

# TELERAY SERVICE AGREEMENT

This Service Agreement (“Agreement”) and associated Business Associate Agreement (“BAA” – attached hereunder as Appendix A) by and between the following, hereinafter “Party” individually or “Parties” collectively:

www.telera.com (“TeleRay”) on the one part

and

Registrant with the name and address provided at the time of registration on TeleRay.com (“Client”) on the other.

This Agreement is entered into on the date of TeleRay registration by Client (“Effective Date”)

## *RECITALS:*

*WHEREAS, Client wishes to retain the Services (as defined below) of TeleRay;*

*WHEREAS, TeleRay has the skills, qualifications, and expertise required to provide the Services to the Client;*

*WHEREAS, TeleRay wishes to render such Services to Client.*

*NOW, therefore, in consideration of the promises and covenants contained herein, as well as other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Parties do hereby agree as follows:*

## Article 1 – DEFINITIONS:

As used in this Agreement:

1.1 “Services” shall be used to refer to the following specific services that Teleray shall provide to the Client under the terms and conditions set forth herein:

1.1.1 “TeleRay” refers to a range of HIPAA–compliant telemedicine software solutions which allow for video-based remote medical consultations or reviews between Client and Client’s patients.

1.1.2 “Hardware” refers to office-based equipment such as but not limited to video monitors, microphones and headsets in order to facilitate the use of TeleRay from Client’s premises.

1.1.3 “Support” refers to assistance of TeleRay in the implementation and maintenance of TeleRay at the Client’s premises – including to the extent reasonably possible scheduling integration, advice regarding billing and reimbursement policies and their applicability.

1.1.4 “Customer Service” refers to general telephone or web-based support from Teleray to the end-user of TeleRay (“Patient”) in the downloading of their TeleRay Application (“App”), its use and charging policies.

*(Note: TeleRay shall not be responsible for the support of end user devices and equipment, which must be furnished by Patient and be compatible with the use of TeleRay as per the App End User License Agreement “EULA”)*

1.2 “Commencement Date” shall be used to refer to the date TeleRay begins providing Services to Client.

1.3 “Completion Date” shall be used to refer to the date that Teleray will complete or cease the provision of Services to the Client in accordance with the Term and Termination provisions set out in Article 14.

1.4 "Consult" shall be used to refer to a successfully connected video-conferencing consultation between Client and Patient. Multiple scheduled video-conferences with the same Patient in any monthly billing period are treated as individual Consult.

1.5 "Fees" shall be used to refer to the payment Client will pay to TeleRay for the provision of Services.

#### Article 2 – AGREEMENT:

Subject to the terms and conditions of this Agreement, Teleray hereby agrees to render the Services to Client, beginning on the Commencement Date and ending on the Completion date, and Client agrees to pay Teleray the Fees required for the Services.

#### Article 3 – LOCATION:

Teleray will render the Services anywhere Teleray considers appropriate to the type and nature of the work required to complete the Services.

#### Article 4 – STAFF OR EMPLOYEES:

Teleray may use any staff or employees that Teleray deems fit and capable in the provision of the Services to the Client.

#### Article 5 – FEES

Client agrees to pay Teleray Fees for the following Services:

Three options exist for TeleRay Consult billing, being monthly or annual subscription or pay per use. Pricing for these services are published on the Teleray website and the selection of preferred method is made by Client upon site registration. Billing will be made at the selected time interval at the price agreed at that time of registration.

## Article 6 – TERMS OF BUSINESS

The following terms relate only to invoices raised to Client by Teleray:

6.1 Invoice Interval: Teleray will be entitled to invoice the client on a calendar month basis

6.2 Payment Terms: Payment within 30 days from date of invoice is required to maintain service.

6.3 Payment Method: Teleray will accept the following forms of payment:

Check, debit or credit card or ACH

6.4 Late Payment Penalties: If the Client fails to remit invoices to terms or as otherwise provided for in this Agreement, Teleray shall be entitled to:

6.4.1 require Client to pay for the Services, or any remaining part of the Services, in advance

6.4.2 cease performance of the Services completely or until payment is made, at TeleRay's sole and exclusive discretion.

6.5 Expenses: Teleray is responsible for the management and payment of any and all expenses incurred in the rendering of the Services.

