

**WECOUNSEL/VISUWELL**  
**TERMS AND CONDITIONS OF SERVICE**

Last updated: June 5, 2018

These Terms and Conditions of Service (these “Terms” or this “Agreement”), govern the relationship between WeCounsel Solutions, LLC, (referred to herein as “WeCounsel”, “VisuWell” “we”, “us” or “our”) and you, the Client or Treatment Provider (each defined below), accessing or otherwise making use of our Service (defined below). These Terms constitute a legally binding agreement between you and WeCounsel. Accordingly, we advise you to read these Terms carefully before accessing or otherwise making use of the Site or Service.

**1. Introduction.** WeCounsel is a third party telehealth and telemedicine technology service provider. Our online platform (a) allows patients (the “Clients”), and healthcare professionals (the “Treatment Providers”) and Treatment Providers’ employees who are authorized to access and use the Service (the “Authorized Clients”), to interact online for the purpose of receiving and providing professional medical services related to the Client’s treatment; and (b) provides Treatment Providers with certain practice management tools including, but not limited to, scheduling, messaging, note taking, and record keeping tools in addition to other features that support the provision of professional medical services within mental healthcare practice areas ((a) and (b) together, the “Service”). Each Treatment Provider is required to obtain a Client’s informed consent prior to communicating with or otherwise engaging the Client through the Service for the purpose of providing professional medical services.

**2. Acceptance of this Agreement; Restrictions on Acceptance.**

(a) **Acceptance.** **When you access or otherwise make use of the Service, you acknowledge, agree to, and are bound by, the terms and conditions of this Agreement. If you do not agree to be bound by this Agreement, do not continue to access or otherwise make use of the Service.** Please note that certain uses of the Service may be subject to separate agreements that will be provided to you prior to such use. Furthermore, if you are accepting this Agreement as or on behalf of a Treatment Provider (and its Authorized Clients), by agreeing to these Terms, you also agree to and are bound by the terms and conditions of WeCounsel’s Business Associate Agreement (located at [www.wecounsel.com](http://www.wecounsel.com)) and incorporated herein by reference.

(b) **Restrictions on Acceptance.** When you access or otherwise make use of the Service you acknowledge and agree that:

- if you are accepting this Agreement on behalf of any legal entity, including any company, organization, government, or governmental agency, you have been authorized to do so and to act on behalf of such legal entity;
- you have read and understood all of the provisions, terms and conditions set forth in this Agreement;
- you will be bound by all of the provisions, terms and conditions set forth in this Agreement;
- except as otherwise provided in Section 13 hereof, you are at least eighteen (18) years of age;
- you have a valid email address;
- you are a resident of one of the fifty (50) states of the United States, or a resident of Washington
- D.C. and have a valid postal mailing address confirming the same; and
- this Agreement is the legal equivalent of a signed, written contract between you and WeCounsel.

**3. Definitions.** Unless context requires otherwise, capitalized terms not defined within the Agreement shall have the following meanings:

- “Affiliate” means, with respect to a Party, any person, firm, Corporation, partnership (including partnerships, and limited liability partnerships), limited liability partnerships), limited liability company, or other entity that now or in the future, directly controls, is

controlled with or by or is under common control with such Party.

- “Applicable Law” means any and all applicable federal, state and local laws, statutes, ordinances, regulations, rules, opinions, interpretive letters and other official releases of or by any government, or any authority, department or agency thereof which are now in effect or which may come in to effect at any time during the Term (as defined below).
- “Client” means a patient or client of a particular Treatment Provider who uses the Service for the purpose of communicating with his or her Treatment Provider regarding his or her treatment.
- “Client Information” means the Personal Information that you provide to us in order to register your Account and make use of the Site or the Service, as further described in Section 9.
- “Account” means your Client account which you must register for through the Site in order to make use of the Service.
- “Personal Information” means information that is unique to you and may include your name, your date of birth, your social security number, your tax identification number (if applicable), your home or other physical address, your email address, your telephone number, payment card information, and other information that identifies you as further described in Section 9.
- “Service” means the WeCounsel interactive platform, provided on a software as a service basis, that (a) allows Clients and Treatment Providers to interact online for the purpose of receiving and providing professional medical services related to the Client’s treatment; and (b) provides Treatment Providers with certain practice management tools including, but not limited to, scheduling, messaging, note taking, and record keeping tools in addition to other services that support the provision of professional medical services related to therapy and mental health treatment.
- “Treatment Provider” means the healthcare professional or group of healthcare professionals that use the Service to communicate with Clients regarding their treatment and to manage certain administrative functions of their healthcare practice.
- “you”, or “your” means the Treatment Provider or Client, as dictated by the context of this Agreement, who makes use of the Service.
- “WeCounsel”, “VisuWell” “we”, “our” or “us” shall mean WeCounsel Solutions, LLC, a Delaware limited liability company.

