

Terms of Use

Last Updated – September 4, 2025

This Terms of Use Agreement ("Agreement") is entered into by and between you ("You" or "Provider") and Phanova, Inc., a Delaware corporation ("Company"). Each of Provider and Company is referred to as a "Party," and collectively, they are the "Parties."

This Agreement governs your access to and use of the Company's:

1. **Online and Mobile Services**
2. **Offline Services**
3. **Certain Tools:** This includes, but is not limited to, the generation of medical necessity letters, coverage guidance analysis, and medical knowledge summarizer.
4. **Company Software Applications:** This includes, but is not limited to, the Company's website (Phanova.com) and platform, as well as mobile applications provided by the Company (collectively referred to as the "Company Apps").

The term "Company Apps" encompasses all content, functionality, and practice management services ("Services") offered on or through the Company Apps.

When registering or using the Company Apps, your agreement to be bound by the Terms is implied. If you are using the Company Apps on behalf of an organization, you are confirming your acceptance of the Terms on behalf of that organization and assuring the Company that you possess the authority to legally bind that organization to these Terms. It's important to recognize that these Terms encompass any accompanying Order or Subscription form that you complete as part of the engagement, onboarding, and registration process. If you do not consent to be bound by these Terms, you are prohibited from using the Company Apps.

We reserve the right to, at our sole discretion, make changes to the Terms of Use either by sending you an email notification or by posting a notice on any part of the Company Apps. The "Last Updated" date positioned at the beginning of the Terms indicates the most recent changes made to them. Your continued access and usage of the Company Apps signify your agreement to these modifications.

Furthermore, when you utilize specific services or features within the Company Apps, you will be subject to any guidelines or policies that are applicable to those services or features. These guidelines or policies may be posted periodically, including, but not limited to, the Privacy Policy mentioned below. All such guidelines and policies are hereby integrated into these Terms by reference.

If you have any comments or questions regarding the Terms, or wish to report any violation of the Terms, you may contact us at support@Phanova.com.

1. DEFINITIONS: In these Terms, capitalized terms not defined elsewhere are as follows:

- a. **Affiliate:** Refers to any other party that directly or indirectly controls, is controlled by, or is under common control with the Party in question.
- b. **Agreement:** Encompasses these Terms and any and all documents executed as part of the engagement, onboarding, or registration process between the Parties. These documents may be executed as attachments, Work Orders, exhibits, amendments, or through virtual platforms like DocuSign. All such documents are hereby incorporated into this Agreement by reference.
- c. **Provider Content:** Refers to digital, audio-visual materials made available by Provider to Company. This includes, but is not limited to, patient data, other data feeds, and metadata, as

specified in any Work Order or other documentation provided to or uploaded to the Company Apps. Notwithstanding the foregoing, Company may provide the Provider with model predictions generated by its algorithms. The Provider acknowledges that feedback on these predictions, including assessments of correctness and suggestions for improvement, is a valuable component of the AI platform. The Provider agrees to keep all information provided by the Company confidential, with the understanding that feedback provided by the Provider regarding the model predictions is not considered proprietary or restricted content. The Company encourages open communication and collaboration regarding such feedback for the purpose of improving and refining the models. However, the Company reserves the right to exclude specific types of feedback from the Provider if it deems such feedback to be sensitive or proprietary. In such cases, the Company will communicate the exclusion criteria to the Provider in a timely manner, and the Provider agrees to respect the Company's decision to exclude certain feedback while continuing to collaborate on non-excluded aspects.

- a. **Intellectual Property Rights:** Include all intellectual property and proprietary rights of any nature or kind, whether protected, created, or arising under any applicable law. This encompasses all worldwide common law, statutory, and other rights related to trademarks, copyrights, patents, domain names, and trade secrets.
- b. **Work Order:** Represents an agreement that outlines the description of specific Services to be provided, the associated charges for those Services, and other pertinent information.

2. LEGAL STATUS OF THE PARTIES

- a. **Appointment of Company** Provider hereby appoints and retains Company to assist in the non-professional operation of Provider's medical practice solely with respect to the Company Apps and Company hereby accepts this engagement in accordance with the terms and conditions contained in these Terms and any Agreement between the Parties. Company grants Provider a personal, non-exclusive, royalty-free license to access and use the Company Apps solely for the purposes of providing information, analysis, and related services to end users of the Company Apps. This license expressly excludes the provision of clinical care or medical treatment.
- b. **Retention of Authority and Control.** Company agrees that Provider, and only Provider, will perform the medical functions of its practice, and that Provider will retain the ultimate authority and responsibility for the operation of its practice including, without limitation:
 - i. final adoption or approval of Provider's operating policies and procedures and independent adoption of policies affecting the delivery of services, including the supervision of all medical providers;
 - ii. approval of Provider's contracts for management or for the provision of services;
 - iii. approval of settlements of administrative proceedings or litigation to which Provider is a party.
 - iv. Nothing contained in this Agreement shall permit, authorize or create the corporate practice of medical services. This Section is intended to set forth the understanding and intent of the Parties that all required medical decisions and conduct will be done by licensed health care professionals affiliated with Provider and not by the Company.
- c. **Independent Contractor.**
 - i. Provider and Company are and shall be at all times acting hereunder as independent contractors. Nothing contained herein shall be construed as creating a partnership, joint venture, agency or employment relationship between Company and Provider, or any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of this Agreement. Company and Provider agree that Provider shall retain the authority to direct all of the medical, counseling, professional, clinical, and ethical aspects of its practice. Company shall neither exercise control over nor interfere with the doctor-patient relationships of the Provider, which shall be maintained strictly between the licensed practitioners of Provider and its medical staff and their patients. Company shall from time to time employ other associates

to aid in the performance of its duties under this Agreement and any such individual(s) shall also be considered for all purposes, independent contractors and no other relationship shall be conferred. Provider shall neither have nor exercise any control or direction over the methods by which Company and its employees operate the Company Apps, except as it directly relates to patient care.

