

COMS SAAS, PRODUCTS AND SERVICES AGREEMENT – TERMS AND CONDITIONS

This COMS SaaS, Products and Services Agreement – Terms and Conditions (the “Agreement”) is entered into by and between COMS Interactive, LLC, a Delaware limited liability company (“Clinical Outcomes Management System” or “COMS”) and the Customer for the provision of COMS Software as a Service (“SaaS”) Products and Services together with the schedules attached hereto (collectively, the “COMS Application Services Agreement Schedules”) which are made part of this Agreement. The Customer’s access to and use of the COMS SaaS Products and Services constitutes acceptance and agreement to be bound by this Agreement. It is understood that this Agreement and the COMS hosting environment may be updated from time to time by COMS.

A. Definitions

- “Affiliate” means a person or entity controlling, controlled by, or under common control with a stated person or entity.
- “Confidential Information” means all information of COMS or the Customer, respectively, including but not limited to inventions, works of authorship, trade secrets, software and software code (object and source), proposals, pricing quotations, contractual terms and conditions (including, without limitation this Agreement), application demonstrations, user passwords, analyses, compilations, forecasts, studies or other documents owned or prepared by the discloser of such materials, its Affiliates, or their respective officers, directors, employees, agents or representatives and disclosed to the other party, its Affiliates, or their respective officers, directors, employees, agents or representatives regardless of format (oral, written, electronic or otherwise) and regardless of whether marked or indicated to be “confidential” or “proprietary” at the time of disclosure, including, without limitation, all information and materials provided during any presentation made by COMS or the Customer to the other or the respective officers, directors, employees, agents or representatives of the other party and all materials provided in response to any inquiry or request made by either party to the other, and all information which should reasonably be understood to be confidential or proprietary to the disclosing party. Confidential Information does not include information which (i) is or becomes generally available to the public other than as a result of a disclosure by the receiving party, its Affiliates, or their respective officers, directors, employees, agents or other representatives, (ii) becomes available to the receiving party on a non-confidential basis from a source other than the disclosing party which is not prohibited from disclosing such Information to the receiving party by a legal, contractual, fiduciary, or other obligation to the disclosing party or any other person, (iii) information which is independently developed by the receiving party without use of or access to the Confidential Information of the disclosing party, as evidenced by written and dated records kept in the ordinary course of business by the receiving party, or (iv) information required to be disclosed by court order or other legal process.
- “Consultant” means an individual, group of individuals, or an organization with whom COMS has a business relationship, and who provide consulting services and advice to Contracting Organizations on a fee basis.
- “Contracting Organization” means an individual, a group of individuals, or an organization who desires a specific product or service and to whom COMS provides the product or service for a Fee.
- “Customer” or “Customer organization” means the person or entity entering into this Agreement with COMS on behalf of itself and/or its Affiliates, which person or entity hereby represents and warrants that the person or entity who has executed this Agreement and the applicable COMS Application Services Agreement Schedule(s) is duly authorized to execute and deliver this Agreement and the applicable COMS Application Services Agreement and Schedules(s) on behalf of the Customer organization.
- “Fee or Fees” means any or all charges to the Customer, whether for access to hosted applications and/or for Customer Support and any other Products or Services that the Customer purchases from American HealthTech, Inc. (AHT) from time-to-time as set out in the prevailing AHT price list.
- “Products and Services” means the COMS® Disease Management Product Suite and/or any product or service offered by COMS to customers, for a Fee. COMS owns and will continue to own all rights, titles and interests in and to the Products and Services. All rights not expressly granted to Customer under this Agreement are reserved to and retained by COMS.

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- “Healthcare Consultant” or “Professional Consultant” means an individual, group of individuals, or organization with whom COMS has a business relationship and provides healthcare or professional consulting products or services, as the case may be, to the Contracting Organization through its affiliation with COMS.
- “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended.
- “HITECH” means the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009.
- “HL7” means an ANSI-approved, structured, message-oriented protocol framework for electronic communication between healthcare application systems. The HL7 protocol was developed by Health Level Seven, a non-profit organization.
- “PHI” means Protected Health Information, as such terms is defined in HIPAA.
- “Software as a Service” (“SaaS”) refers to a model of software deployment whereby a provider provides access to a software application to a customer on a subscription basis for use as a service on demand.
- “Service” refers to the SaaS Products or Services provided by COMS, whereby the Customer is provided access to and use of the Products and Services on a hosted basis in accordance with and subject to the limitations set forth in this Agreement.

