

DAW SYSTEMS AGREEMENT & TERMS OF USE

Version 1.4 – January 15, 2022

This Agreement and Terms of Use (hereinafter “Terms”) cover the use of DAW SYSTEMS, INC. (hereinafter “DAW”) websites, services, products, applications, software, vendor partner communication and integration points that share or communicate your data and devices (hereinafter “Services” or “DAW Services”). These Terms represent a Legally Binding Agreement between DAW and you (hereinafter “You” or “DAW Service User” or “Company”). (Collectively, DAW and you are referred as hereinafter as the “Parties”.) You must accept these Terms in order to use the DAW Services and when creating a DAW account online or through a DAW application. By agreeing, signing up for an account, accessing or using the Services, you agree to be bound by the terms of this agreement. If you are not willing or unable to accept, agree and adhere to the terms of this agreement, do not sign-up for or access or use the DAW Services. The DAW application(s) can be accessed or downloaded from the DAW Website(s) or other third-party application deployment technology. Please review these Terms carefully. Please also review our DAW Privacy Policy, which explains how our Services treat your personal data and protect your privacy and data when you use our Services. Furthermore, the DAW User Code of Conduct policy must be adhered to by any user. By accessing our Services, you are agreeing to these Terms, our DAW Privacy Policy and Code of Conduct.

Notwithstanding any provision herein to the contrary, any provision of this agreement that references HIPAA (or that otherwise creates obligations premised on an assumption that HIPAA is applicable) is applicable only to the extent that HIPAA actually applies to the end user, account owner, business or practice. In the event a user, organization, account holder, business or practice using the Services qualifies for FERPA, the rules and regulations of FERPA shall apply and any HIPAA related rules and regulations and terms in this agreement will not apply to such users and entities. The determination of whether HIPAA or FERPA applies to a DAW Service User must be made by the User. DAW is not responsible for any User actions based on inappropriate determinations of the applicability of FERPA vs HIPAA.

- 1. Definitions:** For the purposes of this Agreement, the terms set forth in this Section 1 have the meanings assigned to them below. Terms not defined below or in the body of this Agreement (whether or not capitalized) have the definitions given to them in HIPAA.
 - a. “Account Health Information” includes any Content that you or your Supporting Users, Administrators or other Providers at your business or practice input or upload into the Services or that DAW Services receive and/or store on your behalf from your patients, authorized service providers, or our third party partners.
 - b. "Administrator" means any user of the Services for a Provider’s account that has been granted the authority to perform administrative or other clinical tasks in the Services,

including the authority to provide, request, issue, administer, add data and limit the access rights to other Users or accounts issued to such Provider's Supporting Users, as well as the rights to integrate, connect, or otherwise share your Account Health Information with, or receive Protected Health Information from, third parties through the Services.

- c. "Alerts" is a text, email or on-screen notification from the DAW Services to inform a User of an action, update or other information that is to be communicated to the User.
- d. "Authorized User" is any person that have been granted access and credentials and permissions to use the DAW Services at a Provider business or practice, regardless of when the access or credentials or permissions were given.
- e. "Clinical Data Exchange" means the exchange, with your Consent, of Protected Health Information between You and covered entities, clearinghouses (and their business associates) for any permitted purpose, including, to the extent applicable, care coordination, performance or quality measurement programs (such as HEDIS), and risk adjustment, prescription sending and other treatment, payment or health care operations purposes.
- f. "Confidential Information" shall mean all written or oral information, disclosed by either Party to the other, related to the operations of either Party or a third party, whether or not identified or marked as confidential information that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential.
- g. "Consent" means consent or authorization by a user of the Services allowing us to take actions described under this Agreement, which the user of the Services may give in an electronic communication to us or by use of the features of the Services (such as "share," "transmit," "refer," "authorize," "agree", "opt-in," or toggling or selecting an action through a settings or activation page located within the Service, and the like). Such Consent may apply to an individual case or situation, or may apply globally or programmatically based on variables that apply to an overall situation or circumstance (whether through a settings or preference page, a global "opt-in" or otherwise).
- h. "Credentials" means any unique identifier, password, token, credential, any combination thereof, or other means DAW may utilize from time to time for authorizing access to all or any portion of the Services.
- i. "Content" include, but not be limited to, the ability to store data, electronic transactions, downloaded information, notes, post and record data, graphics, images, video or other content.
- j. "Controlled Prescriptions" refers to any Class II-V medication that can be prescribed.

- k. "Credentials" means any unique identifier, password, token, credential, any combination thereof, or other means DAW may utilize from time to time for authorizing access to all or any portion of the Services.
- l. "DAW Services" or "Services" means the DAW websites, services, products, applications, software, vendor partner communication and integration points that share or communicate your data and devices.
- m. "De-Identified Personal Information" means health information that has been de-identified in accordance with the provisions of the Privacy Rule and further means any Personal Information from which a user's name and other unique and other identifiers that could reasonably be anticipated to identify an individual by an anticipated recipient – such as an individual's name, contact information, or government identifiers – have been removed, and from which the user cannot reasonably be identified.
- n. "De-Identified Health Information" means health information that has been de-identified in accordance with the provisions of the Privacy Rule.
- o. "De-Identified Information" means De-Identified Health Information and De-Identified Personal Information.
- p. "FERPA" means the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99), a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.
- q. "HIPAA" means the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, and the regulations promulgated thereunder, including the Privacy Rule and the Security Rule, as amended.
- r. "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act of 2009, and regulations promulgated thereunder.
- s. "Initial term" is a period of twelve (12) months from the date you sign up.
- t. "Supporting Staff" refers to any Authorized User that has been granted access to the Services at your business or practice or account and that may or may not have been granted access to act on your behalf, including Administrators. Users can assume several roles; for example, a Provider can also be assigned as another Provider's Supporting Staff and granted Prescribe Using privileges and Administrative rights.
- u. "Messages" refers to phone, fax, SMS text and email messages, alerts, notifications and communications to Users regarding DAW Services and any 3rd party services.
- v. "Prescribe Using" refers to a feature of the Services where a Provider or an account Administrator may grant or limit prescribing privileges to a Supporting User for non-controlled new and refill prescriptions.

- w. "Prescribers" & "Providers" refers to any lawfully licensed and credentialed prescriber that has been issued and holds a currently valid DEA, NPI or State License. Furthermore, a Prescriber or Provider for purposes of this agreement includes the definition give for "health care providers" in 45 CFR §160.103.
- x. "Personal Information" means information that identifies you includes an individual's name, contact information, government identifiers, or includes identifiers that could reasonably be anticipated to identify an individual personally by an anticipated recipient.
- y. "You" refers to you as a User of the Services and a party to this Agreement.

2. Services

- a. DAW Services are designed to be used by healthcare professionals and their staff to create, store and access health-related information and to share health-related information to other people that patients have consented to have access to their data. The Services may include, but not be limited to, the ability to store data, perform electronic healthcare related transactions (e.g. prescription creation and sending), medical notes, post and record data, graphics, images, video, download information or other content (hereinafter, "Content"). This Content can be stored and shared by Authorized Users. Authorized Users are any persons that have been granted access and credentials and permissions to use the DAW Services at your business or practice. All Company personnel authorized to use the DAW Services must properly register with DAW and agree to the terms of DAW Terms of Use, DAW Privacy Policy and Code of Conduct. Any content provided in the DAW Services, whether entered by Authorized Users, provided by DAW, download, any user community or third party product, third party vendor or the like is for general informational purposes only and should not be relied upon for medical decisions as DAW do not ensure the completeness, timeliness or accuracy of any Content. Be aware that any publically communicated information in help menus or forums or blogs will be able to read and reproduce or copy the Content you provide. We do not pre-screen or monitor all user-submitted Content, and such Content may simply represent a user's opinion or Content a user or Professional finds interesting.
- b. DAW agrees to provide the Controlled Substance prescribing in the DAW Services as an additional product and services offering which integrates with Services to allow users access to register, identity-proof and enable for Controlled Prescribing through third party CSPs, as well as sign and forward prescriptions for controlled substances electronically.

- i. A hard or soft security token must be purchased and bound to a Prescriber in order to send Controlled Prescriptions. The tokens and ID proofing of carry additional costs which may be due and payable to third party partners.
- c. The DAW Services records are not designated record sets as defined under U.S. regulations. If a healthcare provider decides to include any data made available from DAW within in its records, it should store a copy in its own system.
- d. If there is a custodian or guardian of a DAW Services account, you acknowledge that the custodian or guardian has full control over that record and DAW may cancel your access to the record, manage other peoples' access to the record, and view the record's data including how and when the record is used.
- e. A unique username and password will be provided to each Authorized User of the Services. You are responsible for the addition of new users and the removal of inactive users.
- f. Certain features and functionality within the DAW Services may only be provided to Authorized Users and to access all current or future applications and services, you may need to accept additional terms and conditions and pay additional fees; you will be notified prior to any increase or fees or additional consents needed.

3. Physicians, Therapists & Medical Professionals

- a. You represent that you will only use the Services as a properly credentialed, Licensed Medical Professional or under the specific direction of a properly credentialed Licensed Medical Professional;
- b. You agree not to use the Services to: (a) violate any local, state, national or international law; (b) access any Services account other than your own; or (c) impersonate any person or entity, or otherwise misrepresent my affiliation with a person or entity. You agree that your usage will be in compliance and in accordance with relevant laws; FERPA, HIPAA, HITECH and/or all other applicable privacy laws as they may apply.
- c. You agree not violate (a) any intellectual property rights in the Services, (b) the confidentiality of any privacy rights or personal data used in connection with the Services; or (c) the confidentiality or proper use of any technical data relating to the Services.
- d. You understand that despite the best efforts to provide accurate patient information through the DAW Services and partners functionality, any information is provided "as is" and that you understand that whenever possible and practical patient medical history should be independently verified (e.g. DX codes, medication history downloaded information, etc.).
- e. You agree you will not provide access to the DAW Services to anyone you have not verified proper credentials and ID proofing.

- f. DAW Services may include listings and directories (“Directories”) to help you find physicians, therapists, healthcare professionals, certified consultants or other professionals (hereinafter, “Professionals”) to share your information to. (Note: a medical professional may be able to invite you to the Services as Well.) Any Directories are not comprehensive, but rather generally represent Professionals who use our Services and who have chosen to participate in the Directories. Further, DAW do not evaluate any Professional and the listing of a Professional does not in any way constitute a recommendation of such Professional. Before obtaining services or treatment from any Professional listed in a Directory, you should take the same care you would under any other circumstance, including by confirming licensure and specialty certifications. The Professionals are solely responsible for the appropriateness and quality of the services they provide. Additionally, Directories rely on information submitted by 3rd party sources or the Professionals themselves. Unless Professionals provide us with current information, the Directory information may not be timely or accurate. You should confirm such information before obtaining services or treatment from a Professional.
- g. agrees and acknowledges that under no circumstance shall the any information contained or presented in the DAW Services replace an Authorized User’s professional judgment.

4. User Types

- a. All Prescribing users of the software must undergo ID proofing, which is process completed The DAW Services are designed to be used by Authorized Users, which can include administrators, owners, Healthcare Providers (i.e. physician) and their Supporting Staff (nurses, PA’s, secretaries, etc.) to view, use and share health related data. Depending on the user type, the Terms of Use may vary slightly. Any Prescribers that has the ability to prescribe, can grant access to others to prepare prescriptions or prepare and send prescriptions (except for controlled prescriptions) for that user. Controlled prescriptions can only be executed (new and refill requests) by the Prescribers themselves. It the Prescribers responsibility to grant “Prescribe Using” permissions to any Supporting Users and to maintain those permissions as needed. This is done within the Prescribers account in the DAW Services application. Administrators at the practice have the ability to create accounts and add Users (both prescribers and non-prescribers) and it is the responsibility of the Administrators to add or inactivate users, locations, addresses, credentials, licenses and to control permissions and access to DAW Service features.
 - i. In addition to these Terms, the account holder, business or practice must enter into a Business Associate Agreement (BAA) with DAW before using the Services.

