

Last Updated: 19 December 2022

## PHARMALYTIQ PLATFORM TERMS OF USE

This PHARMALYTIQ PLATFORM TERMS OF USE (“*Terms*”), is a binding agreement made and entered into by and between PharmalytIQ LLC, a Delaware limited liability company (“*PharmalytIQ*” or “*we*”) and the Customer (as defined below).

IMPORTANT: PLEASE READ ALL OF THE FOLLOWING TERMS OF USE, CAREFULLY. THESE TERMS CONTAIN IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES AND OBLIGATIONS. THESE INCLUDE (BUT ARE NOT LIMITED TO) VARIOUS LIMITATIONS AND EXCLUSIONS, A BINDING ARBITRATION CLAUSE, A CLASS ACTION WAIVER, A CLAUSE THAT GOVERNS THE JURISDICTION AND VENUE OF DISPUTES, AND OBLIGATIONS TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS.

### 1. Acceptance.

By clicking the acceptance box or button, signing a relevant Order Form, or accessing the PharmalytIQ Site or using the PharmalytIQ Products or PharmalytIQ Services, you accept and agree to be bound by these Terms and Conditions (“*Terms*”). If you do not agree to these Terms, then do not order, access, or use the Site or the PharmalytIQ Platform.

The PharmalytIQ Services are made available only to persons who are the age of majority and can form legally binding contracts under applicable law. Without limiting the foregoing, the PharmalytIQ Services are not intended to be used by individuals under the age of 18. If you do not qualify, do not access or use the Site, PharmalytIQ Products, or PharmalytIQ Services.

If you are accepting these Terms on behalf of a company, a governmental body, or other legal entity, you represent and warrant that you have the authority to bind such entity; that such entity agrees to be legally bound by the Terms; and that neither you nor such entity are barred from using the PharmalytIQ Services or accepting the Terms under the laws of the applicable jurisdiction. If acceptance is on behalf of an entity, then any reference to the terms “you” and “your” shall mean that entity. PharmalytIQ and Customer, Authorized User (as defined herein) and you may be referred to herein collectively as the “*Parties*” or individually as a “*Party*.”

Your use of the PharmalytIQ Services is also subject to our Privacy Policy and Intellectual Property Policy, which are available on the Site at [www.PharmalytIQ.com/Legal](http://www.PharmalytIQ.com/Legal) as well as any policies and procedures we publish from time to time (collectively, the “*Policies*”). We reserve the right to modify these Terms at any time, with such changes becoming effective upon PharmalytIQ posting the modified Terms to the Site and upon written notice to you in your Account (defined herein) or by email to the Customer. Each time you use the Site, PharmalytIQ Products, or PharmalytIQ Services, the then-current version of the Terms will apply. If you use the Site, PharmalytIQ Products, or PharmalytIQ Services after a modification of these Terms, you agree to be bound by the Terms as modified.

You represent that any information you submit to us when using the Site, PharmalytIQ Products, or PharmalytIQ Services is accurate, truthful, and current. You also represent that your use of the Site, PharmalytIQ Products, or PharmalytIQ Services does not violate any applicable law or regulation.

## **2. Definitions.**

The definitions for some of the defined terms used in these Terms are set forth below. The definitions for other defined terms are set forth elsewhere in these Terms.

**2.1** “*Affiliate*” means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.

**2.2** “*Authorized User*” means an employee, agent, representative, or individual contractor of Customer (including, any sales representatives and retailers), or such other party who has been authorized by Customer to use the PharmalytIQ Products and PharmalytIQ Services, as well as any guest invited by Customer to access and use the PharmalytIQ Products or PharmalytIQ Services.

**2.3** “*PharmalytIQ Product(s)*” means the products or applications offered by PharmalytIQ in connection with the PharmalytIQ Services that are described on the applicable PharmalytIQ Order Form including without limitation the PharmalytIQ Software and the Equipment.

**2.4** “*PharmalytIQ Platform*” means the online platform, access to which Customer has purchased pursuant to an Order Form, including the online-accessible pharmacy data and analytics platform, software-as-a-service, hosting, maintenance and/or support made available by PharmalytIQ for remote access and use by Customer and its Authorized Users, including any Documentation and Updates thereto and any technology used by PharmalytIQ in connection with the foregoing.

**2.5** “*PharmalytIQ Services*” means the services provided by PharmalytIQ under the applicable PharmalytIQ Order Form, including but not limited to the PharmalytIQ Platform and other services as PharmalytIQ may offer or provide from time to time. Such PharmalytIQ Services are provided by PharmalytIQ in its role as Data Processor on behalf of the Customer, Authorized User, or you.

**2.6** “*PharmalytIQ Software*” means the data collection software developed by PharmalytIQ and such other software as may be from time to time provided by PharmalytIQ as software pre-installed on Equipment, software-as-a-service, or other such means as may be determined by PharmalytIQ from time to time.

**2.7** “*Customer Installed Programs*” means any third-party software or, if applicable, Customer’s or any Authorized User’s own proprietary software that Customer or such Authorized User is required to have installed on their own computers in order to access and properly interact with the PharmalytIQ Products and PharmalytIQ Services.

**2.8** “*Customer*” means the person or entity (i) who has subscribed to the PharmalytIQ Products and PharmalytIQ Services with us, and/or with respect to whom we have created a Company Account; and (ii) has specifically authorized you as an Authorized User to access PharmalytIQ Products and PharmalytIQ Services under their Company Account subject to these Terms.

**2.9** “*Data Controller*” means an entity that has the authority over the processing of personal information. This entity controls the use of personal data by determining the purposes for its use and the way the data will be processed. The Customer, Authorized User, or you serve as the Data Controller responsible for decisions regarding any data or content stored, processed, or otherwise transmitted using PharmalytIQ Products.

**2.10** “*Data Processor*” means an individual or organization that processes data on behalf of the Data Controller. In connection with the processing of Personal Data, PharmalytIQ serves as a Data Processor in furtherance of decisions by the Customer, Authorized User, or you regarding the processing of Personal Data”.

