

TERMS OF SERVICE

This Terms of Service (“**Terms**”) is a legal contract between the entity that is entering this Agreement to allow its End Users access and use of the Hospital Management System (“**Client**”) and **HiCare Group, Inc.** (“**HiCare**” or “**Company**”).

PLEASE REVIEW THIS AGREEMENT, AND ANY END USER AGREEMENT ASSOCIATED WITH THIS AGREEMENT, EVERY TIME CLIENT USES THE HOSPITAL MANAGEMENT SYSTEM AS THERE MAY BE CHANGES AND UPDATES FROM TIME TO TIME.

BY USING THE SERVICES DESCRIBED BELOW, CLICKING A BOX INDICATING ACCEPTANCE, OR EXECUTING AN ORDER FORM OR SUBSCRIPTION AGREEMENT REFERENCING THESE TERMS OF SERVICE, CLIENT IS AGREEING TO BE BOUND BY THESE TERMS OF SERVICE. IF YOU DO NOT AGREE TO THESE TERMS OF SERVICE, DO NOT SUBSCRIBE TO, ACCESS, OR USE THE SERVICE.

DO NOT USE, AND HALT YOUR END USERS FROM USING, THIS WEBSITE OR ANY COMPANY SERVICE OR PRODUCT FOR A MEDICAL EMERGENCY.

1. DEFINITIONS

Capitalized terms shall have the meaning set forth in this Terms or any applicable Order or Subscription Agreement as defined below:

- “**Affiliate**” means a company, practice, group and/or other legal entity (i) owned by a Party; or (ii) in which a Party has a majority controlling interest in such company, practice, group and/or other legal entity; or (iii) in which a Party has entered into a management agreement with such company, practice and/or other legal entity that creates a bona fide business relationship with that Party to perform one or more management service functions;
- “**Client Data**” means the compilation of Client’s, its Affiliated Organizations’, subsidiaries’, and/or parent entity’s data from all Data Sources;
- “**Confidential Information**” means a Discloser’s non-public information (including copies, summaries, and extracts): (A) that is identified in writing as confidential at the time of disclosure, whether in printed, textual, graphic, or electronic form; or (B) that is disclosed in non-tangible form, identified as confidential at the time of disclosure, summarized in a writing labeled as “confidential”, and delivered to Recipient within 15 days after disclosure. Confidential Information of HiCare includes the terms of this Agreement, Company Technology, Client lists, and employee lists whether or not marked or identified as confidential. The Party disclosing Confidential Information is referred to as “Discloser” and the Party receiving Confidential Information is referred to as “Recipient”. Confidential Information does not include information that:
 - is or becomes generally publicly available at or after the time of disclosure through no fault of either Recipient;
 - was known to Recipient free of any confidentiality obligations, before its disclosure by Discloser;

- becomes known to Recipient free of any confidentiality obligations from a source other than Discloser; or
- is independently developed by either Recipient without use of Confidential Information.
- **“De-Identify” or “De-Identified”** means to de-identify personal data in accordance with the “safe harbor” requirements of section 164.514(b)(2) of the HIPAA regulations, or in a manner that otherwise meets the requirements of section 164.514;
- **“De-Identified Data”** means Client Data that has been De-Identified;
- **“Order”** means each sales order form that is executed between Client and Company for Client’s procurement of Products and Services;
- **“Party”** means Company or Client, as applicable;
- **“Personnel”** means, with respect to each Party, such Party’s officers, employees and contractors;
- **“Service(s)”** means each service procured from HiCare under one or more Orders.
- **“User(s)”** means Personnel who are: authorized by Client to use any portion of the Services. Unless specifically stated otherwise in the applicable materials, each User will be assigned a unique ID and password.

2. SERVICES OF HICARE

2.1 These Terms of Service provide the Client with access and use of HiCare’s services, as specified on the applicable order form or subscription agreement between the parties. These Terms of Service, along with the applicable order form or subscription agreement, are referred to herein collectively as the **“Agreement”**. Client may purchase services across HiCare’s solutions offerings, which are collectively referred to as the Service.

