

## **Personal Health Monitoring Terms and Conditions of Use**

These Personal Health Monitoring ("PHM") Terms and Conditions of Use ("Agreement") govern your use of our Services. You accept this Agreement either by using the Services, by indicating your acceptance on our website, or by executing a Services Agreement. This Agreement is effective as of the date of your acceptance (the "Effective Date"). This Agreement applies whether you are a casual visitor to the Site, a physician or medical provider who subscribes to the Services in order to appear on the Site (a "Provider"), or a patient who utilizes the Service to schedule the listed medical service (a "Consumer").

You may not access the Services: (a) if you do not agree to these terms and conditions; (b) if you are our direct competitor; or (c) for purposes of monitoring their availability, performance or functionality. The Site and Services are not intended for children under the age of 18. **IF YOU ARE UNDER 18 YEARS OF AGE, YOU MUST NOT USE OR ACCESS THE SITE OR SERVICES AT ANY TIME OR IN ANY MANNER.**

The Services and the Site are evolving and are continually under development. If you are dissatisfied with the Services in any way, we ask you to tell us by sending an email to [info@myphms.com](mailto:info@myphms.com). We may make changes to this Agreement from time to time. When these changes are made, we will make a new copy of the Agreement available to you through the Site. Your use of the Services after the date on which the updated Agreement is made available to you through the Site constitutes your acceptance of the updated Agreement. If you disagree with changes to the Services or updates to the Agreement, your exclusive remedy is: (i) if you are a casual visitor or consumer, to stop visiting or using the Site; (ii) if you are a Provider, to provide us notice of your intention not to renew your contract or (iii) if you are a subscriber, to cancel your Account.

### 1.0 Definitions.

- "Account" means the particular instance of the Site authorized for use by you and your Users (as applicable) under your specific login.
- "Documentation" means the specifications and materials located at the Site about the Services.
- "Services" means all services you order from us and made available by us via the Site and/or other locations designated by us.
- "Services Agreement" means the subscription services agreement entered into between a Provider and PHM relating to the Provider's offer of services to consumers via the PHM platform.
- "Site" means <https://www.myphms.com/>.
- "Subscription Period" means the subscription time described in the Provider's Services Agreement.
- "We," "Us" or "Our" means Personal Health Monitoring, LLC.

- "You" or "Your" means yourself individually or the company or other legal entity for which you are accepting this Agreement. As used in this Agreement, "you" or "your" may encompass casual browsers, Providers and Consumers, as applicable.
- "User" means an authorized user of the Services.
- "User Data" means all electronic data or information submitted by you and your Users (as applicable).

## 2.0 Disclosures/Healthcare Regulatory Information.

- If you choose to post a review of PHM on the website, please note that your name and city/state may be published on the PHM site publicly. If you do not wish to have your real name published on the site, you should use a pseudonym for your username rather than your real name (i.e., use "57chevy" instead of "JosephBrown"). WE ARE NOT RESPONSIBLE FOR THE DISCLOSURE OR PUBLICATION OF ANY PRIVATE INFORMATION THAT YOU SHARE PUBLICLY ON THE SITE. We consider health information to be private information and recommend against disclosing your identity publicly on the Site. See Section 8, together with our Privacy Policy, for more information on our confidentiality obligations.
- WE DO NOT PROVIDE MEDICAL ADVICE, NOR DO WE PROVIDE ANY GUIDANCE OR SUGGESTED TREATMENT FOR YOUR PARTICULAR SITUATION OR ANY OTHER FORM OF MEDICAL TREATMENT. We DO NOT recommend or endorse any specific tests, physicians, products, procedures, opinions, or other medical information. We have not evaluated the education, training, experience or credentials of any doctors or health care providers, nor have we evaluated the acceptability, health, or suitability of any patient for any particular procedure. Reliance on any information provided by the Site, whether you are a receiver or provider of healthcare services is solely at your own risk. We simply offer a marketplace platform that allows healthcare providers to list and provide information about their services to potential patients. You should always seek the advice of a medical professional regarding your health and wellness. We are not responsible for any services provided/not provided by medical professionals who treat you as a result of the Site and Services.
- PHM is not a "covered entity," "health insurance issuer," "health care clearinghouse" or "health care provider" and is therefore not required to comply with the privacy rules and security rules implemented under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). You are strongly encouraged to discuss your provider's health information privacy policies and procedures with your provider.
- This website is only to be used in connection with the purchase or sale of services which are not reimbursed by any state or federal health care program, including Medicare or Medicaid. No services may be offered on this website to beneficiaries of any such federal or state health care program. No services received as a result of the use of this website may be submitted to any federal or state health care program for reimbursement.
- By utilizing our services or replying to our emails, you acknowledge that you are aware that email is not a secure method of communication, and that you agree to the risks. If

