

## Apex Remote Monitoring Terms of Service

Welcome to the Apex Remote Monitoring (“Apex” or “Company”) experience. Take control and streamline all of your patient data needs and more. Please read these Terms of Service carefully as they are binding between You, the “End User” or “Client”, and Apex. The End User and Company may be collectively referred throughout this agreement as “Parties” or individually as “Party”. As you are likely aware, Apex offers many services and products including software that allows the End User to:

- 1.) Create a patient profile including demographics, insurance information, diagnostic billing codes, and parameters creating alerts and messages;
- 2.) Monitor the data provided from the peripheral devices on a timely basis; and
- 3.) Tracks provider/staff time utilized in reviewing data collected from patients.

This license governs the use of all of our website/software products (hereinafter, "software"), specifically:

Our software product and associated devices we use to create a platform for healthcare providers to actively track and analyze data collected from their patient’s peripheral devices, such as blood pressure monitors, glucometers, and scales. This data is utilized to improve patient health and outcomes. This product is not intended for the use of any emergency services provided by our clients. The software is **for general educational purposes only. You must be eighteen (18) years or older to use this product. By proceeding You acknowledge that you are eighteen (18) years or older.**

By accessing, downloading, installing, or otherwise using our software in any way, you agree to be bound by the terms of this Agreement. **If you do not agree to be bound by the terms of this Agreement, you must cease use of the software immediately.**

The use of this software and software services are provided by Apex Remote Monitoring and are subject to the following **Disclaimer**:

1. By using this software, you agree to and acknowledge each of the terms under this Disclaimer.
2. Apex’s software and services are provided without any guarantees or warranty. Apex makes no warranties of any kind, either express or implied, including but not limited to warranties of merchantability, fitness for a particular purpose, of title, or of non-infringement of third-party rights. Use of the product by a user is at the user’s sole and exclusive risk.
3. Apex is not liable for any direct, indirect, incidental, consequential or exemplary damages relating to the use or inability to use any Apex product.
4. That information and/or documents provided by the Company are simply that, information and/or documents, and should not be considered professional healthcare advice, medical advice, insurance billing procedure or coding, or any healthcare related support.
5. Apex makes no warranties that the software will meet your needs or that the software will be uninterrupted, error-free, or secure. Apex makes no warranties as

to the reliability or accuracy, completeness, or quality of any information on the software or obtained through any services.

6. Apex is not liable for any errors, omissions, loss or damage which may be caused by your use of the software, to the fullest extent permitted by law. Any damage that may occur is your sole responsibility. The maximum liability of Apex arising from, or relating, to your use of the software is limited to the greater of one hundred (\$100) US dollars or the amount you paid to the Company over the last three (3) months. This applies to any and all claims by you, including, but not limited to, lost profits or revenues, consequential or punitive damages, negligence, strict liability, fraud, or torts of any kind. Documents, information, or other services received on or through this software may not be appropriate for your particular situation, the assessment of which is your sole and exclusive responsibility.
7. Apex's software is not for the purpose of addressing acute medical conditions, emergencies, or life-threatening conditions. The Company does not provide healthcare advisement and takes no liability for malpractice or inappropriate treatment provided by the healthcare provider. The use of any Apex software is at your own risk. **THE SERVICES PROVIDED BY APEX ARE NOT A SUBSTITUTE FOR, AND IS NOT INTENDED TO, PROVIDE PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS, OR TREATMENT. THE SERVICES ARE NOT INTENDED TO REPLACE YOUR RELATIONSHIP WITH YOUR PATIENT AS CARE MANAGER, ADVOCATE, DOCTOR, OR ANY OTHER QUALIFIED HEALTHCARE PROVIDER.**

**Licenses to Third-Party Software:** In addition to the terms and conditions of this Agreement and the other terms and conditions herein, any licenses to Third-Party Software granted to Client under the Agreement shall be subject to the Third-Party Software Terms. The Company represents and warrants that it has sufficient rights to grant Client the license to the Third-Party Software.

**Permitted Users of Software.** The Agreement shall identify those Permitted Users who are authorized to use the Software. Client agrees that it is responsible for all Permitted Users who Use the Software. Accordingly, the terms, conditions, restrictions and obligations of the Agreement (excluding Client's payment obligation to The Company) shall be construed to also apply to all Permitted Users, and Client shall be liable for any breach of the Agreement by a Permitted User.

**Passwords; Security.** To access other resources offered by the Software or obtain a product quote or demonstration, you may be asked to provide certain registration details or other information. It is a condition of your use of the Software or to the provision of your product quote or demonstration that all the information you provide on the Software is correct, current and complete.

If you choose or are provided with a user name, password or any other piece of information as part of our security procedures, you must treat such information as

confidential, and you must not disclose it to any third party. You agree to immediately notify The Company of any unauthorized use of your username or password or any other breach of security and ensure that you exit from your account at the end of each session. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information.

