

**pingmd Master Subscription Services Agreement**  
**Additional Terms of Service**

By execution of a Master Subscription Agreement (the “**Agreement**”) with pingmd, and upon accessing the pingmd website at [www.pingmd.com](http://www.pingmd.com) or accessing the pingmd mobile app, the Client hereby agrees to the following additional terms of service (“**ATOS**”) which are incorporated into the Agreement by reference.

1. **Definitions.** The following terms used in the Agreement (including the ATOS and EULA) will have the meanings specified below. Capitalized terms not otherwise defined herein shall have the meanings as set forth elsewhere in the Agreement.
  - 1.1. “**Activation Date**” means the date that the Subscription Service is first available for use in a live, production environment for Client.
  - 1.2. “**Client Materials**” means any and all messages and other content transmitted or submitted by or on behalf of Client, including without limitation by any End User, associated with Client’s account on the Subscription Service (or any other service provided hereunder).
  - 1.3. “**Collaborator**” means any individual who is not employed by Client’s organization and who uses the Subscription Service to communicate with Client’s Licensed Users or other Enterprise Users.
  - 1.4. “**Confidential Information**” means: (i) any non-public information of a Party; (ii) all information relating to pingmd Offerings as well as pingmd’s other current or planned products, services, technology, techniques, know-how, research, engineering, designs, finances, accounts, customer lists, business forecasts, and marketing plans; (iii) Client information received by pingmd; (iv) other information of a Party that is disclosed in writing and is conspicuously designated as “Confidential” at the time of disclosure or that is disclosed orally and identified as “Confidential” at the time of disclosure; and (v) the terms and conditions of this Agreement including the Subscription Service Schedule. Notwithstanding the foregoing, Confidential Information shall not include information that: (x) is or becomes generally known or available by publication, commercial use or otherwise through no fault of the receiving Party; (y) was in the receiving Party’s possession at the time of disclosure without violation of any confidentiality restriction and without any restriction on the receiving Party’s further use or disclosure; or (z) is independently developed by the receiving Party without use of the disclosing Party’s Confidential Information.
  - 1.5. “**End User**” means any Licensed User or Enterprise User, any Patient User or Collaborator.
  - 1.6. “**Enterprise User**” means any employee or contractor of Client who uses the Subscription Service for the benefit of Client (e.g., Licensed Users, home health service providers, nurses, office staff, etc.).
  - 1.7. “**Fees**” means the charges for use of the Subscription Service in the amounts set forth in the on Exhibit A.
  - 1.8. “**HIPAA**” means the regulations of the U.S. Department of Health & Human Services at 45 C.F.R. Parts 160, 162, and 164 promulgated pursuant to the Administrative Simplification Provisions of the Health Insurance Portability and Accountability Act of 1996, as amended, and the provisions of the Health Information Technology for Economic and Clinical Health (“HITECH”) Act relating to the privacy of health information.
  - 1.9. “**Licensed User**” means any individual employed by or affiliated with Client who is designated by Client to use the Subscription Services.
  - 1.10. “**Patient User**” means a customer of Client who is using the Subscription Service to communicate with Client.
  - 1.11. “**pingmd Offering**” means any product or service provided by pingmd to Client as set forth in an order form, including, without limitation, the Subscription Service and any other service provided under this Agreement.
  - 1.12. “**PHI**” means “protected health information” as that term is used in HIPAA.
  - 1.13. “**Subscription Service**” means pingmd’s software-as-a-service consisting of an encrypted, multi-user messaging service intended to help connect medical practices and their patients in a HIPAA-compliant manner, including content provided therein by pingmd (such as documents, forms, functions, medical data, rules, screens, templates, and videos).
  - 1.14. “**Subscription Service Schedule**” means the description of the specific features of the Subscription Service as set forth on Exhibit A to the Agreement that Client is authorized to use under this Agreement, including the Term, Fees, number of Licensed Users and other applicable terms and conditions of Client’s subscription.
2. **Restrictions on Use.** Except as otherwise explicitly provided in this Agreement, Client will not, and will not permit any third party to: (a) copy, modify, duplicate, create derivative works from, frame, mirror, republish, reverse compile, disassemble, reverse engineer, decompile, or distribute all or any portion of any pingmd Offering in any form or media or by any means (b) interfere in any manner with the operation of the Subscription Service or any pingmd Offering; (c) purport to sublicense or transfer any of Client’s rights under this Agreement; or (d) otherwise use the Subscription Service or any pingmd Offering in any manner that exceeds the applicable scope of use permitted hereunder.
  - 2.1. **Licensed Users.** Client’s use of the Subscription Service or other applicable pingmd Offering shall be limited to the number of Licensed Users and other Enterprise Users set forth on the Subscription Service Schedule. pingmd will support the creation of accounts with unique user identification numbers on behalf of Client. pingmd will monitor