- ii. Except as specifically provided in this Agreement, Company shall neither have, nor exercise, any control or direction over Provider with respect to the manner in which Provider or its employees and independent contractors perform professional healthcare Services: and Company shall have no control or direction over the professional judgment of Provider, its employees and independent contractors with respect to medical services. The parties hereto agree that Company may not engage in the practice of medicine or otherwise provide professional medical or related services or supervise individuals who furnish such services. Except as expressly provided herein, no Party hereto shall have any authority or power to contract or in any manner, incur liability, retrospectively or prospectively, of any kind or nature for, or in the name of, any other Party or for which any other Party could or might be held liable to others. Provider shall be solely responsible for and have sole and complete authority, supervision, medical management, and control over the provision of clinical and other health care services provided to end user patients of the platform. Additionally, Provider shall have exclusive authority over the management of all diagnoses, treatments, procedures, and other professional health care services, whether clinical or administrative, including but not limited to activities related to the insurance reimbursement process. When the patient chooses to use the product directly, they shall be considered a direct user, and any interactions or engagements with the product by the patient directly shall be governed by separate terms applicable to the end user. In such cases, the patient is recognized as an independent user of the product, and any decisions made by the patient based on information or services provided by the product are their sole responsibility.
- d. **Standard.** Company shall provide non-professional services and support to Provider subject to and in accordance with any and all applicable Federal and State rules and regulations and for any rules and regulations regarding the provision of such services by non-licensed individuals.
- e. **No “Corporate Practice of Medicine”.** Nothing contained in this Agreement shall imply, authorize or condone the Corporate Practice of Medicine. The Parties further acknowledge and understand that Company will only perform those duties and assignments that are allowed by law to be performed by Company. Neither Company nor any of its personnel shall undertake or be deemed to undertake the practice of medicine or provide medical services or medical advice to Provider or its patients in the performance of its services and other obligations hereunder. All services provided by Company will be administrative and non-professional in nature, specifically limited to tasks that complement and/or otherwise assist Provider in the operation of their business solely as it relates to the Company Apps. However, it is expressly understood that Company shall not engage in healthcare administrative tasks that may result in financial liabilities for patients, including but not limited to handling insurance prior-authorization. Instead, Company's services are focused on providing information, analysis, and support that enhances the overall functionality of the Company Apps without involving direct financial or administrative responsibilities related to healthcare services. To the extent that any acts of Company required by any provision of this Agreement shall be construed or deemed to constitute the practice of medicine, said provision shall be void *ab initio* or from the date of adoption of such law or regulation, as the case may be, and the performance of said act or service shall be deemed waived upon Provider's receipt of written notice of said waiver. Provider shall be solely responsible for all aspects of the services provided by Provider, including but not limited to clinical services, practice management, revenue cycle management, and other related functions. Provider shall have exclusive

authority over the supervision, selection, direction, contracting, hiring, and firing of all personnel, including medical professionals, therapists, counselors, practitioners, administrative staff, and other clinical professionals rendering services on Provider's behalf. This authority extends to both clinical and administrative roles relevant to the operation of the product. Provider agrees to hire or engage only duly licensed and qualified health professionals in connection with the conduct of its business of providing health services through the Company Apps.

- f. **Compliance with Laws.** Provider shall use its best efforts to comply with all applicable federal, state and local laws, rules, regulations and restrictions in the conduct of Provider's business, including, without limitation, those relating to HIPAA.
- g. **Ownership of Records; Disclosure.** All records (including patient medical records) relating in any way to the operation of Provider shall at all times be and remain the sole property of Provider. All records relating in any way to the operation of Company shall at all times be and remain the sole property of Company. Notwithstanding any other provisions of this Agreement to the contrary, disclosures of records and Information by and between Provider and Company shall be made in full compliance with all state and federal laws and regulations.

3. LICENSE

- a. **License Grant.** Commencing at the time Company receives the associated payment for any Company Apps or Services, Company grants to Provider a non-exclusive, non-transferable, royalty free license to use the Company Apps or Services identified by Company as being in connection with its provision of Services. Additional terms and conditions of license, if any, will be as set forth on the Work Order or a License Agreement attached to such Work Order. Unless otherwise indicated in the Work Order or the License Agreement attached to such Work Order: (i) such license shall continue only for so long as necessary for Provider to utilize such Services and (ii) such license shall not extend beyond termination of this Agreement or any relevant Work Order nor to any period during which Provider is in material breach under this Agreement.
- b. **Scope of Use.** Except in accordance with the terms herein or as reasonably required for Provider to avail itself of the intended functionality of the Company Apps as contemplated in a form of invoice or Work Order, if any, Provider will not, directly or indirectly: reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, model structure, parameters, or underlying structure, ideas, know-how, or algorithms relevant to the Company Apps or any software, documentation, or data related to the Company Apps. This includes, but is not limited to, any proprietary aspects of machine learning models employed by the Company Apps.; modify, translate, or use output from the Company Apps to develop models that compete with the Company and Provider shall not create derivative works based on the Company Apps (except to the extent expressly permitted by Company or authorized within the Company Apps); use the Company Apps otherwise for the benefit of a third party; or remove any proprietary notices or labels.
- c. **Company Policy; Applicable Law.** Provider represents, covenants, and warrants that Provider will use the Company Apps only in compliance with Company's standard published policies then in effect, including without limitation the Company's Privacy Policy as found at www.Phanova.com/privacy-policy (the "**Policy**"). Provider additionally covenants and warrants that its use of the Company Apps will be in compliance with all applicable laws and regulations. In the event of a conflict between the Policy and specifications set forth in an invoice or Work Order, if any, the terms of the applicable invoice or Work Order shall control.

