

## **PAYMENT PORTAL TERMS OF USE AGREEMENT**

Last Updated June 18, 2024.

### **1. PAYMENT PORTAL GENERAL TERMS AND CONDITIONS**

1.1 This Terms of Use ("Terms") is between you ("you," "your," and "yourself") and PHIMED Technologies ("PHIMED," "we," and "us") and defines the terms and conditions under which you may access and use of the website, software, applications, and services ("Services"). These Terms administer how you use the Services, whether you are joining for yourself or on behalf of a minor or a person to whom you are a caregiver, health service Provider, or agent and constitute a binding agreement between you and PHIMED and its affiliates and subsidiaries. Please read these terms carefully before using the Services.

1.2 These Terms shall remain in effect consistently until you cease using the Services and delete all applications related to the Services.

1.3 BY USING THE SERVICES, DOWNLOADING OR USING ANY WEBSITES, AND/OR USING APPLICATIONS RELATED TO THE SERVICES, YOU AGREE TO THESE TERMS. These Terms, including the related Privacy Policy, take effect when you use the Services or otherwise affirm acceptance. When first using different products or services covered by these Terms, you may be presented again with this Terms. IF YOU DO NOT ACCEPT THESE TERMS, DO NOT USE ANY PART OF THE SERVICES (INCLUDING ANY RELATED WEBSITES OR APPLICATIONS).

1.4 BY REGISTERING FOR ACCESS, ACCESSING, OR USING THE SERVICES OR BY DOWNLOADING AND REGISTERING FOR ACCESS, ACCESSING, OR USING ANY RELATED APPLICATION(S), YOU AGREE THAT YOU HAVE READ, UNDERSTOOD, AND AGREED TO BE BOUND BY THESE TERMS AND OUR PRIVACY POLICY. IF YOU DO NOT AGREE TO BE SO BOUND, DO NOT ACCESS, DOWNLOAD, OR USE THE SERVICES OR ANY RELATED WEBSITES OR APPLICATIONS.

1.5 PHIMED reserves the right, at its sole discretion, to make changes to portions or all Terms and the Privacy Policy at any time. You are responsible for checking these Terms and the Privacy Policy periodically for changes. Your continued use of the Services means that you agree to any new or modified provision of these Terms or the Privacy Policy accessible through the Services.

### **2. CONTENT AND INTELLECTUAL PROPERTY INFORMATION**

2.1 PHIMED owns the rights to PhyGeneSys and PhyPortal, federally-registered trademarks and service marks of PHIMED. These marks may not be used without the express written consent of PHIMED. The software, workflow processes, user interface, designs, know-how and other technologies provided by PHIMED as part of the Service are the proprietary property of PHIMED and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with PHIMED. PHIMED reserves all rights unless expressly granted in this agreement. Any third-party trademark(s) that may appear on or in connection with the Services are the property of their respective owner(s).

2.2 You may not: sell, resell, rent or lease the Service, use the Service beyond their internal operations or reverse engineer the Service; use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party rights (including without limitation any privacy rights); interfere with or disrupt the integrity or performance of the Service; attempt to gain unauthorized access to the Service or its related systems or networks, remove or modify any proprietary marking or restrictive legends in the Service; use the Service in violation of any law; access the Service to build a competitive product or service, or copy any feature, function or graphic of the Service for competitive purposes. You are solely responsible for your User Information, must use commercially reasonable efforts to prevent unauthorized access to the Service,

must notify PHIMED promptly of any such unauthorized access, and may use the Service only in accordance with its Terms and applicable law.

2.3 The proprietary contents of the Services include, without limitation, the animations, applets, audio, data, design, graphics, illustrations, images, information, marks, music, photographs, text, video, and any other files displayed, used and/or available on or through the Services (the "Content"), as well as the arrangement, coordination, design, expression, look and feel, selection, and structure of such Content. The Content is owned, controlled, or licensed by or to PHIMED, and is protected by copyright, trade dress, trademark, and other intellectual property rights and unfair competition laws. PHIMED reserves all rights, title, and interests in the Content and the Services.

2.4 Except as expressly provided in these Terms or by PHIMED's express written consent, no part of the Services and no Content may be copied, modified, reformatted, leased, loaned, sold, distributed, encoded, posted, publicly displayed, published, republished, reproduced, creative works derived from, translated, uploaded, or otherwise exploited in any manner.

2.5 PHIMED owns and operates various websites, software, and applications related to the PAYMENT PORTAL and other related online products and services. These products and services include the PAYMENT PORTAL, other health portals powered by PHIMED, and any other current or future websites or mobile access or applications.

### **3. PURPOSE OF WEBSITES AND APPLICATIONS**

The purpose of the Services is to provide a secure network that will assist you in managing your healthcare-related items, which include but are not limited to: medical records, doctors' appointments, billing statements, and payments online and/or from your mobile devices to obtain improved quality, safety, and efficiency of healthcare. This includes providing a means of interacting with PHIMED's EMR and other EMR-related products and services which one or more of each patient's healthcare Providers utilize. The Services may interact with other websites, applications, and portals owned and operated by PHIMED or its affiliates.

### **4. ACCESS AND USE OF ACCOUNTS ON THE SERVICES**

4.1 The Services are intended to be used by individuals whose healthcare Providers provide services from PHIMED or its affiliates, in addition to all other individuals who wish to use the Services' functionality in connection with their medical care, billing, and well-being. To begin use of the Services, you may be asked to provide information about yourself (or the person on whose behalf you are accessing, using or downloading the Services, including all related websites and applications).

