

## AdvancedMD Pay Sub-Merchant Terms and Conditions

### INTRODUCTION

These AdvancedMD Pay Sub-merchant Terms and Conditions, any attachment hereto (including without limitation, if applicable, the EULA (defined below)), and any terms on the AdvancedMD Pay Order Form (collectively the “AdvancedMD Pay Agreement”) govern use by Client (referred to herein as “Sub-merchant”) of any Hardware, Software, and/or Additional Services identified on the AdvancedMD Pay Order Form (as each term is defined below, and collectively, the “AdvancedMD Pay Offerings”) and provided to Sub-merchant, and is made and entered into by and between the Sub-merchant and AdvancedMD, Inc., a Delaware corporation (“AdvancedMD”) with an office at 10876 S. Riverfront Parkway, Suite 400, South Jordan, Utah 84095. Any AdvancedMD Pay Offerings are being offered subject to the Terms of Service by and between Sub-merchant and AdvancedMD (“AdvancedMD Terms of Service”) and the services provided by ProPay, Inc. (“ProPay”) to Sub-merchant and may not be used separately from those AdvancedMD Terms of Service and/or those services. In the event of any conflict between the terms and conditions of the AdvancedMD Pay Agreement (including the EULA) and the terms and conditions of the other provisions of the AdvancedMD Terms of Service, the AdvancedMD Pay Agreement shall prevail.

1. **ADVANCEDMD PAY OFFERINGS.** Subject to the terms of the AdvancedMD Pay Agreement, AdvancedMD shall make available to Sub-merchant the AdvancedMD Pay Offerings which may consist of one or more of the following, as selected on the AdvancedMD Pay Order Form:

1.1. Certain point-of-sale software that leverages AdvancedMD’s Portico gateway and is identified by AdvancedMD from time to time and selected by Sub-merchant (collectively, the “Software”);

1.2. Certain point-of-sale hardware identified by AdvancedMD from time to time, including, but not limited to C2X card reader, PAX S300 terminal, PAX A920 terminal (collectively, the “Hardware”); and

1.3. Certain other additional services selected by Sub-merchant from time to time, including, but not limited to, tokenization services and multi-capture (collectively, the “Additional Services”).

1.4. Sub-merchant shall comply with all security and operational requirements, policies, and procedures relating to the AdvancedMD Pay Offerings as specified in the documentation related thereto and as may be otherwise communicated or provided by AdvancedMD to Sub-merchant from time to time. Sub-merchant shall use the AdvancedMD Pay Offerings solely in the ordinary conduct of its business. Sub-merchant is solely responsible for knowing all laws, rules, and regulations applicable to its use of the AdvancedMD Offering and will at all times strictly comply with such laws, rules and regulations of every governmental authority or card association having jurisdiction over Sub-merchant.

1.5. The Software, Hardware, Additional Services, and other features and services under this AdvancedMD Pay Agreement, and the rights and obligations related to them, may be provided by certain Affiliates of AdvancedMD. “Affiliate” means, with respect to a party, any entity which is controlling, controlled by, or under common control with such party.

2. **PROPAY PROCESSING.** Sub-merchant may only use the AdvancedMD Services in connection with its ProPay account. Sub-merchant shall comply (and as between the parties hereto shall bear sole responsibility for complying) with, and agrees to be bound by, all terms and conditions of ProPay’s ProFac Sub-Merchant Terms and Conditions available here: <https://www.propay.com/en-us/Legal/ProFac-Sub-merchant-Terms-and-Conditions>, which may be modified from time to time by ProPay as described therein (“ProPay Agreement”). Sub-merchant’s breach of the ProPay Agreement may be deemed by AdvancedMD to be a breach of the AdvancedMD Pay Agreement.

### 3. PAYMENT TERMS.

3.1. Sub-merchant shall pay the fees for the AdvancedMD Pay Offerings listed on the AdvancedMD Pay Order Form (the “Fees”) on the terms described in this section. ProPay will deduct from the proceeds of Sub-merchant’s transactions the Fees together with any other fees, fines or other debts due to AdvancedMD and/or ProPay for the AdvancedMD Pay Offerings; provided, however, that Sub-merchant agrees that AdvancedMD may, on ProPay’s behalf, bill Sub-merchant directly for any such amounts. All costs, fees, and charges in this AdvancedMD Pay Agreement (including shipping costs and other payments) are stated in U.S. dollars.