The Business Associate agreement is as defined under the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 and its privacy and security regulations (“HIPAA”), and under the privacy and security provisions of the Health Information Technology for Economic and Clinical Health Act of 2009 (the “HITECH Act”). Please contact DAW directly for any detailed information on executing and signing a BAA, the terms of which are included in this Agreement.

1. Users, account holders, businesses and practices that qualify for FERPA are not required to do comply with paragraph 5.(e)(a)(i).

b. Verification

- i. You agree that your use of the Services, or certain features or functionality of the Services, may be subject to verification by DAW of your identity and credentials as a health care provider or health care professional, and to your ongoing qualification as such. You agree that DAW may use and disclose your Personal Information for such purposes, including making inquiry of third parties concerning your identity and professional and practice credentials. You authorize such third parties to disclose to DAW such information as DAW may request for such purposes, and you agree to hold them and DAW harmless from any claim or liability arising from the request for or disclosure of such information. Notwithstanding the applicable provisions herein, you agree that DAW may terminate your access to or use of the Services at any time if DAW is unable at any time to determine or verify your identity, qualifications or credentials.

5. Health Information Rights

Depending on the end user, FERPA or HIPAA may apply. It is the end user’s responsibility to determine which law applies. Refer to the “Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to Student Health Records for guidance on applicability: <https://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf>

- a. “Account Health Information” refers to Protected Health Information that you or your Staff input or uploaded onto the DAW Services or that DAW receives on your behalf from your patients, authorized service providers or our third party partners.
- b. You retain all rights with regard to your account Health Information, and DAW will only use such information as expressly permitted in this Agreement.

- c. DAW will permit unrestricted access to your Account Health Information to you and your Staff. You are responsible for ensuring that your use of your Accounts Health Information is consistent with the relevant legal restrictions.
- d. Medication history data may be available for patients in outpatient settings only, unless agreed to in writing, signed by both parties in a Schedule, Amendment or Attachment allowing for such use in a hospital, in-patient or emergency room department setting, provided that prior to any use of the medication history data, Client shall ensure that all appropriate consents, including patient consent, and authorizations have been obtained as required by Applicable Law and that such consents allow disclosure of all elements of data to be exchanged, whether or not Client, a Client Customer, or a Prescriber End User has specifically requested or intends to use all such data elements.
- e. DAW will permit access to your Account Health Information by healthcare providers, covered entities and their business associates to whom you have Consented to provide access to the DAW Services and who have otherwise agreed to integrate with our systems. DAW will obtain your Consent before DAW makes your account Health Information available to other providers, covered entities and their respective business associates. You acknowledge that once DAW has granted access rights to another provider or covered entity (or their respective business associates), DAW has no control over the uses and disclosures that such person or entity makes of Health Information, and the recipient may be subject to its own legal or regulatory obligations (including HIPAA) to retain such information and make such information available to patients, governmental authorities and others as required by applicable law or regulation. In the event you are accessing the DAW Services through a 3rd party vendor partner (EHR or EMR application) you agree and consent to the sharing of any of your Account Health Information with that such vendor.
- f. DAW may disclose or permit access to your Account Health Information to entities such as, but not limited to, health plans, health care clearinghouses, medical groups, independent practice associations, your authorized service providers and other parties responsible for payment and their business associates for the purpose of obtaining (or confirming eligibility or authorization for) payment for services you provide, unless you advise us in writing that, with respect to a specific service provided to a specified patient, such patient has paid out of pocket in full for the service to which the health information relates, and has requested that it not be disclosed to his or her health plan.
- g. DAW may De-Identify Your Account Health Information in the DAW Services databases, and use and disclose De-Identified Information for any purpose whatsoever. To be clear, any data that is De-Identified, will not identify the practice, user of the DAW Services not the patient. In consideration of our provision of the Services, you hereby

transfer and assign to us all right, title and interest in and to all De-Identified Information that DAW makes from Your Information. You agree that DAW may use, disclose, market, license and sell such De-Identified Information for any purpose without restriction, and that you have no interest in such information, or in the proceeds of any sale, license, or other commercialization thereof. You acknowledge that the rights conferred by this Section are the principal consideration for the provision of the Services, without which DAW would not enter into this Agreement.

- h. DAW may create limited data sets from your Account Health Information, and disclose them for any purpose for which you may disclose a limited data set; and you hereby authorize DAW to enter into data use agreements on your behalf for the use of limited data sets, in accordance with applicable law and regulation.
- i. DAW may use your Account Health Information in order to prepare analyses and reports, such as activity or quality-metrics reports, or any other reports the Services makes available, in order to render these reports to You or for any of the purposes described in our Privacy Policy. Preparation of such analyses and reports may include the use of data aggregation services relating to your treatment and health care operations, which DAW may perform using your Account Health Information. Such reporting will be done in a manner that does not make any disclosure of your Account Health Information that you would not be permitted to make.
- j. DAW may use your Account Health Information for the proper management and administration of the DAW Services and our business, and to carry out our legal responsibilities, which may include us disclosing such information to one of our business associates that has entered into a business associate agreement with DAW. DAW may also disclose your Account Health Information for such purposes if the disclosure is required by law (as such term is defined in 45 CFR §164.103), or DAW obtains reasonable assurances (as such term is interpreted or applicable in connection with or under HIPAA) from the recipient that it will be held confidentially and used or further disclosed only (a) as required by law (as such term is defined in 45 CFR §164.103), or (b) for the purpose for which it was disclosed to the recipient, and the recipient notifies us of any instances of which it is aware in which the confidentiality of the information has been breached. Without limiting the foregoing, DAW may permit access to the system by our contracted system developers under appropriate confidentiality agreements.
- k. DAW may use your Account Health Information to contact your patients on your behalf for any purpose for which you would be permitted to contact them, including:
 - i. For treatment and health care operations messages, including sending appointment notifications (such as appointment requests, confirmations, reminders, cancellations and the like) and messages about currently prescribed

medications (including refill reminders), or post-visit treatment satisfaction surveys, invitations and administrative messages concerning relevant Portal access, if any, and the like;

- ii. With your Consent, to request an authorization on your behalf from your patients to use or disclose their health information for any purpose for which use or disclosure may be made with an appropriate authorization, including marketing and research purposes. You agree that DAW may also use and disclose your patients' health information as permitted by any such authorization; and
 - iii. To provide information about health-related products or services that you provide, or that DAW provide on your behalf as your business associate.
- l. You hereby grant to us a nonexclusive, royalty-free, fully paid-up, perpetual, irrevocable, worldwide and fully sublicensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, and display any information, material or work product – other than your Account Health Information that has not been De-Identified – you provide to this site or the Services. You agree that DAW may use, disclose, market, license, and sell such information and works, including derivative products, without restriction. This includes any information that may be contributed to forums, discussion groups and the like that may be available from time to time. Furthermore, you agree that DAW may use, disclose, market, license and sell such material or content, and that you have no interest in the information, or in the proceeds of any sale, license, or other commercialization thereof. You warrant and agree that any material you provide will not infringe or otherwise violate the intellectual property or other rights of others, and will not be otherwise unlawful, infringing, threatening, libelous, defamatory, obscene, pornographic, or in violation of any law.
- m. From time to time DAW may incorporate information DAW receives from your authorized service providers (including Third-Party Applications), our third party partners, or covered entities (and their business associates) who are providing or paying for medical services for one or more of your patients, into the Services DAW provides to you. Such information may include, without limitation, clinical information such as lab results, imaging results, eligibility information, prior authorizations and prescription history; and shall, upon incorporation into the Services, be treated as "Account Health Information" for all purposes hereunder. You hereby authorize us to request and receive such information on your behalf from such authorized service providers or our third party partners.
- n. DAW may use or disclose Health Information for other purposes, as from time to time described in our Policies and Procedures; provided that DAW will not make or permit

any such use or disclosure that would violate applicable law or regulation if made by you or your business associate.

- o. Without limiting the provisions of this Agreement, you agree that DAW may provide De-Identified Health Information and other information (including Your Personal Information and information concerning your practice) to any medical group, independent practice association of physicians, health plan or other organization with which you have a contract to provide medical services, or to whose members or enrollees you provide medical services. Such information may identify you, but will not identify any individual to whom you provide services. Such information may include aggregated data concerning your patients, diagnoses, procedures, orders and the like.
- p. DAW may use your Account Health Information to provide you with notifications regarding Your patients' potential eligibility for certain programs, including savings programs, coupons, sampling, educational, safety, adherence or treatment support materials or other programs which you may choose to share with your patients ("Patient Support Programs") as Well as to administer the Support. These notifications and materials are not a substitute for your professional medical judgment pertaining to the appropriateness of any such program for a given patient and you should discuss any such programs or materials with your patients directly. DAW may receive remuneration from the funding sources or sponsors for presenting you with Support or displaying their advertisements. In connection with offering or operating such Support, DAW may share personally identifiable information about you for the purposes of program administration, and for assessing program eligibility, effectiveness or performance. DAW will only share such information with partners who are subject to confidentiality obligations. Additionally, DAW may disclose Personal Information about you to administrators of the Support for recordkeeping, corporate integrity or regulatory reporting purposes.
- q. DAW will enable Clinical Data Exchange between You and your business associate(s) or those covered entities (and their respective business associates), including health systems, Accountable Care Organizations, and payers, who desire to transmit such data to you with respect to patients they have a treatment or payment relationship or with whom you have Consented to provide to provide such data (all third parties collectively referred herein as "Transmission Partner"). While such transmission integrations are in effect, such Transmission Partner may send and receive clinical data to and from your account on a routine and recurring basis. You may disable an integration with any Transmission Partner by contacting DAW, but any clinical data already received by such Transmission Partner will remain in its possession, subject to the terms of your independent agreements with such Transmission Partner, if any. You are solely

responsible for ensuring that You have all necessary consents from Your patients applicable to the sharing of any of Your Health Information under applicable law with respect to each Transmission Partner with whom you have Consented to share any information.

6. Medical Notice

- a. DAW and the DAW Services it owns and deploys in no way provide any medical advice and is not designed to ever function as a platform for medical advice, diagnosis or treatment, or to substitute the professional judgment of medical professionals.
- b. You will be solely responsible for the professional and technical services you provide. DAW makes no representations concerning the completeness, accuracy or utility of any information in the Services, or concerning the qualifications or competence of persons who placed it there. DAW has no liability for the consequences to you or your patients of your use of the Services.
- c. Always seek the advice of your physician or other qualified health care provider with any questions you may have regarding a medical condition, mood, prescription regimen or Wellness program. Never disregard professional medical advice or delay in seeking it because of information you accessed on or through the Services. If you cannot reach your medical professional during an emergency or at a time where any mental health issue is presenting itself where you may need help or assistance, do not rely on the application, blog posts, forums or journal entries for responses, assistance or the like; call emergency services in your area by dialing 911.

7. No Legal or Regulatory Advice

- a. Some Services and Content in the DAW Services may include regulatory related information pertaining to you or your business. Such Content is provided for informational purposes only. DAW is not providing legal or regulatory advice and no attorney/client relationship is created by your use of our Services or the Content. Accordingly, always seek the advice of your attorney or advisors with any questions you may have regarding a law, regulation, or dispute.

8. Business Associate Provisions

These business Associate provisions only apply to HIPAA qualifying DAW Services Users, account owners, practices and businesses. If FERPA applies, these Business Associate provisions are not required.

