



eCare Vault, Inc. Terms of Service

This document was last updated on May 28, 2018.

Acceptance.

eCare Vault owns and operates the website www.ecarevault.com (the "Site"). eCare Vault also develops, operates and distributes certain software applications (**Apps**), which include hosted applications and applications for mobile devices and related service software (the "Service Software"). Through the Site and Service Software, eCare Vault, Inc. (eCare Vault, "we" or "us") provides the tools for enhancing and streamlining communications between Authorized Users (as defined below). The Site, Apps and Service Software along with the communication tools, data collection and transmission, storage, analysis and reporting tools, functions and related services, are collectively referred to in these Terms of Service as the **Service**.

The Service is offered and provided subject to acceptance without modification of all of the terms and conditions contained herein (**Terms of Service**). The Terms of Service shall be deemed to include all other operating rules, conditions, policies and procedures that are referred to herein or that may otherwise be published by eCare Vault, from time to time, at the Site or through the Service Software (collectively, **Policies**), including without limitation, eCare Vault's Privacy Policy, available [here](#)].

YOU ACKNOWLEDGE AND AGREE THAT, BY CLICKING ON THE "I ACCEPT" BUTTON, OR ACCESSING OR USING THE SITE, SERVICE SOFTWARE OR APPS, OR BY DOWNLOADING OR POSTING ANY CONTENT FROM OR THROUGH THE SITE, SERVICE SOFTWARE OR APPS, YOU ARE INDICATING THAT YOU HAVE READ AND UNDERSTAND AND AGREE TO BE BOUND BY THESE TERMS OF SERVICE, WHETHER OR NOT YOU HAVE REGISTERED VIA THE SITE OR APPS.

IF YOU DO NOT AGREE TO ALL OF THESE TERMS OF SERVICE, OR IF YOU ARE NOT ELIGIBLE OR AUTHORIZED TO ENTER INTO THIS AGREEMENT, THEN DO NOT REGISTER FOR, DOWNLOAD, ACCESS OR USE THE SERVICE. COMPLETING OUR REGISTRATION PROCESS, OR OTHERWISE ACCESSING OR USING ALL OR ANY PART OF THE SERVICE WILL CONSTITUTE ACCEPTANCE OF, AND CREATE A LEGALLY ENFORCEABLE CONTRACT UNDER WHICH YOU AGREE TO BE BOUND BY, ALL OF THESE TERMS OF SERVICE, WITHOUT MODIFICATION.

DISCLAIMER: ALL AUTHORIZED USERS ARE SOLELY RESPONSIBLE FOR PROVIDING OR OBTAINING ALL NECESSARY AUTHORIZATIONS AND CONSENTS FROM CARE RECIPIENTS/PARENTS/GUARDIANS REQUIRED UNDER APPLICABLE PRIVACY LAWS FOR THE COLLECTION, INTERNATIONAL TRANSFER (IF APPLICABLE) AND SUBSEQUENT DISCLOSURE OF A CARE RECIPIENT'S PERSONAL DATA PRIOR TO SHARING OR



DISCLOSING SUCH INFORMATION TO ANY AUTHORIZED USERS AND TO ANY THIRD PARTIES THAT HAVE NOT BEEN IDENTIFIED AS AN AUTHORIZED USER. eCARE VAULT SHALL NOT BE RESPONSIBLE OR BE HELD LIABLE FOR ANY IMPROPER DISCLOSURES OF SUCH PERSONAL DATA MADE BY AN AUTHORIZED USER TO ANY THIRD PARTY OR ANY OTHER AUTHORIZED USER WITHOUT THE NECESSARY CONSENT.

AUTHORIZED USERS MAY NOT DISCLOSE OR SHARE INFORMATION ABOUT A CARE RECIPIENT OBTAINED THROUGH THE SERVICE TO ANY PERSON OR ENTITY OUTSIDE THE CARE TEAM WITHOUT THE PRIOR EXPRESS WRITTEN CONSENT OF THE CARE RECIPIENT OR HIS PARENT OR GUARDIAN. AUTHORIZED USERS MUST OBTAIN THE CONSENT OF THE CARE RECIPIENT/PARENT/GUARDIAN BEFORE INVITING ANY NEW AUTHORIZED USERS TO THE CARE TEAM.

NOTE TO COVERED ENTITIES: The eCare Vault Service (Service) is not an Electronic Medical Record (EMR) service, nor is it providing storage of medical records, and it should not be treated nor used as such.

Definitions.

1. **Authorized User:** Any person who has properly registered for the Service; including, but not limited to: parents, educators, therapists, clinical providers, etc.
2. **Personal Data:** Personally Identifiable Information (PII) and Protected Health Information (PHI) which eCare Vault collects, receives, uses, retains, and discloses through the Service. PII includes information that is personally identifying such as, but not limited to name, email address, date of birth and phone number and which is not otherwise publicly available. PHI includes information relating to a person's health, including but not limited to medical history, test and laboratory results, insurance information and other data that a healthcare professional collects to identify an individual and determine appropriate care. PII and PHI may include other types of information depending on the legal definition that applies in your physical location. Both the federal definitions of PII and PHI and the definitions that apply in your local jurisdiction will apply under this Terms of Service.
3. **Care Recipient:** A person receiving health, education, and/or other care services. The Care Recipient is added to an Authorized User's profile for the purpose of storing and sharing information about such Care Recipient's health or education services with a Care Team and other Authorized Users.
4. **Care Team (Team):** a collection of Authorized Users that have been specifically invited to receive and share health or education-related information about a specific Care Recipient or Project.
5. **Healthcare Services:** the furnishing of medical or surgical treatment, dispensing of drugs or medical devices, or any other clinical or therapeutic services provided for treatment or prevention of disease, medical condition or disorder.
6. **Team Member:** an Authorized User who has become a member of a Care Team by accepting an invitation to join



that Team. A Team Member can share documents, discussions and photos they have created with other Team Members (based on appropriate permissions and consents). A Team Member can choose to exit a team at any time.

7. **Team Captain:** an Authorized User and Team Member of a Care Team who has the authority to invite and remove a Team Member, transfer ownership of that Care Team to another Team Member or “freeze” the Care Team. A Team Captain can onward share documents and discussions with any other team members.
8. **Team Co-Captain:** an Authorized User and Team Member of a Care Team who has the authority to invite and remove a Team Member. A team Co-Captain can onward share documents and discussions with any other team members.
9. **Access Credentials:** When registering for the eCare Vault Service, the Authorized User inputs the following items that are access credentials for that particular user: username and password for user’s authentication account (Google, Facebook, LinkedIn or personal email) and user’s encryption password.
10. **Student/Pupil:** any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.
11. **Local Education Agency (LEA):** an educational institution that receives public funding in the United States.
12. **Educational Representative (Ed Rep):** an Authorized User, who is a representative of a school or local educational agency (LEA).
13. **Covered Entity Representative (CE Rep):** an Authorized User, who is either a covered entity or a representative of a covered entity (as defined by HIPAA regulations).

Eligibility.

The Service is intended by eCare Vault to be made available only to individuals who are at least 13 years old in the U.S or the age of majority in their jurisdiction of residence if a user is outside the U.S.

