

## AMWELL CONNECT TERMS AND CONDITIONS

American Well Corporation ("**Amwell**") hereby offers to the customer named in the applicable ordering document ("**Customer**" or "**Ordering Activity**") the Services (as defined below) on the express condition that Customer agrees to accept and be bound by these terms and conditions (the "**Agreement**"). Any additional or conflicting provisions contained in any document issued by Customer are expressly rejected. If the terms and conditions in this Agreement differ from the terms of Customer's offer, this document will be construed as a counteroffer and will not be effective as an acceptance of Customer's document. Customer's execution of an Order under a GSA Schedule Contract incorporating this Agreement will constitute Customer's acceptance of this Agreement. Amwell's failure to object to terms contained in any subsequent communication from Customer will not be a waiver or modification of the terms set forth herein. All orders are subject to acceptance in writing by an authorized representative of Amwell.

### Definitions.

"**Access Credentials**" means any username, identification number, password, security key, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Services.

"**Authorized Users**" means all users authorized by Customer to access the Services pursuant to Section 2.1 and the other terms and conditions of this Agreement and as may be specified in the applicable Quote. Any Authorized User authorized by Customer must have an individual registered account with Amwell. No registered account may be shared or accessed by more than one Authorized User.

"**Amwell Materials**" means the Service Software, Specifications, Services documentation and Amwell Systems and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Amwell or any Subcontractor or any Amwell Personnel in connection with the Services or related to the Services or Amwell Systems. For the avoidance of doubt, Amwell Materials include Resultant Data and any information, data or other content derived from Amwell's monitoring of Customer's access to or use of the Services, but exclude Customer Data.

"**Amwell Personnel**" means all parties involved in the performance of Services as employees, agents or independent contractors of Amwell or any Subcontractor.

"**Amwell Systems**" means the information technology infrastructure used by or on behalf of Amwell in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Amwell or through the use of third-party services.

"**Customer Data**" means, other than Resultant Data, information, data and other content, in any form or medium, that is collected, downloaded or otherwise received, directly or indirectly from Customer or an Authorized User by or through the Services or that incorporates or is derived from the Processing of such information, data or content by or through the Services. For the avoidance of doubt, Customer Data includes information reflecting the access or use of the Services by or on behalf of Customer or any Authorized User. Customer Data does not include Resultant Data.

"**Customer Systems**" means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services.

"**Harmful Code**" means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data Processed thereby, or (b) prevent Customer or any Authorized User from accessing or using the Services or Amwell Systems as intended by this Agreement.

"**HIPAA Rules**" means the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**") and the regulations promulgated thereunder by the United States Department of Health and Human Services ("**HHS**"), codified at 45 CFR Parts 160

and 164 and the Health Information Technology for Economic and Clinical Health (“**HITECH**”) Act of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (hereinafter, all references to the “**HIPAA Rules**” includes all amendments thereto set forth in the HITECH Act and any accompanying regulations).

**"Intellectual Property Rights"** means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection.

**"Losses"** means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

**"Permitted Use"** means any use of the Services by an Authorized User for the benefit of Customer solely for Customer's internal business operations. Additionally, the Permitted Use of the Services are meant to be used in a way for a reasonable of Authorized Users to communicate to Amwell Service Software or Hardware.

**"Process"** means to take any action or perform any operation or set of operations that the Service Software is capable of taking or performing on any data, information or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or block, erase or destroy.

**"Processing"** and **"Processed"** have correlative meanings.

**"Quote"** means a written order request for Services or third-party proposal which includes a description of the Services, Specifications, quantity, price, payment terms and Service duration; and which references this Agreement. Once fully executed, each Quote, shall be fully incorporated herein by reference.

**"Resultant Data"** means information, data and other content that is derived by or through the Services from Processing Customer Data and is sufficiently different from such Customer Data that such Customer Data cannot be reverse engineered or otherwise identified from the inspection, analysis or further Processing of such information, data or content.