We have the right to disable any user identification code or password, whether chosen by you or provided by us, at any time, for any reason, including, if in our opinion, you have failed to comply with any provision of these Terms.

**DATA:** You own the data provided and generated by our software. If you are entering another person's information into our software you represent and guarantee that you have their consent to provide said information.

**Protection of Your Data.** Each party shall comply with its respective obligations under applicable data protection laws. Each party shall maintain appropriate administrative, physical, technical and organizational measures that ensure an appropriate level of security for Confidential Information and Personal Data.

You are responsible for ensuring that the security of the Services is appropriate for Your intended use and the storage, hosting, or processing of Personal Data. The Company is not and shall not be liable for any damages arising from, or relating to, the theft of your user credentials, and/or and resulting access to your personal data, your disclosure of your user credentials, or the use of your user credentials by another person or entity regardless of whether you were aware of such use.

## **SERVICES**

**Professional Services.** The Company shall perform all Professional Services agreed upon in any Agreement for the fees specified therein and in a professional and workman like manner by personnel having a level of skill commensurate with their responsibilities.

## **Changes to the Software**

We may update the Software from time to time, but its content is not necessarily complete or up-to-date. We may change the Software at any time with or without notice. We may suspend access to the Software or close it indefinitely. Any material on the Software may be out-of-date at any given time, and we are under no obligation to update such material.

## **ACCEPTABLE USE:**

The Company makes no assurances to any particular outcome based on your use of the software, including business or financial outcomes. The software provided by the Company is the property of the Company, including all copyrights, trademarks, trade secrets, patents, and other intellectual property ("Company IP"). The Company owns all right, title and interest in, and to, the Company IP and that You will not use the Company IP for any unlawful or infringing purpose. Client shall not reproduce or distribute the Company IP in any way, without the express written consent of the Company. Client shall not use the software for any unlawful purpose, or any purpose prohibited under this Agreement. Client shall not use the software in any way that could damage the software or general business of the Company.

In addition to the above, it is a violation of this Agreement use the Company IP to:

- 1) Harass, abuse, or threaten others or otherwise violate any person's legal rights;
- 2) Violate any intellectual property rights of the Company or any third-party;
- 3) Upload or otherwise disseminate any computer viruses or other software that may damage the property of another;
- 4) Perpetrate any fraud;
- 5) Engage in or create any unlawful gambling, sweepstakes, or pyramid scheme;
- 6) Publish or distribute any obscene or defamatory material;
- 7) Publish or distribute any material that incites violence, hate, or discrimination towards any group; or
- 8) Unlawfully gather information about others.

#### **Business Associates Agreement:**

**The client and any associated users of the client are required to follow the rules and regulations in accordance with the Health Insurance Portability and Accountability Act (HIPAA). You may not use our software until your organization has completed a Business Associates Agreement (BAA) with The Company. By using our software, you are in agreement to follow all the conditions and laws outlined in the BAA. Any information that the Company collects through the use of our software is subject to the private policies of Apex, and are subject to HIPAA regulations.**

#### **Billing Information:**

**The services we provide may or may not be reimbursable by federal, state, or commercial health insurance payors. We are not billing experts and any information provided to you for billing purposes is for informational purposes only and are not a guarantee of reimbursement. You are solely responsible for complying to all applicable laws, rules, and regulations in regards to submitting insurance claims for appropriate reimbursement.**

**INDEMNIFICATION:** Client will indemnify the Company and any of its affiliates (if applicable) and hold us harmless against any and all legal claims and demands, including reasonable attorney's fees, which may arise from or relate to your use or misuse of the software, your breach of this Agreement or any other agreement, or your conduct or actions. Company retains the right to select its own legal counsel and may participate in its own defense if it wishes. Through your use of the software, you agree that the laws of New Jersey shall govern any matter or dispute relating to or arising out of this Agreement, as well as any dispute of any kind that may arise between you and the Company, with the exception of its conflict of law provisions.

**ARBITRATION:** In case of a dispute between the Parties relating to or arising out of this Agreement, the Parties shall first attempt to resolve the dispute personally and in good faith. If these personal resolution attempts fail, the Parties shall then submit the dispute to binding arbitration. The arbitration shall be conducted by a single arbitrator, and such arbitrator shall have no authority to add Parties, vary the terms of the legal relationship (such as if evidenced through written contract), award punitive damages, or certify a class. If the Parties cannot agree on choice of an arbitrator within 21 days after commencement of an arbitration proceeding, the arbitrator will be chosen by the American Arbitration Association. The arbitrator shall be bound by applicable and governing Federal law as well as the law of the following state: New Jersey. Each Party shall pay their own costs and fees. *Intellectual property claims by the Company will not be subject to arbitration and may be litigated, as the sole exclusion to this section.*

The Parties waive any rights they may have to a jury trial in regard to arbitral claims

**SOFTWARE LICENSE:** When you lawfully access the software, whether through purchase or other lawful means, we grant you, subject to all of the terms and conditions of this Agreement, a non-exclusive, non-transferable, limited, revocable license to use the Software ("License"). This License extends to the use of documentation, data, or information developed by the Company, and other materials which may assist in your use of the Software. This License may not be transferred to any third parties without express, lawful, written permission from the Company and this License terminates upon your cessation of use of the Software.