**4. Ownership of Intellectual Property Rights.** You acknowledge and agree that, except as otherwise expressly stated, all text, pictures, graphics, logos, button items, images, works of authorship, and other content (collectively with all information and material about WeCounsel or the Service, “Content”) appearing on your Account or the Service is the copyrighted work of WeCounsel or its third party content suppliers and is protected by U.S. and international copyright, trademark, and other laws. We own or have the license to use all of the intellectual property rights relating to the Content, including, without limitation, all intellectual property rights protected as patent pending or patented inventions, trade secrets, copyrights, trademarks, service marks, trade dress, or proprietary or confidential information, whether or not they happened to be registered. You will not acquire any intellectual property rights in WeCounsel by your use of the Service. You only hold a non-exclusive, non-transferable, non-sublicensable license to use this information through the Service as indicated in Section 15 below.

**5. License.** Subject to your compliance with this Agreement, WeCounsel hereby grants you a limited license to access and make use of the Service, but not to download (other than page caching or downloading of PDF forms, statements, etc. provided as part of the Service) or modify the Service, or any portion of thereof. The Service also contains the Content, and the license granted in this Section does not include any resale or commercial use of the Service or the Content; any derivative use of the Service or the Content; or any use of data mining, robots, or similar data gathering and extraction tools. The Service or any portion thereof may not be reproduced, duplicated, copied, sold, resold, visited, or otherwise exploited for any commercial purpose without the express written consent of WeCounsel. You may not frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form) of WeCounsel without, WeCounsel’s express written consent. You may not use any meta-tags or any other “hidden text” utilizing any of WeCounsel’s name(s) or service marks without the express written consent of their owners. We (or the respective third party owners of Content)

retain all right, title, and interest in the Service and any Content offered on these Service, including any and all intellectual property rights. Any software applications available on or through the Service are licensed, not sold, to you. WeCounsel may assign this Agreement or any part hereof, without restrictions. You may not assign this Agreement or any part hereof, nor transfer or sub-license your rights under this Agreement, to any third party. We (or the respective third party owners of Content) reserve all rights not expressly granted. Any unauthorized use terminates the permission or license granted by WeCounsel. Unless otherwise expressly agreed in writing by WeCounsel, the Service is only permitted to be used within the United States of America.

**6. Fees and Payment.** Your license to use the Service is contingent upon payment of all required fees, with such payments to be made within the required time periods as set forth during the Account registration process. If any charges or fees are not received from Client within ten (10) days following any notice from WeCounsel, WeCounsel may suspend access to the Service until past due charges are paid.

**7. Amendments.** WeCounsel reserves the right to change, modify, supplement, or update this Agreement (each such change, modification or supplement, an "Amendment"), from time to time upon notice by posting such Amendment on the Site. We encourage you to periodically visit this Agreement to check for any Amendments. In the event that an Amendment to this Agreement materially modifies your rights or obligations we will take commercially reasonable measures to notify you of such Amendment in advance, which may include posting notices on the website or sending notices to you at your email address. You acknowledge and agree that you will be bound by any such Amendment if you continue to access or use the Site or Service after such Amendment is posted. Unless otherwise indicated, any new Service added to the Site will also be subject to this Agreement effective upon the date of any such addition.

**8. Privacy.** You acknowledge and agree to the terms and conditions of our Privacy Policy available at [https://www.wecounsel.com/content/uploads/Privacy\\_Policy.pdf](https://www.wecounsel.com/content/uploads/Privacy_Policy.pdf), as may be amended from time to time, and which is incorporated by reference into this Agreement as if it were set forth herein in its entirety. The Privacy Policy describes our collection and possible use of the information that you provide to us or which we collect in connection with your use of the Site or Service. By using the Site or Service, you agree to, and are bound by, the terms of the Privacy Policy.

