

Intelichart third party pass through terms:

ARTICLE I – DEFINITIONS

“Documentation” means those materials provided to Client that describe the function and use of the Portal, including without limitation the online user guide for the Portal, as updated from time to time.

“InteliChart” or “Supplier” means InteliChart, LLC, a North Carolina limited liability company.

“Netsmart Agreement” means a written agreement between Netsmart and Client, including all schedules, exhibits, and addenda thereto, pursuant to which Client is purchasing subscriptions to access and use the Portal.

“Order Form” means a Netsmart order form submitted by Client in order to (i) purchase additional User subscriptions to the Portal, and/or (iii) purchase Services from Netsmart. Each Order Form shall be in a form acceptable to Netsmart and shall not be deemed effective unless accepted in writing by Netsmart in its sole discretion. The terms of each such Order Form are hereby incorporated by reference.

ARTICLE II - SUBSCRIPTION AND SERVICES

(a) Subscription Purchases. During the Term Netsmart shall make the Portal available to the Client pursuant to, and in accordance with, the Terms, the Netsmart Agreement and each of the applicable exhibits, schedule(s) and/or Order Forms thereto. Client agrees that its subscriptions hereunder are neither contingent on the delivery of any future functionality or features in the Portal nor dependent on any oral or written public comments made by Netsmart regarding future functionality or features in the Portal. For avoidance of doubt, Client acknowledges and agrees that its right to access and use the Portal is subscription-based and is not being provided pursuant any perpetual license grant included within the Netsmart Agreement; provided, however, that the restrictions and limitations imposed on the Licensed Programs included in the Netsmart Agreement shall apply to your access and use of the Portal.

(b) User Subscriptions. Unless otherwise specified in an applicable Order Form, (i) the Portal shall be purchased as User subscriptions and may be accessed by no more than the number of Users purchased by Client from Netsmart, (ii) additional User subscriptions for the Portal may be purchased during the term of the Netsmart Agreement by submitting an Order Form, and (iii) the additional User subscriptions for the Portal shall terminate on the same dates as the then-existing subscriptions for the Portal. User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Portal.

(c) **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Netsmart reserve all rights, title and interest in and to the Portal, including all related intellectual property rights. No rights are granted to Client hereunder other than as expressly set forth herein.

(d) **Client Responsibilities.** Client shall (i) be responsible for its User's compliance with the Netsmart Agreement, (ii) be solely responsible for the accuracy, quality, integrity and legality of the Patient Data and of the means by which Client acquired the Patient Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Portal, and notify Netsmart promptly of any such unauthorized access or use, (iv) use the Portal only in accordance with the Documentation and all applicable federal and state laws and regulations, (v) not make the Portal available to anyone other than its Users, its administrative personnel and Client's patients, provided that in each such instance that Client shall ensure that such individual (A) shall use the Portal only in accordance with the Documentation and all applicable federal and state laws and regulations and (B) shall not access and/or use the Portal in order to build a competitive product or service, copy any features, functions or graphics of the Portal, or monitor the availability and/or functionality of the Portal for any benchmarking or competitive purposes, (vi) not sell, resell, rent or lease the Portal, (vii) not modify, alter, revise, decompile, disassemble, reverse engineer, create derivative works or attempt to derive the source code of the Portal, (viii) not use the Portal to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (ix) not store or transmit any material containing software viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs, (x) not interfere with or disrupt the integrity or performance of the Portal, (xi) not attempt to gain unauthorized access to the Portal or their related systems or networks, or (xii) not access the Portal in order to build a competitive product or service, copy any features, functions or graphics of the Portal or monitor the availability and/or functionality of the Portal for any benchmarking or competitive purposes.

(e) **Patient Data.** As between Netsmart and Client, Client exclusively owns all rights, title and interest in and to all of the Patient Data. Client hereby grants Netsmart and IntelliChart a non-exclusive, unrestricted royalty-free license to distribute, modify, transmit, display and otherwise exploit any de-identified information contained in the Patient Data, in any medium, including without limitation, incorporating such de-identified information into Netsmart's and/or IntelliChart's national data repository, as well as submission and sublicense of such de-identified information to third parties for independent studies and analyses, provided, however, that Netsmart's and IntelliChart's right to distribute, modify, transmit, display and otherwise exploit certain personally identifiable

Patient Data of Client submitted to the Portal shall be governed by, subject to, and exploited in a manner consistent and acceptable with then-current HIPAA regulations.