Client's usage of the Subscription Service, and if at any point the number of Licensed Users or other Enterprise Users is greater than the number of Licensed Users or other Enterprise Users, as applicable specified in the Subscription Service Schedule, pingmd will charge Client for those additional Licensed Users or other Enterprise Users in excess of the amount agreed upon. Prior to the Activation Date of the Subscription Services, Client shall provide, in writing, a list of users (e.g. names and e-mail addresses) who Client intends to be considered Licensed Users, and Client shall promptly notify pingmd of any updates to such list during the period of the schedule.

**2.2. Client Account.** Client shall provide pingmd with complete and accurate account, billing and payment information and keep such information up to date during the MSA Term. Client is responsible for maintaining the security and confidentiality of all passwords associated with Client's account. As between the Parties, Client shall be responsible for all activities that occur under Client's account, including by all End Users using any pingmd Offering on behalf of or with Client. If Client becomes aware of any unauthorized or illegal use of Client's account, Client shall immediately notify pingmd.

**2.3. Acceptable Use Policies.** All Client Materials are subject to pingmd's then-current acceptable use policies for the Subscription Service. Client shall not use or permit use of the Subscription Service or any other pingmd Offering, including the transmission or other submission of any Client Materials, for any purpose that may (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing or obscene, (c) violate privacy rights or promote bigotry, racism, hatred or harm, (d) constitute unsolicited bulk e-mail, "junk mail", "spam" or chain letters; (e) constitute an infringement of intellectual property or other proprietary rights, or (f) otherwise violate applicable laws, ordinances or regulations. In addition to any other rights afforded to pingmd under this Agreement, pingmd shall have the right, but not the obligation, to take remedial action if any material transmitted or otherwise submitted through any pingmd Offering violates the foregoing restrictions, including the removal or disablement of access to such material. pingmd shall have no liability to Client in the event that pingmd takes such action. Client shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of Client's materials.

**2.4. Data Retention.** pingmd shall not retain data for purposes other than processing and delivering messages or as permitted or required by any Business Associate Agreement (the "BAA") between the Parties. Secondary use of any data received by pingmd pursuant to this Agreement is prohibited unless otherwise specifically allowed in this Agreement and any BAA entered between the Parties.

**3. No Healthcare Services.** No healthcare services are provided by pingmd. The Subscription Service and any other pingmd Offering cannot and is not intended to replace the relationship that Client or any Licensed Users have with any of their respective patients. A patient with a serious or life-threatening condition should be instructed to call 9-1-1 in areas where that service is available, or go to the nearest open clinic or emergency room. Client, Licensed Users, and Enterprise Users shall assume full responsibility for all medical and other health care decision-making and conduct associated with their use of Subscription Service and any other pingmd Offering, and shall do so in accordance pingmd's then-current acceptable use policies for the Subscription Service.

**4. Business Associate Agreement.** To the extent required by applicable law, Client agrees to the terms and conditions of pingmd's BAA as set forth on [www.pingmd.com/terms/baa](http://www.pingmd.com/terms/baa), the terms of which are incorporated herein, by reference, which shall govern pingmd's creation, receipt, maintenance, and/or transmission of PHI in connection with Client's use of the Subscription Services and pingmd Offerings. To the extent that any of the provisions set forth in the BAA conflict with any of provisions in this Agreement: (i) any provisions set forth in the BAA that are more protective of PHI shall control and (ii) with respect to any other matters, the other provisions set forth in this Agreement shall control.

**5. Non-Solicitation.** Client agrees that it will not, directly, or indirectly through any partners, affiliated entities (including any entities under common control or under common management), consultants, third parties, employees, agents, or otherwise, during the Term of the Agreement, and for 12 months after the termination or expiration hereof for any reason: (a) solicit or encourage any employees of pingmd to terminate or alter their employment relationship with pingmd, or hire or arrange for the hiring of any pingmd employee or leased employee, or former pingmd employee or leased employee, (b) become a proprietor, partner, agent, trustee, director, officer, shareholder or member, directly or indirectly, of, any organization which is engaged or proposes to engage, anywhere in any location in the world, any business activity which is competitive or similar to the pingmd Service, or (c) encourage any person, firm, company or other business entity who are clients, suppliers, business associates or referral sources of pingmd and/or its affiliates to cease doing business with pingmd and/or its affiliates. Both the Client and pingmd agree that actual damages in the event of a breach of this ATOS Section 5 may be difficult to ascertain at present, and pingmd shall be entitled to all equitable relief including injunctions in addition to damages in the event Client breaches any of the foregoing obligations, and pingmd shall be entitled to injunctive relief without proof of irreparable injury and without posting bond.

