

Spacelabs Healthcare
Subscription Software Terms

1. **Terms.** These terms cover the provision of software on a subscription basis, hosted and provided by Spacelabs as described in a Spacelabs Customer Quotation (the "Hosted Service") under the terms of the Customer Quotation and herein stated (the "Agreement"). Any additional or different terms, including terms in any purchase order, will be of no effect unless expressly accepted in writing by Spacelabs. Spacelabs' performance will not, under any circumstances, be deemed Spacelabs' acceptance of any of the terms and conditions contained in any Customer document. Customer's issuance of a purchase order or other Customer document to procure the Hosted Service, or use of the Service, will be deemed to constitute Customer's subscription to the Hosted Service and acceptance of these Subscription Software Terms.
2. **Price; Payment.** The price for Hosted Service usage is as set forth in the Spacelabs Customer Quotation. Thereafter, Spacelabs reserves the right to increase the price for such Hosted Service. Hosted Service usage will be invoiced on a monthly basis (or annually in advance if requested by Customer), with payment due thirty (30) days after date of invoice. All fees not paid when due shall accrue interest at the maximum rate allowed under applicable law, and in the case of unpaid fees for Hosted Service, may result in temporary suspension of Customer's ability to access the Hosted Service until payment is made. Customer agrees to pay collection expenses and legal fees incurred by Spacelabs in collecting past due balances. Hosted Service upgrades and add-ons may be subject to an additional charge.
3. **Hosted Service Provision and Limitations.**
 - 3.1. The Hosted Service consists of one or more software applications in object code or binary form that are provided over the internet on an application service provider basis, as well as related Hosted Service materials, including technical and functional documentation, provided by or produced by Spacelabs in the course of providing support ("Materials"). The Hosted Service communication platform is not an emergency communication system approved by the FDA and must not be used as such. The speed of inbound and outbound communication may vary. Internet outages may occur that affect communication. The Hosted Service should not be used as the primary means of contacting staff except for non-emergency administrative matters.
 - 3.2. "Authorized User" means Customer's employees and business partners who are authorized by Customer to use the Hosted Service. Authorized User access credentials issued to access or utilize the Hosted Service cannot be shared or used by more than one individual at a time, provided however, an Authorized User's access rights may be transferred from one individual to another if the original Authorized User is removed from the Hosted Service, no longer requires, or is no longer permitted access to or use of the Hosted Service. Customer shall be responsible for the acts and omissions of its Authorized Users as if they were the acts and omissions of Customer.
 - 3.3. Subject to Customer's compliance with all the terms and conditions of the Agreement, Spacelabs grants to Customer a nonexclusive, non-transferable, limited, and revocable right during the subscription term identified in the Customer Quotation to implement, configure and permit its Authorized Users to remotely access and use the Hosted Service and related Materials in connection with Customer's use of the Hosted Service, solely for Customer's own internal business purposes.
 - 3.4. Spacelabs will use commercially reasonable efforts to provide the Hosted Service 24 hours a day, seven days a week, except for planned maintenance carried out between 12:00 a.m. and 1:00 a.m. Central Time on Mondays and unscheduled maintenance necessary for proper functioning of the Hosted Services.
 - 3.5. Spacelabs will use commercially reasonable security technologies in providing the Hosted Service. Spacelabs will retain Customer Data on a secure server and maintain data recovery and data backup facilities in accordance with accepted industry practices.
 - 3.6. Customer acknowledges and agrees that Customer's use of the Hosted Service is solely at Customer's own risk and is subject to all applicable local, state, national and international laws and regulations. Customer acknowledges and agrees that the reliability, availability, integrity and performance of resources accessed through the internet or other services connected to the Hosted Service are beyond the control of Spacelabs and are not warranted or supported by Spacelabs.
 - 3.7. Spacelabs may change the Hosted Service at any time. If such changes to the Hosted Service materially diminish the functionality of the Hosted Service, Customer shall have the right to terminate the subscription for the Hosted Service by providing written notice to Spacelabs within 10 days of the changes, and receive a prorated refund of the subscription fees paid by Customer for such Hosted Service for the remainder of the subscription term subsequent to such termination. The termination right and refund described herein is Customer's sole and exclusive remedy for Spacelabs' change to the Hosted Service.
4. **Customer Responsibilities.**