**2.11** “*Destructive Elements*” means computer code, programs, or programming devices that are intentionally designed to disrupt, modify, access, delete, damage, deactivate, disable, harm, or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation of the PharmalytIQ Product or any other associated software, firmware, hardware, computer system, or network (including, without limitation, “Trojan horses,” “viruses,” “worms,” “time bombs,” “time locks,” “devices,” “traps,” “access codes,” or “drop dead” or “trap door” devices) or any other harmful, malicious, or hidden procedures, routines, or mechanisms that would cause the PharmalytIQ Product to cease functioning or to damage or corrupt data, storage media, programs, equipment, or communications, or otherwise interfere with operations.

**2.12** “*Documentation*” means any guides and other documentation for any PharmalytIQ Product or PharmalytIQ Service that PharmalytIQ provides to Customer either directly or through publication on the PharmalytIQ Platform or other means made available to the Customer.

**2.13** “*Equipment*” means certain data collection hardware containing an object-code version of the PharmalytIQ Software.

**2.14** “*GDPR*” means the Global Data Protection Regulation otherwise known as Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons about the processing of personal data and on the free movement of such data.

**2.15** “*Intellectual Property Right(s)*” means, with respect to any thing, material or work (hereinafter, a “Work”): (a) any and all worldwide copyrights, trademarks, trade secrets and any other intellectual property and proprietary rights and legal protections in and to such Work including but not limited to all rights under treaties and conventions and applications related to any of the foregoing; (b) all patents, patent applications, registrations and rights to make applications and registrations for the foregoing; (c) all goodwill associated with the foregoing; (d) all renewals, extensions, reversions or restorations of all such rights; (e) all works based upon, derived from, or incorporating the Work; (f) all income, royalties, damages, claims, and payments now or hereafter due or payable with respect thereto; (g) all causes of action, either in law or in

equity for past, present or future infringement based on the Work; (h) all rights corresponding to each of the foregoing throughout the world; and (i) all the rights embraced or embodied therein, including but not limited to, the right to duplicate, reproduce, copy, distribute, publicly perform, display, license, adapt, prepare derivative works from the Work, together with all physical or tangible embodiments of the Work.

**2.16 “Order Form”** means a document or website form whether or not entitled or specifically identified as a “Order Form” that is signed or otherwise agreed to by authorized representatives of both Parties and that sets forth various terms and conditions applicable to the PharmalytIQ Products and PharmalytIQ Services purchased or subscribed for by the Customer, which may include any or all of the following: (i) the PharmalytIQ Platform; (ii) any PharmalytIQ Product(s) or PharmalytIQ Services being ordered; (iii) the Subscription Term; (iv) the applicable fees; and (v) other mutually-agreed upon terms and conditions. Each PharmalytIQ Order Form is deemed incorporated into and made a part of these Terms. To the extent any provision set forth in the PharmalytIQ Order Form conflicts with any provision set forth elsewhere in these Terms, the provision set forth in these Terms shall govern, unless the PharmalytIQ Order Form includes the section numbers of these Terms that the Parties agree no longer govern or are modified for the matters covered thereby.

**2.17 “Prohibited Content”** means content that: (i) is illegal under applicable law; (ii) violates any third party’s intellectual property rights, including, without limitation, copyrights, trademarks, patents, and trade secrets; (iii) contains indecent or obscene material; (iv) contains libelous, slanderous, or defamatory material, or material constituting an invasion of privacy or misappropriation of publicity rights; (v) promotes unlawful or illegal goods, PharmalytIQ Services, or activities; (vi) contains false, misleading, or deceptive statements, depictions, or sales practices; (vii) contains Destructive Elements; or (viii) is otherwise objectionable to PharmalytIQ in its sole discretion.

**2.18 “Severe Infraction”** means breach or violation by Customer or any Authorized User of their respective obligations not to (nor authorize, permit, or encourage any third party to) do the following: (i) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code or interface protocols of the PharmalytIQ Products or PharmalytIQ Services; (ii) modify, adapt, or translate the PharmalytIQ Products or PharmalytIQ Services; (iii) make any copies of the PharmalytIQ Products or PharmalytIQ Services; (iv) resell, distribute, or sublicense the any of the PharmalytIQ Products or PharmalytIQ Services, or use any of the foregoing for the benefit of anyone other than Customer or the Authorized Users unless expressly set forth in the PharmalytIQ Order Form; (v) use any of the PharmalytIQ Products or PharmalytIQ Services (1) in violation of any applicable law or regulation, for any illegal purpose, or in a way that violates, infringes, or misappropriates PharmalytIQ’s or any third party’s Intellectual Property Rights, as determined by PharmalytIQ in its sole and absolute discretion, (2) in order to build a competitive (or substitute) product or service, or (3) for any purpose not specifically permitted in these Terms; (vi) introduce, post, or upload to any of the PharmalytIQ Products or PharmalytIQ Services any Prohibited Content; (vii) attempt a denial of service attack on the PharmalytIQ system or any part thereof, or attempt to hack or break any security mechanism of or on the system or any Service; (viii) access or use any of the PharmalytIQ Products or PharmalytIQ Services in a way that poses a security or service risk to PharmalytIQ, to any user of PharmalytIQ Services offered by PharmalytIQ, to any

third party, or to any of PharmalytIQ's or their respective customers, or may subject PharmalytIQ or any third party to liability or damages; (ix) access or use any of the PharmalytIQ Products or PharmalytIQ Services in a way intended to avoid incurring Fees or exceeding usage limits or quotas or (x) if PharmalytIQ determines, in its sole and absolute discretion, that the provision of any of the PharmalytIQ Products or PharmalytIQ Services to Customer or any Authorized User is prohibited by any applicable law, or has become impractical or unfeasible for any legal or regulatory reason.

**2.19 “Site”** means PharmalytIQ's website located at [www.pharmalytiq.com](http://www.pharmalytiq.com) or any other website under the ownership and control of PharmalytIQ and provided in connection with the PharmalytIQ Products and PharmalytIQ Services.