4. REGULATORY DETERMINATIONS

- a. If any federal or state governmental agency or court determines that any aspect of the transactions between Parties pursuant to this Agreement violates any other federal or state statute or regulation, Parties will cooperate to take all steps necessary to cure such violation.
- b. If any government agency with jurisdiction over the Parties requires any modifications to the terms and conditions of this Agreement, the Parties shall consider such modifications in good faith, while reserving their respective right to terminate this Agreement in the event that such modification cannot be agreed upon.
- c. Each Party will promptly notify the others of any investigation or claim made by any party or any governmental agency that relates to the terms and conditions of this Agreement or the services provided hereunder. The Party under investigation shall provide the other Party with an opportunity to participate in and approve responses to such investigation to the extent that the investigation or any claims involve the other Party.

5. OBLIGATIONS

- a. **Onboarding.** Company shall onboard Provider to the Company Apps and provide the Company Apps per the feature specifications, if any, in the applicable form of Work Order, if any. Parties shall provide each other with reasonable assistance, access, and information in order to initiate Provider's use of the Company Apps.
- b. **Cooperation.** Both Company and Provider acknowledge that a successful integration of Provider Content and the Company Apps, including any modifications thereto, shall require their full and mutual good faith cooperation, and Provider and Company acknowledge that they shall timely fulfill their responsibilities in this regard.
- c. **Updates.** From time to time, the Company may provide upgrades, patches, enhancements, or fixes for the Company Apps to its users generally without additional charge ("Updates"), and such Updates will become part of the Company Apps, and subject to the Terms and/or an Agreement. Notwithstanding the foregoing, the Company shall have no obligation under this the Terms or otherwise to provide any such Updates. You understand that the Company may cease supporting old versions or releases of the Company Apps at any time in its sole discretion.
- d. **Provider Content.** Provider represents to the Company and unconditionally guarantees that any elements of text, graphics, data, photos, designs, trademarks, or other artwork furnished to the Company for inclusion in the Company Apps ("Provider Content") are owned by the Provider, or that the Provider has permission from the rightful owner to use each of these elements, and will hold harmless, protect, and defend (indemnify) the Company from any claim or suit arising from the use of such elements furnished by the Provider. Provider grants Company a nonexclusive, nontransferable license to use, reproduce, modify, display and publish the Provider Content solely in connection with Company's Company Apps under this Agreement and the limited promotional uses as allowed by this Agreement. Provider affirms and represents that this Agreement does not conflict with any other contract, agreement or understanding to which Provider is a party.

6. USE OF THE COMPANY APPS AND SERVICES

- a. **Accessing the Company Apps and Account Security:** We reserve the right to withdraw or amend the Company Apps, and any service or material we provide on the Company Apps, in our sole discretion without notice. We will not be liable if for any reason all or any part of the Company Apps are unavailable at any time or for any period. From time to time, we may restrict access to some parts of the Company Apps, or the entire Company Apps, to users, including registered users.
- b. **Provider Responsibilities:** You are responsible for both:
 - i. Making all arrangements necessary for you to have access to the Company Apps.
 - ii. Ensuring that all persons who access the Company Apps through Provider's internet connection are aware of these Terms of Use and comply with them.

- c. **Access:** To access the Company Apps or some of the resources they offer, you may be asked to provide certain registration details or other information. Utilizing the Company Apps may require you to register with a Company online Platform or Service by providing Provider's name and email address. By doing so, Provider creates a user id and password. This can be used by Provider at any time as long as Provider account is active/up to date. During any time, the Provider can modify or change or update the information on the Company Apps without any prior consent. Company has the right to disable any username, password, or other identifier, whether chosen by you or provided by us, at any time in our sole discretion for any or no reason, including if, in our opinion, you have violated any provision of these Terms of Use.
- d. **Account Information:** It is a condition of Provider's use of the Company Apps that all the information you provide on the Company Apps are correct, current, and complete. You agree that all information you provide to register with the Company Apps or otherwise, including, but not limited to, through the use of any interactive features on the Company Apps, is governed by our Privacy Policy, and you consent to all actions we take with respect to Provider's information consistent with our Privacy Policy.
- e. **Account Security:** If you choose, or are provided with, a username, password, or any other piece of information as part of our security procedures, you must treat such information as confidential, and you must not disclose it to any other person or entity. You also acknowledge that Provider's account is personal to you and agree not to provide any other person with access to the Company Apps or portions of it using Provider's username, password, or other security information. You agree to notify us immediately of any unauthorized access to or use of Provider's username or password or any other breach of security. You also agree to ensure that you exit from Provider's account at the end of each session. You should use particular caution when accessing Provider's account from a public or shared computer so that others are not able to view or record Provider's password or other personal information.
- f. **Prohibited Uses:** You may use the Company Apps only for lawful purposes and in accordance with these Terms of Use. You agree not to use the Company Apps :
 - i. In any way that violates any applicable federal, state, local, or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the US or other countries).
 - ii. For the purpose of exploiting, harming, or attempting to exploit or harm minors in any way by exposing them to inappropriate content, asking for personally identifiable information, or otherwise.
 - iii. To send, knowingly receive, upload, download, use, or re-use any material that does not comply with the Content Standards set out in these Terms of Use.
 - iv. To transmit, or procure the sending of, any advertising or promotional material without our prior written consent, including any "junk mail," "chain letter," "spam," or any other similar solicitation.
 - v. To impersonate or attempt to impersonate the Company, a Company employee, another user, or any other person or entity (including, without limitation, by using email addresses or screen names associated with any of the foregoing).
 - vi. To engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the Company Apps, or which, as determined by us, may harm the Company or users of the Company Apps, or expose them to liability.
 - vii. Use the Company Apps in any manner that could disable, overburden, damage, or impair the site or interfere with any other party's use of the Company Apps, including their ability to engage in real time activities through the Company Apps.
 - viii. Use any automated or manual process, including but not limited to robots, spiders, artificial intelligence methods, machine learning algorithms, generative models, or any similar techniques, to access the Company Apps for any purpose, including monitoring, copying, replicating, imitating, or re-generating content from the Company Apps. This prohibition extends to any process used without our prior written consent for purposes not expressly authorized in these Terms of Use.

