

SOFTWARE AS A SERVICE, MASTER SERVICE AGREEMENT

WHEREAS, Carebility has the right to license access and use of the Services (defined below); and

WHEREAS, Customer desires to access and use the Services, all in accordance with the terms and conditions hereof;

NOW, THEREFORE, in consideration of the foregoing, and in reliance on the mutual agreements contained herein, the parties agree as follows:

Definitions

1. **"Services"**: The web services described and specified on the applicable Sales Order and any updates or upgrades to such services that may be generally released by Carebility to customers from time to time.
2. **"Carebility Technology"**: The computer hardware, software, and other tangible equipment and intangible computer code necessary to deploy and serve the Services via the Site.
3. **"Site"**: Carebility's website, carebility.com, including the Carebility Technology.
4. **"Authorized Users"**: The number of identifiable unique persons consisting of Customer's personnel and outside consultants who are authorized to access and use the Services. Authorized Users may include Customer's third-party consultants, outsourcers, contractors, and other service providers.
5. **"Affiliate"**: With respect to Customer, any parent or subsidiary corporation, and any corporation or other business entity controlling, controlled by, or under common control with Customer, which agrees in writing to be bound by all the obligations of Customer hereunder.
6. **"Internet Data Centers"**: Any of the facilities owned or controlled by Carebility and used to provide the Services. These facilities house the Carebility Technology used for the provision of Services. All Internet Data Centers shall be located in the United States unless prior written consent is obtained from Customer.
7. **"Customer Data"**: Customer's information or other data processed, stored, or transmitted by, in, or through the Services, including, without limitation, personal information relating to Customer's personnel, customers, and prospective customers, such that the identity of such persons is apparent or can reasonably be determined. Customer Data may include "Protected Health Information" and/or "Electronic Protected Health Information" as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act.
8. **"Sales Order"**: A document indicating it is a "sales order," which incorporates the terms of this Agreement in written form if mutually agreed upon and duly executed by the parties.
9. **"Proprietary Rights"**: Any and all rights, whether registered or unregistered, related to patents, copyrights, confidential information, know-how, trade secrets, moral rights, contract or licensing rights, trade names, domain names, trade dress, logos, animated characters, trademarks, service marks, and other intellectual or industrial property.

Subscription License Grant

Subject to the terms and conditions hereof, during the term of this Agreement, Carebility hereby grants to Customer and its Affiliates, limited to the extent of Authorized Users and solely for Customer's internal business purposes, a non-exclusive, non-transferable, worldwide right and license to access the Site and use the Services. All rights not expressly granted to Customer herein are expressly reserved by Carebility.

Use Restrictions

Customer covenants and agrees that its use of the Services will comply with this Agreement and all applicable laws and regulations, including trade secret, copyright, trademark, and export control laws. Without limiting the generality of the foregoing, Customer shall not, nor shall it permit or assist others to:

1. Abuse or fraudulently use the Services.
2. Process or permit the processing of data for any third party not expressly authorized herein to access and use the Services.
3. Attempt to copy, reverse-engineer, decompile, disassemble, create derivative works from, or otherwise attempt to derive the source code of any part of the Carebility Technology.
4. Access, alter, or destroy any information belonging to any other customer of Carebility by fraudulent means or device, or attempt to do so.

Evaluation License Option

If the applicable Sales Order expressly provides for the evaluation license option, Customer is hereby granted a royalty-free, non-exclusive, non-transferable, worldwide right and license to access and use the Services for evaluation purposes only, for the evaluation term and for the number of Authorized Users specified on the Sales Order. Technical support services will be provided during the evaluation period at no charge. For the duration of the evaluation license term, the Services will be provided **"AS IS," WITHOUT ANY WARRANTY EXPRESS OR IMPLIED**, including without limitation the service level warranty or any indemnity provided herein, and all implied warranties, including without limitation, are hereby disclaimed.

Upon the expiration of the evaluation term, this Agreement will terminate unless Customer pays the use fees as specified in the applicable Sales Order, in which case this Agreement shall continue without this evaluation license.

Security

Customer is solely responsible for acquiring and maintaining technology and procedures to secure its link to the Internet. As part of the Services, Carebility shall implement reasonable security procedures consistent with prevailing industry standards to protect Customer Data from unauthorized access (the "Security Standard").