you would prefer not to exchange personal health information via email, please notify us at [info@myphms.com](mailto:info@myphms.com).

- By agreeing to these terms and conditions, you acknowledge that your medical information, which is protected under the Health Insurance Portability and Accountability Act (HIPAA), may be shared with other companies or entities that are owned, partially-owned, and/or operated by PHM. This sharing of information is essential for the coordination of your healthcare services, improvement of healthcare quality, and compliance with regulatory requirements. Rest assured that all shared medical information will continue to be handled with the utmost confidentiality and in accordance with applicable laws and regulations governing the privacy and security of personal health information. If you have any concerns or questions regarding the sharing of your medical information, please contact us for further clarification.
- PHM may obtain a copy of your credit report to determine your ability to pay for services purchased. By using the site, you consent to PHM obtaining a copy of your consumer information, including your credit report, in order to verify your ability to pay.

### 3.0 Services.

- **Subscription Services for Providers.** Upon a Provider's payment for Services and execution of a Services Agreement with PHM, we will make the Services available to the Provider through its Account and/or in the manner described in the agreement during the Subscription Period.
- **Service Commitment.** We will use commercially reasonable efforts to make the Services available (web service) 24 hours a day, 7 days a week, except for: (a) planned downtime (generally during weekend hours between 1:00 a.m. and 7:00 a.m Eastern Time or during low traffic times during the week); or (b) any unavailability caused by circumstances beyond our reasonable control, including, without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems, infrastructure or Internet connectivity provider failures or delays, and denial of service or other malicious attacks. We will provide the Services in accordance with applicable laws and government regulations.
- **Updates.** We will update the Site and Services from time to time. These updates are designed to improve, enhance and further develop the Services and may take the form of bug fixes, enhanced functionality or updates. You agree to receive such updates from us as part of your use of the Services.
- **Your Duties.** You are responsible for all activities that occur under your Account, including, without limitation, Users' compliance with this Agreement. You are responsible for the accuracy, quality and legality of User Data, and for ensuring that the Services are used only in accordance with the Services Agreement, Documentation, and applicable laws and government regulations. You agree to provide true, accurate, current and complete information about yourself and your Users as requested by PHM. You also agree to update the information about yourself and your Users promptly, and as necessary, to keep it current and accurate. You agree to use commercially reasonable efforts to prevent unauthorized access to or use of the Services and to notify us promptly of any such unauthorized access or use.

