subcontractors and affiliates, and each of its and their respective officers, directors, employees, agents, successors and assigns (each, a "Caregility Indemnatee") from and against any and all Losses incurred by such Caregility Indemnatee in connection with any Action by a third party to the extent that such Action or Losses arise out of or relate to any act or omission of Yours or Your Authorized Users or any arising out of or relating to any of the following (each an "Excluded Claim"):**

- (a) access to or use of the Services or Equipment in combination with any hardware, system, software, network or other materials or service not provided by or authorized by Supplier;
- (b) modification of the Services or Equipment other than modifications made by or on behalf of Supplier as part of the SaaS Services;
- (c) failure to timely implement or permit Supplier to implement any modifications, upgrades, replacements or enhancements made available to You by or on behalf of or otherwise required by Supplier;
- (d) the use of the Services or Equipment by any person or entity or in any manner not expressly permitted under these Terms and Conditions;
- (e) Supplier's compliance with any rules, specification or requirement of Yours or a third party; or
- (f) Your Data or any content of Yours or a third party or any other materials or information (including any documents, data, specifications, software, content or technology) provided by or on behalf of You or any Authorized User

13.2 Intellectual Property Infringement Mitigation. If any of the Services or Equipment are, or in Caregility's opinion are likely to be, claimed to infringe, misappropriate or otherwise violate any third-party intellectual property right, or if Yours or any Authorized User's use of the Services or Equipment is enjoined or threatened to be enjoined, Caregility may, at its option and sole cost and expense:

- (a) obtain the right for Subscriber to continue to use the Services and Equipment materially as contemplated by these Terms and Conditions;
- (b) modify or replace the Services and Equipment, in whole or in part, to seek to make the Services and Equipment (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services and Equipment, as applicable, under these Terms and Conditions; or
- (c) by written notice to You, terminate these Terms and Conditions with respect to all or part of the Services and Equipment, and require You to immediately cease any use of the Services and Equipment or any specified part or feature thereof, provided that, subject to Your compliance with its post-termination obligations set forth in §14.8 (Survival), You will be entitled to a refund of a pro-rated portion of the fees paid under these Terms and Conditions for the terminated portion of the then current applicable Service Term in respect of such Services and Equipment.

**13.3** THIS §13 SETS FORTH SUBSCRIBER'S SOLE REMEDIES AND SAS'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THESE TERMS AND CONDITIONS OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND EQUIPMENT) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.

#### **ARTICLE 14. MISCELLANEOUS**

**14.1** Force Majeure. Except for Your payment obligations to Caregility, no delay, failure or default in performance of any obligation by either party, shall constitute a breach of these Terms and Conditions to the extent (a) caused by an act of nature, war, terrorism, strikes, lockouts, trade disputes, fires, epidemic, pandemic, quarantine restrictions, compliance with recommendations or guidance of public health organizations (including without limitation the CDC and/or NIH), governmental actions, intentional, malicious or reckless



acts of third parties or other events beyond the reasonable control of such party, or (b) indirectly arising from any such events and resulting in a material increase in the cost, risk of liability or danger associated with such party's performance. The non-performing party will immediately notify the other party in writing if a force majeure event delays performance and will state the revised date for performance.

**14.2 Notices.** Unless otherwise specified in these Terms and Conditions, all notices or other communications under these Terms and Conditions shall be in writing and may be delivered in person, or may be sent by receipted courier, facsimile transmission, express mail, or postage prepaid certified or registered mail, addressed to the party for whom it is intended, at the following address:

If to You:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Caregility

Caregility  
81 Corbett Way  
Eatontown, NJ 07724  
Attn: Contracts Department  
Email: [contracts@Caregility.com](mailto:contracts@Caregility.com)

Either party may change its notice information by giving notice to the other party of the change. Any notice or other communication shall be deemed given no later than the date actually received. Unless otherwise provided in these Terms and Conditions, notice by courier, express mail, certified mail, or registered mail shall be deemed given on the date it is officially recorded as delivered by return receipt or equivalent.