- 4.1. Customer is solely responsible for procuring, maintaining, and supporting all non-Spacelabs equipment used in conjunction with the Hosted Service, including computer hardware, operating systems, network connections, and internet access ("Customer Equipment"), and for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer Equipment. Customer will ensure that Customer Equipment meets minimum security requirement for use in connection with Protected Health Information. Customer will at all times maintain backup of all Customer Data (as defined below) provided, and will be responsible for any loss of any such data. Customer shall maintain commercially reasonable security standards for its and its Authorized Users' use of the Hosted Service, including without limitation the use of regular required password changes and virus scans.
- 4.2. Customer will not and will not permit any third party or Authorized User to: (i) copy, trace, disassemble, decompile, modify, make derivative works based on, or reverse engineer the Hosted Service software or Materials; (ii) copy or transfer the Hosted Service software or Materials or any part thereof, except as expressly permitted by these terms; (iii) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make the Hosted Service or Materials available to any third party (other than Authorized Users); (iv) use the Hosted Service to transmit any content, data or information that is unlawful, defamatory, or invasive of another's privacy right or right of publicity; (v) infringe any intellectual property rights when using the Hosted Service; (vi) interfere with or disrupt the integrity or performance of the Hosted Service; (vii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (viii) circumvent or disclose the user authentication or security of the Hosted Service or any host, network, or account related thereto; or (ix) use Hosted Service components other than those specifically identified in the Customer Quotation, even if technically possible.
- 4.3. Customer is responsible for all activity occurring under Customer Authorized User accounts and will abide by all applicable local, national and foreign laws, treaties and regulations in connection with the use of the Hosted Service, including those related to data privacy, international communications and the transmission of technical or personal data.
- 4.4. Customer will not take any action that imposes an unreasonable or disproportionately large load of data on the Hosted Service infrastructure.

5. Customer Data.

- 5.1. "Customer Data" means: (i) any content, materials, data and information that Customer or its Authorized Users enter into the Hosted Service; and (ii) Customer-specific data that is derived from Customer's use of the Hosted Service (e.g. Customer-specific reports) as long as such derivative work is not a component of the Hosted Service itself or furnished by Spacelabs under the Agreement. Customer Data shall not include any component of the Hosted Service or Material provided by or on behalf of Spacelabs.
- 5.2. Customer agrees that it has collected and shall maintain and handle all personal data contained in Customer Data in compliance with all applicable data privacy and protection laws, rules and regulations. Customer authorizes Spacelabs to process its personal data in accordance with the applicable data protection provisions. Customer is responsible for obtaining all necessary consents and permissions to transfer the Customer Data to the Hosted Service.
- 5.3. Customer owns all rights, title and interest in and to all Customer Data and will have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. Customer represents and warrants that it has the right to transfer the Customer Data to the Hosted Service. Customer grants to Spacelabs the nonexclusive right to process Customer Data for the sole purpose of and only to the extent necessary for Spacelabs: (i) to provide the Hosted Service (including without limitation preparing backup copies or performing penetration tests); (ii) to verify Customer's compliance with the restrictions set forth in the Agreement if Spacelabs has a reasonable belief of Customer's non-compliance; and, (iii) as otherwise set forth in the Agreement.
- 5.4. Spacelabs may utilize the information concerning Customer's use of the Hosted Service to improve Spacelabs products and services, to provide Customer with reports on its use of the Hosted Service, and to compile aggregate statistics and usage patterns by customers using the Hosted Service. Customer hereby permits Spacelabs to de-identify, anonymize, aggregate, copy, process and display Customer Data to derive anonymous statistical and usage data, and data about the functionality of the Hosted Service, provided such data cannot be used to identify Customer or its individual users for the purposes of combining or incorporating such data with or into other similar data and information available, derived or obtained from other customers (when so combined or incorporated, referred to as "Aggregate Data"). Spacelabs will be the owner of all right, title and interest in and to Aggregate Data.