**9. Medical Advice.** Only the audiovisual telecommunication platform portion of the Service may be used to communicate information regarding professional medical or healthcare services and treatment. Accordingly, neither Clients nor Treatment Providers should request, send or receive any information related to professional medical or healthcare services through any portion of the Service except the audiovisual telecommunication platform. No other Service features should be used to convey professional medical services, advice, treatment or any other confidential information. **WeCounsel does not provide medical advice, and any information contained on the Site is not and should not be considered medical advice. WeCounsel makes and you receive no representation or warranty with respect to any professional medical services, advice, treatment, or recommendations rendered by a Treatment Provider in connection with your use of the Site or Service or any medication or treatment prescribed by a Treatment Provider in connection with your use of the Site or Service, and WeCounsel does not endorse or advocate any professional medical services so rendered or any medication or treatment method so prescribed.**

**10. Eligibility Requirements to Access Treatment Provider Portions of the Site.** You agree to promptly pay all fees and charges for your Service, and you authorize us to automatically deduct all applicable charges and fees from the payment account(s) that you designate in your WeCounsel Client Profile. Any "linked" payment processing accounts with third parties (such as Stripe) will appear in your Client Profile as part of the Service. You agree to provide a current, up-to-date email address to us at all time in order to access the Site.

**11. Registered Client Accounts.** In order to access and make use of the Service you must register and create a WeCounsel Account ("Account"). When you register you will be required to provide certain Personal Information in order to create your Account and use the Service and such information may include your name, your date of birth, your home or other physical address, your email address, your telephone

number, your Client name, the name of your Treatment Provider, your health plan, your health plan subscriber ID number (where applicable), and other information (collectively, "Client Information"). By registering your Account, you acknowledge and agree that your Personal Information and Client Information may be used as may be necessary for us to provide the Service to you.

When you register, you must choose a Client name and a password. You are responsible for safeguarding and maintaining the confidentiality of your password and you agree not to disclose your password to any third party. You will be solely responsible for any activities or actions taken under your Account, whether or not you have authorized such activities or actions. You must notify us immediately if you know or suspect that there has been any unauthorized use of your password or any unauthorized access to your Account.

You further agree to promptly update all your Client Information whenever the Client Information provided to us by you is found to be in error or becomes inaccurate. We are not responsible for any Service-related issues or errors arising from your failure to submit or maintain current and accurate Client Information. If we determine that you have failed to submit or maintain current and accurate Client Information, we may temporarily suspend or terminate your access to your Account, the Site or the Service.

**12. Treatment Provider Profiles.** Treatment Providers are solely and exclusively responsible for any content or information displayed on or published to their respective profiles, and WeCounsel expressly disclaims any and all liability for the content of the Treatment Provider profiles, including, without limitation, the accuracy or reliability of any information contained therein.

**13. Client Profile.** It is the Treatment Provider's responsibility to protect and maintain the confidentiality of any Client Information and Personal Information to which the Treatment Provider has access through the Service in accordance with these Terms, the Privacy Policy, Applicable Laws including, without limitation, any laws related to healthcare and privacy, any laws concerning the provision of telehealth or telemedicine services and any laws which require the Treatment Provider to obtain a Client's consent or authorization prior to disclosing or sharing such information with third parties. WeCounsel disclaims any and all liability in connection with the Treatment Provider's use of any information contained in a Client's Client Profile or any other information provided by a Client in connection with the Service.

**14. Disclosure and Consent to Electronic Communications.**

(a) Consent to Electronic Communications. When you accept these Terms, you acknowledge that WeCounsel may provide certain information, including information regarding your use of the Service and WeCounsel Account ("Communications"), to you electronically through email, the Service, the WeCounsel Account unless and until you withdraw your consent or "opt out" as described below. You understand that the communications referenced in this section may include SMS text messages to which you give your express consent to receive SMS text messages for this purpose. You agree that all agreements, notices, disclosures and other Communications that we provide to you electronically satisfy any legal requirement that such Communications be in writing. You further agree that any Communications provided by us electronically are deemed to be given and received on the date we transmit any such Communication as described in this Agreement. The categories of Communications that may be provided by electronic means include:

- any Amendments to this Agreement;
- disclosures or notices provided in connection with the Service, including any such notice required by Applicable Law;
- any statements or information concerning your Account;
- any customer service communications, including communications with respect to claims of error or unauthorized use of your Account, the Service; and
- any other communication related to the Service.

Although WeCounsel reserves the right to provide Communications in paper format at any time, you agree that WeCounsel is under no obligation to do so unless you first notify us, in writing, of your request to receive further communications in a paper format and your decision to opt out of

receiving Communications. All Communications in either electronic or paper format will be considered to be "in writing." **You should print a paper copy of this Agreement and any Communication that is important to you and retain the copy for your records.** If you do not wish to enter into this Agreement electronically, you may not use your WeCounsel Account, the Site or the Service.

