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**Medsender Terms of Service**

Welcome to the Medsender, Inc. (“the Company”) Service Platform and thank You for visiting.

These Terms of Service (“Terms”) are a legal contract between You and the Company (collectively, the "Parties") and govern Your use of all the text, data, information, software, graphics, photographs and more (all of which the Company refer to as “Materials”) that the Company and the Company’s affiliates may make available to You, as well as any services (“Services”). The Company may provide the Materials and the Services through any of the Company’s websites (all of which are referred to in these Terms as this “Website”), mobile applications or additional platforms (collectively, the “Service Platform”).

READ THESE TERMS CAREFULLY BEFORE USING THE SERVICE PLATFORM. USING THE SERVICE PLATFORM INDICATES THAT YOU HAVE BOTH READ AND ACCEPT THESE TERMS. YOU CANNOT USE THE SERVICE PLATFORM IF YOU DO NOT ACCEPT THESE TERMS.

NOTE: THESE TERMS CONTAIN A DISPUTE RESOLUTION AND ARBITRATION PROVISION, INCLUDING CLASS ACTION WAIVER THAT AFFECTS YOUR RIGHTS UNDER THESE TERMS AND WITH RESPECT TO DISPUTES YOU MAY HAVE WITH THE COMPANY. YOU MAY OPT OUT OF THE BINDING INDIVIDUAL ARBITRATION AND CLASS ACTION WAIVER AS PROVIDED BELOW.

**CHANGES.**

The Company may alter the Materials and Services the Company offers You and/or choose to modify, suspend or discontinue the Service Platform at any time and without notifying You. The Company may also change, update, add or remove provisions (collectively, “modifications”) of these Terms from time to time. The Company may inform You of any modifications to these Terms by posting them on the Service Platform and, if You have registered with the Company, by describing the modifications to these Terms in an email that the Company will send to the address that You provided during registration. To be sure the Company properly reaches Your email inbox, the Company requests that You let the Company know if Your preferred email address changes at any time after Your registration.

If You object to any such modifications, Your sole recourse shall be to cease using the Service Platform. Continued use of the Service Platform following notice of any such modifications indicates You acknowledge and agree to be bound by the modifications. Also, these Terms may be superseded by expressly-designated legal notices or terms located within this Service Platform These expressly-designated legal notices or terms are incorporated into these Terms and supersede the provision(s) of these Terms that are designated as being superseded.

**GENERAL USE.**

By using the Service Platform, You promise that You are at least 13 years of age. If You are not yet 18 years old, You must have the permission of an adult to use the Service Platform and agree to its Terms, and that adult must be a parent or legal guardian who is willing to be responsible for Your use of the Service Platform.

The Company invites You to use the Service Platform for individual, consumer purposes ("Permitted Purposes").

In these Terms the Company is granting You a limited, personal, non-exclusive and non-transferable license to use and to display the Materials; Your right to use the Materials is conditioned on Your compliance with these Terms. You have no other rights in the Service Platform or any Materials and You may not modify, edit, copy, reproduce, create derivative works of, reverse engineer, alter, enhance or in any way exploit any of the Service Platform or Materials in any manner. If You make copies of any of the Service Platform while engaging in Permitted Purposes, then the

Company asks that You be sure to keep on the copies all of the Company's copyright and other proprietary notices as they appear on the Service Platform.

If You breach any of these Terms the above license will terminate automatically and You must immediately destroy any downloaded or printed Materials (and any copies thereof).

## **MOBILE APPLICATIONS.**

The Company may make available Mobile Applications to access the Service Platform via a mobile device. If applicable, to use the Mobile Application You must have a mobile device that is compatible with the mobile service. The Company does not warrant that the Mobile Application will be compatible with Your mobile device. If applicable, the Company hereby grants to You a non-exclusive, non-transferable, revocable license to use an object code copy of the Mobile Application for one registered account on one mobile device owned or leased solely by You, for Your personal use. You may not: (i) modify, disassemble, decompile or reverse engineer the Mobile Application, except to the extent that such restriction is expressly prohibited by law; (ii) rent, lease, loan, resell, sublicense, distribute or otherwise transfer the Mobile Application to any third-party or use the Mobile Application to provide time sharing or similar services for any third-party; (iii) make any copies of the Mobile Application; (iv) remove, circumvent, disable, damage or otherwise interfere with security-related features of the Mobile Application, features that prevent or restrict use or copying of any content accessible through the Mobile Application, or features that enforce limitations on use of the Mobile Application; or (v) delete the copyright and other proprietary rights notices on the Mobile Application. You acknowledge that the Company may from time to time issue upgraded versions of the Mobile Application, and may automatically electronically upgrade the version of the Mobile Application that You are using on Your mobile device. You consent to such automatic upgrading on Your mobile device, and agree that these Terms will apply to all such upgrades. The foregoing license grant is not a sale of the Mobile Application or any copy thereof, and the Company and the Company's third-party licensors or suppliers retain all right, title, and interest in and to the Mobile Application (and any copy of the Mobile Application). Standard carrier data charges may apply to Your use of the Mobile Application.