6.6 Tax Statement: Any and all charges payable under this Agreement are exclusive of taxes, surcharges, or other amounts assessed by state or federal governments. Taxes imposed upon or required to be paid by Client or Teleray shall be the sole and exclusive responsibility of each, respectively.

## Article 7 – CLIENT OBLIGATIONS:

During the provision of the Services, the Client hereby agrees to:

7.1 Cooperate with Teleray for anything Teleray may reasonably require in the provision of Services such as, but not limited to:

7.1.1 Provision of information and/or documentation needed by Teleray relevant to the provision of Services or payment for the provision of Services;

7.1.2 Require any staff or agents of the Client to co-operate with and assist Teleray as Teleray may reasonably need;

7.1.4 Setting up of the Stripe payment accounts;

7.1.3 Using reasonable efforts to offer TeleRay through the drafting and dissemination of Patient communications.

#### Article 8 – INTELLECTUAL PROPERTY:

In accordance with the terms and conditions of this Agreement, Teleray may create certain intellectual property (“Created IP”), including, but not limited to, plans, drawing, specifications, reports, advice, analyses, designs, methodologies, code, artwork, or any other intellectual property as required to render the provision of Services to the Client. Unless the Parties otherwise agree, any such Created IP generated by Teleray in connection with the provision of Services to the Client shall belong to TeleRay, but Teleray hereby grants the Client a non-exclusive, irrevocable, royalty-free license use the Created IP for Client’s internal purposes. Client shall not, however, be permitted to copy, modify, disseminate, or otherwise publish the Created IP and shall not allow others to do so.

Any intellectual property provided by the Client to Teleray to assist in the provision of Services, that was not created by Teleray pursuant to this Agreement, shall belong to the Client. Any ancillary intellectual property belonging to TeleRay, provided or shown to the Client in any way, that was not created by Teleray pursuant to this Agreement, shall belong to TeleRay.

Page Break Article 9 – CONFIDENTIALITY:

Each Party hereby acknowledges and agrees that they and the other party each possess certain non-public Confidential Information (as hereinafter defined) and may also possess Trade Secret Information (as hereinafter defined) (collectively the "Proprietary Information") regarding their business operations and development. The Parties agree that the Proprietary Information is secret and valuable to each of their respective businesses and the Parties have entered into a business relationship, through which they will each have access to the other party's Proprietary Information. Each of the Parties desires to maintain the secret and private nature of any Proprietary Information given. "Receiving Party" refers to the Party that is receiving the Proprietary Information and "Disclosing Party" refers to the Party that is disclosing the Proprietary Information.

9.1 Confidential Information refers to any information which is confidential and commercially valuable to either of the Parties. The Confidential Information may be in the form of documents, techniques, methods, practices, tools, specifications, inventions, patents, trademarks, copyrights, equipment, algorithms, models, samples, software, drawings, sketches, plans, programs or other oral or written knowledge and/or secrets and may pertain to, but is not limited to, the fields of research and development, forecasting, marketing, personnel, customers, suppliers, intellectual property and/or finance or any other information which is confidential and commercially valuable to either of the Parties.

Confidential Information may or may not be disclosed as such, through labeling, but is to be considered any information which ought to be treated as confidential under the circumstances through which it was disclosed.

Confidential Information shall not mean any information which:

9.1.1 is known or available to the public at the time of disclosure or became known or available after disclosure through no fault of the Receiving Party;

9.1.2 is already known, through legal means, to the Receiving Party;

9.1.3 is given by the Disclosing Party to third parties, other than the Receiving Party, without any restrictions;

9.1.4 is given to the Receiving Party by any third party who legally had the Confidential Information and the right to disclose it; or

9.1.5 is developed independently by the Receiving Party and the Receiving Party can show such independent development.

9.2 "Trade Secret Information" shall be defined specifically as any formula, process, method, pattern, design or other information that is not known or reasonably ascertainable by the public, consumers, or competitors through which, and because of such secrecy, an economic or commercial advantage can be achieved.

9.3 Both Parties hereby agree they shall:

9.3.1 Not disclose the Proprietary Information via any unauthorized means to any third parties throughout the duration of this Agreement and the Parties' relationship with each other;

9.3.2 Not disclose the Confidential Information via any unauthorized means to any third parties for a period of 3 (three) years following the termination of this Agreement;

9.3.3 Not disclose the Trade Secret Information forever, or for as long as such information remains a trade secret under applicable law, whichever occurs first, to any third party at any time;

9.3.4 Not use the Confidential Information or the Trade Secret Information for any purpose except those contemplated herein or expressly authorized by the Disclosing Party.

