

COMMONWELL HEALTH ALLIANCE – CORE COMMERCIAL SERVICES

END USER TERMS AND CONDITIONS

These End User Term and Conditions (“EULA”) apply to Customer’s use of the Core Commercial Services. The CommonWell Health Alliance, Inc. (the “Alliance”) requires Customer’s agreement to this EULA.

1. Description of Services. Customer acknowledges and agrees that, as part of the patient identity and data routing management services provided under the Core Commercial Services, Health Data of Customer and each of its End Users may be used and disclosed by Service Provider and disclosed to other Members’ Customers participating in the Core Commercial Services solely as necessary to carry out the Core Commercial Services. Customer represents and warrants that it has all rights and authority necessary to agree to and comply with the previous sentence and all Health Data provided to Service Provider or exchanged via the Core Commercial Services by Customer and its End Users is provided with the full authority of the owner of such Health Data as set forth in Section 5. Health Data may be used and disclosed by Service Provider and its subcontractors solely as necessary to provide the Core Commercial Services, including on behalf of Customer or End Users to carry out the following related to the Core Commercial Services: (a) submit requests for Health Data relating to individual patients, (b) identify whether other Core Commercial Services participants maintain Health Data relating to those patients, (c) request such Health Data from the participants maintaining it, and (d) transmit requested Health Data to the requesting participant. In addition, Service Provider may de-identify PHI and store Health Data and de-identified PHI for the sole purposes of performance testing, trouble shooting and improving the Core Commercial Services within the scope of the Agreement, and for no other purpose.

2. Defined Terms. The following defined terms shall apply to this EULA.

“Applicable Privacy Laws” means all laws and regulations concerning the privacy and/or security of personal information or personal information breach notification, including, where applicable, the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, (“HIPAA”) and all applicable state privacy laws, including those governing sensitive conditions.

“Core Commercial Services” means the technology services provided by Service Provider to enable patient registration and enrollment, and linking clinical patient records across healthcare organizations for patient identity and consent management described in the Alliance Specifications, together with the querying and retrieval of clinical healthcare record documents then indexed for a patient and available through the network as described in the Alliance Specification, in both cases as the Alliance Specification is amended from time to time.

“Customer” is the healthcare provider that contracts with Member (the electronic medical records vendor) to receive the Core Commercial Services.

“Documentation” means the user documentation containing the functional descriptions for the Core Commercial Services as may be reasonably modified from time to time by Service Provider.

“End User” means a healthcare provider facility, practice group, or physician, including any individual or legal entity, permitted by Customer to access the Core Commercial Services or any enrollment user interface to utilize the Core Commercial Services.

“Health Data” means health information, including PHI, that is received, transmitted, stored, or maintained through the Core Commercial Services.

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“Login Credentials” means unique user identification and password combination, as well as any other applicable security measures that are required by Service Provider to allow Member, a Customer or a User to gain access to the Core Commercial Services.

“Member” means legal entity which is a party to a Membership Agreement accepted by the Alliance and eligible to become an Authorized Member.

“PHI” will have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, as applied to the information created, received, transmitted or maintained through the Core Commercial Services by or on behalf of Member, Customer, or an End User.

3. Licenses. Customer hereby receives a limited, nonexclusive, non-transferable, non-sublicensable license to access the Core Commercial Services as integrated with and accessible via a designated Customer healthcare information technology solution, solely for Customer’s internal purposes. Customer is responsible for establishing back-up, and other procedures and controls appropriate to maintain the integrity and continuity of Customer’s operations.
4. Core Commercial Services Access. The Core Commercial Services include the login features described in the Documentation. Each End User will be required to enter his or her login credentials (“Login Credentials”) in order to access the Core Commercial Services. Customer is fully responsible for all uses of Login Credentials issued to (or created by) its End Users. Customer is responsible for authentication and identity management of each End User that accesses the Core Commercial Services and to ensure such Login Credentials are unique to each End User and remain secure. Customer shall ensure that each End User accessing clinical data using the Core Commercial Services is properly identified and authenticated as a duly licensed provider authorized under applicable law to access such Health Data.
5. Authority. Customer agrees to (i) use or disclose data received from other Core Commercial Services participants responsibly and in accordance with Applicable Privacy Laws, and (ii) only request data for patients of legal age. Customer shall not, and shall cause and obligate each End User not to, request any data or information, including any Health Data, made available through the Core Commercial Services except for treatment (as defined in 45 C.F.R. § 164.501) purposes. Customer agrees, and shall cause and obligate each End User to agree, that when it accesses Health Data available through the Core Commercial Services it shall access that Health Data solely for treatment of the individual to whom the data relates. Customer shall ensure, and train and obligate its Ends Users to ensure, that patient consents are: (i) made with full transparency and education; (ii) made only after the patient has had sufficient time to review educational material; (iii) commensurate with circumstances for why health information is exchanged; (iv) not used for discriminatory purposes or as a condition for receiving medical treatment; (v) consistent with patient expectations; and (vi) revocable at any time (collectively, “Meaningful Consent”).
6. Business Associate Agreement. Customer represents and warrants that it has and will maintain a business associate agreement in conformance with Applicable Laws with Member that is applicable to and covers the use and disclosure of Health Data for participation in the Core Commercial Services.
7. Suspension of Core Commercial Services. Service Provider and/or Member retains the right to suspend the Core Commercial Services provided to Customer at any time in the event that Customer is not in

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material compliance with this EULA or to protect the performance, integrity and security of the Core Commercial Services.