**"Services"** shall mean the Amwell software as a service product called “**Amwell Connect**”. The Services, as specified in the applicable Quote, may include, one or more of the following: (i) access to browser-based video client which includes enhanced far-end-camera-control for compatible Amwell devices, (ii) HIPAA compliant video conferencing with up to 2.5 mbps HD video, multi-party with audio and video participants and SIP compatible, and (iii) remote device management to configure and monitor compatible Amwell devices. The Services are more fully described in Section 1 and more fully described in each Quote.

**"Service Software"** means Amwell's proprietary software applications and any-third party software, including all new versions and updates of the foregoing, that Customer may remotely access and use solely as part of the Services.

**"Statement of Work"** means a written description of the professional services performed by Amwell Personnel as part of the delivery of Services as agreed to by the parties, if any. Each Statement of Work shall be fully incorporated herein by reference.

**"Specifications"** means the specifications for the Services set forth in any Quote, and to the extent consistent with and not limiting of the foregoing, the Amwell Materials.

**"Territory"** means the United States.

**"Third Party Materials"** means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to Amwell.

## **1. Software Services.**

**1.1 Software Services.** Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, during the Term (as set forth in Section 9.1), Amwell shall use commercially reasonable efforts to provide to Customer and its Authorized Users the Services as described in each applicable Quote in accordance with the Specifications and terms and conditions hereof, including to host, manage, operate and maintain the Service Software for remote electronic access and use by Customer and its Authorized Users in substantial conformity with the Specifications, 24 hours per day, seven days per week every day of the year, except

for: (a) Scheduled Downtime in accordance with Section 5; (b) Service downtime or degradation due to a Force Majeure Event; (c) any other circumstances beyond Amwell's reasonable control, including Customer's or any Authorized User's use of Third Party Materials or use of the Services other than in compliance with the terms and conditions of this Agreement and the Specifications; and (d) any suspension or termination of Customer's or any Authorized Users' access to or use of the Services as permitted by this Agreement.

**1.2 Quotes.** From time to time, Customer may add new Quotes, which, upon execution by both parties, will be subject to the terms and conditions of this Agreement. Quotes may be issued by a third party which may also perform certain billing and payment collection, and similar obligations on behalf of Amwell.

**1.3 Service and System Control.** Except as otherwise expressly provided in this Agreement, as between the parties: Amwell has and will retain sole control over the operation, provision, maintenance and management of the Services and Amwell Materials, including the: (i) Amwell Systems; (ii) location(s) where any of the Services are performed, including in the United States, in countries outside the United States, or outside the borders of the country in which Customer or the Customer Systems are located, in accordance with applicable Government data security requirements; (iii) selection, deployment, modification and replacement of the Service Software; and (iv) performance of Support Services and Service maintenance, upgrades, corrections and repairs; and Customer has and will retain sole control over the operation, maintenance and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Services and Amwell Materials by any third party by or through the Customer Systems or any other means controlled by Customer or any Authorized User, including any: (i) information, instructions or materials provided by any of them to the Services or Amwell; (ii) results obtained from any use of the Services or Amwell Materials; and (iii) conclusions, decisions or actions based on such use. Notwithstanding anything to the contrary in this Agreement, all Services, including all Processing of Customer Data by or on behalf of Amwell shall be provided solely from within, and on computers, systems, networks and other infrastructure located in the United States.

**1.4 Changes.** Amwell reserves the right, in its sole discretion, to make any changes to the Services and Amwell Materials that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of Amwell's services to its customers, (ii) the competitive strength of or market for Amwell's services or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable law. In the event that Amwell make a change to the Services and Amwell Materials that materially diminishes the functionality that Ordering Activity has contracted for, Ordering Activity shall be entitled to a pro rata refund for any fees paid but not used. Without limiting the foregoing, either party may, at any time during the Term, request in writing changes to the Services. The parties shall evaluate and, if agreed, implement all such requested changes in accordance with the change procedure set forth in a Statement of Work. No requested changes will be effective unless and until memorialized in a written change order signed by both parties, except that Customer may increase or decrease the number of Authorized Users for any Services.

