

Aiva Software End User Licensing Agreement for Marketplaces

Last updated April 28, 2021

This Aiva Software End User License Agreement (this “**EULA**”; with each Order Form you enter into in connection herewith, and all exhibits and attachments hereto and thereto, collectively, this “**Agreement**”), sets forth the terms and conditions of your license, access, and use of the Licensed Software. For the purposes of this Agreement, “**you**” or “**Customer**” means you, the end user, and “**Aiva**” or “**Company**” means Aiva, Inc. and its affiliates. Company and Customer may be referred to herein together as the “**Parties**” and each a “**Party**”. Capitalized terms used but not defined herein shall have the meaning assigned in the corresponding Order Form.

You should carefully review all of the terms and conditions in this EULA and each Order Form before agreeing to this Agreement and before commencing access and use of the Licensed Software. By agreeing to an Order Form and by accessing and using the Licensed Software you are accepting and agreeing to be bound by all of the terms, conditions, restrictions, and requirements of this Agreement. For the avoidance of doubt, this Agreement represents a limited, non-exclusive, non-transferable, revocable license to access and use the Licensed Software, and is not a contract for sale of

Licensed Software (or any component thereof) or any other product or service.

In the event of a conflict between this EULA and any Order Form, this EULA shall govern unless the provisions of the relevant Order Form explicitly state that the particular relevant portion of the Order Form should supersede this EULA.

1. Nature of Relationship; Enforceability: By checking the appropriate box or by clicking the “AGREE”, “Create Contract”, or similar button in the Order Form and Customer’s use of the Services throughout the Term shall be deemed Customer’s acceptance of and agreement with all of the terms and conditions of the Agreement, including but not limited to this EULA and each such Order Form. Customer expressly acknowledges and agrees that the Agreement, including but not limited to this EULA and each such Order Form, shall be a binding and fully enforceable agreement and, as such, Aiva shall be entitled to enforce all of the terms and conditions in the Agreement, including but not limited to any and all of Aiva’s rights and remedies set forth in the Agreement, directly against Customer. To the extent that Customer agrees to this Agreement via an Aiva-authorized third-party marketplace or platform (each, an “**Authorized Marketplace**”), this Agreement shall be separate from and independent of Customer’s agreement with such Authorized Marketplace, if applicable, and notwithstanding anything to the contrary Company shall have no responsibility or liability to Customer or any third party for any act or omission by such Authorized Marketplace.

2. Definitions.

2.1 “**Access Protocol**” shall mean the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be set forth by Company as necessary to allow Customer or any Authorized Users to access the Service(s).

2.2 “**Affiliate**” shall mean any corporation or other entity that is directly or indirectly controlling, controlled by or under common control with a Party. For the purpose of this definition, “control” means: (i) the direct or indirect ownership of more than fifty percent (50%) of the capital stock of the subject entity; (ii) controls more than fifty percent (50%) of the voting rights of the subject entity; or (iii) possesses, directly or indirectly, the power to direct or cause direction of the management or policies of the subject entity (whether through ownership of securities or other ownership interests, by contract or otherwise).

2.3 “**Ancillary Services**” shall have the meaning set forth in Section 5.2 of this EULA.

2.4 “**Authorized User**” shall mean employees and subcontractors of Customer that have access to the Service(s) and authorized by Customer to access the Service(s).

2.5 “**Customer Content**” shall mean, as the context requires: (a) non-public data, lists or other records and information that is (i) input either (A) directly by a Participant through voice communication via the Devices, or (B) by an Authorized User through any means into the Licensed Software or Devices and (ii) provided to Company by Customer (“**Customer Data**”); (b) any information that Customer makes available to Participants and Authorized Users via the Service, including but not limited to, requests, questions, wait times, data, music, messages, materials, and other communications (“**End User Data**”); and (c) all derivatives thereof. Notwithstanding the foregoing, Customer Content shall not include De-Identified Data.

2.6 “**Customer End Users**” shall mean any individuals at the Site that may use the Services and communicate information or data via the Devices, including but not limited to Site patients or Site residents as the context requires. Customer End Users shall not include Authorized Users of the Licensed Software or Services.

2.7 “**De-Identified Data**” shall mean data which has been de-identified in accordance with the HIPAA Privacy Rule standards for de-identification in 45 CFR §164.514(b).

2.8 “**Devices**” shall mean the third-party equipment, including but not limited to, Amazon Echo devices, Google Nest devices, and associated accessories, cases, and chargers, to be procured by Customer, configured for use with the Licensed Software, and provided to Participants for use with the Services as further described herein and in an Order Form.

