

## USER AGREEMENT

This User Agreement (this “Agreement”), effective as of the date of the last signature below (“Effective Date”), is entered into by and among Med Cloud, LLC d/b/a Rapidoccc (“Rapidoccc”), a Massachusetts limited liability company, and the healthcare provider named on the signature page hereto (“Provider”).

WHEREAS, Rapidoccc provides a software solution that streamlines and improves the after-hours care process for medical providers and patients (the “Solution”); and

WHEREAS, Provider is a hospital, medical practice, or solo practitioner that wishes to utilize Rapidoccc’s software solution;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereby agree as follows:

1. License; Restrictions.

(a) Subject to the terms of this Agreement, Rapidoccc hereby grants to Provider a limited, non-exclusive, non-assignable, non-transferable license to: (i) use the Solution via a web-based portal or on an iPhone, Android or other mobile device that Provider, or its Authorized User, owns or controls; and (ii) to access and use the Solution. The terms of this Agreement will govern any updates or upgrades provided to Provider that replace or supplement the original Solution unless the update or upgrade is accompanied by a separate agreement, in which case the terms of that agreement will govern to the extent set forth therein.

(b) All rights and ownership not expressly granted to Provider are hereby reserved by Rapidoccc. Data and information owned by Provider that is processed using the Solution is and will remain, as between Provider and Rapidoccc, owned by Provider.

(c) Except as and only to the extent any of the following restrictions are prohibited by applicable law, Provider shall not (and shall not allow any third party to): (i) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any source code, underlying ideas, or interoperability interfaces of the Solution by any means whatsoever; (ii) remove any product identification, copyright or other notices; (iii) copy, resell, distribute, provide, lease, lend, use for timesharing, service bureau or hosting purposes or otherwise use the Solution to or for the benefit of third parties (including sharing Authorized Users’ username(s) and password(s) for the Solution with any third party); (iv) modify, adapt, alter, translate or incorporate into or with other software or create a derivative work of any part of the Solution; or (v) disclose information or analysis (including, without limitation, benchmarks) regarding the quality or performance of the Solution.

(d) Provider will not use or permit the use of the Solution to send unsolicited mass mailings outside its organization. The term “unsolicited mass mailings” includes all statutory or common definitions or understanding of those terms in the applicable jurisdiction, such as those set forth for “Commercial Electronic Mail Messages” under the U.S. CAN-SPAM Act, as an example only.

(e) Provider will not use or permit the use of the Solution: (i) to communicate any message or material that is defamatory, harassing, libelous, threatening, or obscene; (ii) in a way that violates or infringes upon the intellectual property rights or the privacy or publicity rights of any person or entity or that may otherwise be unlawful or give rise to civil or criminal liability (other than liability for communications processed through the Solution); (iii) in any manner that is likely to damage, disable, overburden, or impair the Solution or interfere with the use or enjoyment of the Solution by others; or (iv) in any way that constitutes or encourages conduct that could constitute a criminal offense.

(f) *[Placeholder for reference to pass-through terms of Apple App and Google Play.]*

## 2. Access; Authorized Users.

(a) An “Authorized User” means any (i) employee of Provider or (ii) temporary user providing call coverage on behalf of an Authorized User (a “Covering Authorized User”), in each case identified by a unique email address and user name, who is registered under Provider’s Rapidoccc account. During the term of, and subject to the provisions set forth in, this Agreement, Provider will have the right to register Authorized Users, who may access and use the Solution subject to the terms hereof. The right to use the Solution is limited to Authorized Users, and Provider may not resell or otherwise provide or assist with the provision of the Solution to any third party.

(b) The Solution is made available on the basis of a monthly subscription based on the number of Authorized Users, as further set forth in Exhibit A hereto. No two individuals may log onto or use the Solution as the same Authorized User, but Provider may unregister or deactivate Authorized Users and replace them with other Authorized Users without penalty. If Provider adds additional Authorized Users above the limits of its subscription, then additional charges per additional Authorized User will become immediately due and payable.

(c) To the extent that at any time Provider’s subscription includes one or more Covering Authorized Users, Provider hereby acknowledges and agrees that (i) Provider (and any Authorized User on whose behalf a Covering Authorized User uses the Solution) authorizes and intends use of the Solution for the purpose of sharing information, including PHI (as defined in Schedule I hereto), between the Authorized User and the relevant Covering Authorized User, and (ii) it is the sole responsibility of Provider to ensure that any Covering Authorized User’s use of the Solution is compliant with all Applicable Authorities (as defined below) and is limited to access to the relevant patients’ data for the intended purpose.

