

## TERMS AND CONDITIONS OF USE

THESE TERMS AND CONDITIONS OF USE (these “**Terms of Use**”) establish the terms and conditions applicable to the App (defined below) you are preparing to download, access and display. As used in these Terms of Use, the terms: “**you**”, “**your**”, and their variants mean the corporation or other entity that has requested App Rights (defined below) from Research Hive, LLC and further includes all persons, whether employees or individual contractors, acting for, or on behalf or with the apparent authority of, such entity; “**Research Hive**”, “**we**”, “**us**” and “**our**” means Research Hive, LLC, having a place of business at 25568 Genesee Trail Road, Golden, CO 80401. Some words in these Terms of Use are capitalized when grammatical rules would not require. These words have, in both their singular and plural forms, the definitions given to them in the Section in which they first appear as indicated by bold type. The English language version of these Terms of Use is the controlling version regardless of any translation you may attempt.

### 1. This is a Contract.

These Terms of Use, as well as our [privacy statement](#) (the “**Privacy Statement**”), the Business Associate Agreement in **Attachment A** and the Data Processing Addendum in **Attachment B** are a legally enforceable contract between you and Research Hive. The App and any other products and services we promote through our website, as well as via certain off-line means, are governed by these Terms of Use.

**IMPORTANT NOTE TO BE READ BEFORE DOWNLOADING, INSTALLING OR USING THE APP. THESE TERMS OF USE ALSO CONTAIN AN ARBITRATION AGREEMENT AND CLASS ACTION WAIVER WHICH CAN BE FOUND [HERE](#), A BUSINESS ASSOCIATE AGREEMENT WHICH CAN BE FOUND [HERE](#) AND A DATA PROCESSING ADDENDUM WHICH CAN BE FOUND [HERE](#). PLEASE READ THESE TERMS OF USE AND EACH ATTACHMENT CAREFULLY. BY DOWNLOADING AND USING OUR APP YOU ARE CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THE CONTRACT FORMED BY THESE TERMS OF USE AND ACKNOWLEDGING THAT YOU HAVE THE AUTHORITY TO ENTER INTO THESE TERMS OF USE AND BIND YOURSELF OR YOUR COMPANY, AS APPLICABLE, TO THIS CONTRACT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THESE TERMS OF USE, WE ARE UNWILLING TO PROVIDE YOU ACCESS AND APP RIGHTS TO THE APP, IN WHICH EVENT DO NOT CLICK ACCEPTANCE OF THESE TERMS OF USE AND STOP ANY DOWNLOAD OR INSTALL PROCESS.**

### 2. Your Rights and Obligations.

(a) Mobile Application. To connect to our clinical research platform and access and interact with its features and functions and online portals, you need to download to your mobile device or other hardware, the clinical research software application we make available for that purpose (the software application and all such features, functions, and related portals are referred to collectively as, the “**App**”). Subject to the terms and conditions of these Terms of Use, we grant you, during the App Rights Term (defined below), a personal, revocable, non-exclusive, non-assignable, non-sublicenseable, non-transferable right to permit your: (i) Administrators to access the App and create and edit security profiles and configure App parameters for Business Users; and (ii) Business Users to download, install, and use the App, including display of its graphical user interface, to execute the applicable features and functions of the App and to display and print the App’s documentation all within the configurations and parameters set by your Administrators (collectively, “**App Rights**”). The App Rights apply to new App versions we provide, though we may request re-confirmation of your assent if a new version requires us to modify these Terms of Use. The App also may use lock-out codes or other rights management features to prevent unauthorized use. As used herein, “**Administrators**” means those employees or independent contractors you designate to have the greater, configuration and parameterization App Rights we grant to such category of users; and “**Business Users**” means those employees or independent contractors designated by your Administrators to have the limited App Rights we grant to such category of users.

(b) Conditions and Restrictions. The use described by the App Rights is the only acceptable use of the App. Among your other obligations, you are required to make sure you don't use the App for, or in connection with:

- reverse engineering, making machine code human readable, or creating derivative works or improvements;
- scraping, crawling, downloading, screen-grabbing, or otherwise copying and/or transmitting it in any way we haven't specifically permitted;
- commercially exploiting or providing it to third parties (other than Administrators and Business Users);
- introducing, transmitting, or storing viruses or other malicious code;
- interfering with its security or operation;
- framing or mirroring it;
- creating, benchmarking, or gathering intelligence for a competitive offering;
- removing, modifying, or obscuring proprietary rights notices on it;
- defaming or harassing anyone;
- infringing another party's intellectual property rights, including failing to obtain permission to upload/transfer/display works of authorship;
- intercepting or expropriating data; and/or
- spamming, spoofing, or otherwise misrepresenting transmission sources.

(c) App Stores; Mobile OS Provider. If you download the App from an app store or other platform operated by a Mobile OS Provider, you acknowledge and agree that your App Rights may only be exercised on the mobile device that you own or control and as permitted by the applicable App Store Rules; and that the Mobile OS Provider is not a party to these Terms of Use, and has no responsibility for the App, including no obligation to provide maintenance and support or address infringement or other claims relating to the App, whether for infringement or otherwise. As used herein, "**App Store Rules**" means the rules and requirements of the applicable Mobile OS Provider operating the online store from which you downloaded our App such as, among others, Apple's found at <http://www.apple.com/legal/itunes/us/terms.html#APPS> and Google Android found at <http://www.google.com/mobile/android/market-tos.html>; and "**Mobile OS Provider**" means the supplier of the operating system that is loaded on the mobile device on which the App is installed (such as Apple for iOS or Google for Android).