If you do not qualify for eligibility, then you are prohibited from downloading, accessing, using and registering for the Service. eCare Vault will not collect Personal Data from any person who is actually known to us to be under the age of 13 (in the U.S.) or under the age of majority in their jurisdiction of residence if outside the U.S. If we become aware that a person under 13 or a minor if outside the U.S. has provided Personal Data, eCare Vault will take steps to remove such information and terminate that individual’s account, access and use of the Service.

eCare Vault will comply with any instruction from an Authorized User to change, modify, update or delete Personal Data in the possession of eCare Vault, consistent with the functionalities of the Service, platform and Service Software.



Registration.

Although you may be able learn about the Service without registering, you will not be able to access or use any valuable aspect of the Service until you are registered and become an Authorized User.. All other users will be invited by existing Authorized Users and provided with the appropriate instructions to register.

The Service may be accessed by visiting my.ecarevault.com; registering and signing-in via the log-in prompt which then communicates with eCare Vault's web servers. Specific authorization codes and/or an invitation from another Authorized User may be required to register.

Regardless of how you access the Service, to ensure the integrity of the Service, you must complete an account registration process and provide eCare Vault with current, complete and accurate information. During the registration process you will be prompted by the system as to what information is required.

For example, you may be required to provide the following information in order to establish your account and register for and use the Service: name, address, telephone number, e-mail address, username, password, and certain preferences and permissions. You are required to maintain and update your registration data from time to time (including billing and credit card information if applicable), to ensure that it is always current, complete and accurate.

If, during the registration process, you have agreed to be contacted by eCare Vault to provide Feedback (as defined below in the **Feedback License** section), eCare Vault may contact you via email and/or phone. eCareVault may also ask you to complete one or more surveys.

eCare Vault may refuse to accept your application to register for the Service, in its sole discretion. Upon acceptance, eCare Vault will activate the access credentials for your account. You alone are responsible for maintaining the confidentiality of your access credentials and other account information, and you will be solely liable for any and all activities under your account. You agree to notify eCare Vault immediately of any unauthorized use of your user account or any other breach of security related to the Service.

Service Tiers and Subscriptions.

Service Tiers. As of January 22, 2018, eCare Vault will offer four tiers of the Service: Care Coach, Care Champion and Care Pro (each being a paid subscription and referred to herein as "Subscription Tiers") and Free Tier. As of January 22, 2018, unless a new Authorized User enrolls in a Subscription Tier, all Authorized Users will be enrolled in the Free Tier. All current Authorized Users as of January 22, 2018 will be enrolled in the Free Tier and will have until March 31, 2018 to enroll in the applicable Subscription Tier as necessary to comply with the Subscription Limits (as defined below).

Subscription Tiers. Descriptions of Care Coach, Care Champion and Care Pro (including the limits applicable to each tier such as maximum number of documents, discussions and photos referred to herein as "Subscription Limits") are set



forth on the Site's subscriptions [page](#). Any individual uploaded file at any Subscription Tier may not exceed 25 megabytes.

Free Tier. The Free Tier allows an Authorized User to create up to two care teams, 10 documents, 20 discussions and 20 photos with unlimited sharing. eCare Vault may change these limits at any time at its sole discretion and will provide notice of such changes by postings at the Service Software, via the platform, e-mail or otherwise. Any individual uploaded file at the Free Tier may not exceed 25 megabytes

Enterprise Customers- Large organizations requiring higher Subscription Limits than offered on the Site's subscription page should contact eCare Vault directly.

Fees and Payments.

Fees for Services. You agree to pay to eCare Vault any fees for each Service you purchase or use (including any upgrade because you exceed any Subscription Limits), in accordance with the applicable pricing and payment terms and subscription period (the "Subscription Period") selected by you. Where applicable, you will be billed using the billing method you select (credit card or bank account) when registering for the eCare Vault Service. Fees paid by you are non-refundable, except as provided in these Terms of Service or when required by law.

Subscriptions. Our Subscription Tier Services are billed on a subscription basis (we call these "**Subscriptions**"). This means that you will be billed in advance on a recurring, periodic basis (each period is called a "**billing cycle**"). Billing cycles are typically monthly or annual, depending on what Subscription Period you select when purchasing a Subscription. **Your Subscription will automatically renew at the end of each Subscription Period unless you cancel auto-renewal through your My Subscription page or by [contacting our customer support team](#).** You may cancel auto-renewal on your Subscription at any time, in which case your Subscription will continue until the end of that Subscription Period before terminating. If an Authorized User upgrades to a different Subscription Tier during a Subscription Period, the additional cost of the upgraded Tier will be pro-rated and the new Subscription Tier and fee will be automatically renewed at the end of the Subscription Period.

Taxes. Unless otherwise stated, you are responsible for any taxes (other than eCare Vault's income tax) or duties associated with the sale of the Services, including any related penalties or interest (collectively, "**Taxes**"). You will pay eCare Vault for the Services without any reduction for Taxes. If eCare Vault is obliged to collect or pay Taxes, the Taxes will be invoiced to you, unless you provide eCare Vault with a valid tax exemption certificate authorized by the appropriate taxing authority or other documentation providing evidence that no tax should be charged. If you are required by law to withhold any Taxes from your payments to eCare Vault, you must provide eCare Vault with an official tax receipt or other appropriate documentation to support such payments.

Price Changes. eCare Vault may change the fees charged for the Services at any time, provided that, for Services billed on a subscription basis, the change will become effective only at the end of the then-current Subscription Period. eCare Vault will provide you with reasonable prior written notice of any change in fees to give you an opportunity to cancel your



Subscription before the change becomes effective; such notice may be communicated by postings at the Service Software, via the platform, e-mail or otherwise.

If during a Subscription Period, you exceed the Subscription Limits for your Subscription Tier, you will be notified (by postings at the Service Software, via the platform, e-mail or otherwise) and directed to the subscription page to upgrade to a new Subscription Tier for which your use of the Service does not exceed the Subscription Limits. If you choose to upgrade to a new Subscription Tier, you agree to pay to eCare Vault any additional fees for such upgraded Service. You will be required to pay the fees for any such upgrade in Subscription Tier through the end of the Subscription Period, even if there is a reduction in your usage. If you choose not to upgrade, you may lose certain functionality of the Service. By way of example, if you have exceeded your care recipient limit, you will not be able to add additional recipients until you've upgraded to a new Subscription Tier, but you will continue to be able to access and use other features of the Service to the extent you are within the applicable Subscription Limits for such features.

Social Media Account. You are able to log in to eCare Vault by using your Google, Facebook, or LinkedIn account ("Social Media Account") for authentication. By associating the Service with your Social Media Account, you are granting permission for eCare Vault to use your Social Media Account provider for registration and authentication services using your Social Media Account information. At no point during registration or authentication, or during your use of eCare Vault while logged in with your Social Media Account, will eCare Vault share any information you create or upload to the Service with the Social Media Account provider.