- (b) **Timing of Communications.** Any electronic Communications will be deemed to have been received by you no later than five (5) business days after WeCounsel sends it to you by email or posts such Communication through the Service, whether or not you have received the email or retrieved the Communication from the Service. An electronic Communication by email is considered to be sent at the time that it is directed by WeCounsel's email server to your email address. You agree that these are reasonable procedures for sending and receiving electronic Communications.
- (c) **Updated Client Information.** You understand and agree that if WeCounsel sends you an electronic Communication, but you do not receive it because the email address on file is incorrect, out of date, blocked by your service provider, or you are otherwise unable to receive such electronic Communications, WeCounsel will be deemed to have provided the Communication to you.
- (d) **System Specifications.** In order to access, view, and retain electronic Communications that WeCounsel provides to you, you must have access to: (i) a computer with an Internet connection; (ii) a current or previous major release version (up to the second most recent version) of either Firefox, Internet Explorer, Chrome, or Safari with cookies enabled and Adobe Acrobat Reader to open documents in ".pdf" format; (iii) sufficient electronic storage capacity on your computer's hard drive or other data storage unit to save past Communications and/or an installed printer to print them; and (iv) an email account with an Internet service provider and email software. Your access to this page through your device verifies that your device meets these requirements.
- (e) **Reservation of Rights.** WeCounsel reserves the right, in its sole discretion, to discontinue the provision of electronic Communications to you, or to terminate or change the terms and conditions under which WeCounsel provides electronic Communications. WeCounsel will provide you with notice of any such termination or change as may be required by Applicable Law.

**15. Use of the Service by Children.** Clients under the age of eighteen (18) years old are expressly prohibited from using the Service; provided, however, that Clients under the age of eighteen (18) may use the Service with permission from the Client's parent or legal guardian who must take part in each online consultation with the Client. If a Client is registering as the parent or legal guardian on behalf of a minor Client, such parent or legal guardian will be fully responsible for complying with these Terms and our Privacy Policy.

**16. Restrictions on Conduct.** The services may be used and accessed for lawful purposes only. You agree to abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Service. Any violation of these restrictions may result in immediate barring from the use of the services and/or further actions in the sole discretion of WeCounsel, including the cooperation with the appropriate legal authorities into any investigation and prosecution of your actions.

In addition, without limitation, you agree that you will not do any of the following while using or accessing the Service: (a) transmit or upload any information for which you don't have the right to transmit, publish, copy, upload, or disseminate; (b) upload, post, email or otherwise transmit any Content that infringes on the intellectual property rights or violates the privacy rights of any third party (including without limitation copyright, trademark, patent, trade secret, or other intellectual property right, or moral right or right of publicity); (c) use the Service to collect or store personal data about other Clients without their express permission; (d) knowingly include or use any false or inaccurate information in any profile; (e) upload, post, email or otherwise transmit any unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, "pyramid schemes" or any other form of solicitation, as well as viruses or other computer code that may interrupt, destroy, limit the functionality of the Service, or interfere with the access of any other Client to the Service; (f) circumvent, disable, or otherwise interfere with security-related features of

the services or features that prevent or restrict use or copying of any Content; (g) use any meta tags or other hidden text or metadata utilizing a WeCounsel name, trademark, URL or product name; (h) attempt to probe, scan or test the vulnerability of any WeCounsel system or network or breach or impair or circumvent any security or authentication measures protecting the Service; (i) attempt to decipher, decompile, disassemble, reverse engineer, or otherwise attempt to discover or determine the source code of any software or any proprietary algorithm used to provide the services; (j) use the services in any way that competes with WeCounsel, including, without limitation, pretexting or misrepresenting one's identity or posing as a current or prospective patient in order to solicit or recruit Treatment Providers, directly or indirectly; or (k) encourage or instruct any other person or entity to do any of the foregoing.

#### **17. Term and Termination.**

- (a) **Term.** This Agreement shall commence on the date you first make use of the Service and will remain in effect until either you or WeCounsel terminates this Agreement (the "Term").
- (b) **Termination Rights of WeCounsel.** WeCounsel reserves the right to change the Service or any Content we offer at any time without notice. We may, in our sole discretion, and without prior notice to you, terminate this Agreement at any time and for any reason.
- (c) **Your Termination Rights.** You may terminate your Account at any time and for any reason by sending WeCounsel written notice at the contact information provided herein or by notifying WeCounsel through the online Support Center. Any cancellation request will be handled within thirty (30) days of receipt of such a request by WeCounsel.
- (d) **Effects of Termination.** Upon any termination for cause by WeCounsel due to Client's breach, Client shall forfeit any and all prepaid or pro rata fees paid by Client to WeCounsel. Upon any termination for cause by Client due to WeCounsel's breach, WeCounsel shall refund Client any prepaid fees, at a pro-rated value, covering the remainder of the use of the Service after the effective date of termination. Upon any termination by you, your Account will no longer be accessible. After termination, WeCounsel will have no further obligation to provide the Service, except to the extent we are obligated to provide you with access to your health records or Treatment Providers are required to provide you with continuing care under their applicable legal, ethical and professional obligations to you. Upon termination of your right to use our Site or Service or our termination or discontinuation of the Site or Service, all licenses and other rights granted to you by these Terms will immediately terminate.