## **6. Intellectual Property.**

**6.1. pingmd Materials.** Client acknowledges and agrees that, as between Client and pingmd, pingmd retains all right, title and interest (including intellectual property rights) in and to the Subscription Service and all other pingmd

Offerings, regardless of the media or form in which the pingmd Offerings are accessed, all onboarding and training materials for use of the Subscription Service or any pingmd services, all other materials, and all associated software and technology (including all content provided through the Subscription Service other than any Client Materials). Additionally, pingmd shall own all right, title and interest (including intellectual property rights) in and to any customization made to the Subscription Service on behalf of Client. Client does not acquire any ownership rights to any pingmd Offering through accessing, downloading, installing, copying or use of the Subscription Service or any pingmd Offering.

**6.2. Client Materials.** pingmd acknowledges and agrees that, as between Client and pingmd, Client retains all right, title and interest (including intellectual property rights) in and to the Client Materials. Client grants pingmd a perpetual, irrevocable, non-exclusive, non-transferable (except to an acquirer of pingmd or its business), royalty-free license to: (i) use, copy, prepare derivative works of (including excerpting, in whole or in part), distribute and display the Client Materials solely in connection with Subscription Service to the extent necessary to deliver such service to Client; (ii) de-identify the Client Materials in accordance with applicable legal requirements; and (iii) further use and disclose data and information that pingmd generates from such de-identified Client Materials for any lawful purpose.

**6.3. Retention of Rights.** pingmd shall retain all rights, title, and interest in and to the Subscription Service and all pingmd Offerings, including the pingmd app, and to any modifications, improvements, configurations or customizations made thereto, and any upgrades, updates or documentation provided to Client. Client will not obtain any rights in and to the Subscription Service and all pingmd Offerings, and to any modifications, improvements, configurations or customizations made thereto, and any upgrades, updates or documentation, as a result of its responsibilities hereunder.

**6.4. Exclusive Rights.** Client acknowledges pingmd's exclusive rights in the Subscription Service and that the Subscription Service is unique and original to pingmd and that pingmd is the owner thereof. Unless otherwise permitted by law, Client shall not, at any time during or after the effective term of the Agreement, dispute or contest, directly or indirectly, pingmd's exclusive right and title to the Subscription Service, including the pingmd app, and to any modifications, improvements, configurations or customizations made thereto, and any upgrades, updates or documentation. Client shall not dispute or contest, directly or indirectly, the validity of any pingmd's intellectual rights thereto. If Client does dispute or contest such intellectual property rights, pingmd may terminate this Agreement and all licenses granted hereunder. Client shall not attempt to develop or participate in the development of any system or performs a similar function as any portion of the Subscription Service or any pingmd Offering, including the pingmd app.

**7. Consent to Electronic Communication.** Client understands that pingmd may send Client communications or data regarding the Subscription Services, including but not limited to (a) notices about Client's use of the Subscription Services, including any notices concerning violations of use; (b) updates; and (c) promotional information and materials regarding products and services offered by pingmd and any of its marketing partners, via electronic mail. pingmd will give the Client the opportunity to opt out of receiving promotional information and materials, but the Client acknowledges that the use of email to provide notices and updates is essential to performance under this Agreement.

**8. Other Covenants.**

**8.1. Compliance with Applicable Law.** Each Party covenants that it will comply with all applicable laws in connection with its performance or use (as applicable) of the pingmd Offerings.

**8.2. Limitations of Claims.** No claim against pingmd of any kind will be made more than one (1) year after Client knows, or (in the exercise of reasonable care) could have known of: (i) such claim; (ii) an act or omission of pingmd that would give rise to a claim (even if the connection with any damage is not known or knowable); or (iii) any material damage that would likely be caused by such act or omission (even if the extent or nature of damage is not known or knowable).

**8.3. Service Levels.** pingmd covenants that it will use commercially reasonable efforts to meet the Service Levels described in the "Service Level Attachment" in Exhibit D to the Agreement.