- a. Each practice, owner or account must enter into a BAA (Business Associate Agreement) with DAW in accordance with the requirements of HIPAA, as such requirements are informed by the guidance given by the United States Department of Health and Human Services (or any office, department or agency operating thereunder, "HHS"):

- b. DAW will maintain, use and afford access to Health Information in the DAW Services in accordance with this Agreement and in compliance with HIPAA and the guidance by the United States Department of Health and Human Services (or any office, department or agency operating thereunder, "HHS"):
 - i. DAW will not use or disclose such information except as permitted or required by this Agreement or as required by law (as such term is defined in 45 CFR §164.103);
 - ii. DAW will use appropriate safeguards consistent with the requirements of the Security Rule with respect to Health Information to prevent the use or disclosure of such information in a manner inconsistent with the provisions of this Agreement;
 - iii. DAW will report to you any use or disclosure of your Account Health Information not provided for by this Agreement of which DAW become aware, including breaches of Health Information that meets the definition of "unsecured protected health information" under HIPAA, in each case as required by §164.410 of HIPAA, and any security incident (as defined by HIPAA) involving Your Health Information of which DAW becomes aware;
 - iv. In accordance with §§164.502(e)(1)(ii) and 164.308(b)(2) of HIPAA, as applicable, DAW will ensure that any subcontractors that create, receive, maintain or transmit Health Information on our behalf agree to the same restrictions, conditions, and requirements that apply to us with respect to such information (as such requirement is interpreted or applicable in connection with or under HIPAA); and DAW obtains satisfactory assurances (as such term is interpreted or applicable in connection with or under HIPAA) that such subcontractors will appropriately safeguard such information (it being understood, for the avoidance of doubt, that other users of the Services are not our subcontractors);
 - v. DAW will make available to you, your Account Health Information in furtherance of your obligations under §164.524 of the Privacy Rule;
 - vi. DAW will make available to you your Account Health Information in furtherance of your obligations to amend and incorporate any amendments to such information in accordance with §164.526 of the Privacy Rule;
 - vii. DAW will maintain and make available your Account Health Information to provide an accounting of disclosures in accordance with §164.528 of the Privacy Rule;
 - viii. DAW will comply with the requirements of the Privacy Rule that apply to you in the performance of such obligations;

- ix. DAW will make our internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by us on your behalf, available to the Secretary of HHS for purposes of determining your compliance with the Privacy Rule; and
- x. At termination of this Agreement DAW will provide a copy of your Account Health Information, upon your request, in electronic form, the form of which is at DAWs discretion (i.e. Excel file), provided that it is accessible through commercially available hardware and software. You may have to purchase such hardware and software from third parties in order to access your data, and you may have to configure your systems in order to use your data in your practice. Upon termination DAW will, if feasible, return or destroy all Protected Health Information received from, or created or received by us on your behalf that DAW still maintain in any form, and retain no copies of such information; or, if such return or destruction is not feasible (whether for technical, legal, regulatory or operational reasons), extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible. You acknowledge that if you have approved, in accordance with the terms of this Agreement, other users of our or their respective business associates, DAW will continue to make such information and data available to such users pursuant to the terms of the agreements DAW have with them.
- xi. You will immediately notify us of any breach or suspected breach of the security of the Services of which you become aware, or any unauthorized use or disclosure of information within or obtained from the Services, and you will take such actions to mitigate the breach, suspected breach, or unauthorized use or disclosure of information within or obtained from the Services as DAW may direct, and will cooperate with us in investigating and mitigating the same.

9. Safeguards

- a. You will implement and maintain appropriate administrative, physical and technical safeguards to protect information within the Services. Such safeguards shall comply with federal, state, and local requirements, whether or not you are otherwise subject to HIPAA. You will maintain appropriate security with regard to all personnel, systems, and administrative processes used by you or members of your Staff to transmit, store and process electronic health information through the use of the Services.
- b. You will immediately notify DAW of any breach or suspected breach of the security of the Services of which you become aware, or any unauthorized use or disclosure of information within or obtained from the Services, and you will take such actions to

mitigate the breach, suspected breach, or unauthorized use or disclosure of information within or obtained from the Services as DAW may direct, and will cooperate with DAW in investigating and mitigating the same.

10. Clinical Decision Support Resources; Advertising

- a. DAW may provide information to assist you in clinical decision-making. This may include information and reminders concerning drug interactions, allergies, dosages, as well as general health-care related information and resources. DAW may also provide forums for our users to exchange information. You agree that the information and materials available through the Services are for informational and educational purposes only and are not intended to constitute professional advice, diagnosis or treatment, or to substitute for your professional judgment. Information may be placed in the Services by us and by third parties beyond our control, including by funding sources of such information. DAW are not responsible for the accuracy or completeness of information available from or through the Services. You assume full risk and responsibility for the use of information you obtain from or through the Services, and neither DAW nor any of our licensors or data providers are responsible or liable for any claim, loss, or liability arising from use of the information. DAW do not recommend or endorse any provider of health care or health-related products, items or services, and the appearance of materials in the Services relating to any such products, items or services is not an endorsement or recommendation of them. You will review the definitions, functionality, and limitations of the Services, and to make an independent determination of their suitability for your use. DAW and our suppliers and licensors disclaim all warranties, whether expressed or implied, including any warranty as to the quality, accuracy, and suitability of the information provided by the Services for any purpose.
- b. DAW may also present to you, through the Services or through the use of Your Information, the opportunity to utilize or engage in clinical decision support or assessment resources or informational programs. DAW may also place advertisements concerning the products and services of third parties throughout the Services, so that you see them when you use the Services. Such Resources or advertisements may be funded or sponsored by third parties, and may include branded or unbranded content about medical conditions, treatments and products, or safety and regulatory information resources. They may also include opportunities to participate in informational surveys or studies, or to discuss with your patient's potential clinical trials or other research programs. DAW may receive remuneration from the funding sources or sponsors for presenting you with Support and Assessment Resources or displaying their advertisements. In connection with offering or operating such Resources or delivering advertising, DAW may share personally identifiable information about you for

the purposes of assessing program eligibility, effectiveness or performance with partners who are subject to confidentiality obligations. Additionally, if you choose to engage or utilize one of the Resources, you may be asked to provide personal information that may be used to supplement Your Information as well as information gathered as part of the program itself (e.g., responses to surveys). This information will be used to provide the content or services described in the Resources or provide you with any gift or honoraria associated with the program. If you receive remuneration for participating in a sponsored survey, for example, DAW may be required to provide the funding source or sponsor with information about you for its recordkeeping, regulatory reporting or measurement purposes.

- c. Our Services may include advertisements or promotional messages sponsored by third parties (collectively, “Ads”). The manufacturers, services providers, distributors and resellers of the products and services identified in the Ads are solely responsible for the accuracy of their Ads and the suitability, efficacy, safety and quality of such products or services. An Ad does not in any way constitute or imply our recommendation or endorsement of such product or service.

11. Use of the Services By & On Behalf of Minors

- a. You are not eligible to use our Services (including obtaining a Credential or entering into a User Agreement) unless you are at least 18 years old and otherwise have the legal capacity to enter into a binding contract in your jurisdiction. If you are not an emancipated minor over the age of 13, you may only use our Services if: (i) such use has been approved of by your parent or legal guardian, (ii) you use our Services under his or her supervision, and (iii) he or she has agreed to these Terms on your behalf.
- b. If you are the parent or guardian of a minor that has not been emancipated, you may use the Services and enter into a User Agreement on behalf of such minor. By doing so, you represent and warrant that you have the legal capacity to act on behalf of such minor; and you acknowledge and agree, in such capacity, that all provisions of these Terms (and User Agreement, if applicable) that applicable to you are equally applicable to such minor.
- c. Under no circumstances may our Services be used by a child under 13 years old.

12. United States Only

- a. Access to our Services is administered in the United States (“U.S.”) and is intended for users in the U.S. You may not use our Services in any jurisdiction where offering, accessing or using our Services would be illegal or unlawful.

13. Sign Up, Communications & Service Notifications

- a. When you sign up for one of our Services, or when you submit information on a web form or email or instant message us, you are communicating with us

electronically. When you visit our Websites, DAW and certain third-party service providers collect information during your visit. In each case, the nature of the information DAW collect, the duration and manner of how DAW retain it, how DAW use it, and to whom DAW disclose it, is governed by the DAW Privacy Policy.

- b. As part of providing our Services to you, DAW may need to provide you with certain communications, such as service announcements and administrative messages. Such communication may be by email, SMS text message, instant message, a posting on our Services or some other mechanism. You consent to receive such communications from us electronically. If you have registered for one or more of the Services, our service announcements and administrative messages DAW provide you are considered part of the Services themselves, which you may not be able to opt-out from receiving until you cease using, or terminate your access to, such Services. Messages received by phone, fax, SMS text and email regarding queued or pending prescription orders, refills and other alerts may also be messages which you cannot opt-out from receiving.
- c. You agree that all agreements, notices, authorizations, disclosures and other communications that DAW provide to you electronically, as well as any acceptances, agreements, consents or authorizations that you provide to us electronically, satisfy any and all legal requirement(s) that such communications be in writing.
- d. DAW may send you Service notifications, account and billing notifications or information and product information and updates to the email associated with your DAW account.

14. Phone, Email & SMS Text Alerts & Messages

- a. You agree that we may contact you by phone, fax, SMS text and email (“Messages”) as our contact is reasonable and appropriate. You acknowledge that you have an Established Business Relationship with DAW under applicable law. Phone, fax, Email and SMS Text messages alerts can be enabled by an administrator or users of the Daw Services. Federal law requires your consent for DAW and the DAW Services, to use automation to email, call or text message you. Automated calls and texts will ensure that you receive timely and important information. By using the ScriptSure applications and clicking Agree, you represent and warrant:
 - i. that you are authorized to give this consent on behalf of your company, practice or organization;
 - ii. that you, your company, practice or organization agrees that DAW and its partners may send your company, practice or organization information via Messages in connection with DAW Services or other 3rd party services, and promotional or advertising material regarding partners; and

- iii. that you, your company, practice or organization agrees that Messages from DAW Services and 3rd party partners may cause a charge by your carrier for such communication.
- b. Administrator and Users of the DAW Services have the ability to manage Messages from the application Settings. You can contact us at our toll-free number 1-866-755-1500 or email support@dawsystems.com for information on Messages and what can be opted-out of while continuing to use DAW Services and what Messages cannot be opted-out from receiving.
- c. **MESSAGE DELIVERY NOTICE: DAW will not be liable for the failure of a Message to be sent to you or your practice regarding prescription orders, benefits or other notifications. Failures can occur due to outages, programming issues, bugs or incorrect settings. Users can in all cases log in to the DAW Services and review the DAW Services for orders and other information regardless of whether Messages have been sent to you or your practice. If you believe you are not receiving Messages properly, please contact 1-866-755-1500 or email support@dawsystems.com. It is the Users absolute responsibility to log in and review any pending orders (new or pending prescriptions or refills) and ensure a timely response to orders.**

15. Service Availability

- a. Third-Party Apps and Services, or material or products offered through the Services may be unavailable from time to time.
- b. DAW will undertake commercially reasonable measures to ensure that the operation and function of the Services and the Services' Servers are available to you. The Services will be generally available 98.7% of the time, calculated using "available minutes" in a month, equivalent to minutes in a calendar month for which DAW makes the Services available, excluding (i) scheduled downtime, which shall be any period notified by DAW to you at least 24 hours ahead, scheduled to the extent reasonably practicable during aggregate your off peak hours; (ii) any period of unavailability lasting ten (10) minutes or less; (iii) downtime caused by circumstances beyond DAW's reasonable control, including without limitation, force majeure events, failure of computers, failure of 3rd party servers including, but not limited to DAW internal servers, Amazon servers, SureScripts servers and communications, telecommunications, internet service providers or hosting facility or delays involving hardware, software or power systems not within DAW's possession or reasonable control, and denial of service attacks; or (iv) your use of the Services other than in accordance with this Agreement.
- c. We strive to keep the Services up and running; however, all online services suffer occasional disruptions and outages, and DAW is not liable for any disruption or loss you may suffer as a result. In the event of an outage, you may not be able to retrieve your

information that you've stored. We recommend that you regularly backup, by copying or via screenshots, Content that you store on the Services.