6. Warranty.

- 6.1. Spacelabs warrants that it either owns or has the right to provide the Hosted Service, and that the Hosted Service will substantially conform to the specifications stated in the Hosted Service Materials. The foregoing warranty shall not apply to the extent: (i) the Hosted Service is not being used in accordance with the Agreement and/or the Materials; (ii) any non-conformity is caused by Customer Equipment, Customer products, third party products, implementation or configuration performed by any party other than Spacelabs, or any content or service being accessed through a Hosted

Service that is identified as third party products, content, or services; or (iii) the Hosted Service being used was provided for no fee or is a trial license of the Hosted Service. Customer's sole and exclusive remedy, and Spacelabs' entire liability for breach of the limited warranty in this Section 6.1, shall be correction of the warranted non-conformity or, if Spacelabs fails to correct the warranted non-conformity after using reasonable commercial efforts, Spacelabs may terminate Customer's access to the non-conforming Hosted Service and refund the subscription fees paid by Customer for such Hosted Service for the remainder of the then-current subscription term (starting on the date Customer reported the non-conformity).

6.2. Spacelabs warrants that any services provided in connection with the Hosted Services will be performed in a prompt, diligent, competent and workmanlike manner. Customer's sole and exclusive remedy, and Spacelabs' entire liability for breach of the limited warranty in this Section 6.2, shall be the re-performance of such deficient services; and if Spacelabs fails to re-perform such services as warranted, Spacelabs will, at its option re-perform the applicable services, or refund the fees paid to Spacelabs for such non-conforming services.

6.3. SPACELABS AND ITS SUPPLIERS MAKE NO OTHER WARRANTY OF ANY KIND WHATEVER, EXPRESS OR IMPLIED, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY SPACELABS AND ITS SUPPLIERS.

7. Intellectual Property Rights.

7.1. Ownership. "Intellectual Property Rights" means patent, copyright, trademark, trade secret and any other intellectual property rights. Spacelabs and its suppliers retain all rights, title and interest in and to the Intellectual Property Rights in the Hosted Service, the Materials, and any updates, upgrades, or derivative works thereto, and any knowledge or processes related thereto and/or provided hereunder. Except for the limited rights expressly granted herein, Customer does not acquire any other rights, express or implied, in the Hosted Service or Materials. Customer will not take any action in violation of Spacelabs' or any third party author's copyright or other intellectual property rights as regards the Hosted Service or Materials.

7.2. Customer Ownership. Customer shall own all right, title and interest in and to any Intellectual Property Rights in the Customer Data.

8. Infringement

8.1. Claims. If any third party alleges in a claim against Customer that all or a part of the Hosted Service as used within the terms of this Agreement infringes any Intellectual Property Rights in the country of Customer's domicile (the "Indemnified Claim"), Spacelabs will defend the Indemnified Claim at its expense and will hold Customer harmless against any judgment with respect thereto. This defense and indemnification obligation is contingent upon: (i) Customer giving Spacelabs prompt written notice of any claim; (ii) Spacelabs being granted control of the defense, compromise, or settlement of such claim; and (iii) Customer's assistance to the extent reasonably required for such defense. In the event Spacelabs receives information concerning an intellectual property infringement claim (including an Indemnified Claim) related to the Hosted Service it may, at its expense and without obligation to do so, upon notice to Customer to cease use of the allegedly infringing Hosted Service, either: (i) procure for Customer within a commercially reasonable period of time the right to continue to use the allegedly infringing aspect of the Hosted Service; (ii) replace or modify the Hosted Service to make it non-infringing; or (iii) refund the subscription fees paid by Customer for such Hosted Service for the remainder of the then-current subscription term.

8.2. Liability Limitations. Spacelabs will have no liability for any intellectual property infringement claim based on Customer's: (i) use of the Hosted Service after Spacelabs' notice that the Customer should cease use of the Hosted Service; (ii) combination of the Hosted Service with a product, program or data not authorized by Spacelabs; or (iii) adaptation or modification of the Hosted Service.

9. Term; Deactivation and Termination.

9.1. The term of the Hosted Service begins on the date of installation of the Hosted Service software, and shall continue on a month to month subscription basis unless terminated or canceled in accordance with these terms.

9.2. Either party may terminate this Agreement at any time by notifying the other party in writing at least 30 day prior to the date of the requested termination.

9.3. Spacelabs may, in its reasonable determination, deactivate Customer's user name(s) and password(s) and/or temporarily suspend access to the Hosted Service or a portion thereof, if and to the extent Spacelabs can substantiate that the continued use of the Hosted Service by Customer or its Authorized Users may result in harm to the Hosted Service (including the security of the systems used to provide the Hosted Service) or other Spacelabs customers, or the rights of third parties, upon prior written notice to Customer as the circumstances permit. Spacelabs shall limit the temporary suspension in time and scope as reasonably required.

