

# HealthTrac Patient Engagement Platform Terms and Conditions

## ARTICLE 1

### Services

During the term of this Agreement, SPH agrees to provide the following (as defined below):

#### **Section 1.1. Development of Web Portal.**

- (a) SPH agrees to develop a dedicated, multi-domain web portal (Web Portal).
- (b) Client agrees and understands that its use of the SPH Platform is nonexclusive and that SPH shall be entering into agreements in form and substance similar to this Agreement with other parties and that their portals shall be similar in appearance to the Web Portal.

#### **Section 1.2. Hosting.**

SPH shall host the Web Portal on a server (s) operated by SPH. Client will be notified by email of all scheduled downtime for maintenance with 72 hours advance notice. Maintenance is typically conducted on Saturday and Sunday during the hours of 10pm-4am ET. Outside of periodic scheduled downtime for routine maintenance and upgrades, SPH will maintain a 99% uptime rating (equivalent to 7 hours per month of unscheduled down time).

#### **Section 1.3. Availability.**

The Web Portal shall be available to Client and those patients that Client registers to use the Web Portal (the "Users").

#### **Section 1.4. Technical Support.**

SPH will provide technical support to Client for the Services hosted at the Web Portal during provided between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time Monday through Friday, except SPH holidays ("Normal Business Hours"). SPH shall use reasonable commercial efforts to notify Client of scheduled and unscheduled maintenance outages, traffic reports and alerts via e-mail.

## ARTICLE 2

### Proprietary Rights

#### **Section 2.1. Proprietary Rights of SPH.**

Client acknowledges SPH's exclusive ownership claim to and/or claim of rights in any and all ideas, concepts, know-how, techniques, processes, methods, inventions,

discoveries, developments, innovations and improvements, together with all printed materials, software (in object code and source code form), script, programming code, HTML script, data, information and other works of authorship, including, without limitation, all copyrights, trademarks, patents, trade secrets and other proprietary rights inherent therein, the look and feel of the Web Portal, the User Information and any other information that is conceived, made, developed or authored by or for SPH prior to or during the term of this Agreement and that is provided to Client by SPH in connection with the performance of the Services (collectively referred to as the "SPH Materials"). Client does not, and will not, make any claim of ownership in or title to the SPH Materials.

## **Section 2.2. Confidentiality.**

(a) During the term of the Agreement one or both Parties may disclose its confidential information to the other. Any confidential information disclosed by one party (the "Discloser") to the other party (the "Recipient") in tangible form shall be marked as confidential by the Discloser. Notwithstanding the immediately preceding sentence, any information provided by SPH to Client related to insurance billing procedures and training shall be deemed confidential information of SPH subject to the provisions of this Section 5.2. Any disclosure of confidential information which is made orally or visually shall be confirmed in summary written form, and marked as confidential, within thirty (30) days after the date of disclosure. For a period of five (5) years from the date of disclosure, the Recipient agrees to use the same care and discretion to avoid any publication, disclosure or dissemination of any part or all of the confidential information of the Discloser outside of the Recipient, as the Recipient employs with information of its own which it regards as confidential and which it does not desire to publish, disclose or disseminate, and in any event shall use at least a reasonable standard of care.

(b) This Agreement imposes no obligation upon Recipient with respect to information that: (i) was in Recipient's possession before receipt from Discloser; (ii) is or becomes a matter of public knowledge through no fault of Recipient; (iii) is rightfully received by Recipient from a third party without a duty of confidentiality; (iv) is disclosed by Discloser to a third party without a duty of confidentiality on the third party; (v) is independently developed by Recipient; (vi) is disclosed under operation of law; or (vii) is disclosed by Recipient with Discloser's prior written approval.

## **ARTICLE 3** **Warranties**

### **Section 3.1. SPH Warranties.**

SPH represents and warrants that: (a) SPH has the power and authority to enter into and perform its obligations under this Agreement; and (b) to the best of SPH's knowledge, the SPH Materials do not and will not infringe, or constitute a misappropriation of the property rights of third parties.

#### **Section 4.2. SPH System Warranties.**

SPH WARRANTS ONLY THAT DURING THE TERM OF THIS AGREEMENT, WHEN OPERATED AS RECOMMENDED, THE WEB PORTAL WILL PERFORM SUBSTANTIALLY AS DESCRIBED OR IN ANY FUTURE WEB PORTAL FEATURES AND FUNCTIONS DOCUMENTATION THAT MAY BE PUBLISHED BY SPH FROM TIME TO TIME. EXCEPT AS EXPRESSLY SET FORTH ABOVE, NO OTHER WARRANTIES ARE MADE WITH RESPECT TO THE WEB PORTAL. SPH EXPRESSLY DISCLAIMS ALL WARRANTIES NOT STATED HEREIN. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SPH EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. SPH DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE WEB PORTAL OR THE OPERATION OF THE WEB PORTAL SHALL BE UNINTERRUPTED OR ERROR-FREE.

