

End User License & Subscriber Agreement

The subscriber set forth below (“Subscriber” or “you”) expressly and fully agrees to the following terms of use and acknowledges that the terms in this End User License Agreement together with the Service Schedule constitute a legally binding agreement between ChiroFusion LLC doing business as ChiroFusion (“ChiroFusion,” “we,” “our,” or “us”) and the Subscriber. (Together the Service Schedule and the EULA are referred to as the “Agreement.”)

BY USING THE SOFTWARE IN ANY MANNER WHATSOEVER, YOU INDICATE YOUR ACCEPTANCE OF THE AGREEMENT. IF YOU DO NOT AGREE TO THE AGREEMENT, DO NOT ACCESS OR USE THE SOFTWARE IN ANY MANNER WHATSOEVER.

1. Grant of License

Subject to the terms and conditions herein, ChiroFusion hereby grants Subscriber a non-exclusive, nontransferable license to access and use the Software via ChiroFusion’s application server over the Internet for the sole purpose of creating and maintaining documentation related to Subscriber’s medical practice and, if Subscriber has purchased the applicable Software modules, billing for services provided by Subscriber’s medical practice. ChiroFusion, in its sole discretion, reserves the right to delete, modify, or amend the Software at any time for any reason, without notification.

2. Subscriber Responsibilities and Use of the ChiroFusion Software

Subscriber shall use the Software only for its internal business operations and shall not permit the Software to be used by or for the benefit of anyone other than Subscriber without ChiroFusion’s prior written permission. Subscriber is responsible for (i) providing data in the format requested by or required by the Software or ChiroFusion service features; (ii) prohibiting any of Subscriber’s employees, independent contractors or other agents or representatives who have access to the Software from transmitting to or sharing password codes that allow access to the Software with any other person; (iii) providing Subscriber’s patients with access to the Patient Portal and sharing information with patients through the Patient Portal; (iv) using the Software and services in accordance with all applicable laws and regulations; and (v) the format, content, completeness, accuracy and timeliness of any claims for services produced and transmitted through ChiroFusion and any integrated billing service.

When using the Software, Subscriber will use its best efforts to ensure that Subscriber does not introduce any viruses, worms, unauthorized cookies, trojans, malicious software, “malware,” or other program, routine, subroutine, or data designed to disrupt the proper operation of the Software or any part thereof or any hardware or software used by ChiroFusion in connection therewith, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action, will cause the Software or any part thereof or any hardware, software or data used by ChiroFusion in connection therewith, to be improperly accessed, destroyed, damaged, or otherwise diminished, made inoperable or inaccessible.

3. Protection of Intellectual and Other Property

Title to any proprietary rights in the Software, or any components thereof (including without limitation all copyrights, patents and trademarks and applications therefore, and all trade secrets therein), shall remain in and be the sole and exclusive property of ChiroFusion or its licensors, as applicable. Subscriber acknowledges and agrees that all copyright, trade secret and other intellectual property rights of whatever nature in and to the Software are and shall remain the property of ChiroFusion or its licensors, as

appropriate, and nothing in the Agreement shall be construed as transferring any aspects of such rights to Subscriber or any other third party.

4. Data Migration

If you have purchased Data Migration, ChiroFusion will follow our standard process to migrate the patient demographics at a minimum from your existing EHR/EMR. Additional data will be migrated if possible. ChiroFusion makes no guarantee any information can be migrated. If there are difficulties with your Data Migration, you will be contacted as soon as possible to discuss alternative methods and remedies that we use to assist our new customers with the inputting of patient demographic data and additional information from your existing EHR/EMR into ChiroFusion.

5. Subscriber Data

Subscriber shall own all data input by Subscriber into the Software ("Subscriber Data"). ChiroFusion will not disclose to any person any Subscriber Data except that ChiroFusion may disclose such Subscriber Data (i) as provided in the Agreement, (ii) as required by law or legal process, provided that in doing so ChiroFusion gives prompt written notice to Subscriber of any request or demand for such disclosure that is received by ChiroFusion to allow Subscriber the opportunity to obtain a protective order except to the extent prohibited by applicable law or court order. Notwithstanding anything herein to the contrary, Subscriber shall be permitted electronic access to Subscriber Data residing on ChiroFusion's application server at all times, except when Subscriber's access has been suspended or terminated, during a period of repair, or during scheduled maintenance of the Software or the application server.