YOU ACKNOWLEDGE AND UNDERSTAND THAT, WHILE THESE TERMS OF USE PROHIBIT THE SHARING OF CARE RECIPIENT INFORMATION OUTSIDE THE CARE TEAM AND PROHIBIT INVITING A NEW AUTHORIZED USER WITHOUT THE CARE RECIPIENT/PARENT/GUARDIAN'S CONSENT, ONCE AN AUTHORIZED USER HAS ACCEPTED AN INVITATION TO BE PART OF A CARE TEAM, S/HE IS ABLE TO INVITE OTHERS TO THAT CARE TEAM AND USE THE SERVICE TO SHARE INFORMATION ABOUT THAT CARE RECIPIENT WITH OTHER TEAM MEMBERS WITHOUT FURTHER ACTION OR PERMISSION FROM YOU OR THE CARE RECIPIENT/PARENT/GUARDIAN. CURRENTLY, THE SERVICE DOES NOT CONSTRAIN TEAM MEMBERS IN ANY WAY FROM SHARING INFORMATION WITH OTHER TEAM MEMBERS. ANY CONSENTS OR AUTHORIZATIONS REQUIRED TO PERMIT SUCH SHARING ARE OUTSIDE THE PURVIEW OF THE SERVICE.

Updates.

eCare Vault reserves the right, at its sole discretion, to update, modify or replace the Terms of Service (including any Policy), in whole or in part, at any time. eCare Vault will use reasonable efforts to notify you of any material change in advance of the effective date of any change. Change notices may be communicated by postings at the Service Software, via the platform, e-mail or otherwise. In any case, you should periodically check the Policies and Terms of Service for changes. Continued access or use of the Service following any change to the Terms of Service means that you have accepted those changes. The Terms of Service may not otherwise be amended, as they apply to you specifically, except



by a written agreement executed by you and eCare Vault. If we make any changes regarding the use or disclosure of Personal Data, we will inform all Authorized Users by E-mail notifications, and post a notice of the new Privacy Policy from the privacy link on our Web site. We will also prompt users to accept the new Privacy Policy at next login. Further use of the Service following any such change constitutes your agreement to follow and be bound by the amended Privacy Policy.

eCare Vault may modify, suspend or terminate the Service (including without limitation, the Service Software), in whole or in part, at any time in its sole discretion.

Medical Disclaimers.

The Service is intended only as a tool, which can be used to assist Authorized Users in enhancing and streamlining communications between Authorized Users of the Service. eCare Vault does not provide any Healthcare Services, including but not limited to therapeutic, psychological or medical services. As a result of its limited role as an intermediary between Authorized Users, eCare Vault has no control over the appropriateness, accuracy, quality, timeliness, scope, price or risks of or associated with any provision of Healthcare Services. Being enrolled in this Service is not a substitute for the care received from a clinician; therefore, anyone using eCare Vault should continue to receive usual care from a clinician. If you have any questions regarding treatment, medications, or diagnosis, you should contact a clinician directly. The Service is not designed to provide or replace medical care. Your refusal to accept these Terms of Service or to participate in the Service will not affect your ability to obtain services from a clinician or any healthcare provider.

The eCare Vault Service is not intended for use in any emergency situation or urgent matter, nor is it monitored by any clinician, therapist, or licensed medical professional. **In the event of a medical emergency, please call 911.**

eCare Vault does not recommend or endorse any specific clinician or healthcare provider, or any Healthcare Service.

YOU ACKNOWLEDGE AND AGREE THAT eCARE VAULT IS NOT RESPONSIBLE FOR AND EXPRESSLY DISCLAIMS ALL LIABILITY RELATED TO THE PROVISION OR RECEIPT OF HEALTHCARE SERVICES BY AN AUTHORIZED USER, AND ANY LIABILITY UNDER APPLICABLE DATA PRIVACY LAWS ARISING FROM THE STORAGE OR MAINTENANCE OF ANY UPLOADED ELECTRONIC MEDICAL RECORD OR RELATED DOCUMENTS. MOREOVER, YOU AGREE TO RELEASE ECARE VAULT FROM ANY AND ALL CLAIMS, DEMANDS, DAMAGES AND LIABILITIES, OF ANY TYPE AND NATURE, KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED, DISCLOSED AND UNDISCLOSED, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PROVISION OF HEALTHCARE SERVICES (INCLUDING ANY INJURIES OR DISABILITY ARISING THEREFROM).

Privacy and Security of Your Information.

eCare Vault's current **Privacy Policy** is available [here](#). It is important that you read and understand the Privacy Policy, especially because the nature of the Service involves the collection and use of your Personal Data, as defined above.



At no point in providing the Service does eCare Vault store or maintain unencrypted ePHI, nor does any of its workforce have routine access to unencrypted ePHI. The most current Privacy Policy will apply to any and all use of the Service Software and other aspects of the Service. eCare Vault will not intentionally edit, modify, delete or disclose the contents of your Personal Data in connection with the Service unless (a) reasonably necessary for eCare Vault (or its service providers) to operate the Service, (b) to communicate with Authorized Users, (c) otherwise permitted under the Privacy Policy or elsewhere in this Terms of Service, (d) eCare Vault reasonably believes that such action is necessary to conform or comply with any legal, regulatory, law enforcement or similar requirement or investigation, to protect or defend the rights or property of eCare Vault or any third party or to enforce the Terms of Service or (e) otherwise authorized by you.

In addition, we may not be able to recover your data in all circumstances if you forget your secret question/answer. We recommend you write it down and share it with a trusted individual/keep it in a safe place with your important papers so that a trusted individual can recover access to your account in case you are unable to do so.

FOR EDUCATORS - FERPA (Federal) and California Privacy (AB1584) Statement

eCare Vault is not a Student Information Management System (SIMS) and should not be treated as such.

1. Student/Pupil records uploaded to the Service by an Authorized User, who is a representative of a school or local educational agency (LEA) (Ed Rep), continue to be the property of and under the control of that Ed Rep. While the eCare Vault Service is a platform in which individual teachers and/or educators can exchange information with others via a Care Recipient's Care Team, eCare Vault operates as a no-view Cloud Service Provider (No-View CSP) and as such, has no routine access to any Personal Data. eCare Vault does not directly touch any information and recognizes that any information exchanged is the property of the Ed Rep.
2. eCare Vault is not intended to be a platform by which students/pupils under the age of 13 can create content; therefore, eCare Vault does not knowingly provide a means by which students/pupils under the age of 13 may retain possession and control of such content. Authorized Users may download any information that they have uploaded and/or received.
3. eCare Vault will not use any information in student/pupil records for any purpose other than those required or specifically permitted by these Terms of Service and Privacy Policy for the eCare Vault Service.
4. Parents, legal guardians, or eligible students/pupils (18 years old and above) may review personally identifiable information (PII) in the student's/pupil's records and correct erroneous information by either contacting the Ed Rep or as Team Members, who have the ability to access, update and delete data through logging into their account. Please note that any information that has been previously shared by Authorized Users cannot be unshared.
5. eCare Vault is committed to maintaining the security and confidentiality of student/pupil records. To that end, eCare Vault has taken the following actions: (a) limiting employee access to student data based on roles and responsibilities; (b) conducting background checks on employees who have access to student data; (c) conducting privacy training that includes FERPA for employees with access to pupil data; (d) protecting personal information with technical, contractual, administrative, and physical security safeguards in order to protect it from unauthorized access, release or use.
6. In the event of an unauthorized disclosure of a student's/pupil's records, eCare Vault will promptly (within 20 days



of becoming aware of the issue) notify the Ed Rep. The notification will include: date of the breach, the types of information that were subject to the breach; general description of what occurred; steps eCare Vault is taking to address the breach; the person at eCare Vault whom the data holder can contact regarding questions about the breach. eCare Vault will keep the Authorized User fully informed until the incident is resolved.