4.2 If you are under 18 years old, please discuss whether you should use and download the Services with your clinician and your parent(s) or guardian(s). You are not eligible to use the Service unless they are at least 18 years old and otherwise have the legal capacity to enter into a binding contract in their jurisdiction. If you are an unemancipated minor over the age of 13, you may only use the Service if: such use has been approved of by your parent or legal guardian, you use the Service under their supervision, and your parent or legal guardian has agreed to this agreement on your behalf. If you are the parent or guardian of an unemancipated minor, you may use the Service and enter into this agreement on behalf of such minor. By doing so, you represent and warrant that they have the legal capacity to act on behalf of such minor; and you agree, in such capacity, that all provisions of this agreement that are applicable to them are equally applicable to such minor. Under no circumstances may the Service be used by a child under 13 years old.

4.3 To use the Services, you must be a resident of the 50 States of the United States of America, exclusive of its commonwealths, territories, and possessions. To access or use the Services, you may be required to provide PHIMED with information relating to your identity and certain other information, including your email address. By submitting such information to PHIMED, you hereby certify that all information you

provided to PHIMED is true and correct, and you authorize PHIMED to use any method we choose to verify the truth and accuracy of the information that you provide to the extent PHIMED needs to do so to protect its rights or other users of the Services. Failure to provide truthful and accurate information to PHIMED may result in termination of your access to the Services.

4.4 The Services require a valid, working email address and other information initially to set up your access to the Services. (Some functionality may not require you to set up an account; such functionality is not subject to the same security and protections as the functions available to account holders who access the Services through their accounts using their Sign In credentials). Additionally, you will be required to create a username and password to access the Services securely. Current users of certain Services may be allowed to use their current login credentials to access the Services, and all users may have the ability to "link" their various accounts together through the Services and any Affiliated Services or applications.

4.5 You are solely responsible for maintaining the strict confidentiality of the username and password you use to access the Services. This responsibility includes preventing other people from using your credentials to access the Services. You will be solely responsible for any damages or losses that may be incurred or suffered because of your failure to maintain the strict confidentiality of your username and password. You should immediately inform PHIMED in writing of any need to deactivate your account due to potential or actual security concerns. PHIMED will not be liable for any harm related to the misappropriation of your username, password, your intentional or negligent disclosure of such items to another person, or your authorization to allow another person or entity to access and use the Services under your sign in credentials. You agree that you will not register for more than one account for any specific product or service, including each website and application which may be available. All forms of indirect and "spoofed" access are strictly prohibited.

## **5. SECURITY**

5.1 PHIMED uses the means it believes are reasonable to provide access to the Services 24 hours a day, 7 days a week, except in the case of natural disasters, events beyond PHIMED's control, and any necessary repair or maintenance operations required for the smooth operation of the Services. PHIMED shall not be liable for any failure or deficiency in the performance of the Services for any reason whether such reason be maintenance, breakdown or any event beyond PHIMED's reasonable control including, without limitation: fire, Internet outage, interruption of service, labor disturbance, natural disaster, technological disaster, terrorism, or war.

5.2 You acknowledge that data conversion and transmission is subject to the likelihood of human and machine errors, omissions, delays and losses, including inadvertent loss of data or damage to media, that may give rise to loss or damage. PHIMED shall not be liable for any such errors, omissions, delays, or losses. You understand and agree that use of or connection to the Internet through the Services and/or use of mobile devices is inherently insecure and that connection to the Internet and/or use of mobile devices provides opportunity for unauthorized access by a third party to computer systems, mobile devices, networks, and any information stored therein. All information transmitted and received through the Services, the Internet, or through mobile devices is subject to unauthorized interception, diversion, corruption, loss, access, and disclosure. PHIMED shall not be responsible for any adverse consequences whatsoever of your connection to or use of the Services, the Internet, or mobile devices, and shall not be responsible for any use by you of an Internet connection in violation of any law, rule, or regulation, or any violation of the intellectual property rights of another.

## **6. MUTUAL CONFIDENTIALITY**

6.1 Confidential Information means all non-public information disclosed by a party (Discloser) to the other party (Recipient), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure

(Confidential Information). PHIMED's Confidential Information includes without limitation the non-public portions of the Service.

6.2 The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement. The Recipient may disclose Confidential Information (i) to the extent required by law or legal process; (ii) to its legal or financial advisors, provided that such advisors are bound by a duty of confidentiality that includes use and disclosure restrictions; and (iii) as required under applicable securities regulations.

6.3 PHIMED may use protected health information to provide its Clients with data aggregation services (as that term is defined by HIPAA) and to create de-identified data in accordance with 45 CFR 164.514(a)-(c) retaining any and all ownership claims relating to the de-identified data it creates from protected health information. PHIMED may use, during and after this agreement, all aggregate anonymized information and de-identified data for purposes of enhancing the Service, technical support and other business purposes, all in compliance with the HIPAA Privacy Standards, including without limitation the limited data set and de-identification of information regulations.

6.4 Confidential Information excludes information that: is or becomes generally known to the public without breach of any obligation owed to Discloser; was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser; is received from a third party without breach of any obligation owed to Discloser; or was independently developed by the Recipient without use or access to the Confidential Information.

