Terms of Service

HCBS MedPass Subscription Agreement for Provider Organizations

Healthport Inc. · Aurora, Colorado, United States · hcbsmed.com
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These Terms of Service (the "Terms") form a binding agreement between **Healthport Inc.**, a Colorado corporation with its principal place of business in Aurora, Colorado, United States, which offers the software service known as **HCBS MedPass** (also called "MedPass") ("Healthport," "we," "us," or "our"), and the organization that subscribes to the Service ("Customer," "you," or "your"). Healthport's current mailing address is published at hcbsmed.com.

PLEASE READ THESE TERMS CAREFULLY. THEY CONTAIN A BINDING ARBITRATION PROVISION AND CLASS ACTION WAIVER (SECTION 25), LIMITATIONS OF LIABILITY (SECTION 21), AND AUTOMATIC RENEWAL TERMS (SECTION 10). HCBS MEDPASS IS A RECORD-KEEPING AND WORKFLOW TOOL. IT DOES NOT PROVIDE MEDICAL, NURSING, PHARMACY, OR LEGAL ADVICE AND IS NOT A SUBSTITUTE FOR PROFESSIONAL JUDGMENT, A NURSE CALL SYSTEM, OR EMERGENCY SERVICES. IN AN EMERGENCY, CALL 911.

1. Acceptance and Authority

By signing an order form, clicking to accept, signing in to the Service, or paying for a subscription, you agree to these Terms on behalf of the organization you represent. You represent and warrant that you have legal authority to bind that organization, that it is validly organized, and that it holds every license, certification, and registration required to operate its facilities and services. If you do not have that authority or do not agree, do not use the Service.

These Terms incorporate by reference the HCBS MedPass Business Associate Agreement (the "BAA"), the HCBS MedPass End User License Agreement (the "EULA"), the HCBS MedPass Privacy Notice, and any order form, contract summary, or plan selection shown in the Service's Billing page (each an "Order"). Your acceptance by electronic means is an electronic signature under the federal Electronic Signatures in Global and National Commerce Act (E-SIGN) and the Uniform Electronic Transactions Act as adopted in Colorado and other states, and has the same effect as a handwritten signature.

2. Definitions

- **"Service"** means the HCBS MedPass hosted software, including the web application, mobile and desktop applications, room-station device mode, application programming interfaces, related documentation, and support, as updated from time to time.
- **"Customer Data"** means all data, records, documents, and files that Customer or its Users submit to the Service, including Protected Health Information.
- **"Protected Health Information" or "PHI"** has the meaning given in 45 C.F.R. § 160.103.
- **"User"** means an individual whom Customer authorizes to access the Service under Customer's account, including Customer's employees, contractors, and agents. Residents and their representatives are not Users unless Customer expressly authorizes them.
- **"Owner"** means the User designated as the owner of Customer's account, who controls billing, plan selection, and contract decisions.
- **"Branch"** means a facility, home, or location set up as a branch within Customer's account.
- **"Active Resident"** means an individual recorded in the Service as currently receiving services from Customer, across all of Customer's Branches.
- **"Plan"** means the monthly subscription tier defined by a maximum number of Active Residents.
- **"Applicable Law"** means all federal, state, and local laws and regulations that apply to a party's activities under these Terms.

3. The Service

3.1 What the Service does

HCBS MedPass helps home- and community-based services (HCBS) providers, assisted living residences, group homes, host homes, memory care settings, and similar providers keep electronic medication administration records (eMAR), resident and care-plan records, charting, incident and compliance logs, fire-safety and inspection logs, quality assurance and performance improvement (QAPI) records, staff files, and related workflows.

3.2 What the Service does not do

The Service records, organizes, reminds, and reports. It does not diagnose, treat, prescribe, dispense, or verify the clinical appropriateness of any order, dose, route, or timing. Reminders, alerts, schedules, drug information, and reports are aids only. The Service is not intended to be a medical device as defined by the Federal Food, Drug, and Cosmetic Act. It is designed so that licensed and trained staff can independently review the basis of any information it displays. The Service is not a pharmacy system of record, a nurse call system required by building, fire, or licensing codes, a life-safety system, or a means of contacting emergency services.