B. COMS Responsibilities

- COMS will provide to Customer the SaaS Products and Services as defined in the applicable AHT contract, which has been executed separately with the Customer.
- COMS will regularly update the SaaS Products and Services provided under AHT contract as updates are created by COMS and made generally available to COMS’ customers.
- AHT will invoice Customer according to the terms set forth on any AHT contract, sales order, invoice or quotation attached to or made part of this Agreement.

C. Customer Responsibilities

- Customer will comply with and is hereby bound by this Agreement and applicable Schedules and Addendums that have been executed by AHT and Customer.
- Customer will comply in frequency, timeliness, completeness, and accuracy in executing the recommended processes and components of all Products and Services. This includes but is not limited to, assessments and clinical documentation, supervisory review and quality assurance, documentation of outcomes, and providing pre-implementation benchmark data. Customer’s failure to comply shall void any applicable warranties and guarantees of COMS with respect to the Products and Services.
- Customer will remit all amounts due and payable to AHT hereunder according to the terms set forth on any AHT contract, schedule, addendum, invoice or quotation attached to or made part of this Agreement and when not otherwise stated to the contrary, within thirty (30) days of the Customer’s receipt of an invoice detailing the Fees and other amounts due. In the event that Customer breaches its payment obligations hereunder, COMS may terminate the provision of Products and Services immediately upon written notice to Customer.

D. Intellectual Property Rights for COMS SaaS Products and Services

- COMS, through its reseller AHT, hereby grants to the Customer a limited, non-exclusive, non-transferable, non-assignable, non-sublicenseable, license, exercisable solely during the term of this Agreement, solely for the purpose of accessing and using the Products and Services for its own internal use. The Customer may not use the Products and Services to perform or provide a product or service for any other person or entity.

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- Except for the rights expressly granted above, this Agreement does not transfer from COMS to the Customer any COMS products or services, or any patent, copyright, trademark, trade secret or other intellectual property or proprietary rights; and all rights, titles and interests in and to the COMS products and services shall remain solely with COMS. The Customer shall not, directly or indirectly, reverse engineer, copy or reproduce any portion of the Products and Services, or decompile, disassemble or otherwise attempt to derive source code or other trade secrets from any of the Products and Services.
- COMS' trademarks, trade names, service marks, logos, other names and marks, and related product and service names, design marks and slogans are the sole and exclusive property of COMS. The Customer may not use any of the foregoing in any advertising, publicity or in any other commercial manner without the prior written consent of COMS. COMS shall maintain and control ownership of all Internet domain names and related Internet protocol numbers and addresses that may be utilized in connection with the provision of Products and Services under this Agreement and COMS may, in its sole discretion, change or remove any and all such domain names and Internet protocol numbers and addresses.

E. Confidentiality

- COMS desires to protect the confidentiality of, maintain its right in, and prevent the unauthorized use and disclosure of its Confidential Information, and is willing to grant to Customer the license granted hereunder only on the condition that the Customer performs its obligations to protect COMS' Confidential Information. Customer will keep all Confidential Information in confidence and will not disclose any Confidential Information to anyone without COMS' express, prior written consent.
- If Customer becomes legally obligated to disclose Confidential Information of COMS, Customer shall, prior to disclosing such information, give COMS prompt written notice sufficient to allow COMS to seek a protective order or other appropriate remedy prior to disclosure. Customer will disclose only such information as is legally required and will use its best efforts to obtain confidential treatment for any Confidential Information of COMS that is disclosed.

F. Security

- While COMS uses reasonable efforts and implements reasonable security measures to safeguard PHI as required under HIPAA, the Customer agrees that neither COMS nor its Affiliates or partners shall, under any circumstances, be held responsible or liable for unauthorized access to data stored or transmitted through the Products and Services, including, without limitation, situations where such data is accessed through malicious acts or the exploitation of security gaps, weaknesses or flaws (whether known or unknown to COMS at the time) which may exist. Electronic communications as provided within the COMS SaaS Products and Services are private, and only under situations where explicitly required or allowed by law will such communications be accessed, intercepted, disclosed, or used without the consent of at least one of the parties to the communication.
- All COMS employees and contractors are required to comply with the Privacy and Security Policies of COMS, undergo mandatory training on such policies, and execute a Nondisclosure Agreement with COMS.
- PHI is retained by COMS for the greater of (i) the period required under applicable law; or (ii) the duration of the Agreement.

