

PHRQL, Inc.
CONNECT & COACH TERMS AND CONDITIONS

These Connect & Coach terms and conditions (these "Terms and Conditions") are entered into on the date of acceptance. BY CLICKING ON THE BUTTONS LABELED "AGREE" AFTER THE CONNECT & COACH TERMS AND CONDITIONS, THE AUTHORIZED USER AGREES TO BE BOUND BY THESE TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, PLEASE CLICK ON THE BUTTON LABELED "DO NOT AGREE". IF YOU INDICATE THAT YOU DO NOT AGREE, YOU WILL NOT BE ALLOWED TO ACCESS THE SERVICE.

"Connect & Coach" provides the subscriber (the "Authorized User") with access to a software-based, hosted electronic records management service (the "Service"). Access to the Service is conditioned on compliance with these Terms and Conditions.

1. The Service. PHRQL hereby grants to the Authorized Users access to the Services and the Authorized User accepts such access to the Services on a non-exclusive basis, subject to these Terms and Conditions. The Authorized User's rights and access to the Services: (a) are non-assignable, non-transferable, non-sublicenseable; (b) are strictly limited to "Sites" that the Authorized User has paid to access; and (c) are strictly limited to the Authorized User's internal business purposes or for the Authorized User's personal use, as applicable. PHRQL and its licensors retain all ownership, intellectual property rights and all other right, title and interest in and to the Services, and underlying software and technology and in all copies, improvements, enhancements, modifications and derivative works thereof, including without limitation, all patent, copyright, trade secret and trademark rights. PHRQL reserves all rights not expressly granted to Authorized Users hereunder. To the extent the Authorized User acquires any rights to the Services, or any underlying software, technology or the Documentation (as defined below), the Authorized User hereby assigns all of those rights to PHRQL or its licensors, as applicable. With respect to any Authorized User, PHRQL reserves the right, without notice, (i) to revoke any User Identity (user name together with a password); (ii) to require the Authorized User to change User Identities; or (iii) to deny, limit or terminate access to the Service or any portion thereof, whether for security purposes, for violation of these Terms and Conditions, or for any other reason.

Except for those rights and licenses expressly granted by PHRQL to the Authorized User, PHRQL does not grant any other express or implied right(s) to the Authorized User. PHRQL and all other names, logos, and icons identifying PHRQL's products and services are proprietary marks of PHRQL and its affiliates, and any use of such marks without the express written permission of PHRQL is strictly prohibited. Other product and company names mentioned on the Service may be the marks of their respective owners.

2. Term and Termination; Fees. The Services shall be available to the Authorized User, upon the Authorized User's agreement to these Terms and Conditions and payment of the applicable fees (the "Fees"). The Services shall remain available for the initial term, as indicated by the Authorized User, (the "Initial Term") or until otherwise terminated as provided in these Terms and Conditions. The Services will automatically renew for the same duration as the Initial Term (each a "Renewal Term" and together with the Initial Term is hereinafter referred to as the "Term") unless the Authorized User provides PHRQL at least fifteen (15) days' written notice prior to the end of the then current Term and in the event that PHRQL desires to discontinue providing the Services, PHRQL will provide written notice to the Authorized User at least sixty (60) days prior to the end of the then current Term. If the Authorized User fails to pay any amount when due, PHRQL may terminate the Authorized User's access to the Services. If the Services are terminated for failure of the Authorized user to pay the Fees, the Authorized User shall be responsible for all late payments and interest at the rate of one and one half percent (1½%) per month, but not to exceed the maximum allowed by law, on such delinquent amount. Authorized User will reimburse PHRQL for reasonable costs (including attorneys' fees) relating to collection of past due amounts. All Fees are subject to change upon prior notice to the Authorized User. PHRQL may terminate the Authorized Users access to the Services if the Authorized User breaches these Terms and Condition, including without limitation the Documentation.