3.3 Room stations and intercom

Room-station device mode lets a resident press a call button that alerts staff on duty through the Service. It depends on power, devices, networks, and internet connectivity outside Healthport's control. It must not replace any call system, emergency response system, staffing level, or supervision required by Applicable Law or by a resident's service plan. Two-way voice intercom between direct care staff and resident rooms is a planned feature. Healthport does not represent that it is available until it is released, and any early or preview functionality is provided "as is."

3.4 Changes to the Service

Healthport continually improves the Service and may add, modify, or remove features. Healthport will not materially reduce the core eMAR, charting, and compliance-record functionality of a paid subscription during a paid term without notice. If a change materially and adversely affects you, you may terminate the affected subscription under Section 12.3 and receive a pro-rated refund of prepaid fees for the remaining paid period.

4. Customer Responsibilities

4.1 Clinical and operational responsibility

Customer is solely responsible for the care and services it provides, all clinical and operational decisions, and their outcomes. This includes:

- obtaining, transcribing, verifying, and following prescriber orders and pharmacy labels;
- the five rights of medication administration and any additional checks required by Applicable Law or Customer's policies;
- staffing, training, competency, delegation, and supervision of medication administration, including QMAP, CMA, CNA, medication aide, and nurse delegation requirements under state law;
- controlled-substance handling, counts, storage, and destruction under the Controlled Substances Act, DEA regulations, and state law;
- incident reporting, critical incident and abuse/neglect reporting to state agencies, case managers, and guardians within required timeframes;
- compliance with licensing rules, Medicaid HCBS waiver requirements, the HCBS Settings Rule (42 C.F.R. § 441.301(c)), person-centered planning, resident rights, and survey and inspection obligations;
- the accuracy, completeness, and timeliness of everything entered into the Service.

4.2 Downtime procedures

Customer must maintain written downtime procedures, including current printed or otherwise accessible medication administration records and resident information, so that care continues safely if the Service, a device, a network, or the internet is unavailable. The Service lets you print or export MARs and records for this purpose.

4.3 Notices, consents, and authorizations

Customer is responsible for its Notice of Privacy Practices and for obtaining any consent, authorization, or acknowledgment that Applicable Law requires before it enters, uses, or discloses information in the Service. This includes requirements for records of minors, persons under guardianship, and substance use disorder treatment records subject to 42 C.F.R. Part 2. If Customer is a Part 2 program or receives Part 2 records, it must tell Healthport in writing before entering those records so the parties can put any required terms in place.

4.4 Users and access

Customer controls who becomes a User, which permissions and job titles each User has, and when access ends. Customer must promptly remove access for Users who leave or no longer need it. Customer is responsible for all activity under its account and for its Users' compliance with these Terms and the EULA. Credentials are personal: Users must not share passwords or accounts, and each User must sign records under his or her own identity.

4.5 Devices and networks

Customer is responsible for the computers, phones, tablets, room-station devices, networks, and internet service its Users rely on. This includes operating-system updates, screen locks, device encryption, mobile device management where appropriate, physical security of room stations, and protection of device tokens.

4.6 Record retention

Customer is responsible for meeting the record-retention periods that apply to it under state licensing rules, Medicaid program rules, HIPAA documentation requirements (45 C.F.R. § 164.316), and other Applicable Law. Customer must export and keep any records it needs before deleting a Branch or ending its subscription (see Sections 11 and 13).

5. HIPAA and Protection of Health Information

Customer is a covered entity, or a business associate of a covered entity, under the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as amended by the HITECH Act ("HIPAA"). Healthport acts as Customer's business associate (or subcontractor business associate) when it creates, receives, maintains, or transmits PHI on Customer's behalf. The BAA governs Healthport's handling of PHI and controls over these Terms if they conflict regarding PHI.

Customer must not send PHI to Healthport through channels outside the Service, such as ordinary email or support forms, except the minimum necessary to resolve a support request or as Healthport directs. Customer will configure the Service, including User permissions, consistent with the HIPAA minimum necessary standard.

Where state law gives greater protection to health or personal information, for example the California Confidentiality of Medical Information Act or the Texas Medical Records Privacy Act, each party will comply with the provisions that apply to it. Customer is responsible for state-law requirements that depend on its own activities, such as patient consent, staff training, and resident notifications.