Your obligations under this Agreement survive and extend past any termination or suspension of our Service to you. Specifically, Section 14 (Ownership of Intellectual Property Rights), Section 16 (Third Party Websites; Advertisements), Section 17 (Disclaimer of Warranties), Section 18 (Indemnification), Section 19 (Limitation of Liability), Section 21 (General Terms), Section 23 (Arbitration) and Section 24 (Governing Law and Forum for Disputes) shall survive and remain in full force and effect, but the provisions of Section 15 (License) shall be suspended, terminated or cancelled, as the case may be.

**18. Third-Party Websites; Advertisements.** Links to third-party websites or resources and advertisements from third parties may be available and visible through the Service. WeCounsel is not responsible or liable for the availability or accuracy of, and WeCounsel does not endorse, sponsor, or recommend such websites, resources, or third-party advertisements or the content, products, or services on or available through such websites, resources, or third-party advertisements. When we make available such third-party links, resources, and advertisements through the Service, you must look solely to the third party with respect to the content, products, or services they provide. We do not endorse and are not responsible or liable for any of the content, products, or services provided or advertised by others, or for any losses arising out of or relating to the websites or resources of third parties.

**19. Disclaimer of Warranties.** Your use of the Service and Content is at your sole discretion and risk. The Service and Content, and all materials, information, products and services included therein, are provided on an "AS IS" and "AS AVAILABLE" basis without warranties of any kind. WECOUNSEL AND ITS LICENSORS AND AFFILIATES EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, RELATING TO THE SERVICES AND CONTENT, INCLUDING,

WITHOUT LIMITATION, ANY: (1) WARRANTIES THAT THE SITE AND SERVICE WILL MEET YOUR REQUIREMENTS; (2) WARRANTIES CONCERNING THE AVAILABILITY, ACCURACY, SECURITY, USEFULNESS, TIMELINESS, OR INFORMATIONAL CONTENT OF THE SITE, THE CONTENT OR THE SERVICE; (3) WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE; (4) WARRANTIES CONCERNING THE ACCURACY OR RELIABILITY OF THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SITE OR SERVICE; AND (6) WARRANTIES THAT YOUR USE OF THE SITE OR SERVICE WILL BE SECURE OR UNINTERRUPTED; VIRUS-FREE OR ERROR-FREE.

**20. WeCounsel Indemnification.** WeCounsel indemnifies, defends, and holds Client harmless from and against any claims, actions, or demands alleging that the provision or use of the Service infringes any United States patent or copyright right of a third party. If use of the Service is permanently enjoined for any reason, WeCounsel, at WeCounsel's option, and in its sole discretion, may (a) modify the Service so as to avoid infringement; (b) procure the right for Client to continue to use and reproduce the Service and Documentation; or (c) terminate this Agreement and refund to Client all license fees paid WeCounsel. WeCounsel shall have no obligation under this Section for or with respect to claims, actions, or demands alleging infringement that arise as a result of (a) the combination of non-infringing items supplied by WeCounsel with any items not supplied by WeCounsel; (b) modification of the Service or Documentation by Client or by WeCounsel in compliance with Client's designs, specifications, or instructions; (c) the direct or contributory infringement of any process patent by Client through the use of the Service; and (d) continued allegedly infringing activity by Client after Client has been notified of the possible infringement.

**21. Client Indemnification.** You agree to forever indemnify, defend, and hold harmless WeCounsel and Affiliates, and our respective directors, officers, employees, agents, and representatives, from and against any and all claims, causes of action, demands, liabilities, losses, costs or expenses (including, but not limited to, reasonable attorneys' fees and expenses) arising out of or relating to any of the following matters: (a) your access to or use of the Service or the Content; (b) your violation or breach of any of the provisions of these Terms; (c) any activity related to your Account by you or any other person accessing the Service through your account, including, without limitation, negligent or wrongful conduct; or (d) your violation of any third party right, including, without limitation, any intellectual property right, publicity, confidentiality, property or privacy right.