3.2. Except as may be expressly stated in the AdvancedMD Pay Order Form, the Fees do not cover, and AdvancedMD is not responsible for, replacement or repair of materials such as printer paper, ink, batteries or other consumables, any hardware or software not provided by AdvancedMD with and as part of the Software, Hardware, or Additional Services, or cosmetic damage.

3.3. The Fees are non-cancelable during the Term and Sub-merchant is responsible for such Fees whether or not Sub-merchant actually uses the AdvancedMD Pay Offerings during the term.

3.4. Sub-merchant agrees to promptly and carefully review any statements or other documents provided or made available (physically, electronically, or otherwise provided by AdvancedMD, ProPay, or others, including through your Sub-merchant portal) in connection with the AdvancedMD Pay Offerings. IT IS AGREED THAT IN NO EVENT WILL ADVANCEDMD OR PROPAY BE LIABLE FOR ANY CLAIM, LOSS, BILLING ERROR, DAMAGE, OR EXPENSE ARISING OUT OF OR RELATING TO THIS ADVANCEDMD PAY AGREEMENT WHICH IS NOT REPORTED IN WRITING TO ADVANCEDMD OR PROPAY WITHIN SIXTY (60) DAYS OF

SUCH FAILURE TO PERFORM, OR IN THE EVENT OF A BILLING ERROR WITHIN NINETY (90) DAYS OF THE DATE OF THE INVOICE OR APPLICABLE STATEMENT. SUB-MERCHANT HEREBY EXPRESSLY WAIVES ANY SUCH CLAIM THAT IS NOT BROUGHT WITHIN THE SPECIFIED TIME PERIODS.

#### 4. SOFTWARE TERMS.

4.1. Sub-merchant's use of any Software provided by AdvancedMD hereunder is subject to the End User License Agreement ("EULA"), attached hereto as Schedule 1. By accepting and/or using the Software, Sub-merchant expressly acknowledges that it has read the EULA and agreed to the terms thereof. If Sub-merchant does not agree to the terms of the EULA, Sub-merchant should not use the Software.

4.2. AdvancedMD will provide Software maintenance, including new versions, updates and bug fixes as it deems necessary to the Software at no additional charge on an when and if available basis. Such new versions, updates and bug fixes shall be provided by AdvancedMD at no additional charge on an when and if available basis. Sub-merchant acknowledges that it shall be responsible for any and all damages arising from Sub-merchant's failure to install Software updates provided by AdvancedMD to Sub-merchant, and AdvancedMD shall have no liability to Sub-merchant for any such failure.

#### 5. HARDWARE TERMS.

5.1. Sub-merchant may choose to buy some or all of the necessary Hardware from or through AdvancedMD. Hardware pricing will be quoted, and must be agreed upon by Sub-merchant (via an AdvancedMD Pay Order Form) before an order will be processed. If Hardware purchased from AdvancedMD is returned within sixty (60) days of purchase in Original Condition, AdvancedMD will refund the difference less a restocking fee of \$30 for new or used repair/replacement equipment. "Original Condition" means Hardware that has not been used to process transactions, other than to test the Hardware prior to deployment for general use. AdvancedMD will not accept returned Hardware after sixty (60) days of purchase or Hardware not in Original Condition. Unless otherwise specifically stated in the documentation provided with the Hardware, AdvancedMD provides a one year warranty beginning on the date of shipment on all AdvancedMD supplied serialized Hardware (including its internal Software) that such Hardware shall be free from faulty workmanship and defects in materials ("Hardware Warranty"). Hardware covered by the Hardware Warranty will be replaced at no cost to the Sub-merchant during the applicable warranty period. However, Hardware sold to Sub-merchant by or through AdvancedMD and sent back to AdvancedMD, but not covered under the Hardware Warranty (including, but not limited to, AdvancedMD supplied and sold equipment damaged by fire, lightning, water damage) will be replaced and billed to Sub-merchant as a new purchase at then current rates. After the warranty period, AdvancedMD will replace such Hardware and repair damaged Hardware at Sub-merchant's expense. If Hardware is damaged by the negligence or the willful acts or omissions of Sub-merchant, its employees, agents or customers during the applicable warranty period, Sub-merchant will be charged for Hardware repairs or replacements. Sub-merchant acknowledges and agrees that Sub-merchant's negligence will be determined by AdvancedMD, in its sole discretion. AdvancedMD's sole obligation with respect to a warranty claim received by AdvancedMD during the applicable warranty period shall be to replace any malfunctioning Hardware under warranty, provided however, that Sub-merchant has first utilized AdvancedMD's telephone assistance services and such assistance has not resolved the Hardware problem. Hardware returned to AdvancedMD as a repair / replacement must be in repairable order. Hardware Warranties are not available for used PinPads or PinPad swaps. In addition any PinPad swap must be of like equipment. Any extended warranty programs which may be offered by AdvancedMD with respect to Hardware, if any, shall be governed by the terms and conditions applicable to such extended warranty programs.