Provided that Carebility complies with the Security Standard, the parties agree that Carebility shall not, under any circumstances, be held responsible or liable for situations:

1. Where data or transmissions are accessed by third parties through illegal or illicit means.
2. Where data or transmissions are accessed through the exploitation of security gaps, weaknesses, or flaws unknown to Carebility at the time.

Carebility will report any unauthorized access to Customer Data promptly upon discovery, in accordance with the Business Associate Agreement. Carebility will use diligent efforts to promptly remedy any breach of security that permitted such unauthorized access.

Set-Up of Services

On or before the Go Live date specified in the applicable Sales Order, Carebility will complete all tasks required to make the Services accessible to Customer.

Access Codes for Services

Carebility will permit access to the Services only over the Internet using access codes assigned by Carebility. Access codes will be deemed the Confidential Information of both parties.

Technical Requirements for Services

1. **Capacities:** The Services shall support the Authorized User requirements and other requirements specified in the applicable Sales Order.
2. **Scalability:** The Services shall be scalable to meet any forecasted increases specified in the applicable Sales Order. Customer acknowledges that increasing the Authorized User or data storage requirements may lead to increased fees, as outlined in the Sales Order.
3. **Internet Data Centers:** The Services will be provided through Internet Data Centers configured to meet prevailing industry standards for fireproofing, power and backup generation, structural integrity, seismic resistance, and protection

against natural and man-made disruptions. These facilities will also be secured against physical and electronic intrusion consistent with prevailing industry standards. Carebility may outsource Internet Data Center operations to subcontractors but will remain responsible and liable for their performance as if performed by Carebility.

Backups

At no additional charge, Carebility shall make periodic incremental backups ("Incremental Backups") and periodic full backups ("Full Backups") of Customer Data archived with Carebility Technology. Backups will be stored off-site in a secure facility designed for emergency use.

Monitoring of Customer's Use

Carebility reserves the right to internally monitor Customer's usage of the Site and Services.

No Commingling of Customer Data

The Services will be operated in an environment where:

1. All Customer Data is stored in files completely separate from those of other Carebility customers, or
2. Files containing Customer Data are partitioned sufficiently to protect their security and privacy.

Purchase of Additional Services

Customer may purchase additional services through a Sales Order. These purchases will be governed by the terms of this Agreement. Any terms or conditions provided by Customer in its sales order or other documents that differ from this Agreement shall not be binding unless expressly accepted in writing by Carebility.

Subscription Fees

Customer shall pay periodic subscription fees for the Services and technical support as specified in the applicable Sales Order.

Taxes

All fees are exclusive of taxes or duties. If Carebility is required to pay or collect any federal, state, local, value-added tax, or duty on fees charged under this Agreement, excluding taxes on Carebility's net income, such taxes and/or duties will be billed to and paid by Customer upon receipt of Carebility's invoice and supporting documentation.

Technical Support, Training, and Consulting Services

During the term of this Agreement, Carebility shall provide technical support via email or telephone at no additional charge. Additional services, training, or consulting services will be provided on a time and materials ("T&M") basis:

1. Customer shall pay for time spent performing such services, plus materials, taxes, and reimbursable expenses.
2. Customer shall give advance approval of costs associated with any additional services, training or consulting.
3. Rates for such services shall reflect Carebility's then-current standard rates.

Carebility reserves the right to require non-refundable fees or deposits before commencing services.

Contacts

Customer shall designate a principal technical contact and an Authorized User administrator contact. Customer may update these contacts by emailing support@carebility.com.

Proprietary Rights Ownership

Ownership of the Proprietary Rights in the Site, Services, and Carebility Technology shall remain exclusively vested in Carebility and its licensors. Customer also assigns to Carebility any rights to suggestions, ideas, feedback, or recommendations provided by Customer personnel regarding the Services.

The **carebility.com** domain name, product names, and logos associated with the Services are trademarks of Carebility or third parties. No right or license is granted to use them.

Mutual Exchange of Confidential Information

The parties anticipate that each may disclose confidential information to the other. Accordingly, the parties desire to establish in this Section terms governing the use and protection of certain information one party ("Owner") may disclose to the other party ("Recipient").