- ix. Use any device, software, or routine that interferes with the proper working of the Company Apps.
 - x. Introduce any viruses, Trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful.
 - xi. Attempt to gain unauthorized access to, interfere with, damage, reverse engineer, or disrupt any parts of the Company Apps, the server on which the Company Apps are stored, or any server, computer, or database connected to the Company Apps. Attack the Company Apps via a denial-of-service attack or a distributed denial-of-service attack.
 - xii. Prohibit any attempt to expose, reverse engineer, or disclose the inner workings of the Company Apps, including any underlying models, algorithms, or proprietary technology. Additionally, users are expressly prohibited from sending specially crafted prompts or instructions with the intention of extracting non-public information or using the model for any purpose not explicitly allowed in these Terms of Use. Any such actions are considered a violation of these terms and may result in immediate termination of access and other legal remedies available to the Company.
 - xiii. Otherwise attempt to interfere with the proper working of the Company Apps.
- g. **Social Media Login:** The Company Apps provide the convenience of logging in using your social media accounts. However, we want to assure our Providers that we do not collect or share data from your social media profiles. When you log in through your social media account, we only use this information for the purpose of creating and managing your user account on our platform. Your data remains private and is not shared with any third parties, including your social media providers. We respect your privacy and are committed to maintaining the confidentiality of your personal information. For more details, please refer to our Privacy Policy.

7. HIPAA COMPLIANCE:

- a. Company acknowledges that, through this Agreement, it may gain access to confidential patient information held by Provider. This information is defined as "Protected Health Information" (PHI) and includes both protected health information and individually identifiable health information as per 45 CFR Part 164. Company agrees not to use or disclose any patient's PHI except as explicitly allowed by this Agreement or in compliance with the federal privacy regulations (the "Federal Privacy Regulations") and the federal security standards (the "Federal Security Regulations") as outlined in 45 CFR Part 164.
- b. To ensure compliance, Company will establish appropriate safeguards to prevent the unauthorized use or disclosure of a patient's PHI, in accordance with these Terms and any other Agreement between the Parties. If Company, with Provider's consent, engages subcontractors or agents to whom it provides a patient's PHI, Company will require those subcontractors and agents to adhere to the same restrictions and conditions concerning the patient's PHI as set out for Company in this Agreement.
- c. Company will also make its internal practices, records, and books pertaining to the use and disclosure of a patient's PHI available to the Secretary of Health and Human Services, as necessary to confirm compliance with the Federal Privacy Regulations and the Federal Security Regulations.
- d. In line with these requirements, the Parties are simultaneously entering into a Business Associate Agreement, which is included herein by reference. Importantly, no doctor-patient or healthcare provider-patient privilege shall be considered waived by Company or Provider as a result of this section.

8. COMPENSATION:

- a. **Fees and Expenses.** For all services, Provider shall pay all fees and other charges due according to the prices and terms provided under the applicable Order(s). Except as otherwise expressly provided in this Agreement, Company is obligated to provide, and Provider is obligated to pay for, each Service through the applicable Initial Term and any Renewal Term.
- b. **The Company Apps License Fee.** There is a recurring monthly licensing fee for the use of the Company Apps (“Phanova License Fee”). The Phanova License Fee shall be due and payable, in arrears, each calendar month occurring after the Effective Date of this Agreement. The Phanova License Fee is invoiced and due on the 15th each month for the following month’s license. The Phanova License Fee will be based on applicable modules and service levels implemented to Provider’s services as specified in applicable Work Order(s).
- c. **Subscription Services.** When applicable, the Company Apps may include features that allow for automatically recurring payments for periodic charges (“Subscription Service”). If you decide to activate a Subscription Service, you authorize the Company to charge periodically, on a going-forward basis and until cancellation of either the recurring payments or your account, all accrued sums on or before the payment due date for the accrued sums. The subscription will continue unless and until you cancel your subscription or we terminate it. You must cancel your subscription before it renews to avoid billing the next periodic subscription fee to your account. We will bill the periodic subscription fee to the payment method you provide to us during registration (or to a different payment method if you change your payment information). The Company may change the subscription fee for any subsequent subscription period but will provide you advance notice of any increase before it applies. You may cancel a Subscription Service through your settings page in your user profile for the paid feature.
- d. **Promotions.** Phanova, Inc., in its sole discretion, may offer promotional pricing, codes or other offers to you (“Promotions”). Promotions cannot be used on past Orders. Promotions are non-transferable, and there is no cash alternative. Promotions cannot be used in conjunction with other Promotions or Offers and must be used by the date published, if any. Company reserves the right at any time without notice to retract or change any Promotions. Phanova.com reserves the right, with or without prior notice, to do any one or more of the following: (i) limit the available quantity or discontinue any product or service; (ii) impose conditions on the honoring of any coupon, coupon code, promotional code, or other similar promotion; (iii) bar any Client from making or completing any or all Order(s); and (iv) refuse to provide any Client with any product or service.
- e. **Payment:**
 - i. **Payment Processing.** We utilize “third-party payment providers” (i.e., PayPal, Stripe, or ACH/Wire). For payments through third-party payment providers, you may be directed to their websites, APIs and online tools. It is your responsibility to familiarize yourself with the third-party payment provider’s terms and conditions and privacy policy.
 - ii. When applicable, Client acknowledges and agrees that the credit or debit card being used belongs to Client or that the owner of such card has specifically authorized Client to use it. All cardholders are subject to validation and authorization by the card issuer. If the issuer of your payment card refuses to authorize payment to us, we will not be liable for any non-delivery or delay of orders.
- f. **Taxes.** Provider shall pay state sales, use and similar taxes imposed on the delivery of the Services under this Agreement.