G. Limited Warranty and Liability

- COMS neither warrants that the SaaS Products and Services provided will be uninterrupted or error free, nor does COMS make any warranty as to the results to be obtained from the Customer's use of the Products and Services except as expressly set forth in this Agreement.
- The Customer agrees that their access to and use of the Products and Services is on an "as is" basis without warranties of any kind, either express or implied, other than as expressly stated in this Agreement, including but not limited to conditions or warranties of title or implied warranties of merchantability, fitness for a particular purpose, or non-infringement.

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- The Customer agrees that deployment of the Products and Services as set forth in this Agreement in no way replaces or diminishes the role of the physician and/or the clinical team, nor does it replace appropriate medical treatment. The Customer further agrees to indemnify, defend and hold harmless COMS, its Affiliates, and their respective officers, directors, employees, agents and representatives for any claims, causes of action, losses, liabilities, injury, reduced capacity, costs and expenses incurred by COMS, its Affiliates, and their respective officers, directors, employees, agents and representatives arising from or relating to the use of the Products and Services.
- **IN NO EVENT SHALL COMS AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER TO COMS HEREUNDER.**
- **IN NO EVENT SHALL COMS HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENT, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.** COMS is not liable for access to or use of the Products and Services and/or inability to access the Products and Services. This limited liability extends to COMS, its Affiliates, and their respective officers, directors, employees, agents, representatives, licensors, third party providers, successors and assigns.
- **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, THE MAXIMUM LIABILITY COMS MAY HAVE TO THE CUSTOMER (WHETHER AS A RESULT OF BREACH OF THIS AGREEMENT, NEGLIGENCE, TORT, OR OTHERWISE) IS LIMITED TO THE FEES PAID BY CUSTOMER TO COMS FOR THE APPLICABLE AGREEMENT TERM.**

H. Indemnity

- The Customer will indemnify, defend and hold harmless COMS, its Affiliates and their respective officers, directors, employees, agents, licensors, third party providers, successors and permitted assigns from any claim, cause of action, liability, loss, damage, cost and expense (including, but not limited to, reasonable attorneys' fees) arising out of or in connection with (i) the Customer's access to and use of the Products and Service, (ii) the gross negligence or willful misconduct of Customer in connection with Customer's access to and use of the Products and Services, (iii) damage to COMS' internal computer, telecommunications or other systems or networks arising from Customer's access to or use of the Products and Services including, without limitation, the introduction of viruses or other malicious code and any resultant data security breach, damage or loss.
- COMS will indemnify and hold harmless the Customer, its Affiliates and their respective officers, directors, employees, agents, licensors, third party providers, successors and permitted assigns from any claim, cause of action, liability, loss, damage, cost and expense (including, but not limited to, reasonable attorneys' fees) arising out of or in connection with the gross negligence or willful misconduct of COMS in connection with Customers access to and use of the Products and Services.

I. Disaster Recovery, Business Continuity and HIPAA Compliance

- COMS data is backed up using enterprise backup and recovery software, using a "disk to disk to tape" process in which information is copied to the distributed storage network and to tape for offsite storage. COMS' agreement with the hosting provider includes restoration of functionality in the event of a disaster.
- The COMS' system has redundant connective providers and a fire protection and suppression system with monitoring of servers done 24/7/365. The power redundancy features redundant UPS in parallel with failover to a diesel generator.
- COMS and the Customer represent and warrant to each other that they are HIPAA compliant in all aspects. COMS and the Customer comply with the Privacy Regulations and the Security Regulations under HIPAA and HITECH. Both parties' HIPAA compliance process/methodology is on file and promptly will be made available to the other party upon reasonable prior written notice from the other party.

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J. Amendments to this Agreement

- COMS reserves the right at any time and without notice to remove, amend or vary any of the software or content supplied in connection with the Products and Services, provided such alteration or amendment does not require any material change to this Agreement. Should it be necessary for COMS to amend or vary the Products and Services, if any such amendments or variances materially reduce the functionality of the Products and Services then being provided under this Agreement, Customer may terminate this Agreement if such functionality is not restored by COMS within 30 days following receipt of written notice of termination by Customer.
- COMS reserves the right at any time to update, amend, remove or vary the COMS hosting environment without the consent or approval of Customer.
- COMS reserves the right at any time to alter and/or amend this Agreement upon giving the Customer fourteen (14) days' notice in advance of any such amendment taking effect. However, if, upon receiving any such notice, the Customer elects not to continue with the COMS Products and Services, the Customer may terminate this Agreement as permitted hereunder.
- Notwithstanding the foregoing, or anything to the contrary contained in this Agreement, the Customer will be deemed to have accepted any alteration and/or amendment to the Agreement and/or the Products and Services if the Customer continues to use the Products and Services after the relevant period of notice (14 days) has expired.