Definition of Confidential Information

For purposes of this Agreement, "Confidential Information" means:

1. The terms and conditions of this Agreement.
2. Non-public aspects of Carebility's Site, the operation thereof, Carebility Technology, the Services and additional services provided by Carebility, and Carebility's business and technical information and data.
3. Customer Data, and non-public aspects of Customer's technology, computer programs, business and technical information, and data.

Confidential Information also includes information that, although not related to the Services or this Agreement, is nevertheless disclosed hereunder. Such information is disclosed by an Owner or its affiliate to Recipient in document or other tangible form bearing an appropriate legend indicating its confidential or proprietary nature, or, if initially disclosed orally or visually, is identified as confidential at the time of disclosure and summarized in writing, marked with such a legend, and provided to Recipient within fifteen (15) days of the initial disclosure.

Restrictions on Use and Disclosure

Recipient may use Owner's Confidential Information only for the purposes of this Agreement and shall protect such Confidential Information from disclosure to others by using the same degree of care it uses to protect its own proprietary information of like importance, but in no case less than a reasonable degree of care.

Recipient may disclose Confidential Information received hereunder only as reasonably required to perform its obligations under this Agreement and only to its employees who have a need to know for such purposes and who are bound by signed, written agreements to protect the received Confidential Information from unauthorized use and disclosure.

Exclusions

The restrictions on the use and disclosure of Confidential Information shall not apply to information that:

1. Is in the possession or control of Recipient at the time of its disclosure under this Agreement.
2. Becomes publicly known through no wrongful act of Recipient.
3. Is received by Recipient from a third party free to disclose it without obligation to Owner.
4. Is independently developed by the Recipient as evidenced by written and dated records, without breach of this Agreement.
5. Is the subject of written permission to disclose provided by Owner.

The Recipient may disclose Confidential Information of Owner as required by a governmental agency or by operation of law, provided that Recipient gives Owner written notice as soon as practicable and reasonably cooperates with Owner to contest such disclosure.

Data Use and HIPAA/HITECH Compliance

Carebility shall comply with:

1. HIPAA, as amended by HITECH.
2. The terms and conditions of the Business Associate Agreement executed between Customer and Carebility.

Customer grants Carebility the right to generate statistical reports using Customer Data elements that do not identify Customer or its Affiliates.

General Skills and Knowledge

Notwithstanding anything to the contrary in this Agreement, Customer agrees that Carebility is not prohibited from utilizing any skills or knowledge of a general nature acquired during the course of providing the Services, including information publicly known, publicly available, or that could reasonably be acquired in similar work performed for another customer of Carebility.

Customer Representations and Warranties

Customer represents and warrants that:

1. The performance of its obligations and use of the Services (by Customer and its Authorized Users) will not violate any applicable laws or regulations or cause a breach of any agreements with third parties, nor unreasonably interfere with the use of Carebility's services by other Carebility customers.
2. Carebility does not monitor the content of information passing through the Services to verify accuracy or legal compliance. Customer agrees to use commercially reasonable efforts to ensure that the information it and its Authorized Users transmit complies with all applicable laws and regulations, whether now in existence or enacted in the future.

Customer acknowledges that Carebility is required by law to report any occurrence of Medicare or Medicaid abuse or fraud.

Breach by Customer

In the event of any breach by Customer of the above representations or warranties, in addition to any other remedies available at law or in equity, Carebility will have the right to immediately suspend any Services if deemed reasonably necessary to prevent harm to Carebility and its business. Carebility will provide notice to Customer and an opportunity to remedy the breach.

Carebility Representations and Warranties

Carebility represents and warrants that:

1. It has the legal right to enter into this Agreement and perform its obligations hereunder.
2. The performance of its obligations and delivery of the Services to Customer will not violate any applicable laws or regulations of the United States or cause a breach of any agreements between Carebility and any third parties.

In the event of a breach by Carebility of the foregoing warranties, Customer's sole remedy shall be the termination of this Agreement upon written notice to Carebility.

Limited Warranty

Carebility represents and warrants that the Services will:

1. Conform to all material operational features as described in the applicable Sales Order.
2. Be free of errors and defects that materially affect the performance of such features (the "Limited Warranty"), provided that Customer notifies Carebility of any non-conformity, error, or defect.

Customer's sole and exclusive remedy for breach of this Limited Warranty shall be the prompt correction of non-conforming Services at Carebility's expense.