**1.5 Subcontractors.** Amwell may from time to time in its discretion engage third parties to perform Services (each, a "Subcontractor").

## **2. Authorizations and Customer Restrictions.**

**2.1 Authorization.** Subject to and conditioned on Customer's payment of amounts due hereunder and under any Quote and compliance and performance in accordance with all other terms and conditions of this Agreement, Amwell hereby authorizes Customer to access and use, solely in the Territory and during the Term the Services, such Amwell Materials as Amwell may supply or make available to Customer solely for the Permitted Use by and through Authorized Users in accordance with the Specifications, and the conditions and limitations set forth in this Agreement and the Quote. This authorization is non-exclusive and non-transferable.

**2.2 Reservation of Rights.** Except for the limited right granted in Section 1.1, nothing in this Agreement grants any right, title or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, the Service Software, Amwell Materials or Third-Party Materials, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the Services, the Service Software, the Amwell Materials and the Third-Party Materials are and will remain with Amwell and the respective rights holders in the Third-Party Materials.

**2.3 Authorization Limitations and Restrictions.** Access to the Services by any direct competitor of Amwell is expressly prohibited. Customer may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes. Customer shall not and shall not permit any Authorized User to access or use the Services or the Amwell Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, any applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer or its Authorized Users shall not, except as this Agreement expressly permits:

copy, modify or create derivative works or improvements of the Services, Service Software or Amwell Materials;

rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services or Amwell Materials to any third party, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service; reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services, Service Software or Amwell Materials, in whole or in part; bypass or breach any security device or protection used by the Services or Amwell Materials or access or use the Services or Amwell Materials other than by an Authorized User through the use of his or her own then valid access credentials; input, upload, transmit or otherwise provide to or through the Services or Amwell Systems, any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code; damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, Service Software, Amwell Systems or Amwell's provision of services to any third party; remove, delete, alter or obscure any trademarks, Specifications, Documentation, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services or Amwell Materials, including any copy thereof; access or use the Services or Amwell Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party including by any unauthorized access to, misappropriation, use, alteration, destruction or disclosure of the data of any other Amwell customer, or that violates any applicable law; access or use the Services or Amwell Materials for purposes of competitive analysis of the Services or Amwell Materials, the development, provision or use of a competing software service or product or any other purpose that is to the Amwell's detriment or commercial disadvantage; or otherwise access or use the Services or Amwell Materials beyond the scope of the authorization granted under Section 2.1.

**2.4 Third-Party Agreements.** The Services may incorporate licensed third-party technologies. Third party license terms applicable to Customer, if any, are provided in the applicable Quote, or exhibits thereto. Nothing herein shall bind the Ordering Activity to any Third party license terms unless the terms are provided for review and agreed to in writing by all parties

### 3. Customer Obligations.

**3.1 Customer Systems and Cooperation.** Customer shall at all times during the Term: (a) set up, maintain and operate in good repair and in accordance with the Specifications all Customer Systems on or through which the Services are accessed or used; (b) provide Amwell Personnel with such access to Customer's premises and Customer Systems as may be necessary for Amwell to perform the Services in accordance with the terms of this Agreement; and (c) provide all cooperation and assistance as Amwell may reasonably request to enable Amwell to exercise its rights and perform its obligations hereunder.

**3.2 Effect of Customer Failure or Delay.** Amwell is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "Customer Failure").

**3.3 Corrective Action and Notice.** If Customer becomes aware of any actual or threatened prohibited activity Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Amwell Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Amwell of any such actual or threatened activity.