7. Upon request of the Authorized User and/or upon expiration of the services agreement, eCare Vault will delete personally identifiable data, except the profile information of the Authorized User and Care Recipient(s), to ensure accurate record keeping, as per the process specified in the *Termination* section below.
8. eCare Vault agrees to work with any Ed Rep to ensure compliance with FERPA. The Ed Rep, in turn, agrees to ensure compliance with FERPA by providing parents, legal guardians or eligible students/pupils with the ability to inspect and review student/pupil information collected in the Service and to correct any inaccuracies therein as described in statement 4 above.
9. eCare Vault prohibits using personally identifiable information in student/pupil records to engage in targeted advertising and will not sell nor transfer student/pupil PII to anyone for such purposes, nor allow student/pupil PII in its possession to be used for such purposes.

FOR HEALTH CARE PROVIDERS: IN ACCEPTING THESE TERMS OF SERVICE, A HEALTHCARE PROVIDER WHO IS ALSO A “COVERED ENTITY” UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (“HIPAA”) AGREES TO ALSO BE BOUND BY THE BUSINESS ASSOCIATE AGREEMENT ATTACHED TO AND INCORPORATED INTO THESE TERMS OF SERVICE.

1. Any health records of a Care Recipient, uploaded to the Service by an Authorized User, who is also a Covered Entity or a representative of a Covered Entity (“CE Rep”), continue to be the property of and under the control of that CE Rep. While the eCare Vault Service is a platform in which individual providers can exchange information with others via a Care Recipient’s Care Team, eCare Vault does not directly touch any Personal Data nor do we have routine access to Personal Data. Thus, any Personal Data uploaded to the Service by an Authorized User, including health records of a Care Recipient, remain the property of the Authorized User.
2. As a Health Care Provider, you acknowledge and understand that the eCare Vault Service (Service) is not an Electronic Medical Record (EMR) service, nor does it provide for the storage and maintenance of medical records and should not be used as such by any clinical/healthcare providers using the Service. As a Covered Entity (or CE Rep), you remain solely responsible for maintaining original medical records of any Care Recipient, and to the extent applicable, agree to upload ONLY copies of any such medical records to the Service platform. In the event you create any new/original content through the “Discussions” module of the Service, you agree to incorporate such content into your existing EMR and shall not rely on the Service to store or maintain such content as an “original” record.
3. eCare Vault operates as a no-view Cloud Service Provider (No-View CSP) and as such, has no routine access to any Personal Data, including any health records of a Care Recipient. As such, we will not view, use, store or share any Personal Data, including PHI, for any purpose other than those required or specifically permitted by these Terms of Service and Privacy Policy for the eCare Vault Service, or by any applicable laws.



4. eCare Vault agrees to work with any Covered Entity or CE Rep to ensure our compliance with HIPAA. The Covered Entity or CE Rep in turn agrees to ensure compliance with HIPAA by obtaining in advance all necessary consents required to upload and share any PHI, and will provide parents, legal guardians or individuals with the ability to inspect and review information collected in the Service, and to correct any inaccuracies in accordance with HIPAA requirements.

User Generated Content.

The Service currently provides functionality that permits Authorized Users to cause or control the uploading or posting of content or other information they think may be relevant or of interest directly to other Authorized Users. At this time, the Service does not permit a person under 13 years of age to upload or post content or other information they think may be of interest to other Authorized Users, or that permits a person under 13 years of age to cause or control messaging with other Authorized Users.

User Rules and Conduct.

If you elect to use the Service or register for an account with eCare Vault ("User Account"), you are responsible for maintaining the confidentiality of your account login information and the security of your device, and are fully responsible for all activities that occur under your account. You are solely responsible for all content and material that you provide to the Service and your involvement with other Authorized Users. You agree that eCare Vault will not be responsible for any harm or loss incurred as the result of any such interactions. You acknowledge that as an Authorized User, you have access to the sharing history of Personal Data shared by or with you.

You agree to immediately notify eCare Vault of any unauthorized use or suspected unauthorized use of your eCare Vault account or any other breach of security. eCare Vault cannot and will not be liable for any loss or damage arising from your failure to comply with the above requirements.

eCARE VAULT, RESERVES THE RIGHT, TO HAVE OUR SYSTEMS MONITOR ANY AUTHORIZED USER'S USE OF THE eCARE VAULT SERVICE, INCLUDING A USER'S REGISTRATION ATTEMPTS, AS WELL AS AN AUTHORIZED USER'S USE OF OR ACCESS TO THE USER ACCOUNTS OF OTHER AUTHORIZED USERS. ACCORDINGLY, eCARE VAULT ALSO RESERVES THE RIGHT TO (A) DISABLE ANY AUTHORIZED USER'S USE OF OR ACCESS TO THE SERVICE OR (B) TERMINATE ANY AUTHORIZED USER'S ACCOUNT, FOR ANY REASON AND WITHOUT ANY NOTICE. eCARE VAULT RESERVES THE RIGHT TO REFUSE ACCESS TO ANY AUTHORIZED USER, FOR ANY REASON AND WITHOUT ANY NOTICE.

The Service Software and all other aspects of the Service are provided only for your personal or professional use. Any unauthorized use of the Service (including without limitation, accessing any aspect of the Service for which you are not authorized, or any commercial use by you, such as, for example, marketing of any Healthcare Services) is expressly prohibited. You alone are responsible for all acts or omissions that occur under your account, username or password, including messaging conducted via the Service.



As a condition of use, you hereby promise not to use the Service for any purpose that is unlawful, or that is commercial in nature (such as, for example, collecting money, or advertising or promoting any product, service, pyramid scheme or other venture) or that is prohibited by the Terms of Service, or for any other purpose not reasonably intended by eCare Vault. You agree to abide by all applicable local, state, national and international laws, regulations and rules.

By way of example, and not limitation, you agree not to (a) take any action or (b) provide any information using any communications service, survey, feedback, or other aspect of the Service, in any manner, that:

- is unlawful, deceptive, misleading, fraudulent, threatening, abusive, harassing, libelous, invasive of another's privacy, tortious, obscene, pornographic, profane or which otherwise violates the Terms of Service;
- reveals any confidential, proprietary or other information that you are required to keep secret, including without limitation, non-public Personal Data (including PHI) about another individual;
- discovers or reveals any personal information about another individual, including another person's Personal Data (including PHI) or any other information that could be used to track, contact that person, unless such information has been provided by that person in any public communication or forum, or unless you are duly authorized to share such Personal Data in accordance with these Terms of Service;
- impersonates any person or entity, including but not limited to any Authorized User or representative of eCare Vault, or any business partner;
- infringes any patent, trademark, trade secret, copyright, right of publicity, privacy right or other right of any person or entity;
- imposes an unreasonable or disproportionately large load on eCare Vault's computing, storage or communications systems and networks, or attempts to gain unauthorized access to the Service Software, or other aspect of the Service (including the underlying technology platform), someone else's information, accounts, computer systems or networks connected to the Service, through password mining or otherwise;
- contains software viruses or any other computer codes, files or programs that are designed or intended to disrupt, damage, limit or interfere with the proper function of any software, hardware or network system or to damage or obtain unauthorized access to any system, data or other information of eCare Vault or any Authorized User or other third party;
- constitutes unauthorized or unsolicited advertising, junk or bulk e-mail ("spamming"), chain letters or any form of lottery or gambling;
- registers for or creates user accounts by any automated means or under false or misleading pretenses, including by the use of a false, misleading or disguised e-mail address;
- harvests, scrapes or collects any information from the Service;
- reverse engineers, disassembles, decompiles, decodes, adapts or otherwise attempts to derive or gain access to the source code of the Service or eCare Vault Materials, in whole or in part;
- damages, destroys, disrupts, disables, impairs, interferes with or otherwise impedes or harms in any manner the Service or eCare Materials, in whole or in part;
- uses any script or other automated means that only simulates compliance with the Terms of Service or other requirement applicable to the Service;