3. Initial Trial. If Provider has opted to use the Solution on a trial basis (an “Initial Trial”), Provider’s use of the Solution during such Initial Trial shall be governed by the terms of this Agreement. Notwithstanding anything to the contrary set forth in this Agreement, either party may terminate the Initial Trial at any time during the Initial Trial, for any reason or no reason at all, upon written notice to the other party. In such event, Provider’s access to the Solution shall be terminated immediately.

4. Fees. For use of the Solution, Provider shall pay to Rapidoccc the subscription fee set forth on Exhibit A hereto.

5. Compliance with Law; Business Associate Terms.

(a) At all times during the term of this Agreement, Provider shall ensure that its use of the Solution complies with all applicable federal, state, and local laws, rules and regulations, including the Health Insurance Portability and Accountability Act of 1996, and the regulations promulgated thereunder (“HIPAA”) and implementing regulations and all other applicable medical privacy laws and regulations, and accepted medical practice (all of the foregoing, collectively, “Applicable Authorities”). Provider is solely responsible for obtaining and making any and all required consents, waivers, disclosures, and other patient communications in connection with Provider’s use of, and patients’ access to, the Solution, and Rapidoccc makes no representations, and shall have no obligation, with respect to any such consents, waivers, disclosures, or other patient communications. Provider has and shall maintain, and shall cause all Authorized Users to have and maintain, all certifications, authorizations, permits and licenses required to conduct its business and provide the medical services it and they provide.

(b) The parties acknowledge and agree that Provider is a “Covered Entity” and Rapidoccc is a “Business Associate” of Provider, as each such term is defined in HIPAA. The parties shall comply with the Business Associate Terms set forth hereto on Schedule I, which are hereby incorporated by reference herein.

6. Provider’s Professional Services. Provider is solely responsible and liable for the medical services it and its personnel provide, and Rapidoccc shall have no responsibility or liability for (i) such services or their results or (ii) the content of any communications submitted to or transmitted through the Solution. Provider shall indemnify Rapidoccc for any and all liability, losses, damages and expenses (including reasonable attorney’s fees) (collectively, “Losses”) arising from any third-party claims in connection with the foregoing (i) or (ii).

7. Confidential Information. To the extent the parties exchange any information (other than PHI, which shall be treated in accordance with the provisions of Schedule I) pursuant to this Agreement that may be proprietary, confidential, or otherwise not generally known (“Confidential Information”), the parties agree that any such information is the property of the party by whom it was disclosed and has economic value to such party; a receiving party shall not use or disclose Confidential Information of the disclosing party other than as expressly contemplated in this Agreement; and unauthorized use or disclosure of such information may result in harm to the party by whom it was disclosed. Accordingly, any use or disclosure of such information for purposes outside the scope of this Agreement shall entitle the other party to legal and/or equitable relief. The term “Confidential Information” shall not include any information that: (i) now is or hereafter becomes publicly available other than as a result of a breach by the receiving party; (ii) becomes available to the receiving party on a non-confidential basis from a third party; or (iii) is developed by the receiving party independently of, or was known by the receiving party prior to, disclosure of such information by the disclosing party to the receiving party. If a receiving party is legally required to disclose any Confidential Information of the disclosing party, the receiving party shall provide the other party with prompt written notice of any such requirement so that the disclosing party may seek a protective order or other appropriate remedy.

8. Use of Name. Provider acknowledges and agrees that Rapidoccc is permitted to use Provider's name and business description in Rapidoccc's marketing materials and other communications about Rapidoccc's services.

9. Indemnification; Limitation on Liability.

(a) In addition to any indemnification obligation set forth elsewhere in this Agreement (including Schedule I hereto), Rapidoccc shall indemnify and hold harmless Provider, its owners, directors, officers, staff, employees and agents (collectively, the "Provider Indemnitees") against all Losses that the Provider Indemnitees may sustain or incur from any third-party claim to the extent arising from or relating to: (i) any breach by Rapidoccc of its confidentiality obligations set forth in Section 7 hereto; or (ii) any claim that the Solution infringes any third party's intellectual property rights. Rapidoccc shall promptly notify Provider of any claim for which indemnification is sought under this Agreement and will cooperate in good faith with any Provider Indemnitee in defense of such claim.