## **7. PROHIBITED CONDUCT**

7.1 You may only use the Services for lawful purposes. In your access and use of the Services, you agree that you will not: infringe any copyright, patent, right of privacy, right of publicity, trademark, trade secret, or other right of PHIMED or any third party; abuse, defame, harass, or stalk any individual or other user of the Services; interfere or attempt to interfere with, or damage or attempt to damage, the Services or the proper working of the Services, including, without limitation, through the use of cancel bots, denial of service attacks, flood pings, forged routing or electronic mail address information, harmful code, packet or IP spoofing, phishing, Trojan horses, viruses, or similar methods or technology; use any deep-link, page-scrape, robot, spider, or other automatic device, program, algorithm or methodology, or any similar or equivalent manual process, to access, acquire, copy or monitor any portion of the Services or any Content, or in any way reproduce or circumvent the navigational structure or presentation of the Services or any Content, to obtain or attempt to obtain any materials, documents or information through any means not purposely made available through the Services; misrepresent your identity, provide false information, impersonate another person or entity, misrepresent your affiliation with a person or entity, including, without limitation, PHIMED, create or use a false identity, or attempt to use another user's account; attempt to obtain unauthorized access to any website or mobile device application through the Services; engage, directly or indirectly, in transmission of chain letters, junk mail, spam, or any other type of unsolicited solicitation; collect, reverse look-up, trace or seek to trace, manually or through automated means, information about other users of the Services without their express consent or other information relating to the Services; use any meta tags or any other hidden text utilizing the PHIMED names, service marks, trademarks, or product or service names; advertise, offer to sell, or sell any goods or services set forth in the Services or otherwise use the Services to solicit other users, except as expressly permitted by PHIMED; engage in any activity that interferes with any third party's ability to use or enjoy the Services;

probe, scan or test the vulnerability of the Services or any network connected to the Services, or breach the security or authentication measures on the Services or any network connected to the Services; take any action that imposes an unreasonable or disproportionately large load on the infrastructure of the Services or PHIMED's systems or networks, or any systems or networks connected to the Services or PHIMED; or assist any third party in engaging in any activity prohibited by these Terms.

## **8. COMPLIANCE WITH LAWS; TRANSMISSION OF DATA**

8.1 With respect to its operation of the Services, and to the extent required by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the regulations stated henceforth, and the Health Information Technology for Economic and Clinical Health Act ("HITECH") and any regulations promulgated thereunder (HIPAA and HITECH are collectively referred to herein as the "Privacy Laws"), PHIMED will fully comply with the Privacy Laws applicable to business associates and maintain the confidentiality of any Protected Health Information (as defined by the Privacy Laws) transmitted or made available through the functionality of the Services or the Affiliated Services. You understand and agree that these Terms may be amended if necessary to comply with the Privacy Laws. The requirements of this Section will survive the termination of your use of the Services.

8.2 When you use the Services to upload, transmit, or receive Protected Health Information, you agree that, to the extent applicable, you shall comply with all applicable state and federal laws including, but not limited to, the Privacy Laws. You represent and warrant that at all times you will comply with all laws directly or indirectly applicable to you that may now or hereafter govern the gathering, use, transmission, processing, receipt, reporting, disclosure, maintenance, and storage of Protected Health Information. You agree that PHIMED, and all other persons or entities involved in the operation of the Services, have the right to monitor, retrieve, store, review, and use Protected Health Information, if applicable, in connection with the transmission of any Protected Health Information.

8.3 To the extent permissible under the Privacy Laws and any other applicable Federal and State laws, you hereby grant to PHIMED a perpetual, unlimited license to use the data and information that is compiled or passes through the Services that specifically relates to you, your patient care, your Provider's procedures or diagnoses, or insurance Provider procedures, policies, coverage, or payments, and any related information (collectively, the "Client Data"), in a de-identified format as defined under the Privacy Laws for data benchmarking, sharing, warehousing, resource utilization, and similar data analysis services; provided, however, that PHIMED shall comply with the Privacy Laws in connection with any such actions.

8.4 PHIMED CANNOT AND DOES NOT ASSUME ANY RESPONSIBILITY FOR YOUR USE OR MISUSE OF PROTECTED HEALTH INFORMATION OR OTHER INFORMATION TRANSMITTED, MONITORED, STORED OR RECEIVED WHILE USING THE SERVICES WHETHER TO A Provider LOCATED USING THE SERVICES OR OTHERWISE. PHIMED RESERVES THE RIGHT TO AMEND OR DELETE ANY UPLOADED CONTENT (ALONG WITH THE RIGHT TO REVOKE ANY MEMBERSHIP OR RESTRICT ACCESS TO THE SERVICES) THAT IN PHIMED'S SOLE DISCRETION VIOLATES ANY PROVISIONS OF THIS SECTION OR THE TERMS IN GENERAL.

## **9. COMMUNICATION OF OTHER INFORMATION TO AND ON THE SERVICE WEBSITES AND APPLICATIONS**

9.1 The Services may at some point contain features that allow you to submit content or messages in the form of text, pictures, drawings, designs, graphics, audio clips, video clips, documents, or other files that are then accessed by other Service users or through the websites or applications (a "Posting"). If such functionality is available, you are prohibited from submitting any Posting that: restricts or inhibits any other user from using and enjoying the Services or any Affiliated Services, in whole or in part; is abusive, defamatory, inaccurate, indecent, false, libelous, misleading, obscene, offensive, pornographic, profane, threatening, sexually explicit, vulgar, or unlawful in any manner; constitutes or encourages conduct that would constitute a criminal offense, gives rise to civil liability or otherwise violates any law, rule or

regulation; violates, plagiarizes, or infringes the rights of third parties including, without limitation, copyright, trademark, patent, rights of privacy or publicity or any other proprietary right; contains a virus or other harmful component; contains any information, software or other material of a commercial nature; contains advertising, promotions or commercial solicitations of any kind; or constitutes or contains false or misleading statements of fact.

9.2 By submitting or authorizing any Posting, you are granting PHIMED a perpetual, worldwide, royalty-free, exclusive, and irrevocable right and license to use, copy, reproduce, distribute, perform, and display such Posting (and any information contained therein) and derivative works thereof, in whole or in part, in any form, media or technology known or hereafter developed as long as such use is consistent with PHIMED's applicable obligations set forth elsewhere in these Terms. You hereby irrevocably waive any claims based on moral rights or similar doctrines and theories, as well as claims based on based on right of privacy, misappropriation, right of publicity, unfair competition and similar doctrines, theories and torts.

