Terms of Service

1. Introduction

1.1. Your use of OT EMR's electronic medical records service via a web browser or a mobile application (referred to collectively as the "Services" in this document and excluding any services provided to you by OT EMR under a separate written agreement) is subject to the terms of a legal agreement between you and OT EMR. "OT EMR" means OT EMR, Inc., whose principal place of business is at 5301 Alpha Rd., Suite 80-25, Dallas, TX 75240. This document explains how the agreement is made up, and sets out the terms of that agreement.

1.2. Unless otherwise agreed in writing with OT EMR, your agreement with OT EMR will always include, at a minimum, the terms and conditions set out in this document.

1.3. This agreement forms a legally binding agreement between you and OT EMR in relation to your use of the Services. It is important that you take the time to read it carefully. Collectively, this legal agreement is referred to below as the "Terms".

1.4. The "Subscription Agreement" shall mean your Subscription Agreement with OT EMR.

2. Accepting the Terms

2.1. In order to use the Services, you must first agree to the Terms. You may not use the Services if you do not accept the Terms.

2.2. You can accept the Terms by: (A) clicking to accept or agree to the Terms, where this option is made available to you by OT EMR in the customer interface for the Services; or (B) by actually using the Services. In this case, you understand and agree that OT EMR will treat your use of the Services as acceptance of the Terms from that point onwards.

2.3. If you are accepting the Terms on behalf of another legal entity, you represent that you have the authority to bind such legal entity.

2.4. You may not use the Services and may not accept the Terms if (A) you are not of legal age to form a binding contract with OT EMR, or (B) you are a person barred from receiving the Services under the laws of the United States or other countries including the country in which you are resident or from which you use the Services.

2.5. Before you continue, you should print off or save a local copy of the Terms for your records.

3. Provision of the Services by OT EMR

3.1. OT EMR may have affiliated legal entities around the world ("Affiliates"). Sometimes, these companies will be providing the Services to you on behalf of OT EMR itself. You acknowledge and agree that the Affiliates will be entitled to provide the Services to you.

3.2. You acknowledge and agree that the form and nature of the Services which OT EMR provides may change from time to time without prior notice to you.

3.3. As part of this continuing innovation, you acknowledge and agree that OT EMR may stop (permanently or temporarily) providing the Services (or any features within the Services) to you or to customers generally, at OT EMR's sole discretion, with thirty days' prior notice to you.

3.4. OT EMR may at its sole discretion disable access to your account if (a) you violate any of the Terms or (b) your relationship with OT EMR is terminated or otherwise ends.

3.5. You acknowledge and agree that if OT EMR disables access to your account, you may be prevented from accessing the Services, your account details or any files or other content which is contained in or associated with your account.

4. Use of the Services by you

4.1. In order to access certain Services, you may be required to provide information about yourself (such as identification or contact details) as part of the registration process for the Services, or as part of your continued use of the Services. You agree that any registration information you give to OT EMR will always be accurate, correct and up to date.

4.2. You agree to use the Services only for purposes that are permitted by (a) the Terms and (b) any applicable law (including, but not limited to, Health Insurance Portability and Accountability Act (HIPAA)), regulation or generally accepted practices or guidelines in the relevant jurisdictions.

4.3. You agree not to access (or attempt to access) any of the Services by any means other than through the interface that is provided by OT EMR, unless you have been specifically allowed to do so in a separate agreement with OT EMR.

4.4. You agree that you will not engage in any activity that interferes with or disrupts the Services (or the servers and networks which are connected to the Services).

4.5. Unless you have been specifically permitted to do so in a separate agreement with OT EMR, you agree that you will not reproduce, duplicate, copy, sell, trade or resell the Services (or any portion thereof) for any purpose.

4.6. You agree that you are responsible for (and that OT EMR has no responsibility to you or to any third party for) any breach of your obligations under the Terms and for the consequences (including any loss or damage which OT EMR may suffer) of any such breach.

5. Your passwords and account security

5.1. You agree and understand that you are responsible for maintaining the confidentiality of passwords associated with any account you use to access the Services.