The following additional terms and conditions apply with respect to any Mobile Application that the Company provides to You designed for use on an Apple iOS-powered mobile device (an "iOS App"):

- You acknowledge that these Terms are between You and the Company only, and not with Apple, Inc. ("Apple").
- Your use of the Company's iOS App must comply with Apple's then-current App Store Terms of Service.
- The Company, and not Apple, is solely responsible for the Company's iOS App and the Service Platform and Content available thereon. You acknowledge that Apple has no obligation to provide maintenance and support services with respect to the Company's iOS App. To the maximum extent permitted by applicable law, Apple will have no warranty obligation whatsoever with respect to the Company's iOS App.
- You agree that the Company, and not Apple, are responsible for addressing any claims by You or any third-party relating to the Company's iOS App or Your possession and/or use of the Company's iOS App, including, but not limited to: (i) product liability claims; (ii) any claim that the iOS App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation, and all such claims are governed solely by these Terms and any law applicable to the Company as provider of the iOS App.
- You agree that the Company, and not Apple, shall be responsible, to the extent required by these Terms, for the investigation, defense, settlement and discharge of any third-party intellectual property infringement claim related to the Company's iOS App or Your possession and use of the Company's iOS App.
- You represent and warrant that (i) You are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) You are not listed on any U.S. Government list of prohibited or restricted parties.
- You agree to comply with all applicable third-party terms of agreement when using the Company's iOS App (e.g., You must not be in violation of Your wireless data service terms of agreement when using the iOS App).

- The parties agree that Apple and Apple's subsidiaries are third-party beneficiaries to these Terms as they relate to Your license of the Company's iOS App. Upon Your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against You as they relate to Your license of the iOS App as a third-party beneficiary thereof.

The following additional terms and conditions apply with respect to any Mobile Application that the Company provides to You designed for use on an Android-powered mobile device (an "Android App"):

- You acknowledge that these Terms are between You and the Company only, and not with Google, Inc. ("Google").
- Your use of the Company's Android App must comply with Google's then-current Android Market Terms of Service.
- Google is only a provider of the Android Market where You obtained the Android App. The Company, and not Google, is solely responsible for the Company's Android App and the Service Platform and Content available thereon. Google has no obligation or liability to You with respect to the Company's Android App or these Terms.
- You acknowledge and agree that Google is a third-party beneficiary to the Terms as they relate to the Company's Android App.

## **USING THE SERVICE PLATFORM.**

You can simply view the Service Platform. You need not register with the Company to simply visit and view the Service Platform. However, in order to access certain password-restricted areas of the Service Platform (such as viewing the Service Platform's blog posts and other User Submissions (defined below)) and to use certain Services and Materials offered on and through the Service Platform, You must successfully register an account with the Company.

By using the Service Platform, you acknowledge that you are fully responsible for ensuring that you have written permission from the applicable patient to share or view their medical records and any related PHI, as satisfactory by HIPAA and any applicable patient privacy laws. Furthermore, you acknowledge that by uploading, modifying, viewing or sharing any patient's medical record, you have legally obtained the permission to fully do so. You also understand that Medsender is not responsible for ensuring that such permission has been obtained.

## **PASSWORD RESTRICTED AREAS OF THE SERVICE PLATFORM.**

If You want an account with the Company, You must submit the following information through the account registration page on the Service Platform:

- A working email address;
- First and last name; and
- Preferred username and password.