2.9 “**Documentation**” shall mean Company’s standard user manuals and/or related documentation that are generally made available to users of the Licensed Software, as applicable, in the form provided by Company to Customer under or in connection with this Agreement.

2.10 “**Effective Date**” shall mean the date that Customer checks the appropriate box or clicks the “AGREE”, “Create Contract”, or similar button in the Order Form.

2.11 "**Fees**" shall mean the fees paid or payable by Customer to Company (or Company's designee) for the Services and Ancillary Services as set forth in any Order Form.

2.12 "**Go-Live Date**" shall mean the earliest date of the following to occur within any Site: (a) Participants are able to make a request through the Device which will be routed to the Licensed Software (e.g. "Alexa, tell my caregiver I am hungry"); (b) Participants are able to use the basic Device functionality (e.g. play music, get news, get weather); and/or (c) the Service is otherwise put into commercial use by the Customer.

2.13 "**Intellectual Property Rights**" shall mean: (a) all patents, copyright, database rights, compilations, know-how, designs, and trademarks (registered or unregistered), and related goodwill, as well as proprietary rights, trade secret, moral rights (including rights of authorship and attribution and subsequent modification); (b) all other intellectual property rights and similar or equivalent rights anywhere in the world which currently exist or are recognized in the future; and (c) applications, registrations, extensions, and renewals in relations to any such rights.

2.14 "**Laws**" shall mean all applicable laws, regulations, orders, and binding codes of practice, including but not limited to the Health Insurance Portability and Accountability Act of 1996 as amended and the rules promulgated

thereunder (together, "**HIPAA**"), the Telephone Consumer Protection Act of 1991 as amended and the rules promulgated thereunder (together, "**TCPA**"), and any other state or federal laws, regulations, orders and binding codes of practice protecting privacy.

2.15 "**Licensed Software**" shall mean, collectively, any and all of Company's proprietary software application(s) that enable communication of Customer Content via the Devices and for which a license is granted to Customer pursuant to this Agreement, in each case, as listed in an Order Form.

2.16 "**Order Form**" shall mean the order or purchase form that Customer enters into with Company (either directly or via an Authorized Marketplace) that sets forth (a) the Licensed Software and Ancillary Services that Customer elects to license under this Agreement, and (b) the Fees and payment terms relating to such Licensed Software and Ancillary Services, in each case as agreed by Customer once Customer checks the appropriate box or clicks the "AGREE", "Create Contract", or similar button in such form.

2.17 "**Participants**" shall mean any individual using the Service, including without limitation, Customer End Users, legal guardians, Authorized Users, or Customer's or its Affiliate's employees, contractors, and vendors.

2.18 “**Service**” means, collectively, the Licensed Software (including interoperability of such Licensed Software with Devices), in each case, as set forth in a valid, executed Order Form.

2.19 “**Site**” shall mean (a) Customer’s location(s) set forth in an Order Form, and (b) any such other Customer locations as may be added throughout the Term with the execution of an additional Order Form.

2.20 “**Software Error**” shall mean any material non-conformity of any component of the Licensed Software with the applicable Documentation provided by Company to Customer.

2.21 “**Software Update**” will mean any version of the Licensed Software (or its components thereof), developed subsequent to the Effective Date, which implements minor improvements or augmentations and is designated as a dot (.) release (e.g. 3.X), or which corrects failures of the Licensed Software materially to conform to the then-current documentation. Software Updates shall be included in the price of the annual Service Fees.

2.22 “**Software Upgrade**” will mean any version of the Licensed Software (or its components thereof), developed subsequent to the Effective Date,

which implements additional features or functions, is designated as a major release (e.g. X.0), produces substantial and material improvements with respect to the utility and efficiency of the Licensed Software, but which does not constitute merely a Software Update (as reasonably determined by Company in good faith), and which is not marketed by Company as a separate product and/or service. Software Upgrades shall be included in the price of the annual Service Fees.

3. Term; Termination.

3.1 Term. The term of this Agreement (“**Term**”) shall be effective as of the earliest Effective Date and shall expire on the latest Order Form Term expiration or earlier termination date, unless earlier terminated in accordance with Section 3.2 below.

3.2 Termination. Notwithstanding anything to the contrary, at any time during the Term: (a) either Party may terminate this Agreement or any Order Form upon written notice to the other Party (i) in the event that such other Party (a) has breached any material term of this Agreement and has failed to cure such breach within thirty (30) calendar days of receipt of written notice of such breach, or (ii) has executed an assignment for the benefit of creditors or filed for relief under any applicable bankruptcy, reorganization, moratorium, or similar debtor relief laws, or in the event that a receiver has been appointed

for the other Party or any of its assets or properties, or an involuntary petition in bankruptcy has been filed against such other Party, which proceeding or petition has not been dismissed, vacated, or stayed within sixty (60) days; and (b) in the event Company amends this EULA pursuant to Section 15 below (excluding amendments covered by the proviso of the fourth sentence of Section 15), Customer may terminate this Agreement at any time upon written notice to Company prior to the effective date of such amendment.

