

OUTCOMEMD TERMS OF SERVICE

Last Revised: September 8, 2020

As set forth in these Terms of Service, OutcomeMD, Inc. ("**OutcomeMD**", "**we**" or "**us**") grants you the right to use the website located at outcomemd.com (the "**Site**"), our software applications, including our mobile apps ("**Software**" or "**Apps**"), and services provided through the Site or Software (together, the "**Service**"), subject to the terms and conditions set forth below. The term "you" refers to the person visiting the Site or using the Service.

PLEASE READ THESE TERMS OF SERVICE CAREFULLY. BY CLICKING "ACCEPT" OR ACCESSING THE SERVICE, YOU AGREE TO BE BOUND BY THE TERMS OF SERVICE. IF YOU DO NOT WISH TO BE BOUND BY THESE TERMS OF SERVICE, YOU MAY NOT ACCESS OR USE THE SERVICE. BY ACCEPTING THESE TERMS OF SERVICE OR BY USING THE SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THESE TERMS OF SERVICE, INCLUDING OUTCOMEMD'S PRIVACY POLICY (TOGETHER, THE "**TERMS**"). If you are not eligible, or do not agree to the Terms, then do not click "Accept" and do not use the Service.

THE SERVICE IS INTENDED ONLY TO SOLICIT, RECORD, STORE, AND TRANSMIT INFORMATION THAT YOU SUBMIT AND INFORMATION RELATED TO THE QUALITY AND OUTCOME OF HEALTHCARE SERVICES PROVIDED TO YOU OR YOUR DEPENDENTS ("**RESPONSE DATA**"). YOU, AS THE USER OF THE SERVICE, ARE RESPONSIBLE FOR THE RESPONSE DATA RECORDED AND STORED BY THE SERVICE. THE SERVICE IS NOT INTENDED TO DIAGNOSE OR TREAT ANY MEDICAL CONDITION OR AUTOMATICALLY ALERT YOU OR YOUR HEALTHCARE CLINICIANS TO ANY MEDICAL CONDITIONS. ALTHOUGH OUTCOMEMD MAY ENABLE YOU TO TRANSMIT RESPONSE DATA TO YOUR HEALTHCARE CLINICIAN, THE SERVICE IS NOT INTENDED FOR COUNTINUOUS MONITORING, AND WE DO NOT GUARANTEE A RESPONSE BY ANY HEALTHCARE CLINICIAN TO RESPONSE DATA REPORTED THROUGH THE SERVICE OR THAT A CLINICIAN WILL SEE THE RESPONSE DATA.

- 1. Use of the Service.** The Service is intended to allow you to record and report certain measures of the quality and outcomes of healthcare services provided to you, provide analyses and reports about such data, and share such data with your healthcare clinicians. You may not access or use the Service for any purpose not identified by us as permissible. You may use the Service, including any data presented to you on or by the Service, or otherwise hosted or stored by OutcomeMD for you, only for lawful and appropriate purposes on your own behalf, and subject to your full compliance with these Terms and any other guidelines and policies applicable to the Service that OutcomeMD may post from time to time.

2. **Eligibility.** You must be at least 13 years of age to use the Service. By agreeing to these Terms, you represent and warrant to us that: (a) you are at least 13 years of age; (b) you have not previously been suspended or removed from the Service; (c) your registration and your use of the Service is in compliance with all applicable laws and regulations in your local jurisdiction; (d) an emancipated minor; (e) possess the consent of a legal parent and/or guardian; and/or (f) creating an account to use the Service for the benefit of a minor for whom you are the legal parent and/or guardian.
3. **Accounts and Registration.** To access most features of the Service, you must register for an account. When you register for an account, you may be required to provide us with information about yourself, such as your email address or other contact information. You agree that the information you provide to us is accurate and that you will keep it accurate and up-to-date at all times. When you register, you will be asked to provide a password. You are solely responsible for maintaining the confidentiality of your account and password, and you accept responsibility for all activities that occur under your account. If you have reason to believe that your account is no longer secure, then you must immediately notify us at patientsupport@outcomemd.com. Your account may automatically expire following any period of inactivity associated with your account in excess of twelve (12) consecutive months.
4. **License.** OutcomeMD owns and operates the Service. The documents and other information and content available on the Service (the "**Site Content**") are protected by copyright and other intellectual property laws throughout the world. All copyright and other proprietary notices on any Site Content must be retained on any copies made of Site Content. Any unauthorized reproduction, modification, distribution, public display or public performance of any Site Content is strictly prohibited. OutcomeMD and its suppliers reserve all rights not granted in these Terms.

