

CNS Vital Signs Concussion Product Terms of Use

These Terms of Use govern use of the CNS Vital Signs service made available to you through www.concussionvitalsigns.com (the "Site") and form a legally binding agreement ("**Agreement**") between you and CNS Vital Signs, LLC. ("**CNSVS**"). ***If you do not wish to be bound by this Agreement, do not accept it and discontinue using and accessing the Site and Service immediately.*** This Agreement is applicable to your use of the Site and Service regardless of how you accessed it. Please contact CNSVS at 888-750-6941 if you have any questions about this Agreement.

This Agreement, along with the Order (defined below), constitutes the entire agreement between you and CNSVS governing your use of the Service, superseding any prior agreements, documents or communications relating to the subject matter of this Agreement.

DEFINITIONS

"**Content**" means the information, data, graphics, reports, and other materials included as part of or in conjunction with the Service.

"**Documentation**" means the electronic and written manuals, guides, help text, and other documentation relating to the installation, use, operation or support of the Service and delivered to you under this Agreement.

"**Order**" means a signed paper or web-based order form completed by you when ordering the Service.

"**Service**" means the specific CNSVS service(s) acquired by you as set forth in the Order, and made available to you through the Site, and includes all associated Content and Documentation, as well as all updates to the Service made available by CNSVS under this Agreement.

"**Software**" means all proprietary rights, including all copyrights, patents and trademarks, in and to Service and all associated software.

NO MEDICAL ADVICE

By entering into this Agreement, you represent and warrant that you are either: (1) a properly licensed and qualified healthcare provider and that all your individual employees or contractors using the Service have sufficient credentials, training, and qualifications in order to understand and interpret the Service, or (2) using the Service under the supervision of a properly licensed and qualified healthcare provider. This Service is an informational tool that is provided for use only in conjunction with a variety of other information that is relevant for evaluation and management of patients and test subjects. All use of the Service is subject to the disclaimers and limitations of liability contained in this Agreement.

YOU UNDERSTAND AND AGREE THAT CNSVS IS NOT ACTING AS A PHYSICIAN OR OTHER HEALTH CARE PROVIDER, OR AS A DIAGNOSTIC SERVICE, AND DOES NOT PROVIDE MEDICAL ADVICE. The results of the Service and any information provided with the Service or on the Site are provided for informational purposes only. You alone shall be responsible for the accuracy and adequacy of information and data furnished for processing and any use made by you of the output of the Service or any reliance thereon.

If you or any individual(s) using the Service under your direction are suffering from symptoms related to a concussion, or any other medical condition, and are not directly under the care and supervision of a qualified healthcare provider, you should immediately stop using the Site and Service and seek proper medical attention.

RIGHTS OF USE

Subject to payment of any applicable fee and the terms of this Agreement, CNSVS grants to you the personal, non-exclusive, non-transferable right to use the Service under the terms of this Agreement. You agree to use the Service in compliance with all applicable laws, rules, regulations and standards, including laws, rules, regulations and standards applicable to the treatment of concussions and relating to the privacy of individually identifiable health care information.

YOU MAY:

- Allow your patients to use the Service under your direction (you agree to be solely responsible for obtaining all necessary consents and authorizations from patients for such use and any associated analysis and disclosures of acquired patient information); and
- Distribute and use Content and Documentation solely for the internal purposes of your organization.

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YOU SHALL NOT:

- Use the Service except as provided in this Agreement;
- Disassemble, decompile or otherwise reverse engineer the Service in order to discover the source code or related proprietary information and trade secrets, or have a third party do so; or
- Rent, lease, sublicense, distribute, transfer, modify or timeshare the Service.
- If utilizing the free version of the software and you are not an authorized representative of a registered school, college or university you may be subject to charges for any usage of the Site and Service.

NOTE: The Service may be provide on a “per-test”, “per-protocol”; and/ or other “per-use” basis, and may require the payment of additional fees and entry of additional passwords or keys in order to expand use rights. Any training and/or support and services outside the scope of standard documentation provided by CNSVS, may be subject to a fee. You agree to abide by all limits on number of tests and/or other restrictions associated with your use of the Service as set forth in the Order. Please contact CNSVS for the availability of expanded use rights.