#### 4.0 Restrictions.

- **Usage Limitations.** You may not use the Services or accept this Agreement if you are not of a legal age to form a binding contract with us. The Services may be subject to other limitations, as specified in the Services Agreement and/or Documentation. As a condition of use, you promise not to use the Service for any purpose that is prohibited by this Agreement. You further promise not to build a product or service that is competitive to the Services.
- **Prohibited Activities.** You shall not: (a) make the Services available to anyone other than Users or except for whom you have written consent to do so on his/her behalf (such as family member) ; (b) sell, resell, rent or lease the Services; (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (d) use the Services for any malicious purpose; (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein; or (f) attempt to gain unauthorized access to the Services or their related systems or networks.
- **Examples of Prohibited Activities.** By way of example, and not as a limitation, you shall not (and shall not permit any third party to): (a) take any action or (b) upload, download, post, submit or otherwise distribute or facilitate distribution of any content on or through the Service, including, without limitation, any User Data that:
  1. infringes any patent, trademark, trade secret, copyright, right of publicity or other right of any other person or entity or violates any law or contractual duty;
  2. modifies, adapts, appropriates, reproduces, distributes, translates, creates derivative works or adaptations of, publicly displays, republishes, repurposes, sells, trades, or in any way exploits the Service, except as expressly authorized by us;
  3. deciphers, decompiles, disassembles, reverse engineers or otherwise attempts to derive any source code or underlying ideas or algorithms of any part of the Service (including, without limitation, any application or widget), except to the limited extent applicable laws specifically prohibit such restriction;
  4. you know is false, misleading, untruthful or inaccurate;
  5. is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, vulgar, pornographic, offensive, profane, contains or depicts nudity, contains or depicts sexual activity, promotes bigotry, discrimination or violence, or is otherwise inappropriate as determined by us in our sole discretion;
  6. Imposes or may impose (as we determine in our sole discretion) an unreasonable or disproportionately large load on our (or our third party providers') infrastructure;
  7. constitutes unauthorized or unsolicited advertising, junk or bulk e-mail ("spamming");
  8. interferes with or may interfere with the proper working of the Service or any activities conducted on the Service;

9. involves commercial activities (whether or not for profit) and/or sales, such as contests, sweepstakes, barter, advertising, or pyramid schemes, without our prior written consent;
  10. bypasses any measures we may use to prevent or restrict access to the Service (or other accounts, computer systems or networks connected to the Service);
  11. contains software viruses or any other computer codes, files, worms, logic bombs or programs that are designed or intended to disrupt, disable, damage, limit or interfere with the proper function of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any system, data, password or other information belonging to us or any third party;
  12. employs manual or automated software, devices, or other processes to "crawl" or "spider" any page of the Site;
  13. harvests or scrapes any data or content from the Service;
  14. impersonates any person or entity, including our employees or representatives;
  15. includes anyone's identification documents or sensitive financial information;
  16. breaches our privacy policy and/or any of the other policies and rules incorporated herein; or
  17. that otherwise violates our guidelines and policies.
- Image Restrictions. If the User Data includes an image, our image guidelines shall apply. We have a zero-tolerance policy against child pornography, and will terminate and report to the appropriate authorities any User who publishes or distributes child pornography.
  - Services Reimbursed by Federal or State Health Care Programs Not Permitted. This website is only to be used in connection with the purchase or sale of services which are not reimbursed by any state or federal health care program, including Medicare or Medicaid. No services may be offered on this website to beneficiaries of any such federal or state health care program. No services received as a result of the use of this website may be submitted to any federal or state health care program for reimbursement.

#### 5.0 Third Party Services and User Data You Send to Public Forums.

- Additional Third-Party Terms. You may access and subscribe to third-party products or services as add-ons or additional modules to provide specific functionality to the Services, including, without limitation, specialized industry information and other services. All third-party products and services are provided subject to all restrictions required by us at the time of your subscription to such third-party products or services.
- Integration with Third-Party Services. The Services may contain features designed to interoperate with third-party applications (e.g., Google, Facebook or Twitter applications). To use such features, one must have an account with such applications. If the provider of any such third-party application ceases to allow us to integrate on reasonable terms, we may cease providing such Service features without entitling you to any refund, credit, or other compensation.

