



Terms and Conditions

1. SERVICES, RESTRICTIONS AND RESPONSIBILITIES

1.1 Service and Support

- **1.1.1:** Subject to the terms and conditions of this Agreement, HeartCloud, Inc. will provide Customer with access to Heart Cloud for Health Practices (“HCHP”) at <https://practices.heartcloud.io> through one or more user accounts. Customer may create as many user accounts as it wishes without additional charges.
- **1.1.2:** HeartCloud, Inc. will undertake commercially reasonable efforts to make HCHP available twenty-four (24) hours a day, seven (7) days a week, 365 days a year, in accordance with the Service Level Agreement (“SLA”) attached hereto in Part B. Notwithstanding the foregoing, HeartCloud, Inc. reserves the right to suspend Customer’s access to HCHP or HeartCloud MD: (i) for scheduled (with not less than 48 hours’ notice) or emergency maintenance, or (ii) in the event Customer is in breach of this Agreement, including failure to pay any amount(s) due to HeartCloud, Inc.
- **1.1.3:** Subject to the terms hereof, HeartCloud, Inc. will provide reasonable support to Customer for HCHP and HeartCloud MD from Monday through Friday during HeartCloud, Inc.’s normal business hours (8 AM to 5 PM CT) and according to the terms of the SLA.

1.2 Required Patient Legal Agreements

- **1.2.1** Customer shall provide the text of and require each current and future patient who is provided with a Patient User Account to electronically consent to the following documents (which may be viewed and/or edited at <https://practices.heartcloud.io/data-sharing/legal-agreements>, the “HCTOS”) provided, however, that the foregoing does not apply where the Patient User Account is created by the patient, in which case, HeartCloud, Inc. shall secure from the patient directly whatever agreements it requires. The text of 1.2.1(a) and 1.2.1(b) of the HCTOS are at the sole discretion of Customer whereas the text of 1.2.1(c) of the HCTOS is a HeartCloud, Inc. agreement.
 - **1.2.1(a):** “Terms of Service”
 - **1.2.1(b):** “Privacy Policy”
 - **1.2.1(c):** “HeartCloud Patient Data Sharing Terms of Service”



- **1.2.2** HeartCloud, Inc. reserves the right to review and approve or reject the “terms of service” and “privacy policy” document provided by Customer.

1.3 Customer will not, and will not permit any third party to: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover or obtain the source code, object code or underlying structure, ideas or algorithms of HCHP or any software, documentation or data related to HCHP (“Software”) (provided that reverse engineering is prohibited only to the extent such prohibition is not contrary to applicable law); (ii) modify, translate, or create derivative works based on HCHP or Software; (iii) use HCHP or Software for purposes other than the provision of medical services to its patients; or (v) use HCHP or Software other than in accordance with this Agreement and in compliance with all applicable laws, regulations and rights.

1.4 Customer will cooperate with HeartCloud, Inc. as reasonably necessary in connection with HeartCloud, Inc.’s performance of this Agreement by making available such personnel and information as may be reasonably required, and taking such other actions as HeartCloud, Inc. may reasonably request. Customer will also cooperate with HeartCloud, Inc. in establishing a password or other procedures for verifying that only designated employees of Customer have access to any administrative functions of HCHP.

1.5 Each party will designate an individual who will be responsible for all matters relating to this Agreement (“Primary Contact”). Either party may change the individual designated as Primary Contact at any time by providing written notice to the other party.

1.6 Customer hereby agrees to indemnify and hold harmless HeartCloud, Inc. against any damages, losses, liabilities, settlements and expenses (including without limitation costs and reasonable attorneys’ fees, “Losses”) incurred by HeartCloud, Inc. resulting from any third party claim or action directly arising out of Customer’s (a) negligence or willful misconduct; (b) use of the Services in a manner not authorized by this Agreement; or (c) use of the Services in combination with data, software, hardware, equipment, or technology not provided by HeartCloud, Inc. or authorized by HeartCloud, Inc. in writing.

1.7 Although HeartCloud, Inc. has no obligation to monitor the content provided by Customer or Customer’s use of HCHP, HeartCloud, Inc. may, to the extent permitted by HIPAA and any other applicable laws, do so and may remove any such content or prohibit any use of HCHP it believes may be (or alleged to be) in violation of the foregoing.