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- bypasses or breaches any security device or protection used by the Service or eCare Vault Materials or access or use the Service or eCare Vault Materials other than by an Authorized User through the use of his or her own then valid access credentials;
 - deletes or alters any content or Personal Data posted by any Authorized User (other than self or if authorized) or any other person or entity; or
 - disguises the source of Personal Data.

eCare Vault may, at its sole discretion, immediately suspend or terminate your access to the Service should your conduct fail (or appear to fail) to strictly conform to any provision of this section.

eCare Vault has no obligation to monitor the Service or any user's use thereof. However, eCare Vault reserves the right at any time and without notice to monitor, review, copy, retain or disclose any information as may reasonably be necessary to satisfy any applicable law, regulation, legal process or governmental request or investigation (including any inquiry from law enforcement).

Connections and Third Party Sites.

You may be able to obtain an App, access the Service and/or communicate with the Service from, and you may be able to link or communicate from the Service to, applications, devices, distribution platforms and websites owned and operated by Channel Partners. The term **Channel Partner** means any distribution platform operator or other third party who is authorized to make applications available for distribution pursuant to arrangements with eCare Vault. These other applications, devices, platforms and websites are not operated or controlled by eCare Vault, and you agree that eCare Vault is not responsible for the availability, accuracy, legality, appropriateness or any other aspect of the content or function of such applications, devices, platforms and websites. Additional or different terms and conditions (including without limitation, privacy and security practices) apply when you access and use such other applications, devices, platforms and websites.

Advertising and Promotions.

At this time, the Service does not include advertisements or promotions for or offers from eCare Vault, or other third parties.

Proprietary Rights.

The Service (including the Service Software, and underlying technology platforms), and all content, materials, data and other information created by or for eCare Vault (or its affiliates or licensors) and made available via the Service (collectively, **eCare Materials**), are protected by copyrights, trademarks, service marks, patents, trade secrets or other proprietary rights and laws, and eCare Vault (and its applicable affiliates and licensors) shall own and retain all rights, title and interests (including all intellectual property and proprietary rights) therein and thereto. Unless and only to the extent expressly authorized by eCare Vault, you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit,



publicly display, publicly perform, publish, adapt, edit or create derivative works of any part of the Service or eCare Materials. Your systematic retrieval of Personal Data or other eCare Materials from the Service to create or compile, directly or indirectly, a collection, database or directory is strictly prohibited without eCare Vault's express prior written permission. **For purposes of these Terms of Service, eCare Materials does not refer to Personal Data.**

IMPORTANT: If you desire to access or use the Service or eCare Materials for any purpose other than Authorized Use, then you must first secure written authorization directly from eCare Vault or other owner of that content. Reproducing, copying or distributing any eCare Materials, or any design elements from the Service Software for any other purpose is strictly prohibited without eCare Vault's express prior written permission. Attempting to access or use the Service or eCare Materials for any purpose not expressly permitted in the Terms of Service is prohibited.

Feedback License.

If you provide eCare Vault with any idea, recommendation or other suggestion regarding possible corrections, changes, improvements or extensions related to the Service or eCare Materials (collectively, **Feedback**), in any form or by any means (whether through the Service, or by direct communication (e.g., e-mail) with eCare Vault or any of its officers, directors, employees, representatives, agents or Business Partners), then you:

- represent and warrant that the Feedback does not include your own or any third party's confidential or proprietary information; and
- acknowledge and agree that eCare Vault is under no obligation of confidentiality, express or implied, with respect to the Feedback; and
- agree to grant and do hereby grant to eCare Vault and its affiliates and licensees a non-exclusive, transferable, perpetual, irrevocable, royalty-free, worldwide right and license to use, modify and make derivative works of the Feedback, in any manner, in any media and for any purpose, and to permit third parties to do the same.

Termination.

eCare Vault may immediately terminate your access to all or any part of the Service at any time, with or without cause, with or without notice. If you elect to terminate your registration and account, you may do so at any time by contacting eCare Vault at help@ecarevault.com. Upon any termination, all rights and obligations of the parties under the Terms of Service shall cease, and you shall immediately stop accessing and using the Service and eCare Materials, except that (a) all obligations that accrued prior to the effective date of termination (including payment obligations, if any) and all remedies for breach of the Terms of Service shall survive, (b) eCare Vault may retain and use Analytics in the manner described herein, and (c) the provisions of those sections of the Terms of Service that should reasonably be understood to continue in effect shall survive (including without limitations, the sections entitled Medical Disclaimers, Analytics, Proprietary Rights, Feedback License, No Warranties, Limitation of Liability and Indemnification).

If you terminate a Subscription in the middle of a Subscription Period, you will not receive a refund for any period of time you did not use in that Subscription Period unless you are terminating for any of the following reasons: (a) we have



materially breached these Terms of Service and failed to cure that breach within 30 days after you have so notified us in writing; or (b) a refund is required by law.

eCare Vault may terminate your Subscription at the end of a Subscription Period by providing at least 30 days' prior written notice to you. eCare Vault may terminate your Subscription for any reason by providing at least 90 days' written notice to you and will provide a pro rata refund for any period of time you did not use in that Subscription Period because of such termination. eCare Vault may suspend performance or terminate your Subscription for any of the following reasons: (a) you have materially breached these Terms of Service and failed to cure that breach within 30 days after eCare Vault has so notified you in writing; or (b) you fail to pay fees for 30 days past the due date. Additionally, eCare Vault may limit or suspend the Services to you if you fail to comply with these Terms of Service, or if you use the Services in a way that causes legal liability to us or disrupts others' use of the Services. eCare Vault may also suspend providing the Services to you if we are investigating suspected misconduct by you. If we limit, suspend, or terminate the Services you receive, we will endeavor to give you advance notice and an opportunity to export a copy of your Content from that Service. However, there may be time sensitive situations where eCare Vault may decide that we need to take immediate action without notice. eCare Vault will use commercially reasonable efforts to narrow the scope and duration of any limitation or suspension under this Section as is needed to resolve the issue that prompted such action. If a Subscription is suspended for non-payment, eCare Vault may charge a re-activation fee to reinstate the Subscription Service.

If eCare Vault stops providing the Services to you because you repeatedly or egregiously breach these Terms, eCare Vault may take measures to prevent the further use of the Services by you, including blocking your IP address.