USER INFORMATION AND PASSWORDS

Access to certain parts of the Service may require a user name and password. You represent and warrant that all user information that you provide to CNSVS in connection with obtaining a user name and password is accurate and complete. In the event that any of your user information changes in the future, you will promptly provide CNSVS with updated information when applicable.

You are solely responsible in all respects for: (a) all use of the Service made using your user name and password, and (b) maintaining the confidentiality of your user name and password. You agree to notify CNSVS immediately of any unauthorized use of your email address, user name or password or any other breach of security regarding the Service of which you are aware.

DO NOT SHARE YOUR PASSWORD WITH ANYONE. If you know or suspect that your user name or password has been compromised, change your password immediately.

CONFIDENTIALITY

“Confidential Information” means any information or data that is disclosed by one party to the other party pursuant to this Agreement that is marked in writing as confidential; provided that, whether or not marked, your Confidential Information whether or not marked includes any and all information regarding your patients, and the Confidential Information of CNSVS includes the Service and Software, as well as the structure, organization, design, algorithms, templates, data models, logic flow, and screen displays associated with the Service and Software. Confidential Information does not include information that the receiving party can show: (a) is or becomes publicly known or available without breach of this Agreement; (b) is received by a receiving party from a third party without breach of any obligation of confidentiality; or (c) was previously known by the receiving party as shown by its written records.

A receiving party agrees: (a) to hold the disclosing party’s Confidential Information in confidence, and to protect the disclosing party’s Confidential Information in the same manner that it protects the confidentiality of its own similar confidential information (but in no event using less than reasonable care); and (b) except as expressly authorized by this Agreement, not to, directly or indirectly, use, disclose, copy, transfer or allow access to the disclosing party’s Confidential Information. Without limiting the foregoing, you shall disclose and allow access to the Service only for the purpose of supporting and augmenting your use of the Service. Notwithstanding the foregoing, a receiving party may disclose Confidential Information of the disclosing party as required by law, applicable regulatory authorities, or court order; in such event, such party shall use its best efforts to inform the other party prior to any such required disclosure.

Each party acknowledges and agrees that any violation of the confidentiality obligations in this Agreement may cause the disclosing party irreparable injury for which the disclosing party would have no adequate remedy at law, and that the disclosing party shall be entitled to preliminary and other injunctive relief against the receiving party for any such violation. Such injunctive relief shall be in addition to, and not in limitation of, all other remedies or rights that disclosing party shall have at law or in equity.

To the extent you are a “covered entity” under HIPAA, the parties agree that the terms of HIPAA Business Associate Addendum, attached hereto, shall apply.

PROPRIETARY RIGHTS

CNSVS and its suppliers own all proprietary rights, including all copyrights, patents, and trademarks, in and to the Service

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and all associated software (“**Software**”). The Software source code and related proprietary information and trade secrets are not provided to you, and any modification, addition or deletion of or to the Software is strictly prohibited. You agree to take all reasonable steps to prevent unauthorized disclosure, use or copying of the Service and Software. You also agree to include in all copies of the Content and Documentation all CNSVS copyright and proprietary notices. CNSVS reserves all rights not expressly granted to you.

TERM

This Agreement is effective until terminated or the term associated with your use of the Service as set forth in the Order expires. CNSVS may also stop providing Services to you, or add or create new limits to our Services at any time. Either party may terminate this Agreement if the other party materially breaches this Agreement and such material breach is not cured within ten (10) days after written notice thereof. The provisions of this Agreement relating to confidentiality; proprietary rights; limitation of liability; disclaimers; and exclusions of warranties shall survive termination of this Agreement.

For thirty (30) days after termination, CNSVS will maintain your ability to access and download the data that you have supplied to the Service. After such time, CNSVS may irretrievably destroy all of your data.

LIMITED WARRANTY

CNSVS warrants for a period of 30 days from date of purchase that the Service will substantially conform to the specifications set forth in the Documentation, provided it has been configured correctly by you and is used on the operating systems, web browsers, and other software, hardware and systems as specified in the Documentation. CNSVS will use commercial efforts to correct any breach of the foregoing warranty at no charge, so long as you provide notice to CNSVS within 30 days of date of purchase. If CNSVS is unable to correct the nonconformance, CNSVS will refund any fee you have paid CNSVS. These are your sole remedies and CNSVS’s entire liability for any breach of warranty.