**22. Condition to Indemnification.** Should any claim subject to indemnity be made against WeCounsel or Client, the party against whom the claim is made agrees to provide the other party with prompt written notice of the claim. WeCounsel will control the defense and settlement of any claim under Section 10(a) and Client will control the defense and settlement of any claim under Section 10(b). The indemnified party agrees to cooperate with the indemnifying party and provide reasonable assistance in the defense and settlement of such claim. The indemnifying party is not responsible for any costs incurred or compromise made by the indemnified party unless the indemnifying party has given prior written consent to the cost or compromise.

**23. Limitation of Liability.** IN NO EVENT WILL WECOUNSEL OR WECOUNSEL'S LICENSORS OR AFFILIATES BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING THE LOSS OF PROFITS, REVENUE, DATA, OR USE OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF THE SERVICES, OR THE CONTENT, WHETHER IN CONTRACT OR TORT, OR WHETHER THE DAMAGES ARE FORESEEABLE AND WHETHER OR NOT WECOUNSEL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. NOTHING HEREIN SHALL LIMIT THE POTENTIAL PROFESSIONAL LIABILITY OF ANY TREATMENT PROVIDERS OR OTHER HEALTHCARE PROFESSIONALS THAT MAKE USE OF THE SERVICE OR THE POTENTIAL PROFESSIONAL LIABILITY ARISING FROM OR RELATED TO PROFESSIONAL MEDICAL OR MENTAL HEALTH SERVICES, ADVICE, DIAGNOSIS, OR TREATMENT THAT SUCH TREATMENT PROVIDERS AND HEALTHCARE PROFESSIONALS PROVIDE TO ANY CLIENT IN CONNECTION WITH THIS AGREEMENT, EXCEPT AS PROVIDED UNDER APPLICABLE STATE LAWS. IN NO EVENT SHALL WECOUNSEL BE LIABLE FOR THE DISCLOSURE OF ANY CLIENT'S CONFIDENTIAL INFORMATION BY A TREATMENT PROVIDER FROM WHOM A CLIENT HAS RECEIVED PROFESSIONAL MEDICAL

OR MENTAL HEALTH SERVICES. IN NO EVENT WILL THE CUMULATIVE LIABILITY OF WECOUNSEL OR WECOUNSEL'S LICENSORS OR AFFILIATES TO YOU, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE AMOUNTS ACTUALLY PAID BY YOU WECOUNSEL FOR USE OF THE SERVICE IN THE TWELVE (12) MONTHS PRIOR TO THE OCCURRENCE OF THE CLAIM GIVING RISE TO SUCH LIABILITY.

ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATING TO YOUR USE OF THE SERVICES OR THE CONTENT OR OUR RELATIONSHIP WITH YOU, REGARDLESS OF THEORY, MUST BE BROUGHT WITHIN ONE (1) YEAR AFTER THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM OR CAUSE OF ACTION OR BE FOREVER BARRED.

**24. General Terms.** These Terms constitute the entire agreement between you and us relating to our Service and the Content, replacing any prior or contemporaneous agreements, whether written or oral, unless you have signed a separate written agreement with us relating to our Service or the Content. If there is any conflict between the Terms and a separate signed written agreement between you and us relating to our Service, the Site, or the Content, the signed written agreement will control. Our licensors may be entitled to enforce this Agreement as third-party beneficiaries. There are no other third-party beneficiaries to this Agreement.

**25. No Waiver.** The failure by you or us to enforce any provision of these Terms will not constitute a waiver. If any court of law, having the jurisdiction to decide the matter, rules that any provision of these Terms is invalid or unenforceable, then the invalid or unenforceable provision shall be removed from these Terms or reformed by the court and given effect so as to best accomplish the essential purpose of the invalid or unenforceable provision, and all of the other provisions of the Terms shall continue to be valid and enforceable. Nothing contained in these Terms shall limit the ability of a party to seek an injunction or other equitable relief without posting any bond. The titles of the Sections of the Terms are for convenience only and shall have no legal or contractual effect.

**26. Dispute Resolution.** Except as otherwise stated herein, on the written notice of either party requesting application of this Section, all claims and disputes arising out of or relating to these Terms shall be mediated by a mediator to be selected by mutual agreement of the parties. In the event the parties cannot agree on a mediator within fifteen (15) days of the receipt by either of written notice of the other requesting application of this Section 8, then each party shall designate a party within fifteen (15) days thereof by written notice to the other. Within fifteen (15) days thereof, the two parties selected then shall mutually designate a mediator for mediation of the dispute. The mediation shall continue from time to time until the dispute is resolved or the mediator has made a determination in writing that the dispute cannot be resolved through mediation and arbitration is recommended, provided that mediation may be terminated by either party upon fifteen (15) days' notice given at any time on or after the sixty-first (61st) day after notice requesting application of this Section 14. The mediator shall recommend one or more arbitrators to the parties.