6. Accounts and Security

6.1 Healthport's safeguards

Healthport maintains administrative, physical, and technical safeguards designed to protect Customer Data, consistent with the HIPAA Security Rule. These include:

- encryption of data in transit (TLS);
- encryption at rest provided by Healthport's hosting provider, plus additional field-level encryption for especially sensitive identifiers such as Social Security numbers;
- role- and job-title-based access controls;
- audit logging of access to and changes in records;
- automated backups with point-in-time recovery;
- least-privilege access for Healthport personnel, who access Customer Data only to provide, support, secure, or maintain the Service or as required by law.

6.2 Customer's safeguards

Customer must use strong, unique passwords and change temporary passwords at first sign-in. It must keep credentials confidential, restrict access to authorized Users, and notify Healthport promptly at support@hcbsmed.com of any suspected unauthorized access, lost device, or compromised credential.

6.3 Security incidents

Healthport will notify Customer of a Breach of Unsecured PHI and of Security Incidents as provided in the BAA. For incidents involving personal information that is not PHI, Healthport will notify Customer as required by applicable state breach-notification laws. Customer is responsible for notices that it, as the covered entity or data owner, must give to individuals, regulators, and the media, unless the parties agree otherwise in writing.

7. Acceptable Use

Customer and its Users must not, and must not allow anyone else to:

- use the Service in violation of Applicable Law, including HIPAA, anti-discrimination laws, and laws on records, privacy, and consumer protection;
- enter false or misleading records, alter records to conceal errors, or backdate entries except through the Service's correction and late-entry features that preserve an audit trail;
- upload malicious code, probe or test the Service's vulnerabilities without Healthport's written permission, or circumvent security, access, or usage controls;
- copy, frame, resell, sublicense, or provide the Service to third parties as a service bureau;
- reverse engineer, decompile, or create derivative works of the Service except as Applicable Law expressly permits notwithstanding this restriction;
- access the Service to build a competing product or to benchmark it for publication without consent;
- overload the Service, or use automated means to access it except through documented interfaces;
- use the Service to store or transmit content that is unlawful, defamatory, infringing, or harmful to minors.

Healthport may suspend access that it reasonably believes violates this Section or threatens the security, integrity, or availability of the Service. It will give notice where practicable and restore access promptly once the issue is resolved.

8. Fees, Plans, and Payment

8.1 Plans by number of residents

Fees are charged monthly according to the Plan that covers Customer's Active Residents across all Branches. Healthport publishes the Plans and prices in the Service, for example: up to 10, 20, 30, 40, and 50 Active Residents. Organizations above the largest published Plan pay a custom price agreed in writing. Until that price is agreed, they are billed at the largest published Plan.

8.2 Choosing a Plan

The Owner may choose any Plan whose maximum is equal to or greater than Customer's current number of Active Residents. A Plan smaller than the current number of Active Residents cannot be chosen.

8.3 Residents increase during a paid period

If Active Residents exceed the current Plan, Healthport moves Customer to the smallest Plan that covers them. The new price takes effect at the start of the next billing period. The current paid period is not re-charged, and there is no partial-period (prorated) charge.

8.4 Residents decrease

Plans never move down automatically. If Active Residents fall, Customer stays on its current Plan until the Owner chooses a smaller Plan that still covers the current Active Residents. That choice takes effect at the start of the next billing period. No credit or refund is given for the current period.

8.5 Payment processing

Payments are processed by Stripe, Inc. or another payment processor Healthport designates. Card numbers and bank details are entered on the processor's pages and are not stored by Healthport, which receives only limited details such as card brand, last four digits, and expiration date. By providing a payment method, Customer authorizes recurring charges for its Plan, applicable taxes, and any other fees described in these Terms until the subscription ends. Customers approved for invoicing may pay by bank transfer (ACH) or card through the invoice's payment page by its due date.

8.6 Payment deadline and suspension

Customer must set up a valid payment method within fourteen (14) days after its account is set up or after a payment fails. Healthport sends reminders approximately seven (7) days and two (2) days before the deadline. If payment is not set up or made by the deadline, Healthport may pause access for all Users other than the Owner. During the pause, the Owner can sign in only to Billing to complete payment. Customer Data is retained during the pause, and access is restored when payment succeeds. Healthport may extend a deadline at its discretion.

