

## **WECOUNSEL TERMS AND CONDITIONS OF SERVICE:**

THESE TERMS AND CONDITIONS OF SERVICE AGREEMENT (the “Agreement” or “Terms”) is made between WECOUNSEL SOLUTIONS, LLC, a limited liability company organized under the laws of the State of Delaware (“WeCounsel”) and Providers, the client end user or mental healthcare professional.

### **1. The Service.**

WeCounsel is a third-party tele-health platform that connects healthcare providers to clients in order to:

- a) Facilitate tele-communication with Treatment Providers
- b) Provide additional services including: Scheduling, messaging, note taking, record keeping and other services related to therapy and mental health treatment.
- c) WeCounsel does not provide and our services don't include mental health care or professional services related to medical care. Rather, we are a technology provider that provides a platform or space in which professional can provide these services to clients.
- d) The healthcare professionals (“Providers”) providing services on the site are not employees or agents of WeCounsel, nor are they associate with WeCounsel in any way. Each provider is required to obtain the clients' informed consent before treatment.
- e) WeCounsel does not endorse any Providers nor any methods or actions that may be found on this site. It is the responsibility of the client end user to verify the competency of the Providers (generally, the “Service”).

### **2. Eligibility.**

- a) Permitted Users
  - i. As a Provider, to use the Service, you must be a healthcare professional licensed in the state in which the patient lives. By applying or registering to use the Service, you represent and warrant that you have reasonable and customary levels of malpractice and related liability insurance coverage. You represent and warrant that you have the authority to accept this Agreement. For the duration of their use of the Service, Providers represent and warrant they are in compliance and in good standing with all applicable local, state and federal regulatory requirements. Provider has never been investigated for or subject to a disciplinary proceeding or reprimanded by a governmental or administrative agency, hospital or professional association. Provider has never been convicted of an act committed in violation of any law ordinance other than a traffic offense. Provider has never been denied professional liability

(malpractice) insurance. Provider is not currently a party, and shall not be a party, to any agreement, including any agreement you have with a third party payor, which conflicts with the terms of this Agreement.

- ii. Provider may be removed at the discretion of WeCounsel if failing to adhere to this Agreement.

### **3. Provider Accounts.**

- a) WeCounsel may grant or deny Provider application in its sole discretion. By submitting an application, Provider grants WeCounsel permission to verify the information contained therein.
- b) Never use another user's account without permission. Provide accurate and complete information when creating a Provider account, and keep such information up to date throughout the term of this Agreement. Provider is solely responsible for the activity that occurs on its account, and must keep the account password secure. Notify WeCounsel immediately of any breach of security or unauthorized use of the account. WeCounsel will not be liable for any loss caused by any unauthorized use of the account.
- c) By providing WeCounsel an email address Provider consents to WeCounsel using the email address to send Service-related notices, including any notices required by law, in lieu of communication by postal mail. WeCounsel may also use Provider email address to send other messages, such as changes to features of the Service and special offers. Provider may opt out in the settings page. Opting out may prevent Provider from receiving email messages regarding updates, improvements, or offers.

### **4. Providers Must have Mastery of Online Technological Tools.**

4.1 Encryption and Information Security: Providers must understand how to use encrypted services for communications and records. Providers must use highly secure passwords and change them regularly. Any records stored on either the cloud or on physical storage media must be encrypted and secured against unauthorized access. Providers are prohibited from storing or transmitting client data on any network with less than 128 bit encryption, with 256 bit encryption encouraged. Physical storage devices such as a computer hard drive, USB or mobile device must be stored in a locked location with precautions taken against any unauthorized physical or electronic access. Any WiFi networks used must be encrypted. Using public, shared computers is never permitted, regardless of security or encryption tools used. If a Provider uses a laptop computer, it must have a master password enabled along with special attention paid to the computer's physical storage and security.

4.2 Backup Systems: All WeCounsel providers are encouraged to use secure,

cloud-based systems for records backup. At the minimum, all client records must be physically backed up on an external storage device which is then stored in a locked, secure location. Providers are encouraged to backup their client files on a daily basis, but are required to back up at least weekly. Paper printouts of any patient records are highly discouraged.

4.3 Passwords: Passwords must be changed regularly. All Providers are required to change their Wecounsel passwords monthly and are encouraged to change any passwords related to client records at least monthly. Passwords must be at minimum 8 characters long with both upper and lower case letters, at least 2 different numbers and 2 special characters. Any variation of the Provider's name, social security number, address, etc. must not be used. Providers are prohibited from storing their Wecounsel password on their computer.

4.4 Firewalls: Providers must ensure that they use appropriate firewall protection to ensure no unauthorized network connections to their computer.