CNSVS does not warrant that the Service or the functions contained in the Service will meet your requirements, operate without interruption, or be error-free. You are solely responsible for the proper configuration and operation of the Service in accordance with the instructions and specifications set forth in the Documentation.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY SET FORTH ABOVE, CNSVS AND ITS SUPPLIERS MAKE NO REPRESENTATIONS OR WARRANTIES RELATING TO THE SERVICE OR THE SITE, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR ANY PARTICULAR PURPOSE.

LIMITATION OF LIABILITY

IN NO EVENT SHALL CNSVS OR ITS AFFILIATES, SUPPLIERS, OFFICERS AND DIRECTORS BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA OR LOST PROFITS, AS A RESULT OF USE OF, OR INABILITY TO USE, THE SERVICE, PERSONAL INJURY, OR DEATH, EVEN IF CNSVS IS MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO CASE SHALL CNSVS’S LIABILITY EXCEED THE AMOUNT OF THE FEE PAID TO CNSVS IN CONNECTION WITH YOUR USE OF THE SERVICE.

SUSPENSION AND OPERATION OF SERVICE

CNSVS may at its discretion suspend or terminate operation of the Service for maintenance or other reasons. In addition, technical and other issues, including issues with the internet, may make the Service unavailable from time to time, and CNSVS will have no liability for such unavailability.

In the event CNSVS determines, in its sole discretion, that you have violated this Agreement (including but not limited to by not making any required payment of fees due under the terms of an Order), CNSVS shall have the right to immediately suspend your access to the Site and Service without prior notice to you, and/or pursue any other remedies available to it under applicable law.

ADDITIONAL PROVISIONS

Export and use of the Service outside of the United States is subject to the Export Administration Regulations of the Bureau of Export Affairs, United States Department of Commerce. In the event you desire to use or allow permitted users to use the Service outside the United States, you, at your own expense, shall comply with all applicable regulations governing such export. CNSVS makes no warranty relating to the exportability of the Service to any particular country.

CNSVS’s failure to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision.

You agree that any claim or cause of action arising out of or related to use of the Service or this Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

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This Agreement is governed by the laws of North Carolina, USA, without regarding to its internal rules regarding conflicts of law. CNSVS may elect to resolve any controversy or claim arising out of or relating to this Agreement or the Site by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Any such controversy or claim shall be arbitrated on an individual basis and shall not be consolidated in any arbitration with any claim or controversy of any other party. The arbitration shall be conducted in Raleigh, North Carolina, and judgment on the arbitration award may be entered in any court having jurisdiction thereof. Either party may seek any interim or preliminary relief from a court of competent jurisdiction necessary to protect its rights or property (or rights or property of its agents, suppliers, and subcontractors), pending the completion of arbitration.

If any part of this Agreement is determined to be invalid or unenforceable pursuant to applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision, and the remainder of this Agreement shall continue in effect.

CNSVS shall have no liability for any failure or delay resulting from any condition beyond the reasonable control of CNSVS, including but not limited to governmental action or acts of terrorism, earthquake, fire, flood or other acts of God, labor conditions, power failures and Internet disturbances.

MODIFICATIONS TO THE SERVICE AND THIS AGREEMENT

CNSVS reserves the right, in its sole discretion, to modify or change this Agreement at any time by posting the changes on the Site and/or the Service. Your continued use of the Service following the posting of such changes constitutes acceptance of those changes. CNSVS will use reasonable efforts to provide notice of material changes by e-mail to registered users of the Service.

CNSVS also reserves the right to modify the Site and the Service at any time without prior notice to you.

HIPAA BUSINESS ASSOCIATE ADDENDUM

If you are a covered entity under HIPAA, CNSVS may create, receive, use and/or disclose for or on your behalf certain Protected Health Information relating to your patients that is subject to protection under the privacy and security regulations of the Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. Sections 160, 162, and 164 ("HIPAA"), as amended by American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), pursuant to Title XIII of Division A and Title IV of Division B, called the "Health Information Technology for Economic and Clinical Health" ("HITECH") Act.