3.3 *Effect of Termination.* Upon any termination of this Agreement, (a) all Order Form Terms shall immediately terminate and the licenses and rights granted to Customer under Section 4 below shall terminate immediately, and (b) each Party shall (i) immediately discontinue all use of the other Party's Confidential Information; (ii) at the Disclosing Party's option and cost, return to the other Party, or delete the Confidential Information of the other Party then in its possession, with written certification of such destruction; and (iii) promptly pay all amounts due and remaining payable hereunder. For clarity, in the event an Order Form expires or is terminated and there are one or more remaining Order Forms as of such expiration or termination date, this EULA shall remain in full force and effect with respect to all surviving Order Forms. Any provisions which remain to be performed, or by their nature are intended to be applicable, following any expiration or termination of this Agreement shall remain in full force and effect after such expiration/termination.

3.4 *Survival.* The provisions of Sections 2 (Definitions), Section 3.3 (Effect of Termination), this Section 3.4 (Survival), 4.3 (Retained Rights; Ownership), 4.4 (Authorized Users), 4.5 (Third Party Integrations), the last sentence of Section 4.6 (Use of Name and Logo), 6 (Fees), and Sections 11-25, as well as Customer's obligations to pay any amounts due and outstanding prior to the effective date of termination hereunder, shall survive termination or expiration of this Agreement

4. Rights Granted; Access and Use.

4.1 *License Grant.*

4.1.1 From Company to Customer: Subject to the terms and conditions of this Agreement, Company hereby grants Customer, during the Term, a non-exclusive, non-transferable, non-sublicensable right and license to (i) access and use the corresponding Licensed Software for use solely in connection with Devices and solely in accordance with the corresponding Access Protocols, and (ii) where applicable, grant Authorized Users limited sublicenses (without the right of further sublicense) to use the Licensed Software for use in connection with Devices in accordance with the Access Protocols.

4.1.2 From Customer to Company: Subject to the terms and conditions of this Agreement, Customer hereby grants (and Customer shall cause Participants to grant) to Company, during the Term, a non-exclusive, non-transferable, non-sublicensable right and license to (i) use the Customer Content during the Term for the limited purposes of performing Company's obligations under this Agreement; (ii) transmit, display, publicly perform the End User Data, and the Customer trademarks, service marks and/or logos explicitly provided to Company for use with the Services; and (iii) collect and transmit the Customer Content from and/or to Participants.

4.2 Usage Restrictions. Customer will not (a) sublicense, sell, resell, transfer, assign, distribute, share, lease, rent, make any commercial use of, outsource, use on a timeshare or service bureau, otherwise generate income from the Services, (b) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of the Services are compiled or interpreted, and Customer acknowledges that nothing in this Agreement will be construed to grant Customer any right to obtain or use such code; (c) modify, adapt, translate or create derivative works, nor allow any of those actions to occur, based on all or any part of the Services, (d) modify any proprietary rights notices which appear in or on the Services or components thereof, (e) allow third parties other than Authorized Users to gain access to the Licensed Software, and/or (f) use any Services in violation of any Laws (including but not limited to any export laws, restrictions,) or outside of the scope of the rights granted in this Agreement.

4.3 Retained Rights; Ownership.

4.3.1 By Company: Company and its licensors, as applicable, at all times own all right, title, and interest in and to the Services ((x) including, without limitation, the corresponding Licensed Software and interoperability with any Devices, but (y) excluding any Customer Content and any third-party underlying rights in and to the Devices), Documentation, Access Protocols, Company Confidential Information, Ancillary Services and Deliverables, including all Intellectual Property Rights in and to each of the foregoing (collectively, the "**AIVA IP**"). Customer acknowledges and agrees and warrants that it has not acquired, and shall not acquire, any right, title, interest, or other ownership in or to the AIVA IP. Should any such right, title, interest, or other ownership become vested in Customer by operation of law or otherwise, Customer agrees to assign, and hereby assigns, all such right, title, interest, and other ownership to Company without further consideration. Any and all use by Customer of the AIVA IP, and any and all goodwill and benefit arising from such use, shall inure to the sole and exclusive benefit of Company. Customer shall not, during or after the Term, do anything which would in any way damage, injure, or impair the validity and subsistence of the AIVA IP, nor shall Customer permit or cause any lien, charge, pledge, mortgage or encumbrance to attach thereto.