4.5 Virus Protection: Providers are highly encouraged to use Mac OS or Linux systems to minimize security vulnerabilities. Windows users are required to use up-to-date anti-virus software and download the most current Windows security updates within 1 week of release. Providers are also encouraged to avoid any websites of a questionable or risky nature. All Providers, regardless of computer operating system, are highly discouraged from using any public, peer-to-peer file sharing services. Wecounsel will stay current on security risks for Providers and users and inform the Wecounsel community as appropriate, however all Providers have the ultimate responsibility of ensuring their machine is safe and secure.

4.6 Hardware: Providers must be comfortable and familiar with their particular hardware.

4.7 Software: Providers must be comfortable with both the Wecounsel platform and any software necessary to assist clients during therapy.

4.8 Third-Party Services: Providers must not use any third-party software or services for Wecounsel online counseling that has not been approved by Wecounsel. Certain tools are prohibited because of known or potential security issues as well as the user experience of clients. Providers must never require a client to use a particular software or service that has not been approved by Wecounsel.

## **5. Providers must work only within their scope of practice.**

Scope of Practice indicates the specific area in which Providers may practice. Providers may not practice within an area for which they are not trained and/or licensed. Providers must follow the laws and professional regulations for their

locale. Clients seeking treatment for a Provider licensed outside of their physical location are considered "visiting" the Providers in the Provider's home location. Providers are required to answer any questions about their qualifications, training and/or licensing so a client can be fully informed. Providers are expressly prohibited from providing any service for which they are not qualified or legally allowed to provide.

#### **6. Providers must ensure that their skills are current.**

Providers must stay current within their professional area. This includes receiving any required continuing education training. Providers must keep abreast of significant research within their field and be able to employ new training, knowledge and research towards the betterment of their clients. Providers must keep their licenses and certifications current as required by their local jurisdiction.

#### **7. Providers must be prepared for client emergencies.**

While Wecounsel strives to provide relevant emergency information for each client's location, Providers must take responsibility for their client's safety. Providers are encouraged to be familiar with the emergency and crisis resources for a particular client's location. Emergency contact information is collected from every Wecounsel client; providers must be knowledgeable on how to use emergency information, regardless of client location. The Providers should also take advantage of emergency and crisis resources provided by Wecounsel for each client location. Providers should have a telephone available in the event of a network or hardware failure in order to ensure that a client is not abandoned. The safety and security of Wecounsel clients is the highest priority.

#### **8. Providers must use appropriate Informed Consent.**

Providers must ensure that all of their Wecounsel clients complete and sign an Informed Consent. This can be done electronically using a digital signature service such as Right Signature, or it can be through a printed, signed and scanned document. Providers must keep encrypted digital copies of any documents submitted by clients and must provide a copy of the document in PDF format to the client. Microsoft Word documents are highly discouraged due to their ability to be easily altered and lack of universal compatibility. Right Signature is the preferred Wecounsel provider for legal, digitally signed documents. Providers are not required, but are encouraged to use the Right Signature service to ensure that clients are able to easily read and sign informed consent documents. Regardless of method, an informed consent is absolutely necessary. Wecounsel has sample informed consent forms for Provider use, however the ultimate responsibility for informed consent compliance lies with the Provider. Minor children **MUST** have a parent or legal guardian sign an Informed Consent before **ANY** consultation or treatment can begin. The Informed Consent must include information about the Provider's jurisdiction and licensing and inform the client that the session will be conducted under the laws of the

Provider's specific jurisdiction. The Informed Consent must inform the client that the laws and regulations within the Provider's jurisdiction may be different than the laws within the client's jurisdiction."

## **9. Applicability.**

In order to use the WeCounsel Platform ("service") Provider must comply with the Terms and Conditions of Service. Different parts of the site may also require compliance with additional terms prior to entering a session.

## **10. Service Rules.**

The Services is not for use in emergency or urgent situations. Provider shall instruct clients to immediately contact their local emergency services in any such situations.

## **11. Provider-Patient Relationship.**

The Service shall be solely provided pursuant to an established Provider-patient relationship and related to the treatment of the patient. Provider is solely responsible for verifying the identity and authenticity of the clients.

## **12. Business Associate Agreement.**

By agreeing to these terms and conditions, Provider also agrees to the terms in WeCounsel Solutions' Business Associate Agreement. (See Exhibit A). The parties acknowledge that by agreeing to these terms and conditions, they accept a "Business Associate" agreement. "Business Associate" means, with respect to a Covered Entity, a person who:

12.1 On behalf of such Covered Entity or of an organized health care arrangement (as defined under the HIPAA Regulations) in which Covered Entity participates, but other than in the capacity of a member of the workforce of such Covered Entity or arrangement, performs, or assists in the performance of:

- a. a function or activity involving the use or disclosure of Individually Identifiable Health Information, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and re-pricing; or
- b. any other function or activity regulated by the HIPAA Regulations; or

12.2 Provides, other than in the capacity of a member of the workforce of such Covered Entity, legal, actuarial, accounting, consulting, Data

Aggregation, management, administrative, accreditation, or financial services to or for such Covered Entity, or to or for an organized health care arrangement in which Covered Entity participates, where the provision of the service involves the disclosure of Individually Identifiable Health Information from such Covered Entity or arrangement, or from another Business Associate of such Covered Entity or arrangement, to the person.

