

1. *Definitions*

As used in this Agreement, the following terms shall have the following meanings:

“**Agreement**” means these terms of use and the Order Form.

“**Cliniconex Technology**” means all of Cliniconex’s proprietary technology made available to Customer by Cliniconex in providing the Service.

“**Content**” means the audio and visual information, documents, and services made available to Customer in the course of using the Service.

“**Customer Data**” means any data, information, or material provided or submitted by Customer to the Service in the course of using the Service.

“**Effective Date**” means the earlier of the date first set forth above and the date Customer begins using the Service.

“**Initial Term**” means the initial period during which Customer is obligated to pay for the Service equal to the monthly billing frequency, or as otherwise specified in the Order Form.

“**Intellectual Property Rights**” means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.

“**License Term(s)**” means the Initial Term and subsequent period(s) during which a specified Customer is licensed to use the Service pursuant to the Order Form(s).

“**Order Form(s)**” means the form attached as Schedule A, evidencing the initial subscription for the Service and any subsequent Order Forms submitted online or in written form.

“**Service(s)**” means the specific edition of Cliniconex’s automated reminder and confirmation services for healthcare.

“**Term**” means the Initial Term and any subsequent term

“**User(s)**” means Customer employees, representatives, consultants, contractors, or agents who are authorized to use the Service and have been supplied user identifications and passwords by Customer or Cliniconex.

2. *Right Grant and Restrictions*

Cliniconex hereby grants Customer a nonexclusive, nontransferable, right to use the Service in Canada, solely for Customer’s own

internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to Customer are reserved by Cliniconex and its licensors.

Customer shall not (i) license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make available to any third party the Service or the Content in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) create Internet “links” to the Service on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service.

Customer may use the Service only for Customer’s internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages or private personal information (as defined in applicable law) in violation of applicable law; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy law; (iii) send or store material containing software viruses, malware or other harmful computer code; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorized access to the Service or its related systems or networks.

3. *Customer Responsibilities*

Customer is responsible for all activity occurring under User accounts and shall abide by all applicable laws in connection with Customer’s use of the Service, including those related to data privacy, private health information, personal information, international communications, and the transmission of technical or personal data. Customer shall: (i) notify Cliniconex immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Cliniconex immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by Customer or Users; and (iii) not impersonate another Cliniconex user or provide false identity information to gain access to or use of the Service.

4. *Account Information and Data*

Cliniconex will abide by its Privacy Policy as attached in Schedule B; however Cliniconex does not own any Customer Data. Customer, not Cliniconex, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, privacy

protection, appropriateness, and intellectual property ownership and right to use of all Customer Data, and Cliniconex shall not be responsible or liable for the deletion, correction, destruction, damage, loss, any Customer Data.

5. Intellectual Property Ownership

Cliniconex (and its licensors, where applicable) shall exclusively own all right, title, and interest, including all Intellectual Property Rights, in and to the Cliniconex Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Customer relating to the Service. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Service, the Cliniconex Technology or the Intellectual Property Rights owned by Cliniconex. Cliniconex's name, Cliniconex's logo, and the product names associated with the Service are trademarks of Cliniconex or third parties, and no right or license is granted to use them.

6. Charges and Payment of Fees

Customer shall pay the initial charges at the Effective Date. Customer shall pay monthly usage fee plus overage charges (if applicable) every month during the Term.

All amounts paid are nonrefundable. Customer must provide Cliniconex with valid credit card or approved purchase order information as a condition to signing up for the Service. Cliniconex reserves the right to modify its fees and charges and to introduce new reasonable charges at any time after the Initial Term, upon at least 30 days prior notice to Customer. All pricing terms are confidential, and Customer shall not disclose them to any third party.

7. Billing and Renewal

Cliniconex will automatically issue an invoice to Customer each month of the Term, or as otherwise mutually agreed upon in the Order Form. Fees for other services will be charged on an as-quoted basis. Cliniconex's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, levies, or duties, excluding only federal or provincial taxes based solely on Cliniconex's income.

Customer agrees to provide Cliniconex with complete and accurate billing and contact information. This information includes Customer's full and proper legal company name, street address, email address, and name and telephone number of an authorized billing contact. Customer agrees to update

this information within 30 days of any change to it. If the contact information Customer has provided is false or inaccurate, Cliniconex reserves the right to terminate Customer's access to the Service in addition to any other legal remedies.

If Customer believes its bill is incorrect, Customer must contact Cliniconex in writing within 60 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

This Agreement will automatically renew at the end of the Initial Term for successive monthly terms unless terminated under section 9 or 10.

8. Nonpayment and Suspension

In addition to any other rights granted to Cliniconex herein, Cliniconex reserves the right to suspend or terminate this Agreement if Customer's account becomes delinquent.

Delinquent invoices and accounts are subject to interest of one (1.0) percent per month (or portion thereof). Cliniconex also reserves the right to recover collection costs and expenses from Customer. Customer will continue to be charged for Services during any period of suspension. If Customer or Cliniconex initiates termination of this Agreement, Customer will be obligated to pay the balance due on Customer's account computed in accordance with Section 8 above.

Cliniconex reserves the right to impose a reconnection fee in the event Customer is suspended and thereafter requests access to the Service.

