

# Phamily End User Terms of Use

Please read these terms of use carefully before using the Services and associated Software. You may use the Services and Software only if you first accept these terms, which constitute a binding agreement between you (an individual end user) and Jaan Health, Inc. (“JHI”). By using the Services and Software you signify your agreement with these terms, including the Privacy Policy. JHI may modify, alter or otherwise update these terms from time to time. You agree to periodically check back to this location to keep current on the Terms of Use and Privacy Policy governing your use of the Services and Software.

Any new or modified terms posted will take effect thirty (30) days after posting.

**IF YOU DO NOT AGREE WITH THESE TERMS, OR ANY NEW OR MODIFIED TERMS, DO NOT IN ANY MANNER USE THE SERVICES OR SOFTWARE OR PARTICIPATE IN ANY OF THE FUNCTIONALITY OFFERED THEREIN.**

## 1. Purpose:

The Phamily® End User Terms of Use (the “Agreement”) set forth the terms and conditions under which JHI will provide you with access to and use of a Services offering, and associated Software, for the purpose of certain Web-based healthcare collaboration functionality as described herein. For the purposes of this Agreement, you will be deemed a “User” or a “Family Member” as defined herein.

## 2. Definitions:

All capitalized terms defined in this Agreement have the meanings set forth herein:

- 2.1. “Privacy Policy” means the Privacy Policy, located at <https://my.phamily.com/privacy>, and any subsequent modification by JHI posted at this location.
- 2.2. “Family Member” means a member of a User’s family or other individual designated by User to participate in and use the Services for the purpose of collaborating with User and Physician with respect to User’s healthcare. In order to be considered a Family Member, the User must execute a Proxy Authorization Form.
- 2.3. “User” means a person that participates in and utilizes the Services for the purpose of collaborating with a Physician and, if designated, a Family Member, with respect to his or her own healthcare.
- 2.4. "Content" means all data and information including, without limitation, documents, photographs, recordings, sound, video, graphics, images or text that you create, install, upload or transfer in connection with your use of the Services.
- 2.5. “Physician” means a medical professional selected by User that has elected to participate in and utilize the Services.



- 2.6. "Services" means the Phamily software-as-a-service offering, communications platform and related mobile application functionality.
- 2.7. "Software" means the software and all associated documentation and other materials that may be provided or made available to you by JHI and its third party providers to facilitate access to and use of the Services including, but not limited to, any mobile application.
- 2.8. "Affiliate" means entities that control, are controlled by, or are under common control with JHI.
- 2.9. "Suppliers" means third party providers of services to JHI.

### **3. User and Family Member Usage Requirements:**

By accessing or using the Services in any way, you acknowledge and agree to the following requirements:

- 3.1. You must provide current, accurate information when registering to use the Services or identifying Family Members through the Services. You are responsible for maintaining the accuracy and completeness of such information.
  - 3.2. If you elect to be contacted by your Physician via electronic mail or text message, you are responsible for any connection, data usage or per message charges you may incur in connection therewith.
- 3.3. You will not share your password to access the Services with anyone. Sharing your password with others will allow them to have access to your personal confidential medical information. You are solely responsible for protecting your password.
- 3.4. You will not send any communication to a Physician that may require urgent attention. If you require a response to your communication in less than two (2) business days, contact the Physician's office directly by telephone. **In the event of any medical emergency or other urgent matter, contact the Physician by telephone or call 911 or your local emergency medical services agency.**
- 3.5. A Physician may delegate his or her authority to respond to your communications through the Services to his or her colleagues or support personnel. If you want to send a communication solely to the designated Physician (e.g., if your communication includes particularly sensitive information that you would only want to discuss with the Physician) do not utilize the Services for this purpose.
- 3.6. If the User receives certain information through the Services that would typically trigger a telephone message, fax or postal confirmation from the Physician (e.g., test results, changes in medication dosage), the User may not receive such other communication.
- 3.7. Information communicated through the Services may be made part of the User's permanent medical record at the discretion of the Physician and, accordingly, may be accessible to other medical professionals involved in the User's care.
- 3.8. You may discontinue your use of the Services at any time by electronically opting out of the service

or notifying JHI in writing.

- 3.9. You acknowledge that text messages are not encrypted and information sent via text message could be accessed by third parties.



#### **4. Software License:**

Subject to your compliance with this Agreement, JHI hereby grants you a revocable, non-exclusive, nontransferable license (i) to install the Software (in object code and executable code format only), if applicable, and (ii) to use such Software solely for the purpose of accessing and using the Services. Certain Software that forms part of the Services may be subject to additional terms and conditions which shall be presented to you at the time of download. In the event of a conflict between such additional terms and conditions and the Agreement, the Agreement shall prevail.