- a) "Covered Entity" means a health plan (as defined by HIPAA and the HIPAA Regulations), a health care clearinghouse (as defined by HIPAA and the HIPAA Regulations), or a health care provider (as defined by HIPAA and the HIPAA Regulations) who transmits any health information in electronic form in connection with a transaction covered by the HIPAA Regulations.

### **13. Prohibited Activities.**

Provider agree not to engage in any of the following prohibited activities: (i) copying, distributing, or disclosing any part of the Service in any medium, including without limitation by any automated or non-automated "scraping"; (ii) using any automated system, including without limitation "robots," "spiders," "offline readers," etc., to access the Service in a manner that sends more request messages to the WeCounsel servers than a human can reasonably produce in the same period of time by using a conventional on-line web browser; (iii) transmitting spam, chain letters, or other unsolicited email; (iv) attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Service; (v) taking any action that imposes, or may impose at our sole discretion an unreasonable or disproportionately large load on our infrastructure; (vi) uploading invalid data, viruses, worms, or other software agents through the Service; (vii) collecting or harvesting any personally identifiable information from the Service except as required and permitted by this Agreement; (viii) impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity; (ix) interfering with the proper working of the Service; (x) accessing any content on the Service through any technology or means other than those provided or authorized by the Service; or (xi) bypassing the measures we may use to prevent or restrict access to the Service, including without limitation features that prevent or restrict use or copying of any content or enforce limitations on use of the Service or the content therein.

WeCounsel may permanently or temporarily terminate, suspend, or otherwise refuse to permit Provider's access to the Service without notice and liability for any reason, including if in WeCounsel's sole determination Provider violates any provision of this Agreement, or for no reason.

All aspects of the Service are subject to change or elimination at WeCounsel's sole discretion. WeCounsel reserves the right to interrupt the Service with or without prior notice for any reason or no reason. Provider agrees that WeCounsel will not be liable for any interruption of the Service, delay or failure to perform.

Provider is solely responsible for interactions with other WeCounsel users. WeCounsel reserves the right, but has no obligation, to monitor disputes between Providers and other users.

#### **14. Patient Interactions.**

WeCounsel is not responsible for, nor will be liable for, any interaction Provider has with clients outside of the Service. Provider will indemnify, defend, and hold WeCounsel harmless from any claim arising from such interactions.

#### **15. Medical Advice.**

Only the tele-communication platform shall be used as a conduit for medical or healthcare services. No other features should be used for treatment or confidential information. The Information contained on this site is not and should not be considered medical advice. No representation or warranty is made that any particular drug or treatment is safe, appropriate or effective, and WeCounsel does not endorse or advocate any treatment method.

#### **16. Eligibility Requirements to Access Member Portions of the Site.**

Provider agrees to promptly pay all fees and charges for their service, and authorizes WeCounsel to automatically deduct all applicable charges and fees from the payment account(s) that Provider designates in their WeCounsel user profile. Any "linked" payment processing accounts with third parties (such as Stripe) will appear in your user profile on the Site, and Provider may be able to view certain summary information for all such linked payment accounts. Provider agrees to be responsible for any Internet service fees incurred in accessing their account(s) through the Services.

Provider agrees to provide a current, up-to-date email account to WeCounsel at all times in order to access this site.

#### **17. Registered User Accounts.**

In order to access the Services, Provider will be required to become a registered user of the Services by creating a WeCounsel account ("Account"). To create an Account, Provider must be of legal age to form a binding contract. If Provider is not of legal age to form a binding contract, Provider may not register to use WeCounsel Services. When Provider registers, they must choose a user name and a password. Provider is responsible for safeguarding and maintaining the confidentiality of their password and Provider agrees not to disclose their password to any third party. Provider will be solely responsible for any activities

or actions taken under their Account, whether or not Provider has authorized such activities or actions. WeCounsel is not responsible for any unauthorized access to Provider's account. Provider must notify WeCounsel immediately if they know or suspect that any unauthorized person is using their password or Account. It is recommended that Provider access the services only on a private computer to which they have control.

Provider agrees that the information provided to WeCounsel at all times is true, accurate, current, and complete. This information includes, but is not limited to, name, address, phone numbers, e-mail addresses, payment information, and account numbers. Changes can be made in the "client area" of the Site. By creating an Account, Provider expressly consents to the use of electronic records to store information related to these Terms or their use of the Services. WeCounsel cannot and will not be liable for any loss or damage arising from Provider's failure to comply with the above requirements.

### **18. Treatment Provider Profiles.**

As part of WeCounsel's e-health platform, WeCounsel provides profile pages for Providers which will allow the Providers to include information about themselves, their background and experience, and their practice and treatment focuses. Providers are solely and exclusively responsible for the content of their respective profiles, and WeCounsel expressly disclaims any and all liability for the content of the Treatment Provider profiles, including, without limitation, the accuracy or reliability of any information contained therein.