**27. Governing Law and Forum for Disputes.** THESE TERMS AND OUR RELATIONSHIP WITH YOU SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TENNESSEE, EXCLUDING ITS CHOICE OF LAWS RULES. YOU AND WECOUNSEL EACH IRREVOCABLY AGREES THAT THE EXCLUSIVE VENUE FOR ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THESE TERMS OR OUR RELATIONSHIP WITH YOU, REGARDLESS OF THEORY, SHALL BE THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE, OR THE STATE COURTS LOCATED IN HAMILTON COUNTY, TENNESSEE. YOU AND WECOUNSEL EACH IRREVOCABLY CONSENTS TO THE PERSONAL JURISDICTION OF THESE COURTS AND WAIVES ANY AND ALL OBJECTIONS TO THE EXERCISE OF JURISDICTION BY THESE COURTS AND TO THIS VENUE. NOTWITHSTANDING THE FOREGOING, HOWEVER, YOU AND WECOUNSEL AGREE THAT WECOUNSEL MAY COMMENCE AND MAINTAIN AN ACTION OR PROCEEDING SEEKING INJUNCTIVE OR OTHER EQUITABLE RELIEF IN ANY COURT OF COMPETENT JURISDICTION.

**28. Force Majeure.** If performance of any obligation under this Agreement is prevented, restricted, or interfered with by causes beyond either party's reasonable control ("Force Majeure"), and if the party unable



to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term "Force Majeure" shall include, without limitation, acts of nature, fire, explosion, vandalism, storm, or other similar occurrence; orders or acts of military or civil authority; national emergencies, insurrections, riots, wars, strikes, lock-outs, work stoppages, or other labor disputes, supplier failures, shortages, breach, or delays. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted or caused by such party, or its employees, officers, agents or affiliates.

**29. Publicity.** WeCounsel shall be allowed, and Client gives its explicit and written permission, for WeCounsel to disclose to the public the existence of this contractual relationship, including, at WeCounsel's sole discretion, the terms of the Agreement, to use, mention, or describe and identify Client's name likeness, and logo/marks for the purpose of customer or client testimonials, case studies, endorsements, list of representative customers, on all print, broadcast, or electronic media, including newsletters, social media, blogging, printed literature and the like. WeCounsel also retains the explicit right to identify itself as the source vendor in the footer area of any private branded portals created for the Client.

**30. Contact Us.** If you have any questions about this Agreement, please contact us through the WeCounsel "Support Center" by submitting a request or at the phone number or mailing address provided below. We will attempt to respond to your questions or concerns promptly after we receive them.

WeCounsel Solutions, LLC.  
100 Cherokee Blvd. Suite 320  
Chattanooga, Tn 37405

Phone 888-958-2885

## **EXHIBIT A: BUSINESS ASSOCIATE AGREEMENT**

### **Business Associate Agreement**

THIS BUSINESS ASSOCIATE AGREEMENT (the "Agreement") is effective as of (the "Agreement Effective Date") by and between \_\_\_\_\_ ("Covered Entity") and WeCounsel ("Business Associate").

WHEREAS, Covered Entity has engaged Business Associate to perform telehealth and video conferencing platform and services;

WHEREAS, Covered Entity possesses Individually Identifiable Health Information that is protected under HIPAA (as hereinafter defined) and the HIPAA Regulations (as hereinafter defined), and is permitted to use or disclose such information only in accordance with HIPAA and the HIPAA Regulations;

WHEREAS, Business Associate may receive such information from Covered Entity, or create and receive such information on behalf of Covered Entity, in order to perform certain of the services or provide certain of the goods, or both; and

WHEREAS, Covered Entity wishes to ensure that Business Associate will appropriately safeguard Individually Identifiable Health Information;

NOW THEREFORE, Covered Entity and Business Associate agree as follows:

### **Definitions**

#### **Catch-all definition:**

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules:

Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

(a) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean WeCounsel Solutions, LLC.

(b) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Treatment Provider.

(c) Notification, and Enforcement Rules at 45 CFR Part 160 and Part164.