16. Electronic Record Retention

- a. DAW will maintain all records and databases in the same format as the original form or in a legally produced form, which may be electronic, so that medical records may be reviewed and audited by authorized entities. DAW does not automatically archive or delete or otherwise dispose of any records for active and paid accounts. In the event an account is deactivated, unpaid or use discontinued of the DAW Services, all records for such accounts will be maintained for a period of at least 7 years from the record creation. DAW applies appropriate administrative, technical, and physical safeguards to protect the privacy of medical records and other protected health information (PHI) during their storage and retention. Accounts or end users that need access to data through the DAW Services may be required to pay a fee for read-only access to access the records through the DAW services. As an alternative, accounts, end users and patients may request the data in human readable electronic format (PDF and/or excel documents, etc.).
- b. *Disposal*: In the circumstance of data disposal, DAW will maintain a destruction log that includes:
 - i. Date of destruction;
 - ii. Method of destruction;
 - iii. Description of the disposed records (e.g., name, date of birth, social security number, etc.);
 - iv. Inclusive dates;
 - v. A statement that the records were destroyed in the normal course of business; and;
 - vi. The signatures of the individuals supervising and witnessing the destruction.
- c. *Transfer of Records*: Original records will not be given to patients under any circumstances; copies thereof may be by request in human readable electronic format in the discretion of DAW. For accounts or practices that are closed or sold, the end user may request their records in electronic format and elect to store the records themselves on written request and confirmation of transfer to them. DAW may in its discretion move records from primary servers to an alternative record storage server or third party storage company. In the event of third party storage, the appropriate agreements will be executed with such company and DAW will ensure compliance with relevant laws and regulations.

17. Internet-Based Services

- a. If the application connects to computer systems over the Internet, which may include via a wireless network, using the application operates as your consent to the transmission of standard device information (including but not limited to technical information about your device, system, and application software, and peripherals) for Internet-based or wireless services. If other terms are presented in connection with your use of services accessed using the application, those terms also apply.

18. Privacy

- a. Your privacy is important to us. Please read the DAW Privacy Policy on our Website, as it describes the types of data DAW collect from you and your devices and how DAW use your information. The DAW Privacy Policy also describe how DAW uses your content, which is your communications with others; postings or feedback submitted by you to DAW via the Services. By using the Services or agreeing to these Terms, you are consenting to the terms of the Privacy Policy and acknowledge that you have reviewed our Privacy Policy and further that you consent to DAW's collection, use and disclosure of your content and data as described in the DAW Privacy Policy.

19. Your Content

- a. Many of our Services allow you to store or share your information or receive communications from others. We don't claim ownership of your personally identifiable information and you are responsible for it. When you submit Content on our Services, you grant us and those DAW work with a worldwide, royalty-free right to store, host, reproduce, create derivative works of, publish, display, use and distribute such Content as further described in our DAW Privacy Policy and these Terms. For some of our Services, the Terms may narrow the scope of our use of Content you submit. You can find more information about how DAW use and store Content in our Privacy Policy. Non-personally identifiable information can be used by DAW per the terms of this agreement and the DAW Privacy Policy.
 - i. When you share your information with other people, including our community of Users that you may blog or share communications with as well as Professionals that you have authorized communication with, you understand that they may be able to, use, save, record, reproduce, transmit, display your information. If you do not want others to have that ability, do not use the Services. You represent and warrant that for the duration of these Terms, you have (and will have) all the rights necessary to your information that is uploaded, stored or shared on or through the Services and that the collection, use, and retention of your information will not violate any law or rights of others. DAW cannot be held responsible for your information or the material others uploaded, stored or shared using the Services.

b. Forums, Blog Posts & Content

- i. Our Services may include access to forums, blogs, message boards, and other chat services where various users can share information, opinions, chats and other Content. We generally do not pre-screen or monitor user-submitted Content, and such Content may simply represent a user's opinion or Content a user finds interesting. DAW does not endorse, recommend, critique, analyze, evaluate or otherwise describe the Professionals and the nature or quality of the services received by such patient, client or customer.

20. Code of Conduct

- a. By agreeing to these Terms, you're agreeing that, when using the Services, you will follow these rules and those listed on our DAW Journal Entries and Community Users

Code of Conduct:

- i. Don't do anything illegal.
- ii. Don't engage in any activity that exploits, harms, or threatens to harm children.
- iii. Don't send spam. Spam is unwanted or unsolicited bulk email, postings, contact requests, SMS (text messages), or instant messages.
- iv. Don't publicly display or discuss or use the Services to share inappropriate Content or material (involving, for example, nudity, pornography, graphic violence, or criminal activity).
- v. Don't engage in activity that is false or misleading (e.g., asking for money under false pretenses, impersonating someone else, manipulating the Services to increase play count, or affect rankings, ratings, or comments).
- vi. Don't circumvent any restrictions on access to or availability of the Services.
- vii. Don't engage in activity that is harmful to you, the Services, or others (e.g., transmitting viruses, stalking, communicating hate speech, or advocating violence against others).
- viii. Don't infringe upon the rights of others (e.g., unauthorized sharing of copyrighted info or other copyrighted material, resale or other distribution).
- ix. Don't engage in activity that violates the privacy of others.
- x. Don't help others break these rules.

b. **Removal of Content**

- i. You understand and agree that DAW may, but are not obligated to, monitor, edit or remove any Content for any or no reason at any time. We are not responsible, however, for any delay or failure in removing any Content.

c. **Violations & Enforcement**

- i. If you violate these Terms, DAW may stop providing Services to you or DAW may close your DAW account and access. We may also block delivery of a communication or the sharing of your data to or from the Services in an effort to enforce these Terms or DAW may remove or refuse to publish your information for any reason. When investigating alleged violations of these Terms, DAW reserves the right to review your information in order to resolve the issue.
- ii. We reserve the right to monitor any and all use of our Services, and investigate any activity DAW suspect violates these Terms, a User Agreement, our rights or interest, or the rights or interests of any person or entity.
- iii. We reserve the right, to the fullest extent permitted under law, to cooperate with any governmental authority or third party investigating conduct that may be illegal or harm any individual or entity or violates their respective rights. If, for example, a user threatens to physically harm another user or any other individual, DAW reserve the right to fully cooperate with law enforcement authorities and the threatened individual. You hereby consent to our cooperation in such investigation.

d. Reporting Violations

- i. We may provide you with tools with which to report violations of the DAW Journal Entries and Community Users Code of Conduct or other provisions of these Terms. Notwithstanding the availability of such tools, you acknowledge and agree that DAW are under no obligation to take any action with respect to any such report.

e. Law Compliance

- i. You are solely responsible for ensuring that your use of the Services complies with applicable law, including laws relating to the maintenance of the privacy, security, and confidentiality of patient and other health information. You will not grant any user, including members of your Authorized Users, any rights to access or use our Services that they would not be allowed to have under applicable laws. DAW offers no assurance that your use of the Services under the terms of this Agreement will not violate any law or regulation applicable to you. You acknowledge that DAW may share your Account Information with third parties if DAW determine in good faith that disclosure of your Account Information is necessary to (i) comply with a court order, warrant or other legal process, (ii) protect the rights, property or safety of DAW or others, (iii) investigate or enforce suspected breaches of this Agreement, or (iv) allow our third-party partners to comply with their obligations under federal or state law.

21. Indemnification

- i. The Parties agree to hold harmless, indemnify, and, defend each other from and against any losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from: (1) use of the Services; (2) and misuse of data; and (3) any breach of Confidentiality obligations as contemplated in this Agreement, provided that indemnifying party will not settle any third-party claim against indemnitee unless such settlement completely and forever releases indemnitee from all liability with respect to such claim or unless indemnitee consents to such settlement, and further provided that indemnitee will have the right, at its option, to defend itself against any such claim or to participate in the defense thereof by counsel of its own choice; and (4) any breach by you or your Supporting Staff or Administrators of any representations, warranties or agreements contained in this Agreement; and (5) the actions of any person gaining access to the Services under Credentials assigned to you or a member of your Supporting Staff; and the actions of anyone using Credentials assigned to you or any member of your Supporting Staff that adversely affects the Services or any information accessed through the Services; and (6) your negligent or willful misconduct, or that of any member of your Supporting Staff. Your indemnification obligations in this Agreement are cumulative, and are not intended to, nor do they, limit your indemnification obligations elsewhere in this Agreement or at law, even if such obligations arise or are occasioned or triggered by a single assertion, claim, circumstance, action, event or transaction. You will indemnify, defend and hold harmless DAW and any of its affiliates, officers, directors, employees, agents, representatives, partners and licensors from and against any and all claims, actions, proceedings, suits, liabilities, damages, settlements, penalties, fines, losses, or expenses, including attorneys' fees, costs and disbursements, arising out of or in any way connected with your use of DAW Services.

22. License

- a. DAW grants to you and you accept a non-exclusive, non-transferable, limited right to access and use the Services, subject to your full compliance with the Terms set forth in this Agreement and with our Privacy Statement and Code of Conduct.
 - a. You may not assign or transfer this Agreement, in whole or in part, without DAW's prior written consent, which DAW may withhold at our sole discretion. However, this Agreement may be transferred if you sell, transfer or reorganize the practice or business to which this Agreement relates, provided that: (a) an authorized representative or administrator or owner notifies us in writing of the

transfer, the legal name of the transferee, and desired transfer date; (b) the transferor or transferee provides any documentation required for a DAW Services account. DAW may freely assign this Agreement in connection with a merger, acquisition, or sale of assets, or by operation of law or otherwise.

- b. If you comply with the Terms, DAW grant you the right to install and use one copy of the software per device for use by one person at a time as part of your use of the Services. The Services include certain third-party software, services, data and applications that may require that you enter into separate agreements with third parties. We may also make available optional services, either directly or through integrations with the Services, provided by third parties, such as billing, scheduling, after-hours call answering, and clinical laboratory reporting services. You will comply with and, upon request, execute, any agreements or acknowledgements that may be required for the use of such software or services, and hereby agree to comply with the terms of any license or other agreement relating to third-party products included in the Services or made accessible to you through the Services. Additionally, your use of the Services or of such third-party products or services will constitute your agreement to be bound by the terms of all licensing, subscription and similar agreements relating to such use.
- c. The software or Website that is part of the Services may include third-party code. Any third-party scripts or code, linked to or referenced from the software or Website, are licensed to you by the third parties that own such code, not by DAW. Notices, if any, for the third-party code are included for your information only.
- d. If you are using a DAW Service that is included as a part of another application (i.e. as a medical professional user and using the Services through an E-Prescribing or Electronic Medical Record application), you may be subject to additional terms from that vendor.
- e. The Services are licensed, not sold, and DAW reserves all rights to the Services not expressly granted by DAW, whether by implication, estoppel, or otherwise. This license does not give you any right to, and you may not:
 - i. circumvent or bypass any technological protection measures in or relating to the Services;
 - ii. disassemble, decompile, decrypt, hack, emulate, exploit, or reverse engineer any application or Service or other aspect of the Services that is included in or accessible through the Services, except and only to the extent that the applicable copyright law expressly permits doing so;
 - iii. separate components of the Services for use on different devices;
 - iv. publish, copy, rent, lease, sell, export, import, distribute, or lend the Services, unless DAW expressly authorizes you to do so;

- v. modify the Services, Documentation or create any derivative product from any of the foregoing, except with the prior written consent of DAW;
 - vi. act as a service bureau of the Services or otherwise run the Application for any-third party, except with the prior written consent of DAW;
 - vii. transfer the Services, any licenses, or any rights to access or use the Services (except as permitted above);
 - viii. use the Services in any unauthorized way that could interfere with anyone else's use of them or gain access to any service, data, account, or network;
 - ix. reproduce, publish, or distribute content in connection with the Services that infringes any third party's trademark, copyright, patent, trade secret, publicity, privacy, or other personal or proprietary right; nor use the Services to transmit illegal, obscene, threatening, libelous, harassing, or offensive messages, or otherwise unlawful material.
 - x. attempt to, or authorize anyone to:
 - a. Abuse or misuse the Services, including gaining or attempting to gain unauthorized access to the Services, or altering or destroying information housed in the Services, except in accordance with accepted practices;
 - b. use the Services in a manner that interferes with other users' use of the Services;
 - c. use the Services in any manner that violates our Policies and Procedures; or
 - d. use any ad blocking mechanism, device, or tool to prevent the placement of advertisements in the Services;
 - xi. circumvent any technical measures DAW have put in place to safeguard the Services or the confidentiality, integrity or accessibility of any information housed thereon, or any technical measures DAW have put in place to restrict access to the Services solely to the class of persons expressly so authorized pursuant; and
 - xii. access any portion of the DAW Services other than with a commercial browser or mobile application.
- f. You acknowledge that nothing in this Agreement will be construed to grant you any right to obtain or use the source code from which any component of the Services is compiled or interpreted, and that this Agreement grants certain rights to access the Application, as hosted by DAW, but nothing herein may be construed to require delivery of a copy of the Services or to grant you any right to obtain such a copy.