Subscriber has the ability to offer Subscriber's patients access to the ChiroFusion Patient Portal once it becomes available. Information specifically entered in the Patient Portal by the patient for their exclusive personal use, and not on behalf of or for the specific access to or use by Subscriber, belongs exclusively to that patient. Information specifically entered by a patient in the Patient Portal and shared by the patient with Subscriber will be incorporated into Subscriber Data except where prohibited by law.

6. Confidential Information

All information contained in our website, printed materials and any and all other materials, all of our logos, designs, marks, indicia, statements, and technologies ("Confidential Information") are owned exclusively by us for our explicit and exclusive use and are protected by copyright laws. Permission to use, copy or distribute such information may be granted for non-commercial use only, and only in conjunction with the proper and legal intellectual property notices clearly displayed. You agree to preserve ChiroFusion's Confidential Information from disclosure or improper use. You also agree not to furnish or disclose Confidential Information to any person not privileged to have it and without ChiroFusion's written consent. The term "Confidential Information" does not include: (i) any information known prior to such disclosure free of any obligation to keep it confidential, and (ii) any information that is within the public domain at the time of disclosure or that subsequently enters the public domain through no action on your part or any person having an obligation of confidence to the receiving party respecting such information.

8. Termination

ChiroFusion may terminate Subscriber's access to any part of the Software, for any reason whatsoever and without notice. For example, if you tamper with, corrupt or abuse the Software or services, fail to pay in accordance with this Agreement, breach the Business Associate Agreement contained herein, or conduct any illegal activities through or by our Software or services, we will

terminate your account immediately and without warning. We will prosecute to the fullest extent of the law. Subscriber may terminate this Agreement and use of the Software by providing at least seven (7) days' written notice sent by email. The notice must specify the termination date. ChiroFusion will store your secure electronic health records data for seven days after termination of service. It is the Subscriber's responsibility to export their data prior within seven (7) days of account termination. Data created in integrated, third-party systems may be stored by that vendor. Please contact those vendors directly for more information. Data in third-party billing systems may not be available for extraction unless requested to that company directly and may require an additional fee. ChiroFusion will not refund any setup costs or subscription upon termination.

9. Payment

During the Term, Subscriber shall pay to ChiroFusion a licensing and hosting fee for access to and use of the Software (the "License and Hosting Fee", also referred to as the "Subscription"). The License and Hosting Fee for the Initial Term is set forth on the Service Schedule. Unless otherwise indicated in the Service Schedule, the License and Hosting Fee will be charged monthly with the first License and Hosting Fee being due on the Effective Date. At least thirty (30) days prior to the end of the Initial Term and each subsequent Renewal Term, ChiroFusion shall provide Subscriber with notice of any changes to the License and Hosting Fee that will take effect during a Renewal Term. Unless Subscriber terminates this Agreement prior to the start of the Renewal Term, such changes in the License and Hosting Fee will go into effect on the first day of the Renewal Term.

If the payment form you provided expires, we will notify you in advance to update your payment sources. If during the Term, payment is not received by within three (3) business days of the due date and the form(s) of payment you provided is unavailable for automatic payment, then your access to the Software will be suspended until all License and Hosting Fees then due and owing are paid in full. Payments declined or charged back for any reason will incur a \$25 fee payable immediately. A late fee of \$25 may also be assessed if payment is has not been received within three (3) business days of the due date.

The payment information you provided will be handled, managed and stored in a commercially reasonable manner. This information is encrypted and stored securely and safely, or transferred securely and safely to a qualified and trusted third party for processing, and used exclusively and solely for the purpose of paying the License and Hosting Fee and any other purposes authorized by you.

10. Training and Service

ChiroFusion offers up to four (4) hours of training per office and unlimited live support for an additional monthly charge. We do our best to respond to all tech support calls within 24 business hours.