**2.20 “Subscription Term”** is the applicable license or subscription period defined and set forth in the PharmalytIQ Order Form. If for any reason the PharmalytIQ Order Form does not provide a Subscription Term, the Subscription Term shall be twelve (12) months from the applicable invoice date or effective date specified in the PharmalytIQ Order Form.

**2.21 “Updates”** means any corrections, fixes, patches, workarounds, and minor modifications to the Platform Service that PharmalytIQ provides generally to customers.

### **3. Registration & Account.**

Certain of the PharmalytIQ Services, including the PharmalytIQ Platform, or portions of the Site may require you to register for an account (“**Account**”). As part of the Account creation process, you may be asked to provide a username and password unique to the Account (“**Login Information**”). You are responsible for the confidentiality and use of your Login Information and agree not to transfer or disclose your Login Information to any third party other than an individual with express authority to act on your behalf. If you suspect any unauthorized use of your Account, you agree to notify us immediately. You are solely responsible for any activities occurring under your Account. You have no ownership right to your Account. If you are registering an Account as the Authorized User of an organization, that organization may have administrator rights to access your account and any information provided under your Account.

If you register for the PharmalytIQ Services on behalf of an organization, you may grant access to the PharmalytIQ Services to certain Authorized Users, subject to the limits of any plan for which you enroll. We may require that each Authorized User have unique Login Information. When registering for an Account and accessing the PharmalytIQ Services, you represent or warrant that the information you enter for your organization is correct. You acknowledge and agree that (i) the organizational account owner is responsible for all activity under Authorized User accounts and (ii) organizational administrators may have access to all activity/data under all Authorized Users' accounts.

### **4. Intellectual Property Rights; License; Restrictions on Use.**

**4.1 Intellectual Property Rights.** As between PharmalytIQ and Customer, PharmalytIQ (and/or its licensors) retains title to and ownership of PharmalytIQ Software, PharmalytIQ Services, PharmalytIQ Products, the Documentation, and any content, materials, improvements or derivative works thereof, together with all copyrights, trademarks, and other Intellectual Property

Rights relating thereto. Customer will have no rights with respect to PharmalytIQ Intellectual Property Rights, PharmalytIQ Software, PharmalytIQ Services, PharmalytIQ Products, or the Documentation other than those expressly granted under these Terms.

**4.2 License.** Subject to and conditioned on your payment of all applicable Fees and your compliance with all of the Terms, PharmalytIQ hereby grants you a limited, non-exclusive, non-sublicensable, and non-transferable right to access and use the PharmalytIQ Services in the form identified in your Order Form, for the duration identified in your Order Form, solely for your internal business purposes.

**a. PharmalytIQ Platform.** If applicable, PharmalytIQ shall electronically deliver or make available the PharmalytIQ Platform, such that no tangible media passes to Customer. Customer will be responsible for obtaining Internet connections and other third-party software and PharmalytIQ Services necessary for it to access the Platform Service.

**b. Equipment.** To the extent PharmalytIQ provides Customer with Equipment, Customer's use of the PharmalytIQ Software is limited to such use only in connection with such Equipment and solely for Customer's internal business purposes. In no event shall Customer have any right, title, or interest in or to the Equipment or any PharmalytIQ Software executing thereon. Customer grants PharmalytIQ the right to access and use Customer's facilities and information systems solely to the extent necessary to install and render operable the Equipment and any PharmalytIQ Software running thereon.

**4.3 Restrictions on Use.** Customer will not (and will not authorize, permit, or encourage any third party or Authorized User to): (i) allow anyone other than Authorized Users to access and use the PharmalytIQ Services or the PharmalytIQ Products; (ii) allow an Authorized User to share with any third party his or her Login Information to the Platform Service; (iii) remove or modify any proprietary marking or restrictive legends placed on the Service, any PharmalytIQ Product, or the Documentation; or (iv) take any action, or fail to act in a way, that results in a Severe Infraction. Your failure to abide by these conditions will immediately terminate your right to access the Site or to use the PharmalytIQ Services and may violate our intellectual property rights or the intellectual property rights of third parties.

**4.4 License of Customer Name and Trademarks.** Customer hereby grants to PharmalytIQ a non-exclusive, limited, royalty-free, non-transferable license to use the Customer name and trademarks solely for use in connection with labeling or "skinning" the PharmalytIQ Platform with such name and trademarks. PharmalytIQ shall have the right to grant a sublicense of the Customer's names and trademarks to its authorized contractors and Affiliates for the sole purpose of performing or facilitating the performance of the PharmalytIQ Services hereunder. PharmalytIQ acknowledges that its use of the Customer's names and trademarks inures to the benefit of Customer and that PharmalytIQ shall not acquire any rights therein, other than as expressly set forth in these Terms.

## **5. Third-Party Materials.**

The Site may contain links to websites we do not operate, control, or maintain ("**Third-Party Websites**"). We do not endorse any Third-Party Websites, and we make no representation or

warranty in any respect regarding the Third-Party Websites. Any links to Third-Party Websites are provided solely for your convenience. If you do access any Third-Party Websites, you do so at your own risk and waive any and all claims against us regarding the Third-Party Websites or our links thereto.

The PharmalytIQ Products and PharmalytIQ Software may be compatible with certain software, applications, and resources we do not operate, control, or maintain (“*Third-Party Software*”). We are not affiliated with and do not endorse any Third-Party Software, and we make no representation or warranty in any respect regarding any Third-Party Software. Any links to Third Party Software provided through the Site, PharmalytIQ Products, or PharmalytIQ Services are provided solely for your convenience. If you do access or use any Third-Party Software, you do so at your own risk and waive any and all claims against us regarding the Third-Party Software or our links thereto.