8.7 Taxes

Fees exclude taxes. Customer is responsible for all sales, use, value-added, and similar taxes, other than taxes on Healthport's net income. Where required, Healthport or its payment processor will calculate and collect them. Customer must provide a valid exemption certificate to claim an exemption.

8.8 Price changes

Healthport may change Plan prices or the Plan structure on at least thirty (30) days' notice, effective at the start of Customer's next renewal term. Prices agreed in a signed Order stay fixed for that Order's term.

8.9 Disputes and refunds

Customer must notify Healthport in writing of any billing dispute within sixty (60) days after the charge, or the charge is deemed accepted. Except as these Terms state or Applicable Law requires, fees are non-refundable. Customer agrees to contact Healthport before initiating a chargeback.

8.10 Late amounts

Healthport may charge interest on undisputed overdue amounts at the lesser of 1.0% per month or the maximum rate permitted by law, plus reasonable costs of collection.

9. Health-Care Program Compliance

The fees are fair market value for the Service. They are not determined in a manner that takes into account the volume or value of referrals or business otherwise generated between the parties, and nothing in these Terms requires or induces any referral. Each party will comply with the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), the Stark Law where applicable, and similar state laws.

Customer is solely responsible for any claims it submits to Medicaid, Medicare, or other payers, and for the documentation that supports them, including under the False Claims Act. Each party represents that neither it nor any of its personnel who perform under these Terms is excluded from participation in any federal health care program. Each party will notify the other promptly if that changes.

10. Term, Automatic Renewal, and Cancellation

10.1 Term

The subscription begins on the start date in Customer's Order and continues for the initial term stated there, for example twelve (12) months.

10.2 Automatic renewal

Unless cancelled, the subscription renews automatically for successive terms of the same length at the then-current price for Customer's Plan. Healthport sends a renewal reminder to the billing contact approximately thirty (30) days before the end of each term.

10.3 How to cancel

The Owner may cancel renewal at any time before the end of the current term in the Service (Billing, then Contract), or by written notice to support@hcbsmed.com. Cancellation takes effect at the end of the current term. Customer keeps access until then, and no further renewal charges are made. The Owner may withdraw a cancellation before the term ends. Cancelling renewal does not entitle Customer to a refund for the current term, except as Section 12.3 or Applicable Law provides.

10.4 Consumer auto-renewal laws

The Service is offered only to businesses and organizations. To the extent any state automatic-renewal law nevertheless applies, Healthport will provide the disclosures, reminders, and cancellation methods that law requires.

11. Branches

11.1 Renaming

The Owner and Users with the Administrator job title or administrator role may rename the company and its Branches.

11.2 Deleting a Branch

To delete a Branch, the Owner or an Administrator must enter the Branch name exactly as written and his or her own password. The Customer's only Branch cannot be deleted. Customer may instead cancel the subscription.

11.3 Branches with residents or staff

A Branch that still has resident records or assigned staff remains available for one (1) additional month after the deletion request so that Customer can move residents and export records. That month is billed as usual. Customer may keep the Branch at any time before the deletion date by choosing "Keep branch."

11.4 Deleted Branches

After deletion, the Branch is removed from Customer's view and Users lose access to it. Its records are retained in a non-visible state for record-keeping and legal purposes until the subscription ends and Customer Data is deleted under Section 13. On request during the subscription, Healthport will provide a copy of a deleted Branch's records.

11.5 Requests through support

On the Owner's or an Administrator's request, Healthport support may rename or delete a Branch on Customer's behalf under the same rules. The Owners are notified by email of each change made by support.

12. Suspension and Termination

12.1 Suspension

Healthport may suspend the Service, in whole or in part, for non-payment under Section 8.6, for a violation of Section 7, or where needed to prevent imminent harm to the Service, other customers, or individuals, or as required by law. Healthport will limit any suspension in scope and duration to what is reasonably necessary.

12.2 Termination for cause

Either party may terminate these Terms on written notice if the other party materially breaches them and fails to cure the breach within thirty (30) days after notice, or immediately if the other party becomes insolvent or subject to bankruptcy proceedings. Termination for a material breach of the BAA is governed by the BAA.

12.3 Customer's termination for Healthport's breach or material change

If Customer terminates under Section 12.2, or under Section 3.4 because of a material adverse change, Healthport will refund prepaid fees for the period after termination.