11. Business Associate Agreement

You are a Covered Entity under the federal Health Insurance Portability and Accountability Act ("HIPAA") and its implementing regulations, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, Standards for Privacy of Individually Identifiable Health Information, and 45 C.F.R. Part 164, Subpart C, Security Standards for the Protection of Electronic Protected Health Information (collectively, the "Privacy and Security Standards"). As a Covered Entity, you represent that you are compliant with HIPAA. We are your Business Associate, as that term is defined in HIPAA. The Health Information Technology for Economic and Clinical Health Act (42 U.S.C. §§ 17921-17954), and regulations promulgated thereunder (collectively, the "HITECH Act") impose certain obligations upon Business Associates with respect to compliance with the Privacy and Security Standards. Both parties are committed to complying with the Privacy and Security Standards, and this Business Associate Agreement sets forth the terms on which the parties shall work

cooperatively to achieve compliance. Terms used in this Business Associate Agreement shall have the same meanings as those terms in the Privacy and Security Standards and the HITECH Act. Any and all references in this Section 11 to a section in the Privacy and Security Standards, the HITECH Act or any other HIPAA rules and regulations mean the section as in effect or as amended.

A. Compliance with Privacy and Security Obligations. Consistent with Section 13404(a) of the HITECH Act, we agree that the requirements of the HITECH Act that relate to privacy and security and are made applicable with respect to you shall also be applicable to us, and are hereby incorporated into and made a part of this Business Associate Agreement. Without limitation, we agree that:

(i) Section 13401(a) of the HITECH Act causes 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316 to apply directly to us in the same manner that such sections apply to you; and

(ii) Section 13404(a) of the HITECH Act causes the provisions of 45 C.F.R. § 164.504(e) governing use and disclosure of PHI to apply directly to us in the same manner that such section applies to you.

B. Permitted Uses and Disclosures of Protected Health Information. Pursuant to the Agreement, we shall provide services for and on behalf of you that may involve the use and/or disclosure of Protected Health Information. As permitted by the terms of the Agreement and as otherwise permitted by the Privacy and Security Standards, we may make any and all uses and disclosures of Protected Health Information necessary to perform our duties and obligations to you. All other uses and disclosures, unless specifically described herein, are prohibited. We agree to use, disclose or request only the minimum Protected Health Information necessary to perform or fulfill a specific function required or permitted hereunder. We will comply with any guidance issued by the Secretary regarding compliance with the minimum necessary standard.

C. Business Activities of ChiroFusion. We shall not, and shall ensure that our partners, directors, officers, employees, contractors and agents do not, use or disclose Protected Health Information received from you in any manner that would constitute a violation of the Privacy and Security Standards if used by you, except that we may use or disclose Protected Health Information: (a) for our proper management and administrative services in accordance with the Agreement between us and you; or (b) to carry out our legal responsibilities. Disclosures for these purposes are only valid if the disclosure is required by law, or if we have obtained reasonable assurances from the person to whom the information is disclosed that the disclosed information will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies us of any instances of which it is aware in which the confidentiality of the information has been breached.

D. Third Parties and Agents/Subcontractors.

If we disclose Protected Health Information to a third party or one of our agents/subcontractors in order for us to fulfill our duties and obligations to you, we shall obtain prior to making any such disclosure: (a) reasonable assurances from such third party or agent/subcontractor that PHI will be held confidential, as provided pursuant to this Business Associate Agreement, and disclosed only as required by law or for the purposes for which it was disclosed to the third party or agent/subcontractor; (b) an agreement by the third party or agent/subcontractor to be bound by the same restrictions, terms and conditions that apply to us pursuant to this Business Associate Agreement; (c) reasonable assurances from the third party or agent/subcontractor that it will implement reasonable and appropriate safeguards to protect any electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of you or us; and (d) an agreement from the third party or agent/subcontractor to immediately notify us of any breaches of the confidentiality of the disclosed Protected Health Information, to the extent it has obtained knowledge of such breach. Upon request therefore, we shall furnish you with documentation regarding such third party or agent/subcontractor assurances and agreements.

In furtherance of the foregoing, we shall implement and maintain sanctions against third parties or agents/subcontractors, if any, who violate restrictions and conditions imposed consistent with this Section 10.B.iv(a). We shall terminate any agreement with a third party or agent/subcontractor who fails to comply fully with such restrictions and conditions or, if termination is not feasible, report all such violations promptly and in writing to you.