#### **5. Access to Services:**

- 5.1. License; Suspension and Cancellation. Subject to your compliance with the Agreement, JHI grants you a revocable, non-exclusive, nontransferable right to access and use the Services. The Services are provided with Restricted Rights for U.S. Government users. JHI reserves the right to suspend or discontinue the Services, or any part thereof, (or otherwise terminate the Agreement) at any time without notice. JHI may, at any time, revoke your access to the Services or delete your Content for any reason in its sole discretion, including, but not limited to, if JHI believes that you are in breach of the Agreement or the Acceptable Use Policy set forth in Section 13. Upon any cancellation of this Agreement, your access and other rights to the Services will be cancelled and cease. In such event you must cease any further use of the Services and destroy any copies of the associated Software within your possession or control.
- 5.2. Inviting Physicians to participate in Phamily. You may invite one (1) or more Physicians located in the United States to participate in the Services for the purpose of collaborating with you utilizing the Services. Physicians must agree to the Phamily Physician Terms of Use, therein in order to accept your invitation to participate.

#### **6. Ownership of Software, Services, and Marks:**

The Software and Services are licensed, not sold, solely for use under the terms of this Agreement. Except as specifically set forth herein, JHI and its Affiliates and Suppliers, or their licensors, retain all right, title, and interest, including all intellectual property rights, relating to or embodied in the Software and Services, including without limitation all technology, software, and copies relating to the Software and Services. All graphics, logos, service marks, and trade names, including third-party names, product names, and brand names (collectively, the "Marks") relating to the Software and Services are the trademarks of JHI and its Suppliers or their licensors. You are prohibited from using any Marks without the prior written permission of JHI or the owners thereof. JHI reserves all rights not expressly granted in this Agreement.

#### **7. Restrictions:**

You agree not to copy, reverse assemble, reverse compile, decompile, or otherwise translate the Software or Services, except as expressly permitted by law without possibility of contractual waiver.

Unless expressly permitted in another written agreement between you and JHI or its Affiliates or Suppliers, you may not: (1) use, copy, modify, create derivative works of, distribute, sell, assign, pledge, sublicense, lease, loan, rent, timeshare, deliver, or otherwise transfer, directly or indirectly, the Software (in whole or in part) or any rights in the Services; or (2) you may not remove, deface, cover, alter or obscure any copyright or trademark notices and/or legends or other proprietary notices associated with the Services unless expressly permitted under another written agreement between you and JHI or its Affiliates. The Services and associated Software are to be used by individuals and entities located within the United States solely



for messaging, collaboration and related healthcare activities in which you are an active participant, and only as permitted under the Agreement.

#### **8. Scheduled Downtime; No Training or Technical Support:**

JHI regularly performs scheduled maintenance for the Services and other non-scheduled down times may occur. During such times the Services will not be available for use. JHI has no obligation under the terms of this Agreement to provide support or maintenance services in connection with the Software or Services ("Technical Support"). JHI may elect to provide you with Technical Support at its sole discretion. Any enhancements, updates and other materials provided by JHI as part of any such Technical Support are considered to be part of the Services or Software, as applicable, and therefore governed by the Agreement.

#### **9. Updates; Applicable Terms and Authorization for Auto Updates:**

JHI may, in its sole discretion, provide, and the Agreement shall apply to, all updates, supplements, add on components, features, or other functionality or messages related thereto, including without limitation alterations of functionality, features, storage, security, availability, content, and other information relating to the Software or Services (collectively, "Updates") that JHI may provide or make available generally to its customers after the date that Services commence, subject to any additional terms and conditions provided by JHI applicable to such Updates. You hereby authorize JHI to, and agree that JHI

may, in accordance with JHI's standard operating procedures, automatically and in good faith transmit, access, install, and otherwise provide Updates to the Software upon your access to the Services without further notice or need for consent. JHI has no obligation to, and nothing in this Agreement may be construed to require JHI to, create, provide, or install Updates.

#### **10. Privacy:**

You agree to allow JHI and its Affiliates and Suppliers to store and use the personal information you provide to us in connection with your use of the Services, including your name, phone number(s), and e mail address(es), anywhere JHI and its Affiliates do business, solely as set forth in the Privacy Policy at <http://phamilycares.com/privacy>. Your Physician may have its own privacy policy. You should review its privacy policy to learn more about what, why, and how it collects and uses personally identifiable information. JHI will not access, view or otherwise use any personal information included in your Content except as provided in Section 12. You confirm that you are solely responsible for any personal information that may be contained in your Content and your compliance with applicable data protection laws.