Subject to the restrictions set forth in these Terms, OutcomeMD grants you a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to install and use the Apps in object code format on devices that you own or control, solely for use with the Services. By downloading or using our App(s), you:

- 4.1 Acknowledge that the Apps are licensed, not sold to you; and
 - 4.2 Acknowledge that third party terms and fees may apply to the use and operation of your device in connection with your use of the Apps, such as your carrier's terms of services, and fees for phone service, data access, or messaging capabilities, and that you are solely responsible for payment of any and all such fees.
5. **Analysis and Recommendations.** Under some circumstances, OutcomeMD may present you with notifications, emails, text messages, or suggested actions based on OutcomeMD's analysis of your historical data and other information you or your healthcare

clinicians have provided to OutcomeMD. Those notifications or suggested actions, or lack thereof, are not an indication of your health, nor are those notifications or suggested actions intended to replace the opinion of your clinician. It is your responsibility to present your symptoms to your clinician, and to discuss with your clinician what the proper course of action is based on your medical history. OutcomeMD makes no representations about accuracy, reliability, completeness, or timeliness of any push notifications, as parts of the process for providing such notifications are outside of OutcomeMD's control. You accept that any reliance on these notifications will be at your own risk, and OutcomeMD disclaims all liability arising from your use of them. You agree that OutcomeMD may send push notifications to your mobile device for Service-related or marketing purposes, if they are enabled and in accordance with the OutcomeMD Privacy Policy. You may be able to turn off push notifications through your account settings.

6. **User Representations and Warranties.** You represent, warrant, and covenant to OutcomeMD that (1) you are a resident of the United States of America or another country where OutcomeMD explicitly makes the Service available; (2) these Terms have been executed and delivered by you and constitute a valid and binding agreement with you, enforceable against you in accordance with their terms; (3) you will not access or use the Service except as expressly permitted by these Terms and any additional instructions, guidelines or policies issued by OutcomeMD, including those posted in the Service; (4) you will access and use the Service in full compliance with applicable law; and (5) all of the information, data and other materials provided by you in support of your account registration are accurate and truthful in all respects.

7. User Content

7.1 User Content Generally. Certain features of the Service may permit you or other users to upload content to the Service, including notes, data, text, images, and other types of information ("**User Content**") and to publish User Content on the Service or to third party sites or services. You retain the copyrights, including any moral rights, and any other proprietary rights that you may hold in the User Content that you post to the Service; provided that if you choose to (i) submit Response Data to your healthcare clinician, any data provided to your healthcare clinician may become part of your health record, and that copy of such data may be owned and/or controlled by your healthcare clinician under applicable law or (ii) post to a third party site or service then the terms of that third party site or service will control.

7.2 Limited License Grant to OutcomeMD. By posting or publishing User Content in the Service, you grant OutcomeMD a perpetual, irrevocable, worldwide, non-exclusive, royalty-free, fully paid, transferable right and license (with the right to sublicense) to use, host, store, transfer, display, perform, reproduce, modify, create derivative works of, and distribute your User Content, in whole or in part, for any purpose in accordance with our Privacy Policy, in any media formats and through any media

channels now known or hereafter developed. We may also create anonymized data and reports from your User Content, and such data and reports will no longer be your User Content. You irrevocably and forever waive any rights you may have regarding your User Content being altered or manipulated in any way that may be objectionable to you. OutcomeMD reserves the right to refuse to accept, post, display, or transmit any of your User Content in its sole discretion.

7.3 Limited License Grant to Other Users. By posting or sharing User Content with other users of the Service, or connecting your account to your healthcare clinician, you grant those users and/or healthcare clinicians a non-exclusive license to access and use that User Content as permitted by these Terms and the functionality of the Service.

