

The HIPAA E-Tool[®]

End User License and Software as a Service Agreement

The Parties

This End User License and Software as a Service Agreement (“Agreement”) is a legal agreement between ET&C Group LLC, a Missouri Limited Liability Company referred to in this Agreement as “ET&C Group” and a person (natural person, trust or estate, partnership, corporation, professional association or corporation, or other legal entity, public or private) referred to in this Agreement as “Client”. ET&C Group and Client are sometimes referred to individually as a “Party” and collectively as the “Parties” in this Agreement.

Subject of this Agreement

The subject of this Agreement is *The HIPAA E-Tool*[®], an Internet-based and hosted Software as a Service product described in Section 1. *The HIPAA E-Tool*[®] includes all of *The HIPAA E-Tool*[®] Product Content described and defined in Section 1.A, *The HIPAA E-Tool*[®] Services described and defined in Section 1.B and *The HIPAA E-Tool*[®] Intellectual Property described in Section 1.C. All rights, title and interests in and to *The HIPAA E-Tool*[®] are owned by ET&C Group.

Obligations of the Parties

During the Term of this Agreement in consideration for Client’s performance of the terms and conditions set forth in this Agreement and payment of an applicable End User License and Software as a Service Agreement Fee, ET&C Group shall provide Client a license to use *The HIPAA E-Tool*[®] Product Content and access to *The HIPAA E-Tool*[®] Services.

End User License and Software as a Service Agreement Fee

The amount and terms of an End User License and Software as a Service Agreement Fee (“EULA-SaaS Fee”) referred to in this Agreement shall be based on the number and type of users authorized on behalf of Client to have access to *The HIPAA E-Tool*[®]. The EULA-SaaS Fee and the number and type of Client’s authorized users shall be documented by invoice from ET&C Group to Client. The EULA-SaaS Fee and number and type of Client’s authorized users may be modified during the Term of this Agreement and any such modification shall be documented by invoice from ET&C Group to Client.

Acknowledgement by Client

Client acknowledges and confirms by its receipt and acceptance of access to *The HIPAA E-Tool*[®] Services and *The HIPAA E-Tool*[®] Product Content or by payment of an applicable EULA-SaaS Fee, whichever occurs first, that it has read, understands and agrees to be bound by the terms and conditions of this Agreement.

1. *The HIPAA E-Tool*[®] Product Content, Services and Intellectual Property

1. A *The HIPAA E-Tool*[®] Product Content

The HIPAA E-Tool[®] Product Content licensed for use by Client under the terms of this Agreement is original copyrighted work consisting of explanations, materials, instructions, forms, policies, procedures, static and interactive templates and documents and information compiled, coordinated, selected and arranged in an original and unique sequence and transmitted or maintained in electronic media

or any other form or medium to provide education, guidance and instruction about compliance with health information privacy, security and breach notification law consistent with federal statutory law, 42 USC §§ 1320d -1320d-9 (sections 1171–1180 of the Social Security Act, sections 262 and 264 of Public Law 104–191, section 105 of Public Law 110–233, sections 13400–13424 of Public Law 111–5, and section 1104 of Public Law 111–148) and administrative law, Title 45 CFR Subchapter C, Parts 160, 162 and 164 (the HIPAA Privacy, Security, Breach Notification and Enforcement Rules) as amended and in effect on the commencement date of the Initial Term of this Agreement and all amendments to the aforesaid federal statutory and administrative law during the Term of this Agreement. The aforesaid federal statutory and administrative laws are referred to collectively in this Agreement as "HIPAA" or "HIPAA Regulations".

1. B The HIPAA E-Tool® Services

The HIPAA E-Tool® Services provided under the terms of this Agreement to Client are access to *The HIPAA E-Tool®* Product Content on the Internet and maintenance of Client's data entered and uploaded on *The HIPAA E-Tool®* documents and interactive templates. ET&C Group will use commercially reasonable efforts to maintain *The HIPAA E-Tool®* Services in operational status, available on the Internet (uptime) during 99.5% of the Primary Time Frame (the business day, Monday through Friday, between 7:00 am and 7:00 pm local time in all North American time zones) except for interruptions due to Force Majeure. ET&C Group will make commercially reasonable efforts to perform routine maintenance on *The HIPAA E-Tool®* Services during hours outside the Primary Time Frame. Maintenance may result in limited, temporary unavailability of *The HIPAA E-Tool®* Product Content and *The HIPAA E-Tool®* Services on the Internet that shall not be considered as downtime. Outages of Client's Internet, intranet or other electronic network connections and malfunction of Client's equipment for which ET&C Group has no responsibility resulting in unavailability of *The HIPAA E-Tool®* to Client although *The HIPAA E-Tool®* is available to others not experiencing such connection or equipment malfunction shall not be considered as downtime or affect or be deducted from the measure of uptime of the product.