### **19. Provider's WeCounsel Profile.**

Provider's WeCounsel profile will allow you to enter, store, and access your health information online, including medical history, current conditions, symptoms, complaints, allergies and medications, and for your Provider to communicate with you about your care. All of the information contained in your WeCounsel profile will be maintained in accordance with WeCounsel's Terms and Conditions and Privacy Policy.

Providers may add information to their WeCounsel profile detailing their findings, diagnosis, treatment plan, and recommendations, including any laboratory tests that were ordered and any medications that were prescribed. Provider will have access to all provided information in their WeCounsel Profile.

It is the Provider's responsibility to use and disclose any and all information included in their WeCounsel profile in accordance with applicable state and federal laws, including, without limitation, obtaining any consents or authorizations that may be required for information to be shared with third parties and in compliance with all federal regulations related to healthcare and privacy and tele-health services. WeCounsel disclaims any and all liability in connection with the Provider's use of their profile information.

## **20. Responsibility for Your Care; Verifying Credentials of Treatment Providers**

All Providers available through the Services represent that they have degrees in the areas of psychology, psychiatry, marriage and family therapy, clinical social work, or counseling. WeCounsel attempts to confirm the credentials of all Treatment Providers and to validate that they are in good standing with their respective licensure board(s). However, WeCounsel is not responsible for credentialing Providers, makes no representation regarding the accuracy of any Provider's credentials, and expressly disclaims any liability for fraudulent credentials or claims by Treatment Providers. We highly recommend and it is your responsibility that you separately confirm that your Treatment Provider is in good standing with his or her respective licensing board(s).

## **21. Use of the Services by Children.**

The provision of online counseling services by Treatment Providers through the Services is available for use by children age 3 and above. However, all clients and end users under the age of 18 must have permission from the end user's parent or legal guardian and the client's parent or legal guardian must take part in each online consultation. If you register as the parent or legal guardian on behalf of a minor, you will be fully responsible for complying with our Terms and our Privacy Policy.

## **22. Restrictions on Conduct.**

The services may be used and accessed for lawful purposes only. You agree to abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Services. Any violation of these restrictions may result in immediate barring from the use of the services and/or further actions in the sole discretion of WeCounsel, including the cooperation with the appropriate legal authorities into any investigation and prosecution of your actions.

In addition, without limitation, you agree that you will not do any of the following while using or accessing the Services:

(a) transmit or upload any information for which you don't have the right to transmit, publish, copy, upload, or disseminate,

(b) upload, post, email or otherwise transmit any Content that infringes on the intellectual property rights or violates the privacy rights of any third party (including without limitation copyright, trademark, patent, trade secret, or other intellectual property right, or moral right or right of publicity);

(c) use the Services to collect or store personal data about other users without their express permission;

(d) knowingly include or use any false or inaccurate information in any profile;

(e) upload, post, email or otherwise transmit any unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, "pyramid schemes" or any other form of solicitation, as well as viruses or other computer code that may interrupt, destroy, limit the functionality of the Services, or interfere with the access of any other user to the Services;

(f) circumvent, disable, or otherwise interfere with security-related features of the services or features that prevent or restrict use or copying of any Content;

(g) use any meta tags or other hidden text or metadata utilizing a WeCounsel name, trademark, URL or product name;

(h) attempt to probe, scan or test the vulnerability of any WeCounsel system or network or breach or impair or circumvent any security or authentication measures protecting the Services;

(i) attempt to decipher, decompile, disassemble, reverse engineer, or otherwise attempt to discover or determine the source code of any software or any proprietary algorithm used to provide the services;

(j) use the services in any way that competes with WeCounsel, including, without limitation, pretexting or misrepresenting one's identity or posing as a current or prospective patient in order to solicit or recruit Treatment Providers, directly or indirectly; or

(k) encourage or instruct any other person or entity to do any of the foregoing.

### **23. Sexually Explicit Content.**

WeCounsel provides a platform for health professionals to provide tele-health and mental health services. We understand that by its very nature, often these services may contain content of a sexually explicit nature. You agree that the transmission of any content of a sexually explicit nature, whether via email, messaging, video-conferencing, or other form of transmission, in writing, or through voice communication, video, or photographs or illustrations of any kind, shall be restricted to use necessary by the Provider to provide actual treatment, consultation, therapy, or other legitimate means. The use of the services to transmit any information of a sexually explicit nature for any other purpose, including the use or exploitation of minors for a sexually explicit purpose, is expressly forbidden.

## **24. Termination; Cancellation.**

WeCounsel is continually evolving and innovating. We reserve the right to change our site or the Content we offer, and the products or services you may access at any time without notice. We may discontinue offering our Services or Site and we may suspend or terminate your right to use our Services or Site at any time, in the event that you breach these Terms, for any reason, or for no reason at all, in our sole discretion, and without prior notice to you. After such termination, WeCounsel will have no further obligation to provide the Services, except to the extent we are obligated to provide you access to your health records or Treatment Providers are required to provide you with continuing care under their applicable legal, ethical and professional obligations to you.