3. Obligations of Authorized User. The Authorized User will use the Services pursuant to these Terms and Conditions and PHRQL's written documentation (the "Documentation"). The Authorized User is solely responsible for ensuring that Authorized Users secure their User Identities and do not share such User Identities with others. PHRQL will assume that any person using the Service under a given User Identity is the individual associated with such User Identity in PHRQL's records and will grant access to data, records and other information and capabilities accordingly. Using, or permitting the use of, the Service under User Identities not actually assigned to a particular individual is prohibited. The Authorized User agrees that the Service will be used solely for the purposes and functions contemplated in the Documentation and otherwise in these Terms and Conditions and shall refrain from using the Service for any other Prohibited Conduct. "Prohibited Conduct" shall include, but is not limited to, using or permitting the use of the Services at Sites other than those expressly authorized, permitting or facilitating use of the Services by any party other than the Authorized Users, sublicensing, timesharing, renting, providing service bureau services based on the Services, permitting or facilitating third parties in evaluating the Services, and tampering with or attempting to access other user accounts or information of other users. Authorized user shall be strictly liable to PHRQL for, and shall indemnify, defend and hold PHRQL harmless from and against, any losses, claims or other damages it may incur as a result of Prohibited Conduct by the Authorized User.

The Authorized User represents, warrants and covenants to PHRQL that all materials provided by the Authorized User to PHRQL or uploaded, stored, processed, included and/or integrated in the Service, including without limitation data and/or information forms; Data (as defined below); and other data input by or on behalf of the Authorized Users to the Service: (i) shall not infringe on the intellectual property rights of any third party or any rights of publicity or privacy and the Authorized User either owns or has secured all rights, permissions, consents and/or authorizations necessary for the use, processing, modification by and of PHRQL and Authorized Users as contemplated herein; and (ii) shall not violate any law, statute, ordinance, or regulation (including without limitation the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and the laws and regulations governing export control, unfair competition, antidiscrimination, or false advertising).

The Authorized User acknowledges and agrees that any questions, comments, suggestions, ideas, feedback or other information about the Services ("Feedback") shall become the sole property of PHRQL. PHRQL shall own exclusive rights, including all intellectual property rights, and shall be entitled to the unrestricted use and dissemination of Feedback for any purpose, commercial or otherwise, without acknowledgment, attribution or compensation to the Authorized User or any third party, including without limitation the right to develop derivative works or new

products or services and to register applicable Intellectual Property Rights in Feedback or derivative works, products and services based on Feedback in PHRQL's own name.

Authorized User's computer systems must meet the minimum computing requirements as defined in PHRQL's then-current Documentation. Authorized User is responsible for all Internet, communication and other costs associated with the use of the Service.

4. Data. Authorized User shall hold all right, title and interest in and to the Data; provided however PHRQL is granted: (a) a limited, fully-paid, royalty free, worldwide, non-exclusive, irrevocable, right and license to use, reproduce, modify, adapt, enhance, improve, create derivative works of, publish, edit, translate, distribute, publicly perform, and otherwise display the Data: (i) for the benefit of Authorized Users, and (ii) for the purpose of performing the Services; (b) a limited, perpetual, irrevocable, fully-paid, royalty free, worldwide, non-exclusive, right and license, to use, reproduce, modify, adapt, enhance, improve, create derivative works of, publish, edit, translate, distribute, publicly perform, display and otherwise exploit "De-identified Data" (as defined below); and to create Derivatives (as defined below) of Data and the right to own all right, title and interest in and to such Derivatives in PHRQL's own name. All Data will be used by PHRQL in compliance with PHRL's stated privacy policy. PHRQL will treat patient information and health records input into the Service by Authorized Users as confidential and comply with all other mutually agreed upon terms related to such patient information and health records. The foregoing notwithstanding, the Authorized User acknowledges that the Internet is not an inherently secure means of data communication and while PHRQL has taken the steps described in these Terms and Conditions to secure storage of Data and access to the Service and Data, except as expressly agreed by PHRQL in a mutually executed, written agreement, PHRQL shall have no liability for acts beyond its reasonable control including without limitation Authorized User negligence with respect to responsible practices for maintaining confidentiality of User Identities, or errors in limiting access to the Service.

"Data" shall mean all personally identifiable health records, customer transactions, purchase and other data provided by the Authorized Users to PHRQL via the Services; provided, however Data hereunder shall not include: (i) information which is or becomes generally known to the public through no act or omission by PHRQL; and (ii) information which has been or hereafter is provided directly by an Authorized User to PHRQL by means other than Services provided by PHRQL and information which has been or hereafter is lawfully obtained by a party from a source other than the other party or its Affiliates (as defined below) or their respective officers, directors, employees, equity holders, or agents, so long as, in the case of information obtained from a third party, such third party was or is not, directly or indirectly, subject to an obligation of confidentiality owed to the other party or any of its Affiliates or their respective officers, directors, employees, equity holders, or agents at the time such Confidential Information was or is disclosed to the other party.