5.2. Accordingly, you agree that you will be responsible to OT EMR for all activities that occur under your account.

5.3. If you become aware of any unauthorized use of your password or of your account, you agree to notify OT EMR immediately at support@onetouchemr.com.

5.4. OT EMR, at its sole discretion, may change the password associated with any account you use to access the Services in the event that the security of such account is compromised.

6. Privacy and your Personal Information

6.1. All information of any kind including but not limited to patient data (such as data files, written text, computer software, music, audio files or other sounds, photographs, videos or other images, etc.) that you submit or otherwise provide to OT EMR as part of, or through your use of, the Services is collectively referred to as Personal Information.

6.2. OT EMR agrees not to disclose the Personal Information to any third party except as follows:

(a) to OT EMR's service providers, agents and representatives, provided that such service providers, agents or representatives agree to confidentiality measures that are at least as stringent as those stated in the Terms;

(b) to law enforcement or a government agency if requested, or if OT EMR reasonably believes that you may violate applicable criminal law;

(c) as required by law;

(d) in response to a subpoena or other compulsory legal process, provided that OT EMR agrees to give you written notice of at least seven days' prior to disclosing Personal Information under this subsection (or prompt notice in advance of disclosure, if seven days advance notice is not reasonably feasible), unless the law forbids such notice; or

(e) in a manner consistent with Sections 9.2 or 10 of the Terms.

7. Proprietary rights

7.1. You acknowledge and agree that OT EMR owns all legal right, title and interest in and to the Services, including any intellectual property rights which subsist in the Services (whether those rights happen to be registered or not, and wherever in the world those rights may exist). You further acknowledge that the Services may contain information which is designated confidential by OT EMR and that you shall not disclose such information without OT EMR's prior written consent.

7.2. Unless you have agreed otherwise in writing with OT EMR, nothing in the Terms gives you a right to use any of OT EMR's trade names, trademarks, service marks, logos, domain names, and other distinctive brand features.

7.3. If you have been given an explicit right to use any of these brand features in a separate written agreement with OT EMR, then you agree that your use of such features shall be in compliance with that agreement, and any applicable provisions of the Terms.

7.4. Other than the limited license set forth in Section 9.2 of the Terms, OT EMR acknowledges and agrees that it obtains no right, title or interest from you (or your licensors) under these Terms in or to any Personal Information that you submit or otherwise provide on, or through, the Services, including any intellectual property rights which subsist in that Personal Information (whether those rights happen to be registered or not, and wherever in the world those rights may exist), unless you have agreed otherwise in writing with OT EMR.

7.5. You agree that you shall not remove, obscure, or alter any proprietary rights notices (including copyright and trademark notices) which may be affixed to or contained within the Services.

8. License from OT EMR

8.1. OT EMR gives you a personal, worldwide, limited duration, fee-based, non-assignable and non-exclusive license to use the Services provided to you by OT EMR in accordance with the Subscription Agreement. This license is for the sole purpose of enabling you to use and enjoy the benefit of the Services as provided by OT EMR, in the manner permitted by the Terms.

8.2. The duration of the license from OT EMR is limited to the duration of the Subscription Agreement. As a condition precedent to the grant of the license from OT EMR, the duration of the Subscription Agreement shall be memorialized in writing.

8.3. You may not (and you may not permit anyone else to) copy, modify, create a derivative work of, reverse engineer, decompile or otherwise attempt to extract the source code of the Services or any part thereof, unless this is expressly permitted or required by law, or unless you have been specifically told that you may do so by OT EMR, in writing.

8.4. Unless OT EMR has given you specific written permission to do so, you may not assign (or grant a sub-license of) your rights to use the Services, grant a security interest in or over your rights to use the Services, or otherwise transfer any part of your rights to use the Services.