This License shall be applicable to all lawful End Users of the software, unless a separate written agreement has been executed between you and the Company.

**LICENSE FEE:** The License is provided for a fee, in conjunction with the purchase of the Software. Such fee will be displayed to you prior to your purchase of the Software.

**DEVICES:** The purchased devices such as cellular blood pressure cuffs, glucometers, and weight scales will be provided to your patient through the Company. The Company does not manufacture these devices and makes no promises, warranties, or guarantees with regards to the purchased devices. **USE OF MOST FEATURES OF THE SERVICES REQUIRES AN ONLINE CONNECTION (WI-FI, CELLULAR DATA) BETWEEN YOUR**

MOBILE DEVICE AND THE INTERNET. YOU ARE SOLELY RESPONSIBLE FOR ALL COSTS AND EXPENSES OF SUCH CONNECTION, AS SPECIFIED IN YOUR SUBSCRIBER PLAN OR CONTRACT WITH YOUR COMMUNICATION SERVICE PROVIDER. SOME OF THE FEATURES WITHIN THE SERVICES MAY BE DEPENDENT ON YOUR WIRELESS SERVICE AND THE WIRELESS COVERAGE WITHIN THE AREA IN WHICH YOU ARE LOCATED AT THAT TIME.

**ADDITIONAL TERMS:** Additional terms may be applicable to the Parties' relationship with each other, such as the Company Terms & Conditions or Terms of Use, the Company Privacy Policy, and any other such written agreements governing your relationship with us. Nothing contained herein is intended to restrict the terms of any other written agreement. Instead, all relevant documents shall be construed as broadly as possible. The Terms & Conditions/Terms of Use can be found at the following link: <http://www.apexremotemonitoring.com/terms>. The Privacy Policy can be found at the following link: <http://www.apexremotemonitoring.com/privacy>.

**REVERSE ENGINEERING & SECURITY:** Client may not:

- a) Reverse engineer, or attempt to reverse engineer or disassemble the Software or any code within or related to the Software or the Company software;
- b) Violate the security of the Software through any unauthorized access, circumvention of encryption or other security tools, data mining or interference to any host, user or network;
- c) Copy or otherwise distribute copies of the Software unlawfully, such as through any peer-to-peer network or other intellectual property circumvention tool.

## **MODIFICATION & VARIATION**

The Company may, from time to time and at any time without notice to You, modify this Agreement. You acknowledge that the Company has the right to modify this Agreement. You further acknowledge that all modifications to this Agreement are in full force and effect immediately upon posting on the Software and that modifications or variations will replace any prior version of this Agreement, unless prior versions are specifically referred to or incorporated into the latest modification or variation of this Agreement.

a) If any provision contained in this Agreement, or any future modification, either in whole or in part, is deemed or held to be invalid or unenforceable by any court of competent jurisdiction, the remainder of any partially declared invalid or unenforceable provision and all other provisions of the Agreement shall, nonetheless, remain and continue in full force and effect.

b). Continued use of the Software following any posted change or modification indicates the Clients agreement with the modified terms.

**MAINTENANCE:** This License includes Software maintenance and support. Please contact the Company for assistance.

**SPAM POLICY:** You are strictly prohibited from using the Software or any of the Company's services for illegal spam activities, including gathering email addresses and personal information from others or sending any mass commercial emails.

**SERVICE INTERRUPTIONS:** The Company may need to interrupt access to the Software to perform maintenance or emergency services on a scheduled or unscheduled basis. Your access to the Software may be affected by unanticipated or unscheduled downtime, for any reason, and the Company shall have no liability for any damage or loss caused as a result of such downtime.

### **Limitation of Liability**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE THAT THE COMPANY AND ITS EMPLOYEES, OFFICERS, DIRECTORS, OR SHAREHOLDERS SHALL NOT BE LIABLE TO YOU FOR ANY (A) INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, EXEMPLARY OR STATUTORY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, LOSS OR PROFITS, LOSS OF REVENUE, LOSS OF DATA, LOSS OF GOODWILL OR FOR ANY COST OF COVER OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES), EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE LEGAL THEORY UNDER WHICH DAMAGES ARE SOUGHT, WHETHER IN BREACH OF CONTRACT OR IN TORT, INCLUDING NEGLIGENCE. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE AGGREGATE LIABILITY OF THE COMPANY SHALL IN NO CASE EXTEND BEYOND \$100 USD.