- Links to Third Party Sites; Third Party Contact Information. As you use the Service, you may notice links and contact information for third parties. These links and this contact information are for your convenience only. If you use these links or contact information, you will be outside of the Service. We are not responsible for the availability, content or services provided by these third parties. In addition, these links and this contact information are not an endorsement or approval of these third parties. The services of these third parties will be provided under terms determined solely between you and them.
- User Data You Submit to Public Forums. The Services may include features that facilitate your use of third-party publicity applications (e.g., Google, Facebook or Twitter) and/or public forums within the Service (“Public Forums”). The Services will tell you when your User Data is being submitted in a manner that will be posted to a Public Forum. When you submit User Data using these features of the Service, we and such Public Forums only grant you the right to use the Services on a through-to-the-audience basis. Neither we nor such Public Forums shall have any liability to you or any third party for such User Data uploaded to, transmitted or publicly performed through the Service and made publicly available through such a Public Forum.
- Rights in Posted Content. By posting any content to any public area of the Site, you grant, and you represent and warrant that you have the right to grant, to us, and our affiliates, licensees and successors, an irrevocable, perpetual, non-exclusive, fully paid, worldwide license to use, copy, perform, display, reproduce, adapt, modify and distribute such information and content and to prepare derivative works of, or incorporate into other works, such information and content, and to grant and authorize sub-licenses of the foregoing. You further represent and warrant that public posting and use of your content by us will not infringe or violate the rights of any third party.

## 6.0 Fees and Payment.

- **Payment Terms for Consumers.** There is no fee for Consumers to create a regular Account. Consumers may, at their option, pay and schedule medical services through the Site in accordance with the terms of the applicable Services Agreement. In exchange for the access to the directory, transparent and discounted rates and assistance with scheduling and patient portal, service fee(s) (the “PHM Fee”) will be added to the listed prices for medical services provided to us by healthcare providers listed on our website. An additional fee for credit card payment as payment processing fee charged by 3rd party (such as PayPal) is also added to the final payment. Full payment shall be collected online prior to scheduling of service. In most cases a voucher will be created and given to consumer as a proof of payment for the requested service. PHM Consumer pre-paid medical vouchers are only redeemable for the specific medical procedure selected by the consumer at the time of purchase. Consumers may require additional medical procedures or services upon arrival at their medical appointment. If additional medical services or procedures are required a health care provider may charge additional fees or require the patient to purchase additional PHM medical vouchers to pay for these additional services.

PHM prepaid medical vouchers expire 60 days from the date of purchase, unless that voucher was purchased using CareCredit or the provider performing the Service for which the voucher was issued cancels their participation with PHM. Vouchers purchased



using CareCredit expire 30 days from date of purchase. When providers cancel their participation with PHM, vouchers issued for Services performed by that provider will expire on that provider's effective cancellation date. In this case, the PHM team will attempt to notify the Consumer prior to the day the purchased voucher expires. Funds from expired or cancelled vouchers are subject to cancellation fee as specified on voucher or in this agreement. Remaining balance from refunded vouchers, except for those purchased using CareCredit or paid with cash or check at the facility, will be refunded to the patient account. The balance from refunded vouchers can be used to purchase new vouchers, or full refunds can be requested from the PHM Patient Concierge Team at (888) 360-0001 or support@PHM.com. Vouchers purchased using CareCredit will be refunded to the CareCredit account used to make the initial purchase. If the voucher was purchased using cash or check at the facility, the Consumer must request a refund from the facility where the purchase was made.

- **Relationship with physicians or Service Providers** PHM has no financial or other relationship with the physicians or their practices or listed healthcare service providers other than regarding the Website. PHM is an independent company, separate from the physician practices. The Provider is the service provider and is fully responsible for all services it provides to you and for any and all injuries, illnesses, damages, claims, liabilities and costs such services may cause you to suffer, directly or indirectly, in full or in part. Consumers hereby waive and release us from any injuries, illnesses, damages, claims, liabilities and costs arising from or related to any act or omission of a Provider in connection with your use of service scheduled through the Site.

PHM has not vetted the credentials, licenses, training or legal backgrounds of any physician or other healthcare service providers on the Website. That is your responsibility to verify that information. PHM assumes no responsibility or liability for the inability to schedule an appointment, for the appropriateness of the physician or healthcare provider for the patient ailment at issue, the care provided or not provided, for any occurrence at the physician's or healthcare provider's office during your visit, or for the timeliness, deletion, mis-delivery or failure to store any user communications or data. All such risks shall be borne by you.