9.3 You acknowledge that PHIMED will not pre-screen Postings, but that PHIMED and its designees have the right (but not the obligation) in their sole discretion to block or restrict access to or the availability of, or to edit, disable or remove, any Posting that is available via the Services or the Affiliated Services. By way of example and without limiting the foregoing, PHIMED and its designees may edit, disable, remove, or restrict access to or the availability of, any Posting that violates these Terms or is required to be reviewed, monitored, edited or deleted by any court order, or in any governmental, administrative or judicial proceeding. You must evaluate and bear all risks associated with the use of any Postings, including any reliance on the accuracy, completeness, or usefulness of such Postings. PHIMED assumes no liability for use of any Posting by any third party.

## **10. COMMUNICATIONS WITH USERS**

10.1 PHIMED, through the Services or the contact information you have provided, may contact you regarding certain offers, products or services of PHIMED or other of its partners that PHIMED believes may be beneficial to You. You understand and agree that PHIMED may contact you in this manner. You may also be asked to grant an authorization for PHIMED to use your PHIMED in connection with its business partners and the advertising, offers, products or services that may be directed to You, and PHIMED to "push" notifications to you through your mobile device(s). You may decide to authorize PHIMED to act in these manners by accepting such terms in the process of downloading and signing up for the Services. You will also have the authority to opt out of such use at any time by contacting PHIMED.

## **11. LINKS TO THIRD PARTIES**

11.1 The Services may also contain links to the websites of PHIMED affiliates, partners, advertisers, or unrelated third-party companies or links to other websites or mobile applications (collectively, "Linked Sites").

11.2 PHIMED does not own and has no control over the Linked Sites and therefore assumes no responsibility and makes no warranties or representations with respect to the availability of these websites or mobile applications, their content, advertising material, and the products or services available at or through the Linked Sites. PHIMED does not endorse any Linked Sites, is not bound by the terms and conditions, if any, of such Linked Sites, and the existence of a Linked Site does not mean that PHIMED has any affiliation, connections, endorsement, or sponsorship of such websites and mobile applications or their owners or operators. References or hypertext links made or included on the Services to any names, logos, or marks of third parties, including, without limitation, the Linked Sites' partners or Linked Sites' products and services, do not constitute or imply our endorsement, sponsorship, or recommendation. PHIMED accepts no liability for any direct or indirect damage that may result from your visit to a Linked Site, or from your use of the contents, products or services of these websites, mobile applications, or their owners or operators. Your use of a Linked Site will be subject to that Linked Site's Terms, privacy policies,

and other practices. We undertake no obligation to inform or update you regarding the terms and conditions of access, use or service, or the privacy policies of Linked Sites.

11.3 You acknowledge and agree that PHIMED shall not be responsible or liable for the content or conduct of, associated with, or related to any Linked Site, and, accordingly, your access and use of any Linked Site shall be solely at your own risk. If you have any questions or concerns regarding any Linked Site, you should review any Terms and Conditions and the Privacy Policy maintained by that Linked Site or contact the applicable party or their website administrator.

## **12. INDEMNITY**

12.1 User must indemnify, defend, and hold harmless PHIMED against all third-party claims (including without limitation by governmental agencies), demands, damages, costs, penalties, fines, and expenses (including reasonable attorneys' fees and costs) arising out of or related to: User's breach of any term in this agreement, any unauthorized use, access or distribution of the Service by User, violation of any individual's privacy rights related to information submitted under User's account, or fraudulent, invalid, duplicate, incomplete, unauthorized, or misleading information submitted under User's account or by you. You represent and agree to PHIMED that: you have the full power and authority to enter into and perform your obligations under these Terms; your assent to, and performance of, your obligations under these Terms do not constitute a breach of or conflict with any other agreement or arrangement by which you are bound, or any applicable federal or state laws; you are able to form a legally binding contract, and these Terms constitute legal, valid, and binding obligations on You, enforceable in accordance with their terms; you will not infringe the patent, copyright, trademark, trade secret, right of privacy, right of publicity, or other intellectual property or proprietary right of PHIMED or any third party in your use of the Services or any Affiliated Services; you have provided complete, truthful, and accurate information about Yourself for purposes of downloading, joining, and using the Services; you are not using, and will not use, the Services, any Affiliated Services, or any information contained therein for any improper, harassing, or unlawful purpose; you will comply with all applicable federal and state laws in your use of the Services and the Affiliated Services, including these Terms; and you are not a paid consultant or have any other financial interests in the information you provide on the Services or any Affiliated Services including, but not limited to, the promotion of "off label" drug uses, the disclosure of the results of confidential clinical trials or any other proprietary information.

12.2 You agree to indemnify and hold PHIMED and its owners, employees, representatives, agents, attorneys, affiliates, directors, officers, members, and managers ("Indemnified Parties") harmless from any and all damages, losses, costs, or expenses (including without limitation, attorney's fees and costs) incurred in connection with any third-party claim, demand or action brought or asserted against any of the Indemnified Parties: alleging facts or circumstances that would constitute a breach by you of any provision of these Terms; arising from, related to, or connected with your use of the Services, any Affiliated Services and/or its Content; or arising from, related to, or connected with your non-compliance with any laws including, but not limited to, the Privacy Laws.

## **13. LIMITS ON LIABILITY**

13.1 No Indirect Damage. PHIMED is not liable for any indirect, special, or consequential damages (including without limitation, costs of delay, loss of data or information, lost profits or revenues or anticipated cost savings) arising under or related to this agreement, even if advised of the possibility of such loss or damage.

13.2 PHIMED's total liability for all damages arising under or related to this agreement (in contract, tort or otherwise) does not exceed \$500.