23. Using the Services

- a. Permitted uses:
 - a. Subject to the terms of this Agreement, you may use your Account Health Information for any purpose expressly permitted by applicable law, including treatment, payment and health care operations.
 - b. If you are granted access rights to another user of the Services' Protected Health Information through and EMR Partner or another component of the Service, you may use such information for treatment and for obtaining payment for treatment; provided that, except as expressly authorized in our Policies and Procedures, (i) you may access only information pertaining to individuals with whom you have a treatment relationship or for whom a provider who has a treatment relationship with the individual has requested a professional consultation from you, or from whom you have received authorization to use their health information; and (ii) you may use only the minimum necessary information for payment purposes.
- b. DAW offers the Services to Providers and to natural persons who are members of such Providers' Authorized Users and Supporting Staff. All persons added to an account are deemed to have access to that account. It is the practice owners, providers and administrator's responsibility to ensure that users entered into the system that have been granted and issues credentials (username, etc.) to use the Services and your account are appropriate.
- c. Each Provider entered into a Services account is a party to this Agreement for all purposes and shall be subject to all of the provisions that are applicable to the person addressed as "you" in this Agreement. Although a Supporting User or Owner or someone other than a provider may have signed-up for an account or electronically entered into this Agreement, or may continue to administer Administrative Rights on a Provider's behalf, only the Provider is entitled to any of the rights, remedies or benefits under this Agreement and control over the Administrative Rights. The Provider is likewise subject to, and DAW may enforce against it, all of the covenants, obligations, restrictions, limitations, acknowledgements, Consents, representations, warranties, waivers and releases included in this Agreement. A Provider may delegate Administrative Rights to one or more members of the Supporting Staff or Administrator's or Owners, but the Provider(s) remains responsible for all activity occurring thereunder.
- d. The prescribing Services allow for "Prescribe Using" privileges to be granted to Supporting Users in non-controlled substance new prescription prescribing and non-controlled substance prescription refill requests. This means that a Supporting User can be granted access to prepare and/or send new prescriptions and refills on behalf of a

Provider, provided that a Provider or Administrator has granted prescriber using privileges. Privileges must be manually granted in the Settings menu or by agreeing to an electronic request for prescribe using access and permissions for a Provider. Each Provider or administrator may establish the proper settings for the use of Prescribe Using by a Supporting User in the Services settings. Providers and Administrators can disable Prescribe Using access at any time and can through reports view activity by Supporting Users. Each Provider remains responsible for all activity occurring under their name, the prescribing using feature or that the Provider has otherwise delegated to an Administrator or Supporting Staff.

- e. You will cooperate with DAW in the administration of the Services, including providing reasonable assistance in evaluating the Services and collecting and reporting data requested by DAW for purposes of administering the Services.
- f. You may make available to your patients portions of their medical records through a Web-based personal health record portal that DAW or an EMR partner or vendor may operate on your behalf (a "Patient Portal"). You are responsible for granting Patient Portal access privileges to your patients, either on an individual basis or for your entire patient population. You are solely responsible for the information that you make available through a Patient Portal. Health information included in Patient Portals will be held and administered by us on your behalf subject to the terms of this Agreement and our business associate obligations.
- g. To use the DAW Services, a user account needs to be created. Your DAW account allows you to sign in to products, Websites or services provided by DAW and possibly DAW partners.
 - i. You can create an DAW account by signing up online or by contacting a DAW partner. You agree not to use any false, inaccurate or misleading information when signing up for your DAW account. If you received an invite to create an DAW account from a third party, the third party may have additional rights over your account, like the ability to access or delete your DAW account. Please review any additional terms the third party provided you, as DAW has no responsibility regarding these additional terms.
 1. A Provider that has failed to complete the registration information sufficient to establish itself as the Provider may not be able to access all of the Services. In addition, until such Provider completes such registration information, such Provider agrees and acknowledges that it is subject to, and DAW may enforce against it, all of the covenants, obligations, restrictions, limitations, acknowledgements, Consents, representations, warranties, waivers and releases set forth in this

Agreement that are applicable to the person addressed as “you” in this Agreement, and such Provider hereby grants and makes all rights, waivers and releases set forth in this Agreement that are granted and made by the person addressed as “you” in this Agreement, but such Provider is entitled to none of, and hereby waives and agrees not to assert any of, the rights, remedies or benefits under this Agreement (other than our assurances and obligations below, which such Provider shall have the right to enforce). Once a Provider’s registration has been submitted sufficient to establish its status as the Provider, this provision shall cease to apply.

ii. Supporting Users and Administrators:

1. A Supporting User and/or Administrator of a Provider may obtain an account on behalf of such Provider, and may have Administrative privileges on the account. We call the person(s) authorized to act on behalf of a Provider an Authorized user or Supporting User or Administrators of such Provider. The Provider and Supporting Users and Administrators may be the same person or different people. If you are establishing an account or taking any action with respect to a Provider’s account, you represent and warrant that (a) you have the authority to act on such Provider’s behalf either as owner/principal or as a member of such Provider’s Supporting Staff, (b) the information you submit is complete and accurate, and (c) you have the authority to enter into this Agreement on behalf of such Provider and bind such Provider to the covenants, obligations, restrictions, limitations, acknowledgements, Consents, representations, warranties, grants, waivers and releases contained in this Agreement. If you are a Supporting User, you recognize that you have no personal rights with respect to such Provider’s account, and that such Provider may change the Authorized Representative at any time, for any or no reason, with or without notice.
2. You may permit your Authorized Users to use the Services on your behalf, subject to the terms of this Agreement. You will:
 - a. require each member of your Authorized Workforce to have unique Credentials, and will provide the legal name(s) of each such member for which you are seeking Credentials;
 - b. train all members of your Authorized Users in the requirements of this Agreement and the Policies and Procedures relating to

- their access to and use of the Services, and ensure that they comply with such requirements;
- c. take appropriate disciplinary action against any member of your Staff who violates the terms of this Agreement or the Policies and Procedures;
 - d. ensure that only the person to whom a specific set of Credentials have been assigned accesses the Services with such Credentials; and
 - e. immediately notify DAW of the termination of employment of any member of your Authorized Users, or of your withdrawal of authorization for any such person to access the Services.
3. Your Supporting Users and Administrators are authorized under this Agreement to access the Services solely on behalf and at the direction of a Provider. As such, Supporting Users and Administrators may sign in and use the functionality of the Services solely on behalf and at the direction of such Provider. Each Provider consents to and authorizes the disclosure any content related, or otherwise generated by use of the Services, including secure messages. You hereby agree and acknowledge that you are subject to, and DAW may enforce against you, all of the covenants, obligations, restrictions, limitations, acknowledgements, Consents, representations and warranties set forth in this Agreement that are applicable to the person addressed as “you” in this Agreement, and you hereby grant and make all rights, waivers and releases set forth in this Agreement that are granted and made by the person addressed as “you” in this Agreement, but you are entitled to none of, and hereby waive and agree not to exercise or assert any of, the rights, remedies or benefits under this Agreement other than the limited, non-exclusive, non-transferable, personal rights granted herein to sign in and use the functionality of the Services solely on behalf and direction of such Provider. Notwithstanding the applicable provisions herein, you acknowledge that your access to the Services may be terminated by a Provider or DAW at any time, for any reason or no reason at all, with or without notice. By (i) accessing any of the Services under a Provider’s account(s), or (ii) contacting us by any means and requesting or directing us to take any action with respect to any Provider’s account(s) or data held by such account(s), or (iii) asserting any right or authority with respect to such account(s) or data, you represent and warrant that

you have the authority to act on such Provider's behalf and that you are not using the Services, or otherwise engaging in the activities described in clauses (i) through (iii) above, for the benefit or at the direction, of any person or entity other than such Provider, including yourself.

- iii. You cannot transfer your DAW account to another user or party, unless expressly granted per the Terms of this Agreement. To protect your account, keep your account details and password confidential. You are responsible for all activity that occurs under your DAW account.
 - iv. You must use your DAW account to keep it active. This means you must sign in at least once in a one-year period to keep your DAW account, and associated Services, active. If you don't sign in during this time, DAW will assume your DAW account is inactive and will close it for you and may remove all your associated data.
 - v. Subject to the terms of this Agreement, you may use your Account Health Information in the DAW Services for any purpose expressly permitted by applicable law, including treatment.
 - vi. If you are granted access rights to another user of your Account Protected Health Information, you may use such information for treatment and other lawful and compliant uses; provided that, except as expressly authorized in our Policies and Procedures, (i) you may access only information pertaining to individuals with whom you have a treatment relationship or for whom a provider who has a treatment relationship with the individual has requested a professional consultation from you, or from whom you have received authorization to use their health information; and (ii) you may use only the minimum necessary information for payment purposes.
 - vii. You will acquire, install, configure and maintain all hardware, software and communications systems necessary to access the Services (hereinafter "Hardware"). Your Hardware will comply with the specifications from time to time established by us. You will ensure that your Hardware is compatible with the Services. If DAW notify you that your Hardware is incompatible with the Services, you will eliminate the incompatibility, and DAW may suspend Services to you until you do so.
- b. Responsibility for Misuse by Other Users
- i. You acknowledge that in granting access to the Services for the purposes in this Agreement, we will rely on the assurances of the recipients of the information as to (i) their identity and credentials, (ii) the purposes for which they are accessing the system, and (iii) the nature and extent of the information to which

they will have access. You acknowledge that, while the Services will contain certain technical safeguards against misuse of the Services, it will rely to a substantial extent on the representations and undertakings of users of the Services. You agree that we will not be responsible for any unlawful access to or use of Your Health Information by any user resulting from the user's misrepresentation to us, or breach of the user's user agreement or our Policies and Procedures.

- c. Specially Protected Information
 - i. We apply the standards of the Privacy Rule in permitting access to the Services. You acknowledge that other federal and state laws impose additional restrictions on the use and disclosure of certain types of health information, or health information pertaining to certain classes of individuals. You agree that you are solely responsible for ensuring that Your Health Information may properly be disclosed for the purposes set forth in this Agreement, subject to the restrictions of the Privacy Rule and applicable law, including those laws that may be more restrictive than the Privacy Rule. In particular, you will:
 1. not make available to other users through the Services any information in violation of any restriction on use or disclosure (whether arising from your agreement with such users or under law);
 2. obtain all necessary consents, authorizations or releases from individuals required for making their health information available through the Services for the purposes set forth in this Agreement
 3. include such statements (if any) in your notice of privacy practices as may be required in connection with your use of the Services; and
 4. not place in the Services any information that you know or have reason to believe is false or materially inaccurate.
- 24.** DAW may offer the Services on a limited basis to trial Users. If you have signed-up for an account for the purpose of evaluating the Services or to use the Services for academic coursework (collectively, "Trial Use"), you may use the Services only in connection with such Trial Use. As such, you hereby agree and acknowledge that you are subject to, and DAW may enforce against you, all of the covenants, obligations, restrictions, limitations, acknowledgements, Consents, representations and warranties set forth in this Agreement that are applicable to the person addressed as "you" in this Agreement, and you hereby grant and make all rights, waivers and release set forth in this Agreement that are granted and made by the person addressed as "you" in this Agreement, but you are entitled to none of, and hereby waive and agree not to exercise or assert any of, the rights, remedies or benefits under this Agreement other than the limited, non-exclusive, non-transferable, personal right under this to

sign-in and make Trial Use of the functionality of the Services. Notwithstanding the applicable provisions herein, you acknowledge that your access to the Services may be terminated by us at any time, for any reason or no reason at all, with or without notice. You also hereby acknowledge and agree that in the event that you at any time use the Services in the course of providing healthcare services to any individual or you enter any health information of any Individual your Trial Use license will immediately convert, without further action by either Party, to a paid relevant license.