## Article 10 – COMPETITION

Teleray(and/or their employees, agents, representatives) shall be free to provide services or engage in any form of activity (including, but not limited to, any business, investment or financial activities) whether for themselves or on behalf of or to other organizations, companies or individuals who are or are potentially direct or indirect competitors of the Client.

## Article 11 – WARRANTIES & DISCLAIMERS:

Teleray represents and warrants that its hardware and software will perform the Services to a workable, acceptable degree and that any Services or materials provided by Teleray to the Client under the terms and conditions of this Agreement will not infringe on or violate the intellectual property rights or any other right of any third party.

EXCEPT AS EXPLICITLY SET FORTH HEREIN, Teleray SERVICES ARE DELIVERED “AS IS,” AND Teleray MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, CONTINUITY OF CELLULAR SERVICE BY CELLULAR PROVIDER, MERCHANTABILITY, TITLE AND NON-INFRINGEMENT WITH RESPECT TO THE Teleray SERVICES. Teleray DOES NOT WARRANT THAT THE Teleray SERVICES WILL BE SUITABLE FOR ANY PURPOSE – INCLUDING PATIENT DIAGNOSIS OR RESULTING TREATMENT – OR ARE ERROR-FREE. CLIENT ASSUMES THE SOLE RESPONSIBILITY FOR DETERMINING THE SUITABILITY OF THE Teleray PROPERTY FOR ITS INTENDED USE.

CLIENT IS RESPONSIBLE FOR MONITORING CELLULAR USAGE. Teleray RETAINS THE RIGHT TO CHARGE INCREMENTALLY FOR EXCESSIVE USAGE.

Teleray represents and warrants that TeleRay operates under the “Information Conduit” rule of 45 Code of Federal Regulations §160.103, and, as defined, is referenced in Section 13400 of Subtitle D (‘Privacy’) of the The Health Information Technology for Economic and Clinical Health (HITECH) Act 2009.

## Page Break Article 12 – LIMITATION OF LIABILITY

Either party’s liability in contract, tort or otherwise arising through or in connection with this Agreement or through or in connection with the completion of obligations under this Agreement shall be limited to the Fees paid by the Client to TeleRay.



## Article 13- NOTICE

Any notice, report or other communication required under this Agreement shall be in writing and shall be delivered personally, sent by facsimile transmission (including e-mail) or sent by U.S. mail, addressed as follows:

If to Client: The Name and Address stated at the head of this agreement if none other stated and/or the email address associated with the account registration

Attn: The representative executing this Agreement (below) if none other stated.

If to Business Associate: Teleray

100 Congress Avenue Suite 2000 Austin, TX, 78701 United States

Attn: Timothy Kelley CEO

Email: [tim@teleray.com](mailto:tim@teleray.com)

The parties shall hereafter notify each other in accordance herewith of any change of address to which notice is required to be sent.

## Article 14 – TERM & TERMINATION:

Unless termination is sought by Teleray under the provisions set out below, the Term of this Agreement is determined by the continued usage of Services by Client.

14.1 Client may terminate the use of Services at any time without notice or penalty.

14.2 This Agreement may be terminated by Teleray upon fourteen (14) days written notice if:

14.2.1 Client commits a material breach of any term of this Agreement that is not capable of being remedied within fourteen (14) days or that should have been remedied within fourteen (14) days after a written request and was not;

14.2.2 Client becomes unable to perform its duties hereunder, including a duty to pay or a duty to perform;

14.2.3 Client or its employees or agents engage in any conduct prejudicial to the business of TeleRay, or in the event that either party considers that a conflict or potential conflict of interest has arisen between the parties;

14.2.4 Client fails to pay any requisite Fees within thirty (30) days after the date they are due.

14.3 If this Agreement is terminated by either party, Client hereby agrees to pay for all Services rendered up to the date of termination, and for any and all expenditures due for payment after the date of termination for commitments reasonably made and incurred by Teleray related to the rendering of Services prior to the date of termination.