13.3 Under no circumstances and under no legal theory shall PHIMED or the third parties mentioned on the services or the affiliated services (and all related websites and applications) be liable to you or to any

other person or entity for any damages whatsoever, including, without limitation, direct, indirect, special, incidental, consequential, exemplary, punitive, or other damages of any character whatsoever arising out of or in any way related to the use or inability to use the services, the affiliated services, related websites and applications, and/or their content, or otherwise under or in connection with any provision of these terms, even in the event of fault, tort (including negligence and gross negligence), strict liability, breach of contract, or breach of warranty by PHIMED or the third parties mentioned on the services or any affiliated services (or related websites and applications), and even if PHIMED or the third parties mentioned on the services or any affiliated services (or related websites and applications) have been advised of the possibility of such damages. Some states and jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so this limitation and exclusion may not apply to you. The foregoing provisions shall be enforceable to the maximum extent permitted by applicable law.

#### **14. DISCLAIMER OF WARRANTIES**

14.1 The services, content and any information included on or provided through the services or the affiliated services (including all related websites and applications) are presented on an "as is" basis, without warranty of any kind, express or implied. PHIMED disclaims all warranties and conditions, either express, implied, or statutory including, but not limited to, any implied warranties or conditions of merchantability, fitness for a particular purpose, and lack of negligence.

14.2 Without limiting the foregoing provisions:

14.2.1 You assume sole responsibility for selecting the services and/or their content to achieve your intended results and sole responsibility for the use of, and results obtained from, the services and/or their content;

14.2.2 PHIMED makes no representation or warranty that the services, any affiliated services and/or any content will be error-free, secure, virus free, or free from interruptions, defects or other failures or harmful components or that the services, any affiliated services and/or their content will satisfy your specific requirements or be compatible with your equipment (mobile or otherwise) or other hardware, software or browser configuration or that inaccuracies or errors will be corrected;

14.2.3 PHIMED makes no representation or warranty that the information obtained from third party sources (including, but not limited to, any users of the services) used on or within the services or any affiliated services or received in connection with converting or transmitting any data received in different formats is accurate, timely, or error free, and PHIMED is not responsible in any way for the information obtained from such sources;

14.2.4 PHIMED makes no representation or warranty that the information provided by users to gain access and permission to use the services, any affiliated services, or other information posted by users is accurate or error free; and

14.2.5 PHIMED makes no representation or warranty regarding the suitability of any persons participating in the services or the affiliated services or regarding the character or integrity of such persons. 14.3 Some states and jurisdictions do not allow limitations on implied warranties, so the above limitation may not apply to you. The foregoing provisions shall be enforceable to the maximum extent permitted by applicable law.

#### **15. MEDICAL DISCLAIMERS**

15.1 Use of the Services and/or any information or Content that is included on or transmitted through the Services is not intended to and will not create any healthcare Provider/patient relationship of any kind involving PHIMED or its affiliates. This shall be true whether you are utilizing any Provider location services, links to Affiliated Services or applications, or other websites and any other way the Services may assist a user in locating a medical professional.

15.2 We do not provide medical advice, provide medical or diagnostic services, or prescribe medication. Any Content available on or through the Services is for informational and educational purposes only and is not a substitute for the professional judgment of a healthcare professional in diagnosing and treating patients. Neither the Content nor any other service offered by or through the Services is intended to be substituted for medical diagnosis or treatment. Use of the Service is not a substitute for your medical Provider's judgment in making decisions regarding his or her medical care. You agree that your medical Provider(s) is/are solely responsible for verifying the accuracy of information and for all of their decisions or actions with respect to medical care and treatment, including without limitation, all of their acts or omissions. Your use or reliance upon the Service will not diminish that responsibility.

15.3 Neither PHIMED nor its licensors assume any liability or responsibility for damage or injury (including death) to you, a patient, other person, or tangible property arising from any use of the Service or any medical decisions made by your medical Provider based on data collected, transmitted or displayed by or on the Services. Your reliance upon any information obtained or used by you is solely at your own risk. PHIMED is not responsible for the accuracy of any information or content provided or sent by you or other users of the Services, including your physician, other healthcare Providers, insurance Providers, or their representatives. You are responsible for verifying the accuracy of any information you send or receive through the Services, including any of your patient health information, data, or records.

15.4 PHIMED shall not be liable in any way to you for any decision you make or any actions that occur in connection with the use of the Services in locating and/or starting a relationship with a medical professional. PHIMED has no control over, and cannot guarantee, the availability of any Provider that is a part of the Services at any time. PHIMED will not be liable or responsible in any way for cancelled or otherwise unfulfilled appointments or any injury resulting therefrom, or for any other injury resulting from the use of the Services whatsoever.

15.5 Communications between patients and healthcare Providers may not occur, and cannot be guaranteed to occur, in real-time. IF YOU HAVE AN EMERGENCY, DO NOT USE THE SERVICES TO CONTACT YOUR HEALTHCARE Provider; INSTEAD, YOU SHOULD IMMEDIATELY CALL 911 AND REQUEST EMERGENCY CARE ASSISTANCE.

15.6 The procedures, products, services and devices discussed and/or advertised within the Services are not applicable to all individuals, patients or all clinical situations. PHIMED makes no claims as to the effectiveness of any such procedures, products, services or devices. Any products and/or services represented on the Services by advertisers, sponsors, and other Services participants, either paid or unpaid, are presented for your awareness and do not necessarily imply appropriateness for any individual or prediction of effectiveness, outcome or success.

15.7 PHIMED does not recommend or endorse any specific drugs, tests, physicians, products, procedures, opinions, "off-label" drug uses or other information that may be mentioned on or transmitted through the Services (regardless of if the foregoing is mentioned or transmitted by healthcare Providers, insurance Providers, or similar professionals or organizations).