4.3.2 By Customer: Customer retains all right, title and interest in and to the Customer Content and Customer Confidential Information, and Company acknowledges that it neither owns nor acquires any additional rights in and to

the Customer Content or Customer Confidential Information not expressly granted to Company by this Agreement.

4.3.3 Reservation: Neither Party shall be deemed to grant to the other Party any right, title, interest, and/or license, whether by implication, estoppel, status or otherwise other than as expressly provided in this Agreement. Each Party expressly reserves all rights not expressly granted to the other Party in this Agreement.

4.4 **Authorized Users.** Customer acknowledges and agrees that it shall be responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User which, if undertaken by Customer, would constitute a breach of this Agreement by Customer. Customer shall make all Authorized Users aware of the provisions of this Agreement that may be applicable to such Authorized User's use of the Services, and Customer shall cause Authorized Users to comply with such provisions.

4.5 **Third-Party Integrations.**

4.5.1 During the Term, to the extent mutually agreed by Company and Customer in writing (including via email), Company shall provide the software

development necessary for the Licensed Software to work with Customer's relevant, existing third-party systems (each, a "**Third-Party Integration**"). For the avoidance of doubt, any software development by Company in connection with Third-Party Integrations shall remain the Intellectual Property of Company.

4.5.2 As between the Parties, Customer is solely responsible for paying any additional costs and fees charged by the vendor(a) of each of the Third-Party Integration to integrate with the Licensed Software (collectively, the "**Third-Party Integration Costs**"). For clarity, Third-Party Integration Costs shall be due and payable in addition to Third Party Integration Fees, if any, as agreed by Company and Customer in writing (including via email).

4.5.3 In connection with each Third-Party Integration, the Parties acknowledge and agree that, as between the Parties, (a) Customer shall be solely responsible for any and all content or information accessible by Participants via the Services in connection with such Third-Party Integration (collectively, "**Third Party Integration Content**"), including but not limited to the accuracy, quality, integrity, legality, reliability, and appropriateness of all such Third Party Integration Content, and (b) and Company does not warrant, endorse or assume any liability or responsibility for any such Third Party Integration Content. In addition to Customer's other representations, warranties and covenants set forth in this Agreement, Customer represents and warrants that the Third Party Integration Content provided hereunder, including but not limited to the performance,

transmission, and provision of such Third Party Integration Content via the Devices by Company, shall not infringe the copyright, patent, trademark, trade secret, or other Intellectual Property Rights of any third party, or constitute defamation, or violation of any third party right, or violate any Law.

4.6 Use of Name and Logo. Subject to the terms and conditions of this Agreement, (a) Company hereby grants to Customer during the Term a non-exclusive, non-transferable, royalty-free license to use Company's name and approved logo(s) solely to identify Company as a provider of services to Customer, and (b) Customer hereby grants to Company during the Term a non-exclusive, non-transferable, royalty-free license to use (including reproducing, distributing, resizing, and displaying) Customer's name and approved logo(s) and marks in Company's marketing, sales, and promotional materials (whether digital or physical) solely to identify Customer as a Company customer. Except for the foregoing, neither Party shall use the name, logo(s), or marks of the other Party without the other Party's express prior written approval in each instance. Upon either Party's reasonable request, the other Party shall provide the requesting Party with logo(s) or marks approved for use under the first sentence of this Section 4.6. Upon any expiration or termination of the Term of this Agreement, each Party will discontinue generating and distributing the name, logos, and marks of the other party as soon as is commercially practicable (and for physical materials no later than the next refresh of such materials). Neither Party shall be required to recall any authorized uses.

4.7 *Suspension.* Customer acknowledges and shall cause its Authorized Users to acknowledge that Company may, temporarily or permanently suspend or discontinue access to the Licensed Software in the event Company, in its good faith reasonable discretion, is aware of or suspects (a) any violation of the terms of this Agreement or any Addenda thereto, and/or (b) any risk of material harm or liability to the Licensed Software, Company, and/or Customer.

5. Provisioning.

5.1 *Licensed Software.* As soon as reasonably practicable after the Effective Date, Company will provide Customer with access to the Service, including set up of the Licensed Software for interoperation with the Devices at the Site (it being understood that the timing and/or sequence of release of certain components or parts of the Licensed Software may be sequential and/or subject to update). As between the Parties, Customer shall be solely responsible for procuring Devices subject to Section 9 below, including any and all costs and expenses in connection therewith. Except as expressly set forth in this Agreement, Company shall have no responsibility or liability with respect to any such Devices. Fees for the Service will begin and be payable on the Effective Date.