You may also provide additional, optional information so that the Company can provide You a more customized experience when using the Service Platform, but this is not required. Once You submit the required registration information, the Company alone will determine whether or not to approve Your proposed account. If approved, You will be sent an e-mail detailing how to complete Your registration. For so long as You use the account, You agree to provide true, accurate, current, and complete information which can be accomplished by logging into Your account and making relevant changes directly or contacting the Company using the below contact information and the Company can make the changes for You. If You forget Your password, the Company will send a password update to Your provided email address.

You are responsible for complying with these Terms when You access the Service Platform, whether directly or through any account that You may setup through or on the Service Platform. Because it is Your account, it is Your job to obtain

and maintain all equipment and services needed for access to and use of the Service Platform as well as paying related charges. It is also Your responsibility to maintain the confidentiality of Your password(s), including any password of a third-party site that the Company may allow You to use to access the Service Platform. Should You believe Your password or security for the Service Platform has been breached in any way, You must immediately notify the Company.

## **PAYMENTS.**

If applicable, You agree to pay all applicable fees related to Your use of the Service Platform and the Company's Services. The Company may suspend or terminate Your account and/or access to the Company's Services and the Service Platform if Your payment is late and/or Your offered payment method (e.g., credit card or PayPal account) cannot be processed. By providing a payment method, You expressly authorize the Company to charge the applicable fees on said payment method as well as taxes and other charges incurred thereto at regular intervals, all of which depend on Your particular membership and utilized services.

You may cancel Your account, but the Company will not provide any refund(s) and You will be responsible for paying any balance due on the account. You agree that the Company may charge any unpaid fees to Your provided payment method and/or send You a bill for such unpaid fees.

## **PRIVACY POLICY.**

The Company respects the information that You provide to the Company, and wants to be sure You fully understand exactly how the Company uses that information. So, please review the Company's Privacy Policy ("Privacy Policy") [https://static.medsender.com/docs/m7r\\_privacy\\_policy.pdf](https://static.medsender.com/docs/m7r_privacy_policy.pdf).

## **LINKS TO THIRD-PARTY SITES.**

The Company may provide links on this Service Platform to third-party websites. If You use these links, You will leave the Service Platform. The Company is not obligated to review any third-party websites that You link to from the Service Platform, the Company does not control any of the third-party websites, and the Company is not responsible for any of the third-party websites (or the products, services, or content available through any of them). Thus, the Company does not endorse or make any representations about such third-party websites, any information, software, products, services, or materials found there or any results that may be obtained from using them. If You decide to access any of the third-party websites linked to from the Service Platform, You do this entirely at Your own risk and You must follow the privacy policies and terms and conditions for those third-party websites. Certain areas of the Service Platform may allow You to interact and/or conduct transactions with one or more third-party websites, and, if applicable, allow you to configure your privacy settings in that third-party website account to permit Your activities on the Service Platform to be shared with Your contacts in your third-party site account.

## **SUBMISSIONS.**

Certain areas of the Service Platform (e.g., blogs, chat rooms or customer ratings and review areas) may permit You to submit feedback, information, data, text, software, messages, or other materials (each, a "User Submission"). You agree that You are solely responsible for all of Your User Submissions and that any such User Submission is considered both non-confidential and non-proprietary. Further, the Company do not guarantee that You will be able to edit or delete any User Submission You have submitted.

By submitting any User Submission, You are promising the Company that:

- You own all rights in Your User Submissions (including, without limitation, all rights to the reproduction and display of Your User Submissions) or, alternatively, You have acquired all necessary rights in Your User Submissions to enable You to grant to the Company the rights in Your User Submissions as described in these Terms;
- You have paid and will pay in full all license fees, clearance fees, and other financial obligations, of any kind, arising from any use or commercial exploitation of Your User Submissions;

- Your User Submissions do not infringe the copyright, trademark, patent, trade secret, or other intellectual property rights, privacy rights, or any other legal or moral rights of any third party;
- You voluntarily agree to waive all "moral rights" that You may have in Your User Submission;
- Any information contained in Your User Submission is not known by You to be false, inaccurate, or misleading;
- Your User Submission does not violate any law (including, but not limited to, those governing export control, consumer protection, unfair competition, anti-discrimination, or false advertising);
- Your User Submission is not, and may not reasonably be considered to be, defamatory, libelous, hateful, racially, ethnically, religiously, or otherwise biased or offensive, unlawfully threatening, or unlawfully harassing to any individual, partnership, or corporation, vulgar, pornographic, obscene, or invasive of another's privacy;
- You were not and will not be compensated or granted any consideration by any third party for submitting Your User Submission;
- Your User Submission does not incorporate materials from a third-party website, or addresses, email addresses, contact information, or phone numbers (other than Your own);
- Your User Submission does not contain any viruses, worms, spyware, adware, or other potentially damaging programs or files;
- Your User Submission does not contain any information that You consider confidential, proprietary, or personal; and
- Your User Submission does not contain or constitute any unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of solicitation.