9. INTELLECTUAL PROPERTY RIGHTS

- a. **Provider Ownership.**
 - i. As between Provider and Company, all right, title, and interest (including without limitation all Intellectual Property Rights) in and to Provider Content shall be and remain the sole and complete property of Provider. If the development of the Company Apps results in new derivative works of Provider Content that constitute audio or visual

assets (excluding AI models), then all right, title, and interest in Provider Content Derivative Works (including all Intellectual Property Rights therein) shall belong to Provider and shall be deemed to be Provider Content for purposes of the licenses granted pursuant to the Terms. Company hereby irrevocably and exclusively grants, transfers, and assigns to Provider all Intellectual Property Rights that Company has, or may have, in or to Provider Content Derivative Works (excluding AI models). With respect to any so-called “moral rights” exercisable with respect to Provider Content Derivative Works (excluding AI models), Company hereby unconditionally waives such rights and the enforcement thereof.

- ii. Notwithstanding the above, in cases where customers receive the software (either for free or for a fee) in exchange for allowing the Company to train AI models on their Provider Content, the resulting AI models and any derived intellectual property shall be owned by the Company. This ownership is separate and distinct from Provider Content Derivative Works as specified in this clause.
- b. **Marks and other Intellectual Property.** All trademarks, service marks, trade names, domain names, slogans, logos, and other indicia of origin that appear on or in connection with any aspect of the Company Apps are either the property of the Company, its affiliates or licensors. The Company retains the right to rescind and terminate the limited license granted hereunder at any point, for any reason. All rights not expressly granted herein by the Company to you are fully reserved by the Company, its advertisers and licensors. Some of the company and product names, logos, brands, and other trademarks featured or referred to within the Company Apps may not be owned by us and are the property of their respective trademark holders. These trademark holders are not affiliated with, nor do they sponsor or endorse, the Company, the Company Apps, the Websites and/or our products and services.
- c. **Design and Company Development Tools.** Company has certain “Design and Development Tools” that it may from time to time use to perform the Services and integrate into the Company Apps. Company will retain ownership of all of its Design and Development Tools, which are defined as: (i) any generic materials, information, inventions, methods, procedures, technology and know-how common to the software industry that do not embody and are not derived from the Provider Confidential Information or Provider Content; and (ii) any tools, both in executable code and source code form, which Company creates, licenses or develops. In no event will the Design and Development Tools include any Provider Content or Provider Confidential Information. In the event that Company incorporates any Design and Development Tools into the Company Apps, Company hereby grants the Provider a non-exclusive, transferable, sub-licensable, irrevocable, worldwide, fully-paid up, royalty-free license and right to use, display, perform, transmit, and otherwise exploit the Design and Development Tools in perpetuity, solely as part of the Company Apps, including any modifications to Company Apps. The Provider may not, however, reverse engineer, decompile, or disassemble the Design and Development Tools or otherwise attempt to derive the source code, or permit or encourage any third party to do any of the foregoing.

10. CONFIDENTIALITY

- a. **Confidentiality and Nondisclosure.** Company acknowledges that it may have access to certain confidential information of Provider concerning Provider’s business, plans, customers, technology, products and services, and other information held in confidence by Provider (“Provider Confidential Information”). Provider acknowledges that it may have access to certain confidential information of Company concerning Company’s business, plans, customers, technology, products and services, and other information held in confidence by Company (“Company Confidential Information”) (Provider Confidential Information and Company Confidential Information are together referred to as “Confidential Information”). Information

disclosed or provided by or on behalf of a Party (the “Disclosing Party”) shall be deemed Confidential Information if such information is in tangible or intangible form and is marked or designated by the Disclosing Party as confidential, or if, under the circumstances of its disclosure, the other Party (the “Receiving Party”) reasonably should consider such information to be Confidential Information of the Disclosing Party. Company Confidential Information includes Company’s proprietary technology, the Company Apps, the software and software tools (in source and object forms), user interface designs, documentation (both printed and electronic), know-how, trade secrets and related intellectual property rights throughout the world (whether owned by Company or licensed to Company from a third party, and including any derivatives, improvements, enhancements or extensions thereof). Each Party agrees that it will take reasonable precautions to protect the confidentiality of the other Party’s Confidential Information, at least as stringent as it takes to protect its own Confidential Information, and whether for its own account or the account of any third party, that it will not use in any way or disclose Confidential Information to a third party without the Disclosing Party’s prior written consent, except as expressly permitted by, or required to achieve the purposes of, this Agreement.