#### **Section 3.3. Client Warranties.**

Client represents and warrants that Client has the power and authority to enter into and perform its obligations under this Agreement, and that any representations and warranties made by Client under this Agreement are true correct and complete as of the date hereof

### **ARTICLE 4**

#### **Indemnification**

##### **Section 4.1. Client.**

Client agrees to indemnify, defend, and hold harmless SPH, its directors, officers, employees and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, to the extent that such action is based upon a claim that: (a) relates to the achievement of weight loss on the part of any patient of the Client or any other aspect of Client's treatment of Client's patients; (b) if true, would constitute a breach of any of Client's representations, warranties, or agreements hereunder; (c) arises out of the activities of Client; or (d) any of the Client Content to be provided by Client hereunder infringes or violates any rights of third parties, including, without limitation, rights of publicity, rights of privacy, patents, copyrights, trademarks, trade secrets and/or licenses.

##### **Section 4.2. SPH.**

SPH agrees to indemnify, defend, and hold harmless Client, its directors, officers, employees and agents, and defend any action brought against same with respect to

any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, to the extent that such action is based upon a claim that: (a) if true, would constitute a breach of any of SPH's representations, warranties, or agreements hereunder; (b) arises out of the negligence or willful misconduct of SPH; or (c) any of the SPH Materials provided by SPH hereunder infringes or violates any rights of third parties, including, without limitation, rights of publicity, rights of privacy, patents, copyrights, trademarks, trade secrets and/or licenses.

**Section 4.3. Notice.**

In claiming any indemnification hereunder, the indemnified party shall promptly provide the indemnifying party with written notice of any claim which the indemnified party believes falls within the scope of the foregoing Sections 8.1 and 8.2. The indemnified party may, at its own expense, assist in the defense if it so chooses, provided that the indemnifying party shall control such defense and all negotiations relative to the settlement of any such claim and further provided that any settlement intended to bind the indemnified party shall not be final without the indemnified party's written consent, which shall not be unreasonably withheld.

**ARTICLE 5**

**Limitation of Liability**

SPH shall have no liability with respect to SPH's obligations under this Agreement or otherwise for consequential, exemplary, special, incidental, or punitive damages even if SPH has been advised of the possibility of such damages.

**ARTICLE 6**

**Miscellaneous**

**Section 6.1. Entire Agreement; Amendment.**

This Agreement constitutes the entire agreement and understanding between the Parties relating to the subject matter hereof, and there are no covenants, promises, agreements, conditions or understandings, oral or written, except as herein set forth. This Agreement may not be amended, waived or discharged except by an instrument in writing executed by the party against whom such amendment, waiver or discharge is to be enforced.

**Section 6.2. Publicity.**

SPH may not identify Client as a client or customer of SPH in advertising, publicity, or similar materials distributed or displayed to prospective clients without first having obtained Client's prior written consent. Client shall not make any public announcement

or publicly identify SPH or anyone affiliated with SPH, including, but not limited to, its staff, advisors, or members of this expert panel without first having obtained SPH's prior written consent.

**Section 6.3. Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Massachusetts without giving effect to such jurisdiction's principles of conflict of laws. Client and SPH agree that the sole venue and jurisdiction for disputes arising from this Agreement shall be the appropriate state or federal court located in the State of Massachusetts.

**Section 6.4. Assignment.**

Client shall not assign, without the prior written consent of SPH, its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise, and any attempt to do so shall be deemed a material breach of this Agreement.

**Section 6.5. Notice.**

Any notice provided pursuant to this Agreement, if specified to be in writing, shall be in writing and shall be deemed given (i) if by hand delivery, upon receipt thereof, (ii) if by mail, three (3) days after deposit in the United States mails, postage prepaid, certified mail, return receipt requested, (iii) if by facsimile transmission, upon electronic confirmation thereof, (iv) if by next day delivery service, upon such delivery. All notices shall be addressed as follows (or such other address as either party may in the future specify in writing to the other):

In the case of SPH:

David Blackburn  
2 Commercial St  
SetPoint Health  
Sharon, MA 02067

In the case of Client:

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