5.2. Sub-merchant may choose to rent Hardware from AdvancedMD. Sub-merchant is liable for all rental payments due hereunder. Rental privileges shall last as long as Sub-merchant continues to remit timely rental payments and complies with its agreements with AdvancedMD. AdvancedMD shall have the right to affix or attach to all rented Hardware a tag or label indicating its ownership of, or interest in, said Hardware. Sub-merchant will not remove, or permit the removal of, any such tag or label. Sub-merchant will not sell, lease, encumber, or otherwise dispose of any interest in any rented Hardware and will keep it free of all liens, claims or encumbrances whatsoever. Rental Hardware will be replaced at no expense to Sub-merchant if the Hardware becomes inoperable through no fault of Sub-merchant, its employees, agents or customers. However, if the repair of rental Hardware is due to damage caused by the negligence or the willful acts or omissions of Sub-merchant, its employees, agents or customers, Sub-merchant will be charged for the repairs. With respect to any rental Hardware, Sub-merchant will not be liable for normal wear and tear, provided, however, that Sub-merchant will be liable to AdvancedMD in the event that any rental Hardware is lost, destroyed, stolen or rendered inoperative. Sub-merchant will indemnify AdvancedMD against any loss or destruction of any rental Hardware for any cause whatsoever, excepting the negligence of AdvancedMD. All AdvancedMD owned Hardware must be returned to AdvancedMD at the expense of the Sub-merchant and rental billing will continue until Hardware is received by AdvancedMD. Should Sub-merchant discontinue processing bankcard transactions with AdvancedMD prior to the expiration of the Term of the AdvancedMD Pay Agreement, AdvancedMD may, at its sole discretion, charge a cancellation fee of up to \$100.00.

5.3. Sub-merchant may choose to purchase or lease equipment from parties other than AdvancedMD. In such case, AdvancedMD makes no promise that equipment acquired through third parties ("**Third Party Equipment**") will work correctly with and for AdvancedMD's Hardware, Software, and/or Additional Services. AdvancedMD will not be responsible for any failure, malfunction, speed or adequacy of Third Party Equipment, for performance of AdvancedMD's Software or Additional Services on Third Party

Equipment or for repair or replacement of any Third Party Equipment. AdvancedMD may elect to support certain Third Party Equipment in its sole discretion, and if it so elects AdvancedMD will replace and repair Sub-merchant's Third Party Equipment should the equipment become inoperative, in which event Sub-merchant will receive replacement equipment and the repaired Third Party Equipment will be placed in AdvancedMD's inventory. Sub-merchant will be billed for all replacements and repairs of Sub-merchant's Third Party Equipment. Returned Third Party Equipment that cannot be repaired will be replaced and billed as a new purchase at then current rates. Notwithstanding the foregoing, AdvancedMD does not provide repair or replacement service for third party equipment provided by third party point-of-sale system providers.

5.4. Any Hardware is AdvancedMD's property and will not become Sub-merchant's property unless purchased by Sub-merchant in accordance with the terms hereof. Upon delivery of the Hardware to Sub-merchant, Sub-merchant shall bear the entire risk of loss, theft, destruction of or damage to the Hardware or any portion thereof from any cause whatsoever ("**Loss or Damage**"), whether or not covered by insurance, and whether or not such Hardware is in use by Sub-merchant at the time of the loss event. No Loss or Damage shall relieve Sub-merchant of its obligations hereunder. Sub-merchant shall keep the Hardware in a safe environment and protect it from loss, theft, damage, or any legal encumbrance, and maintain it in accordance with AdvancedMD's maintenance recommendations. Sub-merchant acknowledges that it shall be solely responsible for installation of the Hardware. Sub-merchant further acknowledges that it shall be responsible for any and all damages arising from Sub-merchant's failure to install updates deemed by AdvancedMD to be critical to Sub-merchant's continued uninterrupted, secure use of the Hardware and Software, as applicable, and AdvancedMD shall have no liability to Sub-merchant for any such failure. Sub-merchant will maintain broadband internet service, at Sub-merchant's expense, throughout the Term of this AdvancedMD Pay Agreement. AdvancedMD shall provide Sub-merchant with operating instructions that will instruct Sub-merchant in the proper use of the Hardware, and Sub-merchant shall install, use and operate the Hardware only in such manner. Sub-merchant shall provide the Hardware with a suitable secure space and power for its proper operation. Sub-merchant shall provide all necessary infrastructure, including without limitation, power outlets, grounding and anti-static environments required for the safe and efficient operation of the Hardware in accordance with the specifications of AdvancedMD and any other applicable specifications or regulations. Sub-merchant shall not move the Hardware, attach any devices, change its method of telecommunication with the Software, or install any software without AdvancedMD's prior written consent. At all times during the Term of this AdvancedMD Pay Agreement, Sub-merchant shall maintain adequate insurance coverage sufficient to cover the full replacement cost of any Hardware provided to Sub-merchant hereunder.

