

## **SmartContact™ Followup System License, Confidentiality, Subscription and Service Agreement**

This License, Confidentiality, Subscription and Services Agreement for the SmartContact Follow-Up System begins upon acceptance of the Term and Conditions. The agreement is between the accepting provider "Subscribe") and Smart-ER LLC (dba Auscura), an Illinois registered company located at 111 S 7th Ave, La Grange, Illinois 60525 USA "Auscura").

Auscura 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 text message to check their wellbeing after a medical encounter and to collect their questions/comments. The parties agree as follows:

### Cost and Payment

For one month, Auscura will provide a version of SmartContact for follow-up of patients after a medical encounter at no cost to the subscriber.

After one month, subscriber will pay Auscura \$19.99 per month if less than 50 surveys sent per month and \$39.99 if 50 or more surveys sent per month. The credit card on file will be automatically charged.

### Grant of License to Access and Use Service

Company hereby grants to Customer, including to all Subscriber's Authorized Users, a non-exclusive, non-sublicensable, non-assignable, royalty-free, and worldwide license to access and use the service solely for subscriber's internal business operations in accordance with the terms of this agreement.

### Deliverables

1. Data maintained in a secure server that meets HIPAA privacy requirements.
2. Standard question set, pop-up messages, triggers, and template responses will be setup in English and Spanish.
3. An e-survey link is sent to patients by text message.
4. Real-time response notifications are sent to the subscriber.
5. Subscriber has access to the Active Issues Manager (AIM) module to review feedback and respond to the patient.
6. Subscriber has access to technical support by sending an email to [support@auscura.com](mailto:support@auscura.com).
7. The system will be available 99% during each calendar month.

### Disclaimer

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

### Ownership

Auscura 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.

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

### **Customer Restrictions.**

Customer will not:

1. distribute, license, loan, or sell the software or other content that is contained or displayed in it.
2. reverse engineer, decompile, decode, decrypt, disassemble, or derive any source code from the software

### Confidential Information and HIPAA

Each party acknowledges that it will be exposed to the Confidential Information (as defined herein) of the other party throughout

this agreement. Auscura and subscriber 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 trade secrets and Confidential Information. Auscura and subscriber may disclose the Confidential Information of the other party to the receiving party's employees and 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. Auscura's Confidential Information consists of: (a) all information, including the source code, regarding the software and related technology; and (b) any other information Auscura desires to protect against unrestricted disclosure, for which Auscura will notify subscriber in writing. Subscriber's Confidential Information consists of: (i) all Subscriber Data; and (ii) any information related to subscriber's business learned through Auscura'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.

Auscura acknowledges that it may be exposed to PHI. To the extent that Auscura is exposed to PHI, Auscura 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.

#### Indemnification

Subscriber will indemnify Auscura against all indemnifiable losses arising out of any indemnifiable proceeding.

#### Limitation on Liability

Neither party will be liable for breach-of-contract damages suffered by the other party that are remote or speculative, or that could not have reasonably been foreseen on entry into this agreement.

Neither party's liability under this agreement will not exceed the fees paid by under this agreement during the 12 months preceding the date upon which the related claim arose.

#### Warranties

Auscura warrants that the software will perform in accordance with the documentation and specifications. Auscura 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

In no event shall Auscura be responsible for any loss or damage to subscriber or any third parties caused by subscriber's use of software.

#### Term and Termination

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

#### Dispute Resolution

Auscura and subscriber each agree that any dispute, controversy, or claim arising out of or related to this agreement (the "dispute") shall go through an informal dispute resolution process prior to submission to arbitration. The dispute shall be submitted in writing to Auscura. If the dispute cannot be resolved within thirty (30) business days, 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. The arbitration shall be held in Cook County, Illinois or such

other place as chosen by Auscura. Any award rendered by the arbitrator shall be final, conclusive, and binding upon the parties and judgment may be enforced in any court having jurisdiction. Subscriber agrees that it shall treat the arbitration itself and the outcome of the arbitration as confidential.

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. 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.

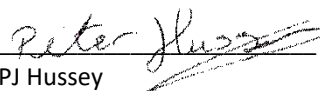
If any part of this agreement is declared unenforceable or invalid, the remainder will continue to be valid and enforceable.

The failure or neglect by a party to enforce any of the rights under this agreement will not be deemed to be a waiver of that party's rights.

A party shall not be liable for any failure of or delay in the performance of this agreement for the period that such failure or delay is beyond the reasonable control of a party, materially affects the performance of any of its obligations under this agreement, and could not reasonably have been foreseen or provided against, but will not be excused for failure or delay resulting from only general economic conditions or other general market effects.

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

ACKNOWLEDGED AND AGREED:

By:   
Name: PJ Hussey  
Title: Chief Information Officer, Auscura  
Date: May 15, 2020