



DATA LICENSE AND USE AGREEMENT

(Marketplace)

This Data License and Use Agreement (“Agreement”) is entered into as of the date Customer accepts these terms under an applicable Order Form (the “Effective Date”), by and between AcuityMD, Inc., with a place of business at 75 Federal St, Suite 800, Boston, MA 02110 (“Company”), and the customer identified in the applicable Order Form (“Customer”) (each, a “Party” and collectively, the “Parties”).

By entering into an Order Form with Company that references this Agreement, or accessing or using Company Data, Customer is agreeing to and accepting the terms of this Agreement. The Order Form referencing this Agreement is incorporated herein by reference. In the event of a conflict between this Agreement and the Order Form, the Order Form shall control. There shall be no force or effect given to any additional, contrary, or different terms of any related purchase order or similar form of Customer even if signed by the Parties after the Effective Date hereof.

Notwithstanding the foregoing, if there is a separate written agreement between Company and Customer that specifically addresses the subject matter covered by these terms, then such agreement shall govern rather than these terms.

1. DEFINITIONS

- 1.1 “Company Data” means any data, datasets, content, information, materials, or outputs made available or provided by Company to Customer under this Agreement or the applicable Order Form, including but not limited to proprietary datasets, reports, analytics, and any other information generated or supplied by Company.
- 1.2 “Data Delivery” means each extract of Company Data delivered to Customer pursuant to the applicable Order Form, as described therein.
- 1.3 “Derivative Work” means any work that incorporates, is derived from, or is based upon any Company Data, in whole or in part, including without limitation any analysis, report, model, scoring tool, or output created using Company Data.
- 1.4 “Marketplace” means the authorized third-party platform or vendor through which Customer orders Company Data.
- 1.5 “Order Form” means the ordering document executed by the Parties that describes the specific Company Data being licensed, the applicable fees, and any other commercial terms, and that references this Agreement.
- 1.6 “Permitted Purpose” means Customer’s internal business purposes only, as further described in Section 2.2.

2. LICENSE GRANT; PERMITTED USE; RESTRICTIONS

- 2.1 **License Grant.** Subject to the terms of this Agreement and Customer’s timely payment of all applicable fees, Company hereby grants Customer a limited, non-exclusive, non-transferable, non-sublicensable license to access and use the Company Data solely for the Permitted Purpose during the term of the applicable Order Form.
- 2.2 **Permitted Purpose.** Customer may use Company Data solely for its own internal business purposes, including internal sales targeting, market analysis, internal research, and internal business



intelligence. Customer shall not use Company Data for any purpose that benefits a third party, or on behalf of any third party.

2.3 Acceptable Use. Customer shall comply with (and shall ensure its users comply with) AcuityMD's acceptable use policy found at www.acuitymd.com/company/legal ("AUP").

2.4 Audit Rights. Company shall have the right, upon at least 10 business days' prior written notice and no more than once per calendar year (unless a prior audit revealed a material breach, in which case more frequent audits are permitted), to audit Customer's use of Company Data to verify Customer's compliance with this Agreement. Customer shall cooperate fully with any such audit and shall provide Company with reasonable access to relevant records, systems, and personnel. Any audit shall be conducted during Customer's normal business hours and in a manner designed to minimize disruption to Customer's operations. Company shall bear the costs of any such audit unless the audit reveals a material breach by Customer, in which case Customer shall reimburse Company for all reasonable costs of the audit.

3. DATA DELIVERY

3.1 Delivery Schedule. Company shall deliver Company Data to Customer, in the format and via the delivery mechanism described in the applicable Order Form. The specific dataset, data fields, applicable Fees and any delivery specifications shall be set forth in the Order Form.

3.2 Delivery Mechanism. Company Data will be delivered through the applicable Marketplace platform or such other delivery mechanism as the Parties may agree upon in writing. Company's obligation to deliver is conditioned upon Customer maintaining an active account and necessary access credentials on the applicable Marketplace platform.

4. PROPRIETARY RIGHTS; DERIVATIVE WORKS

4.1 Ownership of Company Data. Company shall own and retain all right, title, and interest in and to the Company Data, and all improvements, enhancements, or modifications thereto, and all intellectual property rights related thereto. No ownership rights in or to the Company Data are transferred to Customer under this Agreement. Customer's rights are limited to the license expressly granted in Section 2.1.

4.2 Derivative Works. Customer may create Derivative Works from Company Data solely for the Permitted Purpose. Notwithstanding the foregoing, any Company Data incorporated in or forming the basis of a Derivative Work shall remain the exclusive property of Company. Customer shall own only the original, independently created elements of any Derivative Work that do not consist of or incorporate Company Data. Customer shall not use Derivative Works for any purpose that would be prohibited under Section 2.

4.3 Feedback. If Customer provides Company with any feedback or suggestions regarding the Company Data or this Agreement, Company shall be free to use such feedback without restriction or obligation to Customer.