E. **Safeguards Against Misuse of Information.** We agree that we will implement all appropriate and commercially reasonable safeguards consistent with the Privacy and Security Standards to maintain the security of, and prevent the improper use or disclosure of, Protected Health Information. We agree to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic Protected Health Information that we create, receive, maintain or transmit on behalf of you, as required by the Privacy and Security Standards. In the event of any improper use and/or disclosure of Protected Health Information, we shall work, and where practicable you shall work cooperatively with us, to implement procedures for mitigating the harmful effects of such improper use and/or disclosure.

F. **Breach Notification.** We shall report in writing to you (i) any use or disclosure of PHI that is not authorized by the Agreement including, but not limited to, Security Incidents, and (ii) any Breach of Unsecured PHI. We shall deliver such written notice within ten (10) days of the date on which we, or any member of our workforce or one of our agents (except the person(s) responsible for the Breach) became aware, or in the exercise of reasonable diligence should have become aware, of such unauthorized use or disclosure or Breach. Notice of any unauthorized use or disclosure or Breach shall (i) identify each individual whose Unsecured PHI has been, or is reasonably believed by us to have been, accessed, acquired, used or disclosed in such Breach, and (ii) provide with respect to each such individual all information required to be included in the notice of Breach to be delivered by you to each such individual pursuant to 45 C.F.R. § 164.404.

G. **Access to Information.** Throughout the term of this Business Associate Agreement, we shall make available to you such Protected Health Information provided to us by you for so long as such information is maintained. In the event any individual requests access to Protected Health Information directly from us, we shall forward such request to you. Any denials of access to the Protected Health Information requested shall be your responsibility.

H. **Availability of Protected Health Information for Amendment.** Upon receipt of a request from you to update Protected Health Information for an individual, we agree to incorporate any such amendment as may be required by 45 C.F.R. § 164.526. We shall refer to you any requests received by us requesting amendments to Company-provided PHI. Any review and consideration of a requested amendment shall be your responsibility.

I. **Accounting of Disclosures.** We agree to document such disclosures of Protected Health Information and information related to such disclosures as would be required for you to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528. Upon request from you, we shall make available such information as is in our possession and is required for you to make an accounting, as required by 45 C.F.R. § 164.528. We shall provide you with the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the Protected Health Information, and, if known, the address of such recipient entity or person; (iii) a brief description of the Protected Health Information disclosed; and (iv) a brief statement of the purpose of such disclosure, which shall include an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to us, we shall forward such request to you. It shall be your responsibility to prepare and deliver any such accounting requested.

J. Our Performance of Your Obligations. To the extent we are to carry out one or more of your obligations under the Privacy Standards, at Subpart E of 45 C.F.R. Part 164, we will comply with the requirements of the Privacy Standards that apply to you in the performance of such obligations.

K. Availability of Books and Records. We hereby agree to make our internal practices, books and records relating to the use and disclosure of Protected Health Information received from, created or received by us on behalf of you, available to the Secretary (or its designee) for purposes of determining either your or our compliance with the Privacy and Security Standards, subject to attorney-client and other applicable privileges.

L. Your Obligations. You agree that you will not request that we use or disclose Protected Health Information in a manner that would not be permissible under the Privacy Standards if done by you. If applicable to us, you will notify us as soon as practicable of any request for restrictions by an individual of the use or disclosure of the individual's Protected Health Information that you have agreed to accept. You will also notify us, if applicable, of any changes in, withdrawal or revocation of any authorization or other permission(s) granted to you by an individual for the use and/or disclosure of the individual's Protected Health Information.