2.2 The service is provided in three different subscription plans:

- **Small:** This plan is designed for small hospitals with limited needs. It includes access to basic patient management features, the details of which are prescribed in the applicable subscription agreement.
- **Medium:** This plan is designed for medium-sized hospitals with more complex needs. It includes all the features of the Small plan, plus some additional features, as more specifically prescribed in the applicable subscription agreement.
- **Custom:** This plan is designed for large hospitals with the most complex needs. It includes all the features of the Medium plan, plus additional features that can be customized to meet the specific needs of the hospital.

Each User of the System will be assigned an individual account. The Users will need to log in to the System using their individual usernames and passwords to access its features. The type of the account will determine the User’s access to the System. The Client defines all relevant roles and permissions of their organization.

3. CLIENT RESPONSIBILITIES

- **Access by Employees, Contractors and Service Providers of the Client:** Client may allow its employees and contractors to access the Service in compliance with the terms of this Terms, which access must be for the sole benefit of Client. Client is responsible for the compliance with this agreement by its employees, contractors and clients, as applicable.
- **Restrictions and Responsibilities.** Client may not (i) sell, resell, rent or lease the Service, (ii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous,

or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party rights (including without limitation any privacy rights), (iii) interfere with or disrupt the integrity or performance of the Service, or (iv) attempt to gain unauthorized access to the Service or its related systems or networks. Client is solely responsible for Client Data (defined below), must use commercially reasonable efforts to prevent unauthorized access to the Service, must notify HiCare promptly of any such unauthorized access, and may use the Service only in accordance with its user guide and applicable law.

- **Client Data.** All data entered by Client remains the sole property of Client, as between HiCare and Client (Client Data), subject to the other terms of this Terms. Client grants HiCare a non-exclusive term license to use, modify and otherwise make available the Client Data for purposes of performing under this agreement.
- **Accuracy of the Provided Information:** Client represents and warrants that all information and documents provided under Client's account or by Client are true, correct and accurate (if Client learns that any information provided to HiCare as part of the Service is not true, correct or accurate, it must immediately notify HiCare in writing of this fact, and provide the true, correct and accurate information).
- **Aggregate Data:** HiCare may use during and after this agreement all aggregate non-identifiable information and data for purposes of enhancing the Service, technical support and other business purposes, all in compliance with the HIPAA Privacy Standards, including without limitation the limited data set and de-identification of information regulations.

4. PAYMENT TERMS

- 4.1 **Payment:** Client must pay all fees as specified in the order or subscription agreement. Unless otherwise agreed between the Parties, invoiced charges are due as indicated in the order or the subscription agreement. Client is responsible for providing complete and accurate billing and contact information to HiCare and notifying HiCare of any changes to such information.
- 4.2 **Credit Card and ACH:** Client must pay all fees (in US dollars or in the currency specifically requested by HiCare in the order or subscription agreement) with a credit card or via ACH upon receipt of an invoice from HiCare. Client hereby authorizes HiCare to charge such credit card or withdraw from Client's bank account via ACH for all purchased Services and related services, and any renewals.
- 4.3 **Failure to Pay.** If Client fails to pay any undisputed amount when due under this Agreement HiCare may, in its sole discretion,
- i. terminate this Agreement or the applicable Order or Subscription agreement;
 - ii. suspend or restrict provision of the Services;
 - iii. prospectively discontinue any currently provided discount for the affected Services;
 - iv. discontinue any future right to purchase Products and Services, whether at a discount price or otherwise;
 - v. withdraw any previously granted, non-standard payment terms.

Unless otherwise agreed to by the parties in writing, failure of HiCare to invoice for any item set forth in the Order or the subscription agreement shall not relieve Client's obligation to pay for the item. HiCare may charge interest at the maximum rate permitted by applicable Law on any overdue, undisputed fees, from the due date until the date the overdue amount (plus applicable interest) is paid in full.