- 1.8** Customer will be responsible for maintaining the security of Customer account's passwords (including but not limited to administrative and user passwords) and local files, and for all uses of Customer account with or without Customer's knowledge or consent (except to the extent caused by the negligent acts or omission of HeartCloud, Inc.). HeartCloud, Inc. will be responsible for all other aspects of data confidentiality, integrity, and confidentiality, including industry-standard use of encryption, backup, security controls, etc.
- 1.9** Customer further acknowledges, agrees to and is bound by the Terms of Service and Privacy Policy on HeartCloud, Inc.'s website (as they may be updated from time to time), except to the extent expressly and directly in conflict with the terms hereof.
- 1.10** Customer acknowledges and agrees that HeartCloud, Inc.'s infrastructure and software for the iPhone, iPad, Apple Watch, and web platforms (<https://heartcloud.io> and <https://practices.heartcloud.io>) rely on application programming interfaces (APIs), dependencies, and other services operated or provided by third parties ("Third Party Services"). Customer acknowledges that HeartCloud, Inc. does not necessarily exercise control over the availability or software quality of these Third-Party Services and that HeartCloud, Inc. does not make any representations or warranties with respect to Third Party Services or any third party providers. Any direct (i.e. not through HCHP) exchange of data or other direct interaction between Customer and a third party provider is solely between Customer and such third party provider and is governed by such third party's terms and conditions.

2. CONFIDENTIALITY

- 2.1** Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose confidential or proprietary information relating to the Disclosing Party's technology or business (hereinafter referred to as "Proprietary Information" of the Disclosing Party).
- 2.2** The Receiving Party agrees: (i) not to divulge to any third person any such Proprietary Information, (ii) to give access to such Proprietary Information solely to those employees, agents, and advisors with a need to have access thereto for purposes of this Agreement, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a



party apply less than reasonable precautions to protect such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, or (b) was in its possession or known by it without restriction prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. In any event, to the extent permissible under HIPAA and other applicable privacy laws, HeartCloud, Inc. may aggregate data and use such aggregated data to evaluate and improve HCHP.

- 2.3** Customer acknowledges that HeartCloud, Inc. does not wish to receive any Proprietary Information from Customer that is not necessary for HeartCloud, Inc. to perform its obligations under this Agreement.
- 2.4** Both Parties will have the right to disclose the existence but not the terms and conditions of this Agreement, unless such disclosure is approved in writing by both Parties prior to such disclosure, or is included in a filing (or other legal process) required to be made by a Party with a governmental authority (provided such party will use reasonable efforts to obtain confidential treatment or a protective order) or is made on a confidential basis as reasonably necessary to a potential investor or acquiring party.

3. INTELLECTUAL PROPERTY RIGHTS

- 3.1** Except as expressly set forth herein, HeartCloud, Inc. alone (and its licensors, where applicable) will retain all intellectual property rights relating to the Service or the Software or any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any third party relating to the Service and/or the Software, which are hereby assigned to HeartCloud, Inc. Customer will not copy, distribute, reproduce or use any of the foregoing except as expressly permitted under this Agreement. Customer is hereby granted an exclusive, nontransferable, irrevocable right to use digital health data generated by patients and made available through HeartCloud, Inc.'s HeartCloud For Health Practices and/or HeartCloud MD apps ("Resulting Data") for its internal analysis purposes and for purposes of treatment, payment and



healthcare operations only. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Service or Software, or any intellectual property rights.

3.2 HeartCloud, Inc. will obtain, and process certain content/data provided by or on behalf of Customer (“Content”) only to perform its obligations under this Agreement. Customer and its licensors shall (and Customer hereby represents and warrants that they do) have and retain all right, title and interest (including, without limitation, sole ownership of) all Content distributed through HCHP and the intellectual property rights with respect to that Content. If HeartCloud, Inc. receives any notice or claim that any Content, or activities hereunder with respect to any Content, may infringe or violate rights of a third party (a “Claim”), HeartCloud, Inc. may (but is not required to) suspend activity hereunder with respect to that Content and Customer will indemnify HeartCloud, Inc. from all liability, damages, settlements, attorney fees and other costs and expenses in connection with any such Claim, as incurred.