14.4 Any termination of under this subpart shall not affect the accrued rights or liabilities of either Party under this Agreement or at law and shall be without prejudice to any rights or remedies either Party may be entitled to. Any provision or subpart of this Agreement which is meant to continue after termination or come into force at or after termination shall not be affected by this subpart.

14.5 Any termination of this Agreement shall not relieve Recipient of its confidentiality and use obligations with respect to Confidential Information disclosed prior to the date of such termination. Except for the right to use Confidential Information for the Purpose, which right terminates when this Agreement terminates, Recipient's duty to protect Discloser's Confidential Information expires 1 year from the date on which that Confidential Information was disclosed to Recipient.

## Article 15 – RELATIONSHIP OF THE PARTIES:

The Parties hereby acknowledge and agree that nothing in this Agreement shall be deemed to constitute a partnership, joint venture, agency relationship or otherwise between the Parties and that this Agreement is for the sole and express purpose of the rendering of the specific Services by Telerayto the client under the terms and conditions herein.

## Article 16 – GENERAL PROVISIONS:

16.1 GOVERNING LAW: This Agreement shall be governed by and construed in accordance with the laws of the Illinois. All disputes, controversies or claims between the Parties arising out of or in connection with this Agreement (including its existence, validity or termination) shall be finally resolved by arbitration to be held in Illinois and conducted under the Rules of Arbitration of the International Chamber of Commerce; provided, however, that each Party may enforce its or its affiliates' intellectual property rights in any court of competent jurisdiction, including but not limited to equitable relief. The arbitration tribunal shall consist of one arbitrator to be appointed according to the ICC rules. The arbitral award shall be final and binding on the Parties. Except to the extent entry of judgment and any subsequent enforcement may require disclosure, all matters relating to the arbitration, including the award, shall be held in confidence.

16.2 LANGUAGE: All communications made or notices given pursuant to this Agreement shall be in the English language.

16.3 ASSIGNMENT: This Agreement, or the rights granted hereunder, may not be assigned, sold, leased or otherwise transferred in whole or part by either Party without thirty (30) days written notice to the other Party.

16.4 AMENDMENTS: This Agreement may only be amended in writing signed by both Parties.

16.5 NO WAIVER: None of the terms of this Agreement shall be deemed to have been waived by any act or acquiescence of either Party. Only an additional written agreement can constitute waiver of any of the terms of this Agreement between the Parties. No

waiver of any term or provision of this Agreement shall constitute a waiver of any other term or provision or of the same provision on a future date. Failure of either Party to enforce any term of this Agreement shall not constitute waiver of such term or any other term.

16.6 SEVERABILITY: If any provision or term of this Agreement is held to be unenforceable, then this Agreement will be deemed amended to the extent necessary to render the otherwise unenforceable provision, and the rest of the Agreement, valid and enforceable. If a court declines to amend this Agreement as provided herein, the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining terms and provisions, which shall be enforced as if the offending term or provision had not been included in this Agreement.

16.7 PUBLIC ANNOUNCEMENT: Neither Party will make any public announcement or disclosure about the existence of this Agreement or any of the terms herein without the prior written approval of the other Party.

16.8 ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous understandings, whether written or oral.

16.9 HEADINGS: Headings to this Agreement are for convenience only and shall not be construed to limit or otherwise affect the terms of this Agreement.

16.10 COUNTERPARTS: This Agreement may be executed in counterparts, all of which shall constitute a single agreement. If the dates set forth at the end of this document are different, this Agreement is to be considered effective as of the date that both Parties have signed the agreement, which may be the later date.

16.11 FORCE MAJEURE: Teleray is not liable for any failure to perform due to causes beyond its reasonable control including, but not limited to, acts of God, acts of civil authorities, acts of military authorities, riots, embargoes, acts of nature and natural disasters, Wireless network outages, ISP outages, and other acts which may be due to unforeseen circumstances.

16.12 NOTICES, ELECTRONIC COMMUNICATIONS PERMITTED: Any notice to be given under this Agreement shall be in writing and shall be sent by first class mail, air

mail, or e-mail, to the address of the relevant Party set out at the head of this Agreement, or to the relevant email address as that Party may from time to time notify to the other Party in accordance with this clause.

16.13 ELECTRONIC EXECUTION PERMITTED: Parties agree that by Client checking the TeleRay Terms of Service box during registration, Client and Telerayexecute this Agreement and are bound by the terms herein.