- 9.4. Upon the termination of this Agreement; (i) Customer will immediately deliver to Spacelabs all records, documents, specifications, information, tools, and other Materials provided in connection with the Hosted Service; (ii) refrain from further use of the Hosted Service; and (iii) pay all fees due for use of the Hosted Service through termination.
- 9.5. If Customer requires access to the Hosted Service to export and retrieve its Customer Data after the effective date of termination or expiration, Customer may extend the subscription term for up to 90 days by notifying Spacelabs at least 30 days prior to the effective date of termination or expiration and paying subscription fees for such extension. Subject to the foregoing, Spacelabs shall have no obligation to maintain or provide any Customer Data. At Customer's request upon termination, Spacelabs shall, within a reasonable time period, remove, delete, purge, overwrite or otherwise render inaccessible all Customer Data still remaining on the servers used to host the Hosted Service, unless and to the extent applicable laws and regulations require further retention of such data.
10. Miscellaneous.
- 10.1. Audit Rights. Spacelabs and any third party provider of Software will have the right to monitor use of the Hosted Service by Customer: (i) electronically at any time; or (ii) by on-site audit of Customer's use of the Hosted Service, during normal business hours during the term of this Agreement and for three (3) years thereafter, to verify that Customer's use has not exceeded the scope of the rights acquired under the Agreement.
- 10.2. Customer Reporting. Customer agrees to properly report and disclose any discounts granted by Spacelabs to Customer relating to the Hosted Service, to the extent required by applicable state or federal law.
- 10.3. Consulting and Training. Spacelabs will provide Hosted Service consulting and training services in accordance with Spacelabs' then current consulting and training policies and pricing.
- 10.4. Confidentiality. Each party agrees to keep the other party's business, technical and proprietary information, including Hosted Service pricing and Materials, confidential. Each party will not use such information except as necessary for the performance of this Agreement, and will not disclose such information except as required by law. Each party will limit disclosure of such confidential information only to those of its employees and contractors who have a need to know the information and are bound by confidentiality obligations as regards the information that are similar to those stated herein.
- 10.5. Liability. Neither party, nor any Spacelabs supplier (including suppliers of third party software), will be liable to the other or to any third party for any incidental, indirect, special or consequential damages in connection with this Agreement or in connection with the Hosted Service, including, but not limited to, damages arising from loss of data or programming, loss of revenue or profits, failure to realize savings or other benefits, and damage to equipment, even if the breaching party has been advised of the possibility of such damages.
- 10.6. Compliance with Laws. Each party will comply with all federal and state laws, ordinances, regulations and codes applicable to their rights and obligations hereunder, including the Health Insurance Portability and Accountability Act of 1996 and its associated regulations including 45 C.F.R. §§ 160 and 164, Standards for Privacy of Individually Identifiable Health Information, Final Rule (the "Final Privacy Rule"), and 45 C.F.R. §§ 160, 162 and 164, Health Insurance Reform: Security Standards, Final Rule (the "Final Security Rule"), collectively referred to as ("HIPAA"). Spacelabs will use Protected Health Information only in connection with services performed under this Agreement or as otherwise authorized by HIPAA.
- 10.7. Governing Law; Jurisdiction. The Agreement between the parties regarding the Products will be governed by and interpreted in accordance with the laws of the State of Washington, USA, without reference to its laws relating to conflicts of law. The rights and obligations of the parties shall not be governed by the provisions of the U.N. Convention for the International Sale of Goods. Any legal action arising out of or relating to the sale of Products will be brought only in the state and federal courts located in King County, Washington, and the parties irrevocably consent to the jurisdiction and venue of such courts. Notwithstanding the foregoing, Spacelabs shall have the right, but not the obligation, to undertake legal proceedings in a court of Customer's domicile, main place of business or other appropriate court to: (i) settle any issue or dispute arising out of or relating to monies due by Customer to Spacelabs; (ii) protect or enforce any patent, trademark, copyright or other intellectual property right, confidential information or trade secrets; or (iii) proceed with litigation commenced by a third party.
- 10.8. Force Majeure. Spacelabs will not be liable for any delay or default caused by events beyond its reasonable control, including by way of example any acts of God; acts of third parties; Customer's (or any of Customer's employees, agents, or representatives) actions or omissions; fires, floods, and other similar natural causes; sabotage; vandalism; labor disputes; strikes; lockouts; lack of storage, labor, supplies, fuel, or power; delays in receiving any permits or licenses; delays caused by any laws, regulations, ordinances, or any government action or inaction; or delays caused by contractors and subcontractors. The time for performance of Spacelabs' obligations hereunder will be extended for a commercially reasonable period of time in the event of any delay or default for such causes.