1 C. The HIPAA E-Tool® Intellectual Property

The HIPAA E-Tool® Intellectual Property consists of *The HIPAA E-Tool®* Product Content, copyrighted material, original writings and instructional materials, registered trademarks, other proprietary trademarks transmitted or maintained in any form or medium, related goodwill, intangible property and software and source code used to create, maintain, update and provide *The HIPAA E-Tool®* Services and access to *The HIPAA E-Tool®* product Content on the Internet. *The HIPAA E-Tool®* Intellectual Property is owned by ET&C Group. The terms of this Agreement licensing use of *The HIPAA E-Tool®* Product Content and granting access to *The HIPAA E-Tool®* Services do not convey to Client any right, title, ownership or interest in and to *The HIPAA E-Tool®* Intellectual Property.

2. Term and Termination of this Agreement

2. A Term

The Term of this Agreement shall consist of the Initial Term defined in Section 2.A.1 that may be renewed in accordance with the provisions of Section 2.A.2, Renewal Term. Modification of the EULA-SaaS Fee and number and type of Client's

authorized users during the Initial Term or any Renewal Term of this Agreement shall not affect the end date of the then current Term.

2. A. 1 Initial Term

The Initial Term of this Agreement shall be for one (1) year commencing on the date Client receives and accepts access to *The HIPAA E-Tool*[®] Services and *The HIPAA E-Tool*[®] Product Content or makes payment of an applicable EULA-SaaS Fee to ET&C Group, whichever occurs first.

2. A. 2 Renewal Term

This Agreement shall automatically renew for additional one (1) year terms (each, a "Renewal Term") unless terminated in accordance with the provisions of Section 2.B.

2. B Termination

2. B. 1 Termination by Notice

Either Party may terminate this Agreement at the end of the Initial Term or any Renewal Term by providing written notice of its intent not to renew in accordance with the Notice provisions of Section 8.H at least sixty (60) days prior to the end of the then current Term.

2. B. 2 Termination for failure to pay EULA-SaaS Fee

If Client fails to make timely payment of any installment of an applicable EULA-SaaS Fee, ET&C Group may terminate this Agreement. ET&C Group, at its discretion, may provide Client an opportunity to cure and avoid termination.

2. B. 3 Termination for Unauthorized Use of *The HIPAA E-Tool*[®]

If Client engages in Unauthorized Use of *The HIPAA E-Tool*[®] as defined in Section 3. B, ET&C Group may terminate this Agreement. ET&C Group, at its discretion, may provide Client an opportunity to cure and avoid termination.

2. B. 4 Effect of Termination

If this Agreement is terminated by Notice in accordance with Section 2. B. 1 and Client owes no EULA-SaaS Fee payment to ET&C Group, Client may download its data from *The HIPAA E-Tool*[®] Services in accordance with Section 3.A and Section 4 prior to the date this Agreement terminates. If this Agreement is terminated for Client's failure to make timely payment of the EULA-SaaS Fee in accordance with Section 2. B. 2 or for Unauthorized Use of *The HIPAA E-Tool*[®] in accordance with Section 2. B. 3, ET&C Group may cease to provide Client with Internet access to *The HIPAA E-Tool*[®] and may pursue appropriate legal and equitable remedies.

3. Client's Use of *The HIPAA E-Tool*[®]

3. A Authorized Use of *The HIPAA E-Tool*[®]

In accordance with its license to use *The HIPAA E-Tool*[®] Product Content and have access to *The HIPAA E-Tool*[®] Services, Client is authorized to:

- (1) Use *The HIPAA E-Tool*[®] for guidance, instruction and education about compliance with HIPAA and HIPAA Regulations;
- (2) Enter information to customize *The HIPAA E-Tool*[®] policies, procedures, templates and forms maintained on its behalf by *The HIPAA E-Tool*[®] Services for use exclusively by Client;
- (3) Enter information in *The HIPAA E-Tool*[®] Internet-based interactive HIPAA Risk Analysis – Risk Management templates for its own use, guidance and documentation in developing and implementing its HIPAA Risk Analysis – Risk

- Management compliance program;
- (4) Download, print, scan and save electronically or in hard copy *The HIPAA E-Tool*[®] templates, policies, procedures, forms and documents exclusively for its use including training its workforce and documenting its activities consistent with HIPAA Regulations; and
 - (5) Share *The HIPAA E-Tool*[®] Product Content and Services it is licensed or authorized to use by this Agreement with its legal counsel exclusively for the purpose of obtaining legal advice subject to attorney-client privilege.

3. B Unauthorized Use of *The HIPAA E-Tool*[®]

Any Unauthorized Use of *The HIPAA E-Tool*[®] by Client described in this Section 3.B is a material breach of this Agreement. Client's obligation to refrain from Unauthorized Use of *The HIPAA E-Tool*[®] shall survive termination of this Agreement in accordance with the provisions of Section 8.I.