5.2 Ancillary Services. Customer may request and Company may provide certain ancillary support services, including but not limited to Device configuration, training and other service offerings (collectively, “**Ancillary Services**”), pursuant to an Order Form agreed to by Customer for the Ancillary Services.

5.3 Changes and Cancellations. In the event that Customer requests a change or cancellation in any part of an Order Form, Customer shall be responsible for any expenses and charges incurred and work performed by Company through the effective date of such change or cancellation, unless charges are on a flat fee non-cancelable basis as indicated in an Order Form.

6. Fees.

6.1 Fees. In consideration for the rights and license granted to Customer for access and use of the Licensed Software and provision of any Ancillary Services under this Agreement, Customer shall pay to Company (or Company’s designee) the fees (collectively, “**Fees**”) set forth in the corresponding Order Form(s).

6.2 Payment. Customer will pay Company (or Company’s Authorized Marketplace or other designee) the Fees set forth in the applicable Order Form(s), without offset or deduction. Unless otherwise set forth in the

applicable Order Form (or agreed as between Customer and an Authorized Marketplace, if applicable), all payment amounts due hereunder shall be due within thirty (30) calendar days following Customer's receipt of invoice. All payments of invoiced amounts must be paid in full in U.S. Dollars to Company pursuant to the payment instructions set forth in the Order Form or as otherwise notified by Company (or an Authorized Marketplace) in writing. If any such payment is not paid in full when due, in addition to any other remedy otherwise available to Company, Company may impose interest on overdue charges and payments at the rate of 1.5% per month or the maximum amount permissible by law, whichever is greater, until Customer is current on all payments.

6.3 Taxes. Any taxes, duties, excises or tariffs imposed on costs and Fees paid under this Agreement shall be the responsibility of Customer. Customer shall indemnify, defend and hold Company harmless for any failure by Customer to timely remit any of the aforementioned taxes. If Company is required by law to directly pay any such taxes, fees, excises, tariffs or other charges, Customer shall promptly reimburse Company upon Company's presentation to Customer of documentation evidencing such payment.

7. Customer Responsibilities.

7.1 *Authorized User Access to the Services.* Subject to Section 4.4 of this EULA, Customer may permit any Authorized Users to access and use the features and functions of the Service as contemplated by this Agreement. Authorized User IDs cannot be shared or used by more than one Authorized User. Customer shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and shall notify Company promptly of any such unauthorized use known to Customer. Customer acknowledges and agrees that it may need certain networking capabilities, bandwidth, software, and hardware to use the Services. Customer is solely responsible for all such networking capabilities, bandwidth, software, and hardware required to reach the Company systems to gain access to the Services.

7.2 *Customer Responsibility for Data and Security.* Customer shall be responsible for all changes to and/or deletions of all security passwords and other Access Protocols required in order to access the Services. Customer shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of the Customers Content. Customer agrees to collect, maintain, store, transmit, and disclose any information gathered hereunder, including but not limited to any Customer Content in compliance with its published terms of use, privacy policy, and Laws. Customer agrees that Company does not assume any liability or responsibility to Customer, any Participant, or any third party for any Customer Content made accessible via the Licensed Software.

7.3 *Maintenance of Customer Equipment & Environment.* Customer is responsible for (a) maintenance and management of its computer network(s), servers, hardware, software (other than the Licensed Software), website(s), and any equipment or services related to the maintenance and management of the foregoing; and (b) correctly configuring Customer's systems in accordance with the mutually agreed upon Access Protocols.

7.4 *Compliance with Laws.* Customer shall use the Services in compliance with Laws.

8. Technology Maintenance.

8.1 *Error Correction.* Provided that Customer has paid all Fees due and payable pursuant to this Agreement, Company will use commercially reasonable efforts to adapt, re-configure or re-program the Licensed Software, as applicable, in order to correct in a timely fashion any Software Errors reported by Customer via its designated representatives.

8.2 *Procedural Workarounds.* In the event that Company fails or is unable to correct any Software Error, as required by this EULA, Company shall use commercially reasonable efforts to develop in a timely fashion procedure or

routines, for use by the Authorized Users of the Service, which, when employed in the regular operation of, or access to, the Service will avoid or substantially diminish the practical adverse effects of the relevant Software Error, provided that any failure or inability by Company to develop any such procedure or routine, or failure or inability to do so in a timely fashion will in no event be deemed a breach of Company's obligations hereunder.