4.4 **Taxes.** Prices do not include applicable taxes. HiCare will invoice Client for any applicable taxes, and Client must pay these taxes. Where applicable, Client must provide any tax-exemption claim to HiCare before, or contemporaneously, when, placing an order.

5. REPRESENTATION AND WARRANTIES, DISCLAIMERS

5.1 Mutual Representation and Warranties

Each party represents and warrants to the other that:

- the Agreement has been duly entered into and constitutes a valid and binding agreement enforceable against such party in accordance with its terms;
- no authorization or approval from any third party is required in connection with such party's entering into or performance of the Agreement; and
- the entering into and performance of the Agreement does not and will not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

5.2 **Client's compliance with medical retention laws and patient records access.** Client is responsible for understanding and complying with all state and federal laws related to retention of medical records, patient access to information and patient authorization to release data. Client agrees that it will obtain any necessary patient consent prior to using the Service and will comply with state or federal law.

5.3 **NO MEDICAL ADVICE PROVIDED BY HICARE.** The Service does not provide medical advice, provide medical or diagnostic services, or prescribe medication. Use of the service is not a substitute for the professional judgment of health care providers in diagnosing and treating patients. Client agrees that it is solely responsible for verifying the accuracy of patient information (including, without limitation, by obtaining all applicable patients' medical and medication history and allergies), obtaining patient's consent to use the Service, and for all of its decisions or actions with respect to the medical care, treatment, and well-being of its patients, including without limitation, all of its acts or omissions. Any use or reliance by you upon the Service will not diminish that responsibility. Client assumes all risks associated with the clinical use of the Service for the treatment of patients. Neither HiCare nor its licensors assume any liability or responsibility for damage or injury (including death) to Client, a patient, other person, or property arising from any use of the Service.

5.4 DISCLAIMERS

5.4.1 **TO THE MAXIMUM EXTENT PERMITTED BY LAW AND EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, HICARE PROVIDES THE SERVICES ON AN "AS-IS" AND "AS AVAILABLE" BASIS. HICARE DISCLAIMS AND MAKES NO OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING REPRESENTATIONS, GUARANTEES, CONDITIONS OR WARRANTIES OF MERCHANTABILITY, TITLE, NON- INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, OR IMPLIED BY THE PROVISIONS OF ANY LAWS THAT BY THEIR TERMS CAN BE DISCLAIMED (SUCH AS THE UNIFORM COMMERCIAL CODE OR THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT). IF SUCH PROVISIONS CANNOT BE EXCLUDED AND DISCLAIMED, THEN THE PROVISIONS OF THIS AGREEMENT**

WILL CONTROL TO THE MAXIMUM EXTENT PERMITTED. WITHOUT ANY LIMITATION, HICARE HEREBY DISCLAIMS THAT (A) THAT ANY CONTENT, PRODUCT OR SERVICES WILL BE COMPLETE, ACCURATE, UNINTERRUPTED, FREE OF VIRUSES, ERROR FREE, OR THAT ANY ERROR CAN BE CORRECTED, OR (B) THAT ANY PRODUCTS OR SERVICES COMPLY WITH APPLICABLE LAWS..

5.4.2 FROM TIME TO TIME, CLIENT MAY REQUEST THE ADDITION OF CERTAIN CODE AND/OR FUNCTIONALITIES TO BE ADDED TO THE SYSTEM. HICARE SHALL NOT BE RESPONSIBLE FOR ENSURING THAT THE REQUESTED CODE AND/OR FUNCTIONALITIES COMPLY(IES) WITH ANY AND ALL APPLICABLE LAWS AND REGULATIONS PERTAINING TO CLIENT’S BUSINESS. CLIENT HEREBY ACKNOWLEDGES AND AGREES THAT CLIENT ALONE SHALL BE RESPONSIBLE FOR ENSURING THAT THE SERVICE OFFERINGS, EVEN IF SUPPORTED BY HICARE, COMPLY WITH APPLICABLE LAWS AND REGULATIONS.