Client is not authorized to:

- (1) Provide or enable access by any third party to *The HIPAA E-Tool*[®] Product Content or *The HIPAA E-Tool*[®] Services except to its own legal counsel for the purpose of obtaining legal advice subject to attorney-client privilege as set forth above;
- (2) Provide access to more than the number and type of users authorized on behalf of Client to have access to *The HIPAA E-Tool*[®] Services and *The HIPAA E-Tool*[®] Product Content as agreed upon by the Parties and documented by EULA-SaaS Fee invoice from ET&C Group to Client;
- (3) Use *The HIPAA E-Tool*[®] Services or *The HIPAA E-Tool*[®] Product Content in a manner that violates any applicable law, regulation or this Agreement;
- (4) Reproduce, modify, adapt, create derivative works or copy any content of *The HIPAA E-Tool*[®] to sell, trade or give to any third party;
- (5) Assign or transfer Client's rights and obligations under this Agreement or redistribute, encumber, sell, rent, lease or otherwise transfer such rights and obligations to a third party except as provided by Section 8.F of this Agreement;
- (6) Permit third parties to copy and/or use any part of *The HIPAA E-Tool*[®] for personal, commercial or educational purposes;
- (7) Enter protected health information on any document of *The HIPAA E-Tool*[®] that may be uploaded for maintenance by *The HIPAA E-Tool*[®] Services (documents for procedures requiring entry and documentation of protected health information are downloaded as word processing documents to be completed and maintained by Client);
- (8) Consider, use or rely on information in *The HIPAA E-Tool*[®] as legal advice in lieu of consulting an attorney at law who is duly licensed and authorized to practice law in Client's jurisdiction.

4. Ownership of Client's Data

Client owns all the data and information it enters in *The HIPAA E-Tool*[®] to customize documents and templates for its own use and documentation. Client understands *The HIPAA E-Tool*[®] Services do not include maintenance of protected health information. *The HIPAA E-Tool*[®] forms designed for entry of protected health information may only be downloaded for word processing. Those forms may be used, saved by Client electronically or printed for documentation but cannot be

uploaded and maintained by *The HIPAA E-Tool*® Services. During the Term of this Agreement and upon termination of this Agreement Client may download all data it has entered and preserve the data for documentation. If this Agreement is terminated by Notice in accordance with Section 2.B.1 Client is advised to download copies of its data prior to the date of termination. Following the termination date of this Agreement Client will not have access to data and information uploaded for maintenance by *The HIPAA E-Tool*® Services.

5. Modification of this Agreement

ET&C Group reserves the right, in its sole discretion, to modify this Agreement. If the Agreement is modified, ET&C Group will notify Client by means of a notice placed above this Agreement accessible through a link on *The HIPAA E-Tool*® web site (30) days before the modification becomes effective. Client's continued use of *The HIPAA E-Tool*® will constitute Client's acceptance of, and agreement to, such modification. If Client does not agree to accept modification to this Agreement, Client shall notify ET&C Group in accordance with the Notice provisions of Section 8.H prior to the effective date of the modification and this Agreement between ET&C Group and Client shall remain in full force and effect without modification.

6. Disclaimer

Provision of access to *The HIPAA E-Tool*® does not constitute any element of the practice of law by ET&C Group including but not limited to the provision of legal advice and drafting of legal documents. Payment of an applicable EULA-SaaS Fee does not constitute payment for legal advice or legal services provided by ET&C Group and/or *The HIPAA E-Tool*®. Professional legal services may only be provided to Client by an attorney at law who is duly licensed and authorized to practice law in Client's jurisdiction. Citations and discussion of relevant law in *The HIPAA E-Tool*® are provided for educational purposes and to be available to Client's legal counsel as convenient, ready references for such use as Client's legal counsel deems appropriate in providing legal advice and services to Client. Further, ET&C Group expressly disclaims any warranty, guaranty or claim that provision of access to *The HIPAA E-Tool*® is all that is required for Client to be compliant with HIPAA and HIPAA Regulations. Client is solely responsible for its own compliance with HIPAA, HIPAA Regulations and law applicable to the privacy and security of individually identifiable health information and notification related to Unauthorized Use, disclosure and breach of such information.

7. Limitation of Liability and Damages

ET&C Group's liability to Client shall not exceed the amount of an EULA-SaaS Fee paid by Client to ET&C Group during the most recent (1) year Term of this Agreement. ET&C Group shall not be liable for any consequential, indirect, special, incidental or exemplary damages (including but not limited to lost profits) relating to Client's use of *The HIPAA E-Tool*® or arising from any claim or cause of action whatsoever including contract, warranty, strict liability and tort (including negligence) even if ET&C Group has been notified in advance of the possibility Client may incur such damage. This Limitation of Liability and Damages shall be effective to the maximum extent permitted by law.