Upon request of the Authorized User and/or upon expiration of the services agreement, eCare Vault will delete personally identifiable data, except the profile information of the Authorized User and Care Recipient(s), to ensure accurate record keeping, as per the process specified below:

a. **When an Authorized User wants to Exit a Care Team(s), but wants to continue using the Service:**

- i. ***When an Authorized User is a Team Captain:*** Prior to exiting a Team, an Authorized User must transfer ownership of any Care Teams for which s/he is a Team Captain. Once ownership is transferred successfully to another Team Member, the Authorized User can exit the Team. Even after exiting the team, the Authorized User has the opportunity to download any information that s/he has uploaded and/or received prior to exiting the Team. Please note that any information that has been previously shared by this Authorized User prior to exiting the Team cannot be unshared. If for some reason, the Authorized User is unable to transfer ownership to another team member, then the team will be "frozen" by eCare Vault (following appropriate verification processes) and no further team actions (uploading/sharing documents, starting discussions, adding team members) can take place. However, any Team Members can continue to download and view any previously uploaded documents and view past discussions.
- ii. ***When Authorized User is not a Team Captain:*** Even after exiting the team, the Authorized User has the opportunity to download any information that s/he has uploaded and/or received prior to exiting the Team.



Please note that any information that has been previously shared by or with this Authorized User prior to exiting the Team cannot be unshared.

- b. **When an Authorized User wants to terminate his/her eCare Vault Account:** Prior to terminating an account, the Authorized User who wishes to terminate their account will be notified to transfer ownership for all Teams for which s/he is a Team Captain. Please see above, section 7.a.i. Prior to terminating the account, the Authorized User has the opportunity to download any information that s/he has uploaded and/or received across all of the Care Teams s/he is a part of. If the Authorized User does not transfer ownership prior to terminating account, all the Teams in the terminated account (for which this Authorized User is a Team Captain) will be frozen. Please note that any information that has been previously shared by this Authorized User prior to exiting the Team cannot be unshared. eCare Vault may keep de-identified and aggregated data for Analytics. See Analytics section above.

No Warranties.

THE SERVICE SOFTWARE, eCARE MATERIALS AND ALL OTHER ASPECTS OF THE SERVICE ARE PROVIDED "AS IS" AND "AS AVAILABLE". THE SERVICE SOFTWARE, eCARE MATERIALS AND ALL OTHER ASPECTS OF THE SERVICE ARE PROVIDED WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF ACCURACY, INTEGRATION, TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

ALL REPRESENTATIONS AND WARRANTIES REGARDING ANY HEALTHCARE SERVICES SHALL BE, IF AT ALL, ONLY AS EXPRESSLY AGREED BETWEEN STUDENTS/CHILDREN AND THE APPLICABLE CLINICIANS AND/OR HEALTHCARE PROVIDERS.

Limitation of Liability.

You agree that eCare Vault (and its affiliates, licensors and business partners) shall not be responsible or liable for any unauthorized access to, alteration or use of your account, transmissions or data, or for any material or data sent or received or not sent or received through the Service. You agree that eCare Vault (and its affiliates, licensors and business partners) shall not be responsible or liable for any Authorized User's threatening, defamatory, obscene, offensive, illegal or other content or conduct or for any Authorized User's violation of another person's rights, including rights of publicity or privacy rights.

IN NO EVENT SHALL eCARE VAULT (OR ITS AFFILIATES, LICENSORS AND BUSINESS PARTNERS) BE LIABLE CONCERNING ANY SUBJECT MATTER RELATED TO THE SERVICE SOFTWARE, PERSONAL DATA, eCARE MATERIALS OR OTHER ASPECTS OF THE SERVICE, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), FOR ANY (A) MATTER BEYOND ITS REASONABLE CONTROL, (B) LOSS OR INTERRUPTION OF USE, OR COST OF PROCURING SUBSTITUTE



TECHNOLOGIES, GOODS OR SERVICES, (C) INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, REVENUES, PROFITS OR GOODWILL, OR (D) DAMAGES, IN THE AGGREGATE, IN EXCESS OF AMOUNTS YOU PAID TO eCARE VAULT FOR THE SERVICE OR U.S. \$100.00, WHICHEVER IS GREATER, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS AGREEMENT AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY PROVIDED HEREIN. NOTWITHSTANDING ANYTHING TO THE CONTRARY ABOVE, NOTHING IN THE TERMS OF SERVICES IS INTENDED TO LIMIT OR EXCLUDE LIABILITY OF ANY CLINICIAN OR HEALTHCARE PROVIDER AS REGARDING ITS PERFORMANCE OF HEALTHCARE SERVICES.

APPLICABLE LAW IN YOUR STATE OR COUNTRY MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN SUCH CASES, YOU AGREE THAT eCARE VAULT'S LIABILITY WILL BE LIMITED TO THE EXTENT PERMITTED BY APPLICABLE LAW IN YOUR STATE OR COUNTRY.

Indemnification.

You agree to (a) defend eCare Vault, its affiliates, licensors, subcontractors, agents and business partners, and their officers, directors, employees, contractors and representatives (**Indemnitees**) against any action or suit by a third party that arises out of any transaction or other dealings between you and any other user or other business partner, your use or misuse of the Service, or your breach of any of your representations, warranties or covenants under the Terms of Service and (b) indemnify the Indemnitees for liabilities (resulting from settlements or judgment awards), costs and expenses (including without limitation, reasonable attorneys' fees) related to such claims. In addition, eCare Vault reserves the right to assume the exclusive defense and control of any matter subject to the foregoing indemnity, in which event you will assist and cooperate with eCare Vault in asserting any available defenses.

International Use.

The Service originates in the United States and is directed primarily to United States-based users. It is subject to United States export laws and regulations. The eCare Vault Service and Analytics may not be exported or re-exported to certain countries or those persons or entities prohibited from receiving exports from the United States. In addition, the eCare Vault Apps may be subject to the import and export laws of other countries. You hereby expressly consent to the transmission, collection, storage, processing and use of the Analytics within, from and to the United States, in addition to the country where you are located (if not the United States). eCare Vault makes no representation that the Service is accessible, appropriate or legally available for use in locations outside the United States, and accessing and using the Service is prohibited from territories where doing so would be illegal. If you access or use the Service from other locations, then you do so at your own initiative and risk and are solely responsible for compliance with local laws.

Governing Law; Arbitration.

A printed version of the Terms of Service and of any notice given in electronic form shall be admissible in judicial or



administrative proceedings based upon or relating to the Terms of Service (including any Policy) to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. You and eCare Vault expressly agree that any claim or cause of action arising out of or related to the Service must be commenced within one (1) year after the claim or cause of action arose. Otherwise, such claim or cause of action is permanently barred.

The Terms of Service shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, excluding its conflicts of law rules. In the event of any conflict between U.S. and foreign laws, regulations and rules, U.S. laws, regulations and rules shall govern. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Terms of Service.

Except that either party may seek an injunction or other equitable relief from any court of competent jurisdiction, all disputes between the parties arising out of or in relation to or in connection with the Terms of Service shall be settled by binding arbitration in accordance with the JAMS streamlined arbitration rules and procedures then in force, by one neutral arbitrator appointed in accordance with the rules. The arbitration shall take place in Boston, Massachusetts USA. The proceedings shall be in English, all evidence shall be in English (or translated into English) and the governing law shall be as set forth herein. The arbitrator's decision shall be in writing and shall comply with all terms and conditions in the applicable version of the Terms of Service. The decision and award rendered shall be final and binding on both parties. The parties acknowledge and agree that the Terms of Service and any award rendered pursuant hereto shall be governed by the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Judgment on the award may be entered in any court of competent jurisdiction.