15.8 PHIMED makes the Services available as a service to consumers and Providers for the purposes of providing an informative and educational resource. PHIMED may, but has no obligation to, review Content posted on the Services. It is important to note, however, that the timeliness and accuracy of any or all of the Content is not guaranteed. Neither the authors (whether users of the Services or not), PHIMED, nor any other party who has been involved in the preparation or publication of any Content can assure you that such Content is in every respect accurate or complete, and they are not responsible for any errors or omissions or for the results obtained from the use of such Content.

## **16. GOVERNING LAW AND ARBITRATION**

16.1 These Terms shall be governed, construed, and applied in all respects by the laws of the State of Kansas, without regard to any provision governing conflicts of law.

16.2 Any controversies, claims, or disputes arising out of, relating to, or connected with these Terms or your use of the Services and/or the Affiliated Services shall be referred to and settled by arbitration administered by the American Arbitration Association ("AAA") in accordance with the provisions set forth under the AAA's Commercial Arbitration Rules and any other applicable rules and procedures ("Rules") by a panel of three arbitrators appointed in compliance with the Rules. (The AAA Rules are available at <https://www.adr.org/Rules> or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this Section. This includes all disputes over arbitrability.

16.3 Each party retains the right: (a) to bring an individual action in small claims court; (b) to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights (the action described in the foregoing clause (b), an "IP Protection Action").

16.4 Without limiting the preceding sentence, you will also have the right to litigate any other Dispute if you provide PHIMED with written notice of your desire to do so by email or regular mail at 5401 Roberts St, Shawnee, KS 66226 within thirty (30) days following the date you first agree to this Terms of Service (such notice, an "Arbitration Opt-out Notice"). If you don't provide PHIMED with an Arbitration Opt-out Notice within the thirty (30) day period, you will be deemed to have waived in full knowledge your right to litigate any Dispute except as expressly set forth in clauses (a) and (b) above. The exclusive jurisdiction and venue of any IP Protection Action or, if you timely provide PHIMED with an Arbitration Opt-out Notice, will be the state and federal courts located in Kansas City, KS, and each of the parties hereto waives any objection to jurisdiction and venue in such courts. Unless you provide to PHIMED an Arbitration Opt-out Notice in a timely manner, you ACKNOWLEDGE AND AGREE THAT YOU AND PHIMED ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING. Further, unless both you and PHIMED otherwise agrees in writing, the arbitrator may not consolidate more than one person's claims and may not otherwise preside over any form of any class or representative proceeding.

16.5 If this specific paragraph is held unenforceable, then this Section 16, excluding Section 16.3 (a), will be deemed void. Except as provided in the preceding sentence, this section will survive any termination of this agreement.

16.6 Arbitration Process. A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. The arbitrator will be either a retired judge or an attorney licensed to practice law and will be selected by the parties from the AAA's roster of arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.

16.7 Arbitration Location and Procedure. Unless you and PHIMED otherwise agree, the arbitration will be conducted in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely based on the documents that you and PHIMED submit to the arbitrator, unless you request a hearing, or the arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

16.8 The parties submit to the jurisdiction of the federal courts of Kansas for the purposes of ratifying any award made pursuant to arbitration proceedings conducted in accordance with this clause and/or may enforce the award through such courts.

16.9 Arbitrator's Decision. The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator's award of damages must be consistent with the terms outlined above

as to the types and amounts of damages for which a party may be held liable. The arbitral award shall address the costs and expenses of arbitration and all matters related thereto, including, the allocation of same between the parties. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim. If you prevail in arbitration, you will be entitled to an award of attorneys' fees and expenses, to the extent provided under applicable law. PHIMED will not seek, and hereby waives all rights it may have under applicable law to recover, attorneys' fees and expenses if it prevails in arbitration.

16.10 The award of the arbitrators shall be final and binding upon the parties.

16.11 Your responsibility to pay any AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA Rules. However, if your claim for damages does not exceed \$75,000, PHIMED will pay all such fees unless the arbitrator finds that either the substance of your claim or the relief sought in your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure).

16.12 Notwithstanding the provisions of the Terms, if PHIMED changes Section 16 after the date you first accepted these Terms (or accepted any subsequent changes to these Terms), you may reject any such change by sending PHIMED written notice within 30 days of the date such change became effective, as indicated in the revision date below or in the date of PHIMED's email to you notifying you of such change. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and PHIMED in accordance with the provisions of this section as of the date you first accepted these Terms of Service (or accepted any subsequent changes to these Terms of Service). The Parties to this Agreement further acknowledge and agree that by using the Services and/or the Affiliated Services, you expressly waive your right to pursue all controversies, claims, or disputes in court and instead must submit any such controversies, claims, or disputes to arbitration as described above.

## **17. PAYMENT OBLIGATIONS**

17.1 You are responsible for complying with the rules, regulations and terms and conditions between you and Visa, MasterCard, Discover, American Express, and all other card networks and associations (and related members and third-party Protected Health Information) as they may apply and as are modified from time to time ("the rules").

17.2 You agree to comply with the rules, regulations, standards and guidelines set forth by Payment Card Industry Security Standards Council ("PCI-SSC") and any governing committees or boards thereof, as may be amended from time to time ("the PCI-DSS Rules"). You will comply with any materials, information and instructions that it receives from PHIMED or Third-Party Vendors regarding the PCI-DSS Rules relating to software updates, data back-up account instructions, notices, and other instructions necessary to comply with the PCI-DSS Rules. You are solely responsible for timely reading and complying with such materials, information and instructions. You acknowledge and agree that the materials, information and instructions from PHIMED and/or Third-Party Vendors may require you to implement new or modify old procedures to comply with the PCI-DSS Rules, which you agree to implement in accordance with this Section.

17.3 You are responsible for the functionality of its network environment and the integration and compatibility of the Services with its network environment. Such network environment includes, but is not limited to, any POS systems, software, hardware, credit card data, network security, firewall, and encryption used by the Practice in its business. You are responsible for remedying inadequacies, failures, weaknesses, incompatibilities, or non-complying aspects in or of Practices network environment revealed by any quarterly PCI-DSS scans, annual Self-Assessment Questionnaires (SAQs), or as otherwise noted by PHIMED and/or Third-Party Vendor.