Upon termination of your right to use our Services or Site or our termination of the Services or Site, all licenses and other rights granted to you by these Terms will immediately terminate.

You may terminate your Account at any time and for any reason by sending WeCounsel notice in writing or through customer service. Upon any termination by you, your Account will no longer be accessible. Any cancellation request will be handled within 30 days of receipt of such a request by WeCounsel.

Your obligations under this agreement survive and extend past any termination or suspension of our services to you. Specifically, Section 15 (Ownership of Intellectual Property Rights), Section 17 (Third Party Websites; Interest-Based and Other Advertisements), Section 18 (Disclaimer of Warranties), Section 19 (Indemnification), Section 20 (Limitation of Liability), Section 22 (General Terms), Section 23 (Arbitration) and Section 24 (Governing Law and Forum for Disputes) shall survive and remain in full force and effect, but the provisions of Section 16 (Your License to Use the Services) shall be suspended, terminated or cancelled, as the case may be.

## **25. Payment Services.**

### **a) Subscription for Service Fees:**

Every credentialed provider in a Preferred plan will be charged \$14.99/month for use of the WeCounsel software and service. This price will stay in effect for the remainder of 2015. WeCounsel reserves the right to increase subscription fees after that time. All charges will be charged in US dollars.

- I. Providers can cancel their WeCounsel monthly subscription at any time, by contacting WeCounsel via email at [support@wecounsel.com](mailto:support@wecounsel.com) for direction OR by managing their plans in Account Settings.
- II. Payment for all services are payable upon registration or at the

relevant periodic payment date. You can pay subscription fees via credit or debit card. Your payment details will be encrypted to minimize the possibility of unauthorized access to and disclosure of your account details.

III. At the time of registration, you will be asked to provide your credit or debit card details. In the event that WeCounsel are unable at any time to obtain payment of any charges using such credit card details, WeCounsel may freeze your account until We have received settlement in full.

b) Payments & Disbursements:

WeCounsel collects payments from patients and disburses funds to the practitioner, minus any applicable fees, within seven business days of the 30th of the month of every month. Funds are disbursed via check payment or ACH wire transfer, or as indicated by the practitioner.

c) Connection Costs:

You agree to be solely responsible for all costs incurred by you to connect to the Service, including but not limited to obtaining and maintaining all telephone, computer and other equipment necessary.

d) Referrals:

You agree to immediately refer all clients who present with acute symptoms to a local emergency room.

During periods when you will not be available to provide scheduled services to clients via the Service (for instance, vacation, medical leave, family emergencies, etc.) you must provide a referral for each patient to another qualified provider on the Service.

You may have the ability to send a referral message and/or refer a patient to another registered and/or a non-registered Provider using the patient referral message template. By sending a patient referral message and/or attachments you represent and warrant that you have received the necessary consents from your patient as required by federal and state law, as well as any consents that may be required based upon applicable industry standard. You are responsible for confirming any information in a patient referral and/or attachments.

## **26. Ownership of Intellectual Property Rights.**

The information and content contained in this site, any information used in advertising for this Site, and any information that you may receive ("Content") are protected by U.S. and international copyright, trademark, and other laws. We

own or have the license to use all of the intellectual property rights relating to WeCounsel, the Services, the Site, and the Content, including, without limitation, all intellectual property rights protected as patent pending or patented inventions, trade secrets, copyrights, trademarks, service marks, trade dress, or proprietary or confidential information, whether or not they happened to be registered. You will not acquire any intellectual property rights in WeCounsel by your use of the Services or the Site. You only hold a non-exclusive license to use this information contained on the Site as indicated in Section 23 below.

## **27. License.**

WeCounsel grants you a limited, non-exclusive, non-transferable and revocable license, without the right to sublicense, to access and use the Services and to download and print any Content provided by WeCounsel solely for your personal and non-commercial purposes (or purposes as a Provider, as the case may be). You may not use, copy, adapt, modify, distribute, license, sell, transfer, publicly display, publicly perform, transmit, stream, broadcast, prepare derivative works based upon, or otherwise exploit the services or Content, except as expressly permitted in these Terms, and without WeCounsel's express prior written consent. No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by WeCounsel or its licensors, except for the licenses and rights expressly granted in these Terms. Unless otherwise expressly agreed in writing by WeCounsel, the Services are only permitted to be used within the United States of America.

## **28. Third-Party Websites; Advertisements.**

Links to third-party websites or resources and advertisements from third parties maybe available and visible on the Site. WeCounsel is not responsible or liable for the availability or accuracy of, and WeCounsel does not endorse, sponsor, or recommend such websites, resources, or third-party advertisements or the content, products, or services on or available from such websites, resources, or third-party advertisements. When we make available such third-party links, resources, and advertisements on the Site or through the Services, you must look solely to the third party with respect to the content, products, or services they provide. We do not endorse and are not responsible for any of the content, products, or services provided or advertised by others.