By submitting a User Submission, You grant to the Company an irrevocable, perpetual, transferable, non-exclusive, fully-paid, worldwide, royalty-free license (sub-licensable through multiple tiers) to:

- The Company, distributes, reproduces, modifies, adapts, publishes, translates, publicly performs, and publicly displays Your User Submissions (or any modification thereto), in whole or in part, in any format or medium now known or later developed;
- The Company (and permit others to use) Your User Submission in any manner and for any purpose (including, without limitation, commercial purposes) that the Company deems appropriate in the Company's sole discretion (including, without limitation, to incorporate Your Company Submission or any modification thereto, in whole or in part, into any technology, product, or service);
- Display advertisements in connection with Your Company Submissions and to use Your User Submissions for advertising and promotional purposes.

The Company may, but is not obligated to, pre-screen User Submissions or monitor any area of the Service Platform through which User Submissions may be submitted. The Company is not required to host, display, or distribute any User Submissions on or through the Service Platform and may remove at any time or refuse any User Submissions for any reason. The Company is not responsible for any loss, theft, or damage of any kind to any User Submissions. Further, You agree that the Company may freely disclose Your User Submission to any third party absent any obligation of confidence on the part of the recipient.

**THE SERVICE PLATFORM DOES NOT PROVIDE PROFESSIONAL MEDICAL SERVICES OR ADVICE.**

The contents of the Service Platform, such as text, graphics, images, information obtained from the Company's licensors, and other material contained on the Service Platform ("Content") are for informational purposes only. This site and its services do not constitute the practice of any medical, nursing or other professional health care advice, diagnosis or treatment. The Content is not intended to be a substitute for professional medical advice, diagnosis, or treatment. None of the products or services offered through the Service Platform represents or warrants that any particular service or product is safe, appropriate or effective for You. Always seek the advice of Your physician or other qualified health provider with any questions You may have regarding a medical condition. Never disregard professional medical advice or delay in seeking it because of something You have read on the Service Platform.

If You think You may have a medical emergency, call Your doctor or 911 immediately. The Company does not recommend or endorse any specific tests, physicians, products, procedures, opinions, or other information that may be mentioned on the Service Platform. Reliance on any information provided by the Company, the Company's employees, others appearing on the Service Platform at the Company's invitation, or other visitors to the Service Platform is solely at Your own risk.

The Service Platform may contain health or medical-related materials that are sexually explicit. If You find these materials offensive, You may not want to use the Service Platform.

### **RELIANCE ON THIRD-PARTY CONTENT.**

Opinions, advice, statements, or other information made available by means of the Service Platform by third parties, are those of their respective authors, and should not necessarily be relied on. Such authors are solely responsible for such content. THE COMPANY DOES NOT: (I) GUARANTEE THE ACCURACY, COMPLETENESS, OR USEFULNESS OF ANY THIRD-PARTY INFORMATION ON THE SERVICE; OR (II) ADOPT, ENDORSE OR ACCEPT RESPONSIBILITY FOR THE ACCURACY OR RELIABILITY OF ANY OPINION, ADVICE OR STATEMENT MADE BY A THIRD-PARTY BY MEANS OF THE SERVICE PLATFORM. UNDER NO CIRCUMSTANCES WILL THE COMPANY BE RESPONSIBLE FOR ANY LOSS OR DAMAGE RESULTING FROM YOUR RELIANCE ON INFORMATION OR OTHER CONTENT POSTED ON THE SERVICE PLATFORM OR TRANSMITTED TO OR BY ANY THIRD-PARTY. You also understand that by accessing and using the Service Platform, You may encounter information, materials and subject matter that You or others may deem offensive, indecent, or objectionable. You agree to use the Service Platform at Your sole risk and that the Company and the Company's affiliates, partners, suppliers and licensors shall have no liability to You for information, material or subject matter that is found to be offensive, indecent, or objectionable.