Warranty Disclaimers

EXCEPT FOR THE LIMITED WARRANTY PROVIDED ABOVE, NEITHER CAREBILITY NOR ANY OF ITS SUPPLIERS OR

RESELLERS MAKES ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. CAREBILITY AND ITS SUPPLIERS SPECIFICALLY DISCLAIM THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, AND DATA ACCURACY.

SOME STATES DO NOT ALLOW DISCLAIMERS OF IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY. CUSTOMER ACKNOWLEDGES THAT NO REPRESENTATIONS OTHER THAN THOSE CONTAINED IN THIS AGREEMENT HAVE BEEN MADE REGARDING THE SERVICE AND THAT CUSTOMER HAS NOT RELIED ON ANY REPRESENTATION NOT EXPRESSLY SET OUT IN THIS AGREEMENT.

CAREBILITY DOES NOT WARRANT THAT THE SERVICE OR SITE WILL MEET CUSTOMER'S REQUIREMENTS, THAT THE SERVICE OR SITE WILL OPERATE IN THE COMBINATIONS CUSTOMER MAY SELECT FOR USE, OR THAT THE OPERATION OF THE SERVICES OR SITE WILL BE UNINTERRUPTED OR ERROR-FREE.

FURTHER, CUSTOMER ACKNOWLEDGES AND AGREES THAT CAREBILITY HAS NO CONTROL OVER THE INTERNET AND IS NOT LIABLE FOR THE DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF THE SERVICES.

Disclaimer of Actions of Third Parties

Carebility does not and cannot control the flow of data to or from Carebility Technology and other portions of the Internet. Such data flow depends on the performance of Internet services provided or controlled by third parties.

At times, actions or inactions of such third parties can impair or disrupt Customer's connections to the Internet (or portions thereof). Although Carebility will use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, Carebility cannot guarantee that such events will not occur. **CAREBILITY DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO THE PERFORMANCE OR NON-PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES THAT ARE NOT CAREBILITY'S SUBCONTRACTORS.**

Intellectual Property Indemnity

Except for third-party software, including without limitation open-source software, Carebility will indemnify, defend, and hold harmless Customer and its Affiliates from and against any lawsuit, liability, loss, cost, or expense arising out of a third-party claim made against Customer that Carebility Technology or Services infringe upon any U.S. intellectual property right of a third party, provided that Carebility is notified in writing of such claim promptly after the claim is made upon Customer.

Carebility shall have the right to control any defense of the claim. In no event shall Customer settle any such claim without Carebility's prior written approval. Carebility shall have no liability or obligation if the claim arises from:

1. Any alteration or modification to Carebility Technology or Services other than by Carebility.
2. Any combination of Carebility Technology or Services by Customer with other programs or data not furnished by Carebility.
3. Any use by Customer of Carebility Technology or Services outside the scope of this Agreement.

Options for Infringement Claims

If any party is enjoined from using the Carebility Technology, or if Carebility believes that the Carebility Technology may become the subject of a claim of intellectual property infringement, Carebility, at its option and expense, may:

1. Procure the right for Customer to continue to use the Services.
2. Replace or modify the Carebility Technology to make it non-infringing, provided, however, that the Services continue to conform to the descriptions and/or specifications provided in the applicable Sales Order.
3. Terminate this Agreement, in which case Carebility shall refund to Customer any and all subscription fees paid in advance for Services not provided and, at Customer's request and free of charge, provide the Customer Data in a database document format.

This Section and the preceding Section set forth the entire liability of Carebility to Customer for any infringement by the Carebility Technology or Services of any intellectual property right of a third party. Notwithstanding the foregoing, this Section does not apply to third-party software, including without limitation open-source software.

Disclaimer of Incidental and Consequential Damages

EXCEPT FOR INDEMNITY OBLIGATIONS EXPRESSLY PROVIDED HEREIN AND ANY VIOLATION OF CONFIDENTIALITY OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER UNDER ANY THEORY, INCLUDING CONTRACT AND TORT (INCLUDING NEGLIGENCE AND STRICT PRODUCTS LIABILITY), FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, EVEN IF THE PARTY CAUSING SUCH DAMAGES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY.

Liability Cap

Except for Carebility's indemnity obligations expressly provided herein and Carebility's confidentiality obligations, in no event shall Carebility's aggregate liability, including liability arising out of contract, negligence, strict liability in tort, or warranty, exceed the total subscription fees payable by Customer for the six (6) billing periods immediately preceding the claim for such liability.