"De-identified Subscriber Data" shall mean a modified version of the Data from which PHRQL has removed references to the Authorized User in compliance with the HIPAA Privacy Rule.

"Derivatives" means any adaptations, embodiments, derivatives and/or derivative works of Data, including without limitation results, findings and artifacts created, derived and/or extracted by PHRQL from Data; provided, however in no event will Derivatives include: (i) Data in the exact form as provided by the Authorized Users to PHRQL; (ii) the name or street address of the individual data subject; and (iii) any reference to the Authorized user, its trade names or trademarks, and/or any information identifying the Authorized User as the data source.

5. Warranties and Limitation of Liability. PHRQL warrants that for thirty (30) days after access to the Services, the Services will conform in all material respects to the Documentation. Notwithstanding anything to the contrary set forth herein, PHRQL DOES NOT WARRANT THAT SERVICES WILL PERFORM UNINTERRUPTED OR ERROR FREE OR THAT PHRQL WILL CORRECT ALL ERRORS. If the Service fail to meet the warranty and PHRQL receives written notice from the Authorized User within the thirty (30) days describing in reasonable detail how the Service failed to conform to the warranty, PHRQL will, at its option, use commercially reasonable efforts to repair or replace the non-conforming aspects of the Service. THE REMEDIES CONTAINED IN THIS SECTION WILL BE THE AUTHORIZED USER'S SOLE AND EXCLUSIVE REMEDY AND WILL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES THE AUTHORIZED USER MAY HAVE AGAINST PHRQL WITH RESPECT TO THE NON-CONFORMANCE OF THE ABOVE WARRANTY.

EXCEPT AS EXPRESSLY SET FORTH ABOVE, ALL SERVICES PROVIDED BY PHRQL ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. PHRQL DISCLAIMS AND THE AUTHORIZED USER HEREBY WAIVES ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, AVAILABILITY, TITLE, NONINFRINGEMENT, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR INTENDED USE, ANY WARRANTY OF COMPATIBILITY, OR ANY LIABILITY IN NEGLIGENCE, TORT, STRICT LIABILITY OR OTHERWISE, WITH RESPECT TO THE SERVICE.

THE AUTHORIZED USER ACKNOWLEDGES AND AGREES THAT THE SERVICE DOES NOT MAKE CLINICAL, MEDICAL OR OTHER DECISIONS AND IS NOT A SUBSTITUTE FOR COMPETENT, PROPERLY TRAINED AND KNOWLEDGEABLE STAFF WHO BRING PROFESSIONAL JUDGMENT AND ANALYSIS TO THE INFORMATION PRESENTED BY THE SERVICE AND THAT AUTHORIZED USER IS SOLELY RESPONSIBLE FOR OBTAINING ANY NECESSARY CONSENT FOR USE OF AUTHORIZED USER INFORMATION, AND DETERMINING THE DATA NECESSARY FOR AUTHORIZED USERS TO MAKE DIAGNOSTIC AND OTHER DECISIONS USING THE SERVICE, AS WELL AS FOR COMPLYING WITH ALL LAWS, REGULATIONS AND LICENSING REQUIREMENTS APPLICABLE TO AUTHORIZED USER'S OFFER, PROVISION AND/OR DELIVERY OF HEALTHCARE AND OTHER SERVICES. AUTHORIZED USER IS SOLELY RESPONSIBLE FOR THE ACCURACY, RELIABILITY, CURRENTNESS AND CONTENT OF ALL DATA INPUT TO THE SERVICES. PHRQL DOES NOT WARRANT THE AVAILABILITY, ACCURACY, RELIABILITY, CURRENTNESS AND CONTENT OF ANY DATA OR INFORMATION DOWNLOADED, OR OTHERWISE VIEWED, OBTAINED OR ACQUIRED THROUGH THE USE OF THE SERVICES. AUTHORIZED USER ACKNOWLEDGES THAT ANY DATA OR INFORMATION DOWNLOADED OR OTHERWISE VIEWED, OBTAINED OR ACQUIRED THROUGH THE USE OF THE SERVICES ARE AT THE AUTHORIZED USER'S SOLE RISK AND DISCRETION AND PHRQL WILL NOT BE LIABLE OR RESPONSIBLE FOR ANY DAMAGE TO THE AUTHORIZED USERS OR ITS PROPERTY. PHRQL SHALL NOT BE LIABLE TO AUTHORIZED USERS OR ANY OTHER THIRD PARTIES NOR DEEMED TO BE IN DEFAULT OF THESE TERMS AND CONDITIONS, ON ACCOUNT OF ANY DELAYS, ERRORS, MALFUNCTIONS, COMPATIBILITY PROBLEMS OR BREAKDOWNS WITH RESPECT TO THE SERVICE, PHRQL EQUIPMENT, DATA OR SERVICES PROVIDED HEREUNDER.