25. Fees and Charges

- a. You will pay to DAW the standard service fee (the "Service Fee") for the Services to which you have access during the Term of this Agreement either directly or through a 3rd party of vendor partner. You also agree to pay, at our then current rates, for all goods, services, or features that you utilize, or otherwise request from us and that are not included in our standard services ("Additional Charges"). We may notify you of the Service Fee(s) when you are granted access to a service, and DAW will notify you of the applicable Additional Charges before performing services or enabling features to which an Additional Charge will apply. We reserve the right to change the Service Fee and Additional Charges, or to add new fees or charges with notice.
- b. The Service Fees and any Additional Charges shall be paid within ten (10) days of due date or date of an invoice at the address set forth under our name below, or such other business partner.
- c. Fees not paid within ten (10) business days of the due date are subject to a late charge of five percent (5%) of the amount owing and interest thereafter at the rate of one and one-half percent (1½%) per month on the outstanding balance, or the highest amount permitted by law, whichever is lower. Failure to pay fees within ten (10) days of the due date may result in termination of access to the Services without notice. A reconnection fee equal to one (1) month's Service Fee shall be assessed to re-establish connection after termination due to non-payment. Nonpayment constitutes breach of this agreement. For all monthly fees and subscriptions, a credit card is required to be entered and on file for the account.
- d. All charges and fees shall be exclusive of all federal, state, municipal, or other government excise, sales, use, occupational, or like taxes now in force or enacted in the future, and you agree to pay any tax (excluding taxes on our net income) that DAW may be required to collect or pay now or at any time in the future and that are imposed upon the sale or delivery of items and services purchased under this Agreement. The amount DAW charge you for a Service may include certain taxes or charges applicable thereto your purchase. If any tax or charge applicable is not charged by us, you acknowledge that you are solely responsible for paying such tax or other charge.

- e. You are responsible for any charges you incur to use the Services, such as telephone and equipment charges, and fees charged by third-party vendors of products and services.
- f. By providing payment information to us, you hereby represent and warrant that you are authorized to use the payment method you provide, that such information is accurate, and that DAW are authorized to charge you for the applicable Services using the established payment method and the information you provided. You are solely responsible for notifying us of any changes to your payment information or updating within the account screens in the DAW Services.
- g. In relation to obtaining the DAW services through third-party application providers, the charges and payment terms are dictated by the application delivery platform you have used to download and install the Services and/or the terms of the third-party application provider that is providing access to the Services (i.e. Apple® app store, electronic medical record application). Subscriptions may be required directly with DAW in some third party purchase circumstances.

26. Refund Policy

- a. Unless otherwise provided by law or by a particular Service offer, all purchases are final and non-refundable. If you believe that DAW has charged you in error, you must contact us within 75 days of such charge. We reserve the right to issue refunds or credits at our sole discretion. If DAW issues a refund or credit, DAW is under no obligation to issue the same or similar refund in the future. This refund policy does not affect any statutory rights that may apply. In the event a provider cannot complete Identity Proofing as required by the DEA and the electronic prescribing network, a refund of 100% of the cost of the license will be provided.

27. User Identification.

- a. DAW authorizes you and your Authorized Users to use the Credentials uniquely assigned to, or selected by, each such individual User. You acquire no ownership rights in any such Credentials, and such Credentials may be revoked, reset or changed at any time in the discretion of DAW or the Provider. You will adopt and maintain reasonable and appropriate security precautions for your Credentials to prevent their disclosure to or use by unauthorized persons. Each member of your Authorized Users shall have and use a unique identifier. You will ensure that no member of your Staff uses Credentials assigned to another Staff member.

28. No Third-Party Access.

- a. Except as required by law, you will not permit any third party (other than persons who satisfy the definition of Authorized User and meet the requirements herein for those users) to use or access the Services without DAW's prior written agreement. Nor will

you authorize or assist any person or entity in accessing, or attempting to access, any portion of the Services via any means other than a commercial browser (such as Microsoft Edge, Apple Safari or Google Chrome) or a mobile app that DAW have authored and provided to you. You will promptly notify DAW of any order or demand for compulsory disclosure of health information if the disclosure requires access to or use of the Services. You will cooperate fully with DAW in connection with any such demand. You will also notify DAW in the event that any person or entity, whether or not a member of your Authorized Users, (a) attempts to access the Services by any means other than a commercial browser, (b) claims to offer a service or system that “integrates with” our Services or (c) requests to use your Credentials or requests that you obtain Credentials in order to access the Services in a manner that would violate this Agreement if you engaged in such activity.

29. Third Party Services and Links to Other Sites

- a. DAW may provide, through the Services (including via a hyperlinks) or through the use of Your Information, the opportunity to learn about, access, integrate with, or otherwise use services operated by third parties (each a "Third-Party Service"). If you choose to sign-up for or utilize a Third-Party Service, that Third-Party Service may be able to access Your Information. Additionally, DAW may allow you to access the Third-Party Services, or integrate the Services you receive from us with such Third-Party Services using your Credentials. Although DAW may receive remuneration from the operators or sponsors of these Third-Party Services, DAW do not endorse any Third-Party Services and you are responsible for evaluating any Third-Party Services prior to signing-up for, accessing, or integrating them with the Services you receive from us. We are not responsible for the quality or efficacy of any Third-Party Services, or their information privacy or security practices, and DAW have no responsibility for the information, goods or services offered or provided by the operators of such Third-Party Services, or for the manner in which they conduct their operations. Your use of Third-Party Services and the materials, goods and services offered by them is entirely at your own risk, and is subject to the terms of use of the third parties operating or providing them. You should assume that any Internet page or other material that does not bear the official DAW logo is provided by a third party. You should review the applicable terms of use and privacy policies of any Third-Party Services, since they are subject only to the agreements you have with the operators of such Third-Party Services, and not covered by this Agreement. Further, the Third-Party Services may use Your Information in a way that DAW would not. You further acknowledge that your use of any Third-Party Services is on an "as-is" basis. Our Services may contain hyperlinks (including hyperlinks) to Websites operated by third parties, or to materials or information made available by third parties. Such links do not

constitute or imply our endorsement of such third parties, or of the content of their sites, or the suitability, efficacy, safety or quality of their products or services, or the information privacy or security practices of their Websites.

30. Insurance

- a. You will obtain and maintain such policies of general liability, errors and omissions, and professional liability insurance with reputable insurance companies as is usually carried by persons engaged in your business covering the term of this Agreement.

31. Term, Conditions for Breach, Account Suspension, Judicial Requests, Data Access, Termination/Closing Your Account

a. Term

- i. The initial term of this Agreement shall commence on the date you "sign up" for the Services and continue for a period of twelve (12) months thereafter. In the absence of a compelling reason to terminate, the Term shall automatically renew for successive one (1)-year periods, unless either Party provides notices of its desire not to renew not less than thirty (30) days prior to the end of the then current term.

b. Conditions for Breach

- i. DAW will not be deemed to be in violation of this Agreement unless you have first given us written notice specifying the nature of the default, and DAW has failed within thirty (30) days of receipt of the notice either to cure the default or, if cure within such period is not practicable, to be diligently proceeding to cure the default.

c. Account Suspension

- i. Account Suspension means that the DAW Services will no longer be accessible. DAW may suspend access to the DAW Services by you or any member of your staff immediately in the event of a breach of this Agreement or in the event DAW determines in our sole discretion that access to or use of the Services by you or the member of your staff may jeopardize the Services or the confidentiality, privacy, security, integrity or availability of information within the Services, or that you or the member of your staff has violated or may violate this Agreement or our Policies and Procedures, or has jeopardized or may jeopardize the rights of any third party, or that any person is or may be making unauthorized use of the Services. We may terminate the access of any member of your staff upon termination or change in status of his or her employment with you, or in the case of a licensed medical provider a change in the status of the providers active medical license to suspended, under review or inactive. Our election to suspend the Services shall not waive or affect our rights to terminate

this Agreement as permitted under this Agreement. Account suspension for nonpayment may occur as well.

- ii. In the event an account is suspected as having been fraudulently created or an individual's identity has been stolen to create an account, the account will be immediately suspended pending review.
 - 1. There are fees for fraudulent accounts in the amount of \$100/practice to cancel.
 - 2. There are fees for fraudulent users added to an account amounting to \$100/user.
 - 3. There are fraud review fees of \$300/account that are assessed.
- iii. In the event, the electronic network or a pharmacy system provides concern, evidence or a request to investigate prescription activity, the account will be suspended pending review of the issue.
- iv. In the event test prescriptions are sent in production to any pharmacy.
- v. In the event fictional patients are being send in production to any pharmacy.
- vi. In the event that the provider user's first and last name does not match the Identity Proofed name, the account access will be suspended.
- vii. At least one (1) provider must be on all accounts. If all provider users are removed from an account, the account will be suspended.

d. Judicial Requests

- i. We may terminate this Agreement immediately upon notice to you:
 - 1. if you are named as a defendant in a criminal proceeding for a violation of federal or state law;
 - 2. if a finding or stipulation is made or entered into that you have violated any standard or requirement of federal or state law relating to the privacy or security of health information is made in any administrative or civil proceeding;
 - 3. you are excluded from participation in a federal or state health care program; or
 - 4. you cease to be qualified to provide services as a health care professional, or DAW are unable to verify your qualifications as such;
 - 5. to comply with any order issued or proposed to be issued by any governmental agency;
 - 6. to comply with any provision of law, any standard of participation in any reimbursement program, or any accreditation standard; or

7. if performance of any term of this Agreement by either Party would cause it to be in violation of law, or would jeopardize its tax-exempt status.

e. Services and Data Access

- i. Access to the Services and data stored in the Services is provided as long as the terms of this Agreement are complied with. The following conditions must always be met for continued access:
 1. The account has not been suspended.
 2. This agreement has not been breached.
 3. Fees have been paid and account is in good standing (no balance due).
 4. At least 1 provider is active on the account.
 5. Account has not been cancelled.
- ii. In the event that the conditions in 31.e.i. are not met, access to the data will be suspended. A request can be submitted to a DAW sales, an account representative or to support@dawsystems.com to have account access available in a “read-only” form provided payment of fees of the then-current retail license monthly fee is paid for such access; access will be provided in 30-day terms and each term shall require payment. Only one (1) user will have access to the read-only account. Read-only access is in DAW’s discretion and may not be granted to anyone that requests it. In the event read-only access is not granted to the requestor, the requestor will be provided a Microsoft Excel spreadsheet that includes patient name, prescriber of the drug, date of prescription, pharmacy the prescription was sent to and the drug name, strength, quantity directions. DAW may provide additional information. Requestor will need a Microsoft Excel document reader application or Microsoft Excel, obtained at requestor’s own cost, in order to open and view the spreadsheet/report. There is no charge for the report in the event the read-only access is not extended to requestor. Any reports containing PHI must be securely transferred and protected at both rest and while in transit and high degree of care must be taken to avoid any breaches or inadvertent disclosure of PHI data and as a result a secure connection between DAW and the requestor must be utilized in order to deliver the report to the requestor. Reports cannot be emailed without a secure email exchange. DAW reserves the right to risk analyze any requested method of providing the report to the requestor and decline any requested method if it does not comply with HIPAA or State privacy laws; in this event, DAW will provide a method for transfer of the report, file or data.