5. CONFIDENTIALITY

5.1 Confidential Information. Each Party (the "Receiving Party") understands that the other Party (the "Disclosing Party") may disclose non-public business, technical, financial, or proprietary information (collectively, "Confidential Information"). Company Data, the terms of this Agreement, and all Order Forms are deemed Company's Confidential Information. The Receiving Party agrees to:



(i) take reasonable precautions to protect such Confidential Information; and (ii) not disclose Confidential Information to any third party without the Disclosing Party's prior written consent.

5.2 Exceptions. The confidentiality obligations in Section 5.1 shall not apply to information that: (a) is or becomes generally available to the public other than as a result of the Receiving Party's breach; (b) was in the Receiving Party's possession prior to receipt from the Disclosing Party; (c) was rightfully disclosed to the Receiving Party without restriction by a third party; (d) was independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information; or (e) is required to be disclosed by law, provided that the Receiving Party provides prompt written notice to the Disclosing Party and makes a reasonable effort to obtain a protective order. Notwithstanding the foregoing, the fact that individual data points or elements within Company Data may be independently available from public sources shall not cause Company Data to lose its status as Confidential Information. The Parties acknowledge and agree that Company Data derives independent economic value from its selection, compilation, arrangement, and aggregation by Company, and that such compiled form constitutes Confidential Information of Company regardless of whether any individual element thereof is or becomes publicly available.

5.3 Confidentiality Period. Confidentiality obligations under this Section 5 shall survive termination of this Agreement.

5.4 Equitable Relief. Each Party acknowledges that a breach of this Section 5 may cause irreparable harm for which monetary damages would not be an adequate remedy, and agrees that the non-breaching Party shall be entitled to seek equitable relief without any requirement to post a bond or prove actual damages.

5.5 Return or Destruction. Upon expiration or termination of this Agreement or the applicable Order Form, Customer shall, and shall cause any employee or approved contractor or agent to, promptly delete and/or destroy all Company Data in its possession or control, including any copies thereof, within 30 days following such expiration or termination, and shall provide written certification of such deletion or destruction upon Company's request.

5.6 Data Security. Customer shall implement and maintain reasonable technical and organizational security measures to protect Company Data in its possession or control against unauthorized access, use, disclosure, alteration, or destruction. Such measures shall be no less protective than the measures Customer uses to protect its own confidential information of a similar nature, and in no event less than industry-standard security practices. Customer shall ensure that access to Company Data is limited to those employees, approved contractors or agents who have a need to access such data in connection with the Permitted Purpose and who are bound by confidentiality obligations at least as protective as those set forth in this Agreement.

5.7 Breach Notification. Customer shall notify Company promptly, and in no event later than 72 hours, after Customer becomes aware of any unauthorized access to, use of, or disclosure of Company Data (each, a "Security Incident"). Such notice shall include, to the extent known at the time: (a) a description of the nature of the Security Incident; (b) the categories and approximate volume of Company Data involved; (c) the likely consequences of the Security Incident; and (d) the measures Customer has taken or proposes to take to address the Security Incident. Customer shall cooperate fully with Company in investigating and remediating any Security Incident and shall not make any public disclosure regarding a Security Incident involving Company Data without Company's prior written consent, except as required by applicable law.



6. PAYMENT OF FEES

6.1 **Fees.** Customer will pay Company the fees described in the applicable Order Form (“Fees”) in accordance with the payment terms set forth therein. If Customer believes it has been billed incorrectly, Customer must notify Company in writing no later than 30 days after the closing date on the first billing statement in which the error appeared.

6.2 **Late Payment.** Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection. In the event of a dispute, Customer shall pay all undisputed Fees and work in good faith with Company to resolve the dispute within 30 days of notice.

6.3 **Suspension.** Company shall be entitled to suspend access to Company Data if Customer fails to pay any undisputed amounts when due.

6.4 **Taxes.** Customer shall be responsible for all taxes associated with this Agreement, other than U.S. taxes based on Company’s net income.

6.5 **Marketplace Orders.** For the avoidance of doubt, where Customer places an Order through a third- party Marketplace, Orders are subject to this Agreement and the applicable Marketplace provider’s terms. Fees will be as specified in an Order, as applicable, and will be payable to the Company or Marketplace provider, as applicable.

7. TERM AND TERMINATION

7.1 **Term.** This Agreement commences on the Effective Date and remains in effect for the term set forth in the applicable Order Form, unless earlier terminated in accordance with this Section 7.

7.2 **Termination for Cause.** Either Party may terminate this Agreement and any applicable Order Form upon 30 days’ prior written notice if the other Party materially breaches any term or condition of this Agreement and fails to cure such breach within 30 days of receiving written notice of such breach. Company may terminate immediately upon written notice in the case of nonpayment continuing for 30 days or more following written notice to Customer, or upon Customer’s breach of Section 2.3.

7.3 **Effect of Termination.** Upon termination or expiration of this Agreement, the license granted in Section 2.1 shall immediately terminate, and Customer shall cease all use of the Company Data and comply with the return and destruction obligations set forth in Section 5.5. Customer will pay in full for all Company Data delivered up to and including the termination date. All sections of this Agreement that by their nature should survive termination shall survive, including without limitation Sections 2, 4, 5, 6, 7.3, 8, 9, and 10.