9. Licenses from you

9.1. You retain copyright and any other rights you already hold in the Personal Information.

9.2. By submitting or otherwise providing Personal Information to OT EMR as part of, or through your use of, the Services you give OT EMR a perpetual, irrevocable, worldwide, royalty-free, and non-exclusive license to: (a) generate aggregated, Non-personal Information, where aggregated, Non-personal Information is Personal Information that is collected into groups so that it no longer reflects or references an individually identifiable patient **”,”**and (b) reproduce, adapt, modify, translate, publish, sell, publicly perform, publicly display and distribute any generated aggregated, Non-personal Information.

9.3. You understand that OT EMR, in performing the required technical steps to provide the Services to our customers, may (a) transmit or distribute your Personal Information over various public networks and in various media; and (b) make such changes to your Personal Information as are necessary to conform and adapt the Personal Information to the technical requirements of connecting networks, devices, services or media. You agree to give OT EMR a perpetual, irrevocable, worldwide, royalty-free, and non-exclusive license to take these actions.

9.4. You confirm and warrant to OT EMR that you have all the rights, power and authority necessary to grant the above licenses (including without limitation such rights in the Personal Information).

10. Ending your relationship with OT EMR

10.1. The Terms will continue to apply and will not come to an end until (a) terminated by either you or OT EMR as set out below or (b) upon termination of your Subscription Agreement to use the Services.

10.2. If you want to terminate your legal agreement with OT EMR, you may do so by notifying OT EMR. Your notice should be sent, in writing, to OT EMR's address which is set out at the beginning of these Terms.

10.3. OT EMR may at any time prior to the expiration of your Subscription Agreement, terminate its legal agreement with you if: (A) you have breached any provision of the Terms (or have acted in a manner which clearly shows that you do not intend to, or are unable to comply with the provisions of the Terms); (B) you have breached any of the Payment Terms in your Subscription Agreement; or (C) OT EMR is required to do so by law (for example, where the provision of the Services to you is, or becomes, unlawful).

10.4. When these Terms come to an end, all of the legal rights, obligations and liabilities that you and OT EMR have benefited from, been subject to (or which have accrued over time whilst the Terms have been in force) or which are expressed to continue perpetually, shall be unaffected by this cessation.

10.5. Upon termination of your relationship with OT EMR, the export, retention, and deletion of your data is governed by the Subscription Agreement

11. WARRANTY

11.1. Except as specifically warranted in the Subscription Agreement, OT EMR disclaims all warranties as set forth in Section 12 of the Terms.

12. EXCLUSION OF WARRANTIES

12.1. NOTHING IN THESE TERMS**”,”** INCLUDING SECTIONS 12 AND 13, SHALL EXCLUDE OR LIMIT OT EMR'S WARRANTY OR LIABILITY FOR LOSSES WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT OR BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, ONLY THE LIMITATIONS WHICH ARE LAWFUL IN YOUR JURISDICTION WILL APPLY TO YOU AND OUR LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

12.2. YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK AND THAT THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE".

12.3. IN PARTICULAR, OT EMR DOES NOT REPRESENT OR WARRANT TO YOU THAT:

(A) YOUR USE OF THE SERVICES WILL MEET YOUR REQUIREMENTS,

(B) YOUR USE OF THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR,

(C) ANY INFORMATION OBTAINED BY YOU AS A RESULT OF YOUR USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE, AND

(D) DEFECTS IN THE OPERATION OR FUNCTIONALITY OF ANY SOFTWARE PROVIDED TO YOU AS PART OF THE SERVICES WILL BE CORRECTED.

12.4. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU, AND NOT OT EMR, WILL BE RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

12.5. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM OT EMR OR THROUGH OR FROM THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TERMS.