8.3 *Software Updates; Software Upgrades.* From time to time Company may, in its discretion, develop Software Updates and/or Software Upgrades. Company will, during the Term, make such Software Updates and/or Software Upgrades available to Customer free of charge, by the same means or methods by which the Service is made available, provided that Customer has paid all Fees due hereunder. Any such Software Updates and/or Software Upgrades provided hereunder will be deemed to constitute part of the Service and will be subject to all the terms and provisions hereof.

9. Device Procurement.

9.1 *Procurement of Devices.* As between the Parties, Customer shall be solely responsible for procuring the Devices to be deployed at the Site for use by Patients and Authorized Users, including any and all costs and expenses in connection therewith. Company shall have no responsibility or liability with respect to any Devices. In the event of loss, damage, or defect in design,

material, or workmanship with respect to any Device, it shall be Customer's sole responsibility to assert any manufacturer's warranty and/or provide replacement Devices.

9.2 *Device Configuration.* The Parties shall work together in good faith to configure those Devices enumerated in the Order Form to be compatible with the Licensed Software, at all times, solely for the internal access and subject to and in accordance with the terms and conditions of this Agreement. Company will provide reasonable remote support to help Customer configure Devices.

9.3 *Use of Device.* Customer shall only use the Devices at the Site in a careful and proper manner for the purposes of accessing the Services under the terms of this EULA and will comply with all applicable Laws regarding the use, maintenance and storage of the Devices.

9.4 *Installation.* Physical installation, and de-installation for all Devices shall be the sole and exclusive responsibility of Customer.

9.5 *Replacement Devices.* Replacement Devices shall be the sole responsibility of Customer.

10. De-Identified Data: The Parties expressly acknowledge and agree that Company and its suppliers own and shall retain the right to use De-Identified Data to monitor, analyze, improve and enhance the Services and to generate aggregate reports and statistics that may be used for marketing purposes.

11. Confidentiality:

11.1 “**Confidential Information**” shall mean all business, financial, engineering and/or technical information belonging to or properly in the possession of either Party (“**Disclosing Party**”), or to which the other Party (“**Receiving Party**”) has access pursuant to this Agreement, regardless of form or medium (including, without limitation, information and tangible and intangible property which may related to proprietary products, concepts, marketing information, trade secrets, technology, processes drawings, specifications, programs, models, financial information and projections, formulae, data, know-how, developments, designs, improvements, software programs, marketing materials, plans and strategies, customer and provider lists, and other valuable business information and products), and whether or not marked or otherwise identified by Disclosing Party as being confidential. Confidential Information shall not include any of the following: (a) information that is independently developed by Receiving Party without any use of and/or access to the Confidential Information as established by Receiving Party by appropriate documentation; (b) information

that is lawfully received by the Receiving Party free of restriction from a third party having the right as of the date of such disclosure to so furnish such Confidential Information without any breach of the confidentiality obligation owed to Disclosing Party; (c) information that is in the public domain at the time of disclosure or which thereafter becomes part of the public domain through no wrongful act of Receiving Party; (d) information that, at the time of disclosure to Receiving Party, was known to Receiving Party free of restriction as evidenced by appropriate documentation in Receiving Party's possession; and (e) information that Disclosing Party agrees in writing is free of such restrictions.

11.2 ***Non-Disclosure and Use.*** Receiving Party shall not disclose Disclosing Party's Confidential Information to any person or entity other than Receiving Party's employees, agents, advisors and representatives with a need to know the Confidential Information in order to carry out the purpose of this Agreement and who agree to be bound by Receiving Party's obligations under this Agreement with regard to non-disclosure and use of such Confidential Information ("**Representatives**"). Receiving Party's agrees that it shall not, and shall not permit its Representatives to, reverse-engineer, decompile or disassemble any part of, or remove any proprietary marking from, Disclosing Party's Confidential Information. Receiving Party shall be liable for any breach of this Section 11 by its Representatives.

11.3 ***Care.*** Receiving Party shall use at least the same degree of care to safeguard and to prevent disclosure to third parties of Confidential Information

as it employs to safeguard its own information of a similar nature, but in no event less than reasonable care. Receiving Party shall promptly (i) notify Disclosing Party in writing of the details and circumstances of any unauthorized disclosure, misuse or misappropriation of any of Disclosing Party's Confidential Information (an "**Unauthorized Use**") which may come to Receiving Party's attention; (ii) use best efforts to rectify or cure such Unauthorized Use and retrieve any such disclosed Confidential Information; and (iii) use best efforts to provide assistance to and cooperate with Disclosing Party to rectify or cure such Unauthorized Use and to prevent further misuse or disclosure of such Confidential Information.