Your use of the websites or resources of third parties is at your own risk. WeCounsel and its affiliates will not be liable for any of your losses arising out of or relating to the websites or resources of third parties.

## **29. Disclaimer of Warranties.**

Your use of the Services and Content is at your sole discretion and risk. The Services and Content, and all materials, information, products and services included therein, are provided on an "AS IS" and "AS AVAILABLE" basis without

warranties of any kind.

WeCounsel and its licensors and affiliates expressly disclaim all warranties of any kind, express, implied, or statutory, relating to the services and content, including without limitation the warranties of title, merchantability, fitness for a particular purpose, non-infringement of proprietary rights, course of dealing, or course of performance. WeCounsel and its licensors and affiliates make no warranty that the content you access on our website or using our service satisfies the laws or regulations requiring the disclosure of information for prescription drugs.

In addition, WeCounsel and its licensors and affiliates disclaim any warranties regarding security, accuracy, reliability, timeliness, and performance of the services or that the services will be error free or that any errors will be corrected. No advice or information provided to you by WeCounsel will create any warrant that is not expressly stated in these terms of service.

We make no representations concerning, and do not guarantee, the accuracy of the services, including, but not limited to, any information provided through the services or their applicability to your individual circumstances. Our services and site content are developed for use in the United States and WeCounsel and its licensors and affiliates make no representation or warranty concerning the services or site content when they are used in any other country.

Some jurisdictions do not permit us to exclude warranties in these ways, so it is possible that these exclusions will not apply to our Agreement with you. In such event, the exclusions shall apply to the fullest extent permitted under applicable law.

### **30. Indemnification.**

You agree to forever indemnify, defend, and hold harmless WeCounsel, WeCounsel's licensors and affiliates and our respective directors, officers, employees, contractors, agents, and representatives, from and against any and all claims, causes of action, demands, liabilities, losses, costs or expenses (including, but not limited to, reasonable attorneys' fees and expenses) arising out of or relating to any of the following matters:

- (a) your access to or use of the Services, the Site, or the Content;
- (b) your violation of any of the provisions of these Terms of Service;
- (c) any activity related to your Account by you or any other person accessing the Site or Services through your account, including, without limitation, negligent or wrongful conduct; or
- (d) your violation of any third party right, including, without limitation, any intellectual property right, publicity, confidentiality, property or privacy

right.

WeCounsel reserves the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with us in asserting any available defenses.

### **31. Limitation of Liability**

In no event will WeCounsel or WeCounsel's licensors or affiliates be liable to you for any damages whatsoever, including without limitation, indirect, incidental, special, punitive or consequential damages, or lost profits, arising out of or in connection with your use of the services, the site, or the content, whether the damages are foreseeable and whether or not WeCounsel has been advised of the possibility of such damages in advance. If you are dissatisfied with the services, the site or the content, or the terms, your sole and exclusive remedy is to discontinue using the site.

Nothing herein shall limit the potential professional liability of our treatment providers or other licensed healthcare professional arising from or related to medical or mental health advice, diagnosis, or treatment they provide to you, except as provided under applicable state laws. In many jurisdictions, providers are required to report confidential information if they have reason to believe that a patient is likely to harm others or himself/herself. In no event shall WeCounsel be liable for the disclosure of your confidential information by a provider from whom you receive mental health services. WeCounsel is not liable to any person or user for any harm caused by the negligence or misconduct of a treatment provider providing mental health services. In no event will the cumulative liability of WeCounsel or WeCounsel's licensors or affiliates to you, whether in contract, tort, or otherwise, exceed \$1,000.00.

Any claim or cause of action arising out of or relating to your use of the services, the site or the content or our relationship with you, regardless of theory, must be brought within one (1) year after the occurrence of the event giving rise to the claim or cause of action or be forever barred.

Some jurisdictions do not permit us to limit our liability in these ways, so it is possible that these limitations will not apply to our Agreement with you. In such event, the limitations shall apply to the fullest extent permitted under the applicable law.

### **32. Errors and Inaccuracies.**

The information on the Site including, without limitation, information regarding pricing, may contain typographical errors or other errors or inaccuracies, and may not be complete or current. WeCounsel reserves the right to correct any errors, inaccuracies, or omissions and to change or update information at any time without prior notice to you. WeCounsel will not, however, guarantee that any such errors, inaccuracies, or omissions will be corrected. WeCounsel reserves

the right to refuse to fill any orders or provide Services that are based on inaccurate or erroneous information on the Site, including, without limitation, incorrect or out-of-date information regarding pricing, payment terms, or for any other lawful reason.