3.3 HeartCloud, Inc. shall indemnify, defend, and hold harmless Customer from and against any and all Losses incurred by any of the foregoing resulting from any third party claim or action (a) directly arising out of the negligence or willful misconduct of HeartCloud, Inc. (or its employees, contractors, or agents), or (b) that the Services, or any use of the Services in accordance with this Agreement, infringes or misappropriates such third party’s intellectual property rights or trade secrets. The foregoing obligations do not apply with respect to portions or components of HCHP (i) resulting in whole or in part (but only to the extent of that part) in accordance from Customer specifications, (ii) that are modified by Customer after delivery by HeartCloud, Inc. without HeartCloud’s knowledge or consent, (iii) combined with other products, processes or materials where the alleged infringement relates to such combination and such combination was done without HeartCloud’s knowledge or consent, (iv) where Customer’s use of is not in accordance with this Agreement and any documentation provided to Customer in writing. If a third-party infringement claim is made or appears possible, HeartCloud, Inc. shall promptly, at HeartCloud Inc’s sole expense either, (A) modify or replace the Services, or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use the Services.

4. PAYMENT OF FEES

4.1 Customer shall pay (or cause to be paid) to HeartCloud, Inc. all applicable costs as set forth in this Agreement in section 11 (the “Fees”). All payments will be



made in accordance with the Payment Schedule and the Method of Payment. If not otherwise specified, payments will be due within thirty (30) days of invoice by HeartCloud, Inc.

- 4.2** Invoices outstanding for over 30 days are subject to a 1% per month late payment penalty

5. TERMINATION

- 5.1** Subject to earlier termination as provided below, this Service Agreement is for the Service Term as specified in the Order Form.

- 5.2** In the event of any material breach of this Agreement (including any failure to pay), the non-breaching party may terminate this Agreement prior to the end of the Service Term by giving thirty (30) days (or ten (10) days in the case of nonpayment) prior written notice to the breaching party; provided, however, that this Agreement will not terminate if the breaching party has cured the breach prior to the expiration of such thirty-day period. Either party may terminate this Agreement, without notice, (i) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other party's making an assignment for the benefit of creditors, or (iii) upon the other party's dissolution or ceasing to do business.

- 5.3** Customer may terminate this Agreement at any time without cause by providing thirty (30) days prior notice thereof to HeartCloud, Inc.

- 5.4** All sections of this Service Agreement which by their nature should survive termination will survive termination, including, without limitation, restrictions, accrued rights to payment, confidentiality obligations, intellectual property rights, warranty disclaimers, and limitations of liability.

6. INFORMATION SECURITY

- 6.1** HeartCloud, Inc. represents and warrants that it will not knowingly include, and will implement commercially reasonable mechanisms to detect and prevent, in any HeartCloud, Inc. software released to the public and provided to Customer hereunder, any computer code or other computer instructions, devices or techniques, including without limitation those known as disabling devices, trojans, or time bombs, that intentionally disrupt, disable, harm, infect, defraud, damage, or



otherwise impede in any manner, the operation of a network, computer program or computer system or any component thereof, including its security or user data. If, at any time, HeartCloud, Inc. fails to comply with the warranty in this Section, Customer may promptly notify HeartCloud, Inc. in writing of any such noncompliance. HeartCloud, Inc. will, within 24 hours of receipt of such written notification, either correct the noncompliance or provide Customer with a plan for correcting the noncompliance. If the noncompliance is not corrected or if a reasonably acceptable plan for correcting them is not established during such period, Customer may terminate this Agreement as its sole and exclusive remedy for such noncompliance.

7.WARRANTY DISCLAIMER

7.1 EXCEPT FOR THE WARRANTIES EXPRESSLY PROVIDED HEREIN, HCHP AND HeartCloud, Inc. PROPRIETARY INFORMATION AND ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED “AS-IS,” WITHOUT ANY WARRANTIES OF ANY KIND. HEARTCLOUD, INC. AND ITS AGENTS, AFFILIATES, LICENSORS AND SUPPLIERS) HEREBY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED.

8.INSURANCE; LIMITATION OF LIABILITY

8.1 HEARTCLOUD SHALL MAINTAIN AT ALL TIMES DURING THE TERM, AT ITS SOLE EXPENSE, COMMERCIAL GENERAL LIABILITY INSURANCE, CYBER LIABILITY INSURANCE, AND SUCH ADDITIONAL INSURANCE COVERAGES, AND EACH WITH LIMITATIONS OF LIABILITY, EQUAL TO OR EXCEEDING INDUSTRY STANDARDS.