9. Termination upon Expiration/Reduction in Number of Licenses

This Agreement commences on the Effective Date. The Initial Term will be as Customer elects in the Order Form commencing on the Effective Date. Either party may terminate this Agreement, in writing or upon by notifying the other party in writing at least thirty (30) days prior to the end of the Initial Term or subsequent term. In the case of free trials, notifications provided through the Service indicating the remaining number of days in the free trial shall constitute notice of termination. Cliniconex has no obligation to retain the Customer Data, and may delete any such Customer Data at any time after termination.

10. Termination for Cause

Any breach of Customer's payment obligations or unauthorized use of Cliniconex Technology or Service will be deemed a material breach of this Agreement. Cliniconex, in its sole discretion, upon ten days written notice may terminate Customer's password, account or use of the Service if Customer breaches or otherwise fails to comply with this Agreement.

11. Representations and Warranties

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Cliniconex represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof under normal use and circumstances. Customer represents and warrants that Customer has not falsely identified Customer nor provided any false information to gain access to the Service and that Customer's billing information is correct.

12. Mutual Indemnification

Customer shall indemnify and hold Cliniconex, its licensors and each such party's affiliates, officers, directors, employees, and agents harmless from and against any and all claims, costs, damages, losses, liabilities, and expenses (including lawyer's fees and costs) arising out of or in connection with a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; provided that Cliniconex (a) gives written notice of the claim promptly to Customer; (b) gives Customer sole control of the defense and settlement of the claim (provided that Customer may not settle or defend any claim unless Customer unconditionally release Cliniconex of all liability and such settlement does not affect Cliniconex's business or Service); (c) provides to Customer all available information and assistance; and (d) has not compromised or settled such claim.

Cliniconex shall indemnify and hold Customer and Customer's affiliates, officers, directors, employees and agents harmless from and against any and all claims, costs, damages, losses, liabilities, and expenses (including lawyers' fees and costs) arising out of or in connection with: (i) a claim alleging that the Service directly infringes a copyright, a U.S. or Canadian patent issued as of the Effective Date, or a U.S. or Canadian registered trademark of a third party; provided that Customer (a) promptly give written notice of the claim to Cliniconex; (b) give Cliniconex sole control of the defense and settlement of the claim (provided that Cliniconex may not settle or defend any claim unless it unconditionally releases Customer of all liability); (c) provide to Cliniconex all available information and assistance; and (d) have not compromised or settled such claim. Cliniconex shall have no indemnification obligation, and Customer shall indemnify Cliniconex pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Service with any of Customer products, service, Customer Data, hardware or business process(s).

13. Disclaimer of Warranties

CLINICONEX AND ITS LICENSORS MAKE NO REPRESENTATION AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY, OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. CLINICONEX AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED, OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA; (B) THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE; (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY CUSTOMER THROUGH THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; (E) ERRORS OR DEFECTS WILL BE CORRECTED; OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE (THAT THE CLINICONEX SOFTWARE RUNS ON) AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL CONTENT IS PROVIDED TO CUSTOMER STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY CLINICONEX AND ITS LICENSORS.

14. Limitation of Liability

EXCEPT FOR THE PARTIES' INDEMNIFICATION OBLIGATIONS UNDER SECTION 12, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE, OR OTHER

ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY PRIVACY OR DATA BREACH OF CUSTOMER DATA OR PERSONAL HEALTH INFORMATION NOT CAUSED DIRECTLY BY CLINICONEX, ANY INTERRUPTION, INACCURACY, ERROR, OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15. *Additional Rights*

Certain jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential, or certain other types of damages, so the exclusions set forth above may not apply to Customer.

16. *Local Laws and Export Control*

The Services shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported in violation of applicable export control law. Customer is solely responsible for compliance with all applicable export laws.

17. *Notice*

Cliniconex may give notice by means of a email to Customer address on record in Cliniconex's account information, or by written communication sent by first class mail or pre-paid post to Customer address on record in Cliniconex's account information. Such notice shall be deemed to have been given upon the expiration of three business days after mailing or posting (if sent by first class mail or pre-paid post) or 24 hours after sending (if sent by email). Customer may give notice to Cliniconex (such notice shall be deemed given when received by Cliniconex) at any time by any of the following: letter sent by confirmed facsimile to Cliniconex at the following fax number: +1 (866) 596-3409; letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to Cliniconex at the following address: 390 March Rd, Ottawa, ON, K2K 0G7.

18. *Modification to Terms*

Cliniconex reserves the right to modify the terms and conditions of this Agreement or its

policies relating to the Service at any time, effective upon notice to Customer posting of an updated version of this Agreement on the Service.

Cliniconex is responsible for providing a notice to the Customer, the Customer is responsible for regularly reviewing this Agreement.

19. *Assignment*

This Agreement may not be assigned by Customer without the prior written approval of Cliniconex which shall not be unreasonably withheld. Any purported assignment in violation of this section shall be void.

20. *General*

This Agreement shall be governed by Ontario law, without regard to its choice or conflicts of law provisions, and any disputes, actions, claims, or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the courts located in Ottawa, Ontario.

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the in- valid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between Customer and Cliniconex as a result of this Agreement or use of the Service. The failure of Cliniconex to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Cliniconex in writing. This Agreement, together with any applicable Order Form, comprises the entire agreement between Customer and Cliniconex and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein, and no text or information set forth on any other purchase order, preprinted form, or document (other than an Order Form, if applicable) shall add to or vary the terms and conditions of this Agreement.