



SmartContact™ COVID-19 Followup Survey License, Confidentiality and Service Agreement

This License, Confidentiality and Services Agreement (“Agreement”), is specific to supporting the response to the COVID-19 pandemic and begins upon acceptance of the Term and Conditions check box. The agreement is between the Accepting Provider Organization (“Client”) and Smart-ER LLC, an Illinois-registered company located at 111 S 7th Ave, La Grange, Illinois 60525 USA (“SmartER”).

SmartER has developed and is the owner of rights in and title to SmartContact, software that is utilized to assist healthcare providers in electronically engaging patients by email and SMS in order to support the screening of patients for COVID-19 and providing patients with the healthcare providers guidance and instructions around COVID-19. Questions or follow-ups from engaged patients will be routed to Client-assigned users. The parties agree as follows:

Cost and Payment:

SmartER is provided a version of SmartContact for COVID-19 related service free of charge.

Deliverables:

1. COVID-19 specific question set, responses, pop-up messages, and triggers.
2. E-Surveys by email and SMS are sent to selected patients.
3. Real-time response notifications sent to designated individuals.

Disclaimer:

SmartER does not direct or perform any patient care, or participate in any medical decision making.

Support:

SmartER shall provide reasonable technical support to Client. The email address, support@smart-ER.net should be used to report any issues or concerns.

Ownership:

SmartER retains all ownership of, and all intellectual property rights in, the Software and all modifications, customizations, enhancements, updates or derivative works related to the Software. Client shall acquire no rights in the Software other than as set forth in this Agreement. Client shall not delete, remove, modify, obscure, fail to reproduce or in any way interfere with any proprietary, trade secret or copyright notices appearing on or incorporated in the Software.

Client shall remain the owner of all data entered into the Software, including all information related to Client’s patients (“PHI”) and any other data Client enters into or generates through use of the Software (collectively with the PHI, the “Client Data”). Client understands that aggregated, de-identified data may be used for benchmarking and marketing purposes.

Confidential Information and HIPAA:

Each party acknowledges that it will be exposed to the Confidential Information (as defined herein) of the other party throughout the course of this Agreement. SmartER and Client agree to exercise reasonable care to protect the Confidential Information of the other party from unauthorized disclosure,



and such reasonable care shall be no less than what each party uses to protect its own trade secrets and Confidential Information. SmartER and Client may disclose the Confidential Information of the other party to the receiving party's employees and/or agents, without the express written consent of the other party, but only when the disclosure is deemed necessary to perform its obligations under this Agreement. In addition, the disclosing party shall inform said employees and agents, by way of policy and agreement, that they are bound by the obligations of confidentiality listed herein. SmartER's Confidential Information consists of: (a) all information, including the source code, regarding the Software and related technology; and (b) any other information SmartER desires to protect against unrestricted disclosure, for which SmartER will notify Client in writing. Client's Confidential Information consists of: (i) all Client Data; and (ii) any information related to Client's business learned through SmartER's performance of the obligations set forth in this Agreement.

Confidential Information shall not include any information that (a) is already in the possession of the receiving party; (b) is independently developed by the receiving party; (c) is or becomes publicly available without any breach of this Agreement; (d) is rightfully received by the receiving party from a third party without any obligation of confidence; or (e) is released for public disclosure by the disclosing party. The foregoing exceptions shall not apply to PHI.

SmartER acknowledges that it may be exposed to PHI. To the extent that SmartER is exposed to PHI, SmartER agrees to comply with the provisions of the Health Information Portability and Accountability Act of 1996, as amended from time to time ("HIPAA"). All access to the PHI shall be subject to a Business Associate Agreement.

Attachment A is the SmartER Business Associate Agreement (BAA). Attachment B describes our security practices

Warranties:

SmartER warrants that the Software will perform in accordance with the documentation and specifications. SmartER further warrants that the Software does not and shall not infringe the patent or any other proprietary right of any third party.

Limitation of Liability:

Except for violation of HIPAA or any other laws, rules or regulations, or claims arising from gross negligence or willful misconduct, in no event shall SmartER be responsible for any loss or damage to Client or any third parties caused by Client's use of Software.

Indemnification:

SmartER shall, at its own expense, defend, indemnify and hold harmless Client and Client's officers, directors, agents and employees from and against any and all damages, costs and expenses, including reasonable attorneys' fees, incurred by Client or Client's officers, directors, agents and employees in connection with: (a) an actual or alleged third party claim that the Software, services or use thereof infringes any patent or other proprietary right of any other person or entity; or (b) the violation of HIPAA to the extent attributable to SmartER or its employees, directors, officers, subcontractors, agents, or other members of its workforce. Client shall provide SmartER with prompt written notice of any claim, permit SmartER to control the defense, settlement, adjustment or compromise or any such claim and cooperate with SmartER in the defense or settlement of any such action.