**3.4 Access of Services by Authorized Users.** Customer agrees to be bound the actions of its Authorized Users and to require that each of its Authorized Users agree that (i) such Authorized User is solely responsible for the content of all visual, written or audible communications using such Authorized User's account, (ii) such Authorized User will not use the Services to send unsolicited mass mailings outside such Customer's organization, (iii) such Authorized User will be bound by the terms and conditions of this Agreement relating to use of the Services, (iv) such Authorized User agrees to comply with Customer's privacy and security rules including those rules and regulations promulgated under the HIPAA Rules, and (v) such Authorized User further agrees not to use the Services to communicate any message or material that is harassing, libelous, threatening, obscene, would violate the Intellectual Property Rights of any person or is otherwise unlawful, that would give rise to civil liability, or that constitutes or encourages conduct that could constitute a criminal offense, under any applicable law or regulation. Although Amwell and its third-party suppliers and partners are not responsible for any such communications, Amwell may delete any such communications at any time without notice.

### 4. Fees/Payment Terms.

**4.1 Fees.** Customer shall pay the GSA Schedule contractor on behalf of Amwell the fees specified in the applicable Quote in accordance with this Section and, as may be applicable, the terms of any specific Quote.



**4.2 Reimbursable Expenses.** Customer agrees to pay any travel expenses in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Ordering Activity shall only be liable for such travel expenses as approved by Ordering Activity and funded under the applicable ordering document ("**Reimbursable Expenses**").

**4.3 Payment and Invoices.** Unless otherwise indicated in the applicable Quote, Amwell shall invoice Customer for all fees for the Services pursuant to the terms of the Quote. Payment terms are thirty (30) days from the receipt date of invoice or as otherwise specified in the applicable Quote. Invoices shall be sent to the address on the Quote. Any invoicing or documentation requirements of Customer shall be provided within five (5) days of the Effective Date. Customer shall notify Amwell in writing of any invoice dispute (along with a reasonably detailed description of the dispute) within ten (10) days from Customer's receipt of such invoice. Invoices for which no such timely notification is received shall be deemed accepted by the Customer as true and correct, subject to the Federal Acquisition Regulations. If Customer fails to make any payment when due, then, in addition to all other remedies that may be available, Amwell may, (i) charge interest on the past due amount at the rate allowed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.

**4.4 No Deductions or Setoffs.** All amounts payable to Amwell under this Agreement shall be paid by Customer to Amwell in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason other than as required by applicable law.

**4.5 Taxes.** Amwell shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

## 5. Service Levels.

**5.1 Service Levels.** Subject to the terms and conditions of this Agreement, Amwell will use commercially reasonable efforts to make the Services Available at least ninety-nine and one half percent (99.5%) of the time as measured over the course of each calendar month during the Term (each such calendar month, a "**Service Period**"), excluding unavailability as a result of any of the Exceptions described below in this Section 5 (the "**Availability Requirement**"). "**Service Level Failure**" means a material failure of the Services to meet the Availability Requirement. "**Available**" means the Services are available for access and use by Customer and its Authorized Users over the Internet and operating in material accordance with the Specifications. For purposes of calculating the Availability Requirement, the following are "**Exceptions**" to the Availability Requirement, and neither the Services will be considered un-Available nor any Service Level Failure be deemed to occur in connection with any failure to meet the Availability Requirement or impaired ability of Customer or its Authorized Users to access or use the Services that is due, in whole or in part, to any: (a) act or omission by Customer or any Authorized User/access to or use of the Services by Customer or any Authorized User, or using Customer's or an Authorized User's Access Credentials, that does not strictly comply with this Agreement and the Specifications; (b) Customer Failure; (c) Customer's or its Authorized User's Internet connectivity; (d) Force Majeure Event; (e) failure, interruption, outage or other problem with any software, hardware, system, network, facility or other matter not supplied by Amwell pursuant to this Agreement; (f) Scheduled Downtime; or (g) disabling, suspension or termination of the Services pursuant to Section 4.3 or Section 9.