### **UNAUTHORIZED ACTIVITIES.**

To be clear, the Company authorizes Your use of the Service Platform only for Permitted Purposes. Any other use of the Service Platform beyond the Permitted Purposes is prohibited and, therefore, constitutes unauthorized use of the Service Platform. This is because as between You and the Company, all rights in the Service Platform remain the Company's property.

Unauthorized use of the Service Platform may result in violation of various United States and international copyright laws. Unless You have written permission from the Company stating otherwise, You are not authorized to use the Service Platform in any of the following ways (these are examples only and the list below is not a complete list of everything that You are not permitted to do):

- For any public or commercial purpose which includes use of the Service Platform on another site or through a networked computer environment;
- In a manner that modifies, publicly displays, publicly performs, reproduces or distributes any of the Service Platform;
- In a manner that violates any local, state, national, foreign, or international statute, regulation, rule, order, treaty, or other law;
- To stalk, harass, or harm another individual;

- To impersonate any person or entity or otherwise misrepresent Your affiliation with a person or entity;
- To interfere with or disrupt the Service Platform or servers or networks connected to the Service Platform;
- To use any data mining, robots, or similar data gathering or extraction methods in connection with the Service Platform; or
- Attempt to gain unauthorized access to any portion of the Service Platform or any other accounts, computer systems, or networks connected to the Service Platform, whether through hacking, password mining, or any other means.

You agree to hire attorneys to defend the Company if You violate these Terms and that violation results in a problem for the Company. You also agree to pay any damages that the Company may end up having to pay as a result of Your violation. You alone are responsible for any violation of these Terms by You. The Company reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by You and, in such case, You agree to cooperate with the Company's defense of such claim.

## **PROPRIETARY RIGHTS.**

"Medsender" is a trademark that belongs to the Company. Other trademarks, names and logos on the Service Platform are the property of their respective owners.

Unless otherwise specified in these Terms, all Materials, including the arrangement of them on the Service Platform are the Company's sole property, Copyright © 2017. All rights not expressly granted herein are reserved. Except as otherwise required or limited by applicable law, any reproduction, distribution, modification, retransmission, or publication of any copyrighted material is strictly prohibited without the express written consent of the copyright owner or license.

## **INTELLECTUAL PROPERTY INFRINGEMENT.**

The Company respects the intellectual property rights of others and encourage You to do the same. Accordingly, the Company has a policy of removing the Company Submissions that violate intellectual property rights of others, suspending access to the Service Platform (or any portion thereof) to any user who uses the Service Platform in violation of someone's intellectual property rights, and/or terminating in appropriate circumstances the account of any user who uses the Service Platform in violation of someone's intellectual property rights.

Pursuant to Title 17 of the United States Code, Section 512, the Company has implemented procedures for receiving written notifications of claimed copyright infringement and for processing such claims in accordance with such law. If You believe Your copyright or other intellectual property right is being infringed by a user of the Service Platform, please provide written notice to the Company's Agent for notice of claims of infringement:

Attn: CEO and General Counsel

Email: [legal@medsender.com](mailto:legal@medsender.com)

To be sure the matter is handled immediately, Your written notice must:

- Contain Your physical or electronic signature;
- Identify the copyrighted work or other intellectual property alleged to have been infringed;
- Identify the allegedly infringing material in a sufficiently precise manner to allow the Company to locate that material;
- Contain adequate information by which the Company can contact You (including postal address, telephone number, and e-mail address);



- Contain a statement that You have a good faith belief that use of the copyrighted material or other intellectual property is not authorized by the owner, the owner's agent or the law;
- Contain a statement that the information in the written notice is accurate; and
- Contain statement, under penalty of perjury, that You are authorized to act on behalf of the copyright or other intellectual property right owner.

Unless the notice pertains to copyright or other intellectual property infringement, the Agent will be unable to address the listed concern.

#### Submitting a DMCA Counter-Notification

The Company will notify You that the Company has removed or disabled access to copyright-protected material that You provided, if such removal is pursuant to a validly received DMCA take-down notice. In response, You may provide the Company's Agent with a written counter-notification that includes the following information:

1. Your physical or electronic signature;
2. Identification of the material that has been removed or to which access has been disabled, and the location at which the material appeared before it was removed or access to it was disabled;
3. A statement from You under the penalty of perjury, that You have a good faith belief that the material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled; and
4. Your name, physical address and telephone number, and a statement that You consent to the jurisdiction of a court for the judicial district in which Your physical address is located, or if Your physical address is outside of the United States, for any judicial district in which the Company may be located, and that You will accept service of process from the person who provided notification of allegedly infringing material or an agent of such person.