7.4 User Content Representations and Warranties. You are solely responsible for your User Content and the consequences of posting or publishing User Content. By posting or publishing User Content, you affirm, represent, and warrant that:

- a. you are the creator and owner of the User Content, or have the necessary licenses, rights, consents, and permissions to authorize OutcomeMD and users of the Service to use and distribute your User Content as necessary to exercise the licenses granted by you in this section, in the manner contemplated by OutcomeMD, the Service, and these Terms; and
- b. your User Content, and the use of your User Content as contemplated by these Terms, does not and will not: (i) infringe, violate, or misappropriate any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (ii) slander, defame, libel, or invade the right of privacy, publicity or other property rights of any other person; or (iii) cause OutcomeMD to violate any law or regulation.

You agree to pay for any and all royalties, fees, or other monies owing any person by reason of User Content you post on or through the Service.

7.5 User Content Disclaimer. We are under no obligation to edit or control User Content that you or other users post or publish, and will not be in any way responsible or liable for User Content. OutcomeMD may, however, at any time and without prior notice, screen, remove, edit, or block any User Content that in our sole judgment violates these Terms or is otherwise objectionable. You understand that when using the Service you will be exposed to User Content from a variety of sources and acknowledge that User Content may be inaccurate, offensive, indecent, or objectionable. To the fullest extent allowed under applicable law, you agree to waive, and do waive, any legal or equitable right or remedy you have or may have against OutcomeMD with respect to User Content. We expressly disclaim any and all liability in connection with User Content, to the fullest extent allowed under applicable law. If

notified by a user or content owner that User Content allegedly does not conform to these Terms, we may investigate the allegation and determine in our sole discretion whether to remove the User Content, which we reserve the right to do at any time and without notice.

8. Procedure for Unlawful User Content

- 8.1** If you believe that any User Content does not conform to these Terms, please notify us.

We comply with the provisions of the Digital Millennium Copyright Act (the “DMCA”) applicable to our operations (17 U.S.C. §512, as amended). If you have an intellectual property rights-related complaint about material posted on the Service, you may contact our designated agent at the following address:

OutcomeMD, Inc.
ATTN: Legal Department (Copyright Notification)
OutcomeMD, Inc.
8155 Beverly Blvd.
Los Angeles, CA 90048
Email: support@outcomemd.com

Please note that under applicable law, if you knowingly give false, misleading or inaccurate information that User Consent is infringing, you may be subject to civil or criminal penalty.

Any notice under the DMCA alleging that materials hosted by or distributed through the Service infringe intellectual property rights must include all of the information required by the DMCA for such notices.

- 8.2 Repeat Infringers.** OutcomeMD will promptly terminate without notice the accounts of users that are determined by OutcomeMD to be “**Repeat Infringers.**” A Repeat Infringer is a user who has been notified of infringing activity or has had User Content removed from the Service at least three times.

9. Prohibited Conduct. BY USING THE SERVICE YOU AGREE NOT TO:

- 9.1** use or access the Service (a) from a jurisdiction where such use or access is not authorized, (b) for any illegal purpose, or (c) in violation of any local, state, national, or international law;
- 9.2** conduct activities that may be harmful to others or that could damage OutcomeMD’s reputation;