**5.2 Scheduled Downtime.** Amwell will use commercially reasonable efforts to: (a) schedule downtime, if any, for routine maintenance of the Services between the hours of 12 a.m. – 6 a.m. Eastern Standard Time (EST); and (b) give Customer at least 24 hours prior notice of all scheduled outages of the Services ("**Scheduled Downtime**").

**5.3 Message Transmissions.** Customer acknowledges that email message transmissions from or through the Services may result in Amwell's servers becoming "blacklisted" by Internet service providers, email providers, or otherwise on the Internet, thereby preventing further transmission of email messages from servers used by the Services. If such "black listing" occurs (due to the actions of Customer, an Authorized User or any other customer of Amwell), Amwell may, in its sole discretion, discontinue offering email message transmission services from or through the Services, and any temporary or permanent discontinuation of email message transmission services shall not constitute a breach under this Agreement or any Quote. Amwell does not guarantee the successful delivery of email messages to message recipients through the Services.

**5.4 Service Support.** The Services include Amwell's standard customer support services ("**Support Services**") in accordance with the Amwell service support schedule then in effect, a current copy of which is set forth below. Amwell may non-materially amend the Support Services from time to time in its sole discretion. Customer may purchase enhanced support services separately at Amwell's then current rates.

## 6. Privacy and Security.

**6.1 Amwell Systems and Security Obligations.** Amwell will use reasonable efforts to prevent unauthorized access to Amwell Systems. Amwell will take prompt action to remedy any known security breaches or holes in the Services.

Amwell will employ security measures in accordance with Amwell's data privacy and security policy as amended from time to time. Amwell shall maintain a comprehensive data security program, which shall include reasonable and appropriate technical, organizational and security measures against the destruction, loss, unauthorized access or alteration of Customer Data in the possession of Amwell or such Subcontractors, and which shall be (i) no less rigorous than those maintained by Amwell for its own information of a similar nature, (ii) no less rigorous than accepted security standards in the industry, and (iii) adequate to meet the requirements of Customer's privacy, security and records retention policies, as well as all obligations imposed on Customer under law, as each is communicated to Amwell in writing in accordance with the Agreement.

**6.2 Data Breach Procedures.** Amwell maintains a data breach plan in accordance with the criteria set forth in the HIPAA Rules.

**6.3 Customer Control and Responsibility.** Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (c) Customer Systems; (d) the security and use of Customer's and its Authorized Users' Access Credentials; and (e) all access to and use of the Services and Amwell Materials directly or indirectly by or through the Customer Systems or its or its Authorized Users' Access Credentials, with or without Customer's knowledge or consent.

**6.4 Access and Security.** Customer shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Services; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Services.

**6.5 Consent to Use Customer Data.** Customer hereby grants to Amwell and Amwell Personnel all such rights and permissions in or relating to Customer Data as are necessary to perform the Services.

**6.6 Compliance with HIPAA Rules.** Customer shall notify Amwell prior to disclosing to Amwell any Protected Health Information (as defined under HIPAA). Both parties agree to enter into a Business Associate Agreement prior to any sharing of Protected Health Information.

## 7. Intellectual Property Rights.

**7.1 Services and Amwell Materials.** All right, title and interest in and to the Services and Amwell Materials, including all Intellectual Property Rights therein, are and will remain with Amwell and any respective rights holders in the Third-Party Materials. Customer has no right, license or authorization with respect to any of the Services or Amwell Materials (including Third-Party Materials) except as expressly set forth herein. Customer hereby unconditionally and irrevocably grants to Amwell an assignment of all right, title and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.

**7.2 Customer Data.** As between Customer and Amwell, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted hereunder.