8. WARRANTIES AND DISCLAIMER

8.1 **Company Warranties.** Company represents and warrants that it shall use commercially reasonable efforts consistent with prevailing industry standards designed to ensure the accuracy and integrity of each Data Delivery. HOWEVER, COMPANY MAKES NO WARRANTY THAT THE COMPANY DATA OR ACCESS TO COMPANY DATA WILL BE UNINTERRUPTED, ERROR-FREE, COMPLETE, OR WILL MEET CUSTOMER’S REQUIREMENTS OR ANY PARTICULAR PURPOSE. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE COMPANY DATA IS PROVIDED “AS IS” AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED



WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

8.2 Customer Warranties. Customer represents and warrants that: (a) Customer has full authority to enter into this Agreement; (b) Customer will use the Company Data only in compliance with this Agreement and all applicable laws and regulations; and (c) Customer's use of Company Data will not violate any third-party rights.

9. LIMITATION OF LIABILITY

9.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL COMPANY AND ITS SUPPLIERS, DIRECTORS, OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS, AND EMPLOYEES BE RESPONSIBLE OR LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATING TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHER THEORY: (A) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS; (B) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS, INACCURACY, OR CORRUPTION OF DATA; OR (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.2 EXCEPT FOR CUSTOMER'S BREACH OF SECTION 2.3 (RESTRICTIONS) OR CUSTOMER'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 10.2, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE FEES PAID BY CUSTOMER TO COMPANY IN THE 12 MONTHS IMMEDIATELY PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.

10. INDEMNIFICATION

10.1 Company Indemnification. Provided that Customer complies with the indemnification procedure in Section 10.3, Company shall defend Customer from and against third-party claims alleging that Customer's use of the Company Data, as made available by Company and used in accordance with this Agreement, infringes such third party's intellectual property rights. Company will pay all damages and/or costs finally awarded against Customer or agreed to in settlement attributable to any such claim. Company assumes no liability for any claim of infringement based on: (a) Customer's modification of Company Data; (b) the combination of Company Data with data or materials not provided by Company, if the claim would not have arisen but for such combination; or (c) Customer's use of Company Data other than in accordance with this Agreement.

10.2 Customer Indemnification. Provided that Company complies with the indemnification procedure in Section 10.3, Customer shall defend Company from and against third-party claims (including any regulatory action) that arise out of or relate to: (i) Customer's use of Company Data in violation of this Agreement; (ii) Customer's breach of Section 2.3; or (iii) infringement of any intellectual property or other right of any person or entity arising out of or related to Customer's use of Company Data. Customer will pay all damages and/or costs finally awarded against Company or agreed to in settlement attributable to any such claim.

10.3 Indemnification Procedure. The indemnity obligations under this Section 10 are conditioned upon the indemnified Party: (a) providing written notice to the indemnifying Party of any such claim within 60 days of receipt; (b) providing the indemnifying Party with sole control of the defense or settlement (provided that any settlement releases the indemnified Party from all liability); and (c)



providing the indemnifying Party with all reasonable information and assistance, at the indemnifying Party's expense.

11. MISCELLANEOUS

11.1 Governing Law; Dispute Resolution. This Agreement and any matters arising out of or relating hereto shall be governed by the laws of the State of Delaware without regard to its conflict of laws provisions. All disputes, controversies, or differences arising out of or in relation to this Agreement that cannot be settled by mutual accord shall be submitted to the American Arbitration Association ("AAA") for arbitration in Boston, Massachusetts pursuant to such Association's rules for commercial arbitration. The number of arbitrators shall be 3. Notwithstanding the foregoing, to the extent a Party may be entitled to equitable relief, such Party may bring an action in any appropriate court to obtain such equitable relief.

11.2 Severability. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

11.3 Assignment. Either Party may assign this Agreement without the other Party's consent in connection with a merger, acquisition, or sale of all or substantially all of its assets, provided that (i) the assigning Party provides written notice to the other Party within 30 days of such assignment, and (ii) the assignee assumes all obligations of the assigning Party under this Agreement in writing. Neither Party may assign this Agreement to a direct competitor of the other Party without prior written consent.

11.4 Force Majeure. Neither Party shall be liable for any failure or delay in performing its obligations under this Agreement (except for payment obligations) to the extent such failure or delay is caused by circumstances beyond such Party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, epidemics, pandemics, war, terrorism, government orders or actions, or shortage of adequate power, communications, or transportation facilities.

11.5 Notices. All notices under this Agreement will be in writing and will be deemed duly given when received if personally delivered; when receipt is electronically confirmed, if transmitted by email; the day after it is sent, if sent for next-day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

11.6 No Agency. No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement, and neither Party has any authority to bind the other in any respect.

11.7 Entire Agreement; Amendments. This Agreement, together with the applicable Order Form, constitutes the complete and exclusive statement of the mutual understanding of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings relating thereto. All amendments must be in writing signed by both Parties, except as otherwise provided herein.

11.8 Publicity. The Parties shall, upon Customer's consent, work together in good faith to issue at least one mutually agreed upon press release within 90 days of the Effective Date, and Customer otherwise agrees to reasonably cooperate with Company to serve as a reference account upon request.