#### **11. Ownership of Content; Representations and Warranties About Content:**

JHI does not claim ownership of any Content. You hereby grant to JHI a nonexclusive, worldwide, royalty free, fully-paid, transferable license to host, cache, record, copy, and display Content solely for the purpose of providing the Services to you. Except as set forth in this Section 11, you retain all right, title, and interest in and to the Content. You represent and warrant that you: (i) are the owner or authorized licensee of any and all Content; and (ii) will not will not publish, post, upload, record, or otherwise distribute or transmit Content that violates the Acceptable Use Policy set forth in Section 13.



## **12. Limited Purpose Access to Content:**

You acknowledge that the Services are provided by automated means and that JHI personnel will not access or view any Content, except as necessary to perform the Services and enhance and develop the Services, including but not limited to the following: (i) if during a Services interruption as necessary to restore the applicable Content at your request; or (ii) as deemed necessary or advisable by JHI in good faith to conform to legal requirements or comply with legal process.

## **13. Acceptable Use Policy:**

You acknowledge and agree that you will not use the Services in a manner that, in JHI's reasonable judgment, involves, facilitates, or attempts any of the following:

- a. violating any law of, or committing conduct that is tortious or unlawful in, any applicable jurisdiction;
- b. gambling activities;
- c. displaying, performing, sending, receiving or storing any content that is obscene, pornographic, lewd, lascivious, or excessively violent, regardless of whether the material or its dissemination is unlawful;
- d. advocating or encouraging violence against any government, organization, group, individual or property, or providing instruction, information, or assistance in causing or carrying out such violence, regardless of whether such activity is unlawful;
- e. accessing, sending, receiving, displaying, performing, disclosing, storing, or executing any Content (i) in violation of any copyright, right of publicity, patent, trademark, service mark, trade name, trade secret or other intellectual property right, (ii) in violation of any applicable agreement, or (iii) without authorization;
- f. deleting or altering author attributions, copyright notices, or trademark notices, unless expressly permitted in writing by the owner;
- g. obtaining unauthorized access to any system, network, service, or account;
- h. interfering with service to any user, site, account, system, or network by use of any program, script, command, or otherwise;
- i. introducing or activating any viruses, worms, harmful code and/or Trojan horses; j. sending or posting unsolicited messages or e-mail, whether commercial or not, a) to any recipients who have requested that messages not be sent to them, or b) to a large number of recipients, including users, newsgroups, or bulletin boards, at one time;
- k. evading spam filters, or sending or posting a message or e-mail with deceptive, absent, or forged header or sender identification information;

- l. propagating chain letters or pyramid schemes, whether or not the recipient wishes to receive such mailings;
- m. holding JHI, its Affiliates, officers, employees and/or shareholders up to public scorn or ridicule; and/or
- n. reselling JHI's services, in whole or in part, to any entity or individual, without JHI's prior written consent, or misrepresenting your relationship with JHI.

#### **14. Compliance with Applicable Law:**

Regardless of your location when you access the Services, you agree to comply with all applicable United States export control laws, including those regarding the export of data. You may not export, re-export,



divert, transfer or disclose any portion of the Services or Software or technical information or materials, directly or indirectly, in violation of any applicable export law or regulation. You are also responsible for complying with all other laws, rules, and regulations that may be applicable to your use of the Services and Software.

#### **15. Indemnity:**

You agree to defend, indemnify, and hold harmless JHI, Physician and their respective officers, directors, employees, consultants, agents and suppliers from and against any and all third party claims, liabilities, damages, and/or costs (including, but not limited to, fees, costs and other expenses of attorneys and expert witnesses) arising out of or related to: (i) your use of the Services or Software, (ii) any violation of this Agreement or applicable law by you in connection with your use of the Services or Software, or (iii) actual or alleged infringement by you, or any person accessing the Services or Software using your password or access key, of any intellectual property or privacy or other right of any third party, or (iv) any unauthorized use of JHI's or its licensors' Software.