5.5. If Sub-merchant returns any Hardware to AdvancedMD, Sub-merchant shall be entirely liable for any associated shipping and insurance costs. Sub-merchant must retain proof of return such as the courier tracking record and shall insure all returns for the full replacement value of the Hardware. Sub-merchant acknowledges and agrees that any Sub-merchant data stored on any Hardware returned to AdvancedMD will not be preserved for Sub-merchant. Except for Hardware returned to AdvancedMD for maintenance and identified with a valid RMA# provided to Sub-merchant by AdvancedMD, any Hardware returned to AdvancedMD for any reason that is determined by AdvancedMD to be in non-working order will be billed to Sub-merchant at full replacement value. AdvancedMD shall return any such Hardware to Sub-merchant at Sub-merchant's expense. If Sub-merchant fails to return any Hardware to AdvancedMD within ten (10) days following a warranty exchange, following the expiration or earlier termination of the Term, or following the receipt of new Hardware pursuant to the terms hereof, AdvancedMD shall invoice the Sub-merchant for the full replacement value of such Hardware and collect payment via any established payment method immediately.

5.6. If Sub-merchant wishes to purchase the rented Hardware utilized by Sub-merchant hereunder, Sub-merchant shall notify AdvancedMD by written request. In the event that AdvancedMD elects to sell the Hardware to Sub-merchant, AdvancedMD shall issue a purchase price amount for the applicable Hardware. Upon receipt of AdvancedMD's notice setting forth the purchase price amount, Sub-merchant may elect, within thirty (30) days following the date of AdvancedMD's notice, to either (a) pay the purchase price amount in accordance with the terms set forth in AdvancedMD's notice and take ownership of the Hardware, or (b) decline to purchase the Hardware at the stated purchase price amount, maintain possession of the Hardware and continue to pay the monthly rental fees in accordance with this AdvancedMD Pay Agreement.

5.7. Sub-merchant acknowledges and agrees that replacement Hardware may be new or refurbished. Replacement and repair of the Hardware does not cover installation, removal, repair, maintenance or reinstallation of equipment that is not part of the Hardware including any accessories, attachments, or other devices working in conjunction with or near the Hardware such as internet modems, routers or wireless radio units, music service equipment or electrical service external to the Hardware. AdvancedMD (or a third party selected by AdvancedMD) may replace a defective component of the Hardware using new parts or parts manufactured from new, refurbished, or serviceable used parts that are functionally equivalent to new. For rental Hardware, the parts and products that are replaced become AdvancedMD's property. Charges may apply for additional services provided at the time of repair or replacement.

5.8. WHEN PROVIDING REPAIR OR REPLACEMENT SERVICES, ADVANCEDMD WILL USE REASONABLE EFFORTS TO REINSTALL THE HARDWARE'S PRIOR SOFTWARE CONFIGURATION BUT WILL NOT PROVIDE ANY RECOVERY OR TRANSFER OF SOFTWARE OR DATA NOT ORIGINALLY INCLUDED WITH AND AS PART OF THE HARDWARE AND/OR SOFTWARE. SUB-MERCHANT AGREES THAT ADVANCEDMD MAY INSTALL NEWER VERSIONS, UPDATES, OR FIXES OF THE SOFTWARE THAN WERE INSTALLED ON SUB-MERCHANT'S HARDWARE PRIOR TO ANY REPAIR OR REPLACEMENT.