Any arbitration under these Terms of Service will take place only on an individual basis; class arbitrations and class actions are not permitted. **YOU UNDERSTAND AND AGREE THAT BY ENTERING INTO THESE TERMS OF SERVICE, YOU AND eCARE VAULT ARE EACH WAIVING THE RIGHT TO TRIAL BY JURY AND TO PARTICIPATE IN A CLASS ACTION.**

Use of the eCare Vault Service is not authorized in any jurisdiction that does not give effect to all provisions of the Terms of Service, including without limitation, this section.

Integration.

The Terms of Service (including all then current Policies) are the entire agreement between you and eCare Vault with respect to access, use and operation of the Service, and supersede all prior or contemporaneous communications, proposals and agreements (whether oral, written or electronic) between you and eCare Vault with respect to the Service. If any provision of the Terms of Service is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that the Terms of Service will otherwise remain in full force and effect and enforceable.

General Provisions.



Your rights and obligations under the Terms of Service are personal to you, and are not assignable, transferable or sub-licensable by you except with eCare Vault's prior written consent. eCare Vault may subcontract, delegate, assign or otherwise transfer any or all of its rights, licenses and obligations hereunder without your consent. All waivers, consents and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment relationship is created as a result of the Service or Terms of Service, and neither party has any authority of any kind to bind the other in any respect. All notices under these Terms of Service will be in writing, in English and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail or express courier, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail.

Copyright Compliance and Trademark Notices.

Trademarks. eCare Vault is the trademark of eCare Vault Inc. The names and logos of companies, products or services mentioned at the Service Software or through the platform may be the trademarks or service marks of their respective owners, and shall not be deemed to create any endorsement or association between eCare Vault and such owners. All rights not expressly granted herein are reserved.

Copyright Compliance. It is eCare Vault's policy to respond to notices of alleged infringement that comply with the Digital Millennium Copyright Act. In addition, eCare Vault will promptly terminate without notice the accounts of Users that are determined by eCare Vault to be "repeat infringers." A repeat infringer is a User who has been notified by eCare Vault of infringing activity violations more than twice.

If you are a copyright owner or an agent thereof, and you believe that any content hosted on any eCare Vault Service infringes your copyrights, then you may submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing eCare Vault's Designated Copyright Agent with the following information in writing:

- i. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- ii. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works on the applicable eCare Vault Service are covered by a single notification, a representative list of such works on the applicable eCare Vault Service;
- iii. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit eCare Vault to locate the material;
- iv. Information reasonably sufficient to permit eCare Vault to contact the complaining party, such as an address, telephone



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- number, and, if available, an electronic mail address at which the complaining party may be contacted;
- v. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law (for example, "I am under the good faith belief that the use of the copyrighted content that is identified herein is not authorized by the copyright owner, its agent, or the law."); and
- vi. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed (for example, "I swear, under penalty of perjury, that the information in this notification is accurate and that I am the copyright owner, or authorized to act on behalf of the copyright owner, of the copyright(s) that is allegedly infringed by the aforementioned content.").

eCare Vault's designated Copyright Agent to receive notifications of claimed infringement can be reached as follows:

Attention: Copyright Agent Address of Agent:
eCare Vault, Inc.
75 Arlington Street, Suite 500
Boston, MA 02116
Attn: eCare Vault Copyright Agent
Email: help@ecarevault.com

Only DMCA notices should go to the eCare Vault Designated Copyright Agent. You acknowledge that if you fail to comply with all of the requirements of this section, your DMCA notice may not be valid. Please note that under Section 512(f) of the DMCA, any person who knowingly materially misrepresents that material or activity is infringing may be subject to liability.

Contact.

If you have any questions regarding the Terms of Service or your dealings with the Service, please contact us at:
eCare Vault, Inc.
Attn: Terms of Service
75 Arlington Street, Suite 500
Boston, MA 02116
E-mail: help@ecarevault.com



ADDENDUM

HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement Addendum (this "Agreement") by and between you (the "Covered Entity") and eCare Vault, Inc. ("us", "we", the "Business Associate"), together with the Terms of Service as amended by this Agreement, (a) is intended by the parties as a final, complete and exclusive expression of the terms of their agreement; and (b) supersedes all prior agreements and understandings (whether oral or written) between the parties with respect to the subject matter hereof:

WHEREAS Covered Entity and Business Associate have entered into a certain agreement for services ("Services") whereby Business Associate provides or assists Covered Entity with a function or activity that may involve the use or disclosure of protected health information (PHI) (hereinafter the "Services Agreement");

WHEREAS, both Parties desire to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 as amended by the American Recovery and Investment Act of 2009 ("HIPAA"), and implementing regulations which are codified at 45 C.F.R. Part 160, 162 and 164, as such regulations may be amended from time to time and the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 and implementing regulations and guidance issued by the Secretary, all as may be amended from time to time ("HITECH") (collectively referred to hereinafter as the "HIPAA Standards"); and

WHEREAS, such HIPAA Standards require Covered Entity to enter into a Business Associate Agreement with its Business Associates that provide or assist Covered Entity with a function or activity which may involve the use or disclosure of protected health information ("PHI");

WHEREAS, Covered Entity and Business Associate agree to enter into this Business Associate Agreement ("BAA") to ensure compliance with the HIPAA Standards, where applicable, including the amendments thereto set forth in HITECH Act and any applicable state laws and

THEREFORE, in consideration of the Parties' continuing obligations to each other, compliance with the HIPAA Security and Privacy Rules and the HITECH Act, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement.

1. DEFINITIONS.

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Standards: **Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Protected Health Information (PHI), Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.** Capitalized terms used in this Agreement, but not otherwise defined, shall have the same meaning as those terms in the HIPAA Standards, as they apply to Business Associate Agreements.

In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Standards, the HIPAA Standards in effect at the time shall control. Where provisions of this Agreement are different than those mandated by the HIPAA Standards, but are nonetheless permitted by such regulations, the provisions of this



Agreement shall control. Any reference herein to the HIPAA Standards or other federal or state regulation shall be a reference to such rule or regulation as in effect or as subsequently updated, amended or modified.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a. **Use or Disclosure.** Business Associate agrees to not use or further disclose PHI other than as expressly permitted or required by this Agreement or as required by applicable federal and state laws.
- b. **Safeguards and Compliance with the HIPAA Security Regulations.** Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Services Agreement.
- c. **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- d. **Reporting.** Business Associate agrees to report to Covered Entity within twenty (20) business days from the date Business Associate knew or reasonably should have known, any of the following:
 - (1) Any use or disclosure of PHI not permitted by this Agreement of which Business Associate becomes aware.
 - (2) Any Security Incident of which Business Associate becomes aware.
 - (3) The discovery of a Breach of Unsecured PHI.

For purposes of this Agreement, "Security Incident" shall mean the successful unauthorized access, use, disclosure, modification or destruction of PHI. The Parties acknowledge and agree that this Section 2.d constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined herein). "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service, malware such as worms or viruses and any combination of the above, so long as such incidents do not result in unauthorized access, use or disclosure, modification or destruction of PHI.