- 10.9. U.S. Government Rights: Commercial Computer Software and Documentation, Use Governed by Standard Commercial License. If Hosted Service software is used by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then the U.S. Government (and any prime contractor or subcontractor at any tier) hereby acknowledge and agree that the Hosted Service software and any data relating thereto or derived therefrom are "commercial items" as defined in 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. If the end user is a U.S. Government agency, department, or instrumentality, then the use, duplication, reproduction, release, modification, disclosure or transfer of the Hosted Service software and any data relating thereto or derived therefrom, is restricted in accordance with 48 C.F.R. §12.211, 48 C.F.R. §12.212, 48 C.F.R. §227.7102-2, and 48 C.F.R. §227.7202, as applicable. The object code of the Hosted Service software and materials are copyrighted and published products of Spacelabs (except source code, which is copyrighted but unpublished), and all rights not granted expressly herein are reserved.
- 10.10. Export Compliance. The Hosted Services and Materials are subject to export control laws of the United States. Customer agrees that it will not export the Hosted Services and Materials to countries, persons or entities prohibited by such laws.
- 10.11. Access to Records. If and to the extent required by Section 1395x(v)(1)(I) of Title 42 of the United States Code, until the expiration of four (4) years after the termination of the Agreement, Spacelabs will make available, upon written request by the Secretary of the Department of Health and Human Hosted Services, or upon request by the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of the books, documents and records as are necessary to certify the nature and extent of the costs of the services provided by Spacelabs to Customer. Spacelabs further agrees that in the event it carries out any of its duties for Customer through a subcontract with a related organization with a value or cost of Ten Thousand Dollars (\$10,000.00) or more over a twelve (12) month period, such subcontract will contain a provision requiring the related organization to make available until the expiration of four (4) years after the furnishing of such Hosted Services pursuant to such subcontract upon written request to the Secretary of the United States Department of Health and Human Hosted Services, or upon request to the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of such subcontract and such books and records of such organization as are necessary to verify the nature and extent of such costs.
- 10.12. Invalidity; Waiver. The invalidity or unenforceability of any provision hereof will not affect any other provision, and all terms and conditions will be construed in all respects as if any such invalid or unenforceable provision(s) were omitted. The failure of either party to require the performance of any obligation will not affect its right to require such performance at any time thereafter. The waiver of any remedy with respect to any default will not be taken as a waiver of any remedy for any succeeding default.
- 10.13. Notices. All notices required hereunder must be delivered in writing by personal delivery or delivery by professional courier. Such notice will be effective upon receipt. Notwithstanding the foregoing, notices by Spacelabs relating to the operation or support of the Hosted Services may be in the form of an electronic notice to Customer's authorized representative or administrator. Notice to Spacelabs shall be delivered to the address set forth in the Customer Quotation, to the attention of the legal department.
- 10.14. Entire Agreement. This Agreement constitutes the complete and exclusive statement of the agreement between Spacelabs and Customer in connection with the parties' business relationship related to the subject matter hereof, and all previous representations, discussions, and writings are merged in, and superseded the Agreement.
- 10.15. Assignment. Customer may not, without Spacelabs' prior written consent, assign, delegate, pledge or otherwise transfer the Agreement, or any of its rights or obligations under the Agreement, or any Hosted Service, Materials or Spacelabs Confidential Information to any party, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation. Spacelabs may assign the Agreement to any of its affiliates. Spacelabs may in its sole discretion subcontract parts of the Hosted Service to third parties, provided however, that Spacelabs shall assume responsibility for such subcontractors' breaches of the Agreement as if they were the breaches of Spacelabs.
- 10.16. Relationship of the Parties. The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. There are no third party beneficiaries to the Agreement.
- 10.17. Survival. Sections 1, 2, 5, 7, 9.4, 9.5, and 10 shall survive the expiration or termination of the Agreement.