## 6. ADDITIONAL SERVICES TERMS.

6.1. Sub-merchant's receipt of certain Additional Services that are provided via software or SaaS, including without limitation, Auto-Account Updater, Decline Minimizer, and Multi-capture, are subject to the terms of the EULA. By accessing or receiving such Additional Services, Sub-merchant expressly acknowledges that it has read the EULA and agreed to the terms thereof. If Sub-merchant does not agree to the terms of the EULA, Sub-merchant should not use the Software.

6.2. In the event that Sub-merchant has elected to receive Tokenization Services, the following terms and conditions of this Section 6.2 shall apply with respect thereto. AdvancedMD will tokenize each cardholder primary account number ("PAN") submitted to AdvancedMD by Sub-merchant in connection with a card transaction. AdvancedMD's tokenization of each PAN submitted to AdvancedMD by Sub-merchant will occur after authorization of the applicable transaction. Sub-merchant hereby acknowledges that tokens may be assigned to a token group which may be shared among other AdvancedMD merchants. Sub-merchant further acknowledges and agrees that all tokens provided or created in connection herewith remain the sole and exclusive property of AdvancedMD and cannot be transferred or removed from AdvancedMD and will not follow Sub-merchant to any other provider without prior written approval from AdvancedMD, which approval may be approved or withheld by AdvancedMD in its sole discretion.

7. DISCLAIMERS. ADVANCEDMD DOES NOT GUARANTEE THE ABSENCE OF, AND THIS AGREEMENT DOES NOT ENSURE OR COVER, ANY ERRORS, DEFECTS, OR DAMAGE TO ANY HARDWARE, SOFTWARE, OR DATA GENERATED BY THE SOFTWARE AND/OR HARDWARE UNDER ANY CIRCUMSTANCE. SUB-MERCHANT WILL REVIEW ALL INFORMATION AND ENSURE THAT ANY AND ALL DATA PROVIDED IN CONNECTION WITH THE ADVANCEDMD PAY OFFERINGS IS ENTERED CORRECTLY AND ACCURATELY AND THAT THE DATA AND RESULTS GENERATED BY THE SOFTWARE AND/OR HARDWARE IS ACCURATE.

## 8. INDEMNIFICATION.

8.1. Sub-merchant will indemnify, defend, and hold harmless AdvancedMD, any Affiliate, and their respective officers, directors, agents, and employees, as well as any subcontractor of AdvancedMD, and any payment service provider associated with AdvancedMD or AdvancedMD Pay Offerings, and their respective officers, directors, agents, and employees, from and against any and all claims, losses, demands, liabilities, damages, costs, and expenses (including reasonable attorneys' fees), arising out of or relating to (i) Sub-merchant acts or omissions in connection with its use of or access to the AdvancedMD Pay Offerings; and (ii) Sub-merchants breach of the provisions of this AdvancedMD Pay Agreement.

8.2. AdvancedMD shall promptly notify Sub-merchant of any claim for which indemnification is sought, following actual knowledge of such claim, provided however that the failure to give such notice shall not relieve Sub-merchant of its obligations hereunder, except to the extent that Sub-merchant is materially prejudiced by such failure. In the event that any claim is brought, Sub-merchant shall have the right and option to undertake and control of the defense of such action with counsel of its choice, provided however that (i) AdvancedMD, at its own expense, may participate and appear with Sub-merchant in the defense of any such claims, and (ii) AdvancedMD may undertake and control of such defense in the event of the material failure of Sub-merchant to undertake and control the same. AdvancedMD shall not concede or settle or compromise any claim without the prior written approval of Sub-merchant, unless such concession or settlement or compromise includes a full and unconditional release of Sub-merchant from all liabilities in respect of such claim.

## 9. TERM/TERMINATION.

9.1. This AdvancedMD Pay Agreement will extend from the Effective Date indicated on the AdvancedMD Pay Order Form and shall be coterminous with Sub-merchant's ProPay Agreement (the "Term").

9.2. This AdvancedMD Pay Agreement may be terminated in accordance with the terms of the AdvancedMD Terms of Service. Upon the termination or expiration of the AdvancedMD Pay Agreement, any and all licenses granted for use of the AdvancedMD Pay Offerings hereunder shall terminate and Sub-merchant shall immediately return to AdvancedMD any and all full, complete, and intact Hardware (other than Hardware purchased by Sub-merchant). Any provisions of this AdvancedMD Pay Agreement that by their nature are intended to survive, including, without limitation, the provisions of Sections 7 and 8 shall survive termination or expiration of the AdvancedMD Pay Agreement.