Term and Termination:

Either party may terminate this Agreement at any time for any reason.

General Interpretation:

The terms of this Agreement have been negotiated by the parties hereto and the language used in this Agreement shall be deemed the language chosen by the parties to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring interpretation against the party causing such agreement or any portion thereof to be drafted, in favor of the party receiving a particular benefit under the Agreement. No rule of strict construction shall be applied against any person.

Informal Dispute Resolution:

SmartER and Client each agree that any dispute, controversy, or claim arising out of or related to this Agreement (the "dispute") shall go through the following informal dispute resolution process prior to submission to arbitration. First, the dispute shall be submitted in writing to the Account Managers relating to this Agreement for both SmartER and Client. If the Account Managers cannot resolve the dispute within seven business days of receipt of the dispute, the dispute shall be submitted in writing to a Vice President of SmartER and a Vice President of Client. If a Vice President of SmartER and a Vice President of Client cannot resolve the dispute within seven business days of receipt of the dispute, the dispute shall be submitted in writing to an Executive Committee comprised of three members of SmartER and three members of Client, which members shall be designated by title (or position) at the time of execution of this Agreement. If the Executive Committee cannot resolve the dispute within seven business days of receipt of the dispute, the dispute may be submitted to arbitration.

Arbitration:

Any dispute, controversy, or claim arising out of or related to this Agreement which has not been mutually resolved by the parties in accordance with the informal dispute resolution process set forth above shall be determined and settled according to the Commercial Arbitration Rules of the American Arbitration Association except as expressly set forth herein. Either party may demand arbitration by giving written notice to the other party stating the nature of the controversy. A single arbitrator shall be selected by both the parties and the arbitration shall be held in Cook County, Illinois or such other place as chosen by the parties. The arbitrator shall be a licensed attorney with a minimum of 10 years of experience in complex commercial litigation matters. The arbitrator shall allow such discovery as is appropriate for the purposes of the arbitration in accomplishing fair, speedy, and cost-effective resolution of disputes. The arbitrator shall consider the parties' respective discovery costs in connection with any such arbitration. Any award rendered by the arbitrator shall be final, conclusive, and binding upon the parties and a judgment may be enforced in any court having jurisdiction. Client agrees that it shall treat the arbitration itself and the outcome of the arbitration as confidential.

Remedies:

Notwithstanding Sections Informal Dispute Resolution and Arbitration above, the parties agree that either party's failure or neglect to perform, keep, or observe any term, provision, condition, covenant, warranty, or representation contained in this Agreement, the confidentiality agreement, or any other agreement between them will cause the other party immediate and irreparable harm and that the aggrieved party is, in addition to all other remedies available to it, entitled to immediate injunctive and equitable relief from a court having jurisdiction to prevent any breach and to secure the enforcement of its rights hereunder.



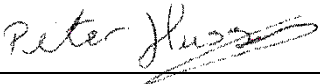
Miscellaneous:

This Agreement shall be deemed to have been executed and delivered in the State of Illinois, and shall be governed and construed in accordance with the laws of the State of Illinois without regard to its conflict of laws principals. All actions or proceedings relating to this Agreement will be brought exclusively in the state and federal courts of Cook County, Illinois. Each party consents to the personal jurisdiction of these courts. The relationship of the parties is that of independent contractors and neither party has any authority to bind the other party in any transaction or make any representation on behalf of the other party. No change or modification to this Agreement is valid. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed as, a waiver of any subsequent breach of the same or any other provision hereof. Neither party may assign this Agreement without the written consent of the other party. This Agreement shall apply to and bind the successors and permitted assigns of the parties. In the event any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall remain in full force and effect. This Agreement supersedes all previous negotiations, understandings and agreements between the parties with respect to its subject matter, and constitutes the entire Agreement. This Agreement is a collaborative drafting effort and the provisions of the Agreement shall not be construed against either party as the purported drafter. Neither party shall be in default or otherwise liable for any delay in or failure of its performance under this Agreement if such delay or failure arises by any reason beyond its reasonable control, including any act of God or the common enemy or earthquakes, floods, fires, epidemics, riots, failures or delay in transportation or communications.

IN WITNESS WHEREOF, the parties have executed this License and Services Agreement as of the date first written above.

ACKNOWLEDGED AND AGREED:

Smart-ER LLC

By: 

Name: PJ Hussey

Title: Chief Information Officer

Date: March 31, 2020