## 8. Confidentiality.

**8.1 Confidential Information.** "Confidential Information" means any technical or non-technical information related to the past, current or proposed operations, products, technology, services, pricing or business that one party discloses or otherwise makes available in any manner (the "Disclosing Party") to the other party (the "Receiving Party"), or to which the Receiving Party may gain access in the performance of its obligations or the exercise of its rights hereunder, whether such information is disclosed orally, visually or in writing, and whether or not bearing any legend or marking indicating that such information or data is confidential, including without limitation this software, know-how, processes, trade secrets, manuals, reports, procedures, and methods. Confidential Information also includes proprietary or confidential information of any third party that may be in the Disclosing Party's possession. The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement. Unless expressly permitted by this Agreement, the Receiving Party will not disclose the Confidential Information of the Disclosing Party to any third party, except to those employees, agents, subcontractors and advisors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and are under a duty of confidentiality no less protective of Confidential Information than the terms of this Agreement. The Receiving Party shall take reasonable measures to protect the secrecy of and avoid disclosure and/or unauthorized use of the Disclosing Party's Confidential Information. Without limiting the foregoing, the Receiving Party will protect the Disclosing Party's Confidential Information from disclosure and/or unauthorized use in the same manner as the Receiving Party protects its own confidential or proprietary information of similar type and importance, but no less than a reasonable standard of care.

**8.2 Exceptions.** Confidential Information shall not include any information the Receiving Party can document: (a) was already lawfully known by the Receiving Party at the time of disclosure by the Disclosing Party; (b) was disclosed

to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) was independently developed by the Receiving Party without access to, or use of, the Disclosing Party's Confidential Information. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in writing by the Disclosing Party, or (ii) required by law or by the order of a court or similar judicial or administrative body, provided that, to the extent possible, the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure. Amwell recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

**8.3 Return of Confidential Information.** The Receiving Party will, at its option, either return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the Disclosing Party or the termination of this Agreement, whichever comes first. In addition, upon request, the Receiving Party will certify in writing signed by an officer of the Receiving Party that it has fully complied with its obligations under this Section 8.3.

## 9. Term and Termination.

**9.1 Term.** Unless terminated earlier in accordance with the termination rights set forth in this Section 9, this Agreement shall commence upon the Effective Date and remain in full force and effect until all Quotes hereto have expired or have been terminated. Each Quote shall specify its duration.

**9.2 Termination.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Amwell shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

Effect of Termination. Upon the expiration or termination of a Quote, all rights, licenses and consents granted by either party the other hereunder will immediately terminate. Customer will cease using the Services under such Quote, and Amwell will be relieved from any further obligation to provide the Services to Customer and its Authorized Users. Should Customer desire to terminate any Quote prior to the end its term, Customer shall remain liable and pay all amounts owing on any Quote for Services provided up to the termination date. Sections which should, by the nature, survive termination of this Agreement shall survive.

## 10. Representations, Warranties and Covenants.

**10.1 Amwell Representations and Warranties.** Amwell represents and warrants to Customer that: (a) it will provide the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement; (b) any and all documentation for the Services provided by Amwell will be accurate and complete and will be revised by Amwell on a timely basis at no cost to Customer to reflect material changes and updates to the Services; (c) the Services shall function properly and in conformity with the Specifications.

**10.2 Mutual Representations and Warranties.** Each party represents and warrants to the other party that: (a) it is duly organized, validly existing and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization; (b) it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this Agreement; (c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and (d) when executed and delivered by both parties, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

**10.3 Customer Representations and Warranties.** Customer represents and warrants to Amwell that Customer and Customer's Authorized Users shall access and use the Services in accordance with the terms and conditions of this Agreement and all applicable laws. Customer also represents and warrants to Amwell that Customer owns or otherwise has and will continue to have the necessary rights and consents in and relating to the Customer Data so that, as received by Amwell and Processed in accordance with this Agreement, it does not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable law, including but not limited to, the HIPAA Rules.