12.4 Effect of termination

On expiration or termination, Customer's right to use the Service ends. Customer must pay all fees due through the effective date. Sections that by their nature should survive will survive, including Sections 5, 8 (for amounts owed), 13, 15, 18 through 22, 25, 26, and 29.

13. Customer Data: Ownership, Export, and Deletion

13.1 Ownership

As between the parties, Customer owns Customer Data. Customer grants Healthport a limited, non-exclusive license to host, copy, process, transmit, and display Customer Data only as needed to provide, secure, support, and improve the Service, and as permitted by the BAA and Applicable Law.

13.2 Exports and access

During the subscription, Customer may export reports, MARs, and records through the Service and may request assistance from support. Healthport supports Customer in meeting individuals' rights of access under 45 C.F.R. § 164.524 as described in the BAA.

13.3 After the subscription ends

When the subscription is cancelled or terminated, Healthport closes the account. Customer Data is then retained for sixty (60) days so that Customer may request an export. After that period, Healthport permanently deletes Customer Data, including people, residents, records, uploaded files, invoices, emails, and the account's audit log.

13.4 Immediate deletion

Customer may ask in writing for immediate deletion instead of the 60-day period. Customer is responsible for exporting anything it must keep before making that request.

13.5 Backups and residual copies

Copies in encrypted backups are overwritten in the ordinary course, generally within approximately thirty (30) days. Until then, they remain protected under the BAA.

13.6 Deletion record

Healthport may keep a minimal record that an account existed and was deleted (name, identifier, and dates, but no health information), and billing records it must keep for tax and accounting purposes.

13.7 De-identified and aggregate data

Healthport may create de-identified data in accordance with 45 C.F.R. § 164.514(a) through (c), and aggregate service-usage statistics that do not identify Customer, any individual, or any resident. Healthport may use them to operate, secure, and improve the Service and for other lawful purposes, only as permitted by the BAA and Applicable Law. Healthport will not attempt to re-identify de-identified data and will not sell PHI.

14. Support and Availability

Healthport provides support by email at support@hcbsmed.com and through the in-app "Contact support" feature during normal business hours (Mountain Time), and aims to respond within one business day.

Healthport uses commercially reasonable efforts to make the Service available 24 hours a day, 7 days a week, except for planned maintenance, which it schedules outside peak hours where practicable, and events outside its reasonable control. Healthport does not guarantee uninterrupted or error-free operation, and no service-level credits apply unless a signed Order states otherwise.

15. Intellectual Property and Feedback

Healthport and its licensors own all rights in the Service, its software, designs, documentation, and the HCBS MedPass and MedPass names and logos. No rights are granted except as expressly stated. Customer may use the Service only during the subscription and only for its internal business purposes.

If Customer or its Users provide suggestions or feedback, Healthport may use them without restriction or compensation, without identifying Customer as their source.

16. Third-Party Services

The Service relies on third-party providers, such as cloud hosting, payment processing, and email delivery. Healthport remains responsible for its subcontractors' handling of PHI as required by the BAA.

Integrations that Customer chooses to enable, such as pharmacy connections, are governed by Customer's agreements with those third parties. Healthport is not responsible for their acts, omissions, content, or availability. Healthport does not warrant third-party drug or clinical reference content.

17. Confidentiality

Each party will protect the other's non-public business, technical, and financial information disclosed under these Terms ("Confidential Information") with at least reasonable care. It will use that information only to perform under these Terms and will disclose it only to personnel and advisers who need to know it and are bound by similar obligations.

These obligations do not apply to information that is or becomes public without fault, was already known, is independently developed, or is rightfully received from a third party without restriction. A party may disclose Confidential Information when legally compelled to do so, after giving notice where lawful. Customer Data that is PHI is governed by the BAA.

18. Warranties

18.1 Mutual

Each party warrants that it has authority to enter into these Terms and will comply with Applicable Law in performing them.

18.2 Healthport

Healthport warrants that the Service will perform materially as described in its documentation and that it will not materially decrease the Service's overall security during a paid term. Customer's exclusive remedy for breach of this warranty is for Healthport to use commercially reasonable efforts to correct the non-conformity. If Healthport cannot do so within a reasonable time, either party may terminate the affected subscription and Healthport will refund prepaid fees for the remaining period.

