

TERMS AND CONDITIONS

1. **Engagement.** Customer hereby engages Healthmonix to perform the Services described on the first page of this Agreement, for the Fees set forth on the first page of this Agreement.

2. **Independent Contractor.** Healthmonix is an independent contractor and shall not be deemed an agent or employee of Customer. Neither party shall have the authority to speak for, represent, or obligate the other party hereto in any way without either the express prior written consent of the other party or pursuant to the express written terms of this Agreement.

3. **Confidentiality and Non-Disclosure.** All information provided by either party to the other under this Agreement, as well as the terms of this Agreement and all information learned or acquired by either party concerning the other party under this Agreement, before or during the term of this Agreement, shall be deemed confidential information (“**Confidential Information**”). Customer and Healthmonix agree that they will not disclose, without the prior written consent of the other party, any of such Confidential Information to any third parties other than for purposes of furthering performance hereunder, and that they will use such Confidential Information only for the consummation of the transactions contemplated by this Agreement. Notwithstanding the foregoing, either party may use the name and/or logo of the other party on its website or in marketing materials; provided, however, that such use is limited to reflect that such party provides or provided services to, or utilizes or utilized the services of, the other party. In the event of termination of this Agreement, all Confidential Information shall, upon request, be promptly returned to the owner thereof. Notwithstanding the foregoing, Confidential Information shall not include protected health information as defined by the Health Insurance Portability and Accountability Act of 1996, as amended, and implementing regulations (collectively, “**HIPAA**”), the confidentiality of which shall be governed by the terms of the Business Associate Agreement entered between the parties.

4. **Intellectual Property Rights.** Healthmonix shall own, control, and retain exclusive ownership of, and worldwide rights, title, and interest in and to all intellectual property and other proprietary rights created, developed, written, or made by Healthmonix or its employees (solely or jointly with others) in connection with the Services (the “**Intellectual Property**”), and Customer agrees to assign and, upon their creation, automatically assigns to Healthmonix, the ownership of such Intellectual Property, without the necessity of any further consideration. Customer shall not reverse engineer, reverse assemble, decompile, or otherwise attempt (i) to defeat, avoid, bypass, remove, deactivate or otherwise circumvent any software protection mechanisms in the Healthmonix platform(s), (ii) to derive the source code or the algorithms from the Healthmonix platform(s), or (iii) to use, modify, reproduce, sublicense, distribute or otherwise provide to third parties the Healthmonix platform(s), in whole or in part, other than as permitted under this Agreement.

5. **Representations and Warranties.** Each party represents to the other party that such party has the power and authority to enter into this Agreement and that such party is not a party to any restrictions, agreements or understandings whatsoever that would prevent or make unlawful such party’s acceptance of the terms set forth in this Agreement or such party’s performance hereunder. Each party further represents that such party’s acceptance of the terms of this Agreement and the performance of such party’s obligations hereunder do not and will not (with the passage of time) conflict with or constitute a breach or default of any contract, agreement or understanding, oral or written, to which such party is a party or by which such party is bound. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES.

6. **Indemnification.** Each party hereby agrees to indemnify, defend and hold harmless the other party, its affiliates, officers, directors, employees and agents from and against any liabilities, losses, claims, damages, costs, expenses (including, without limitation, reasonable attorneys’ fees and costs) and judgments arising out of, based upon or resulting from (i) a

breach of this Agreement by such indemnifying party, or (ii) the gross negligence or willful misconduct of such indemnifying party.

7. **Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY PUNITIVE, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT. Notwithstanding any provision of this Agreement to the contrary, Healthmonix shall not be liable to Customer for any amounts in excess of the aggregate Fees paid to Healthmonix under this Agreement during the immediately prior 12 month period.

8. **Termination.** Each party has the right to terminate this Agreement if the other party materially breaches or is in default of any obligation hereunder, when the breach or default is incapable of being cured or when, being capable of cure, has not been cured within 30 days after receipt of written notice of such breach or default (or such additional cure period as the non-defaulting party may approve). In the event Healthmonix terminates this Agreement pursuant to this Section 8, Customer shall pay to Healthmonix such amounts as would have otherwise been paid to Healthmonix by Customer over the remaining period of the then current Term.

9. **Governing Law; Jurisdiction.** This Agreement shall be governed and construed by the laws of the Commonwealth of Pennsylvania. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts located in the Commonwealth of Pennsylvania for purposes of any proceedings arising out of or relating to this Agreement.

10. **Costs of Collection.** Healthmonix shall be entitled to recover from Customer its attorneys’ fees and costs incurred in any lawsuit involving Customer relating to or arising out of this Agreement, including, without limitation, in order to collect amounts due to Healthmonix hereunder. Any past due amounts owed to Healthmonix hereunder shall accrue interest at 1.5% per month or the highest rate allowed by applicable law, whichever is lower.

11. **Incorporated Terms.** The terms and conditions set forth in the Privacy Policy found at <https://healthmonix.com/privacy-policy/>, the End User License Agreement found at <https://healthmonix.com/end-user-license-agreement-eula/>, and the Business Associate Agreement and Waiver agreed upon by the Customer upon logging into the Healthmonix platform(s), are each incorporated herein by reference. In the event of any conflict between the terms of this Agreement and the terms of any of the foregoing incorporated terms, the terms of this Agreement shall control.

12. **Notice.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes when presented personally to such party or sent by certified or registered mail, return receipt requested, to such party at its address set forth on the first page of this Agreement.

13. **Miscellaneous.** This Agreement constitutes the entire agreement of the parties pertaining to the subject matter hereof and merges all prior negotiations and drafts of the parties with regard to the transactions contemplated herein. This Agreement shall not be modified or amended, or any provision hereof waived, except by a further written document signed by each of the parties. This Agreement may not be assigned by either party without the prior written consent of the other party, except either party may freely assign this Agreement in connection with a sale of its business. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors, heirs and permitted assigns. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same Agreement. In the event of any termination of this Agreement, Sections 3-13 hereof shall survive and continue in effect.