- **Access Charges.** You are responsible for all connectivity costs and expenses required to access the Site, including, without limitation, Internet service provider fees.
- **Taxes.** Unless otherwise stated, our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with your Account. If we are legally obligated to pay or collect your Taxes under this paragraph, the appropriate amount shall be invoiced to and paid by you.
- **Additional Fees.** We reserve the right to assess additional fees, including processing fees, from time to time. You understand and agree that you will be responsible for timely payment of any such fees associated with your Account.

### **Refund policy**

If you cancel service more than 48 hours in advance, healthcare service fee may be fully refunded (some healthcare service providers may charge cancellation fee based on their

terms). However, PHM service fee is non-refundable. In case service is cancelled by the provider, full refund will be processed. Refund will be made, at sole discretion of company, either in original form of payment or as a credit for future use .

### **Scheduling**

PHM may take information you provide on the Website and contact the physician office or other healthcare service providers to assist in scheduling appointment for you with the physician or service provider of your choice. PHM may email, call or text you with confirmation of your appointment time, date and location. This confirmation process may be delayed by reasonable events like weekends, holidays and office closures due to acts of God. You authorize the PHM staff to communicate back and forth with the physician office about you and your visit but only for purposes of scheduling, payment and portal administration.

### **Patient Portal**

The Website also includes a patient portal that you can log into to privately receive reports and feedback from the services you scheduled and paid for via the Website. You authorize the release of information by the physician or service providers (including labs or imaging reports) scheduled from the Website to PHM to upload to the portal for you to access. You authorize PHM to retain this information on its server as per its privacy policy.

## **7.0 Ownership of Site and Services.**

- **Rights in Services.** We reserve all rights, title and interest in and to the Site and the Services, including all related intellectual property rights. No rights are granted to you hereunder other than as expressly set forth herein.
- **Suggestions.** We shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Site and the Services any suggestions, enhancement requests, recommendations or other feedback provided by you, including Users.
- **Government Use.** The Services include "commercial computer software" and related documentation within the meaning of Federal Acquisition Regulation 2.101, 12.212, and 27.405-3 and Defense Federal Acquisition Regulation Supplement 227.7202 and 52.227-7014(a). The Services are highly proprietary to us and our licensors. You shall ensure that all Users, including those that are representatives of the U.S. Government or any other government body, are permitted to use the Services only as expressly authorized under this Agreement. Neither you nor any government body shall receive any ownership, license, or other rights other than those expressly set forth herein, irrespective of: (a) whether you are an agency, agent, or other instrumentality of the U.S. Government or any other government body, (b) whether you are entering into or performing under this Agreement in support of a U.S. Government or any other government agreement or utilizing any U.S. Government or any other government funding of any nature, or (c) anything else.

## **8.0 Confidentiality.**

- **Definition.** The term "Confidential Information" means the provisions of a Services Agreement, and any and all information, written or oral, provided or made available by or on behalf of one party or its affiliates, contractors, or vendors to the other party or its



affiliates, contractors, or vendors in connection with this Agreement or the parties' relationship hereunder, whether or not designated as confidential. Information of a third party to whom a party owes a duty of confidentiality will be treated as Confidential Information of that party if it meets the description above. However, Confidential Information does not include information that: was or is publicly available other than as a result of breach of this Agreement by Recipient (as defined below); was or is lawfully received by the Recipient free of any obligation of confidentiality; or, is independently developed by or on behalf of the Recipient without use of the Discloser's Confidential Information.