EXCEPT AS EXPRESSLY STATED IN THESE TERMS, THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE." HEALTHPORT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, ACCURACY, AND THOSE ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. HEALTHPORT DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT REMINDERS OR ALERTS WILL BE DELIVERED OR RECEIVED, OR THAT THE SERVICE WILL SATISFY ANY LICENSING, SURVEY, OR PAYER REQUIREMENT. CUSTOMER IS SOLELY RESPONSIBLE FOR CLINICAL DECISIONS AND RESIDENT CARE.

19. Indemnification

19.1 By Healthport

Healthport will defend Customer against any third-party claim alleging that the Service, as provided by Healthport, infringes a United States patent, copyright, or trademark, or misappropriates a trade secret. Healthport will pay the damages and costs finally awarded or agreed in settlement.

This obligation does not apply to claims arising from Customer Data, from combinations with items Healthport did not provide, from modifications not made by Healthport, or from use in breach of these Terms. If the Service is or may be found infringing, Healthport may obtain a license, modify the Service, or terminate the affected subscription and refund prepaid fees for the remaining period. This Section states Healthport's entire liability for infringement.

19.2 By Customer

Customer will defend Healthport and its officers, directors, employees, and agents against any third-party claim, investigation, or proceeding arising from:

- the care, services, or medications Customer provides or fails to provide;
- clinical, staffing, or operational decisions;
- Customer Data, including its accuracy and Customer's right to provide it;
- Customer's or its Users' violation of Applicable Law or of these Terms;
- claims submitted by Customer to any payer.

Customer will pay the damages, fines, penalties, and costs finally awarded or agreed in settlement, to the extent they arise from those matters.

19.3 Procedure

The indemnified party must give prompt written notice of the claim, let the indemnifying party control the defense and settlement, and provide reasonable cooperation at the indemnifying party's expense. The indemnifying party may not settle a claim in a way that admits fault by, or imposes obligations on, the indemnified party without its consent, which will not be unreasonably withheld.

20. Insurance

Customer will maintain, at its own expense, professional and general liability insurance appropriate to the care and services it provides, in amounts customary in its industry and state. Healthport will maintain commercially reasonable technology errors and omissions and cyber liability insurance.

21. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, OR FOR LOST PROFITS, REVENUE, GOODWILL, OR DATA (EXCEPT AS PROVIDED IN THE BAA), OR THE COST OF SUBSTITUTE SERVICES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, EVEN IF ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY'S TOTAL LIABILITY ARISING OUT OF OR RELATING TO THESE TERMS AND THE SERVICE WILL NOT EXCEED THE FEES PAID AND PAYABLE BY CUSTOMER TO HEALTHPORT IN THE TWELVE (12) MONTHS BEFORE THE EVENT GIVING RISE TO THE LIABILITY. FOR HEALTHPORT'S BREACH OF THE BAA OR OF SECTION 6.1 RESULTING IN A BREACH OF UNSECURED PHI, THE CAP IS TWO (2) TIMES THAT AMOUNT, AND IT INCLUDES REASONABLE, DOCUMENTED COSTS OF LEGALLY REQUIRED BREACH NOTIFICATIONS AND CREDIT MONITORING.

The limitations in this Section do not apply to:

- Customer's obligation to pay fees;
- either party's indemnification obligations under Section 19;
- liability for gross negligence, fraud, or willful misconduct;
- any liability that cannot be limited under Applicable Law.

The parties agree that these limitations reflect a reasonable allocation of risk and are an essential basis of the bargain. Some states do not allow certain limitations, so they apply only to the extent permitted.

22. Compliance, Export, and Government Use

Each party will comply with Applicable Law, including anti-corruption laws and United States export control and sanctions laws. Customer will not use the Service, or permit access to it, from any embargoed country or by any sanctioned person.

The Service is "commercial computer software" and "commercial computer software documentation." Any U.S. government use is subject to these Terms as provided in FAR 12.212 and DFARS 227.7202.

Healthport will make the Service available in a manner designed to be accessible and will consider reasonable accommodation requests. Customer remains responsible for its own obligations to its employees and residents under disability-rights laws.

23. Publicity

Healthport may identify Customer by name as a customer in customer lists, unless Customer opts out by written notice. Any other use of Customer's name or logo requires Customer's consent.