12. Disclaimers and Limitations of Liability

THE SOFTWARE AND ASSOCIATED SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTIES OF ANY KIND. CHIROFUSION SPECIFICALLY DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SOFTWARE, OPERATION OF THE SOFTWARE, ANY PARTICULAR APPLICATION OR USE OF THE SOFTWARE, AND THE SERVICES PROVIDED BY CHIROFUSION. CHIROFUSION MAKES NO WARRANTY (I) THAT THE SOFTWARE AND ASSOCIATED SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE, OR VIRUS FREE; OR (II) REGARDING ANY THIRD PARTY SOFTWARE, SERVICES, WEBSITES OR TOOLS INCORPORATED INTO THE SOFTWARE. IN NO EVENT SHALL CHIROFUSION BE HELD LIABLE FOR ANY DAMAGES, LOSSES, COSTS OR LIABILITIES ASSOCIATED WITH (I) CHIROFUSION'S INABILITY TO PERFORM ANY OR ALL OF THE SERVICES DUE TO IMPROPERLY FORMATTED OR CORRUPT FILES, VIRUSES OR INCOMPATIBILITY; (II) HUMAN OR MACHINE ERRORS, OMISSIONS, LOSSES OF SUBSCRIBER DATA, DELAYS IN TRANSMISSION OF CLAIMS, OR DAMAGE TO SUBSCRIBER DATA OR MEDIA; (III) UNAUTHORIZED ACCESS TO OR ALTERATION OF ANY SUBSCRIBER DATA, ELECTRONIC TRANSMISSIONS OR TRANSACTIONS INITIATED, RECEIVED BY OR THROUGH THE SOFTWARE; (IV) ANY THIRD PARTY SOFTWARE, WHETHER OR NOT SUCH THIRD PARTY SOFTWARE IS INCORPORATED INTO THE SOFTWARE OR SOLD TO SUBSCRIBER BY CHIROFUSION; OR (V) ANY "HYPERLINKS" TO THIRD PARTY SITES THAT ARE PROVIDED WITHIN THE SOFTWARE.

To the extent not prohibited by applicable law, under no circumstances, including but not limited to negligence, shall we, our subsidiaries, affiliates or licensors, be liable for any direct, indirect, incidental, special, consequential, punitive or exemplary damages that arise from the use, inability to use, or the results of use of the Software, our services or any part of our site. In no event shall our total liability to you for all damages, losses, and causes of action, whether in contract, tort, or otherwise, including but not limited to negligence, exceed one hundred dollars (\$100).

13. Indemnity

You agree to indemnify and hold ChiroFusion and its subsidiaries, affiliates, shareholders, officers, directors, agents, licensors, suppliers, other partners, employees, and representatives harmless from any claims or demands, including reasonable attorneys' fees, made by any third party due to or arising out of your use of or connection to our Software, our services, our site, your violation of this Agreement, or your violation of any rights of another.

16. Modifications to End User License Agreement

Please check this site often, as we reserve the right to change the End User License Agreement or policies regarding the use of the Software at any time. <http://www.chirofusionsoftware.com/eula>

17. Governing Law

These terms of use shall be governed by and construed in accordance with the laws of the State of Florida and the laws of the United States, without giving effect to any conflicts of law. You agree that any action at law or in equity arising out of or related to these terms shall be filed only in the state or federal courts located in Palm Beach County, Florida, and you hereby consent and submit to the personal jurisdiction of such courts for the purpose of litigating any such action. If any provision of these terms of use shall be unlawful or for any reason unenforceable, then that provision shall be deemed severable from these terms of use and shall not affect the validity and enforceability of any remaining provisions. You acknowledge and agree that in the event of a breach or anticipated breach of our intellectual property rights, irreparable damage would be inflicted, and therefore we shall be entitled to immediate court-ordered injunctive relief to halt any apparent or anticipated violation of this Agreement. Said injunctive relief shall be in addition to any other remedies, including punitive damages, available at law or in equity. Our failure to exercise or enforce any right or provision of these terms does not constitute a waiver of such right or provision.

18. Relationship of the Parties

Nothing in this Agreement will create or imply an agency relationship between the parties, nor will this Agreement be deemed to constitute a joint venture or partnership between the parties.

19. Severability

If any term of this Agreement is found to be unenforceable or contrary to law, it shall be modified to the minimum extent necessary to make it enforceable, and the remaining portions of this Agreement shall remain in full force and effect.

20. Survivability

Sections 3, 5, 11, 12, and 16 survive the expiration or termination of the Terms of Use for any reason whatsoever.

21. Force Majeure

No party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay or failure to perform is caused by events or circumstances beyond the delaying party's reasonable control.

22. Waiver and Modification

The waiver by any party of any breach of covenant will not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the party waiving its rights.

23. Entire Agreement

The End User License Agreement together with the Service Schedule and any Attachments, Exhibits, or Statements of Work constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements, proposals, negotiations, representations, or communications relating to the subject matter.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers or representatives duly authorized to do so.

ChiroFusion LLC dba ChiroFusion
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