**SCHEDULE 1****END USER LICENSE AGREEMENT**

LICENSOR (AS DEFINED BELOW) PROVIDES THE LICENSED PRODUCTS (AS DEFINED BELOW) SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS END USER LICENSE AGREEMENT (THIS "AGREEMENT") AND ON THE CONDITION THAT THE SUB-MERCHANT IDENTIFIED ON THE ADVANCEDMD PAY ORDER FORM ("YOU" OR "YOUR") UNCONDITIONALLY ACCEPT AND COMPLY WITH ALL PROVISIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT YOU MAY NOT ACCESS OR OTHERWISE USE THE LICENSED PRODUCTS. THIS END USER LICENSE AGREEMENT GOVERNS USE OF ALL LICENSED PRODUCTS, INCLUDING PRODUCTS LICENSED TO YOU UNDER PREVIOUS VERSIONS OF THIS AGREEMENT. BY CLICKING YOUR ACCEPTANCE AND/OR DOWNLOADING AND USING THE LICENSED PRODUCTS YOU (A) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF YOURSELF AND, IF APPLICABLE, YOUR EMPLOYER OR OTHER ENTITY THAT YOU REPRESENT (COLLECTIVELY, "YOU" OR "LICENSEE"). WITHOUT LIMITING THE FOREGOING, YOU HEREBY ACKNOWLEDGE AND AGREE THAT YOU HAVE READ THIS AGREEMENT AND THAT YOU AND YOUR ORGANIZATION ARE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

**Software**

This Agreement is a legal agreement between you and AdvancedMD, Inc. and its affiliates ("AdvancedMD" or "Licensor") for any and all point-of-sale software provided to you by Licensor in connection with your ProPay Agreement and/or the AdvancedMD Terms of Service (as such terms are defined in the AdvancedMD Pay Sub-Merchant Terms and Conditions (the "AdvancedMD Pay Agreement")), including all software therein in object code form and any enhancements, modifications, updates, upgrades, releases or other customizations of the software provided to you by Licensor, and associated media and printed materials, and may include on-line or electronic documentation (collectively, the "Licensed Products"). This Agreement is entered into in connection with the AdvancedMD Pay Agreement.

**License**

Subject to your compliance with the terms and conditions of this Agreement and your and your organization's compliance with the AdvancedMD Pay Agreement, Licensor hereby grants to you a non-exclusive, non-transferable, non-sub-licensable limited license to access and use the Licensed Products at the location(s) or on the devices specified in the AdvancedMD Pay Agreement (collectively, the "Licensed Sites") during the term of the AdvancedMD Pay Agreement for the purposes set forth therein. No ownership is transferred, implied or granted to you, and Licensor retains full and complete title to the Licensed Products, and all intellectual property rights therein. Except as specified in this Agreement and the AdvancedMD Pay Agreement, you are not licensed to use the Licensed Products for any other purpose whatsoever. The license granted by this Agreement may not be given, sold, leased, rented, or otherwise transferred to any other person, entity, or location. The Licensed Products can only be used by the original licensee at the Licensed Sites. After you download the Licensed Products from the app store or are provided with a copy of the Licensed Products by Licensor, Licensor will issue you access credentials (e.g., a user name and password) that will enable you to log into and use the Licensed Products ("Access Credentials"). Your Access Credentials will enable Licensor to authenticate you as an authorized user of the Licensed Products and to provide appropriate authorizations regarding the scope of your use of the Licensed Products. Any information you provide us in connection with access to or use of the Licensed Products must be accurate, current and complete. You are solely responsible for maintaining the confidentiality and security of your Access Credentials, and for restricting access to the Licensed Sites so that others may not access protected portions of the Licensed Products. You may not share your Access Credentials with any third party, including other employees of your organization, but you may provide unique Access Credentials to a third party. Notwithstanding anything to the contrary, you are responsible for any use of or access to the Licensed Products and any activities conducted therein via your Access Credentials and any Access Credentials issued to third parties on your behalf. If you become aware of any unauthorized use of or compromise of your Access Credentials, you must notify Licensor immediately. Licensor may revoke your Access Credentials at Licensor's discretion including, without limitation, if the applicable AdvancedMD Pay Agreement terminates, if your organization notifies Licensor that you no longer are authorized by the organization to access the Licensed Products or if you engage in conduct that is in breach of this Agreement or that threatens to cause harm or disruption to Licensor, your organization or other users of the Licensed Products. Once your Access Credentials are revoked or disabled, you no longer will have access to the Licensed Products.