Term of Agreement

The initial term of this Agreement shall commence as of the Effective Date and continue for a period of **thirty (30) days**. The initial term shall automatically renew for successive one (1) month terms unless either party notifies the other in writing not less than thirty (30) days prior to the expiration of the current term of its intention not to renew.

Both the initial term and any renewal term are subject to earlier termination as otherwise provided herein. Either party may choose not to renew this Agreement without cause for any reason.

Term of Sales Order

Any Sales Order created under this Agreement shall commence immediately upon execution by both parties and shall continue as provided in the Sales Order. Notwithstanding anything to the contrary herein or in any Sales Order, all existing Sales Orders shall terminate upon the expiration or termination of this Agreement.

Termination for Cause

If either party fails to comply with any of the material terms and conditions of this Agreement or a Sales Order, including the payment of any subscription license fee or reimbursement due and payable under this Agreement, the non-defaulting party may terminate this Agreement and/or any or all Sales Orders, along with all license rights, upon fifteen (15) days' written notice to the defaulting party specifying the breach. If the defaulting party remedies all specified breaches within the notice period, termination shall not take effect.

Termination by Carebility for End of Life

Carebility intends to provide and support the Services for as long as Customer renews in accordance with the applicable Sales Order. However, if Carebility determines, in its sole discretion, that it is no longer feasible to support the Services, Carebility may terminate this Agreement for end-of-life purposes at any time by providing one hundred eighty (180) days' written notice to Customer.

Return of Materials

Within ten (10) days of the expiration or termination of any license under any Sales Order, Customer shall return to Carebility any materials provided by Carebility.

Transition Services

To the extent that Customer is current on all payments due to Carebility, Carebility shall provide Customer's data in a standard database document format readily available to Carebility for an additional charge specified in the Sales Order. If Customer requests the data in a non-standard format, Customer shall pay Carebility a reasonable fee for technical services as determined by Carebility.

Arbitration

Except for actions to protect Proprietary Rights or to enforce an arbitrator's decision, 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, chosen by mutual agreement of the parties in accordance with AAA rules.
- The arbitration shall take place in Dallas, Texas.
- The arbitrator shall apply the laws of the State of Texas to all issues in dispute.

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. Legal fees shall be awarded to the prevailing party in the arbitration.

Notices

Any notice or communication required or permitted under this Agreement may be delivered by hand, deposited with an overnight courier, sent by email, facsimile, or U.S. Mail, in each case to the address set forth on the initial page hereof or to such other address as designated in writing by either party. Notice will be deemed given when received.

Assignment

Customer shall not assign this Agreement or any right or interest under it without Carebility's prior written consent. Any attempted assignment or delegation in contravention of this Section shall be void and ineffective.

Continuing Obligations

The following obligations shall survive the expiration or termination of this Agreement and the distribution grace period provided above:

1. Any and all warranty disclaimers, limitations of liability, and indemnities granted by either party herein.
2. Any covenant granted herein to determine ownership of, or protect, the Proprietary Rights, including without limitation the Confidential Information of either party or any remedy for breach thereof.
3. The payment of taxes, duties, or any money due to Carebility hereunder.

Force Majeure

Neither party shall 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, inaction of government agencies or their designated contractors, Internet disruptions, hacker attacks, or communications failures.

If either party is unable to perform for a period of thirty (30) consecutive days due to such causes, the other party may terminate this Agreement immediately without liability by providing ten (10) days' written notice to the other.

Miscellaneous

1. **Governing Law:** This Agreement shall be construed under the laws of the State of Texas, without regard to its conflict of law principles.
2. **Entire Agreement:** This Agreement constitutes the entire understanding of the parties with respect to its subject matter and merges all prior communications, understandings, and agreements.

3. **Modifications:** This Agreement may only be modified by a written agreement signed by both parties.
4. **Waiver:** Failure to enforce any provision shall not constitute a waiver of that provision or any other provision.
5. **Severability:** If any provision is declared invalid or unenforceable, it shall be deemed modified to render it valid and enforceable, or it shall be omitted. The remainder of this Agreement shall remain in full force and effect.

Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one original Agreement. Facsimile or electronically authenticated signatures shall be accepted and enforceable in lieu of original signatures.