8. Miscellaneous

8. A Severability

If a Court of competent jurisdiction shall declare any provision of this Agreement

to be invalid, illegal or unenforceable, that provision shall be severed from this Agreement and all the remaining provisions of this Agreement shall continue in full force and effect. The invalidity, illegality or unenforceability of any provision of this Agreement shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement. However, if permitted by applicable law, any invalid, illegal or unenforceable provision may be considered in determining the intent of the Parties with respect to other provisions of this Agreement.

8. B Choice of Law, Jurisdiction, Venue, Equitable Relief

The Parties agree that the laws of the State of Missouri will govern this Agreement without regard to conflict of law provisions. Any claim, cause of action or dispute (claim) arising out of or relating to this Agreement shall be resolved exclusively in the U.S. District Court for the Eastern District of Missouri or a state court located in City of St. Louis, Missouri and Client agrees to the venue and to submit to the personal jurisdiction of such courts for the purpose of litigating any such claims. The Parties agree that a material breach of this Agreement by Client involving *The HIPAA E-Tool*[®] Product Content or *The HIPAA E-Tool*[®] Intellectual Property may result in irreparable or immediate harm to ET&C Group. Accordingly ET&C Group shall have the right to seek equitable relief to enjoin, restrain, redress, mitigate or prevent irreparable harm in the U.S. District Court for the Eastern District of Missouri or a state court located in City of St. Louis, Missouri. If the Parties mutually agree to resolve any claim, cause of action or dispute arising out of or relating to this Agreement by arbitration, they agree the arbitration proceedings shall take place in the City of St. Louis, Missouri.

8. C Force Majeure

ET&C Group shall be excused from its obligations under this Agreement, and shall have no liability for any resulting loss or damage, in the event and to the extent that its performance is delayed or prevented by any circumstance reasonably beyond its control, including, but not limited to: terrorism, cyberterrorism, fire, flood, epidemic, explosion, act of any government in its sovereign capacity, act of God or of the public enemy, cyber-attack, strike, walkout or other labor dispute, and riot or civil disturbance.

8. D Captions

The captions of various sections of this Agreement are solely for convenience and are not part of this Agreement for purposes of interpreting the provisions hereof.

8. E Relationship of ET&C Group and Client – Independent Contractors

ET&C Group and Client, as Parties to this Agreement are independent contractors. Nothing in this Agreement shall be deemed or construed by the Parties or by any other person or entity to create a relationship of principal and agent, partnership, joint venture, employer – employee or any other type of relationship between ET&C Group and Client other than that of independent contractors.

8. F Assignment and Successors

Client may not assign this Agreement or any of its rights or obligations hereunder without ET&C Group's express written consent and such consent shall not be withheld unreasonably. ET&C Group may assign this Agreement or any of its rights or obligations hereunder without consent of Client, provided, however, that ET&C Group provides Notice to Client of the assignment and the assignee covenants and agrees to assume all duties, obligations and performance of ET&C Group related to the subject matter of the assignment. Any purported assignment in

violation of this Section shall be void. Except to the extent forbidden in the previous sentence, this Agreement will be binding upon and inure to the benefit of the respective successors and assigns of the Parties.

8. G Waiver

Failure of either Party at any time to require strict performance of any provision of this Agreement shall not be considered to be a waiver of any breach, or of any succeeding breach, of such provision or a waiver of any right of the Party to take any action or obtain any relief permitted under this Agreement.

8. H Notices

Any Notice required or permitted by this Agreement must be in writing. Notices to ET&C Group may be sent by U. S. Mail or responsible private delivery company such as UPS or Federal Express with proof of delivery to ET&C Group LLC, 3534 Washington Ave., St. Louis, MO 63103. Notices to Client may be sent to the email address or the mailing address provided by Client. It is the obligation of Client to provide ET&C Group with current, valid contact information.

8. I Survival of Covenants

Any obligation of Client to pay a EULA-SaaS Fee, any provision in this Agreement that is specifically stated to survive the termination of this Agreement including, but not limited to the provisions of Sections 3.B, 4, 6, 7 and 8.B and any provision which, by its terms, cannot be performed prior to the termination of this Agreement or which, by its terms, continues beyond the term of this Agreement shall be deemed to survive the termination of this Agreement and shall be enforceable by the Parties.

8. J Entire End User License and Software as a Service Agreement

This Agreement constitutes the entire End User License and Software as a Service Agreement between ET&C Group and Client and supersedes any and all prior agreements between the Parties, whether written or oral, including any End User License Agreements, Software as a Service Agreements, contemporaneous writings, negotiations, and discussions with respect to the subject matter hereof.