- **Obligations.** Each party ("Recipient") will not access or use Confidential Information of the other party ("Discloser") for any purposes other than performance of its obligations or receipt of benefits hereunder and shall maintain such information in the strictest confidence, except for disclosures expressly authorized hereunder. Recipient may disclose the Discloser's Confidential Information to Recipient's employees, attorneys, advisors, and contractors who have a legitimate "need to know," provided that Recipient ensures that all such entities and persons are obligated to and do comply with confidentiality obligations consistent with (and no less restrictive than) this Section 8 (Confidentiality), but in no event may you disclose any of our Confidential Information to any of our competitors (or any of their affiliates) or any employees or contractors of any such competitors. Recipient may additionally disclose the Discloser's Confidential Information to the extent such disclosure is necessary in connection with the enforcement of this Agreement.
- **Compelled Disclosure.** The Recipient may disclose Confidential Information of the Discloser if it is compelled by law to do so, provided the Recipient gives the Discloser prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Discloser's cost, if the Discloser wishes to contest the disclosure. If the Recipient is compelled by law to disclose the Discloser's Confidential Information as part of a civil proceeding to which the Discloser is a party, and the Discloser is not contesting the disclosure, the Discloser will reimburse the Recipient for its reasonable costs of compiling and providing secure access to such Confidential Information.
- **Privacy and User Information.** For information about our data protection practices, please read our privacy policy, located at <http://www.PHM.com/privacypolicy>. This policy explains how we treat User Data and protect your privacy when you use the Services. You agree to the use of User Data in accordance with our privacy policy.
- **User Data.** As described more fully in our privacy policy, you grant us broad rights to use and exploit de-identified data, including de-identified User Data collected by us through your use of the Services, which rights continue even after this Agreement ends. Except for our limited rights to use the User Data set forth throughout this Section 8 and in our privacy policy, we acquire no right, title or interest from you or your Users under this Agreement in or to User Data, including any intellectual property rights therein.

#### 9.0 Warranties.

- **Our Warranties.** We warrant that: (a) we have validly entered into this Agreement and have the legal power to do so; (b) the Services shall perform materially in accordance with the Documentation; and (c) we will not transmit any malicious software to you,

provided it is not a breach of this subpart (c) if you or a User uploads a file containing malicious software into the Services and later downloads that file again. For any breach of a warranty above, your exclusive remedy shall be as provided in Section 12.3 (Termination for Cause) and Section 12.4 (Refund or Payment upon Termination) below.

- Your Warranties. You warrant that you have validly entered into this Agreement and have the legal power to do so, and that you will abide by the restrictions on use of the Services contained herein. If you are acting on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that entity to this Agreement. You represent and warrant that any User Data is truthful, accurate, not misleading, offered in good faith, and that you and your Users have all rights, licenses, permissions and authorizations necessary to upload and transmit such User Data to us.
- **DISCLAIMER. NOTWITHSTANDING ANYTHING TO THE CONTRARY, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SUBJECT ONLY TO SECTION 9.1 AND SECTION 11.1, ALL SERVICES, INFORMATION AND MATERIALS ARE PROVIDED "AS IS", AND WE EXPRESSLY DISCLAIM ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION: (A) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE (WHETHER OR NOT WE KNOW, HAVE REASON TO KNOW, OR HAVE BEEN ADVISED OF ANY SUCH PURPOSE); (B) ANY WARRANTY REGARDING RESULTS OBTAINABLE OR TO BE OBTAINED BY USERS AS A RESULT OF PROVISION OR USE OF THE SERVICES AND MATERIALS PROVIDED HEREUNDER; AND (C) ANY WARRANTY OF UNINTERRUPTED, TIMELY, OR ERROR-FREE OPERATION OF ANY SERVICES. NO ADVICE OR INFORMATION, WHETHER WRITTEN, ORAL OR MULTIMEDIA, OBTAINED BY YOU FROM THE SERVICES SHALL CREATE ANY ADDITIONAL WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.**
- **RISK OF INACCURACY OF INFORMATION. YOU ACKNOWLEDGE THAT MANY FEATURES PROVIDED BY THE SITE ARE INTENDED TO AGGREGATE AND MANAGE THIRD PARTY DATA AND INFORMATION FROM NUMEROUS SOURCES. WE ARE NOT RESPONSIBLE FOR THE ACCURACY, INTEGRITY, QUALITY, LEGALITY, USEFULNESS, OR SAFETY OF SUCH INFORMATION. YOU WAIVE ANY CLAIMS YOU MAY OTHERWISE HAVE, AND YOU AGREE THAT WE WILL NOT BE LIABLE FOR ANY DAMAGES OR INCONVENIENCES YOU MAY SUFFER AS A RESULT OF INACCURATE OR INCOMPLETE DATA OR INFORMATION PROVIDED TO YOU OR YOUR USERS BY THE SERVICE.**
- Beta Services. From time to time we may invite you to try, our products or services that are not generally available to all the customers ("Beta Services"). You may accept or decline any such trial in your sole discretion. Any Beta Services will be clearly designated as Beta, pilot, limited release, developer preview, non-production, or by a description of similar import. Beta Services are provided for evaluation purposes and not for production use, are not supported under our support plan, may contain bugs or errors, and may be subject to additional terms. BETA SERVICES ARE NOT CONSIDERED "SERVICES" HEREUNDER AND ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY. We may discontinue Beta Services at any time in our sole discretion.