24. Notices

Healthport may give notices by email to the Owner and billing contact, through the Service, or by mail. Customer must give legal notices to Healthport by email to support@hcbsmed.com with the subject line "Legal Notice," and, for notices of breach or termination, also by mail to Healthport's address published at hcbsmed.com.

Notices are effective on receipt: for email, when sent without a delivery-failure message; for mail, when delivered.

25. Dispute Resolution, Arbitration, and Class Action Waiver

25.1 Informal resolution

Before starting any proceeding, a party must send the other a written description of the dispute. The parties must then try in good faith to resolve it for thirty (30) days.

25.2 Binding arbitration

Any dispute arising out of or relating to these Terms or the Service that is not resolved informally will be resolved by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, before a single arbitrator. The seat of arbitration is Denver, Colorado. Hearings may be held by video. Judgment on the award may be entered in any court with jurisdiction. The Federal Arbitration Act governs this Section.

25.3 Exceptions

Either party may bring an individual action in small-claims court. Either party may also seek temporary or preliminary injunctive relief in court to protect its intellectual property, Confidential Information, or PHI, or to prevent imminent harm.

25.4 Class action waiver

Claims may be brought only in a party's individual capacity, not as a plaintiff or class member in any purported class, collective, consolidated, or representative proceeding. The arbitrator may not consolidate claims of different customers. If this waiver is found unenforceable as to a claim, that claim will proceed in court under Section 26, and not in arbitration.

25.5 Time limit

To the extent permitted by law, any claim must be brought within two (2) years after it arises.

26. Governing Law and Venue

These Terms are governed by the laws of the State of Colorado and applicable federal law, without regard to conflict-of-laws principles. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply.

Subject to Section 25, the state and federal courts located in Arapahoe County, Colorado, or the United States District Court for the District of Colorado have exclusive jurisdiction. Each party consents to venue and personal jurisdiction there.

Where a state's law that cannot be waived requires that a dispute concerning a facility located in that state be governed by that state's law or heard in its courts, that requirement applies only to the extent required.

27. Force Majeure

Neither party is liable for delay or failure to perform caused by events beyond its reasonable control. Such events include natural disasters, epidemics, war, terrorism, labor actions other than the party's own employees, governmental action, utility or internet failures, failures of third-party hosting or telecommunications providers, and cyberattacks despite reasonable safeguards.

This Section does not excuse payment obligations or Customer's obligation to maintain downtime procedures. The affected party must use reasonable efforts to resume performance.

28. Changes to These Terms

Healthport may update these Terms by posting a new version at hcbsmed.com and notifying the Owner by email or in the Service at least thirty (30) days before a material change takes effect. Changes required by law, or relating to new features, may take effect sooner.

If Customer objects to a material change, it may cancel renewal before the change takes effect. If the change takes effect during the current paid term, Customer may instead terminate and receive a pro-rated refund of prepaid fees. Continued use after the effective date constitutes acceptance. A signed Order's negotiated terms prevail over later changes for that Order's term.

29. General

- **Entire agreement and order of precedence.** These Terms, the BAA, the EULA, the Privacy Notice, and any Order are the entire agreement on their subject matter and supersede prior agreements. If they conflict, the order of precedence is: (1) the BAA, regarding PHI; (2) a signed Order, regarding its specific terms; (3) these Terms; (4) the EULA; (5) documentation. Purchase-order terms that Customer issues have no effect.
- **Assignment.** Neither party may assign these Terms without the other's consent, except to a successor in a merger, acquisition, or sale of substantially all assets or of the relevant business, on notice and with the successor bound by these Terms and the BAA.
- **Independent contractors.** The parties are independent contractors. No partnership, agency, joint venture, or employment relationship is created.
- **No third-party beneficiaries.** There are no third-party beneficiaries, including residents and Users.
- **Severability and waiver.** If any provision is unenforceable, it will be modified to the minimum extent necessary and the rest remains in effect. Failure to enforce a provision is not a waiver.
- **Interpretation.** "Including" means "including without limitation." Headings are for convenience only.
- **Counterparts.** Orders may be signed electronically and in counterparts.

30. Contact

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This document is provided as a professionally drafted template. It should be reviewed by counsel licensed in Colorado and in each state where Customer operates before being relied on.