(b) In addition to any indemnification obligation set forth elsewhere in this Agreement (including Schedule I hereto), Provider shall indemnify and hold harmless Rapidoccc, its owners, directors, officers, staff, employees and agents (collectively, the "Rapidoccc Indemnitees") against all Losses that the Indemnitees may sustain or incur from any third-party claim to the extent arising from or relating to (i) the acts or omissions of Provider, any Authorized User, or any of their directors, officers, staff, employees, agents, or affiliates (collectively, the "Provider Parties"); (ii) the failure of Provider to adhere to the terms of this Agreement or to cause any Authorized User or any other Provider Party to do so; or (iii) any services provided to any person by Provider or its personnel. Provider shall promptly notify Rapidoccc of any claim for which indemnification is sought under this Agreement and will cooperate in good faith with any Rapidoccc Indemnitee in defense of such claim.

**(c) Rapidoccc shall not be liable for any incidental, consequential, special or punitive damages of any kind or nature, whether such liability is asserted on the basis of contract, tort (including negligence or strict liability), or otherwise, even if Rapidoccc has been advised of the possibility of such loss or damages. The maximum liability of Rapidoccc under or in connection with this Agreement, including the provisions of Section 9 and Schedule I, or the use or disclosure of PHI, shall not exceed twelve (12) times Provider's monthly subscription fee paid to Rapidoccc under this Agreement.**

10. Insurance. Provider shall obtain and maintain such policies of general liability, errors and omissions, and professional liability insurance with reputable insurance companies as is usually carried by persons engaged in Provider's business throughout the term of this Agreement.

11. Term; Termination.

(a) The term of this Agreement shall commence on the date hereof and shall continue until terminated in accordance with the provisions of this Agreement. This Agreement may be terminated by either party (i) at any time upon thirty (30) days' written notice to the other party or (ii) immediately upon written notice in the event the other party becomes the subject of any proceedings under federal or state law relating to bankruptcy or insolvency, or becomes the

subject of any assignment for the benefit of creditors or becomes subject to the control of a receiver, trustee or other custodian.

(b) Each party shall return to the other party, or destroy, all of the other party's Confidential Information, and reproductions thereof, whether prepared by it or others, which are in its possession, promptly upon request and in any event upon termination of this Agreement. Notwithstanding the foregoing sentence, a party may retain a copy of the other party's Confidential Information solely to the extent required by applicable law, provided that in such case the protections of this Agreement shall continue to apply to any such Confidential Information for so long as it is retained.

(c) Upon expiration or termination of this Agreement, the rights and obligations of the parties under Sections 5 (Compliance with Law; Business Associate Terms), 7 (Confidential Information), 9 (Indemnification), 10 (Insurance), 11 (Termination), and Schedule I (to the extent provided for therein) shall survive, together with any other provisions of this Agreement that by their nature may reasonably be presumed to survive.

12. Independent Contractor. The parties acknowledge and agree that Rapidoc is providing the Solution as an independent contractor and not as an employee of Provider. Nothing contained in this Agreement shall be construed to create an agency or partnership among the parties, and neither party shall have any authority to contract or otherwise act on behalf of the other.

13. Miscellaneous.

(a) Assignment. Neither this Agreement nor any obligation set forth herein shall be assigned by Provider without the prior written consent of Rapidoc. No assignment will relieve any party of the performance of any accrued obligation that such party may then have under this Agreement.

(b) Waiver. A party's failure or neglect to enforce any of its rights under this Agreement will not be deemed to be a waiver of any of that party's rights.

(c) Notices. All notices and other communications provided for hereunder shall be in writing (which includes email). All written notices shall be mailed, certified or registered mail, or delivered to the applicable address or email address as follows:

Provider:            [\_\_\_\_\_]
                          [\_\_\_\_\_]
                          [\_\_\_\_\_]
                          Attn: [\_\_\_\_\_]
                          Email: [\_\_\_\_\_]

Rapidoc:            Rapidoc
                          4 Adamson St., #1
                          Boston, MA 02134
                          [chirag@rapidoc.com](mailto:chirag@rapidoc.com)

Either party may change the name or addresses to whom and where notice is to be given by providing notice to the other party of such change in accordance with this Section 13(c).

(d) Headings. The headings in this Agreement are for convenience only and do not in any way limit or amplify the terms or conditions of this Agreement.

(e) Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and all prior agreements with respect thereto are superceded hereby. No amendment or modification hereof shall be binding unless in writing and duly executed by authorized representatives of both parties.

(f) Governing Law. This Agreement will be construed and interpreted and its performance governed by the laws of the State of Massachusetts.