#### Termination of Repeat Infringers

The Company reserves the right, in the Company's sole discretion, to terminate the account or access of any user of the Service Platform or Service who is the subject of repeated DMCA or other infringement notifications.

### **DISCLAIMER OF WARRANTIES.**

THE SERVICE PLATFORM IS PROVIDED "AS IS" AND "WITH ALL FAULTS" AND THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SERVICE PLATFORM IS WITH YOU.

THE COMPANY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND (EXPRESS, IMPLIED OR STATUTORY) WITH RESPECT TO THE SERVICE PLATFORM, WHICH INCLUDES BUT IS NOT LIMITED TO, ANY IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, TITLE, AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

THIS MEANS THAT THE COMPANY DOES NOT PROMISE YOU THAT THE SERVICE PLATFORM IS FREE OF PROBLEMS. Without limiting the generality of the foregoing, the Company makes no warranty that the Service Platform will meet Your requirements or that the Service Platform will be uninterrupted, timely, secure, or error free or that defects in the Service Platform will be corrected. The Company makes no warranty as to the results that may be obtained from the use of the Service Platform or as to the accuracy or reliability of any information obtained through the Service Platform. No advice or information, whether oral or written, obtained by You through the Service Platform or from the Company or the Company's subsidiaries/other affiliated companies shall create any warranty. The Company disclaims all equitable indemnities.

OUR SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. THE COMPANY IS NOT

RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

## **LIMITATION OF LIABILITY.**

THE COMPANY SHALL NOT BE LIABLE TO YOU FOR ANY DAMAGES RESULTING FROM YOUR DISPLAYING, COPYING, OR DOWNLOADING ANY MATERIALS TO OR FROM THE SERVICE PLATFORM. IN NO EVENT SHALL THE COMPANY BE LIABLE TO YOU FOR ANY INDIRECT, EXTRAORDINARY, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) HOWEVER ARISING, EVEN IF THE COMPANY KNOWS THERE IS A POSSIBILITY OF SUCH DAMAGE. THE COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS SHALL NOT EVER BE MORE THAN \$100.00.

## **LOCAL LAWS; EXPORT CONTROL.**

The Company controls and operates the Service Platform from the Company's headquarters in the United States of America and the entirety of the Service Platform may not be appropriate or available for use in other locations. If You use the Service Platform outside the United States of America, You are solely responsible for following applicable local laws.

## **FEEDBACK.**

Any submissions by You to the Company (e.g., comments, questions, suggestions, materials – collectively, "Feedback") through any communication whatsoever (e.g., call, fax, email) will be treated as both non-confidential and non-proprietary. You hereby assign all right, title, and interest in, and the Company are free to use, without any attribution or compensation to You, any ideas, know-how, concepts, techniques, or other intellectual property and proprietary rights contained in the Feedback, whether or not patentable, for any purpose whatsoever, including but not limited to, developing, manufacturing, having manufactured, licensing, marketing, and selling, directly or indirectly, products and services using such Feedback. You understand and agree that the Company is not obligated to use, display, reproduce, or distribute any such ideas, know-how, concepts, or techniques contained in the Feedback, and You have no right to compel such use, display, reproduction, or distribution.

## **DISPUTE RESOLUTION AND ARBITRATION; CLASS ACTION WAIVER.**

### **Please Read This Provision Carefully. It Affects Your Legal Rights.**

This Provision facilitates the prompt and efficient resolution of any dispute (e.g., claim or controversy, whether based in contract, statute, regulation, ordinance, tort – including, but not limited to, fraud, misrepresentation, fraudulent inducement, or negligence – or any other legal or equitable theory, and includes the validity, enforceability or scope of this Provision (with the exception of the enforceability of the Class Action Waiver clause below) that may arise between You and the Company. Effectively, then, "dispute" is given the broadest meaning enforceable by law and includes any claims against other parties relating to services or products provided or billed to You (such as the Company's licensors, suppliers, dealers or third-party vendors) whenever You also assert claims against the Company in the same proceeding.