6. CONFIDENTIAL INFORMATION

- **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees, contractors and clients (as the case may be) who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement. The Recipient may disclose Confidential Information to the extent required by law or legal process.
- **Exclusions.** Confidential Information *excludes* information that: Is or becomes generally known to the public without breach of any obligation owed to Discloser, Was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, Is received from a third party without breach of any obligation owed to Discloser, or Was independently developed by the Recipient without use or access to the Confidential Information.

7. PROPRIETARY RIGHTS

7.1 Reservation of Rights by HiCare. The software, workflow processes, user interface, designs, know-how and other technologies provided by HiCare as part of the Service are the proprietary property of HiCare and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with HiCare. HiCare reserves all rights unless expressly granted in this agreement.

7.2 Client Restrictions. Client may not:

- Use the Service or the Licensed Documentation (defined below) beyond its internal operations;
- Reverse engineer the Service or the Licensed Documentation;
- Remove or modify any proprietary marking or restrictive legends in the Service; or

- Access the Service to build a competitive product or service, or copy any feature, function or graphic of the Service for competitive purposes.

7.3 **Licensed Documentation.** The Service user guide, sample data, marketing materials and other material provided or accessible through the Service, are licensed to Client as follows: HiCare grants Client a non-exclusive, license for the duration of the Service to use such materials for Client’s internal use solely with the Service, with the right to make additional copies of the material for such duration and purpose (Licensed Documentation).

7.4 **Aggregation Services and De-identified Data:** HiCare and its affiliates may use and disclose, during and after the Agreement, all aggregate, anonymized information and de-identified data for purposes of enhancing the Service, technical support and other business purposes, all in compliance with the HIPAA Privacy Standards, including without limitation the limited data set and de-identification of information regulations.

8. LIMITATION OF LIABILITY

8.1 **NO INDIRECT DAMAGE:** HICARE WILL NOT BE LIABLE TO CLIENT FOR ANY LOST PROFITS, COST OF COVER, LOSS OF DATA, INTERRUPTION OF BUSINESS OR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, EVEN IF CLIENT IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE.

8.2 Limits:

- HiCare’s total liability for all damages arising under or related to the agreement (in contract, tort, or otherwise) will not exceed 10% of annual service agreement amount immediately preceding the event which gave rise to the claim.
- This limitation of liability is intended to apply without regard to whether other provisions of this agreement have been breached or have proven ineffective or if a remedy fails of its essential purpose.
- Any claim by client against HiCare must be brought within six (6) months of the event which gave rise to the claim, and if it is not brought within such time period then such claim is expressly waived by client.

9. TERM, TERMINATION AND RETURN OF DATA

9.1 The term of the Agreement:

- The applicable Services will continue for the duration specified in the applicable order or subscription agreement (Initial Term). Following the end date of the Initial Term, the Agreement will be automatically extended for additional consecutive terms of equal duration to the Initial Term (Renewal Term) unless either party provides thirty /30/ days prior notice of non-renewal. The Initial Term and any subsequent Renewal Term(s) may be collectively referred to as the “Term”.
- These Terms of Service continue in effect until all order forms and/or subscription agreements and all Services are terminated.

9.2 Termination for Material Breach:

- Either party may terminate the Agreement if the other party material breaches any term of the Agreement and does not cure the breach within thirty (30) days of receipt of written or electronic notice of breach.
- Upon termination, Client must pay any unpaid fees and destroy all HiCare property in Client's possession.
- Client, upon HiCare's request, will confirm in writing or electronically that it has complied with this requirement.