To be sure, you use of any Third-Party Software may be governed by the specific terms and conditions set forth by such third parties. Accordingly, Customer acknowledges that the use of any Third-Party Websites or Third-Party Software is governed by such terms and conditions and licenses between Customer and such third parties (“*Third-Party Terms and Conditions*”). Customer agrees and acknowledges that it is responsible for complying with such Third-Party Terms and Conditions and is in fact in such compliance. CUSTOMER AGREES TO INDEMNIFY PHARMALYTIQ FOR ANY COSTS, INCLUDING ATTORNEYS FEES, ARISING FROM ANY CLAIMS AGAINST PHARMALYTIQ DUE TO ACTIONS OF THE CUSTOMER WHICH ALLEGEDLY VIOLATE SUCH THIRD-PARTY TERMS AND CONDITIONS.

## **6. Customer Data.**

Customer will own all right, title, and interest in and to (a) any intellectual property existing prior to the effective date of these Terms that was owned or developed by Customer; (b) anything Customer develops independent of its relationship with Pharmalytiq; (c) pharmacy data, documents, email, or other data uploaded through the PharmalytIQ Services or otherwise provided to Pharmalytiq in the course of using the PharmalytIQ Products or PharmalytIQ Services; and (d) any data or documents uploaded to the PharmalytIQ Services by Customer or any of its Authorized Users (collectively, “*Customer Data*”). We acknowledge and agree that, at all times, we are not and shall not be, the rightful owner of Customer Data, and shall not use Customer Data, except as expressly permitted by these Terms, required by law, required to provide the PharmalytIQ Services to you, or as otherwise authorized by you in writing. Subject to the restrictions in this paragraph, Customer grants PharmalytIQ a non-exclusive right and license to collect, analyze, and use Customer Data any other information relating to the provision, use, and performance of various aspects of the PharmalytIQ Services and related systems and technologies including, without limitation, anonymous and aggregated information concerning Customer’s use of the PharmalytIQ Services and we will be free, during and after the term hereof, to (i) use such Customer Data and any such other information to improve and enhance the PharmalytIQ Services and for the development, diagnostic, and corrective purposes in connection with the PharmalytIQ Services, and (ii) disclose such Customer Data and any such other information solely in aggregate or other de-identified form in connection with our business. No rights or licenses are granted in the Customer Data except as expressly set forth herein.

Our team is dedicated to keeping Customer Data secure. We will implement and maintain technical and organizational measures designed to protect Customer Data against accidental or unlawful loss, alteration, access or disclosure. Such measures will include but are not limited to encryption, monitoring, network controls, personnel training, and regular security testing.

## **7. Fees and Payment Terms.**

**7.1 Payment Terms.** Customer shall pay PharmalytIQ the fees set forth in the Order Form without offset or deduction (“**Fees**”). Customer shall make all payments hereunder in US dollars on or before the due date set forth in Order Form or otherwise in accordance with these Terms. If Customer fails to make any payment when due, in addition to all other remedies that may be available: (i) PharmalytIQ may charge interest on the past due amount at the highest rate permitted under applicable law, calculated daily and compounded monthly; and (ii) Customer shall reimburse PharmalytIQ for all costs incurred by PharmalytIQ in collecting any late payments or interest, including attorneys’ fees, court costs, and collection agency fees. All Fees and other amounts payable by Customer under these Terms are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on PharmalytIQ’s income.

**7.2 Subscription Fees.** We may require Fees for PharmalytIQ Services to be paid on a recurring basis or on an as-used basis (“**Subscription Fees**”). By signing up for such PharmalytIQ Services, including after any free trial period, you agree to pay us the Fees as set forth in your Order Form, or as otherwise agreed in writing. In other instances, you may be charged on a per usage basis. Subscription Fees may be paid by credit card, debit card, or other payment forms we may permit. If you link a debit or credit card to your Account, you authorize us to collect Paid Service Fees by debit from your linked debit card or charge to your linked credit card. Fees are stated exclusive of all applicable duties, tariffs, and taxes. You agree to pay, in addition to the Fees, all applicable duties, tariffs, taxes, and similar government mandated charges which result from your purchase of PharmalytIQ Services, except taxes based on PharmalytIQ’s own income.

## **8. Term and Termination.**

**8.1 Term.** The term of these Terms shall commence on the applicable invoice date or effective date specified in the Order Form and continue for the Subscription Term, unless otherwise terminated as provided in this Section. The Subscription Term will automatically renew for a term of equal length unless Customer notifies PharmalytIQ of its intention not to renew at least thirty (30) days in advance of the expiration of the current term. PharmalytIQ will notify Customer of the renewal date and provide current renewal pricing at least sixty (60) days prior to the expiration of the current term.

**8.2 Termination for Inactivity.** Either Party may terminate these Terms or any Order Form or Equipment Purchase Agreement upon written notice to the other Party if there are no current PharmalytIQ Order Forms in effect and none have been effective within the previous sixty (60) days.



**8.3 Termination by Customer.** Customer may terminate these Terms at the end of the Subscription Term specified in the PharmalytIQ Order Form by providing thirty (30) days written notice to PharmalytIQ. Notwithstanding the foregoing, you may cancel any subscription based PharmalytIQ Service at any time from your Account settings or as otherwise agreed by us in writing. You will continue to have access to that Subscription Service through the end of your then current billing period, but you will not be entitled to a refund or credit for any Subscription Fees already due or paid.

**8.4 Termination by PharmalytIQ.**

**a.** PharmalytIQ may terminate these Terms or suspend Customer's or any Authorized User's access to PharmalytIQ Products and/or Services in PharmalytIQ's sole and absolute discretion if Customer, or any of its Affiliates, employees, contractors or Authorized Users: (i) use any of PharmalytIQ's Intellectual Property Rights other than as expressly permitted herein; (ii) is in default or breach of any provisions of these Terms; (iii) is in default of any of its payment obligations to PharmalytIQ; or (iv) commences liquidation or dissolution proceedings, disposes of or attempts to dispose of its assets other than in the ordinary course of business, fails to continue its business, makes an assignment for the benefit of creditors, or if Customer becomes the subject of a voluntary or involuntary bankruptcy or similar proceeding.

