



## **nddCloud End-User Terms of Use**

ndd Medical Technologies Inc. (“**NDD**”, “we”, “our”), is the developer and owner of a proprietary mobile and Internet-based service that, among other functions, collects, processes, formats, stores and distributes respiratory testing data and other patient medical information (the “**Service**”). **THE SERVICE THAT NDD PROVIDES TO YOU IS SUBJECT TO THE FOLLOWING TERMS OF USE. PLEASE READ THE FOLLOWING INFORMATION CAREFULLY. IN COMPLIANCE WITH THE CHILDREN’S ONLINE PRIVACY PROTECTION ACT, YOU MUST BE EIGHTEEN (18) YEARS OF AGE OR OLDER TO SUBMIT PERSONAL MEDICAL DATA AND INFORMATION. IN UTILIZING THIS SERVICE, YOU REPRESENT THAT YOU ARE OVER EIGHTEEN (18) YEARS OF AGE.**

**BY CLICKING ON THE “I ACCEPT” BUTTON WITHIN THE SERVICE,**

- **YOU ACKNOWLEDGE THAT YOU UNDERSTAND AND ACCEPT THE FOLLOWING TERMS OF USE; AND**
- **YOU REPRESENT TO NDD THAT YOU ARE AUTHORIZED TO MANAGE YOUR PATIENTS’ MEDICAL INFORMATION.**

**IF YOU DO NOT ACCEPT THESE TERMS OF USE, YOU MAY NOT ACCESS THIS SITE OR UTILIZE ANY OF THE SERVICES PROVIDED ON OR THROUGH EASYONE SKY’S EASYONE MOBILE APPLICATION, REFERRED TO IN THIS DOCUMENT AS THE “APP”.**

### **GENERAL**

**Access and Use of Service.** NDD grants you the non-exclusive right to access the Service through NDD’s PC-based application called the EasyOne Mobile App (the “**App**”) which is connected with diagnostic equipment supplied by NDD and NDD’s cloud-based data services. (Unless the context requires otherwise, references to the “**Service**” will include the App, and vice-versa.) The Service will process medical diagnostic data that you or your patients input to the App and the Service, which is collected through an NDD testing device, for the limited purpose of maintenance and storage of that data, and the transmission of that data and other Patient Medical Data (defined below) to selected healthcare provider(s) that your Medical Provider (defined below) has authorized. “**User(s)**” shall mean individuals like yourself, who utilize the App and the Service; the term “**Patient Medical Data**” shall mean your patients’ medical data and other information as entered into the Service pursuant to the terms and conditions provided herein and which, upon authorization, will be shared with other healthcare providers designated by the Medical Provider; and “**Medical Provider**” shall mean the medical practice, hospital, surgical facility or other health care organization that subscribes to our nddCloud service, for which you provide services as a medical professional.

**Other Legal Terms.** These Terms of Use incorporate the following additional terms, in effect between NDD and the Medical Provider for which you provide services:

- NDD’s Business Associate Agreement located at (<https://nddmed.com/terms-and-conditions/>) (the “**BAA**”)
- NAA’s Privacy Policy located at (<https://nddmed.com/terms-and-conditions/>) (the “**Privacy Policy**”)

**Information and Instructions to be Provided to the Users.** Information and instructions for inputting your patients’ Patient Medical Data into the Service are set forth in the App, and are in addition to those instructions already provided to you.

**Limitations of Service.** You are solely responsible for all equipment, software and connections to the Internet required to operate the App.



## SECURITY AND DATA RIGHTS

**Integrity and Confidentiality of Patient Medical Data.** NDD shall deploy commercially reasonable and available security measures to protect the integrity and confidentiality of Patient Medical Data, in compliance with these Terms of Use, the BAA and the Privacy Policy.

**Security.** You ensure that you will: (a) be responsible for the security and/or use of your user id and password; (b) not permit any other person or entity to use your user id and password; and (c) access and use the Service in accordance with these Terms of Use and all applicable local, state, and federal laws and regulations. You shall also be responsible for: (d) your obligations under these Terms of Use and the restrictions set forth in these Terms of Use; and (e) your use of the Service. NDD reserves the right to deny or revoke access to the Service, in whole or in part, if NDD reasonably believes that you are in breach of these Terms of Use or are otherwise using or accessing the Service inconsistent with the Terms of Use.

**Ownership and Use of Patient Medical Data.** You acknowledge that your patients own and retain all right, title and interest in and to all of their Patient Medical Data, and NDD shall obtain no interest whatsoever in such Patient Medical Data, except as otherwise expressly provided herein and in the Privacy Policy. Provided that NDD obtains prior authorization from you or your Medical Practice in writing or electronic form, and in compliance with applicable law, including the Health Insurance Portability and Accountability Act of 1996 and all regulations pertaining thereto (collectively, “HIPAA”), NDD may disclose your patients’ Patient Medical Data to the third-party healthcare provider(s) authorized by you or by the Medical Provider.

**Patient Consent.** You represent that you or the Medical Provider have obtained all consents from patients (or their legal representatives or guardians) required by applicable law (including HIPAA) for the collection, storage, processing and exchange of their Patient Medical Information as contemplated by these Terms of Use.

## PROPRIETARY RIGHTS

**NDD Materials.** All materials, including without limitation, the App and the Service, any other computer software, web pages, web-based applications, Internet domain names, data or information developed or provided by NDD, and any ideas, know-how, methodologies, equipment or processes conceived, developed or used to provide the Service or other deliverables or services including, without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights related to such materials (collectively, “NDD Materials”) shall be and remain the sole and exclusive property of NDD.

