

# Terms of Use

Welcome to the Pulsara platform offered by CommuniCare Technology, Inc., dba Pulsara, a Delaware corporation (“Pulsara”). The following terms and conditions (the “Terms”) govern your access to and/or use of the platform and Pulsara’s services.

## ACCEPTANCE OF TERMS

The Services are offered subject to your acceptance of the terms and conditions contained herein. By accessing, registering for and/or using the Services in any manner you agree to the Terms. If you do not agree to the Terms, do not use the Services.

## ARTICLE 1 DEFINITIONS

### Section 1.1

“Error” means a failure of the Software to conform in all material respects to the Product Specifications; provided, however, that any nonconformity resulting from Subscriber’s improper use of the Software, combining or merging the Software with software not approved by Pulsara for use with the Software, or modification of the Software which has not been performed by Pulsara, shall not be considered an Error.

### Section 1.2

“Healthcare Providers” means Subscriber’s physicians, physician assistants, nurses, paramedics, emergency care responders, and other physician extenders providing healthcare services on behalf of Subscriber whether they are employees, independent contractors or professionally affiliated with Subscriber as a member of Subscriber’s medical staff or other Subscriber-authorized persons.

### Section 1.3

“Licensed Documentation” means all written materials, binders, training disks, and other materials supplied by Subscriber and related to the Software, other than the Software.

### Section 1.4

“Final Quote” means the document executed by Subscriber pursuant to which Subscriber orders Software. The Final Quote must expressly reference and shall form a part of this Agreement. If any terms of the Final Quote conflict with any terms of this Agreement, the terms of the Final Quote will control.

### Section 1.5

“Patient Information” means, collectively, information and data related to the provision of healthcare services to patients, their health status, medical records, and related information, including images, reports, lab and test results, medical treatments performed by Healthcare Providers, other “protected health information” as defined under HIPAA, and any other information provided on or entered into the Software or made available by Subscriber or its Healthcare Providers through the Software.

### **Section 1.6**

“Product Specifications” means the technical and performance functions of the Software, as more fully described in the Licensed Documentation.

## **ARTICLE 2 GRANT/SERVICES**

### **Section 2.1 - Grant of Software License**

Pulsara grants to Subscriber a limited, nonexclusive, nontransferable license during the Term, in the United States for Subscriber’s Healthcare Providers only, to install, execute, access and use the Software and the Licensed Documentation (collectively, the “Licensed Product”) in the manner described in this Agreement and the Final Quote. Pulsara reserves all rights in the Licensed Product.

### **Section 2.2 - Service Performance**

Usage data and error reports collected through the Software help Pulsara improve Software performance and effectiveness.

## **ARTICLE 3 FEES AND PAYMENT**

### **Section 3.1 - Fees**

As compensation for the licenses granted by Pulsara to Subscriber hereunder, Subscriber will pay to Pulsara, annually all fees and costs as set forth in the Final Quote. Unless otherwise provided for in this Agreement, all fees are due upon receipt of Pulsara’s invoice, will be paid in US dollars, and become past due after thirty (30) days.

## **ARTICLE 4 TERM AND TERMINATION.**

### **Section 4.1 - Term**

The term of this Agreement shall commence on the Effective Date (the “Term”) which shall be the date of the Client signature on the Final Quote.

### **Section 4.2 - Healthcare Provider Access**

Pulsara may disable a Healthcare Provider’s access if the Healthcare Provider is in violation of the terms of any other agreement, policy, or terms of use applicable to the Software.

### **Section 4.3 - Termination**

Either party may terminate this Agreement prior to the expiration of the Term upon written notice to the other party only as follows:

(a) if either party breaches a material provision of this Agreement and such breach is not cured within thirty (30) days after written notice has been given to the breaching party; provided, however, that Subscriber access to the Software may be suspended during the thirty (30) day cure period if the breach would cause potential damage to the Software or third parties’ continued safe use of the Software.

(b) in the event that either party becomes insolvent, or is adjudicated a bankrupt, or voluntarily seeks protection under any bankruptcy or insolvency law or, whether, voluntary or involuntary makes an assignment for the benefit of creditors;

c) by Subscriber upon thirty (30) days written notice to Pulsara without refund of fees already paid. Upon early termination, Subscriber will not be responsible for payment of remaining annual fees set forth in the Final Quote; or

(d) by Pulsara upon thirty (30) days written notice to Subscriber.

#### **Section 4.4 - Effect of Termination**

Upon any termination of this Agreement, Subscriber's access to the Software will terminate.