- b. **Exceptions.** Information will not be deemed Confidential Information hereunder if such information: (i) is known to the Receiving Party prior to receipt from the Disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (ii) becomes known (independently of disclosure by the Disclosing Party) to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of these Terms of Use by the Receiving Party; or (iv) is independently developed by the Receiving Party. The Receiving Party may disclose Confidential Information pursuant to the requirements of a governmental agency or by operation of law, provided that it gives the Disclosing Party reasonable prior written notice sufficient to permit the Disclosing Party to contest such disclosure.
- c. **Data Collection.** In carrying out its obligations and obtaining the benefits under the Terms, each Party will comply with applicable laws, including applicable privacy laws. Company will not access or collect any Personal Information except as strictly necessary to perform its obligations under the Terms (including the collection of Personal Information of Provider) or to fulfill any legal requirements. Provider may capture Personal Information and send it to the Company Apps. “Personal Information” means information provided by Provider or collected by Company under the Terms, which information identifies or can be used to identify, contact, or locate the person or device to whom that information pertains. Personal Information includes name, address, phone number, fax number, email address, social security number, or other government issued identifier, and credit-card information. Additionally, to the extent other information (including a personal profile, unique identifier, and/or biometric information is associated or combined with Personal Information), then that information is also Personal Information. Company will not use Personal Information accessed or collected while performing under the Terms for any purpose other than those expressly permitted by the Terms.
 - i. **Limitations on Disclosure of Personal Information.** Company will not share any Personal Information that is collected or accessed by it while performing under the Terms with any third parties for any reason except as necessary to carry out its obligations hereunder or as required to comply with law, and only under terms and conditions substantially similar to those contained in this Section. If Company is served with a court order compelling disclosure of any Personal Information or with notice of proceedings for such an order, Company shall (i) give Provider reasonable notice prior to such disclosure to allow Provider a reasonable opportunity to seek a protective order or equivalent, and (ii) at Provider’s discretion, either assist Provider in opposing the order or provide Provider the opportunity to intervene before Company files any response to the order or notice.

- ii. **Protection of Personal Information.** Company will take reasonable steps to protect Personal Information in Company's possession from unauthorized use, access, disclosure, alteration or destruction. Security measures will include access controls, encryption and other means, where appropriate.
- iii. **De-Identified Data.** Notwithstanding anything herein, Company shall be permitted to create, use, license, sell or disclose De-Identified Data. "De-Identified Data" shall mean Personal Information (i) for which certain unnecessary identifiers have been removed such that the data, alone or in combination with other reasonably available data, cannot be attributed to or associated with or cannot identify any person, and the unauthorized access, use, disclosure, modification, storage, destruction, or loss of the data would not trigger the application of any privacy law or any security breach notification law, and (ii) that has been combined with similar data such that the original data forms a part of a larger data set. Company may retain De-Identified Data.

11. REPRESENTATIONS AND WARRANTIES: INDEMNITY; LIMITATION OF LIABILITY

- a. **Company Representations and Warranties.** Company represents, warrants, and undertakes as follows:
 - i. Company is free to enter into and fully perform the Terms.
 - ii. The entering into of the Terms by Company does not violate any agreements, rights or obligations existing between Company and any other person, firm or corporation.
 - iii. It will use commercially reasonable efforts to not directly introduce to the Provider Content, Websites, or Company Apps any virus, worm, Trojan horse, spyware, or other form of malware.
- b. **Provider Representations and Warranties.** Provider represents, warrants, and undertakes as follows:
 - i. It is free to enter into and fully perform the Terms.
 - ii. The entering into of the Terms by Provider does not violate any agreements, rights or obligations existing between Provider and any other person, firm or corporation.
 - iii. It has, and will have through the Term, the right to contract and provide Provider Content to Company in accordance with the terms and conditions of the Terms.
 - iv. Performance of the licensed professional services by the Provider, through the Company Apps, and the care of the patients of the Provider shall be under the supervision of the Provider and shall be provided by an individual (1) that is licensed and authorized to practice the applicable licensed professional services in the applicable geographical jurisdiction, and (2) possesses the requisite skill, experience, and certifications to perform such licensed professional services in Provider's geographical jurisdiction. Provider shall immediately notify Company of any change in its eligibility to provide the medical services, including, without limitation, any changes to or revocation of any licenses from state authorities or of any other discipline of the Provider or any of its personnel by any state or federal regulatory authority.
 - v. It will use commercially reasonable efforts to not directly introduce to the Provider Content, Websites, or Company Apps any virus, worm, Trojan horse, spyware, or other form of malware, whether through direct attempts or by employing automated or manual processes, including but not limited to robots, spiders, artificial intelligence methods, machine learning algorithms, generative models, or any similar techniques
 - vi. It is of legal age to form a binding contract or has the authority of such legal entity to form a binding contract; all registration information you submit is accurate and truthful; you will maintain the accuracy of such information; and you are legally permitted to use and access the Company Apps, and take full responsibility for the selection and use of and access to the Company Apps.