**b.** PharmalytIQ may, in its sole and absolute discretion, immediately and with or without notice, suspend or terminate the Customer license in whole or in part and with respect to any or all Authorized Users or otherwise, or terminate these Terms or any PharmalytIQ Order Form, if Customer or any Authorized User commits a Severe Infraction.

**c.** PharmalytIQ may terminate these Terms or suspend Customer's or any Authorized User's access to PharmalytIQ Products and/or Services for any or no reason, at PharmalytIQ's convenience, by providing Customer at least fifteen (15) days prior written notice.

**8.5 Termination of an Authorized User.**

**a. By Customer.** Customer may terminate any Authorized User's right to access and use the PharmalytIQ Products or PharmalytIQ Services by changing the Authorized User configurations in the Company Account.

**b. By PharmalytIQ.** PharmalytIQ may terminate the right of any Authorized User to access and use the PharmalytIQ Products or PharmalytIQ Services immediately and without notice if: (i) Customer revokes its status as an Authorized User; (ii) an Authorized User fails to comply with any of the terms or conditions of these Terms; (iii) Customer defaults under or breaches any of the provisions of these Terms; or (iv) Either PharmalytIQ or Customer terminates these Terms, or a PharmalytIQ Order Form, as applicable, for any reason or no reason.

**8.6 Effect of Expiration or Termination.** Upon expiration or earlier termination of these Terms, any licenses granted by PharmalytIQ to Customer hereunder will also terminate, and, without limiting Customer's obligations hereunder, Customer shall cease using the applicable PharmalytIQ Services. No expiration or termination will affect Customer's obligation to pay all

Fees that may have become due before such expiration or termination or entitle Customer to any refund.

## **9. Support.**

You may submit support requests via the PharmalytIQ Help Desk at support.PharmaIyIQ.com, or by emailing support@pharmalytIQ.com. PharmalytIQ will respond to support requests within one business day. PharmalytIQ will use best efforts to resolve support requests in a prompt and timely manner. Support is provided Monday through Friday 9-5 EST, except on federally recognized US holidays. In order to resolve support requests, PharmalytIQ may require you to provide a general description of the operating environment, a list of hardware components, a reproducible test case, and certain log files, trace files, or system files. Failure to provide this information may prevent PharmalytIQ from identifying and resolving the alleged issue. Support is provided only for active Order Forms.

## **10. Service Modifications; Maintenance; Updates.**

**10.1 Service Modifications.** PharmalytIQ reserves the right to, and may at any time from time to time: (i) enhance, modify or remove any feature(s) or functionality of any Site, PharmalytIQ Product, or PharmalytIQ Services; (ii) add additional service offerings; or (iii) remove service offerings (parts (i) – (iii) collectively, “*Service Revisions*”). PharmalytIQ may notify Customer of any material Service Revisions that will substantially impact Customer’s use of the PharmalytIQ Products or PharmalytIQ Services by posting notice of such material Service Revisions on the PharmalytIQ Platform or other support page or by e-mail. Unless, and only to the extent, PharmalytIQ provides otherwise, any Service Revisions will become effective immediately upon their implementation by PharmalytIQ. Customer’s and any Authorized User’s continued use of any PharmalytIQ Product or PharmalytIQ Service after any Service Revisions become effective constitutes Customer’s and that Authorized User’s acceptance of the Service Revisions.

**10.2 Maintenance.** At any time from time to time, with or without notice and without PharmalytIQ liability to Customer or any Authorized User, all or part of any PharmalytIQ Products or PharmalytIQ Services may be suspended: (i) in order to maintain (e.g. update, modify, upgrade, patch or repair) the PharmalytIQ system or any part or aspect of its infrastructure; (ii) as PharmalytIQ determines may be required by applicable law; (iii) as PharmalytIQ determines to be necessary to protect its system or any part thereof, or any other party of its infrastructure, from unauthorized access or any attack; or (iv) as the result of technical issues or system failures. PharmalytIQ will make a good faith effort to notify Customer in advance of any scheduled suspension of the applicable PharmalytIQ Products or PharmalytIQ Services.

**10.3 Updates.** The Site, PharmalytIQ Products, and PharmalytIQ Services, including their functions and functionality, may be changed by PharmalytIQ while these Terms is in effect by means of Updates. Updates may modify or delete in their entirety certain features and functionalities. You acknowledge and agree that Updates will be deemed to be part of the Site, PharmalytIQ Products, and PharmalytIQ Services, as applicable, and will be subject to the terms and conditions of these Terms. Customer agrees to install or otherwise implement Updates when made available by PharmalytIQ, and Customer’s sole recourse in the event it does not desire to

accept an Update is to immediately cease the use of the Site, PharmalytIQ Products, or PharmalytIQ Services, as applicable.

## **11. Notice of Infringement.**

PharmalytIQ respects intellectual property laws and expects all Customers to do the same. It is PharmalytIQ's policy to terminate in appropriate circumstances the Accounts of Customers who infringe or are believed to be infringing the rights of Intellectual Property owners. Claims of trademark, copyright, or patent infringement or any other alleged intellectual property violations should be sent to PharmalytIQ's designated agent. Please review PharmalytIQ's Intellectual Property Policy, found at [www.PharmalytIQ.com/Legal](http://www.PharmalytIQ.com/Legal) for further information regarding our intellectual property policies and procedures for notifying us of any alleged infringement.

## **12. Warranty Disclaimer.**

Except as otherwise provided herein, you agree that the Services Site, PharmalytIQ Products, and PharmalytIQ are available on an "as is" basis, without any warranty, and that you use the Site, PharmalytIQ Products, and PharmalytIQ at your own risk.

WE DISCLAIM, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, (A) WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (B) WARRANTIES AGAINST INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS, (C) WARRANTIES RELATING TO DELAYS, INTERRUPTIONS, ERRORS, OR OMISSIONS IN THE PHARMALYTIQ SERVICES OR ON THE SITE, (D) WARRANTIES RELATING TO THE ACCURACY OR CORRECTNESS OF DATA ON THE PHARMALYTIQ SERVICES, AND (E) ANY OTHER WARRANTIES OTHERWISE RELATING TO OUR PERFORMANCE, NONPERFORMANCE, OR OTHER ACTS OR OMISSIONS.