In this Addendum, the parties agree to the following HIPAA business associate terms. The term "Privacy and Security Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A, C and E. Capitalized terms used but not defined herein have the same meaning as set forth in the Privacy and Security Rule.

1. Obligations and Activities of CNSVS. CNSVS agrees to:

(a) not use or further disclose Protected Health Information other than as permitted or required by this Addendum or as Required By Law.

(b) use appropriate safeguards to prevent use or disclosure of Protected Health Information other than in accordance with this Addendum. CNSVS will also use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any Protected Health Information that is transmitted by Electronic Media CNSVS creates, receives, maintains, or transmits on behalf of You ("Electronic Protected Health Information").

(c) report to you any use or disclosure of the Protected Health Information not in accordance with this Addendum of which CNSVS becomes aware. CNSVS will also report to you any Security Incident related to Electronic Protected Health Information of which CNSVS becomes aware. For purposes of this Agreement, "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. In addition, CNSVS agrees to mitigate, to the extent practicable, any harmful effect that is known to CNSVS of a use or disclosure of Protected Health Information by CNSVS in violation of the requirements of this Agreement.

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(d) ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by CNSVS on behalf of, you agrees to the same restrictions and conditions that apply through this Addendum to CNSVS with respect to such information. CNSVS also agrees to ensure that any agent, including a subcontractor, to whom CNSVS provides Electronic Protected Health Information that was created, received, maintained or transmitted on behalf of You, agrees to use reasonable and appropriate safeguards to protect the Electronic Protected Health Information.

(e) make available Protected Health Information to the extent, for the purposes and in the manner required by 45 CFR 164.524 (Access of individuals to Protected Health Information) and 45 CFR 164.526 (Amendment of Protected Health Information) and incorporate any amendment to Protected Health Information as required under 45 CFR 164.526.

(f) make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by CNSVS on behalf of, you available to the Secretary of Health and Human Services for purposes of the Secretary determining your compliance with the Privacy and Security Rule.

(g) document such disclosures of Protected Health Information and information related to such disclosures as would be required for you to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528 (Accounting of disclosures of Protected Health Information).

(h) provide to you, at a time and in a manner agreed by the parties, information collected in accordance with Section 2(g) of this Addendum to permit you to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

2. Permitted Uses and Disclosures by CNSVS

Subject to the terms of this Addendum, CNSVS may use or disclose Protected Health Information to perform the functions, activities, services for, or on behalf of, Covered, provided that such use or disclosure would not violate the Privacy and Security Rule if done by you. In addition, CNSVS may:

(a) use or disclose Protected Health Information for the proper management and administration of CNSVS (such as for the purposes of quality improvement; developing products applicable to You and other covered entities; support; and system maintenance), provided that, with respect to disclosures: (1) such disclosures are Required by Law; or (2) CNSVS obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies CNSVS of any instances of which it is aware in which the confidentiality of the information has been breached.

(b) use Protected Health Information to provide Data Aggregation services relating to your healthcare operations as permitted by 42 CFR 164.504(e)(2)(i)(B).

(c) De-identify Protected Health Information entered or received by CNSVS under this Addendum; provided that the de-identification conforms to the requirements of the Privacy and Security Rule.

3. Termination

Upon termination of this Agreement for any reason, CNSVS shall return or destroy all Protected Health Information received from you, or created or received by CNSVS on your behalf. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of CNSVS. CNSVS shall retain no copies of the Protected Health Information.

4. Miscellaneous

(a) You shall not request CNSVS to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy and Security Rule if done by you, except as set forth in Section 3(b) above.

(b) A reference in this Addendum to a section in the Privacy and Security Rule means the section as in effect or as amended, and for which compliance is required.

(c) The Parties agree to take such action as is reasonably necessary to amend this Addendum from time to time as is necessary for you or CNSVS, as applicable, to comply with the requirements of the Privacy and Security Rule and the

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Health Insurance Portability and Accountability Act, Public Law 104-191.

(d) Any ambiguity in this Addendum shall be resolved in favor of a meaning that permits you and/or CNSVS, as applicable, to comply with the Privacy and Security Rule.