This Provision provides that all disputes between You and the Company shall be resolved by binding arbitration because acceptance of These Terms constitutes a waiver of Your right to litigation claims and all opportunity to be heard by a judge or jury. To be clear, there is no judge or jury in arbitration, and court review of an arbitration award is limited. The arbitrator must follow this agreement and can award the same damages and relief as a court (including attorney's fees). You may, however, opt-out of this Provision which means You would have a right or opportunity to bring claims in a court, before a judge or jury, and/or to participate in or be represented in a case filed in court by others (including, but not limited to, class actions). THE PARTIES AGREE THAT, EXCEPT AS PROVIDED BELOW, ANY AND ALL DISPUTES, AS DEFINED ABOVE, WHETHER PRESENTLY IN EXISTENCE OR BASED ON ACTS OR OMISSIONS IN THE PAST OR IN THE FUTURE, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION RATHER THAN IN COURT IN ACCORDANCE WITH THIS PROVISION.

### Pre-Arbitration Claim Resolution

For all Disputes, whether pursued in court or arbitration, You must first give the Company an opportunity to resolve the Dispute which is first done by emailing to the Company at legal@medsender.com the following information: (1) Your name, (2) Your address, (3) A written description of Your Claim, and (4) A description of the specific relief You seek. If the Company does not resolve the Dispute within 45 days after receiving Your notification, then You may pursue Your Dispute in arbitration. You may pursue Your dispute in a court only under the circumstances described below.

#### Exclusions from Arbitration/Right to Opt Out

Notwithstanding the above, You or the Company may choose to pursue a Dispute in court and not by arbitration if: (a) The dispute qualifies for initiation in small claims court; or (b) YOU OPT-OUT OF THESE ARBITRATION PROCEDURES WITHIN 30 DAYS FROM THE DATE THAT YOU FIRST CONSENT TO THIS AGREEMENT (the "Opt-Out Deadline"). You may opt-out of this Provision by emailing the Company at legal@medsender.com the following information: (1) Your name; (2) Your address; (3) A clear statement that You do not wish to resolve disputes with the Company through arbitration. The Company promises that Your decision to opt-out of this Arbitration Provision will have no adverse effect on Your relationship with the Company. But, the Company does have to enforce the Opt-Out Deadline so keep in mind that **any opt-out request received after the Opt-Out Deadline will not be valid and You must pursue Your dispute in arbitration or small claims court.**

#### Arbitration Procedures

If this Provision applies and the dispute is not resolved as provided above (Pre-Arbitration Claim Resolution) either You or the Company may initiate arbitration proceedings. The American Arbitration Association ("AAA"), www.adr.org, or JAMS, www.jamsadr.com, will arbitrate all disputes, and the arbitration will be conducted before a single arbitrator. The arbitration shall be commenced as an individual arbitration, and shall in no event be commenced as a class arbitration. All issues shall be for the arbitrator to decide, including the scope of this Provision.

For arbitration before AAA, for Disputes of less than \$75,000, the AAA's Supplementary Procedures for Consumer-Related Disputes will apply; for Disputes involving \$75,000 or more, the AAA's Commercial Arbitration Rules will apply. In either instance, the AAA's Optional Rules For Emergency Measures Of Protection shall apply. The AAA rules are available at www.adr.org or by calling 1-800-778-7879. For arbitration before JAMS, the JAMS Comprehensive Arbitration Rules & Procedures and the JAMS Recommended Arbitration Discovery Protocols For Domestic, Commercial Cases will apply. The JAMS rules are available at www.jamsadr.com or by calling 1-800-352-5267. This Provision governs in the event it conflicts with the applicable arbitration rules. Under no circumstances will class action procedures or rules apply to the arbitration.

Because the Service Platform and these Terms concern interstate commerce, the Federal Arbitration Act ("FAA") governs the arbitrability of all disputes. However, the arbitrator will apply applicable substantive law consistent with the FAA and the applicable statute of limitations or condition precedent to suit.

*Arbitration Award* – The arbitrator may award on an individual basis any relief that would be available pursuant to applicable law, and will not have the power to award relief to, against or for the benefit of any person who is not a party to the proceeding. The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party. Such award will be final and binding on the parties, except for any right of appeal provided by the FAA, and may be entered in any court having jurisdiction over the parties for purposes of enforcement.

*Location of Arbitration* – You or the Company may initiate arbitration in either New York or the federal judicial district that includes Your billing address. In the event that You select the latter, the Company may transfer the arbitration to New York so long as the Company agrees to pay any additional fees or costs which the arbitrator determines You incur as a result of the transfer.