Article III - WARRANTIES AND INDEMNIFICATION

(a) **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THE NETSMART AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

(b) **Netsmart Breach.** Client acknowledges and agrees that should Netsmart discontinue provisions of services under the Netsmart Agreement, or materially breach its reseller agreement with IntelliChart, then Client may negotiate directly with IntelliChart to obtain subscriptions/licenses and/or services previously provided by or through Netsmart.

(c) **InteliChart Remedies.** Client acknowledges and agrees that if Client has breached the terms of the Netsmart Agreement as it relates to the Portal, IntelliChart may exercise and enforce in Netsmart's name all of Netsmart's rights under the Netsmart Agreement, subject to the terms of its reseller agreement with Netsmart.

(d) **Indemnity by Client.** Client shall defend IntelliChart from and against any Claim made or brought by a third party against IntelliChart alleging that (i) the Patient Data, or (ii) Client's misuse of the Portal infringes or misappropriates such third party's United States patent, copyright, trademark, or trade secret rights, and shall indemnify IntelliChart for any damages finally awarded against, and for reasonable attorney's fees incurred by, IntelliChart in connection with any such Claim; provided that IntelliChart, as applicable, (x) promptly gives Client written notice of the Claim; (y) gives Client sole control of the defense and settlement of the Claim (provided that Client may not settle any Claim unless the settlement unconditionally releases IntelliChart of all liability); and (z) provides to Client all reasonable assistance, at Client's expense.

(e) **LIMITATION OF LIABILITY.** CLIENT ACKNOWLEDGES AND AGREES THAT IN NO EVENT SHALL INTELICHART HAVE ANY LIABILITY TO CLIENT, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE. CLIENT AGREES THAT THE PORTAL IS A DOCUMENTATION TOOL ONLY, AND THAT THE PORTAL IS NOT INTENDED TO PROVIDE DIAGNOSES, PRACTICE GUIDELINES, ADVICE, OR PROTOCOLS FOR DELIVERING MEDICAL CARE. CLIENT

FURTHER AGREES THAT NOTHING IN THE PORTAL OR ANYTHING ELSE PROVIDED PURSUANT TO THE NETSMART AGREEMENT CONSTITUTES OR IS INTENDED TO BE MEDICAL ADVICE OR A SUBSTITUTE FOR MEDICAL KNOWLEDGE OR JUDGMENT. CLIENT FURTHER AGREES IT SHALL BE SOLELY RESPONSIBLE TO ENSURE THAT THE DOCUMENTATION OF MEDICAL CARE PROVIDED BY IT, ITS AFFILIATES OR THEIR RESPECTIVE EMPLOYEES, AGENTS, THIRD PARTY CONTRACTORS, AND SUPPLIERS IS ACCURATE AND THAT ALL BILLING INFORMATION DELIVERED BY CLIENT TO ANY INSURANCE COMPANY, GOVERNMENTAL AGENCY, OR OTHER PAYOR SHALL BE ACCURATE AND COMPLETE. NEITHER NETSMART NOR ITS VENDORS SHALL HAVE ANY RESPONSIBILITY AS A RESULT OF THE NETSMART AGREEMENT FOR DECISIONS MADE OR ACTIONS TAKEN OR NOT TAKEN IN RENDERING MEDICAL CARE OR FOR INFORMATION PROVIDED TO ANY INSURANCE COMPANY, GOVERNMENTAL AGENCY, OR OTHER PAYOR.

ARTICLE IV - MISCELLANEOUS

- (a) Assignment. Client shall have no right to transfer, assign or sublicense any of its rights, interests or obligations with respect to the Portal to any third party and any attempt to do so shall be null and void.
- (b) Conflicting Terms. In the event of any conflict, overlap and/or contradiction of terms between the Netsmart Agreement and the Terms, these Terms shall prevail.