- 9.3** violate, or encourage others to violate, any right of a third party, including by infringing or misappropriating any third party intellectual property right, or disclosing personal information about another person;
- 9.4** post, upload, or distribute marketing or advertising links or content, or any User Content or other content that is unlawful, defamatory, libelous, inaccurate, or that a reasonable person could deem to be objectionable, profane, indecent, pornographic, harassing, threatening, embarrassing, hateful, or otherwise inappropriate;
- 9.5** use scrapers, robots, or other data gathering devices on or through the Service, or frame or otherwise provide the Service to third parties without OutcomeMD's permission;
- 9.6** interfere with security-related features of the Service, including by: (a) disabling or circumventing features that prevent or limit use or copying of any content; or (b) reverse engineering, decompiling, or otherwise attempting to discover the source code of any portion of the Service, including the Apps, except to the extent that such activity is expressly permitted by applicable law notwithstanding this restriction;
- 9.7** interfere with the operation of the Service or any user's enjoyment of the Service, including by: (a) uploading or otherwise disseminating any virus, adware, spyware, worm, or other malicious code; (b) making any unsolicited offer or advertisement to another user of the Service; (c) attempting to collect personal information, including without limitation Response Data or other health information, about another user or third party without their consent; or (d) interfering with or disrupting any network, equipment, or server connected to or used to provide the Service, or violating any regulation, policy, or procedure of any such network, equipment, or server;
- 9.8** perform any fraudulent activity including impersonating any person or entity, claiming a false affiliation, accessing any other Service or account without permission, or falsifying your account registration information;
- 9.9** modify, translate, or create derivative works, adaptations or compilations of, or based on, the Service or part thereof, or use, copy or reproduce the Service or any part thereof other than as expressly permitted in these Terms;
- 9.10** assign, sublicense, lease, sell, grant a security interest in, or otherwise transfer the access granted under these Terms or any Materials (as defined in Section 14) or any right or ability to view, access, or use any Material; or
- 9.11** attempt to do any of the acts described in this Section 9, or assist or permit any person in engaging in any of the acts described in this Section 9.

- 10. Third-Party Services and Linked Websites.** The Site may contain links to other websites and services operated by third parties, including social media services. Such third party websites and services are not under the control of OutcomeMD and we are not responsible for the content of any third party website or service or any link contained in a third party website or service. OutcomeMD provides these links only as a convenience and does not review, approve, monitor, endorse, warrant, or make any representations with respect to third party websites or services.

OutcomeMD may provide tools through the Service that enable you to export information, including without limitation Response Data and User Content, to third party applications or services, such as those provided by your healthcare clinician, or import information from such third party applications or services, including through features that allow you to link your account on OutcomeMD with an account on the third party service. By using one of these tools, you represent, warrant, and agree that such transfers are permitted under applicable law and that you are authorized to, and that we may on your behalf, transfer that information to or from the applicable third party service. Third party services are not under our control, and we are not responsible for any third party service's use of your exported information. If you enable the features of the Service that are designed to import information from such third party services, you hereby authorize and grant OutcomeMD a perpetual, irrevocable license to use such imported information and disclose it to third parties such as your healthcare professional in accordance with our Privacy Policy and applicable law. The Service may also contain links to third-party websites. Linked websites are not under our control, and we are not responsible for their content.

- 11. Termination of Use; Discontinuation and Modification of the Service.** You may terminate your account at any time by following the procedures detailed on the OutcomeMD website or contacting customer service at patientsupport@outcomemd.com. If you violate any provision of these Terms, your permission from us to use the Service will terminate automatically. In addition, OutcomeMD may in its sole discretion terminate your user account on the Service or suspend or terminate your access to the Service at any time if you violate any provision of these Terms, if we no longer provide any part of the Services or for any other reason, with or without notice. We also reserve the right to modify or discontinue the Service at any time (including by limiting or discontinuing certain features of the Service), temporarily or permanently, without notice to you. To the fullest extent permitted under applicable law, we will have no liability on account of any change to the Service or any suspension or termination of your access to or use of the Service, provided that if OutcomeMD ceases to operate the Service and terminates your access to the Service accordingly, then you will be entitled to a pro-rated refund of any prepaid fees that you have paid to OutcomeMD for use of the Service. Upon the termination of your account for any reason, subject to applicable law or contractual obligations, OutcomeMD may at its option delete any data associated with your account.