17.4 PHIMED and/or Third-Party Vendors occasionally may provide certain forms or questionnaires to solicit or otherwise request certain information from the Practice to facilitate the provision of the Services hereunder ("Requested Information"). Such Requested Information may include, but is not limited to: (i)

SAQs, SAQ data entry forms, or SAQ submission forms; (ii) questionnaires, forms or requests for information relating to PCI-DSS vulnerability scans or quarterly PCI-DSS scan requirements; (iii) questionnaires, forms or requests for information from Visa, MasterCard, American Express, Discover or other card networks or associations, or any information relating the provision of services by such parties; (iv) questionnaires, forms or requests for information from Third-Party Vendors or any information relating the provision of services by Third-Party Vendors; (v) questionnaires, forms or requests for information from the PCI SSC; (vi) questionnaires, forms or requests for information relating to any PCI-DSS data breaches; and (vii) questionnaires, forms or requests for information relating to fines or penalties incurred by Practice. You shall provide the Requested Information in a timely manner to the requesting party, and it shall be true, complete and accurate in all respects. If any of the Requested Information provided to PHIMED and/or any Third-Party Vendor is or was untrue, incomplete, or inaccurate at the time it was made, you must inform PHIMED and/or Third-Party Vendor of the discrepancy within five (5) days following Practices discovery of the same. You must provide the requesting party true, complete, and accurate modifications to correct the Requested Information previously provided by Practice. If the Requested Information is pre-populated or prepared by PHIMED and/or any Third-Party Vendor, you will be responsible for confirming the veracity, completeness and accuracy of such Requested Information as well as promptly (but in no event later than five (5) days) informing PHIMED of any untrue, incomplete or inaccurate statements prepared by PHIMED and/or any Third-Party Vendor.

#### **18. ACCOUNT ACCESS PASSWORD**

18.1 If Practice receives a user identification name or password from PHIMED to access PHIMED's database or use services offered by PHIMED, Practice will: (i) keep the user identification name and password confidential; (ii) not allow any other entity or person to use the user identification name or password or gain access to PHIMED's database or services; (iii) be liable for all action taken by any user of the user identification name or password; and (iv) promptly notify PHIMED if Practice believes the user identification name or password have been used inappropriately or the confidentiality of the information made available through such use has been compromised.

18.2 Practice agrees that any loss incurred by PHIMED resulting from any party gaining access to Practice's account or PHIMED's website using information when that party was not authorized to obtain it, or using such information in a manner not permitted by the Agreement, which includes but is not limited to improper or unauthorized use of your username and password or any other login credentials, shall be the responsibility of Practice.

#### **19. PHIMED Messaging**

19.1 You authorize PHIMED to send, and you consent to receive, SMS text messages for the following purposes that may include, but is not limited to: notification of approved or declined payments, one-time passcodes to access your account, payment reminders, notification of a new electronic Statement on your account, and requests to update your demographic or insurance information. Message frequency varies.

19.2 After signing up, you will receive a text message from us on your mobile number asking you to confirm your opt-in. You understand that you will receive future SMS text messages for the purposes outlined within these Terms to the telephone number designated in the authorization. You acknowledge that the telephone number provided is yours and that you have permission and access to use it.

19.3 These Terms apply when you provide prior express consent to receive text messages through PHIMED Messaging. Your consent is voluntary and not required (directly or indirectly) as a condition to receive services from PHIMED or its affiliated companies in accordance with the agreement, and you have the right to withdraw this consent at any time by providing PHIMED with written notice of such withdrawal in accordance with Sections 19.5 and 20 below. This consent is being provided electronically in accordance with Section 21 below.

19.4 If you are experiencing issues with the messaging program, you can reply with the keyword "HELP" for more assistance, or you can get help directly by contacting your provider's toll-free number or email address listed on your Statement.

19.5 You can cancel the SMS service at any time by texting "STOP" to the short code. After you send the SMS message "STOP" to us, we will send you an SMS message to confirm that you have unsubscribed. After this, you will no longer receive SMS messages from us. If you want to join again, just sign up as you did the first time, and we will start sending SMS messages to you again.

19.6 Carriers are not liable for delayed or undelivered messages. Text messaging may not be available via all carriers. Message and data rates may apply. If you have any questions about your text plan or data plan, it is best to contact your wireless provider. If you have any questions regarding privacy, please read our Privacy Policy: <https://www.phyportal.com/images/PatientPortalPrivacyPolicy.pdf>

## **20. CONSENT TO ELECTRONIC COMMUNICATIONS**

20.1 By using the Services, you are confirming to us that you have the means to access the Internet through your own service provider and download or print electronic communications. You agree to receive electronic communications via email or the posting of such information by PHIMED at one or more of our sponsored websites. Such communications may pertain to the services we deliver, the use of information you may submit to us, changes in laws or Rules impacting the Services or other reasons, such as amendment of the Agreement. In addition, we may deliver all notices and other communications required or permitted under the Agreement by PHIMED to you either by fax, overnight carrier, or first-class mail, postage or other charges prepaid, addressed and transmitted as set forth below. All notices and other communications required or permitted under the Agreement by Practice to us shall be delivered by you to us by overnight carrier or certified mail, postage or other charges prepaid, addressed and transmitted as set forth below. Any notice sent via fax or email shall be deemed delivered when transmitted. Notice by mail or overnight carrier shall be deemed delivered on the first (1st) business day after mailing or delivery to the carrier. Below are the addresses for the purposes of notices and other communications hereunder, which may be changed by written notice in accordance with this section:

20.2 If to PHIMED, addressed and transmitted as follows: PHIMED Technologies, 5401 Roberts St, Shawnee, KS 66226.

20.3 If communication is sent to you, it will be sent to the address provided as the billing address, the fax number, or email address and to the contact listed on the Authorization.