## 10.0 Indemnification.

- You shall defend us against any claim, demand, suit or proceeding made or brought against us by a third party: (a) arising out of the receipt or provision of professional or medical services offered, sold, purchased, or arranged via the PHM platform; (b) alleging that User Data or your use of the Services infringes or misappropriates the intellectual property rights of a third party; (c) alleging that User Data or your use of the Services violates applicable law; (d) arising from any data or security breach caused by you; and/or (e) related to a dispute between you and such third party (whether you are a provider or a patient) (a "Claim You Cover"), and you shall indemnify us for any damages, attorney fees and costs as a result of, or for any amounts paid by us in respect of a Claim You Cover; provided that we: (i) promptly give you written notice of the Claim You Cover; (ii) give you sole control of the defense and settlement of the Claim You Cover (provided that you may not settle any Claim You Cover unless the settlement unconditionally releases us of all liability); and (iii) provide to you all reasonable assistance, at your expense.

## 11.0 Limitation of Liability.

- You agree that you will hold harmless PHM and its officers, directors, employees and volunteers from all claims arising out of or related to your access or use of, or your inability to access or use, this Website or the information contained in this Website or other websites to which it is linked. This includes, but is not limited to, information or materials viewed or downloaded from this Website or another website to which it is linked that appear to you or are construed by you to be obscene, offensive, defamatory, or that infringe upon your intellectual property rights. In no event will PHM or the contributors of information to this Website be liable to you or anyone else for any decision made or action taken by you in reliance on such information or for any consequential, special or similar damages, even if advised of the possibility of such damages. If you are a resident of California, you specifically waive California Civil Code §1542, which states, "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."
- EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES. IN NO EVENT SHALL WE HAVE ANY LIABILITY TO YOU FOR ANY BUSINESS INTERRUPTION, LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMERS SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW. HOWEVER, IN SUCH EVENT, YOU AGREE THAT SUCH LIMITATIONS OF LIABILITY ARE REASONABLE, AND ARE FUNDAMENTAL ELEMENTS FOR THE SCOPE OF THE SERVICE AND THE FEES CHARGED TO YOU. YOU UNDERSTAND AND ACKNOWLEDGE THAT WE WOULD NOT BE ABLE TO OFFER THE SERVICE TO YOU WITHOUT THESE LIMITATIONS.

## 12.0 Term and Termination.

- Term. This Agreement commences on the Effective Date and continues until all User subscriptions granted in accordance with this Agreement and/or a Services Agreement

have expired or been terminated or, if you do not have a subscription, until you discontinue use of the Site and Services.

- Termination. A party may terminate this Agreement for cause: (a) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period; or (b) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. We may also terminate this Agreement for any reason upon thirty (30) days written notice to you. Under certain circumstances, company reserves the right not to process your request for scheduling of particular service and in that instance will refund any payment made for that service.
- Payment upon Termination. In no event shall any termination relieve you of the obligation to pay any fees payable to us for the period prior to the effective date of termination.
- Surviving Provisions. Section 6 (Fees and Payment), 7 (Ownership), 8 (Confidentiality), 9.3 (Disclaimer), 10 (Indemnification), 11 (Limitation of Liability), 12.4 (Refund or Payment upon Termination), and 14 (Miscellaneous) shall survive any termination or expiration of this Agreement.