IN NO EVENT WILL EITHER PARTY OR ITS RESPECTIVE LICENSORS OR SUPPLIERS HAVE ANY LIABILITY FOR ANY INCIDENTAL, SPECIAL, STATUTORY, INDIRECT OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF PROFITS, REVENUE, DATA, TOLL FRAUD, OR COST OF COVER. THE LIABILITY OF EITHER PARTY FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH ANY SERVICES OR DELIVERABLES PROVIDED UNDER THESE TERMS AND CONDITIONS HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE, AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE TO THE PARTIES FAIL OF THEIR ESSENTIAL PURPOSE WILL NOT EXCEED AN AMOUNT EQUAL TO THE AMOUNT OF THE SUMS PAYABLE FOR THE SERVICES MOST DIRECTLY RELATED TO THE CLAIM. THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY FOR EACH AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS WILL NOT EXCEED THE GREATER OF: (i) AN AMOUNT EQUAL TO THE AGGREGATE TOTAL AMOUNT OF ALL SUMS PAID OR PAYABLE UNDER THESE TERMS AND CONDITIONS IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE CLAIM; OR (ii) \$20,000. THESE LIMITATIONS OF AGGREGATE LIABILITY WILL NOT APPLY TO CONTRACTUAL INDEMNIFICATION OBLIGATIONS PROVIDED IN THESE TERMS AND CONDITIONS.

6. Indemnification. The Authorized user shall indemnify, defend and hold harmless PHRQL, its past and present directors, affiliates, partners, officers, employees and agents from and against all liabilities, damages and expenses, claims for damages, suits, proceedings, recoveries, judgments or executions (including but not limited to litigation costs, expenses, and reasonable attorneys' fees) which may be suffered by, accrued against, charged to or recoverable from PHRQL, its past and present directors, affiliates, partners, officers, employees or agents by reason of or in connection with the Authorized User's use of the Service, the Authorized User's performance or failure to perform, or improper performance of any of the Authorized User's obligations.

7. Modifications. PHRQL retains the right, in its sole discretion, to enhance, modify or alter the operation of the Service at any time and further retains the right to make such enhancements, modifications or alterations ("PHRQL Modifications"). The Authorized User shall only receive such PHRQL Modifications if the Authorized User pays any such additional fees that may be associated with these PHRQL modifications.

8. Excusable Delay. PHRQL will use reasonable efforts to keep the Service available; however, PHRQL is not responsible for any loss or unavailability of the Service that results from a cause over which it does not have direct control, including, but not limited to, failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems, computer viruses, unauthorized access, theft, operator errors, severe weather, earthquakes, or natural disasters, strikes or other labor problems, wars, or governmental restrictions. Neither party will be deemed in default of these Terms and Conditions as a result of a delay in performance or failure to perform its obligations caused by acts of God or governmental authority, strikes or labor disputes, fire, acts of war, failure of third party suppliers, or for any other cause beyond the control of that party.

9. Confidentiality. As used in these Terms and Conditions, "**Confidential Information**" shall mean all information concerning or related to the Data (in the case of the Authorized User), (and in the case of PHRQL) the Service, the PHRQL tools, methodology and any other component or aspect of the Service, and the related technology, operations, or prospects of each party, regardless of the form in which such information appears and whether or not such information has been reduced to a tangible form, and shall specifically include (a) all information regarding customers, suppliers, distributors, sales representatives, business partners, and licensees of each party, whether present or prospective, except for such information regarding such entities which may be disclosed by the owner of such information to the general public in the ordinary course of business, (b) all inventions, discoveries, trade secrets, processes, techniques, methods, formulae, ideas, and know-how relating to the Service, and (c) all financial or business information regarding each party and its Affiliates; provided, that the Confidential Information shall not include (x) information which is or becomes generally known to the public through no act or omission by a party or its Affiliates and (y) information which has been or hereafter is lawfully obtained by a party from a source other than the other party or its Affiliates or their respective officers, directors, employees, equity holders, or agents, so long as, in the case of information obtained from a third party, such third party was or is not, directly or indirectly, subject to an obligation of confidentiality owed to the other party or any of its Affiliates or their respective officers, directors, employees, equity holders, or agents at the time such Confidential Information was or is disclosed to the other party. As used herein, an "**Affiliate**" of a party shall mean an entity which controls, is controlled by or is under common control with such party, and the term "**control**" shall mean, with respect to any entity, the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such entity, whether through ownership of voting securities, by contract or otherwise.