8.2 EXCEPT IN THE EVENT OF HEARTCLOUD INC’S FRAUD, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT, IN NO EVENT WILL HEARTCLOUD, INC. (OR ANY OF ITS AGENTS, AFFILIATES, LICENSORS OR SUPPLIERS) BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF HCHP OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT, THE DELAY OR INABILITY TO USE HCHP OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED



PROFITS OR LOST BUSINESS OR LOST SALES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF HEARTCLOUD, INC. HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. THE TOTAL LIABILITY OF EITHER PARTY TO THE OTHER, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE, THE GREATEST OF (i) FIVE HUNDRED THOUSAND DOLLARS, (ii) THE FEES PAID TO HEARTCLOUD, INC. HEREUNDER IN THE TWELVE MONTH PERIOD ENDING ON THE DATE THAT A CLAIM OR DEMAND IS FIRST ASSERTED, OR (iii) THE LIMITS OF ANY APPLICABLE INSURANCE POLICY. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

9. U.S. GOVERNMENT MATTERS

9.1 Notwithstanding anything else, Customer may not knowingly provide to any person or export or re-export or allow the export or re-export of HCHP or any software or anything related thereto or any direct product thereof (collectively “Controlled Subject Matter”), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing Customer acknowledges and agrees that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, “Embargoed Countries”), or to or by a national or resident thereof, or any person or entity on the U. S. Department of Treasury’s List of Specially Designated Nationals or the U.S. Department of Commerce’s Table of Denial Orders (collectively, “Designated Nationals”). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Use of the Service is representation and warranty that the user is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations. As defined in FAR section 2.101, any software and documentation provided by HeartCloud, Inc. are “commercial items” and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be “commercial computer software” and “commercial computer software documentation.” Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S.



Government will be governed solely by the terms of this Service Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

10. MISCELLANEOUS

10.1 Arbitration. HeartCloud, Inc. and Customer hereto agree that any disputes or claims, of any nature whatsoever, but limited to matters or claims regarding this Agreement, shall exclusively be resolved by binding arbitration before the American Arbitration Association or through Judicial Arbitration and Mediation Services, Inc. (“JAMS”), and that such arbitration shall occur exclusively in the County of Orange in the state of California, and that California law shall apply to all disputes hereunder. The arbitrator shall have power to decide all matters, including arbitrability, but must decide all disputes in accordance with California law.

10.2 Severability. If a court of law holds any provision of this Agreement to be illegal, invalid or unenforceable, (a) that provision shall be deemed amended to achieve an economic effect that is as near as possible to that provided by the original provision and (b) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected.

10.3 Modifications. This Agreement may be modified only if Corporation and Recipient, or their authorized representatives, consent in writing to any modification of this Agreement.

10.4 Entire Agreement. This Agreement constitutes the final and exclusive agreement between Corporation and Recipient with respect to the treatment of Confidential Information and Derivatives disclosed hereunder. This Agreement supersedes all agreements, whether prior or contemporaneous, written or oral, concerning the provision of and treatment of the Confidential Information and Derivatives.

10.5 Possession. The Parties mutually agree that any device (as described in Section 11) purchased by Customer using HeartCloud, Inc. software and physically shipped as a result of an order placed with HeartCloud, Inc. software shall be the personal property of Customer in its capacity as a licensed business entity. As such, any cost(s) or effort(s), whether attempted or completed, to transfer a device from the physical custody of a patient and/or other recipient for any reason shall be



exclusively the responsibility of Customer. Nothing in this Agreement is intended to create a possessory interest by HeartCloud, Inc. in devices purchased by Customer as a result of, or facilitated by, HeartCloud, Inc. software.

10.6 Transferability. This Agreement is not assignable, transferable or sublicensable by Customer except with HeartCloud, Inc.'s prior written consent. HeartCloud, Inc. may transfer and assign any of its rights and obligations under this Agreement with written notice to Customer. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and reasonable attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid.

10.7 Medical Practice, Licensure. At all times, the primary purpose of Customer's business shall be the provision of medical services to the public in accordance with the laws of the state in which medical practitioners are employed or contracted by Customer. Customer warrants and represents that any medical services provided through the Software are performed by licensed individuals in good standing with applicable regulatory authorities in the jurisdiction in which such medical services were performed. If at any time, Customer has knowledge that a licensed medical practitioner employed or contracted by Customer (with user-level access to HeartCloud, Inc. software) has a material change to one or more individual licenses issued to that individual in any state, territory, or other jurisdiction within the United States (including, but not limited to, voluntary ineligibility, revocation or suspension of a license to practice medicine or nursing) and/or becomes the subject of a disciplinary action by a regulatory authority of competent jurisdiction (including, but not limited to, a state medical board or state nursing board overseeing the licensed individual's provision of clinical services), Customer shall promptly modify or disable access to that individual's HCHP account, if applicable, to reflect any such change in licensure status affecting the individual HCHP account holder's ability to provide medical services to the public.