**10.4 DISCLAIMER OF OTHER WARRANTIES.** EXCEPT AS EXPLICITLY STATED IN THIS AGREEMENT, THE SERVICES ARE PROVIDED "AS IS," AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. AMWELL (INCLUDING



AMWELL'S THIRD PARTY SUPPLIERS AND PARTNERS AND EACH OF THEIR AFFILIATES, SUPPLIERS AND RESELLERS) DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, PERFORMANCE, USAGE, OR TRADE PRACTICE. AMWELL DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

## 11. Indemnification.

**11.1 Amwell Indemnification.** Amwell shall have the right to intervene to defend Customer and Customer's officers, directors, employees, agents, permitted successors and permitted assigns (each, a "**Customer Indemnitee**") from and against any and all third party claims (each, an "**Action**"), and pay for any judicially determined (or agreed in a settlement) Losses, arising from any allegation in such Action that Customer's or an Authorized User's use of the Services (excluding Customer Data and Third Party Materials) in compliance with this Agreement and the Specifications infringes an Intellectual Property Right in the Territory. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516. The foregoing obligation does not apply to any Action or Losses arising out of or relating to any: (a) access to or use of the Services or Amwell Materials in combination with any hardware, system, software, network or other materials or service not provided or authorized in the Specifications or otherwise in writing by Amwell; (b) modification of the Services or Amwell Materials other than: (i) by or on behalf of Amwell; or (ii) with Amwell's written approval in accordance with Amwell's written specification; (c) failure to timely implement any modifications, upgrades, replacements or enhancements made available to Customer by or on behalf of Amwell; or (d) act, omission or other matter described in Section 11.2, Section 11.2(b), Section 11.2(c) or Section 11.2(d), whether or not the same results in any Action against or Losses by any Amwell Indemnitee.

### 11.2 Reserved.

**11.3 Indemnification Procedure.** Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified pursuant to Section 11.1 or Section 11.2, as the case may be. The party seeking indemnification (the "**Indemnitee**") shall cooperate with the other party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Action and shall employ counsel reasonably acceptable to the Indemnitee to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this Section 11.3 will not relieve the Indemnitor of its obligations under this Section 11.3 except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

**11.4 Mitigation.** If any of the Services or Amwell Materials are, or in Amwell's opinion are likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if Customer's or any Authorized User's use of the Services or Amwell Materials is enjoined or threatened to be enjoined, Amwell may, at its option and sole cost and expense: (a) obtain the right for Customer to continue to use the Services and Amwell Materials as contemplated by this Agreement; (b) modify or replace the Services and Amwell Materials, in whole or in part, to seek to make the Services and Amwell Materials (as so modified or replaced) non-infringing, while providing equivalent features and functionality, in which case such modifications or replacements will constitute Services and Amwell Materials, as applicable, under this Agreement; or (c) terminate this Agreement upon notice to Customer and refund to Customer any prepaid fees, if applicable, pro-rated for the remainder of prepaid period.

THIS SECTION SETS FORTH CUSTOMER'S SOLE REMEDIES AND AMWELL'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND AMWELL MATERIALS) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHT.

## 12. Limitations of Liability.

**12.1 EXCLUSION OF DAMAGES.** IN NO EVENT WILL AMWELL OR ANY OF ITS LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES



WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S GROSS NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

**12.2 CAP ON MONETARY LIABILITY.** IN NO EVENT WILL THE AGGREGATE LIABILITY OF AMWELL AND ITS LICENSORS, SERVICE PROVIDERS AND SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT, STRICT LIABILITY AND OTHERWISE, EXCEED THE TOTAL AMOUNT OF FEES PAID BY THE CUSTOMER PURSUANT TO THE APPLICABLE PURCHASE ORDER. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

### **13. Miscellaneous.**

**13.1 Publicity.** Neither party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement or otherwise use the other party's trademarks, service marks, trade names, logos, domain names or other indicia of source, affiliation or sponsorship, in each case, without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that Amwell may include Customer's name in its lists of current or former customers in its promotional and marketing materials to the extent permitted by the General Services Acquisition Regulation (GSAR) 52.203-71.