11.4 *Mandatory Disclosure.* If Receiving Party becomes legally compelled to disclose any of Disclosing Party's Confidential Information, Receiving Party shall (i) promptly notify Disclosing Party of such requirement before any disclosure is made so that Disclosing Party may seek a protective order or other appropriate remedy limiting disclosure or use of such information; and (ii) provide reasonable assistance to Disclosing Party to seek such remedy at Disclosing Party's expense. If such protective order or other remedy is not obtained, Receiving Party may furnish only that portion of such Confidential Information that, in the opinion of its legal counsel, it is legally required to disclose, and Receiving Party agrees to make commercially reasonable efforts to obtain assurance that confidential treatment will be accorded to the Confidential Information.

11.5 **Remedies.** The Parties acknowledge and agree that money damages would not be a sufficient remedy for any breach of this Section 11, and that any such breach may cause immediate and irreparable harm. Accordingly, each Party agrees that, in the event of any breach or threatened breach of this Section 11 by Receiving Party, Disclosing Party shall be entitled, in addition to all remedies otherwise available at law or in equity, to seek injunctive relief.

12. Representations and Warranties.

12.1 Each Party represents and warrants to the other Party as follows: (a) it is an entity duly incorporated or organized, validly existing, and has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement; and (b) it will comply with all applicable Laws in connection with its obligations under this Agreement.

12.2 If Aiva is your “Business Associate” as defined in HIPAA, then as of the date that Aiva becomes your Business Associate, the HIPAA Business Associate Addendum at <https://www.aivahealth.com/hipaa-baa> (“BAA”) automatically shall apply and become part of the Agreement.

12.3 Customer further represents and warrants to Company that: (a) it has obtained, and that it shall obtain and maintain, all necessary and legally required consents, acknowledgements, approvals, or applicable authorizations (collectively, "**Acknowledgments**") from Participants as required for the use of the Services and each component thereof by such Participants; (b) all Acknowledgments shall be obtained and maintained in accordance with all Laws; (c) Customer shall ensure that each Participant is informed of the proper use of the Services, including that the Services are not intended to be used for health emergencies; (d) Customer and its Authorized Users shall not use any Services, Licensed Software, Devices, Ancillary Services, and/or any other services provided by Company to Customer hereunder in violation of any Laws; (e) Company has not and is not expected to provide Customer with any analysis, interpretation or advice regarding the compliance of any aspect of the Services, including any Acknowledgments, with any third-party rights or laws, rules, or regulations; and (f) the Customer Content provided hereunder, including performance, transmission, and provision of such Customer Content via the Devices by Company shall not infringe the copyright, patent, trademark, trade secret, or other Intellectual Property Right of any third party, or constitute defamation, or violation of any third party right, or violate any Law.

13. Disclaimers. CUSTOMER ACKNOWLEDGES AND AGREES THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT AS EXPRESSLY SET FORTH IN THIS EULA: (a) COMPANY HAS NOT MADE NOR WILL BE DEEMED TO HAVE MADE, AND COMPANY HEREBY DISCLAIMS, ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED (WHETHER BY STATUTE, FACT, CUSTOM, OR

OTHERWISE), INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, NON-INFRINGEMENT OR CONFORMANCE TO ANY DESCRIPTION (WHETHER WITH RESPECT TO THE SERVICE, ANY LICENSED SOFTWARE, DEVICES, ANCILLARY SERVICES, OR OTHERWISE); AND (b) CUSTOMER SHALL HAVE NO REMEDIES IN RESPECT OF ANY STATEMENT, REPRESENTATION, ASSURANCE OR WARRANTY (WHETHER MADE INNOCENTLY OR NEGLIGENTLY) THAT IS NOT SET OUT IN THIS EULA.

14. Indemnification. Customer shall indemnify, defend and hold Company, its affiliates, and their respective officers, directors, employees, agents and representatives (collectively, “**Company Indemnified Parties**”) from and against any and all loss or damage arising out of a third-party claim, suit, or proceeding against such Company Indemnified Party to the extent that such claim arises out of or results from (a) Customer's gross negligence, intentional wrongdoing or willful misconduct; and (b) a breach or an alleged breach by Customer of its representations, warranties, covenants, and obligations under this EULA, and (c) Customer's breach or alleged breach of any Laws.