WE DO NOT WARRANT THAT THE SITE, PHARMALYTIQ PRODUCTS, OR THE PHARMALYTIQ SERVICES WILL OPERATE ERROR-FREE. IF YOUR USE OF THE SITE, PHARMALYTIQ PRODUCTS, OR THE PHARMALYTIQ SERVICES RESULTS IN THE NEED FOR SERVICING OR REPLACING EQUIPMENT OR DATA, WE ARE NOT RESPONSIBLE FOR ANY SUCH COSTS.

PHARMALYTIQ MAKES NO, AND HEREBY EXPRESSLY DISCLAIMS ANY AND ALL, REPRESENTATIONS OR WARRANTIES REGARDING ANY SOFTWARE, FIRMWARE HARDWARE, COMPUTERS, EQUIPMENT, DEVICES, MATERIALS, NETWORK, OR DATA OR ANY CONDITIONS OR CONFIGURATIONS OF ANY OF THE FOREGOING THAT ARE NOT OWNED OR DIRECTLY CONTROLLED BY PHARMALYTIQ OR ITS AFFILIATES (COLLECTIVELY "**NON-PHARMALYTIQ MATERIALS**"). UNDER NO CIRCUMSTANCE SHALL PHARMALYTIQ OR ANY OF ITS AFFILIATES BE LIABLE FOR OR WITH RESPECT TO ANY LOSS OR DAMAGE ARISING FROM OR IN CONNECTION WITH ANY ERROR, FAULT OR TECHNICAL PROBLEM THAT IS CAUSED DIRECTLY OR INDIRECTLY BY ANY NON- PHARMALYTIQ MATERIALS.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN CATEGORIES OF DAMAGES OR IMPLIED WARRANTIES; THEREFORE, THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. IN SUCH JURISDICTIONS, OUR LIABILITY IS LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

### **13. Limitation of Liability.**

TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW:

NEITHER PHARMALYTIQ NOR ANY OF ITS AFFILIATES, AGENTS, REPRESENTATIVES, THIRD PARTY LICENSORS, RESELLERS, SUPPLIERS, OR CONTRACTORS SHALL BE LIABLE TO LICENSEE OR OTHERWISE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, ANY DAMAGES FOR BODILY INJURY OR DEATH, OR DAMAGE OR INJURY TO ANY PROPERTY, LOSS OF PROFITS, GOODWILL, USE, FILES, DATA, CONTENT, BUSINESS, OPPORTUNITIES, REVENUES, ANTICIPATED SAVINGS OR OTHERWISE (EVEN IF PHARMALYTIQ OR ANY SUCH OTHER PERSON HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY WHATSOEVER) IN CONNECTION WITH ANY OF THE OFFERINGS, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE FOLLOWING: (I) ACCESS TO OR USE OF OR THE INABILITY TO ACCESS OR USE ANY PHARMALYTIQ SERVICE OR ANY PART THEREOF OR OTHER OFFERINGS, OR ANY PART THEREOF; (II) THE PROVISION OF OR ANY DELAY OR FAILURE TO PROVIDE, OR ANY INTERRUPTION OF, ANY PHARMALYTIQ SERVICE OR OTHER OFFERINGS; OR (III) ANY PHARMALYTIQ SOFTWARE (WHETHER COMPRISING PART OF, OR UTILIZED IN CONNECTION WITH ANY PHARMALYTIQ SERVICE OR OTHERWISE).

IN THE EVENT THAT, NOTWITHSTANDING THE PROVISIONS OF THE FOREGOING PARAGRAPH, PHARMALYTIQ (OR ANY OF ITS AGENTS, REPRESENTATIVES, CONTRACTORS, AFFILIATES OR THIRD PARTY LICENSORS, SUPPLIERS OR CONTRACTORS) ARE FOUND LIABLE TO RESELLER OR OTHERWISE, FOR DAMAGES FROM ANY CAUSE WHATSOEVER RELATED TO THESE TERMS AND REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, THE AGGREGATE AMOUNT OF ALL SUCH LIABILITY SHALL BE LIMITED TO AND SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID OR PAYABLE TO PHARMALYTIQ BY RESELLER UNDER THIS AGREEMENT FOR AND WITH RESPECT TO THE PARTICULAR SERVICES THAT GIVE RISE TO SUCH CLAIM, FOR THE MONTH IN WHICH THE CAUSE OF ACTION ACCRUED.

CUSTOMER HEREBY EXPRESSLY WAIVES ANY CLAIM THAT ANY EXCLUSIONS SET FORTH IN THIS SECTION OF THIS AGREEMENT DEPRIVE RESELLER OF AN ADEQUATE REMEDY OR CAUSE THE AGREEMENT TO FAIL OF ITS ESSENTIAL PURPOSE. CUSTOMER FURTHERMORE ACKNOWLEDGES THAT AN ESSENTIAL

PURPOSE OF THE EXCLUSION OF WARRANTIES AND THE LIMITATION OF LIABILITY PROVIDED IN THIS AGREEMENT IS AN ALLOCATION OF RISK BETWEEN PHARMALYTIQ ON THE ONE HAND, AND CUSTOMER ON THE OTHER, WHICH ALLOCATION OF RISK IS REFLECTED IN THE APPLICABLE FEES AND OTHER ARRANGEMENTS BETWEEN PHARMALYTIQ AND LICENSEE IN THIS AGREEMENT AND THAT PHARMALYTIQ WOULD NOT BE WILLING TO ENTER INTO THIS AGREEMENT WITH CUSTOMER, OR TO PROVIDE CUSTOMER WITH ANY PHARMALYTIQ SERVICES OR OTHER OFFERINGS, IF PHARMALYTIQ WERE REQUIRED TO BEAR ANY ADDITIONAL RISK. THE FOREGOING LIMITATIONS AND EXCLUSIONS APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