- iii. In the event that the conditions in 31.e.i. are not met, access to the data will be suspended. A request can be submitted to a DAW sales, an account representative or to support@dawsystems.com for an export of the patient data at anytime. There are fees for requested exports. The fees are \$100/report for basic Microsoft Excel spreadsheet export report that includes patient name, prescriber of the drug, date of prescription, pharmacy the prescription was sent to, the drug name, strength, quantity directions. If an account owner requires a custom report with additional fields or other information or metrics, the request can be submitted and the cost for a custom report is \$500/custom report. Any reports containing PHI must be securely transferred and protected at both rest and while in transit and high degree of care must be taken to avoid any breaches or inadvertent disclosure of PHI data and as a result a secure connection between DAW and the requestor must be utilized in order to deliver the report to the requestor. Reports cannot be emailed without a secure email exchange. DAW reserves the right to risk analyze any requested method of providing the report to the requestor and decline any requested method if it does not comply with HIPAA or State privacy laws; in this event, DAW will provide a method for transfer of the report, file or data.
- iv. Fraudulent accounts and fraudulent users cannot request continued access or reports, unless required by law.

f. Termination/Closing Your Account

- i. You may choose to cancel or terminate your account at any time. If your Services are terminated or your DAW account is cancelled (whether by you or DAW per the Terms of this agreement), a few things happen. First, your right to use the Services stops immediately and your license to use the software related to the Services ends. Second, DAW may duly delete data or your information associated with your DAW account or will otherwise disassociate it from you and your DAW account (unless DAW are required by law to keep it). Third, you may lose access to material or products you've acquired. Fourth, any fees due or owed on any account must be paid in full.
- ii. If you desire to terminate your account and access, please contact DAW using the contact information below. Upon your written request, your account will be deactivated and your personal information may be purged. You can also enter the settings and billing and cancel the account directly in the application.
- iii. Cancellation fees: For Direct end user accounts, defined as those where an account is a direct customer of DAW SYSTEMS, INC. and has directly paid DAW

for the services, a cancel fee equal to one month license fee is charged in order to cancel within the initial term of usage. The initial term, unless specified in writing, is 12 months from the date of account setup. The cancellation fee applied to accounts paid on a monthly basis.

iv. **Contact Information:**

Attn: Support

Daw Systems, Inc.

585 Troy-Schenectady Road, Suite 2

Latham, NY 12110

Main: 866-755-1500

Support@dawsystems.com

- a. The terms of Paragraphs 23-26, 31, 33, 34 and notice requirements will survive termination, cancellation or expiration of these Terms as well as the license terms, access terms, BAA terms and other appropriate paragraphs.

32. Confidential Information

- a. You may not disclose our Confidential Information to any other person, and you may not use any Confidential Information except for the purpose of this Agreement. Confidential information refers to any information relating to DAW business, financial affairs, current or future products or technology, trade secrets, staff, workforce, customers, or any other information that is treated or designated by us as confidential or proprietary, or would reasonably be viewed as confidential or as having value to our competitors. Confidential Information does not include information that DAW make publicly available or that becomes known to the general public other than as a result of a breach of an obligation by you. Confidential Information does not include individuals' health information. Except as otherwise provided in this Agreement, you may not, without our prior written consent, at any time, during or after the Term of this Agreement, directly or indirectly, divulge or disclose Confidential Information for any purpose. In addition, except for the purposes of using the Services, you will not use Confidential Information for any other purposes. You will hold all Confidential Information in strict confidence and to take all measures necessary to prevent unauthorized copying, use, or disclosure of Confidential Information, and to keep the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain its confidentiality. You will disclose Confidential Information only to members of your Workforce who have a need to use it for the purposes of this Agreement. You will inform all such recipients of the confidential nature of Confidential Information and will instruct them to deal with Confidential Information in accordance with the terms of this Agreement. You will promptly advise

us in writing of any improper disclosure, misappropriation, or misuse of the Confidential Information by any person, which may come to your attention.

- b. You agree that DAW will suffer irreparable harm if you fail to comply with your obligations with respect to Confidential Information, and you further agree that monetary damages will be inadequate to compensate us for any such breach. Accordingly, you agree that DAW will, in addition to any other remedies available to us at law or in equity, be entitled to the issuance of injunctive relief to enforce the provisions hereof, immediately and without the necessity of posting a bond.

33. Disclaimers, Warranties and Limitations

a. DISCLAIMER OF WARRANTY

- i. DAW, AND OUR AFFILIATES, RESELLERS, DISTRIBUTORS, AND VENDORS, MAKE NO WARRANTIES, EXPRESS OR IMPLIED, GUARANTEES OR CONDITIONS WITH RESPECT TO YOUR USE OF THE SERVICES. YOU UNDERSTAND THAT USE OF THE SERVICES IS AT YOUR OWN RISK AND THAT WE PROVIDE THE SERVICES ON AN "AS IS" BASIS "WITH ALL FAULTS" AND "AS AVAILABLE." YOU BEAR THE ENTIRE RISK OF USING THE SERVICES. DAW DOESN'T GUARANTEE THE ACCURACY OR TIMELINESS OF INFORMATION AVAILABLE FROM THE SERVICES. TO THE EXTENT PERMITTED UNDER YOUR LOCAL LAW, WE EXCLUDE ANY IMPLIED WARRANTIES, INCLUDING FOR MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, AND NON-INFRINGEMENT. YOU MAY HAVE CERTAIN RIGHTS UNDER YOUR LOCAL LAW. NOTHING IN THESE TERMS IS INTENDED TO AFFECT THOSE RIGHTS, IF THEY ARE APPLICABLE. YOU ACKNOWLEDGE THAT COMPUTER AND TELECOMMUNICATIONS SYSTEMS ARE NOT FAULT-FREE AND OCCASIONAL PERIODS OF DOWNTIME OCCUR. WE DO NOT GUARANTEE THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE OR THAT CONTENT LOSS WON'T OCCUR, NOR DO WE GUARANTEE ANY CONNECTION TO OR TRANSMISSION FROM THE COMPUTER NETWORKS.
- ii. IN NO EVENT WILL DAW OR ITS SUBCONTRACTORS BE LIABLE FOR ANY LOSS OF, OR DAMAGE TO, END USER RECORDS OR DATA. THIS LIMITATION SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSES OF ANY LIMITED REMEDY.
- iii. DAW gives no express warranties, guarantees, or conditions in relation to the application. You may have additional consumer rights under your local laws that this agreement cannot change. If your local laws impose a warranty, guarantee or condition even though these terms do not, its duration is limited to 90 days from when you download the application.

b. Service Providers

- a. YOU ACKNOWLEDGE THAT ACCESS TO THE SERVICES WILL BE PROVIDED OVER VARIOUS FACILITIES AND COMMUNICATIONS LINES, AND INFORMATION WILL BE TRANSMITTED OVER LOCAL EXCHANGE AND INTERNET BACKBONE CARRIER LINES AND THROUGH ROUTERS, SWITCHES, AND OTHER DEVICES (COLLECTIVELY, "SERVICE PROVIDERS") OWNED, MAINTAINED, AND SERVICED BY THIRD-PARTY CARRIERS, UTILITIES, AND INTERNET SERVICE PROVIDERS, ALL OF WHICH ARE BEYOND OUR CONTROL. WE ASSUME NO LIABILITY FOR, OR RELATING TO, THE INTEGRITY, PRIVACY, SECURITY, CONFIDENTIALITY, OR USE OF ANY INFORMATION WHILE IT IS TRANSMITTED ON THE SERVICE PROVIDERS, OR ANY DELAY, FAILURE, INTERRUPTION, INTERCEPTION, LOSS, TRANSMISSION, OR CORRUPTION OF ANY DATA OR OTHER INFORMATION ATTRIBUTABLE TO TRANSMISSION ON THE SERVICE PROVIDERS. USE OF THE SERVICE PROVIDERS IS SOLELY AT YOUR RISK AND IS SUBJECT TO ALL APPLICABLE LOCAL, STATE, NATIONAL, AND INTERNATIONAL LAWS.

c. RISKS YOU ASSUME

- i. WITHOUT LIMITING ANY OF THE OTHER RISKS WE HAVE DISCLOSED TO YOU IN THESE TERMS, YOU ARE SOLELY RESPONSIBLE FOR YOUR USE OF OUR SERVICES, INCLUDING ANY CONTENT YOU SUBMIT TO USE AND YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR USE AND ACCESS TO OUR SERVICES AND THE INFORMATION AND CONTENT CONTAINED THEREIN, AND ANY SITES LINKED THROUGH OUR SERVICES AND ANY DATA TRANSMITTED THROUGH OUR SERVICES IS AT YOUR SOLE RISK. ACCORDINGLY, WE DO NOT ASSUME ANY LIABILITY TO YOU FOR OR RELATING TO ANY OF YOUR ACTIONS, INCLUDING THE PUBLICATION OF ANY CONTENT YOU SUBMIT OR OUR EXERCISE OF THE RIGHTS YOU GRANT TO US WITH RESPECT THERETO.
- ii. YOU ACKNOWLEDGE THAT OTHER USERS HAVE ACCESS TO AND ARE USING OUR SERVICES AND THE ACTIONS OF SUCH OTHER USERS ARE BEYOND OUR CONTROL. ACCORDINGLY, WE DO NOT ASSUME ANY LIABILITY FOR OR RELATING TO ANY IMPAIRMENT OF THE PRIVACY, SECURITY, CONFIDENTIALITY, INTEGRITY, AVAILABILITY, OR RESTRICTED USE OF ANY INFORMATION ON THE SERVICES RESULTING FROM ANY USER'S ACTIONS OR FAILURES TO ACT.
- iii. FURTHERMORE, YOU ARE REQUIRED TO SUBMIT TO US ALL INFORMATION NECESSARY TO CONFIRM YOURSELF AS A PROVIDER AND MAINTAIN THE ACCURACY OF SUCH INFORMATION AND YOU ARE SOLELY RESPONSIBLE FOR

THE MAINTENANCE AND PROPER UPDATING AS NECESSARY IN THE DAW SERVICES OF SUCH INFORMATION (I.E. DEA AND STATE LICENSES, ETC.).

iv. WE ARE NOT RESPONSIBLE FOR UNAUTHORIZED ACCESS TO YOUR DATA, FACILITIES OR EQUIPMENT BY PERSONS USING THE SERVICES OR FOR UNAUTHORIZED ACCESS TO, ALTERATION, THEFT, CORRUPTION, LOSS OR DESTRUCTION OF YOUR DATA FILES, PROGRAMS, PROCEDURES, OR INFORMATION THROUGH THE SERVICES, WHETHER BY ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER MEANS. YOU ARE SOLELY RESPONSIBLE FOR VALIDATING THE ACCURACY OF ALL OUTPUT AND REPORTS, AND FOR PROTECTING YOUR DATA AND PROGRAMS FROM LOSS BY IMPLEMENTING APPROPRIATE SECURITY MEASURES. YOU HEREBY WAIVE ANY DAMAGES OCCASIONED BY LOST OR CORRUPT DATA, INCORRECT REPORTS, OR INCORRECT DATA FILES RESULTING FROM PROGRAMMING ERROR, OPERATOR ERROR, EQUIPMENT OR SOFTWARE MALFUNCTION, SECURITY VIOLATIONS, OR THE USE OF THIRD-PARTY SOFTWARE. WE ARE NOT RESPONSIBLE FOR THE CONTENT OF ANY INFORMATION TRANSMITTED OR RECEIVED THROUGH OUR PROVISION OF THE SERVICES. YOU ACKNOWLEDGE THAT OTHER USERS HAVE ACCESS TO AND ARE USING OUR SERVICES AND THE ACTIONS OF SUCH OTHER USERS ARE BEYOND OUR CONTROL. ACCORDINGLY, WE DO NOT ASSUME ANY LIABILITY FOR OR RELATING TO ANY IMPAIRMENT OF THE PRIVACY, SECURITY, CONFIDENTIALITY, INTEGRITY, AVAILABILITY, OR RESTRICTED USE OF ANY INFORMATION ON THE SERVICES RESULTING FROM ANY USER'S ACTIONS OR FAILURES TO ACT.

v. Each Party hereby represents and warrants (i) that it is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation; (ii) that the execution and performance of this Agreement will not conflict with or violate any provision of any law having applicability to such Party; and (iii) that this Agreement, when executed and delivered, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms. (b) You further represent and warrants (i) that you have the right to disclose and provide to DAW any data provided through use and access of the Services, and (ii) that your use of and access to the Services comply with applicable laws and regulations, including, without limitation, any applicable provisions of the Family Educational Rights and Privacy Act of (FERPA) or Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the rules and regulations promulgated thereunder.

