

M2S, Inc.
Terms and Conditions

These Terms and Conditions supplement and amend the Services Agreement between **Customer** and **M2S, Inc.** related to Customer's use of M2S's products and systems (collectively, **M2S Products**), including but not limited to **PEMS** (Patient Evaluation & Management System™), Preview® Treatment Planning Software, and Clinical Data Pathways System (**Pathways**).

CUSTOMER HEREBY ACCEPTS THE TERMS AND CONDITIONS STATED BELOW IN A LEGALLY BINDING MANNER AS OF THE EFFECTIVE DATE OF CUSTOMER'S SERVICES AGREEMENT.

PROPRIETARY RIGHTS AND CONDITIONS: All right, title and interest including, but not limited to, copyright and other intellectual property rights in and to all M2S Products, including without limitation the website, programs, procedure forms and designs as well as the patents, trademarks, applications and other intellectual property associated therewith, are owned by M2S, Inc. None of the foregoing is a "work-made-for-hire". Such rights are protected by United States copyright laws, other applicable copyright laws, and international treaty provisions. M2S, Inc. retains all rights not expressly granted herein.

Customer shall not copy, modify, redistribute, sell, decompile, reverse engineer, or disassemble or otherwise tamper with any M2S Products. M2S Products, including any modified or customized versions, cannot be resold, redistributed, or offered as a service without explicit written permission from M2S, Inc.

LICENSES: Customer is hereby granted a limited, non-transferable license to access and use the M2S Products governed by Customer's Services Agreement. This license does not grant any reseller privileges.

DISCLAIMER OF WARRANTIES: To the extent allowed by local law, the M2S Products are provided to Customer "as is" without warranties or conditions of any kind, whether oral or written, express or implied. M2S, Inc. specifically disclaims any implied warranties or conditions of merchantability, satisfactory quality, non-infringement and fitness for a particular purpose.

LIMITATION OF LIABILITY: Except to the extent prohibited by local law, in no event will M2S, Inc., or its employees, owners, officers, directors, shareholders, agents, or subcontractors be liable for direct, special, incidental, consequential or other damages (including lost profit, lost data, or downtime costs), arising out of the use, inability to use, or the results of use of M2S Products, whether based in warranty, contract, tort or other legal theory, and whether or not advised of the possibility of such damages, or for any claim by any third party. Customer's use of M2S Products is entirely at its own risk.

COMPLIANCE WITH LAW: M2S and Customer shall comply with all applicable laws. Each party represents and warrants to the other that to the best of its knowledge: (a) neither it nor any of its principals or affiliates are excluded from participation under any federal health care program, as defined under 42 U.S.C. § 1320a-7b(f); (b) neither party has arranged or contracted (by employment or otherwise) with any employee, contractor or agent that it or its affiliates know or

should know are excluded from participation in any federal health care program; and (c) no final adverse action, as such term is defined under 42 U.S.C. § 1320a-7e(g), has occurred or is pending against it or its affiliates or to its knowledge against any employee, contractor or agent engaged to provide items or services under this Agreement; and, shall notify the other party of any event covered by (a) through (c) above on any basis therefore within seven (7) business days of its learning of any such event.

CONFIDENTIALITY: M2S shall comply with the terms and conditions of the Business Associate Agreement between the parties. Notwithstanding the foregoing, the parties agree that: M2S may make all uses and disclosures of HIPAA protected health information provided by Customer to M2S since the Effective Date of the Services Agreement (collectively, **PHI**) necessary to perform its obligations to Customer under the Services Agreement or pursuant to Customer's written instructions, provided that such use or disclosure would not violate HIPAA if done by Customer. Customer further agrees that: (1) M2S may use PHI for the proper management and administration of M2S or to carry out the legal responsibilities of M2S; (2) unless specifically prohibited by the Services Agreement, M2S may de-identify PHI obtained from Customer or generated by M2S on Customer's behalf and then use or disclose that de-identified information to compile or distribute statistical analyses, reports, or databases for Business Associate's commercial purposes, (3) M2S may use and disclose PHI to create de-identified information and use and disclose the de-identified information for research or any other purpose provided that the de-identification conforms to HIPAA requirements, and (4) M2S may disclose PHI for the proper management and administration of M2S or to carry out the legal responsibilities of M2S, if (a) the disclosure is required by law; or (b)(1) M2S obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person; and (2) the person notifies M2S of any instances of which it is aware in which the confidentiality of the information has been breached. M2S may use and disclose PHI to provide data management services relating to the health care operations of the Customer as permitted by HIPAA.

DATA SECURITY: Customer must make every attempt to safeguard Customer's data and other files while uploading or downloading it from M2S Products. M2S, Inc. does not assume responsibility for loss of data or any other losses that result from updating or downloading Customer data.

APPLICABLE LAW: This agreement shall be governed by and construed in accordance with the laws of Delaware.

AMENDMENTS AND WAIVERS: No amendment or waiver shall be enforced unless in writing and signed by both parties.

GENERAL DISCLAIMER: M2S, Inc. neither assumes nor accepts any liability for any loss, damage, theft, misuse, malfunction, etc. of Customer's hardware or data or anything else that Customer may own regardless of the cause or reason for any such misfortune. These policies, terms, and conditions may be subject to change without notice.