#### **14. Indemnification.**

**14.1 By PharmalytIQ.** PharmalytIQ shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the PharmalytIQ Products or PharmalytIQ Services infringes or misappropriates such third party's US intellectual property rights, provided that Customer promptly notifies PharmalytIQ in writing of the claim, cooperates with PharmalytIQ, and allows PharmalytIQ sole authority to control the defense and settlement of such claim. If such a claim is made or appears possible, Customer agrees to permit PharmalytIQ, at PharmalytIQ's sole discretion, to (A) modify or replace the PharmalytIQ Products or PharmalytIQ Services, or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use. If PharmalytIQ determines that none of these alternatives is reasonably available, either party may terminate these Terms, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer. This Section will not apply to the extent that the alleged infringement arises from: (A) use of the PharmalytIQ Products or PharmalytIQ Services in combination with data, software, hardware, equipment, or technology not provided by PharmalytIQ or authorized by PharmalytIQ in writing; (B) modifications to the PharmalytIQ Products or PharmalytIQ Services not made by PharmalytIQ; or (C) use of any version other than the most current version of the PharmalytIQ Products or PharmalytIQ Services or Documentation delivered to Customer; or (D) Third-Party Software. THIS SECTION SETS FORTH COMPANY'S SOLE REMEDIES AND PHARMALYTIQ'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE PHARMALYTIQ SOFTWARE INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

**14.2 By Customer.** Customer agrees to indemnify and hold harmless us, our affiliates and our and their officers, directors, partners, agents, and employees from and against any loss, liability, claim, or demand, including reasonable attorneys' fees (collectively, "**Claims**"), made by any third party due to or arising out of your use of the Site, PharmalytIQ Products, or PharmalytIQ Services in violation of these Terms, any breach of the representations and warranties you make in these Terms. You agree to be solely responsible for defending any Claims against or suffered by us, subject to our right to participate with counsel of our own choosing. You agree to indemnify and hold us harmless for any breach of security or any compromise of your Account.

## **15. Confidential Information.**

From time to time during the Term, either you or PharmalytIQ may disclose or make available to the other party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in writing, and whether or not identified as “confidential” (collectively, “**Confidential Information**”). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving Party shall not disclose the disclosing Party’s Confidential Information to any person or entity, except to the receiving Party’s employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party’s rights under these Terms, including to make required court filings. On the expiration or termination of these Terms, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party’s Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party’s obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of these Terms for as long as such Confidential Information remains subject to trade secret protection under applicable law.

## **16. Questions Regarding Data Processing and Data Privacy.**

Questions regarding how PharmalytIQ processes, stores, or transmits data, including Personal Data, may be directed to PharmalytIQ in accordance with our Privacy Policy found at [www.PharmalytIQ.com/Legal](http://www.PharmalytIQ.com/Legal).

## **17. Electronic Signatures and Notices.**

Certain activities on the Site, PharmalytIQ Products, or PharmalytIQ Services may require you to make an electronic signature. You understand and accept that an electronic signature has same legal rights and obligations as a physical signature.

If you have an Account, you agree that we may provide you any and all required notices electronically through your Account or other electronic means. You agree that we are not responsible for any delivery fees charged to you as a result of your receipt of our electronic notices.

## 18. Governing Law.

These Terms are governed by Delaware law, without giving effect to conflicts of law principles. You agree that, to the extent applicable and expressly subject to the dispute resolution provisions below, to submit to the exclusive jurisdiction of the state and federal courts located in New York, NY in circumstances where these Terms permit litigation in court.

## 19. Dispute Resolution.

**PLEASE READ THIS SECTION CAREFULLY. IT CONTAINS PROCEDURES FOR MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.**

**19.1 Notice Requirement and Informal Dispute Resolution.** Before either we or you may seek arbitration, the party seeking arbitration must send the other party a written Notice of Dispute (“*Notice*”) describing the nature and basis of the claim or dispute and the requested relief. After the Notice is received, you and we may attempt to resolve the claim or dispute informally. If we do not resolve the claim or dispute within thirty (30) days after the Notice is received, either party may begin an arbitration proceeding. The amount of any settlement offer made by any party may not be disclosed to the arbitrator until after the arbitrator has determined the amount of the award, if any, to which either party is entitled.

**19.2 Arbitration Rules.** Arbitration shall be initiated through the American Arbitration Association (“*AAA*”), an established alternative dispute resolution provider (“*ADR Provider*”) that offers arbitration as set forth in this section. If AAA is not available to arbitrate, the parties shall agree to select an alternative ADR Provider. The rules of the ADR Provider shall govern all aspects of the arbitration, including but not limited to the method of initiating and/or demanding arbitration, except to the extent such rules conflict with these Terms. The AAA Commercial Arbitration Rules (the “*Arbitration Rules*”) governing the arbitration are available online at [www.adr.org](http://www.adr.org) or by calling the AAA at 1-800-778-7879. The arbitration shall be conducted by a single, neutral arbitrator. Any claims or disputes where the total amount of the award sought is less than Ten Thousand U.S. Dollars (US \$10,000.00) shall be resolved through binding non-appearance-based arbitration. For claims or disputes where the total amount of the award sought is Ten Thousand U.S. Dollars (US \$10,000.00) or more, the right to a hearing will be determined by the Arbitration Rules. Any hearing will be held in New York, NY, unless the parties agree otherwise. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Each party shall bear its own costs (including attorney’s fees) and disbursements arising out of the arbitration and shall pay an equal share of the fees and costs of the ADR Provider.

**19.3 Additional Rules for Non-Appearance Based Arbitration.** The arbitration shall be conducted by telephone, online and/or based solely on written submissions; the specific manner shall be chosen by the party initiating the arbitration. The arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise agreed by the parties.