- vii. Provider Content is owned or adequately licensed by Provider and does not, to its knowledge, infringe upon or violate any copyright, trademark or other proprietary right of any third party.
 - viii. Any and all factual information furnished or to be furnished by the Provider to Company, including, but not limited to, any reports and patient data, shall to the best knowledge of the Provider, be true and accurate in all material respects as of the date on which such information is furnished.
- c. **Warranty and Disclaimer.** CLIENT’S USE OF THE COMPANY APPS IS AT THE SOLE RISK OF CLIENT. THE COMPANY APPS AND ALL ASSOCIATED CONTENT ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THESE TERMS OF USE, THE COMPANY AND ITS AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND OTHER REPRESENTATIVES (COLLECTIVELY, THE “COMPANY PARTIES”), EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO FITNESS FOR A PARTICULAR PURPOSE, IMPLIED WARRANTIES OF MERCHANTABILITY, AND NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE COMPANY PARTIES MAKE NO WARRANTY THAT: (I) THE COMPANY APPS WILL MEET CLIENT’S REQUIREMENTS; (II) THE COMPANY APPS WILL BE TIMELY, SECURE, UNINTERRUPTED OR ERROR-FREE; (III) INFORMATION THAT MAY BE OBTAINED VIA THE COMPANY APPS WILL BE RELIABLE OR ACCURATE; (IV) THE QUALITY OF ANY AND ALL PRODUCTS, SERVICES, INFORMATION OR OTHER MATERIAL, INCLUDING ALL SERVICES, OBTAINED OR PURCHASED BY YOU DIRECTLY OR INDIRECTLY THROUGH THE COMPANY APPS WILL MEET CLIENT’S NEEDS OR EXPECTATIONS; AND (V) ANY ERRORS IN THE COMPANY APPS WILL BE CORRECTED.
- d. **Exclusion of Damages.** THE COMPANY PARTIES SHALL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND, UNDER ANY CIRCUMSTANCES, ARISING OUT OF, IN CONNECTION WITH OR RELATING TO THE USE OF OR INABILITY TO USE THE COMPANY APPS, INCLUDING ANY LIABILITY: (I) AS A PUBLISHER OF INFORMATION; (II) FOR ANY INCORRECT OR INACCURATE INFORMATION OR ANY ‘BUG’ OF THE COMPANY APPS; (III) FOR ANY UNAUTHORIZED ACCESS TO OR DISCLOSURE OF CLIENT’S TRANSMISSIONS OR DATA; (IV) FOR STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON OR VIA THE COMPANY; (V) FOR ANY DISPUTES BETWEEN USERS OF THE COMPANY APPS, OR BETWEEN A USER OF THE COMPANY APPS AND A THIRD PARTY; OR (VI) FOR ANY OTHER MATTER RELATING TO THE COMPANY APPS OR ANY THIRD PARTY.
- e. **Limitation of Liability.** In no event will Company be liable for any indirect, special, incidental, punitive, or consequential damages, losses or expenses arising out of or relating to Provider’s use of the Company Apps or Services, including without limitation, damages related to any information received from the Company Apps or Services, removal of content from the Company Apps or Services, including profile information, any email distributed to any Provider or any linked website or use thereof or inability to use by any Party, or in connection with any termination of Provider’s usage of the Company Apps or Services or ability to access the Company Apps or Services, failure of performance, error, omission, interruption, defect, delay in operation or transmission, computer virus or line or system failure, even if Company or its representatives are advised of the possibility of such damages, losses or expenses. UNDER NO CIRCUMSTANCES WILL COMPANY’S AGGREGATE LIABILITY, IN ANY FORM OF ACTION WHATSOEVER IN CONNECTION WITH THIS AGREEMENT EXCEED THE FEES PAID BY CLIENT IN THE PREVIOUS SIX (6) MONTHS, OR, IF CLIENT HAS NOT PAID COMPANY FOR THE USE OF ANY SERVICES, THE AMOUNT OF US \$25.00 OR ITS EQUIVALENT. If Provider is a California resident, you shall and hereby do waive California Civil Code Section 1542, which says: “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.”

- f. **Indemnification.** By agreeing to the terms of this Agreement, Provider agrees to indemnify, defend and hold harmless the Company and its affiliates, officers, directors, employees, stockholders, representatives and agents from and against any and all claims, losses, expenses or demands of liability, including attorneys' fees and costs incurred by them in connection with any claim by a third party (including an intellectual property claim) arising out of: (i) Provider's use of the Company Apps (ii) any breach by Provider of Provider's obligations under this Agreement, (iii) any willful misconduct or negligent act, omission or misrepresentation by Provider, Provider's agents or Provider's employees, (iv) any violation by Provider of any federal, state or local, law, rule or regulation, or (v) the violation or alleged violation of third-party intellectual property rights or proprietary rights by the materials and content Provider submits, posts or transmits through the Company Apps or otherwise provides to Company for inclusion on the Company Apps. You may not settle any claim subject to indemnification without the prior written consent of Company. In addition, Company may, at its sole expense, participate in the defense and settlement of the claim.

12. TERMINATION

- a. **Term.** Subject to earlier termination as provided below, the Terms is for the term as specified in the applicable Work Order, if any, and if no term is specified, monthly, and shall be automatically renewed for additional periods of the same duration as the initial term specified in the applicable Work Order (collectively, the “Term”), unless either Party requests termination at least thirty (30) days prior to the end of the then-current Term.
- b. **Termination for Breach with a Cure Period.** If either Party materially breaches the Terms, then the non-breaching Party shall provide the other with written notice of such breach. If such breach is not cured or otherwise resolved within thirty (30) days of delivery of such written notice, then the non-breaching Party will have the right to immediately terminate the Terms.
- c. **Termination for Breach without a Cure Period.** Notwithstanding anything to the contrary in Section 12.b., either Party shall have the right to terminate the Term immediately (without any cure period) in the event of any of the following: (i) a material breach of the confidentiality provisions herein; (ii) the other Party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; (iii) the other Party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing; (iv) willful and malicious interference with the terminating Party's operations by the other Party; or (v) engagement by the other Party in any act of fraud, material misappropriation of funds or assets, theft, bribery or similar dishonest or illegal conduct.
- d. **Termination for Convenience.** Company may terminate the Terms for convenience, and without cause, upon thirty (30) days prior written notice to Provider; provided that Company will provide a pro rata refund of advanced fees for the Company Apps.
- e. **Effect of Expiration or Termination.** Upon expiration or earlier termination of the Terms, all rights granted to each Party herein shall forthwith revert to the granting Party, including, but not limited, to the license, with the following consequences.
- i. Any compensation accrued but not paid will become immediately due and payable.
 - ii. Upon termination of the Terms, Provider's right to access and use the Company Apps shall immediately terminate, Provider shall immediately cease all use of the Company Apps, and Provider shall destroy or return to Company and make no further use of any proprietary, materials, or other items (and all copies thereof) belonging to Company. Upon any termination, Company will make all Provider Content available to Provider for electronic retrieval for a period of thirty (30) days, but thereafter Company may, but is not obligated to, delete stored Provider Content. All sections of the Terms which by

their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

13. DISPUTE RESOLUTION. *Please read this Arbitration Agreement carefully. It is part of Provider's contract with the Company and affects Provider's rights. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.*