**13.2 Assignment.** Neither party may assign its rights under this Agreement, in whole or in part, by operation of law or otherwise, without the prior written consent of the other party. Any attempted assignment in violation of this Section will be void. This Agreement shall be binding on, and shall inure to the benefit of, the parties and their respective successors and permitted assigns.

**13.3 Relationship of the Parties.** The parties hereto are independent contractors. Nothing in this Agreement will be deemed to create an agency, employment, partnership, fiduciary, or joint venture between the parties. No party hereto (nor any agent or employee of such party) will make any representations or warranties or incur any liability on behalf of the other.

**13.4 No Third-party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person (including any Authorized User) any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**13.6 Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable, each party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary, to affect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible.

**13.5 Amendment and Modification; Waiver.** No amendment to or modification of or rescission, termination or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination or discharge of this Agreement and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**13.6 Notices.** Except as otherwise expressly set forth in this Agreement, all notices, requests, consents, claims, demands, waivers and other communications under this Agreement have binding legal effect only if in writing and sent to the address on the Quote or other address that such party may designate from time to time in writing. For Amwell, notice will be sent to the attention of the Chief Operating Officer. Notices will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by e-mail with confirmation of transmission, if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours with a copy also sent via US mail; and (d) on the third day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

**13.7 Construction.** The division of this Agreement into sections and the insertion of captions and headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. For purposes of this Agreement: (a) the words "include," "includes" and "including" are deemed to be followed by the words "without

limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to "Sections" mean the sections of this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

**13.8 Governing Law; Venue.** The Federal laws of the United States.

**13.9 Waiver of Jury Trial.** Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

**13.10 Export Regulations.** Customer agrees to comply with all applicable export and re-export control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the United States Department of Commerce. Specifically, Customer covenants that it shall not, directly or indirectly, sell, export, re-export, transfer, divert, or otherwise dispose of any software, source code, or technology (including products derived from or based on such technology) received from Amwell under this Agreement to any country (or national thereof) subject to antiterrorism controls or U.S. embargo, or to any other person, entity, or destination prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations. Customer agrees to indemnify, to the fullest extent permitted by law, Amwell from and against any fines or penalties that may arise as a result of Customer's breach of this provision.

**13.11 Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

**13.12 Entire Agreement.** This Agreement (including all Quotes), together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), sets forth the complete, exclusive and final statement of the Agreement between the parties as to the subject matter hereof and supersedes all prior and contemporaneous Agreements, understandings, negotiations and discussions, whether oral or written, between the parties regarding such subject matter.

## CUSTOMER SUPPORT SERVICE TERMS

Subject to Customer’s payment obligations for Support Services, Amwell will provide the Support Services in accordance with these Customer Support Service terms.

### 1. Definitions.

“**Workaround**” means a solution that resolves an error through a set of software or non-software steps, methods, or procedures.

“**Response**” means an Amwell Support Engineer, or similar personnel, acknowledges the inquiry via email or phone.

**2. Inquiry Response.** Customer will assign a priority to all inquiries submitted to Amwell. The priority levels are set forth below. If no priority level is identified by Customer, the priority level shall be Priority 3.

Priority	Response	Update frequency	Definition	Examples	Business Hours (8am-8pm ET, M-F)	24/7 support
<b>Priority 1 (Urgent)</b>	30min	1hr	Critical time sensitive issue impacting patient care (system outage or core feature down). No workaround is available and requires immediate attention 24/7	System outage. Or a core feature is down such as: unable to complete visits, unable to select a service	✓	✓
<b>Priority 2 (High)</b>	1hr	1 business day	A feature is not working as expected. Workarounds may be available	A feature is not working as expected. Unable to start call (able to send text), password resets	✓	
<b>Priority 3 (Normal)</b>	3hrs	N/A	Service impairment has no significant impact on customer’s operations	Questions, minor features not functioning as expected	✓	
<b>Priority 4 (Low)</b>	5 days	N/A	Feature requests or cosmetic issues	Enhancement requests to an existing feature, new functionality requests	✓	