Except as otherwise permitted below, each party agrees that it will not, without the prior written consent of the other party, disclose or use for its own benefit any Confidential Information of the other party.

Each of the parties shall be permitted to: (i) disclose Confidential Information of the other party to its officers, directors, employees, and agents, but only to the extent reasonably necessary in order for each party to perform its obligations hereunder, and each party shall take all such action as shall be necessary or desirable in order to ensure that each of such persons maintains the confidentiality of any Confidential Information that is so disclosed; and (b) disclose Confidential Information of the other party to the extent, but only to the extent, required by law; provided, that prior to making any disclosure pursuant to this subsection, the party required to make such disclosure (the "**Disclosing Party**") shall notify the other party (the "**Affected Party**") of the same, and the Affected Party shall have the right to participate with the Disclosing Party in determining the amount and type of Confidential Information of the Affected Party, if any, which must be disclosed in order to comply with applicable law. Authorized User shall pay all costs and expenses, including reasonable attorneys' fees, incurred by PHRQL in connection with any subpoena directed to PHRQL with respect to Confidential Information of the Authorized user.

Each party acknowledges and agrees that the other party would be irreparably damaged in the event that the provisions of these Terms and Conditions relating to Confidential Information are not performed by each party in accordance with their specific terms or are otherwise breached. Accordingly, each party agrees that the other party shall be entitled to an injunction or injunctions to prevent breaches of these Terms and Conditions and shall have the right to specifically enforce these Terms and Conditions and the terms and provisions hereof in addition to any other remedy available at law or in equity.

10. General Provisions. No waiver by either party of any provision or any breach of these Terms and Conditions constitutes a waiver of any other provision or breach of these Terms and Conditions and no waiver shall be effective unless made in writing. The right of either party to require strict performance and observance of any obligations hereunder shall not be affected in any way by any previous waiver, forbearance or course of dealing. The Authorized User shall not sell, assign, license, sub-license, or otherwise convey in whole or in part to any third party these Terms and Conditions or the services provided hereunder without the prior written consent of PHRQL. These Terms and Conditions will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to any principles of conflicts of laws. Any matter and/or dispute relating in any way to the Services, including compliance with these Terms and Conditions, shall be submitted to binding confidential arbitration in Pittsburgh, Pennsylvania as provided herein. Notwithstanding the foregoing, to the extent the Authorized User has in any manner violated or threatened to violate PHRQL's intellectual property rights, PHRQL may seek injunctive or other appropriate relief in the state courts of the Commonwealth of Pennsylvania or the United States District Court for the Western District of Pennsylvania, and the Authorized User consents to exclusive personal jurisdiction and venue in such courts. Arbitration shall be conducted under the prevailing rules of the American Arbitration Association. The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction. In the event, for any reason, arbitration is not permitted by applicable law, the parties waive all rights to trial by jury and waive all right to commence or participate in any class action, consolidated, representative or class proceedings. The Service is controlled and operated by PHRQL from its offices within the United States. PHRQL makes no representation that materials in the Service are appropriate or available for use in other locations, and access to them from territories where any of the contents of this Service are illegal is prohibited. Those who choose to access this Service from other locations do so at their own risk and PHRQL is not responsible for their compliance with applicable local laws. If any of these Terms and Conditions 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 these Terms and Conditions shall continue in effect. These Terms and Conditions and the Documentation and other expressly designated legal notices, rules or other terms located on particular pages of the Site constitute the final and complete understanding and agreement between the parties concerning the subject matter hereof. Any prior or concurrent agreements, understandings, negotiations or communications written or otherwise are deemed superseded by these Terms and Conditions. These Terms and Conditions may be modified by PHRQL upon notice to the Authorized User.