**14.3 Assignment.** Neither party shall assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under these Terms and Conditions, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the other party's prior written consent, which consent shall not be unreasonably withheld or delayed, provided, however, any party merger, acquisition, consolidation, reorganization, or sale of all or substantially all of a party's assets (regardless of whether such party is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under these Terms and Conditions for which the other party's prior written consent is required, provided, further, that the party involved in such a transaction shall give the other party prompt notice following any transaction. No delegation or other transfer will relieve You of any of Your obligations or performance under these Terms and Conditions. Any purported assignment, delegation or transfer in violation of this §14.3 is void. Notwithstanding anything to the contrary, Caregility may from time to time in its discretion engage subcontractors to perform Services without notice to You or Your consent. These Terms and Conditions are binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

**14.4 Interpretation.** The parties acknowledge that they have reviewed these Terms and Conditions with their legal counsel and other advisors and that the terms of these Terms and Conditions have been freely and equally negotiated by the parties. Accordingly, the parties intend these Terms and Conditions to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments and appendices referred to herein are an integral part of these Terms and Conditions to the same extent as if they were set forth verbatim herein.

**14.5 Entire Agreement.** These Terms and Conditions including any SOWs, exhibits, and other attachments which may be added to these Terms and Conditions from time to time by agreement of the parties constitutes the sole and entire agreement of the parties with respect to the subject matter of these Terms



and Conditions and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

- 14.6** No Third-Party Beneficiaries. These Terms and Conditions is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms and Conditions.
- 14.7** Amendment and Modification; Waiver. No amendment to or modification of these Terms and Conditions is effective unless it is in writing and signed by each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in these Terms and Conditions, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from these Terms and Conditions shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or of any other right, remedy, power or privilege.
- 14.8** Survival. Any terms of these Terms and Conditions, including warranties, indemnities, and confidentiality which, by their nature, extend beyond the expiration or termination of these Terms and Conditions shall survive, remain in effect until fulfilled and apply to the Party's respective successors and assigns permitted by these Terms and Conditions.
- 14.9** Severability. If any provision of these Terms and Conditions is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of these Terms and Conditions 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 hereto shall negotiate in good faith to modify these Terms and Conditions so as to effect the original intent of the parties 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.
- 14.10** Governing Law; Submission to Jurisdiction. These Terms and Conditions is governed by and construed in accordance with the internal laws of the State of New Jersey 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 New Jersey. Any legal suit, action or proceeding arising out of or related to these Terms and Conditions or the licenses granted hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of New Jersey in each case located in the State of New Jersey, and You unconditionally and irrevocably submit to the exclusive jurisdiction of, and waive all objections to the laying of venue (including any objection of *forum non conveniens*) in, such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.
- 14.11** Waiver of Jury Trial. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to these Terms and Conditions or the transactions contemplated hereby.
- 14.12** Binding on Successors. These Terms and Conditions shall be binding upon and inure to the benefit of the parties and their respective successors and assigns permitted by these Terms and Conditions.
- 14.13** Equitable Relief. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under **§8** (Confidentiality) or, in Your case, **§3.3** (Restrictions), **§5.3** (Corrective Action and Notice) or **§5.4** (Sensitive Data), 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.

- 14.14** Counterparts – Electronic Signatures. These Terms and Conditions may be executed in separate counterparts. Each executed counterpart will be deemed an original, all of which together shall constitute one and the same agreement. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof
- 14.15** Authority. Each party represents and warrants that it has full power and authority to enter into and perform these Terms and Conditions and that it will indemnify and hold harmless the other party for any and all loss, damage, cost, and expense (to include attorney's fees) which the other party may hereafter suffer or incur as a result of any actions, claims, or demands whatsoever by third parties that may arise from or be connected with the issue of the authority. Each party acknowledges that it has thoroughly considered the terms and conditions of these Terms and Conditions and had the opportunity to review it with legal counsel. Thus, the rule of construction that ambiguities are to be construed against the drafting party shall not be employed in the interpretation of these Terms and Conditions to favor one party over the other.