You acknowledge that the Licensed Products are subscription-based products, and that Licensor may make changes to the Licensed Products from time to time. From time to time, Licensor may make available to you via the applicable app store or otherwise, updates, bug fixes, upgrades, patches and/or new versions of the Licensed Products (collectively, "Updates"). You agree to promptly install such Updates when they become available to you. You understand and agree that Updates may include necessary functionality and/or fixes to protect the security of the Licensed Products and that your failure to promptly install such Updates may compromise your ability to use the Licensed Products and/or result in the disabling of your Access Credentials. Licensor shall have no liability to you for any loss or damage resulting from your failure to timely accept such Updates.

**Restrictions on Use**

You shall use the Licensed Products strictly in accordance with the terms of this Agreement and the AdvancedMD Pay Agreement and in compliance with all applicable laws, rules, and regulations, including without limitation the CAN-SPAM Act. You shall not: (a) make copies of the Licensed Products; (b) disassemble, decompile, decode, reverse engineer, reprint, transcribe, extract, adapt,



translate, create derivative works of, enhance or modify the Licensed Products, or any portion thereof, without the express written consent of Licensor; (c) sell, resell, distribute, assign, transfer or sublicense the Licensed Products; (d) make the Licensed Products available to or use the Licensed Products for the benefit of anyone other than your organization and the Licensor; (e) violate any applicable laws, rules, or regulations in connection with your use of the Licensed Products; (f) remove, obscure, or modify any proprietary notice (including any notice of copyright or trademark) of Licensor or its affiliates; (g) use the Licensed Products to store or transmit infringing, libelous, harassing, disparaging or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (h) use the Licensed Products to store or transmit viruses, malware, ransomware or other malicious code; (i) attempt to gain access to components of or areas within the Licensed Products that your Access Credentials do not permit you to access; or (j) use the Licensed Products to send unsolicited email or other unsolicited messages to any third party. Any act inconsistent with full and complete protection of Licensor's copyright and common law rights in the Licensed Products is expressly and strictly prohibited by this Agreement.

Without in any way limiting the foregoing, you represent and warrant that if you import any email addresses or lists of email addresses (collectively, "Lists") into any of the Licensed Products, you have complied with all applicable laws in connection with obtaining and providing such Lists, and that your use of such Lists in connection with the Licensed Products will not violate applicable law, including without limitation the CAN-SPAM Act of 2003 and regulations thereunder and all other applicable U.S., state, and local laws, or any third-party right. Without in any way limiting the foregoing, you represent and warrant that each List consists only of email addresses that (i) can be categorized as "opt-in" recipients by such recipients' agreements with you to receive your materials via email, and (ii) have not notified you of the applicable recipient's desire to not receive materials from you via email. You further represent and warrant that you will not at any time import into the Licensed Products any List that you have purchased, rented, harvested or leased from a third-party, or any List that contains email addresses that were otherwise collected outside of your purview. If at any time any recipient on a List notifies you of such recipient's desire to not receive materials from you via email, you agree to not utilize the Licensed Products to send any commercial electronic mail message (as that term is defined in the CAN-SPAM Act of 2003) to such recipient. If at any times you export any List from the Licensed Products, you assume complete responsibility for the subsequent use and exploitation of such List and hereby release Licensor from any liability in connection with the use and exploitation of such List.

You acknowledge that any violation of the restrictions on use listed above will cause irreparable harm to Licensor. Licensor shall be entitled to enforce both its legal and equitable remedies to prevent such harm. Without limiting the foregoing, you are solely responsible for the legality and appropriateness of any and all content you provide to or through the Licensed Products.

#### Rights in Proprietary Licensed Products

The Licensed Products are protected by copyright and contain proprietary information protected by copyright laws, intellectual property laws, international treaty provisions and other applicable laws. You shall not remove, alter or obscure any proprietary or other legend or restrictive notice contained in or affixed to the Licensed Products. Any backup copy of the Licensed Products shall include all copyright and other intellectual property protection notices. The copyright and all other right, title and interest in and to the Licensed Products (including but not limited to, any images, photographs, animation, video, audio, music and text incorporated into the Licensed Products) shall at all times remain with Licensor. The Licensed Products and any copies thereof remain the property of Licensor and as such are licensed, not sold to you during the term of this Agreement. You acknowledge that Licensor holds all right, title, and interest in and to all tangible and intangible intellectual property contained in the Licensed Products, including all trade secrets, copyrights, and other intellectual property rights pertaining thereto. You have only the limited revocable right to use the Licensed Products, during the term of this Agreement, as expressly stated in this Agreement. All rights not expressly granted herein are reserved to Licensor.