## **21. ELECTRONIC SIGNATURE**

21.1 You may become a party to, and become bound by, the Agreement by completing the Authorization and accepting it electronically over the Internet. This is done by selecting "I Agree," by providing an electronic form of signature, or otherwise by affirmatively indicating acceptance or consent where requested on an electronic version of the Authorization (any such method constituting an Electronic Consent). By providing such Electronic Consent, you acknowledge that you have received and reviewed all applicable pages, terms, and conditions of the Agreement, and you represent, warrant, consent, and agree to the following:

21.1.1 The electronic agreement process allows you to sign and agree to legally binding agreements online by providing your Electronic Consent;

21.1.2 You intend to use the electronic agreement process to provide its Electronic Consent;

21.1.3 Your Electronic Consent is legally binding, and is governed by the Electronic Signatures in Global and National Commerce Act of 2000, and/or the Uniform Electronic Transactions Act governances (or an amended version thereof) in its state of residence, and you agree to be bound by these governances;

21.1.4 The individual providing Electronic Consent has been authorized to do so and is at least 18 years old; and

21.1.5 The Electronic Consent will be binding, and it will not be construed by a court of law to have any less effect than a standard ink or paper signature.

## **22. MISCELLANEOUS**

22.1 If any provision of these Terms is ruled by a court or other tribunal of competent jurisdiction to be void or unenforceable, such provision(s) shall be limited or eliminated to the minimum extent necessary and replaced with a valid provision that best furthers the intent of these Terms, with all remaining provisions remaining in full force and effect.

22.2 These Terms and the Privacy Policy constitute the entire agreement between you and PHIMED about your access and use of the Services and/or the Affiliated Services. No counter-offers to these Terms shall be accepted by PHIMED, and PHIMED rejects all such counter-offers.

22.3 PHIMED may assign its rights, in whole or in part, in the Services and/or the Affiliated Services in accordance with its sole discretion.

22.4 PHIMED's failure or delay insisting on or enforcing strict performance of these Terms shall not be construed as a waiver of any provision or any right that PHIMED must enforce these Terms.

22.5 You acknowledge and agree that it is the intent of both you and PHIMED to limit the period in which a claim may be filed, even if the period is shorter than that fixed by the statute of limitations. You therefore agree that any cause of action arising out of or related to PHIMED must commence within one (1) year after the cause of action accrues, otherwise such cause of action is permanently barred.

## **23. VIOLATION OF THESE TERMS**

23.1 You agree that PHIMED may, in its sole discretion and without prior notice, terminate your access to the Services and/or any related websites or applications if PHIMED determines in its sole discretion that you have violated these Terms.

23.2 You acknowledge and agree that PHIMED may preserve any communication by you with PHIMED through the Services or any service offered on or through the Services and/or the Affiliated Services, and may disclose such communications when required by law or if PHIMED deems that such preservation or disclosure is reasonably necessary to: comply with legal process; enforce these Terms; respond to a claim that any communication, information posted on the Services, the Affiliated Services, or Content violates the rights of others; or protect the rights, property or personal safety of PHIMED and its employees, users of or visitors to the Services, and/or the public.

23.3 If PHIMED takes legal action against you because of your violation of these Terms, PHIMED will be entitled to recover from you, and you agree to pay all reasonable attorney's fees and costs of such action, in addition to any other relief granted to PHIMED. You agree that PHIMED will not be liable to you or to any third party for termination of your access to the Services and/or the Affiliated Services or removal of any communication or posting of information by you, or contents thereof, because of any violation of these Terms.

23.4 PHIMED may disclose any information it has about you, including your identity, if it determines that such disclosure is necessary as part of any investigation or complaint regarding your use of the Services, or to identify, contact or bring legal action against someone who may be causing injury to or interference with PHIMED's rights or property, or another person's rights or property. PHIMED reserves the right to disclose any information PHIMED deems necessary to comply with any applicable law, regulation, or governmental rule, and when it determines that applicable law permits such disclosure, including exchanging information with other companies and organizations for fraud protection purposes.

## **24. TERMINATION**

24.1 This agreement continues until all Services are terminated with or without cause by you, PHIMED, or your medical Provider. PHIMED may terminate your access to and use of the Services, at its sole

discretion, at any time and without notice to you. You may terminate this agreement by deleting your account on the Services.

24.2 PHIMED may immediately suspend User's access to the Service and remove applicable User Information if it in good faith believes that, as part of using the Service, you may have violated a law or any term of this agreement. PHIMED may try to contact you in advance, but we are not required to do so.

24.3 All terms survive termination of this agreement that, by their nature, survive for a party to assert its rights and receive the protections of this agreement. The Convention on Contracts for the International Sale of Goods does not apply.

## **25. VOID WHERE PROHIBITED**

PHIMED reserves the right to limit, in its sole discretion, the provision and quantity of any Service, Content, feature, or product to any person or geographic area, whether by reason of the local laws applicable in such geographic area or otherwise. Any offer for any feature, product, or service made on the Services and/or the Affiliated Services is void where prohibited.

## **26. MODIFICATION OR TERMINATION OF THE SERVICES**

PHIMED may, in its sole and absolute discretion and without any liability, change, discontinue, make improvements to, modify, or suspend, any aspect or all Services and/or the Affiliated Services, temporarily or permanently, at any time and for any reason without prior notice. PHIMED is under no obligation to retain a record of your Account or any data or information that you may have used, disclosed, processed, retrieved, transmitted, or viewed on PHIMED.

## **27. RIGHTS**

These Terms do not confer any rights or remedies on any third parties.