### **ARTICLE 5 USAGE**

#### **Section 5.1 - Use of Software**

Subscriber shall use the Software only in a manner and for the purposes for which the Software was designed and using only Subscriber's and/or Healthcare Providers' data for their sole and exclusive benefit. All uses not expressly permitted under this Article 5 are prohibited.

#### **Section 5.2 - Authorized Use**

Subscriber is solely responsible for authorizing its Healthcare Providers' access to the Software, maintaining all login information and overseeing use of the Software.

#### **Section 5.3 - Patient Information**

Subscriber and Pulsara acknowledge and agree that the Software may be used to transmit, collect, store, access, manage, and display Patient Information between and among Subscriber and Healthcare Providers and that Patient Information may be stored by Pulsara. Subscriber acknowledges and agrees that the Patient Information stored by Pulsara shall not serve as the system of record for any patient, personal representative of a patient, health care provider, any business associate of a health care provider, or any affiliates of the foregoing.

#### **Section 5.4 - Medical Advice and Treatment**

Subscriber acknowledges and agrees that Pulsara does not provide medical advice, diagnosis, or treatment. Subscriber further acknowledges and agrees that the Software is merely a conduit of information related to patients and the provision of healthcare to patients by independent third-party Healthcare Providers. Pulsara does not endorse, recommend, or otherwise favor a particular device for Subscriber's use of the Software. Pulsara assumes no liability for or relating to the delay, failure, interruption, or corruption of any data or other information transmitted in connection with use of the Software.

### **ARTICLE 6 WARRANTY**

#### **Section 6.1 - Warranty**

Pulsara warrants that the Software licensed in this Agreement is free from significant programming Errors and substantially complies with all applicable specifications set Licensed Documentation.

### **Section 6.2 - Limitations on Warranty**

Except as provided for in Section 6.1, Pulsara makes no representations or warranties, express or implied, with respect to Software, and expressly disclaims all such representations and warranties, including any with respect to merchantability, reliability or fitness for a particular use or purpose. Without limiting the generality of the foregoing, Pulsara, makes no warranty, representation, or guaranty: (1) as to the sequence, accuracy, timeliness, relevance, or completeness of the Software; (2) as to the any information offered or provided within or through the Software regarding treatment of medical conditions, actions, diagnoses, procedures, application of medication, or other provision of medical services; (3) that the use of the Software will be uninterrupted or error-free. Except as otherwise expressly provided for in this Agreement, Subscriber's use of the Software, and any third party technology is at the Subscriber's own risk.

### **Section 6.3 - Access**

Pulsara disclaims and waives any and all responsibility of Pulsara for any defect or service interruption in connection with local telecommunication network activity, capacity and compatibility with third-party communication equipment, internet access, software, browsers and servers, or the Subscriber's computer and telecom systems used to access the Software. Subscriber agrees that Pulsara is in no way responsible for any telecommunications or internet difficulties Subscriber may experience as a result of attempting to transmit data while using the Software and Subscriber waives any and all claims against Pulsara in connection with such use, unless the difficulties were caused solely by the gross negligence or willful misconduct of Pulsara.

### **Section 6.4 - Limited Liability**

(a) In the event of breach of the limited warranty provided in Section 6.1 of this Agreement, Pulsara's entire liability and Subscriber's exclusive remedy will be a cash refund equal to the License Fees paid by Subscriber for the Licensed Products during the twelve (12) month period immediately preceding said breach, less any discount or credits previously received by Subscriber for the Licensed Products.

(b) Neither party will be liable to the other party for consequential, special, indirect, incidental, punitive, or exemplary damages, costs, expenses or losses or lost profits under this Agreement. Pulsara will not be liable for any failure to perform its obligations under this Agreement because of misuse of the Software by Subscriber and its users or third-party technology. The parties acknowledge that the terms of this section reflect the allocation of risk set forth in this Agreement and that the parties would not enter into this Agreement without these limitations of liability.

## **ARTICLE 7 INDEMNIFICATION**

### **Section 7.1 - Indemnification by Subscriber**

Provided that such indemnification does not conflict with Subscriber's state law, Subscriber shall indemnify, defend and hold Pulsara, its licensors, parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys, and agents harmless from and against any and all claims, costs, damages, losses, liabilities, and expenses (including attorneys' fees and costs), arising out of or relating to Subscriber's negligent use of the Software and any breach of this Agreement.