- e. **Business Associates and Agents.** In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate shall ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate agree to substantially the same, but no less restrictive conditions, restrictions, and requirements that apply to the Business Associate with respect to such PHI;
- f. **Requests for Restrictions.** To the extent applicable, Business Associate agrees to comply with reasonable requests for restrictions on use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of such PHI. In the event that Business Associate receives a request for restrictions to PHI directly from an Individual, Business Associate shall forward such request to Covered Entity.
- g. **Access to PHI.** To the extent applicable and upon reasonable request by Covered Entity for access to PHI related to an individual contained in a Designated Record Set, the Business Associate shall make such PHI available to Covered Entity for so long as such information is maintained in the Designated



Record Set, unless such information held by the Business Associate is merely duplicative of information already maintained by Covered Entity. Covered Entity acknowledges and agrees that it shall only upload a copy of any PHI, and not any original PHI, to the eCare Vault Service with the understanding that the Business Associate is not an electronic medical record (EMR) provider. In the event any individual requests access to PHI directly from the Business Associate, the Business Associate shall forward such request to Covered Entity so that Covered Entity can respond directly to such individual in accordance with 45 C.F.R. § 164.524. Any denials of access to the PHI requested by an individual shall be the sole responsibility of Covered Entity.

- h. **Amendment of PHI.** Upon receipt of a written request by or on behalf of Covered Entity for the amendment of an individual's PHI or record contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall, to the extent applicable, provide such information to Covered Entity for amendment, in the time and manner reasonably designated by Covered Entity, and if applicable, incorporate any such amendments in the PHI as required by 45 C.F.R. §164.526. In the event that Business Associate receives a request for amendment to PHI directly from an Individual, Business Associate shall forward such request to Covered Entity. Any denial of a request to amend the PHI shall be the responsibility of Covered Entity.
- i. **Records.** Upon request, Business Associate shall make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Standards.
- j. **Documentation of Disclosures.** To the extent applicable, Business Associate agrees to document such disclosures of PHI, and such information related to such disclosures, as would be required for Covered Entity or Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528, and as otherwise may be amended from time to time.
- k. **Accounting of Disclosures of PHI.** Upon receipt of notice by the Covered Entity that Covered Entity has received a request by an individual for an accounting of disclosures of PHI, Business Associate shall, to the extent applicable, make available to the Covered Entity the information required to provide an accounting of disclosures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.528.
- l. **Prohibition on Sale of PHI.** Business Associate agrees to comply with the prohibition of sale of PHI without authorization unless an exception under 45 C.F.R. § 164.508 applies.
- m. **Minimum Necessary Use and Disclosure.** In conducting functions and/or activities under this Agreement that involve the use and/or disclosure of PHI, Business Associate shall limit the use and/or disclosure of PHI to the minimum amount of information necessary to accomplish the intended purpose of the use or disclosure, as required by 45 C.F.R. 164.502(b).
- n. **Data Aggregation.** Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- a. **General Use and Disclosure Provisions.** Except as otherwise limited in this Agreement, Business



Associate may use or disclose PHI in connection with its performance of the Services if such use or disclosure of PHI would not violate the HIPAA Standards if done by Covered Entity or such use or disclosure is expressly permitted under Section 3.b (“Specific Use and Disclosure Provisions”) of this Agreement.

b. Specific Use and Disclosure Provisions.

- (1) Except as otherwise limited in this Agreement, Business Associate may use and disclose PHI for the proper management and administration of the Business Associate or to meet its legal responsibilities; provided, however, that such PHI may only be disclosed for such purposes only if the disclosures are required by law or the Business Associate obtains certain reasonable assurances from the person to whom the information is disclosed. The required reasonable assurances are that:
 - (a) the information will remain confidential;
 - (b) the information will be used or further disclosed only as required by law or for the purpose for which the information was disclosed to the person; and
 - (c) the person will notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (2) Business Associate may use and disclose PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

4. OBLIGATIONS OF COVERED ENTITY

- a. Covered Entity shall provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520, as well as any changes to such Notice of Privacy Practices to the extent such changes may affect Business Associate’s Use or Disclosure of PHI.
- b. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose PHI, if and to the extent such changes affect Business Associate's permitted or required uses and disclosures to the extent that such changes may affect Business Associates use or disclosure of PHI.
- c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by in accordance with 45 C.F.R. § 164.522, if and to the extent that such restriction may affect Business Associates use or disclosure of PHI.
- d. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.



5. TERM AND TERMINATION

- a. **Term.** This Agreement shall continue in effect until the later of (a) completion, termination or expiration of the Services set forth in the underlying Services Agreement or (b) when all of the PHI provided by Covered Entity to Business Associate or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity in accordance with Section 5(c) below.
- b. **Termination for Cause.** Either Party may terminate this Agreement for cause if a Party determines that the other Party has breached a material term of this Agreement and the breaching party has not cured the breach within thirty (30) days after written notice of such violation from the terminating Party or, if such violation cannot reasonably be cured within said thirty (30) day period, if the breaching Party has not taken steps to cure the violation within such thirty (30) day period.
- c. **Obligations of Business Associate Upon Termination.** Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall, if applicable:
- (1) Retain only that PHI which is necessary for Business Associate to continue its own proper management and administration or to carry out its legal responsibilities;
 - (2) Return to Covered Entity or destroy any and all remaining PHI that the Business Associate still maintains in any form, and if such PHI is destroyed, certify to such destruction in a writing signed by an authorized representative of Business Associate and delivered to Covered Entity;
 - (3) Continue to employ appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent any unauthorized Use or Disclosure of the PHI for as long as Business Associate retains the PHI;
 - (4) Not Use or Disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out in this Agreement which applied prior to its termination; and
 - (5) Return to Covered Entity or destroy the PHI retained by Business Associate when it is no longer required by Business Associate for its proper management and administration or to carry out its legal responsibilities.

6. MISCELLANEOUS

- a. **Interpretation.** Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits the Parties to comply with the HIPAA Standards.
- b. **Amendment.** This Business Associate Agreement shall only be amended or modified upon written



consent of the Parties. The Parties agree to take such action as is necessary to amend this Agreement from time to time as necessary for compliance with the requirements of the HIPAA Standards and any other applicable law.

- c. **Severability.** If any provision of this Business Associate Agreement shall be declared invalid or illegal for any reason whatsoever, then notwithstanding such invalidity or illegality, the remaining terms and provisions of this Business Associate Agreement shall remain in full force and effect in the same manner as if the invalid or illegal provision had not been contained herein, and such invalid, unenforceable or illegal provision shall be valid, enforceable and legal to the maximum extent permitted by law.
- d. **Governing Law.** The validity, interpretation, and performance of this Agreement, shall be construed in accordance with the laws of the Commonwealth of Massachusetts without reference to its conflict of laws principles.
- e. **Notices.** Any notice or other communication given pursuant to this Business Associate Agreement must be in writing and (i) delivered by hand, (ii) delivered by overnight express, or (iii) sent by registered or certified mail, postage prepaid, to the address set forth above and shall be considered given upon delivery.
- f. **Prior Agreements.** This Agreement supersedes and terminates all such prior agreements and this Agreement and any Services Agreement previously executed between the Parties contains the entire understanding of the Parties with respect to the subject matter of this Agreement, and the terms of this Agreement are contractual and not a mere recital.
- g. **Modification.** No addition or modification to this Agreement shall be valid unless made in writing and signed by both parties.
- h. **Waiver.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.