15. Limitation of Liability. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY,

ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. THE CUMULATIVE LIABILITY OF COMPANY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, SHALL NOT EXCEED THE AGGREGATE AMOUNTS PAID BY CUSTOMER TO COMPANY UNDER THE AGREEMENT DURING THE 12-MONTH PERIOD IMMEDIATELY PRECEDING SUCH CLAIM(S). THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. THE DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES, AND, ABSENT ANY OF SUCH DISCLAIMERS, EXCLUSIONS OR LIMITATIONS OF LIABILITY, THE PROVISIONS OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE ECONOMIC TERMS, WOULD BE SUBSTANTIALLY DIFFERENT.

16. Amendments. Company may make changes to this EULA from time to time in its sole discretion. Company will notify you of changes to this EULA in writing (email sufficient). If the Effective Date of your Agreement is after

publication of any such changes, the modified version of this EULA will apply to you immediately upon enrollment. If the Effective Date of your Agreement is prior to such changes, the modified version of this EULA automatically will become effective upon the later of (a) thirty (30) days after delivery of the corresponding email notice and (b) the date indicated in such email notice, regardless of whether or not you affirmatively acknowledge and agree to such changes; provided, however, that Company may change this Agreement with effect as of the date we notify you of them if changes (i) add additional features to the Services that do not materially adversely affect you, or (ii) are necessary for Laws, fraud or abuse prevention, or security reasons (e.g., malware, spam, data breaches, or other cybersecurity risks). Each new version of this EULA will supersede all prior versions. You agree to regularly monitor your Customer Email Address (as provided in the Order Form) for notices regarding such changes. For clarity, if you do not agree with any proposed changes under this Section, you may terminate this Agreement pursuant to Section 2.2(b) above, which is your sole and exclusive remedy. Subject to the foregoing, you agree that your continued use of the Services made available to you via this Agreement constitutes your agreement to such modified terms. No Order Form may be amended without the express written approval of each Party.

17. No Waiver; Severability. No waiver of this Agreement will be binding upon either Party unless made in writing and signed by duly authorized representatives of such Party, and no failure or delay in enforcing any right will be deemed a waiver of such right. All remedies set forth in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise, and may be enforced

concurrently or from time to time. If any term or provision of this Agreement shall be found to be illegal or unenforceable, such illegal or unenforceable provision will be deemed modified to the limited extent required to permit its enforcement in a manner most closely approximating the intention of the Parties expressed herein.

18. Entire Agreement. This Agreement (including all Exhibits and each Order Form attached hereto) expresses the entire understanding of the Parties about the described subject matter and supersedes all prior and contemporaneous agreements, contracts, arrangements and understandings (whether oral, written, or implied). The Parties have reviewed this Agreement with their own attorneys prior to signing it.

19. Governing Law; Venue; Attorneys' Fees. This Agreement, its interpretation, performance and enforcement, any and all disputes related in any way to it, and all other matters related in any way to it, shall be governed by the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles. The Parties agree that Los Angeles County, California shall be the situs of any legal proceeding arising out of or relating to this Agreement. Each party hereby waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section 19, and stipulates that the state and federal courts located in Los Angeles, California shall have *in personam* jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of

or related to this Agreement. In any action between the Parties seeking enforcement of any of the provisions of this Agreement, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorneys' fees.

20. Assignment. This Agreement shall be binding on the Parties' successors and assigns; provided, that neither Party may assign or transfer any rights or obligations under this Agreement without the advance written consent of the other Party. Notwithstanding the foregoing, consent of the other Party shall not be required for assignment or transfer made by (a) operation of law, or (b) to an entity that acquires all or substantially all of its stock, assets, or business. Except as provided in this Section 20, any attempts by either Party to assign any of its rights or delegate any of its duties hereunder without the prior written consent of the other Party shall be null and void.

21. No Exclusivity. Nothing in this Agreement shall obligate Customer to use Company's products or services on an exclusive basis. Nothing in this Agreement grants an exclusive license to Customer hereunder of any Company products or services.

22. Force Majeure. Each Party shall be excused from performance of its obligations under this Agreement if such a failure to perform results from compliance with any requirement of Laws, acts of god, fire, strike, embargo, terrorist attack, war, insurrection or riot or other causes beyond the reasonable control of such Party. Any delay resulting from any of such causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances.

23. Independent Contractors. Company and Customer acknowledge and agree that the relationship arising from this Agreement does not constitute or create any joint venture, partnership, employment relationship or franchise between them, and the Parties are acting as independent contractors in making and performing this Agreement.

24. No Third-Party Beneficiaries. The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing herein, whether express or implied, shall confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

25. Interpretation. This Agreement has been negotiated by the Parties and their respective counsel, and shall be interpreted in accordance with its terms

and without any strict construction in favor of or against either Party. The section headings in this Agreement are included for convenience only and shall not limit or otherwise affect the interpretation of any of the terms or provisions herein.