(g) Severability. If any provision of this Agreement should be held invalid or unenforceable, the remaining provisions shall be unaffected and shall remain in full force and effect, to the extent consistent with the intent of the Parties as evidenced by this Agreement as a whole.

(h) No Third-Party Beneficiary. The provisions set forth in this Agreement are for the sole benefit of the parties hereto and their successors and assigns, and they shall not be construed as conferring any right on any other persons.

(i) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall together be deemed to constitute one agreement. Signatures to this Agreement transmitted by fax, by electronic mail in “portable document format” (“pdf”), or by any other electronic means intended to preserve the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

*[Signature block on following page]*

In WITNESS WHEREOF, the parties hereto, each by a duly authorized representative, have executed this Agreement as of the date first written above.

**MED CLOUD, LLC D/B/A RAPIDOC**

**PROVIDER**

By: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit A  
Pricing

30-day Initial Trial: Free of charge.

Monthly Fees

Initial Authorized User: \$79 per month

Each additional Authorized User: \$39 per month

Payment Terms

Payment is due in advance on the first of each month. Payments due and unpaid shall bear interest from thirty (30) days after the date payment is due at the rate of one and one half percent (1.5%) per month (18 percent per annum). Provider's monthly fee will not be refunded on a prorated basis in the event of a mid-month termination.



Schedule I  
Business Associate Terms

These Business Associate Terms (this “BA Agreement”) is attached to and incorporated by reference into the User Agreement (the “Services Agreement”) by between Provider, as defined in the Services Agreement (“Covered Entity”), and Med Cloud, LLC d/b/a Rapidoccc (“Business Associate”) (Covered Entity and Business Associate each individually, a “Party” and collectively the “Parties”).

WHEREAS, Covered Entity acts as a “covered entity” and Business Associate may act as a “business associate” of Covered Entity, as those terms are defined under the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, and the regulations promulgated thereunder as amended from time to time (collectively, “HIPAA”);

WHEREAS, pursuant to the Services Agreement, Business Associate will provide certain after-hours answering services via Business Associate’s proprietary software solution (the “Services”), and in the course of providing the Services for or on behalf of Covered Entity, Business Associate may access, use, disclose, maintain, and/or transmit Protected Health Information (“PHI”).

WHEREAS, Business Associate desires to provide Covered Entity with satisfactory assurances that it will comply with provisions of HIPAA applicable to business associates in the event it accesses, uses, discloses, maintains, and/or transmits PHI.

NOW, THEREFORE, Covered Entity and Business Associate agree as follows:

1. Definitions. Capitalized terms used, but not otherwise defined, in this BA Agreement shall have the same meanings as those terms are given in HIPAA.
2. Permitted Uses and Disclosures by Business Associate
  - 2.1 *For the Specified Purposes*. Business Associate may only use or disclose PHI as necessary to perform the Services, and as otherwise provided for in this BA Agreement.
  - 2.2 *Required by Law*. Business Associate may use or disclose PHI as required by Law.
  - 2.3 *Minimum Necessary*. Business Associate agrees to limit uses, disclosures of, and requests for PHI to the minimum necessary to accomplish the intended purpose of such use, disclosure or request, in accordance with 45 CFR § 164.502(b).
  - 2.4 *Privacy Rule*. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth below.
  - 2.5 *Use for Management, Administration and Legal Responsibilities*. Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

2.6 *Disclosure for Management, Administration and Legal Responsibilities.* Business Associate may disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate, provided that the disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

2.7 *Data Aggregation.* Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity.

2.8 *De-Identification.* Business Associate may use PHI to de-identify the information in accordance with 45 CFR § 164.514(a)-(c), or otherwise.

### 3. Business Associate's Obligations

3.1 *Limits on use and further disclosure.* Business Associate agrees not to use or disclose PHI other than as expressly permitted or required by this BA Agreement or the Services Agreement.

3.2. *Appropriate safeguards.* Business Associate agrees to use appropriate safeguards, and comply with the Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of the PHI other than as provided for by this BA Agreement.

#### 3.3 *Reporting Requirements.*

3.3.1 Business Associate agrees to promptly report to Covered Entity any use or disclosure of PHI not provided for by this BA Agreement and any Security Incident of which it becomes aware. The parties agree that the term Security Incident does not include trivial and unsuccessful incidents such as pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, or denials of service.

3.3.2 Business Associate agrees to report any actual or likely Breach of Unsecured PHI (a "Breach") without unreasonable delay, but in all cases within sixty (60) calendar days of discovery, and otherwise in accordance with 45 CFR § 164.410.