8. PHI Accuracy and Completeness. Each Customer agrees and will require its End Users to agree to the following terms, or to terms substantially similar thereto:
 - 8.1 Alliance through Service Provider provides the technology and services to allow Customer (and its respective Users) to request and disclose their PHI, and as such, Alliance and Service Provider give no representations or guarantees about the accuracy or completeness of the PHI disclosed through the Core Commercial Services;
 - 8.2 PHI disclosed or received using the Core Commercial Services may not be a complete clinical record or history with respect to any individual, and it is the sole responsibility of any treating healthcare provider to confirm the accuracy and completeness of any PHI or clinical records used for treatment purposes and to obtain whatever information the provider deems necessary for the proper treatment of the patient;
 - 8.3 Customer and each of its Users is solely responsible for any decisions or actions taken involving patient care or patient care management, whether or not those decisions or actions were made or taken using information received through the Core Commercial Services; and
 - 8.4 Alliance and Service Provider by virtue of this Agreement assume no responsibility or role in the care of any patient.
9. Compliance with EULA. Customer agrees (i) to utilize the Core Commercial Services in accordance with the terms and conditions of this EULA, and (ii) to provide reasonable training to End Users regarding the use of the Core Commercial Services in accordance with these terms and conditions and any Documentation, including any required changes to workflow.
10. Accuracy of Data. Customer acknowledges and agrees that it is solely responsible for the accuracy of data it provides through the Core Commercial Services and that Service Provider is not responsible for the accuracy or content of the data used or disclosed in providing the Core Commercial Services.
11. Fraud Detection; Security Breach. Customer must make reasonable efforts to notify Member of any material security breaches related to the Core Commercial Services promptly after discovery.
12. Compliance with Laws. Customer is, and will remain, and will obligate End Users to be and remain, compliant with all Applicable Privacy Laws in their use of the Core Commercial Services.
13. Proprietary Rights. Customer acknowledges and agrees, as between Customer and Service Provider, Customer is only being granted a limited use right to the Core Commercial Services provided by Service Provider and that the Core Commercial Services and all additions or modifications to the Core Commercial Services provided by Service Provider and all intellectual property rights associated therewith (including, without limitation, rights to patents, copyrights, trademarks, trade secrets, or know-how), are the sole and exclusive property of Service Provider.

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14. LIMITATION OF LIABILITY. IN NO EVENT WILL SERVICE PROVIDER BE LIABLE TO CUSTOMER UNDER, IN CONNECTION WITH, OR RELATED TO THE CORE COMMERCIAL SERVICES FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR LOSS OF GOODWILL, WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. SERVICE PROVIDER'S ENTIRE LIABILITY TO CUSTOMER FOR ANY LOSS OR DAMAGE, DIRECT OR INDIRECT, FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF ACTION, RELATED TO CUSTOMER'S USE OF THE CORE COMMERCIAL SERVICES, WILL BE LIMITED TO CUSTOMER'S ACTUAL DIRECT OUT-OF-POCKET EXPENSES WHICH ARE REASONABLY INCURRED BY CUSTOMER IN AN AMOUNT NOT TO EXCEED \$25,000.00.
15. Exclusive Warranty & Disclaimer. SERVICE PROVIDER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
16. Non-Disclosure. The provisions of this EULA are confidential and shall not be disclosed by Customer to any third party without the prior written consent of the other party. Customer agrees to maintain in confidence the Core Commercial Services and all media and documentation that relate to the design, development, operation, or use of the Core Commercial Services or any additions or modifications thereto. The foregoing confidentiality obligations shall not apply to any information generally available to the public, independently developed by Customer without reliance on the Core Commercial Services.
17. Service Provider as Third Party Beneficiary. Service Provider is a third party beneficiary of this EULA and is entitled to enforce any rights herein.
18. Security and Privacy. Customer shall abide by the terms and conditions specified in the Alliance's Data Security and Privacy Policy which shall be made available upon request.
19. Usage Map Participation. Customer agrees to allow its name and physical address to be used by the Alliance for the express purpose of creating and maintain an area usage map of entities utilizing the Core Commercial Services. The area usage map will be maintained on the Alliance's public website.