You agree fully cooperate with the Licensor in any copyright enforcement or related action brought by Licensor and shall promptly notify Licensor of the presence of any unauthorized product.

#### Licensee Data

"Licensee Data" means any data, content or other materials of any type that you upload, submit or otherwise transmit to or through the Licensed Products, including but not limited to data concerning or relating to your customers or your employees, but "Licensee Data" does not include any data, content or other materials of any type that is provided to AdvancedMD from consumers in connection with consumers' AdvancedMD accounts and that AdvancedMD uses across its merchant clients ("AdvancedMD Data"). AdvancedMD Data is the property of AdvancedMD, and AdvancedMD may collect, use, sell, transfer and/or disclose AdvancedMD Data for any purpose.

At your sole discretion, you may permit a third party solution provider ("Integrator") to access, interface with or otherwise engage with the Licensed Products or the Licensee Data. At your option, you may instruct AdvancedMD to share Licensee Data with an Integrator, and/or you may instruct an Integrator to share Licensee Data with AdvancedMD. For the avoidance of doubt, Integrator is your service provider and not a service provider of AdvancedMD, and notwithstanding anything in this Agreement to the contrary, AdvancedMD is not responsible for any acts or omissions of any Integrator. You acknowledge and agree that AdvancedMD may, at any time terminate the access of any Integrator to the Licensed Products or the Licensee Data, without notice to you. For avoidance of doubt, and notwithstanding anything to the contrary, AdvancedMD shall have no liability, whether to you, any Integrator, or any other third party, arising out of, relating to, or as a result of AdvancedMD's acts or omissions related to such termination.

You represent and warrant that (i) you have obtained all necessary rights, releases and permissions to provide all Licensee Data to Licensor and to grant the rights granted to Licensor in this Agreement, (ii) if Integrator provides data to Licensor on your behalf, you have obtained all necessary rights, releases and permissions required for Integrator to provide such data to Licensor for processing,

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This Agreement is in effect for as long as you have a valid license to the Licensed Products under the terms and conditions of the AdvancedMD Pay Agreement, unless sooner terminated as permitted in this Agreement. Your rights under this Agreement will terminate immediately without notice to you if you fail to comply with any term or condition of this Agreement, if you are no longer employed by or contracted to work on behalf of your organization or for any other valid reason, as determined by Licensor. Licensor will determine your compliance with this Agreement in its sole discretion and its decision shall be final and binding and not subject to challenge or appeal. You understand and agree that Licensor shall have no liability to you or any other person for any termination of this Agreement. Further, unless earlier terminated as provided herein, this Agreement will terminate at such time as the AdvancedMD Pay Agreement terminates.

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You agree to indemnify, hold harmless and defend Licensor and its licensors, parent, subsidiaries and affiliates, and all officers, directors, and employees thereof, and anyone acting on Licensor's behalf (collectively, the "Indemnified Parties") from and against any and all claims, alleged claims, demands, causes of action, judgments, damages, losses, liabilities, and all costs and expenses of any kind arising from or connected with (i) your use of the Licensed Products; (ii) any third party, including without limitation, any Integrator, that you authorize to access, interface with or otherwise engage with the Licensed Products or the Licensee Data; (iii) any breach or alleged breach of your representations, warranties, obligations or agreements hereunder; and (iv) any violation of any laws or regulations or the rights of any third party by you or by any person or entity that you allow to use the Licensed Products.

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- f) To the maximum extent permitted by applicable law, Google shall have no warranty obligation or liability whatsoever with respect to the Licensed Products, including without limitation in relation to the sale, distribution or use of the Licensed Products, or the performance or non-performance of the Licensed Products. In the event that the Licensed Products fail to comply with any warranty set forth in this Agreement, you may notify Google, and Google will refund the purchase price for the Licensed Products to you.
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- i) You represent and warrant that (i) the Licensed Products will not be downloaded or used in, or transported to, a country that is subject to a U.S. Government embargo, or has been designated by the U.S. Government as a 'terrorist-supporting' country, and (ii) neither you or any user designated by you is listed on any U.S. Government list of prohibited or restricted parties.
- j) Support requests, as well as questions, complaints or claims regarding the Licensed Products, may be directed to Licensor using the contact information found at: <http://www.advancedmd.com/service-support-policy>.

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