### **33. General Terms.**

These Terms of Service constitute the entire agreement between you and us relating to our Services, the Site, and the Content, replacing any prior or contemporaneous agreements, whether written or oral, unless you have signed a separate written agreement with us relating to our Services, the Site, or the Content. If there is any conflict between the Terms and a separate signed written agreement between you and us relating to our Services, the Site, or the Content, the signed written agreement will control.

Our licensors may be entitled to enforce this agreement as third-party beneficiaries. There are no other third-party beneficiaries to this agreement.

The failure by you or us to enforce any provision of the Terms will not constitute a waiver. If any court of law, having the jurisdiction to decide the matter, rules that any provision of the Terms is invalid or unenforceable, then the invalid or unenforceable provision shall be removed from the Terms or reformed by the court and given effect so as to best accomplish the essential purpose of the invalid or unenforceable provision, and all of the other provisions of the Terms shall continue to be valid and enforceable. Nothing contained in these Terms of Service shall limit the ability of a party to seek an injunction or other equitable relief without posting any bond. The titles of the Sections of the Terms are for convenience only and shall have no legal or contractual effect.

### **34. Arbitration.**

For any claim (excluding claims for injunctive or other equitable relief) where the total amount of the award sought is less than \$10,000.00 USD, the party requesting relief may elect to resolve the dispute in a cost effective manner through binding non-appearance-based arbitration. If a party elects arbitration, that party will initiate such arbitration through JAMS. The parties must comply with the following rules:

- (a) The arbitrator shall be selected from JAMS and the arbitration shall be conducted in accordance with JAMS' Comprehensive Arbitration Rules and Procedures, except as otherwise specified below;
- (b) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, the specific manner shall be chosen by the party initiating the arbitration;
- (c) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and

(d) any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

Any dispute, controversy, or disagreement arising out of or relating to these Terms, the breach thereof, or the subject matter thereof, where the total amount of the award sought is \$10,000.00 USD or greater, shall be settled exclusively by binding arbitration. The arbitrator shall be selected from JAMS and the arbitration shall be conducted in accordance with JAMS' Comprehensive Arbitration Rules and Procedures. The arbitration shall be held in Hamilton County, Tennessee, unless the parties mutually agree to have such proceeding in some other locale. To the extent of the subject matter of the arbitration, the arbitration shall be binding not only on all parties to these Terms, but on any other entity controlled by, in control of or under common control with the party to the extent that such affiliate joins in the arbitration, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

### **35. Governing Law and Forum for Disputes.**

These terms of service and our relationship with you shall be governed by the laws of the state of Tennessee, excluding its choice of laws rules. You and WeCounsel each irrevocable agrees that the exclusive venue for any action or proceeding arising out of or relationship to these terms of service or our relationship with you, regardless of theory, shall be the U.S. District Court for the Eastern District of Tennessee, or the State Courts located in Hamilton County, Tennessee. You and WeCounsel each irrevocably consents to the personal jurisdiction of these courts and waives any and all objections to the exercise of jurisdiction by these courts and to this venue. Notwithstanding the foregoing, however, you and WeCounsel agree that WeCounsel may commence and maintain an action or proceeding seeking injunctive or other equitable relief in any court of competent jurisdiction.

### **36. Changes to These Terms.**

We reserve the right to change our Terms at any time. Any changes that we make will become a part of our agreement with you when they are posted to our Site. Your continued use of our Services or the Site will constitute your agreement to the changes we have made. The last date these Terms were revised is set forth at the end of this document.

### **37. Payments.**

ALL PAYMENTS MADE TO WECOUNSEL ARE FINAL. WECOUNSEL HAS NO RETURN POLICY.

### **38. Contact Us: [info@wecounsel.com](mailto:info@wecounsel.com)**

WeCounsel Solutions, LLC  
1333 Brow Estates Drive

Signal Mountain, TN 37377

**EXHIBIT A: BUSINESS ASSOCIATE AGREEMENT**

**Business Associate Agreement**

THIS BUSINESS ASSOCIATE AGREEMENT (the “Agreement”) is effective as of (the “Agreement Effective Date”) by and between (“Covered Entity”) and WeCounsel Solutions, LLC (“Business Associate”).

WHEREAS, Covered Entity has engaged Business Associate to perform tele-health and video conferencing platform and services;

WHEREAS, Covered Entity possesses Individually Identifiable Health Information that is protected under HIPAA (as hereinafter defined) and the HIPAA Regulations (as hereinafter defined), and is permitted to use or disclose such information only in accordance with HIPAA and the HIPAA Regulations;

WHEREAS, Business Associate may receive such information from Covered Entity, or create and receive such information on behalf of Covered Entity, in order to perform certain of the services or provide certain of the goods, or both; and

WHEREAS, Covered Entity wishes to ensure that Business Associate will appropriately safeguard Individually Identifiable Health Information;

NOW THEREFORE, Covered Entity and Business Associate agree as follows:

**Definitions**

Catch-all definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

(a) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean WeCounsel Solutions, LLC.

(b) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement shall mean Mental Health Professional.