### **Section 7.2 - Indemnification by Pulsara**

Pulsara shall indemnify, defend and hold Subscriber, its parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of (i) Pulsara's breach of this Agreement; or (ii) actual or alleged infringement of any Intellectual Property Right arising from the Software. Notwithstanding the foregoing, Pulsara's entire liability under this Section 7.2 will be the total of the fees paid by Subscriber in the (12) month period immediately preceding the event triggering the indemnification protection.

### **Section 7.3 - Limitations to Indemnification Obligations**

Notwithstanding anything to the contrary in this Article 7, Pulsara shall have no obligation to defend Subscriber with respect to any claim, costs, damages, losses, or liabilities arising from any acts or omissions of Subscriber and/or any Healthcare Provider related to the provision of medical services or Subscriber's other operations.

## **ARTICLE 8 INTELLECTUAL PROPERTY**

### **Section 8.1 - Ownership and Title**

Except for the limited license and use rights expressly granted to Subscriber under this Agreement during the term, all title to and the rights in the Software and Documentation (including any and all updates), including ownership rights to patents (registrations, renewals, and pending applications), copyrights, trademarks, trade secrets, Pulsara's or third party hardware, other technology, any derivatives of and all goodwill associated with the foregoing is the exclusive property of Pulsara and/or third parties.

## **ARTICLE 9 GENERAL PROVISIONS**

### **Section 9.1 - Governing Law**

This Agreement will be construed in accordance with and governed by the internal law of Subscriber's state, without regard to the choice or conflicts of law provisions of any jurisdiction. In the event that either party institutes any action or proceeding arising out of or relating to this Agreement, exclusive jurisdiction will be in the state or federal court in the county where the Subscriber is located.

### **Section 9.2 - Severability**

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 invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.

### **Section 9.3 - Independent Contractors**

No joint venture, partnership, employment, or agency relationship exists between Subscriber and Pulsara as a result of this Agreement or use of the Software.

### **Section 9.4 - Assignment**

The rights and/or obligations contained in this Agreement may not be assigned, delegated or otherwise transferred by either party (except to a direct or indirect parent or subsidiary) without the prior written approval of the other party, not to be unreasonably withheld, provided, however that either party may assign this Agreement in connection with a merger, consolidation or acquisition of a party resulting in a

change of control or a transfer or sale of all or substantially all of the assets of either party. No assignment or delegation shall relieve either party of liability for its obligations hereunder.

#### **Section 9.5 - Waiver**

The failure of either party 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 that party in writing.

#### **Section 9.6 - Entire Agreement**

This Agreement, together with any applicable BAA and Final Quote, comprises the entire agreement between Subscriber and Pulsara and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

#### **Section 9.7 - Counterparts**

This Agreement may be executed in one or more counterparts, each of which may be deemed an original, but all of which constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

#### **Section 9.8 - Export and Sanctions Compliance**

Subscriber agrees that Subscriber's use of the Licensed Product will comply with applicable export control and trade sanctions laws, rules and regulations, including without limitation the regulations promulgated by the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") and the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") (collectively, "Export Control Laws"). Subscriber represents and warrants that (i) Subscriber is not located or ordinarily resident in a country or territory that is subject to comprehensive U.S. trade sanctions (including Crimea, Cuba, Iran, North Korea, and Syria); (ii) Subscriber is not identified on, or owned or controlled by any party identified on, any U.S. government restricted party list (including the Specially Designated Nationals and Blocked Persons List, Foreign Sanctions Evaders List, and Sectoral Sanctions Identifications List, administered by OFAC, and the Denied Party List, Entity List and Unverified List, administered by BIS); and (iii) that no content created or submitted by Subscriber is subject to any restriction on disclosure, transfer, download, export or re-export under the Export Control Laws. Subscriber agrees that Subscriber will not use the Licensed Product to disclose, transfer, download, export or re-export, directly or indirectly, any content to any country, entity or other party which is ineligible to receive such items under the Export Control Laws or under other laws or regulations to which Subscriber may be subject. Subscriber acknowledges that the Licensed Products may not be available in all jurisdictions and that Subscriber is solely responsible for complying with the Export Control Laws.

#### **Section 9.9 - Anti-Corruption Compliance**

Subscriber warrants that neither Subscriber, nor any of Subscriber's respective officers, employees, agents, representatives, contractors, intermediaries or any other person or entity acting on Subscriber's behalf, in connection with this Agreement has taken or will take any action, directly or indirectly, in violation of the U.S. Foreign Corrupt Practices Act of 1977, as amended, or any other applicable anti-corruption or anti-bribery laws.