DAW represents and warrants that the Services shall be in compliance with the relevant provisions of the Drug Enforcement Agency's Electronic Prescriptions of Controlled Substances Final Rule as codified in 21 CFR Parts 1300, 1304, 1306, and 1311 (the "DEA Regulations"). You acknowledge and agrees that it shall be responsible for obtaining any third party approvals, certifications or other evidence of compliance with the relevant provisions the DEA Regulations if necessary or applicable.

d. LIMITATION OF LIABILITY AND EXCLUSION OF REMEDIES AND DAMAGES

- i. To the extent not prohibited by law, if you have any basis for recovering damages, you can recover from the application publisher only direct damages up to the amount you paid for the application for the six (6) month period preceding the event of first event that gave rise to the claim or \$1.00, whichever is greater. You will not, and waive any right to, seek to recover any other damages, including lost profits and consequential, special, direct, indirect, or incidental damages, from the application publisher. This limitation applies to anything related to the application or services made available through the application; and claims for breach of contract, warranty, guarantee or condition; strict liability, negligence, or other tort; violation of a statute or regulation; unjust enrichment; or under any other theory; all to the extent permitted by applicable law. It also applies even if this remedy doesn't fully compensate you for any losses.

e. ASSURANCES

- i. If you are the owner or administrator, you represent and warrant that (i) you have the authority to act on such Provider's behalf or to control account(s) or data, and (ii) your request or direction is not in furtherance of any purpose or action that would violate any provision of this Agreement, applicable law or the rights of any person or entity. YOU HEREBY WAIVE AND UNCONDITIONALLY RELEASE US, OUR AFFILIATES, AND OUR AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, FROM ANY AND ALL CLAIMS, DEMANDS, DAMAGES, DEBTS, LIABILITIES, EXPENSES, ACTIONS AND CAUSES OF ACTIONS OF EVERY KIND AND NATURE, WHETHER NOW KNOWN OR UNKNOWN, ARISING OUT OF OR IN CONNECTION WITH ANY ACTION WE TAKE OR DO NOT TAKE IN RESPONSE TO ANY REQUEST, DIRECTION, INFORMATION, CERTIFICATION, ASSURANCE OR INSTRUMENTS WE RECEIVE FROM YOU. ACCORDINGLY, YOU AGREE TO WAIVE THE BENEFIT OF ANY LAW WHICH STATES A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS

OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR. You hereby agree to indemnify, defend, and hold harmless us and other users, and our and their respective affiliates, officers, directors, employees and agents, from and against any claim, cost or liability, including reasonable attorneys' fees arising from:

- a. any action DAW take in reliance on any information, certification, assurance or instrument you provide to us, or,
- b. any action DAW take that complies with any request or direction you at any time make or made.

34. Arbitration Procedure & Governing Law

- a. Claims for enforcement, breach or violation of duties or rights under these Terms will be adjudicated under the laws of the State of New York, without reference to conflict of laws principles. You hereby irrevocably consent to the exclusive jurisdiction and venue of state or federal courts in Albany, NY, USA in all disputes arising out of or relating to the use of the Services.
 - i. In the event of a dispute, the parties shall meet and confer in good faith to resolve such dispute. In the event such efforts do not resolve the dispute within thirty (30) days from the date the dispute arises, either party shall have the right to demand arbitration administered and conducted in Albany, NY, by the American Arbitration Association, before one (1) arbitrator, under its Commercial Arbitration Rules, such arbitration to be final, conclusive, and binding. The arbitral tribunal shall not be empowered to award damages in excess of any compensatory damages, and you hereby irrevocably waive any right to recover punitive, exemplary, or similar damages with respect to any Dispute. Judgment on the award rendered by the arbitrator may be entered by any court having proper jurisdiction. This provision shall survive termination of this Agreement. Notwithstanding the foregoing, any party may seek or assert entitlement to injunctive relief or specific performance in court as an initial matter and shall have no prior obligation to establish in arbitration the entitlement to injunctive relief or specific performance. In the event of a Dispute resolved by arbitration in accordance with this Section or otherwise by judicial order, the arbitrator or court, as the case may be, may award to the prevailing party, if any, reasonable attorney's fees, expenses, and costs which it incurs as a result thereof. Any such award will be in addition to any and all other remedies, which shall be cumulative.

- ii. YOU HAVE LIMITED TIME TO BRING A CLAIM: YOU AND DAW AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE DAW SERVICES MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.
- iii. THE PARTIES AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN AN INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF, CLASS MEMBER, OR PRIVATE ATTORNEY GENERAL IN ANY PURPORTED CLASS, REPRESENTATIVE, OR PRIVATE-ATTORNEY-GENERAL PROCEEDING. BY ENTERING INTO THIS AGREEMENT, YOU AND WE ARE EACH WAIVING THE RIGHT TO A JURY TRIAL OR TO PARTICIPATE IN A CLASS ACTION. THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIM WITH YOUR CLAIMS OR OUR CLAIMS AND MAY NOT OTHERWISE PRESIDE OVER ANY REPRESENTATIVE, CLASS, OR PRIVATE-ATTORNEY-GENERAL PROCEEDING. THE ARBITRATOR MAY AWARD DECLARATORY OR INJUNCTIVE RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT PARTY'S INDIVIDUAL CLAIM.
- iv. DAW shall have no liability for outages of the Services.
- v. Attorneys' Fees:
 - a. If any action or proceeding, including without limitation arbitration, is brought for the enforcement of, or because of an alleged dispute, breach or default in connection with any of the provisions of these Terms of Service, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

35. Miscellaneous

- a. We may assign these Terms, in whole or in part, at any time without notice to you.
- b. You may not assign your rights or obligations under these Terms or transfer any rights to use the Services, unless expressly permitted herein.
- c. Entire Agreement**
 - a. This is the entire agreement between you and DAW, including any policies referenced in these Terms for your use of the Services. There are no other written or oral understandings or promises between the Parties with respect to the subject matter of this Agreement other than those contained or referenced in this Agreement.
 - b. These terms supersede any prior agreements between you and DAW regarding your use of the Services.

- c. All parts of these Terms apply to the maximum extent permitted by relevant law.
- d. **Force Majeure**
 - vi. If DAW performance under these terms are interfered with by reason of any circumstances beyond its reasonable control, including, without limitation, airline schedules, weather, fire, explosion, main power failure, telecommunications or internet failure, corruption of a Service by a computer virus, acts of God, war, revolution, civil commotion, acts of public enemies, any law, order, regulation, ordinance or requirement of any government body or representative of any such legal body, labor unrest, including without limitation, strikes, slowdowns, picketing or boycotts, then DAW shall be excused from its performance on a day-for-day basis to the extent of such interference.
- e. **Subcontracting**
 - i. DAW may subcontract any or all of the Services to be provided under these Terms.
- f. **Intellectual Property**
 - a. DAW retains all right, title, and interest in the DAW Services and any documentation or help menus and agreements, the interface software, and all related materials, including all copies thereof in any form or medium, whether now known or existing or hereafter developed, and further including all copyrights, patents, trade secrets, trademarks or trade names therein. All goodwill arising in or from the DAW shall inure solely to DAW's benefit. Except to the extent granted herein, you acquire no rights in any of the foregoing.
- g. **Notice**
 - i. DAW respects the intellectual property rights of third parties. If you wish to send a notice of intellectual property infringement, including claims of copyright infringement, please contact us. ALL INQUIRIES NOT RELEVANT TO THIS PROCEDURE WILL NOT RECEIVE A RESPONSE. DAW uses the processes set out in Title 17, United States Code, Section 512 to respond to notices of copyright infringement.
 - ii. Notices and other similar communications may be transmitted via email. If you supply us with an electronic mail address, DAW may give notice by email message addressed to such address. Such notices and communications shall be deemed effective when received. DAW and users may also provide notices by regular mail or fax. Delivery and notice shall be considered effective four (4) days after the date of mailing or upon receipt as evidenced by the U.S.

Postal Service return receipt card if sent by certified mail, or upon receipt if sent by facsimile or overnight courier. Either party may change the address to which its notices are to be sent by notice to the other party conforming to this Section.

a. If notice is mailed to DAW, send to:

i. Attn: Support

Daw Systems, Inc.

585 Troy-Schenectady Road, Suite 2

Latham, NY 12110

Main: 866-755-1500

Support@dawsystems.com

h. Severability

i. In the event any one or more of the provisions, or any part thereof, contained in these Terms shall for any reason be held to be unenforceable or invalid in any respect by a court of competent jurisdiction, such provision(s) or part thereof shall be stricken from these Terms and not affect the other provisions or the validity of the Terms in its entirety.

i. Headings

i. Paragraph headings used in these Terms are for reference purposes only and shall not be interpreted to limit or affect in any way the meaning of the language contained in such paragraphs.

j. Copyright & Trademark Notices:

i. The Services are copyright © 2016-2017 DAW, LLC. All rights reserved. DAW and the names, logos, and icons of all DAW products, applications, software and services may be either trademarks or registered trademarks of DAW in the United States and/or other countries. The names of actual companies and products may be the trademarks of their respective owners. Any rights not expressly granted in these Terms are reserved.

k. Electronic Transactions

a. YOU ACKNOWLEDGE THAT YOUR ELECTRONIC SUBMISSIONS VIA THE SERVICES IN CONNECTION WITH SUCH ACTIVITIES CONSTITUTE YOUR AGREEMENT AND INTENT TO BE BOUND BY SUCH AGREEMENTS AND TRANSACTIONS, AND APPLIES TO ALL RECORDS RELATING TO SUCH TRANSACTIONS. You represent and warrant that you have the authority to take such actions.

l. Waiver

a. No term of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed

to have waived or consented. Any consent by any Party to, or waiver of a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

m. Documentation

- i. If documentation is provided with the application, you may copy and use the documentation for personal reference purposes only.

n. No Third-Party Beneficiaries

- a. Except as expressly provided herein, nothing express or implied in this Agreement is intended to confer, nor shall confer, upon any person or entity other than the parties and their respective successors or assigns any rights, remedies, obligations, or liabilities whatsoever.

o. Export Restrictions

- i. DAW is intended to only be used within the U.S. The application may be subject to United States or international technology control or export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to the technology used or supported by the application. These laws include restrictions on destinations, end users, and end use.

p. Amendments, Modifications, & Services Updates

- i. We may update or change our Services or the provisions set forth in these Terms from time to time and recommend that you review these Terms on a regular basis. You understand and agree that your continued use of our Services after these Terms have been updated or changed constitutes your acceptance of the revised Terms. Without limiting the foregoing, if DAW make a change to these Terms that materially affects your use of the Services, DAW may post notice on DAW's Website or notify you via of any such change. The most current version of the Terms shall govern and supersede all previous versions.
- ii. If you don't agree to the new terms, you must stop using the Services and close your DAW account of the account of which you are an administrator, owner, user, custodian or guardian.
- iii. Sometimes you'll need software updates to keep using the Services. We may automatically check your version of the software and download software updates or configuration changes, including those that prevent you from accessing the Services. Updates will be subject to the terms of any application delivery partners. Please review their terms and policies regarding the delivery of application updates. Such updates are subject to these Terms

unless other terms accompany the updates, in which case, those other terms apply. DAW isn't obligated to make any updates available and DAW don't guarantee that DAW will support the version of the system for which you licensed the software.

- iv. There may be times when DAW need to remove or change features or functionality of the Service or stop providing a Service or access to Third-Party Apps and Services altogether. Except to the extent required by applicable law, DAW have no obligation to provide a re-download or replacement of any material. Note: We may release the Services or their features in a beta version, which may not work correctly or in the same way the final version may work.

If you have any questions regarding this Services Agreement and Terms of Use, please contact us at support@dawsystems.com

END OF AGREEMENT – Version 1.4 – January 15, 2022