K. Term and Termination of Agreement

- The term of this Agreement shall commence on the Effective Date as shown on applicable AHT contract, which have been executed separately with the Customer.
- Upon the expiration or termination of this Agreement for any reason, the licenses and all other rights granted to the Customer under this Agreement shall immediately cease, and COMS may deactivate the Customer's user ID(s) and password(s) and Customer's access to and use of the Products and Services.
- Upon expiration or termination of this Agreement, the Customer will immediately cease all access to and use of the Products and Services, and each party shall return to the other any Confidential Information, User Materials or other user documentation in its possession or under its control, or in the possession or under the control of its Affiliates.
- Subject to applicable law, COMS may delete archived Customer data, but will not do so earlier than thirty (30) days after the termination of this Agreement.

L. Settlement of Disputes

- This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to its conflict of laws principles or rules.
- Each party hereby agrees to submit to the jurisdiction of the state and federal courts located in Cuyahoga County, Ohio with respect to any dispute arising from this Agreement.
- If a provision or section of this agreement is or becomes illegal, invalid, or unenforceable in any jurisdiction, it will not affect: (i) the validity or enforceability in that jurisdiction of any other provision of this agreement; or (ii) the validity or enforceability in other jurisdictions of that or any other provision of this agreement.
- The failure of COMS to insist upon or enforce strict performance of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement shall not be construed as a waiver or relinquishment of any extent of COMS' right to assert or rely upon any such provisions, rights or remedies in that or any other instances.

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M. Miscellaneous

- Medicare Anti-Discrimination Policy – Neither COMS nor the Customer denies, limits, or conditions health care services to individuals otherwise eligible on the basis of any factor that is related to health status, including, but not limited to the following: claim experience, receipt of health care, medical history and medical condition including physical and mental illness, genetic information, evidence of insurability, including conditions arising out of acts of domestic violence, and disability.

Additionally, COMS and the Customer comply with the provisions of the Civil Rights Act, Age Discrimination Act, Rehabilitation Act of 1973, Americans with Disabilities Act, and the Genetic Information Nondiscrimination Act of 2008; and represent and warrant to the other that they have procedures in place to ensure that individuals are not discriminated against in the delivery of health care services based upon race, ethnicity, national origin, religion, gender, age, mental or physical disability, sexual orientation, genetic information, or source of payment.

- Relationship of Parties - This Agreement shall not be interpreted or construed as creating any joint venture, partnership, or agency between the parties or as imposing any partnership obligation or partnership liability upon either party. Neither party is an agent of the other party nor has any right or authority to create any obligations, representations or responsibilities, express or implied, on behalf of the other party in any manner except as specifically set forth in this Agreement.
- Notices - All notices required or authorized under this Agreement shall be given in writing. All notices shall be effective upon delivery if delivered in person, upon receipt of transmission verification if delivered via fax, upon courier's notation if delivered by overnight delivery service, or upon mailing if mailed via US first class mail, postage prepaid, addressed or delivered to the address set forth below, or at such other address that either party provides by advance written notice to the other party.
- Assignment – The agreement may not be assigned or transferred by either party without the prior written consent of the other party, which permission shall not be unreasonably withheld. Any attempted assignment without such consent will be void. Notwithstanding the foregoing, either party may assign its rights and obligations under the Agreement, in whole but not in part, without the other party's permission, in connection with any merger, consolidation, sale of all or substantially all of such assigning party's assets or equity, or any other similar transaction; provided, that the assignee: (a) provides prompt written notice of such assignment to the non-assigning party; (b) is capable of fully performing the obligations of the assignor under the Agreement; and (c) agrees to be bound by the terms and conditions of the Agreement. The Agreement is binding on the parties hereto and their respective successors and permitted assigns.
- Communication – For communicating to COMS, the following details and methods are to be used. In writing, send via overnight delivery service or US Mail to:

COMS Interactive, LLC
9200 South Hills Blvd, Suite 200
Broadview Heights, Ohio 44147
Tel: 330.650.9900

Or by email to: contracts@comsllc.com