**TERM AND TERMINATION:** Either party have the right to cancel the Services at any time for any reason or for no reason.

If you violate this Agreement, your permission to use the Software and Content automatically terminates and you must immediately destroy any copies you have made of any portion of the Software or Content. Your records containing your Personal Data are available in accordance with our Privacy Policy. Termination will not limit any of Apex's rights or remedies at law or in equity.

Apex may also suspend or terminate your access if we have reason to believe that you have violated or may have violated another's intellectual property rights.

Client remains responsible for any Fees that had accrued prior to the date your access was terminated.

**CONSEQUENCES OF TERMINATION.** Upon expiration or termination of the Agreement, all licenses to Software granted by the Company under the Agreement and Client's right to receive Services pursuant to the Agreement shall immediately terminate and Client shall immediately cease the Use of the Software. Notwithstanding the foregoing, and in addition to any provisions in the Agreement which are expressly stated to survive termination, the following provisions of this agreement shall survive such expiration or termination:

**Fees and Payment.** All orders placed will be considered final upon acceptance by Apex. Fees will be due and payable as set forth on the Order Form. Unless otherwise set forth herein, fees shall be at Apex's then-standard rates at the time of invoice or, if applicable, as set forth in the Order Form. If You fail to pay, Apex shall be entitled, at its sole discretion, to: (i) suspend the license to the Software until You fulfill Your pending obligations; (ii) charge You an interest rate designated by Apex at the time of invoice; and/or (iii) terminate this Agreement, You will be charged additional fees, which will be reflected in Your invoice. Unless otherwise stated, all payments made under this Agreement shall be in United States dollars. Fees are non-refundable.

At Apex's option, Apex may assess a late payment fee of one and one half per cent (1.5%) of the unpaid balance for each succeeding thirty (30) day period or portion thereof in which Apex has not received payment from Client of Fees when due.

**Taxes.** All fees are exclusive of all taxes including local, state, federal, and You shall pay or reimburse Apex for all taxes arising out of transactions contemplated by this Agreement. Payments to Apex are in full, including taxes.

**ASSIGNMENT:** This Agreement, or the rights granted hereunder, may not be assigned, sold, leased or otherwise transferred in whole or part by you. Should this Agreement, or the rights granted hereunder, be assigned, sold, leased or otherwise transferred by the Company, the rights and liabilities of the Company will bind and inure to any assignees, administrators, successors, and executors.

**HEADINGS FOR CONVENIENCE ONLY:** Headings of parts and sub-parts under this Agreement are for convenience and organization, only. Headings shall not affect the meaning of any provisions of this Agreement.

**NO AGENCY, PARTNERSHIP OR JOINT VENTURE:** No agency, partnership, or joint venture has been created between the Parties as a result of this Agreement. No Party has any authority to bind the other to third parties.



**FORCE MAJEURE:** The Company 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, and other acts which may be due to unforeseen circumstances.

**ELECTRONIC COMMUNICATIONS PERMITTED:** Electronic communications are permitted to both Parties under this Agreement, including e-mail or fax. For any questions or concerns, please email us at the following address: [info@apexremotemonitoring.com](mailto:info@apexremotemonitoring.com).

**Waiver.** The failure of either Party to insist upon strict performance of the provisions of this Agreement shall not be construed as a waiver of any subsequent default of the same or similar nature. Failure to enforce any right or provision under this Agreement does not constitute a waiver of future enforcement of that right or provision.

**Notice.** Any notices, demands and other communications pursuant to the Agreement shall be in writing, via mail or E-mail to the applicable address, set out on in the Agreement or at such other address as may be designated in writing by the receiving party. All such notices shall be effective upon receipt

**Further Assurances.** The parties hereto shall with reasonable diligence do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated in the Agreement, and each party shall provide such further documents or instruments required by any other party as may be reasonably necessary or desirable to effect the purpose of the Agreement and carry out its provisions.

**No Agency.** Nothing in the Agreement shall constitute or be deemed to constitute one party as agent of the other, for any purpose whatsoever, and neither party shall have the authority or power to bind the other, or to contract in the name of or create a liability against the other, in any way or for any purpose.

**Apex is a Non-Party.** All transactions concluded through Use of the Software by Client shall be between the Client and the other parties to that transaction pursuant to the terms and conditions agreed upon by the Client and those parties. Apex shall not be a party to any transaction or contract concluded through Use of the Software.

**Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or

other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**Independent Contractors.** Nothing herein shall be construed to create a joint venture or partnership between the parties hereto or an employee/employer relationship. Neither party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement or undertaking with any third party.