**General Restrictions.** Except as otherwise provided in these Terms of Use, you shall not: (a) provide, disclose, divulge or make available to or permit use of the Service by any third party; (b) copy or reproduce all or any part of the Service (except as expressly provided for herein); (c) interfere, or attempt to interfere, with the Service in any way; (d) distribute, market, sell, lease, transfer, license or sublicense the Service; (e) modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile the Service, or discover or attempt to discover the source code of all or any portion of the Service in any way for any reason; (f) engage in spamming, mailbombing, spoofing or any other fraudulent, illegal or unauthorized use of the Service or NDD's systems; (g) introduce into or transmit through the Service any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design; (h) attempt to provide or create a link to the Service, except as authorized by NDD; (i) create any frames at any other web sites pertaining to or using any of the information provided by the Service; or (j) engage in or allow any action involving the Service that is inconsistent with these Terms of Use.

## FEES

**Fees.** Use of the App is at no charge to you. Fees may apply separately to the Medical Practice that subscribes to our nddCloud service.

## TERM AND TERMINATION



**Term.** These Terms of Use will commence as soon as you access and use the App and continue for the duration of your access and use. NDD shall have the right to terminate your access to all or part of this site at any time, with or without notice.

## **WARRANTIES**

**User's Warranties.** You represent and warrant to NDD that you have the capacity to understand and accept these terms. Furthermore, you represent and warrant that you are not using the App or accessing the Service under misrepresentation or false identification.

**DISCLAIMER. NDD AND ITS AFFILIATES, SUBCONTRACTORS AND THIRD PARTY LICENSORS, IF ANY, MAKE NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY REGARDING OR RELATING TO THE SERVICE PROVIDED TO YOU UNDER THIS AGREEMENT, AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NDD SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT. THE SERVICE IS PROVIDED "AS IS, AND WITH ALL FAULTS." NDD DOES NOT GUARANTEE THAT YOUR ACCESS TO THE SERVICE PROVIDED UNDER THIS AGREEMENT WILL BE UNINTERRUPTED, ERROR FREE OR SECURE. NDD IS NOT A HEALTH SERVICES PROVIDER AND MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, REGARDING THE COMPLETENESS OR ACCURACY OF THE PATIENT MEDICAL DATA YOU ENTER, NOR ANY INTERPRETATION, MEDICAL DECISION OR COURSE OF MEDICAL TREATMENT RELATED THERETO. FURTHER, NDD DOES NOT WARRANT TO YOU THE AVAILABILITY OF THE SERVICE AT ALL TIMES AND SPECIFICALLY EXCLUDES AVAILABILITY DURING SCHEDULED DOWNTIME FOR MAINTENANCE PURPOSES, UNSCHEDULED MAINTENANCE AND SYSTEM OUTAGES, AND/OR AVAILABILITY OF THE SERVICE FOR REASONS BEYOND NDD'S CONTROL.**

## **LIMITATION OF LIABILITY**

**NDD AND ITS AFFILIATES, SUBCONTRACTORS AND THIRD PARTY LICENSORS SHALL NOT BE LIABLE FOR ANY LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF OR DAMAGE TO PATIENT MEDICAL DATA, COST OF COVER, DIRECT, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE SERVICE UNDER THESE TERMS OF USE, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORT, INCLUDING NEGLIGENCE, EVEN IF NDD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, NDD WILL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY ANY DELAY IN DELIVERY OR FURNISHING ACCESS TO THE SERVICE UNDER THESE TERMS OF USE. SINCE THE SERVICE IS PROVIDED TO YOU AT NO CHARGE, NDD SHALL NOT BE LIABLE UNDER THESE TERMS OF USE FOR ANY DAMAGES OF ANY KIND.**

## **INDEMNIFICATION**

NDD does not have any responsibility for the medical treatment or care that you provide. You shall indemnify, defend and hold harmless NDD, its directors, officers, employees, agents, successors and assigns and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, arising out of or relating to: (a) any injury resulting from the use of Patient Medical Data by you; (b) claims that content or information provided by you infringes the intellectual property rights of a third party; or (c) any breach of these Terms of Use by you.

## **PRIVACY AND CONFIDENTIALTY**



Medical Technologies

**Privacy Policy and BAA.** By agreeing to these Terms of Use, you acknowledge that you have had prior access and agree to the terms of the Privacy Policy and the BAA. You further acknowledge and agree that the terms of the Privacy Policy may be updated by NDD from time to time, and that such updated Privacy Policy terms shall be incorporated into these Terms of Use.

**Privacy Terms.** NDD will take all reasonable precautions necessary to safeguard the confidentiality of Patient Medical Data, which will in no event be less than a reasonable degree of care. NDD agrees to use reasonable efforts to comply with any local, state or federal law and regulations governing the privacy and confidentiality of the content of Patient Medical Data that you submit to the App, including, without limitation, HIPAA.

#### MISCELLANEOUS

**Waiver and Severability.** Any waiver of these Terms of Use will not be effective unless executed in writing and signed by you and NDD. The failure of either party to enforce, or the delay by either party in enforcing, any of its rights under these Terms of Use will not be deemed to be a waiver or modification by such party of any of its rights under these Terms of Use. If any provision of these Terms of Use is held to be unenforceable, in whole or in part, such holding will not affect the validity of the other provisions of the Terms of Use.

**Governing Law; Jurisdiction.** These Terms of Use will be interpreted and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to conflict of law principles. All disputes arising out of these Terms of Use shall be brought only in the district and federal courts located in Manhattan County, New York.

**EACH PARTY CONSENTS TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN MANHATTAN COUNTY, NEW YORK.**

These Terms of Use were last modified on November 15, 2024.