**19.4 Time Limits.** If either you or we pursue arbitration, the arbitration action must be initiated and/or demanded within the statute of limitations (i.e., the legal deadline for filing a claim) and within any deadline imposed under the AAA Rules for the pertinent claim.

**19.5 Authority of Arbitrator.** If arbitration is initiated, the arbitrator will decide the rights and liabilities, if any, of the parties involved, and the dispute will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages, and to grant any non-monetary remedy or relief available to an individual under applicable law, the Arbitration Rules, and these Terms. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding on you and us.

**19.6 Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY, instead electing that all claims and disputes shall be resolved by arbitration under these terms. Arbitration procedures are typically more limited, more efficient and less costly than rules applicable in a court and are subject to very limited review by a court. In the event any litigation should arise between you and us in any state or federal court in a suit to vacate or enforce an arbitration award or otherwise, YOU AND WE WAIVE ALL RIGHTS TO A JURY TRIAL, instead electing that the dispute be resolved by a judge.

**19.7 Waiver of Class or Consolidated Actions.** ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS SECTION 19 MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS, AND CLAIMS OF MORE THAN ONE USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER USER.

**19.8 Confidentiality.** All aspects of the arbitration proceeding, including but not limited to the award of the arbitrator and compliance therewith, shall be strictly confidential. You agree to maintain confidentiality unless otherwise required by law. This paragraph shall not prevent a party from submitting to a court of law any information necessary to enforce this Section, to enforce an arbitration award, or to seek injunctive or equitable relief

**19.9 Severability.** If any part or parts of this Section 19 are found under the law to be invalid or unenforceable by a court of competent jurisdiction, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of this Section 19 shall continue in full force and effect.

**19.10 Right to Waive.** Any or all rights and limitations set forth in this Section 19 may be waived by the party against whom the claim is asserted. Such waiver shall not waive or affect any other portion of this Section 19.

**19.11 Survival of Agreement.** This Section 19 will survive the termination of your relationship with us.



**19.12 Small Claims Court.** Notwithstanding the foregoing, either you or we may bring an individual action in small claims court.

**19.13 Emergency Equitable Relief.** Notwithstanding the foregoing, either party may seek emergency equitable relief before a state or federal court in order to maintain the status quo pending arbitration. A request for interim measures shall not be deemed a waiver of any other rights or obligations under this Section 19.

**19.14 Claims Not Subject to Arbitration.** Notwithstanding the foregoing, claims of defamation, violation of the Computer Fraud and Abuse Act, and infringement or misappropriation of our Intellectual Property Rights shall not be subject to this Section 19.

## **20. Notice for California Users.**

Under California Civil Code Section 1789.3, California Website users are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer PharamlytIQ Services of the California Department of Consumer Affairs may be contacted in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at (800) 952-5210.

## **21. Force Majeure.**

Nonperformance of either Party will be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts, orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control of and not caused by the negligence of such Party.

## **22. U.S. Government.**

With respect to the procurement or use of any PharamlytIQ Service or PharamlytIQ Product by or for any agency or part of the U.S. Government, any software provided in connection with any Service and any related explanatory written materials are “commercial items” as that term is defined at 48 CFR Section 2.102, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation” as such terms are used in 48 CFR Section 12.212 or 48 CFR Section 227.7202, as applicable. Consistent with 48 CFR Section 12.212 or 48 CFR Section 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computers Software Documentation are being licensed to the U.S. Government end Authorized Users (a) only as Commercial Items; and (b) with only those rights as are granted to Customer or its Authorized Users pursuant to the terms, conditions and restrictions of these Terms. All Computer Software, technical data and documentation were developed exclusively at private expense by PharamlytIQ or its third-party licensors or suppliers.

### **23. Business Associate Agreement**

To the extent performance of these Terms involves the use or disclosure of Protected Health Information as that term is defined in 45 C.F.R. §160.13, the Parties agree to enter into a business associate agreement (if required by HIPPA or other applicable health information privacy laws) in a customary form to be mutually agreed to by the Parties in connection herewith.

### **24. Entire Agreement.**

These Terms including any Order Forms, Policies, and any exhibits to any of the foregoing contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes and replaces all prior or contemporaneous agreements, proposals, understandings, commitments, or negotiations with respect thereto, including, without limitation, any confidentiality or non-disclosure agreements, whether written or oral, and any prior click-wrap, shrink-wrap, or browse-wrap agreements between the Parties with respect to the terms and conditions hereof. There are no other oral or written understandings, terms, or conditions, and neither Party has relied upon any representation, express or implied, not contained in these Terms.

### **25. Notices.**

All notices, requests, consents, claims, demands, waivers, and other communications hereunder must be in writing and addressed to the Parties at the physical addresses or email addresses set forth on the signature page of these Terms (or to such other address that may be designated by the Party giving notice from time to time in accordance with this Section). All notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), email, (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in these Terms, a notice is effective only: (i) upon receipt by the receiving Party, and (ii) if the Party giving the notice has complied with the requirements of this Section.

### **26. Amendment and Modification; Waiver.**

No amendment to or modification of these Terms is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in these Terms, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from these Terms will operate or be construed as a waiver thereof and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

### **27. Severability.**

If any provision of these Terms is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties hereto shall negotiate in good faith to modify these Terms so as to effect the original intent of the

Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

### **28. Assignment.**

Customer may not assign or transfer any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of PharmalytIQ. Any purported assignment, transfer, or delegation in violation of this Section is null and void. No assignment, transfer, or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. These Terms are binding upon and inures to the benefit of the Parties hereto and their respective permitted successors and assigns.

### **29. Equitable Relief.**

Customer acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations hereunder would cause PharmalytIQ irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, PharmalytIQ will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

### **30. Survival**

Any right or obligation of the Parties in these Terms which, by its express terms or nature and context is intended to survive termination or expiration of these Terms, will survive any such termination or expiration.

### **31. Counterparts.**

These Terms may be executed in counterparts (digitally, electronically, or otherwise), each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

**YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THESE  
TERMS AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS  
THEREOF.**