#### **16. DISCLAIMER OF WARRANTIES:**

**THE SERVICES AND SOFTWARE (INCLUDING ANY ASSOCIATED DOCUMENTATION, INFORMATION AND MATERIALS) ARE PROVIDED TO YOU "AS IS" AND JHI AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.**

**WITHOUT LIMITING THE FOREGOING, THE SERVICES AND SOFTWARE ARE NOT DESIGNED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATIONS SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. WITHOUT LIMITING THE GENERALITY OF ANY OF THE FOREGOING, JHI, ITS AFFILIATES, SUPPLIERS AND RESELLERS SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSE.**

#### **17. Acceptance of Risk:**

JHI will make commercially reasonable efforts to deliver secure and reliable Services and Software. Notwithstanding the foregoing, you acknowledge and agree that: (i) use of the Services and Software is at your sole risk; (ii) any material and/or data downloaded or otherwise obtained through the use of the Services and Software is at your own discretion and risk; (iii) you will be solely responsible for any

damages to you resulting from your use of the Services and Software; and (iv) the entire risk arising out of use of the Services and Software remains with you.

#### **18. LIMITATION OF LIABILITY AND EXCLUSION OF DAMAGES:**

**IN NO EVENT WILL JHI OR ITS SUPPLIERS OR RESELLERS, OR ANY PHYSICIAN BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS OR DAMAGE) ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SERVICES OR SOFTWARE, OR THE PROVISION OF OR FAILURE TO PROVIDE TECHNICAL OR OTHER SUPPORT SERVICES, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF JHI, ITS AFFILIATES OR SUPPLIERS OR RESELLERS HAVE BEEN ADVISED OF OR ARE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE**

JHI Phamily End User Terms of Use (Rev. 11/2015) Page 6 of 8



**MAXIMUM AGGREGATE LIABILITY OF JHI, ITS AFFILIATES OR SUPPLIERS OR RESELLERS AND YOUR EXCLUSIVE REMEDY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO YOUR USE OR ATTEMPTED USE OF THE SERVICES OR SOFTWARE WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU FOR THE SERVICES, IF ANY. Because some states and jurisdictions do not allow the exclusion or limitation of liability, the above limitation may not apply to you.**

#### **19. Geographic Scope:**

Although you may have accessed the Services or Software outside of the United States of America, delivery of the Services or Software by JHI or its suppliers will only occur within the United States of America, and JHI's obligations hereunder are valid only in the United States of America. You acknowledge and agree that the Services are intended for use by you only within the United States.

#### **20. Governing Law; Exclusive Forum:**

This Agreement, and the relationship between you and JHI resulting from your use or attempted use of the Services or Software, and the resolution of any dispute arising out of that relationship, shall all be governed by and construed in accordance with the laws of the State of New York, without regard to any conflict of law principles or provisions. you agree that any legal action or proceeding arising out of or related in any manner to the Agreement, or the relationship between you and JHI resulting from the Agreement or your use or attempted use of the Services or Software, shall be brought exclusively in the United States District Court for the Southern District of New York in White Plains, New York; or, if jurisdiction is not available in that court, in the New York State Supreme Court in Westchester County, New York. The parties expressly waive any right to a jury trial for disputes related to the subject matter of this Agreement. Unless otherwise provided by local law without the possibility of contractual waiver or limitation, any legal or other action related to a breach of this Agreement must be commenced no later than two (2) years from the date on which the cause of action arose.

#### **21. Injunctive Relief:**

Your use of the Services or Software in violation of the Agreement would cause irreparable harm to JHI, its licensors and suppliers for which no adequate remedy at law exists, and under such circumstances JHI, its Affiliates and suppliers will be entitled to equitable relief, without posting bond or other security, including, but not limited to, preliminary and permanent injunctive relief.

## **22. Miscellaneous:**

If any part of this Agreement is determined to be invalid or unenforceable, then such invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the Agreement will continue in effect. If any provision(s) is found to be contrary to law, then such provision(s) will be construed, as nearly as possible, to reflect the intentions of the parties with the other provisions remaining in full force and effect. JHI's failure to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision unless agreed to by JHI in a writing signed by a duly authorized representative of JHI. JHI reserves the right to modify the Agreement, and related Acceptable Use Policy set forth in Section 13 at any time by providing such revised terms to you. Your continued use of the Software or Services shall constitute your acceptance to be bound by any such revised terms and conditions.



## **23. Entire Agreement:**

The Agreement constitutes the entire agreement between JHI and you with respect to the Software and Services and supersedes all other (prior or contemporaneous) communications and proposals, whether electronic, oral, or non-electronic, between JHI and you regarding them. You agree that any terms or conditions contained in any document, including but not limited to a purchase order, acknowledgement, email, or other document that you may now or later provide to JHI, will have no effect and that this Agreement is the only contract between JHI and you regarding the Software and Services and may only be amended as set forth herein.