## Obligations and Activities of Business Associate

Business Associate agrees to:

- (a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;
- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;
- (c) Report to covered entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;
- (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;
- (e) Make available protected health information in a designated record set to the Covered Entity as necessary to satisfy covered entity's obligations under 45 CFR 164.524;
- (f) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526;
- (g) Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy covered entity's obligations under 45 CFR 164.528;
- (h) To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and
- (i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

## Permitted Uses and Disclosures by Business Associate

- (a) Business associate may only use or disclose protected health information as necessary to perform the services set forth in Service Agreement and according to the terms and conditions of the use of Business Associate's services.]
- (b) Business associate may use or disclose protected health information as required by law.
- (c) Business associate agrees to make uses and disclosures and requests for protected health information consistent with covered entity's minimum necessary policies and procedures.
- (d) Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity
- (e) Business associate may disclose protected health information for the proper management and administration of business associate or to carry out the legal responsibilities of the business associate, provided the disclosures are required by law, or business associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies business associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (f) Except as otherwise limited in this Agreement, Business Associate may use protected health information ("PHI") to provide Data Aggregation services to covered entity as permitted by 45 C.F.R. §164.504(e)(2)(i)(B). Data Aggregation services involve the combining by BA of (a) PHI with (b) Protected Health Information received by BA in its capacity as a business associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective Covered Entities.
- (g) Business Associate will not receive direct or indirect remuneration in exchange for any PHI unless a HIPAA-compliant authorization is obtained that includes information with regards to future sales. PHI may be sold for the purposes of public health, research or treatment, merger or sale of the entity or service payments. Limited marketing communications may be made by the Business Associate on behalf of the covered entity so long as a HIPAA-complaint authorization is obtained.

## Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

- (a) Covered entity shall notify business associate of any limitation(s) in the notice of privacy practices of covered entity under 45 CFR 164.520, to the extent that such limitations may affect business associate's use or disclosure of protected health information.
- (b) Covered entity shall notify business associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect business associate's use or disclosure of protected health information.
- (c) Covered entity shall notify business associate of any restriction on the use or disclosure of protected health information that covered entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect business associate's use or disclosure of protected health information.

## **Safeguards, Reporting, Mitigation and Enforcement.**

(a) *Safeguards.* Business associate shall use any and all appropriate administrative, physical and technical safeguards to (i) prevent use or disclosure of covered entity's PHI otherwise than as provided by this Agreement, and (ii) protect the confidentiality, integrity and availability of any electronic PHI.

(b) *BA's Agents.* Business associate shall not disclose PHI to any agent or subcontractor of business associate except with the prior written consent of covered entity. BA shall ensure that any agents, including subcontractors, to whom it provides PHI, agree in writing to be bound by the same restrictions and conditions that apply to business associate with respect to such PHI; provided, however, that business associate shall not disclose or provide access to covered entity's PHI to any subcontractor or agent without the prior consent of covered entity.

(c) *Reporting.* Business associate shall report to covered entity as soon as practicable of business associate becoming aware of any use or disclosure of covered entity's PHI in violation of this Agreement or applicable law. Business associate shall also report to covered entity within the same time-frame any Security Incident of which it becomes aware.

(d) *Mitigation.* Business associate shall have procedures in place to mitigate, to the maximum extent practicable, any deleterious effect from any use or disclosure of covered entity's PHI in violation of this Agreement or applicable law.

(e) *Sanctions.* Business associate shall have and apply appropriate sanctions against any employee, subcontractor, or agent who uses or discloses covered entity's PHI in violation of this Agreement or applicable law.

## Term and Termination

- (a) Term. The Term of this Agreement shall be effective as of acceptance of terms and shall terminate on Deactivation or on the date covered entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- (b) Termination for Cause. Business associate authorizes termination of this Agreement by covered entity, if covered entity determines business associate has violated a material term of the Agreement and business associate has not cured the breach or ended the violation within thirty (30) days.
- (c) Obligations of Business Associate Upon Termination.

Upon termination of this Agreement for any reason, business associate, with respect to protected health information received from covered entity, or created, maintained, or received by business associate on behalf of covered entity, shall:

1. Retain only that protected health information which is necessary for business associate to continue its proper management and administration or to carry out its legal responsibilities;
2. Return to covered entity the remaining protected health information that the business associate still maintains in any form;
3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as business associate retains the protected health information;
4. Not use or disclose the protected health information retained by business associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at paragraphs (e) and (f) above under "Permitted Uses and Disclosures By Business Associate" which applied prior to termination; and
5. Return to covered entity the protected health information retained by business associate when it is no longer needed by business associate for its proper management and administration or to carry out its legal responsibilities.

- (d) Survival. The obligations of business associate under this Section shall survive the termination of this Agreement.

## Miscellaneous

- (a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- (b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

(c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Agreement Effective Date.

Covered Entity

Business Associate

WeCounsel Solutions, LLC

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By: *Harrison Tyner*

Title: Chief Privacy Officer

[info@wecounsel.com](mailto:info@wecounsel.com)

888-958-2885