(c) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

### **Obligations and Activities of Business Associate**

Business Associate agrees to:

(a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;

(b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;

(c) Report to covered entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;

(d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;

(e) Make available protected health information in a designated record set to the Covered Entity as necessary to satisfy covered entity's obligations under 45 CFR 164.524;

(f) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526;

(g) Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy covered entity's obligations under 45 CFR 164.528;

(h) To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and

(i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

## **Permitted Uses and Disclosures by Business Associate**

(a) Business associate may only use or disclose protected health information as necessary to perform the services set forth in Service Agreement and according to the terms and conditions of the use of Business Associate's services.]

(b) Business associate may use or disclose protected health information as required by law.

(c) Business associate agrees to make uses and disclosures and requests for protected health information consistent with covered entity's minimum necessary policies and procedures.

(d) Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity

(e) Business associate may disclose protected health information for the proper management and administration of business associate or to carry out the legal responsibilities of the business associate, provided the disclosures are required by law, or business associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies business associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(f) Except as otherwise limited in this Agreement, Business Associate may use protected health information ("PHI") to provide Data Aggregation services to covered entity as permitted by 45 C.F.R. §164.504(e)(2)(i)(B). Data Aggregation services involve the combining by BA of (a)PHI with (b) Protected Health Information received by BA in its capacity as a business associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective Covered Entities.

(g) Business Associate will not receive direct or indirect remuneration in exchange for any PHI unless a HIPAA-compliant authorization is obtained that includes information with regards to future sales. PHI may be sold for the purposes of public health, research or treatment, merger or sale of the entity or service payments. Limited marketing communications may be made by the Business Associate on behalf of the covered entity so long as a HIPAA-complaint authorization is obtained.

## **Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions**

(a) Covered entity shall notify business associate of any limitation(s) in the notice of privacy practices of covered entity under 45 CFR 164.520, to the extent that

such limitation may affect business associate's use or disclosure of protected health information.

(b) Covered entity shall notify business associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect business associate's use or disclosure of protected health information.

(c) Covered entity shall notify business associate of any restriction on the use or disclosure of protected health information that covered entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect business associate's use or disclosure of protected health information.

### **Safeguards, Reporting, Mitigation and Enforcement**

(a) *Safeguards.* Business associate shall use any and all appropriate administrative, physical and technical safeguards to (i) prevent use or disclosure of covered entity's PHI otherwise than as provided by this Agreement, and (ii) protect the confidentiality, integrity and availability of any electronic PHI.

(b) *BA's Agents.* Business associate shall not disclose PHI to any agent or subcontractor of business associate except with the prior written consent of covered entity. BA shall ensure that any agents, including subcontractors, to whom it provides PHI, agree in writing to be bound by the same restrictions and conditions that apply to business associate with respect to such PHI; provided, however, that business associate shall not disclose or provide access to covered entity's PHI to any subcontractor or agent without the prior consent of covered entity.

(c) *Reporting.* Business associate shall report to covered entity as soon as practicable of business associate becoming aware of any use or disclosure of covered entity's PHI in violation of this Agreement or applicable law. Business associate shall also report to covered entity within the same time-frame any Security Incident of which it becomes aware.

(d) *Mitigation.* Business associate shall have procedures in place to mitigate, to the maximum extent practicable, any deleterious effect from any use or disclosure of covered entity's PHI in violation of this Agreement or applicable law.

(e) *Sanctions.* Business associate shall have and apply appropriate sanctions against any employee, subcontractor, or agent who uses or discloses covered entity's PHI in violation of this Agreement or applicable law.

### **Term and Termination**

(a) *Term.* The Term of this Agreement shall be effective as of acceptance of terms and shall terminate on deactivation or on the date covered entity terminates for cause as authorized in paragraph (b) of this Section, whichever is

sooner.

(b) Termination for Cause. Business associate authorizes termination of this Agreement by covered entity, if covered entity determines business associate has violated a material term of the Agreement and business associate has not cured the breach or ended the violation within thirty (30) days.

(c) Obligations of Business Associate upon Termination. Upon termination of this Agreement for any reason, business associate, with respect to protected health information received from covered entity, or created, maintained, or received by business associate on behalf of covered entity, shall:

1. Retain only that protected health information which is necessary for business associate to continue its proper management and administration or to carry out its legal responsibilities;
2. Return to covered entity the remaining protected health information that the business associate still maintains in any form;
3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as business associate retains the protected health information;
4. Not use or disclose the protected health information retained by business associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at paragraphs (e) and (f) above under "Permitted Uses and Disclosures By Business Associate" which applied prior to termination; and
5. Return to covered entity the protected health information retained by business associate when it is no longer needed by business associate for its proper management and administration or to carry out its legal responsibilities.

(d) Survival. The obligations of business associate under this Section shall survive the termination of this Agreement.

### **Miscellaneous**

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the

requirements of the HIPAA Rules and any other applicable law.

(c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.