3.4 *Subcontractors.* In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that any subcontractor, that creates, receives, maintains or transmits PHI on behalf of Business Associate, agrees to substantially the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information.

3.5 *Right of access to information.* At the request of Covered Entity, and in the reasonable time and manner designated by Covered Entity, Business Associate agrees to make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity's

obligations under 45 CFR § 164.524. If an individual contacts Business Associate directly to request access, Business Associate shall notify Covered Entity immediately and Covered Entity shall respond to the individual's request.

3.6 *Amendment of PHI.* At the request of Covered Entity, and in the reasonable time and manner designated by Covered Entity, Business Associate agrees to make amendments to PHI in a Designated Record Set, as directed or agreed to by Covered Entity pursuant to 45 CFR § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR § 164.526. If an individual contacts Business Associate directly to request an amendment, Business Associate shall notify Covered Entity immediately and Covered Entity shall respond to the individual's request.

3.7 *Accounting.* Business Associate agrees to maintain and make available, the information required to provide an accounting of disclosures, to Covered Entity in the reasonable time and manner designated by Covered Entity, as necessary to satisfy Covered Entity's obligations under 45 CFR § 164.528. The information shall be maintained by Business Associate until the later of (a) the termination of this BA Agreement or (b) six (6) years after the date of the disclosure of any PHI. If an individual contacts Business Associate directly to request an accounting, Business Associate shall notify Covered Entity immediately and Covered Entity shall respond to the individual's request.

3.8 *Carrying Out Covered Entity's Obligations.* To the extent that Business Associate is to carry out one or more of Covered Entity's obligation under 45 CFR Part 164, Subpart E, Business Associate agrees to comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).

3.9 *Access to Books and Records.* Business Associate agrees to make its internal practices, books, and records available to the Secretary for purposes of determining compliance with HIPAA.

#### 4. Covered Entity Obligations

4.1 Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI; provided that Covered Entity shall not include any limitation which would restrict Business Associate's ability to provide the Services.

4.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

4.3 Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI; provided that Covered Entity shall agree to any restriction which would restrict Business Associate's ability to provide the Services.

4.4 Covered Entity shall not request that Business Associate use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity, except as otherwise provided in Sections 2.5, 2.6, and 2.7 of this BA Agreement.

## 5. Term and Termination

5.1 *Term.* The term of this BA Agreement shall be effective as of the effective date of the Services Agreement, and shall terminate when Business Associate no longer continues to provide services under the Services Agreement, or on the date Covered Entity terminates for cause as authorized by paragraph 5.2, whichever is sooner.

5.2 *Termination for Cause.* Covered Entity may terminate this BA Agreement and any other related agreements if Covered Entity determines Business Associate has violated a material term of this BA Agreement.

5.3 *Obligations of Business Associate upon Termination.* Upon termination of this BA Agreement for any reason, if feasible, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall return all such PHI to Covered Entity, or destroy all such PHI if agreed to by Covered Entity.

5.4 *Survival.* The obligations of Business Associate under Section 3 of this BA Agreement shall survive termination of this BA Agreement for so long as Business Associate retains any PHI.

## 6. Miscellaneous

6.1 *Regulatory references.* A reference in this BA Agreement to a section in HIPAA or other applicable law means the section as in effect or as amended.

6.2 *Amendment.* The Parties agree to take such action as is necessary to amend this BA Agreement from time to time as is necessary for compliance with HIPAA and other applicable law.

6.3 *Interpretation.* Any ambiguity in this BA Agreement shall be interpreted to permit compliance with HIPAA.

6.4 *Compliance with Law.* Business Associate shall at all times comply with all applicable law, including any applicable statutes, ordinances, regulation or administrative or judicial orders, and shall at all times maintain all such authorizations, licenses and registrations as are required for Business Associate to conduct its business in accordance with all applicable law.

6.5 *Indemnification.* To the extent permitted by law, each Party (the “Indemnifying Party”) agree to indemnify and hold harmless the other (the “Indemnified Party”) from and against all claims, demands, liabilities, judgments or causes of action of any nature for any relief, elements of recovery or damages recognized by law (including, without limitation, reasonable attorney’s fees, defense costs, costs of breach notification and mitigation, and regulatory investigations, including but not limited to, those by the Office for Civil Rights or state regulatory agencies, and

equitable relief), for any damage or loss incurred by the Indemnified Party arising out of, resulting from, or attributable to any acts or omissions or other conduct of the Indemnifying Party or its subcontractors, employees, officers, or agents in violation of the Indemnifying Party's duties under this BA Agreement.