- a. The parties agree that they shall make all best efforts to informally resolve any and all disputes relating to this Agreement and the relationship of the parties. This shall include in-person meetings, telephone conference calls and written correspondence. The parties shall even consider the use of a third-party mediator. In the event that all reasonable efforts to resolve the dispute are unsuccessful, then the parties shall be entitled to initiate an arbitration proceeding as set forth herein. The binding arbitration provision shall be the exclusive forum for the redress or resolution of any and all claims, disputes, controversies or any other unresolved issue.
- b. The Parties hereby agree to binding arbitration, and that such binding arbitration shall apply to any claim, dispute, controversy, disagreement, unresolved issue, or other matter or question between Company or Provider that arises out of or relates to this Agreement, whether now or hereafter existing or its breach (collectively referenced for purposes of this Section as "Disputes"), including any claim that may constitute a class action. All Disputes will be decided by binding arbitration in New York City, before one arbitrator in accordance with the American Arbitration Association Rules and Procedures (the "Rules"). The decision of the arbitrator shall be final and binding on the parties to this Agreement, any judgment upon the award rendered may be entered in any cause having jurisdiction thereof. Notwithstanding the foregoing, (i) either Party shall be entitled to obtain injunctive or similar relief by filing an action with a venue in a state or federal court in the State of New York, County of New York provided that the substantive issues shall thereafter be referred to arbitration as herein provided; and (ii) in the event of an action by or against any third party, any Party to this Agreement may join or otherwise proceed against the other Party as part of that action or in an action reasonably related to or arising therefrom. Each Party shall bear their own costs of arbitration (including, without limitation, attorney's fees), except that the parties to this Agreement shall share equally all fees and expenses of the arbitrator.
- c. The parties hereby consent to personal jurisdiction of the state and federal courts located in the State of New York, County of New York for any action or proceeding arising from or relating to this Agreement or relating to any arbitration in which the parties are participants.
COMPANY AND PROVIDER AGREE AND UNDERSTAND THAT BY USING ARBITRATION TO RESOLVE ANY AND ALL DISPUTES BETWEEN THE PARTIES, EACH PARTY IS GIVING UP ANY RIGHT THAT THEY MAY HAVE TO A JUDGE OR JURY TRIAL.
- d. Provider may bring claims only on its own behalf. Neither Provider nor Company will participate in a class action or class-wide arbitration for any claims covered by this agreement to arbitrate. Provider ACKNOWLEDGES THAT IT IS GIVING UP ITS RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM Provider MAY HAVE AGAINST Company INCLUDING, WITHOUT LIMITATION, ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS. Provider also agrees not to participate in claims brought in a private attorney general or representative capacity, or consolidated claims involving another person's account or their usage of the Company Apps, if Company is a party to the proceeding.

14. MISCELLANEOUS

- a. **Notice.** Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by email, transmitted by facsimile,

or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the Receiving Party listed on the signature page to this Agreement, or at such other address as may hereafter be furnished in writing by either Party to the other Party, including in any applicable Work Order. Such notice will be deemed to have been given as of the date it is delivered, mailed, emailed, faxed or sent, whichever is earlier, provided the parties can provide confirming evidence of such, otherwise such notice shall be deemed to have been given as of the date received.

- b. **Merger/Modification. Attachments and Exhibits.** Each document attached hereto, or otherwise executed as part of the onboarding or registration process between the Parties, as an attachment, Work Order, exhibit or amendment shall hereby be incorporated herein by reference and together, constitute the Agreement. In the event any provision of this these Terms of Use conflicts with any attachment, Work Order, exhibit or amendment, such attachment, such Work Order, exhibit or amendment shall control with respect to the subject matter of the conflict. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior agreements and understandings or representations, whether written or oral, by the parties with respect to that subject matter.
- c. **Governing Law.** This Terms shall be governed by and interpreted in accordance with the laws of the State of Delaware.
- d. **Severability.** The invalidity, illegality or unenforceability of any term or provision of this Agreement shall in no way affect the validity, legality or enforceability of any other term or provision of this Agreement. In the event a term or provision is determined to be invalid or unenforceable, the parties agree to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified.
- e. **Assignment by Company.** Company may not assign the Agreement in whole or in part, without the consent of the Provider, except that Company shall have the right to assign the Agreement to an Affiliate, subsidiary or a third-party acquirer of all or substantially all of the shares and/or assets of such the Company without the consent of Provider.
- f. **Assignment by Provider.** Without the consent of Company, Provider may not assign the Terms in whole or in part, except that Provider shall have the right to assign the Terms to an Affiliate or subsidiary.
- g. **Waiver.** The waiver by either Party of a breach of or a default under any provision of these Terms of Use shall not be effective unless in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of these Terms of Use, nor shall any delay or omission on the part of either Party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.
- h. **Survival.** Except as limited by this Agreement: (a) the representations and warranties of the parties contained herein will survive the termination of this Agreement; and (b) any other provision that, in order to give proper effect to its intent, should survive such termination, will survive the termination of this Agreement.
- i. **Force Majeure.** No Party shall be liable for a failure or delay in performing any of its obligations under the Terms if, but only to the extent that, such failure or delay is due to causes beyond the reasonable control of the affected Party, including, but not limited to (1) acts of God; (2) fire or explosion (except to the extent caused by the negligence or willful misconduct of the affected Party); (3) unusually severe weather; (4) war, invasion, riot, or other civil unrest; (5) governmental laws, orders, restrictions, actions, embargoes, or blockages; (6) national or regional emergency; (7) a local epidemic or pandemic for infectious disease, and (8) injunctions, strikes, lockouts, labor trouble, or other industrial disturbances; provided that the Party affected shall promptly notify the other of the force majeure condition and shall exert reasonable efforts to eliminate, cure, or overcome any such causes and to resume performance of its obligations as soon as practicable.
- j.

2. **Your Comments and Concerns:** Phanova.com is operated by Phanova, Inc. All feedback, comments, requests for technical support, and other communications relating to the Company Apps should be directed to: support@Phanova.com