*Payment of Arbitration Fees and Costs* – If You place a request in writing prior to commencement of the arbitration, the Company will pay all arbitration fees and associated costs and expenses. However, You will still be responsible for all additional fees and costs that You incur in the arbitration which include but are not limited to attorneys' fees or expert witnesses. In addition to any fees and costs recoverable under applicable law, if You provide notice and negotiate in good faith with the Company as provided in the section above titled "Pre-Arbitration Claim Resolution" and the arbitrator concludes that You are the prevailing party in the arbitration, You will be entitled to recover reasonable attorney's fees and costs as determined by the arbitrator.

### Class Action Waiver

Except as otherwise provided in this Provision, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a class or representative proceeding or claims (such as a class action, consolidated action or private attorney general action) unless both You and the Company specifically agree to do so following initiation of the arbitration. **If You choose to pursue Your Dispute in court by opting out of the Arbitration Provision, as specified above, this Class Action Waiver will not apply to You.** Neither You, nor any other user of the Service Platform can be a class representative, class member, or otherwise participate in a class, consolidated, or representative proceeding without having complied with the opt-out requirements above.

### Jury Waiver

You understand and agree that by accepting this Provision in these Terms, You and the Company are each waiving the right to a jury trial or a trial before a judge in a public court. In the absence of this Provision, You and the Company might otherwise have had a right or opportunity to bring disputes in a court, before a judge or jury, and/or to participate or be represented in a case filed in court by others (including class actions). Except as otherwise provided below, those rights are waived. Other rights that You would have if You went to court (e.g., the rights to both appeal and certain types of discovery) may be more limited or may also be waived.

### Severability

If any clause within this Provision (other than the Class Action Waiver clause above) is found to be illegal or unenforceable, that clause will be severed from this Provision whose remainder will be given full force and effect. If the Class Action Waiver clause is found to be illegal or unenforceable, this entire Provision will be unenforceable and the dispute will be decided by a court.

### Continuation

This Provision shall survive the termination of Your account with the Company or the Company's affiliates and Your discontinued use of the Service Platform. Notwithstanding any provision in this Agreement to the contrary, the Company agrees that if the Company makes any change to this Provision (other than a change to the Notice Address), You may reject any such change and require the Company to adhere to the language in this Provision if a dispute between the Company arises.

## **GENERAL.**

The Company may notify You if You are not in compliance with these Terms. The Company may provide You with recommended necessary corrective action(s).

However, certain violations of these Terms, as determined by the Company, may require immediate termination of Your access to the Service Platform without prior notice to You. The Federal Arbitration Act, New York state law and applicable U.S. Federal Law, without regard to the choice or conflicts of law provisions, will govern these Terms. Foreign laws do not apply. Except for disputes subject to arbitration as described above, any disputes relating to these Terms or the Service will be heard in the courts located in San Francisco County, San Francisco. If any of these Terms are deemed inconsistent with applicable law, then such term(s) shall be interpreted to reflect the intentions of the parties, and no other terms will be modified. By choosing not to enforce any of these Terms, the Company is not waiving the Company's rights. These Terms are the entire agreement between You and the Company and, therefore, supersede all prior or contemporaneous negotiations, discussions or agreements between The Parties about the Service Platform. The proprietary rights, disclaimer of warranties, representations made by You, indemnities, limitations of liability and general provisions shall survive any termination of these Terms.

## **CALIFORNIA CONSUMER NOTICE.**

If applicable, under California Civil Code Section 1789.3, California users are entitled to the following consumer rights notice: The Service Platform and Service are provided by Medsender, Inc., 447 Broadway, 2nd Floor, New York, NY 10013. If You have a question or complaint regarding the Service Platform or Service, please contact Customer Service at support@medsender.com . You may also contact the Company by writing Medsender, Inc., 447 Broadway, 2nd

Floor, New York, NY 10013. If applicable, California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by post at 1625 North Market Blvd., Sacramento, CA 95834 or by telephone at (916) 445-1254 or (800) 952-5210 or Hearing Impaired at TDD (800) 326-2297 or TDD (916) 322-1700.

## **CONTACT US.**

If You have any questions about these Terms or otherwise need to contact the Company for any reason, You can reach the Company at [legal@medsender.com](mailto:legal@medsender.com) .