12.6. OT EMR FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

13. LIMITATION OF LIABILITY

13.1. SUBJECT TO OVERALL PROVISION IN SECTION 12.1 ABOVE, YOU EXPRESSLY UNDERSTAND AND AGREE THAT OT EMR SHALL NOT BE LIABLE TO YOU FOR:

(A) ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL**","** CONSEQUENTIAL OR EXEMPLARY DAMAGES WHICH MAY BE INCURRED BY YOU, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY. THIS SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY LOSS OF PROFIT (WHETHER INCURRED DIRECTLY OR INDIRECTLY), ANY LOSS OF GOODWILL OR BUSINESS REPUTATION, ANY LOSS OF DATA SUFFERED, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR OTHER INTANGIBLE LOSS;

(B) ANY LOSS OR DAMAGE WHICH MAY BE INCURRED BY YOU, INCLUDING BUT NOT LIMITED TO LOSS OR DAMAGE AS A RESULT OF:

(I) ANY CHANGES WHICH OT EMR MAY MAKE TO THE SERVICES, OR FOR ANY PERMANENT OR TEMPORARY CESSATION IN THE PROVISION OF THE SERVICES (OR ANY FEATURES WITHIN THE SERVICES);

(II) THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE, ANY CONTENT AND OTHER COMMUNICATIONS DATA MAINTAINED OR TRANSMITTED BY OR THROUGH YOUR USE OF THE SERVICES;

(III) YOUR FAILURE TO PROVIDE OT EMR WITH ACCURATE ACCOUNT INFORMATION;

(IV) YOUR FAILURE TO KEEP YOUR PASSWORD OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL.

13.2. THE LIMITATIONS ON OT EMR'S LIABILITY TO YOU IN PARAGRAPH 13.1 ABOVE SHALL APPLY WHETHER OR NOT OT EMR HAS BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING.

14. General legal terms

14.1. The Terms and Subscription Agreement constitute the whole legal agreement between you and OT EMR and govern your use of the Services and completely replace any prior agreements between you and OT EMR in relation to the Services (but excluding any services which OT EMR may provide to you under a separate written agreement).

14.2. You agree that OT EMR may provide you with notices, including those regarding changes to the Terms, by email, regular mail, or postings on the Services.

14.3. You agree that if OT EMR does not exercise or enforce any legal right or remedy which is contained in the Terms (or which OT EMR has the benefit of under any applicable law), this will not be taken to be a formal waiver of OT EMR's rights and that those rights or remedies will still be available to OT EMR.

14.4. If any court of law, having the jurisdiction to decide on this matter, rules that any provision of these Terms is invalid, then that provision will be removed from the Terms without affecting the rest of the Terms. The remaining provisions of the Terms will continue to be valid and enforceable.

14.5. You and OT EMR agree that the Terms, and your relationship with OT EMR under the Terms, shall be governed by the laws of the State of Texas without regard to its conflict of laws provisions.

14.6. In the event that the Uniform Computer Information Transaction Act, any version thereof or a substantially similar law (collectively "UCITA") is enacted so as to be applicable to the performance of OT EMR under the Terms, the statute shall not govern any aspect of the Subscription Agreement, the Terms, any license granted hereunder, nor any of the rights and obligations of the parties pursuant to the Subscription Agreement or the Terms.

14.7. ANY CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, WHETHER PREEXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT AND EQUITABLE CLAIMS) BETWEEN YOU AND OT EMR, its agents, employees, principals, successors, assigns and affiliates (collectively for purposes of this paragraph, "OT EMR") arising from or relating to the Terms of Service, its interpretation, or the breach, termination or validity thereof, the relationships which result from the Terms (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories to this Agreement) SHALL BE EXCLUSIVELY AND FINALLY SETTLED BY ARBITRATION. THE ARBITRATION SHALL BE HELD IN DALLAS, TEXAS AND CONDUCTED IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION. THE ARBITRATION SHALL BE CONDUCTED BEFORE THREE ARBITRATORS, ONE SELECTED BY EACH OF THE PARTIES, AND THE THIRD SELECTED BY THE FIRST TWO ARBITRATORS. JUDGMENT UPON THE AWARD RENDERED MAY BE ENTERED IN ANY COURT HAVING JURISDICTION, OR APPLICATION MAY BE MADE TO SUCH COURT FOR JUDICIAL ACCEPTANCE OF THE AWARD AND AN ORDER OF ENFORCEMENT AS THE CASE MAY BE.