9.3 Suspension or Termination of Service for Violation of Law or the Agreement:

- HiCare may immediately suspend or terminate the Service if it in good faith believes that, as part of using the Service, Client may have violated any applicable law or any term of the Agreement.
- HiCare may use reasonable efforts to try to contact Client in advance, but it is not required to do so.

10. INDEMNIFICATION

Client must indemnify, defend, and hold harmless HiCare against all third-party claims (including without limitation by governmental agencies), demands, damages, costs, penalties, fines, and expenses (including reasonable attorneys' fees and costs) arising out of or related to:

- Client's breach of any term in this agreement,
- Any unauthorized use, access or distribution of the Service by Client,
- Violation of any individual's privacy rights related to information submitted under Client's account, or
- False, duplicate, incomplete, unauthorized, or misleading information submitted under Client's account or by Client.

11. GOVERNING LAW AND DISPUTE RESOLUTION

This agreement is governed by the laws of the State of Delaware, USA without regard to conflict of laws principles. Any dispute arising out of or related to this agreement must be exclusively brought in the courts having jurisdiction thereof. Client consents to the personal jurisdiction of such courts and waives any claim that it is an inconvenient forum. The prevailing party in litigation is entitled to recover its attorneys' fees and costs from the other party.

12. MISCELLANEOUS

- 12.1 **Equitable Relief.** Actual or threatened breach of certain sections of this Agreement (including, without limitation, provisions on intellectual property, license, privacy, data protection and confidentiality) may cause immediate, irreparable harm that is difficult to calculate and cannot be remedied by the payment of damages alone. Either Party will be entitled to seek preliminary and permanent injunctive relief and other equitable relief for any such breach.

- 12.2 **Notices.** Any notice given under this Agreement must be in writing and, other than service of process, may be delivered:
- If to Company, to the email address, specified by Company from time to time as available on [Contact | hicare.io](#).
 - If to Client, to the email address, specified in the Client's account or (ii) such other address as identified by Client from time to time.
- 12.3 **Waiver.** Neither Party's waiver of the breach of any provision constitutes a waiver of that provision in any other instance.
- 12.4 **Modification.** This Master Agreement may not be modified nor any rights under it waived, in whole or in part, except in writing signed by the Parties.
- 12.5 **Relationship of Parties, Assignment.**
- HiCare is an independent contractor, and nothing in this Agreement is intended to constitute an employment, partnership, joint venture, fiduciary, trust or agency relationship between the Parties, or authorize Client or HiCare to enter into any commitment or agreement with any Third Party that is binding on the other Party.
 - This Agreement is personal to Client, and Client may not delegate and/or assign this Agreement, including but not limited to any and all Services thereunder, or any of Client's rights or duties hereunder without the advance, written consent of HiCare, which shall not be unreasonably withheld. Any attempted assignment or transfer by Client in violation of the provisions of this Section will be void and of no force and effect. HiCare may assign this Agreement or its rights and/or duties to its affiliates or to its successor in the event of a sale of all or substantially all of its assets, voting securities, or the assets or business related to the Services provided under this Agreement.
- 12.6 **Force Majeure.** Except as otherwise agreed between the Parties, a Party's failure to perform its obligations under this Agreement, other than the payment of money, is excused to the extent that the failure is caused by an event outside its reasonable control, including an act of God, act or threat of terrorism, shortage of materials, strike or labor action, war or threat of military or significant police action, natural disaster, failure of Third Party suppliers, denial of service attacks and other malicious conduct, utility failures, power outages, governmental acts, orders, or restrictions, or other cause beyond its reasonable control.
- 12.7 **Severability.** If any terms or provisions of this Agreement are for any reason held invalid, unenforceable or deemed contrary to any applicable law or policy, the parties preference is that such terms or provisions be effective to the extent permitted by law and the same will not affect any other term or provision of this Agreement, which will otherwise remain in full force and effect.
- 12.8 **Client Cooperation.** HiCare may publicly identify Client as a client of HiCare.