**9. Representations and Warranties; Disclaimer.**

**9.1. Authority.** Each Party represents, warrants and covenants that it has the full right, power and authority to enter into this Agreement, to grant the rights granted by it hereunder and to discharge its obligations hereunder.

**9.2. Necessary Rights.** Client represents, warrants and covenants that it at all times will have all rights, licenses, and consents necessary to grant the license set forth in ATOS Section 6.2 above, including under any and all intellectual property rights, as well as any rights of privacy, rights of publicity or similar rights of any type, in or to the Client Materials, including without limitation all patient consents and other authorizations required under applicable law to transmit Client Materials via the Subscription Service. Client shall not upload to or otherwise make available on the Subscription Service any Client Materials for which Client does not have all necessary rights, licenses, or consents needed to so make available such Client Content on the Service.

## 10. Indemnification.

**10.1. pingmd Indemnity.** pingmd shall indemnify, defend, and hold harmless Client and its affiliates and its and their respective officers, directors, employees and agents, and the successors and assigns of the foregoing (“**Client Indemnitees**”), from and against any and all damages, awards, settlements, and costs and expenses of defense (including reasonable legal fees) (collectively, “**Losses**”) arising from any third party claims, demands, suits, actions and proceedings (each, a “**Third Party Claim**”) alleging that Client’s use of any pingmd Offering as authorized hereunder (i) infringes any United States patent issued as of the Effective Date of this Agreement or (ii) breaches a third party’s confidentiality during the Term of this Agreement. If a Third Party Claim this Section is made or appears possible or, if in pingmd’s opinion, such a claim is likely to occur, pingmd may, at its sole option and expense, either (a) procure for Client the right to continue to use the pingmd Offering in question or (b) modify or replace the infringing pingmd Offering so that it becomes non-infringing as long as the functionality is not materially and adversely affected. If neither of the foregoing options is reasonably available then pingmd may terminate the Subscription Service Schedule (or Other Services Schedule, as the case may be) that is the subject of such claim, and issue Client a pro rata refund of any Fees prepaid by Client under such schedule for periods following the date of such termination. Notwithstanding anything to the contrary herein, pingmd’s obligations under this ATOS Section 10.1 do not apply to the extent the Third Party Claim arises out of: (a) Client’s breach of this Agreement; (b) any modification to the pingmd Offering in question in compliance with specifications provided by Client; or (c) any use of the pingmd Offering in combination with hardware or software not provided by pingmd.

**10.2. Client Indemnity.** Client shall indemnify, defend, and hold harmless pingmd and its affiliates and its and their respective officers, directors, employees and agents, and the successors and assigns of the foregoing (“**pingmd Indemnitees**”), from and against any **Third Party Claims**, and to pay any Losses associated with such Third Party Claims, in each case to the extent arising from or relating to (i) any claim that any of the Client Materials infringes or misappropriates any third party’s copyright, privacy, confidentiality, or other intellectual property or proprietary rights; or (ii) any use of the pingmd Offerings by any Enterprise User and/or any other person or entity to whom Client or any Licensed User makes the Subscription Service available, including without limitation any claim arising from, related to, or alleging exposure or disclosure of personally identifiable information or other private information input into the Subscription Service through Client’s account. Notwithstanding anything to the contrary herein, Client’s obligations under this Section 10.2 shall not apply to the extent any Third Party Claim arises from the gross negligence or willful misconduct of pingmd.

**10.3. Indemnity Procedures.** If a Party intends to seek indemnification for any Third Party Claim under ATOS Section 10.1 or ATOS Section 10.2, such Party (the “**Indemnified Party**”) will inform the other Party (the “**Indemnifying Party**”) of the Third Party Claim promptly after receiving notice of the Third Party Claim; provided, however, that any failure to provide such notice will not relieve the Indemnifying Party of its obligations under this ATOS Section 10 except to the extent the Indemnifying Party is materially prejudiced by such failure. The Indemnified Party will permit the Indemnifying Party to direct and control the defense and settlement of such Third Party Claim and will provide such reasonable assistance as is reasonably requested by the Indemnifying Party (at the Indemnifying Party’s cost) in the defense of the Third Party Claim; provided, however, that the Indemnifying Party will not make any admission on behalf of the Indemnified Party, or to settle any claim or litigation which would impose any financial obligations (that are not themselves indemnified by the Indemnifying Party) on the Indemnified Party without the prior written consent of the Indemnified Party, such consent not to be unreasonably withheld or delayed.