### 13.0 Copyright and Trademark Policies.

It is our policy to respond to notices of alleged copyright infringement which comply with applicable law (including the Digital Millennium Copyright Act) and to terminate the accounts of repeat infringers. Trademark infringement complaints can be submitted to us at [legal@PHM.com](mailto:legal@PHM.com) and will be handled by us according to our policy.

### 14.0 Arbitration.

Except for actions to protect intellectual property rights and to enforce an arbitrator's decision hereunder, all disputes, controversies, or claims arising out of or relating to this Agreement or a breach thereof shall be submitted to and finally resolved by arbitration under the rules of the American Arbitration Association ("AAA") then in effect. There shall be one arbitrator, and such arbitrator shall be chosen by mutual agreement of the parties in accordance with AAA rules. The arbitration shall take place in Atlanta, Florida, and may be conducted by telephone or online. The arbitrator shall apply the laws of the State of Florida, USA to all issues in dispute. The controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The findings of the arbitrator shall be final and binding on the parties, and may be entered in any court of competent jurisdiction for enforcement. Enforcements of any award or judgment shall be governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Should either party file an action contrary to this provision, the other party may recover attorney's fees and costs up to \$1000.00.

- **Jurisdiction and Venue.**  
The courts of Duval County in the State of Florida, USA and the U.S. District Court for the Northern District of Florida, Jacksonville Division shall be the exclusive jurisdiction and venue for all legal proceedings that are not arbitrated under these Terms of Use.

- **Controlling Law.**  
This Agreement shall be construed under the laws of the State of Florida, USA, excluding rules regarding conflicts of law. The application the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded.
- **Force Majeure**  
We shall not be liable for damages for any delay or failure of delivery arising out of causes beyond their reasonable control and without their fault or negligence, including, but not limited to, Acts of God, acts of civil or military authority, fires, riots, wars, embargoes, Internet disruptions, hacker attacks, or communications failures.

#### 15.0 Miscellaneous.

- **Notices.** You agree that we may provide you with notice, including changes to this Agreement, by email, regular mail or postings in your Account.
- **Governing Law/Forum.** This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee, disregarding any conflict-of-laws rules which may direct the application of the laws of another jurisdiction. Venue shall be exclusively in Davidson County, Tennessee.
- **Export Compliance.** The Services, other technology we make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use Services in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.
- **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- **Waiver.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.
- **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- **Attorney Fees.** You shall pay on demand all of our reasonable attorney fees and other costs incurred by us to collect any fees or charges due us under this Agreement following your breach of Sections 6.1 or 6.2 (Payment).
- **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement or any Services Agreement in its entirety, without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization,

or sale of all or substantially all of its assets not involving a direct competitor of the other party. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

- Interpretation. No provision shall be construed against a party by reason of the fact that such party or its legal counsel drafted that provision, notwithstanding any rule of law or any legal decision to the contrary. For purposes of interpreting this Agreement: (a) the terms “herein,” “hereof,” “hereto,” “herewith,” “hereunder,” “hereinafter,” and similar terms shall refer to this Agreement as a whole; (b) the terms “includes” and “including” shall mean “include[ing], without limitation”; (c) references to Sections in any particular Attachment shall refer to Sections in that same Attachment, unless otherwise specified therein; and (d) headings contained herein are for convenience of reference only and shall not affect the interpretation of this Agreement. For purposes of this Agreement, whenever the context requires, the singular number will include the plural, and vice versa.
- Entire Agreement. This Agreement, including all exhibits and addenda hereto and all Services Agreements, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Services Agreement, the terms of such exhibit, addendum or Services Agreement shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your Services Agreement shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.