- 12. Privacy Policy; Additional Terms**

- 12.1 Privacy Policy.** Please read OutcomeMD's Privacy Policy at OutcomeMD.com/privacypolicy carefully for information relating to our collection, use, storage and disclosure of your personal information. The Privacy Policy is incorporated by this reference into, and made a part of, these Terms. You consent to the collection, hosting, use, disclosure and other processing or handling of your personal information (including sharing data with third party providers) as described in the Privacy Policy.
- 12.2 Additional Terms.** Your use of the Service is subject to all additional terms, policies, rules, or guidelines applicable to the Service or certain features of the Service that we may post on or link to from the Service (the "**Additional Terms**"), such as end-user license agreements for any downloadable software applications, or rules that are applicable to a particular feature or content on the Service, subject to Section 13. All Additional Terms are incorporated by this reference into, and made a part of, these Terms.
- 13. Modifications to these Terms.** We reserve the right, at our discretion, to change these Terms on a going-forward basis at any time. Please check these Terms periodically for changes. If a change to these Terms materially modifies your rights or obligations, we will notify you of the modified Terms by email to the address you provided in your user profile and/or in a notification in the Service or on our website. Material modifications will be effective upon your acceptance of such modified Terms or upon your continued use of the Service after we send or post our notification of the changes, whichever is earlier. Immaterial modifications are effective upon publication. Disputes arising under these Terms will be resolved in accordance with the version of these Terms that was in effect at the time the dispute arose. Your sole and exclusive remedy if you do not agree with any modification to these Terms is to cancel your account. You may not amend or modify these Terms under any circumstances.
- 14. Ownership; Proprietary Rights.** The Service is owned and operated by OutcomeMD. The visual interfaces, graphics, design, compilation, information, data, computer code (including source code or object code), products, software, services, and all other elements of the Service ("**Materials**") provided by OutcomeMD are protected by intellectual property and other laws. All Materials included in the Service are the property of OutcomeMD or our third-party licensors. Except as expressly authorized by OutcomeMD, you may not make use of the Materials. OutcomeMD reserves all rights to the Materials not granted expressly in these Terms.
- 15. Subcontractors.** You hereby consent to OutcomeMD's engagement of third parties (including OutcomeMD's affiliates) to perform, or support the performance of, all or any portion of the Service or the OutcomeMD website, such as the clinical interpretation service.

- 16. Feedback.** If you choose to provide input and suggestions regarding problems with or proposed modifications or improvements to the Service ("**Feedback**"), then you hereby grant OutcomeMD an unrestricted, perpetual, irrevocable, non-exclusive, fully-paid, royalty-free right to exploit the Feedback in any manner and for any purpose, including to improve the Service and create other products and services.
- 17. Indemnity.** To the fullest extent permitted under applicable law, you are responsible for your use of the Service, and you will indemnify, hold harmless, and, if so directed by OutcomeMD, defend OutcomeMD and its officers, directors, employees, consultants, affiliates, subsidiaries and agents (together, the "**OutcomeMD Entities**") from and against every claim, liability, damage, loss, and expense, including reasonable attorneys' fees and costs, arising out of or in any way connected with: (a) your access to, use of, or alleged use of, the Service; (b) your violation of any portion of these Terms, any representation, warranty, or agreement referenced in these Terms, or any applicable law or regulation; (c) your violation of any third-party right, including any intellectual property right or publicity, confidentiality, other property, or privacy right; (d) any dispute or issue between you and any third party; and (e) all claims arising from or alleging fraud, intentional misconduct, criminal acts, or gross negligence committed by you. To the fullest extent permitted under applicable law, we reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (without limiting your indemnification obligations with respect to that matter), and in that case, you agree to cooperate with our defense of that claim.

18. Disclaimers; No Warranties

THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE ARE PROVIDED "**AS IS**" AND ON AN "**AS AVAILABLE**" BASIS, WITHOUT WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED. THE OUTCOMEMD ENTITIES DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE SERVICE, ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE, AND ANY SOFTWARE OR HARDWARE ASSOCIATED OR USED WITH THE SERVICE, OR THE AVAILABILITY OF ANY OF THE FOREGOING, INCLUDING: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; (B) ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE; AND (C) ANY WARRANTY AS TO WHETHER THE RESPONSE DATA OR OTHER INFORMATION AVAILABLE ON OR TRANSMITTED BY THE SERVICE IS TRUE, COMPLETE OR ACCURATE. YOU SPECIFICALLY ACKNOWLEDGE AND AGREE THAT OUTCOMEMD IS NOT RESPONSIBLE FOR ANY HEALTHCARE OR RELATED DECISIONS MADE BY YOU OR YOUR HEALTHCARE CLINICIAN BASED UPON DATA COLLECTED, TRANSMITTED OR DISPLAYED BY OR ON THE SERVICE, WHETHER SUCH DATA IS ACCURATE OR INACCURATE. THE OUTCOMEMD ENTITIES DO NOT WARRANT THAT THE SERVICE OR ANY PORTION OF THE SERVICE, OR ANY MATERIALS OR CONTENT OFFERED THROUGH THE SERVICE, WILL BE UNINTERRUPTED, SECURE, OR FREE OF

ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND DO NOT WARRANT THAT ANY OF THOSE ISSUES WILL BE CORRECTED.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE SERVICE OR ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE WILL CREATE ANY WARRANTY REGARDING ANY OF THE OUTCOMEMD ENTITIES OR THE SERVICE THAT IS NOT EXPRESSLY STATED IN THESE TERMS. YOU ASSUME ALL RISK FOR ANY DAMAGE THAT MAY RESULT FROM YOUR USE OF OR ACCESS TO THE SERVICE, YOUR DEALING WITH ANY OTHER SERVICE USER, AND ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE. YOU UNDERSTAND AND AGREE THAT YOU USE THE SERVICE, AND USE, ACCESS, DOWNLOAD, OR OTHERWISE OBTAIN MATERIALS OR CONTENT THROUGH THE SERVICE AND ANY ASSOCIATED SITES OR SERVICES, AT YOUR OWN DISCRETION AND RISK, AND THAT YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM OR MOBILE DEVICE USED IN CONNECTION WITH THE SERVICE), OR THE LOSS OF DATA THAT RESULTS FROM THE USE OF THE SERVICE OR THE DOWNLOAD OR USE OF THAT MATERIAL OR CONTENT.

THE ABOVE PARAGRAPHS APPLY TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW. SOME JURISDICTIONS MAY PROHIBIT A DISCLAIMER OF WARRANTIES, IN PARTICULAR A DISCLAIMER OF WARRANTIES PROVIDED OR IMPLIED BY LAW, AND YOU MAY HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.

19. Limitation of Liability

IN NO EVENT WILL THE OUTCOMEMD ENTITIES BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, OR ANY OTHER INTANGIBLE LOSS) ARISING OUT OF OR RELATING TO YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE, THE SERVICE OR ANY MATERIALS OR CONTENT ON THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT ANY OUTCOMEMD ENTITY HAS BEEN INFORMED OF THE POSSIBILITY OF DAMAGE. FOR THE AVOIDANCE OF DOUBT, THE EXCLUDED DAMAGES ALSO INCLUDE WITHOUT LIMITATION, LOSS OF SAVINGS OR REVENUE; LOSS OF PROFIT; LOSS OF USE; LOSS OF LIFE OR HEALTH, THE CLAIMS OF THIRD PARTIES; AND ANY COST OF ANY SUBSTITUTE EQUIPMENT OR SERVICES.

EXCEPT AS PROVIDED IN SECTION 23.4, IF OUTCOMEMD CANNOT LAWFULLY DISCLAIM LIABILITY FOR ANY OF THE FOREGOING DAMAGES, THEN THE AGGREGATE LIABILITY OF THE OUTCOMEMD ENTITIES TO YOU FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE USE OF OR ANY INABILITY TO USE ANY

PORTION OF THE SERVICE OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO THE GREATER OF THE AMOUNTS YOU HAVE PAID TO USE THE SERVICE OR \$100, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN WHICH CASE SUCH LIMITATIONS SHALL APPLY TO YOU TO THE EXTENT PERMITTED IN SUCH JURISDICTION. FURTHERMORE, NOTHING IN THESE TERMS LIMITS OR EXCLUDES ANY LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED BY LAW, SUCH AS LIABILITY FOR INTENTIONAL VIOLATION OF THESE TERMS. NOTHING IN THESE TERMS AFFECTS YOUR LEGAL RIGHTS AS A CONSUMER.

EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THESE TERMS. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION 19 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

- 20. Force Majeure.** OutcomeMD will be excused from performance under these Terms for any period that it is prevented from or delayed in performing any obligations pursuant to these Terms, in whole or in part, as a result of a Force Majeure Event. To the fullest extent permitted under applicable law, for purposes of this section, "Force Majeure Event" means an event or series of events caused by or resulting from any of the following: (1) weather conditions or other elements of nature or acts of God; (2) acts of war, acts of terrorism, insurrection, riots, civil disorders or rebellion; (3) quarantines or embargoes, (4) labor strikes; (4) telecommunications, network, computer, server or Internet downtime; (5) unauthorized access to OutcomeMD's information technology systems by third parties; or (6) other causes beyond the reasonable control of OutcomeMD.
- 21. Governing Law and Competent Courts.** To the fullest extent permitted pursuant to applicable law, these Terms are governed by the laws of the State of California, United States without regard to conflict of law principles. If a lawsuit or court proceeding is permitted under these Terms, then you and OutcomeMD agree to submit to the personal and exclusive jurisdiction of the state courts and federal courts located within the Northern District of California for the purpose of litigating any dispute. We operate the Service from our offices in the United States, and we make no representation that Materials included in the Service are appropriate or available for use in other locations.
- 22. General.** These Terms, together with the Privacy Policy and any other agreements expressly incorporated by reference into these Terms, are the entire and exclusive understanding and agreement between you and OutcomeMD regarding your use of the

Service. Except as expressly permitted above, these Terms may be amended only by a written agreement signed by authorized representatives of all parties to these Terms. You may not assign or transfer these Terms or your rights under these Terms, in whole or in part, by operation of law or otherwise, without our prior written consent, which may be granted or withheld at OutcomeMD's sole discretion. Any attempted assignment by you without such consent shall be null and void. We may assign these Terms at any time without notice or consent, to the fullest extent permitted under applicable law. The failure to require performance of any provision will not affect our right to require performance at any other time after that, nor will a waiver by us of any breach or default of these Terms, or any provision of these Terms, be a waiver of any subsequent breach or default or a waiver of the provision itself. Use of section headers in these Terms is for convenience only and will not have any impact on the interpretation of any provision. If any part of these Terms is held to be invalid or unenforceable, the unenforceable part will be given effect to the greatest extent possible, and the remaining parts will remain in full force and effect. Upon termination of these Terms, Sections 2, and 6 through 24, along with the Privacy Policy and any other accompanying agreements, will survive.

23. Dispute Resolution and Arbitration

23.1 Generally. Unless you are a user located in a jurisdiction that prohibits the exclusive use of arbitration for dispute resolution, these Terms provide that all disputes between you and OutcomeMD will be resolved by BINDING ARBITRATION. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under these Terms, except for matters that may be taken to small claims court. Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury, and your claims cannot be brought as a class action.

To the fullest extent permitted under applicable law and in the interest of resolving disputes between you and OutcomeMD in the most expedient and cost effective manner, you and OutcomeMD agree that every dispute arising in connection with these Terms will be resolved by binding arbitration, unless you are a consumer located in a jurisdiction that prohibits the exclusive use of arbitration for dispute resolution.

Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. This agreement to arbitrate disputes includes all claims arising out of or relating to any aspect of these Terms, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of these Terms. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND OUTCOMEMD ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO

PARTICIPATE IN A CLASS ACTION, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW.

- 23.2 Exceptions.** Despite the provisions of Section 23.1, nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either party to: (a) bring an individual action in small claims court; (b) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (c) seek injunctive relief in a court of law; or (d) to file suit in a court of law to address an intellectual property infringement claim.
- 23.3 Arbitrator.** To the fullest extent permitted under applicable law, any arbitration between you and OutcomeMD will be settled under the Federal Arbitration Act, and governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, "**AAA Rules**") of the American Arbitration Association ("**AAA**"), as modified by these Terms, and will be administered by the AAA. The AAA Rules and filing forms are available online at www.adr.org, by calling the AAA at 1-800-778-7879, or by contacting OutcomeMD.
- 23.4 Notice; Process.** A party who intends to seek arbitration must first send a written notice of the dispute to the other party by certified U.S. Mail or by Federal Express (signature required) or, only if such other party has not provided a current physical address, then by electronic mail ("**Notice**"). OutcomeMD's address for Notice is: OutcomeMD, Inc., 1306 NW Hoyt Street, Ste 307, Portland OR 97209. The Notice must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("**Demand**"). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 30 days after the Notice is received, you or OutcomeMD may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or OutcomeMD must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the dispute is finally resolved through arbitration in your favor, OutcomeMD will pay you the highest of the following: (i) the amount awarded by the arbitrator, if any; (ii) the last written settlement amount offered by OutcomeMD in settlement of the dispute prior to the arbitrator's award; or (iii) \$1,000.
- 23.5 Fees.** If you commence arbitration in accordance with these Terms, OutcomeMD will reimburse you for your payment of the filing fee, unless your claim is for more than \$10,000, in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearing will take place at a location to be agreed upon in San Mateo County, California, but if the claim is for \$10,000 or less, you may choose whether the arbitration will be conducted: (a) solely on the basis of documents submitted to the arbitrator; (b) through a non-appearance based telephone hearing; or (c) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the arbitrator finds that either the substance of your claim or the

relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse OutcomeMD for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

23.6 No Class Actions. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, YOU AND OUTCOMEMD AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and OutcomeMD agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding, to the fullest extent permissible pursuant to applicable law.

23.7 Claims. To the fullest extent permitted under applicable law, no action arising out of, in connection with, or relating to these Terms shall be brought by you more than one (1) year after the accrual of the cause of action. This period shall not be extended for any reason, except by the written consent of both parties. All statutes or provisions of law which would toll or otherwise affect the running of the period of limitation are hereby waived, and no such statute or provision of law shall operate to extend the period limited in this paragraph, to the fullest extent permitted under applicable law.

23.8 Modifications to this Arbitration Provision. If OutcomeMD makes any future change to this arbitration provision, other than a change to OutcomeMD's address for Notice, you may reject the change by sending us written notice within 30 days of the change to OutcomeMD's address for Notice, in which case your account with OutcomeMD will be immediately terminated and this arbitration provision, as in effect immediately prior to the changes you rejected will survive.

23.9 Enforceability. If Section 23.6 is found to be unenforceable or if the entirety of this Section 23 is found to be unenforceable, then the entirety of this Section 23 will be null and void and, in that case, the parties agree that the exclusive jurisdiction and venue described in Section 20 will govern any action arising out of or related to these Terms.

24. Notices; Consent to Electronic Communications. By using the Service, you consent to receiving certain electronic communications from us as further described in our Privacy

Policy. Please read our Privacy Policy to learn more about our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that those communications be in writing. All notices from OutcomeMD intended for receipt by You shall be deemed delivered and effective when sent to the email address provided by You during the registration process or when posted to and made available to you on the Service. If you change the email address provided in connection with your registration to access and use the Service, you must update your address in accordance with the procedures set forth on Service. You consent to receive text messages at that number as requested for account verification, message notifications, and other purposes related to the Service. While we do not charge a fee for text messages, your carrier may charge standard messaging, data, and other fees. You are responsible for those charges. We may send and receive text messages through cellular telephone operators or other networks, and the level of reliability may vary. We are not responsible for the timeliness or final delivery of the message, as this is outside our control and is the responsibility of the cellular telephone operator or other networks. Notwithstanding the foregoing, we will use your mobile number in accordance with our Privacy Policy.

25. NOTICE REGARDING APPLE

You acknowledge that these Terms are between you and OutcomeMD only, not with Apple, and Apple is not responsible for the Apps and the contents thereof. Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Apps. In the event of any failure of the Apps to conform to any applicable warranty, then you may notify Apple and Apple will refund the purchase price for the Apps to you, if any; and, to the maximum extent permitted by applicable law, Apple has no other warranty obligation whatsoever with respect to the Apps. Apple is not responsible for addressing any claims by you or any third party relating to the Apps or your possession and/or use of the Apps, including, but not limited to: (i) product liability claims; (ii) any claim that the Apps fail to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. Apple is not responsible for the investigation, defense, settlement and discharge of any third party claim that the Apps or your possession and use of the Apps infringes that third party's intellectual property rights. You agree to comply with any applicable third party terms when using the Apps. Apple and Apple's subsidiaries are third party beneficiaries of these Terms, and upon your acceptance of the Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce the Terms against you as a third party beneficiary of the Terms. You hereby represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

26. Contact Information. The Service is offered by OutcomeMD, Inc. You may contact us by emailing us at support@outcomemd.com.