**11. Limitations of Liability.** NEITHER PARTY WILL BE LIABLE OR OBLIGATED TO THE OTHER PARTY UNDER THIS AGREEMENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, RELIANCE OR CONSEQUENTIAL DAMAGES, OR LOSS OF PROFITS, REVENUE, DATA OR USE, REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH CLAIM IS BASED, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, (A) IN NO EVENT WILL PINGMD’S TOTAL CUMULATIVE LIABILITY FOR ALL OF PINGMD’S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT EXCEED ONE HUNDRED THOUSAND DOLLARS (\$100,000), AND (B) IN NO EVENT WILL PINGMD’S TOTAL CUMULATIVE LIABILITY UNDER THIS AGREEMENT FROM ALL OTHER CAUSES OF ACTION OF ANY KIND, INCLUDING TORT, CONTRACT, NEGLIGENCE AND STRICT LIABILITY, EXCEED THE LESSER OF (I) TEN THOUSAND DOLLARS (US\$10,000); OR (II) THE CUMULATIVE FEES PAID BY CLIENT TO PINGMD DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. The Parties agree that the foregoing limitations of liability are essential elements of the bargain and that in the absence of such limitations, the financial and other terms of this Agreement would be substantially different.

**12. Effect of Expiration or Termination; Survival.** Upon expiration or termination of this Agreement, Client shall immediately cease using the Subscription Service and all pingmd Offering(s) provided thereunder. All terms and provisions of the Agreement including the ATOS shall survive any expiration or termination of the Agreement.

### **13. General Provisions.**

- 13.1. Relationship of the Parties.** The relationship of the Parties under this Agreement is one of independent contractors, and neither Party has the authority to bind the other Party in any way.
- 13.2. Force Majeure.** Except with respect to failure to pay any amount due under this Agreement, nonperformance of either Party will be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts, orders or restrictions, failure of suppliers, internet outages or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing Party.
- 13.3. Waiver.** A waiver of rights under this Agreement will not be effective unless it is in writing and signed by an authorized representative of the Party that is waiving the rights.
- 13.4. Amendments.** This Agreement may not be amended unless the amendment is in writing and signed by authorized representatives of the Parties.
- 13.5. Assignment.** pingmd may assign this Agreement to any of its affiliates and/or in connection with any merger, sale of all or substantially all assets, sale of equity interests or other change of control transaction involving pingmd or its line of business to which this Agreement relates. Client shall not assign or otherwise transfer this Agreement, in whole or in part, without pingmd's prior written consent. Any attempt to assign this Agreement, in whole or part, in contravention of this ATOS Section 13.5 shall be void.
- 13.6. Notices.**
- 13.6.1. Legal Notices.** Any legal notice from either Party to the other shall be sent to the addresses first mentioned in the preamble, unless otherwise mutually agreed upon by both Parties.
- 13.6.2. Security Notices.** If Client has reason to believe of a security threat due to use of the Subscription Service at a Client location, Client shall immediately notify pingmd by e-mailing **security@pingmd.com** and detail the nature of the security threat.
- 13.7. Binding Effect.** This Agreement is binding upon and will inure to the benefit of each Party and their respective successors and permitted assigns.
- 13.8. Headings.** Section headings are for convenience only, and will not affect the meaning of the Agreement.
- 13.9. Choice of Law.** The Agreement, and any disputes directly or indirectly arising from or relating to this Agreement, will be construed and controlled by the laws of the State of Florida (without reference to the choice of law rules thereof).
- 13.10. Consent to Jurisdiction.** Each of the Parties irrevocably and unconditionally waives: (a) any immunity from the jurisdiction of any arbitral panel or court mentioned in Section 6 of the Agreement and any immunity from suit, judgment, execution, set-off, attachment, arrest, specific performance, injunction or other judicial order or remedy to which it or any of its assets may be entitled at present or in the future in any jurisdiction in respect of any legal action or proceedings with respect to or in connection with this Agreement; (b) any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement brought in any arbitral panel or court mentioned in Section 6 of the Agreement; and (c) any objections to such jurisdiction on the ground of venue or forum non conveniens or any similar grounds. For any court proceeding authorized under Section 6 of the Agreement each of the Parties hereby submits to the exclusive jurisdiction of such courts for purposes of any such proceeding.
- 13.11. Counterparts.** The Agreement may be executed in counterparts and a copy of a signed document send by PDF electronic image or telephone fax will be deemed an original in the hands of the recipient.
- 13.12. Severability.** Each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision hereof. Any invalid or unenforceable provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular provisions(s) held to be invalid or unenforceable.