### **3. Scope of our Obligations.**

Except for new versions, we do not provide any other dedicated support or maintenance for the App. We are not responsible for problems in or unavailability of the App arising from or related to: (a) modifications or alterations made by anyone but us; (b) your or your contractors' negligence; (c) your breach of these Terms of Use; (d) any problem that cannot reasonably be recreated by us; (e) use of an un-supported version; (f) failure to comply with published documentation; (g) any device, equipment, software (including open source software), data or other content obtained or licensed by you or us from third parties; (h) failures beyond our reasonable control; and/or (i) your inability to access or use the App due to problems with software, hardware, telecommunications, or networking equipment not provided by us whether used by you, your service provider, or part of the public network, where "**public network**" means the third party provided circuits, cabling and other telecommunications and connectivity infrastructure from a point of demarcation starting immediately after the ingress/egress router or similar appliance in your premises to the point immediately before the ingress/egress router or similar appliance at the facilities we use for our own networks and communications infrastructure.

### **4. Governing Law.**

We control and operate the App from within the United States of America (the "**U.S.**"). As such, your use of the App, and the enforcement of these Terms of Use, are governed and construed exclusively in accordance with the laws of the State of Colorado and the federal laws of the U.S. enforced within that state, without regard to principles of conflicts of laws.

No matter where you use the App from, you also must comply with all laws applicable to such use, including U.S. export control laws that prohibit access from certain embargoed, prohibited, or restricted countries or access by prohibited, denied, and specially designated persons.

If the U.S. government (including the Department of Defense) wants to access the App, your Account (defined below) through you, the App will be considered “commercial computer software”, “commercial computer software documentation” and “restricted data” under “Limited Rights” and “Restricted Rights” and only as commercial end items under the same rights granted to other general users.

All legal proceedings relating to us, the App, or these Terms of Use must be brought in the state or federal courts located in Denver County, Colorado and you hereby irrevocably consent to the exclusive personal jurisdiction of such courts.

## **5. Account Registration.**

In order to use the App and exercise your App Rights, an Administrator will have to register and create an account (an “**Account**”). In doing so, you agree to submit complete, accurate, and current information and data about you as required during the registration process and maintain and promptly update it as necessary. If you submit any information that is inaccurate or incomplete, or if Research Hive has a reasonable belief that such is the case, we may immediately suspend or terminate the Account and your use of the App. As part of the registration process, you will be issued credentials, usually in the form of a unique user identification and password (the “**Account Credentials**”). Your commitment to maintaining the strict confidentiality of your Account Credentials is a material condition of your access and use of the App. You must not allow others to use your Account Credentials and you agree to notify us immediately if you have reason to believe that someone is using your Account Credentials without your permission or if any other breach of security related to your Account occurs. You must also ensure that you log-off and exit from your Account at the end of each session. It is your responsibility to notify us if you desire to cancel your Account. Except to the extent required by law, Research Hive will not be liable for any losses arising out of the unauthorized use of your Account Credentials, either with or without your knowledge.

## **6. Intellectual Property Rights.**

These Terms of Use do not transfer title to the App. As between you and us, we are the exclusive owners of all right, title, and interest, including intellectual property rights (including copyrights, patents and trademarks), proprietary rights (including trade secrets and data base rights), and moral rights (including rights of attribution and authorship) throughout the world in and to the App and its look and feel, design, and organization and compilation, as well as all logos, names, and other similar marks (collectively, the “**Trademarks**”). The Trademarks displayed on the App and/or our website are registered and unregistered Trademarks of Research Hive and our licensors and may not be used unless authorized by the applicable Trademark owner. Nothing contained on the App or our website or in these Terms of Use or the Privacy Statement should be construed as granting you any license or other right to use any Trademark displayed. As between you and us, all intellectual property rights in and to Customer Data are owned by you provided that Research Hive may, and is hereby granted the right to, access, modify, and use the Customer Data solely for purposes of performing its obligations hereunder and/or on an aggregated, de-identified basis to improve the App. As used herein, “**Customer Data**” means all data input by or on behalf of you into the App.

## **7. Confidential Information.**

The App is protected by intellectual property laws and our disclosure of the App to you and your use thereof is governed by the App Rights. You shall not: (a) use the Confidential Information, including internally within your own organization, except to the extent necessary to operate the App; or (b) disclose the Confidential Information to any third party without our express written consent, except to those with a need to know who have signed an agreement at least as protective of the Confidential Information as these Terms of Use. You always shall handle Confidential Information with at least reasonable care and shall be responsible for the actions of those persons to whom disclosure is made. The non-use and non-disclosure obligations under this Section shall not apply to Confidential Information demonstrated by reasonable contemporaneous written evidence to be: (i) already known or independently developed without use of, reference to or reliance on our Confidential Information prior to receipt; (ii) lawfully made available to the public by us without restriction or breach of confidentiality obligation; or (iii) lawfully independently obtained from a third party. If you are required by a court to disclose the Confidential Information, so much as is legally required may be disclosed but only after providing us with written notice and reasonable assistance in obtaining and enforcing means of safeguarding the Confidential Information. If you have previously entered into a non-disclosure or other agreement for confidentiality with us, this Section shall supersede such agreement with respect to the App. As used herein, “**Confidential Information**” means our information, data or materials in either tangible or intangible form that are trade secrets of, or proprietary

and confidential to us or our clients or business partners, including as may be so designated by statute, regulation or common law including by the form of the Uniform Trade Secrets Act and privacy laws adopted under applicable law, or which are marked as “Confidential” or which, by their nature and the context of their disclosure, should reasonably be known to be confidential.

## **8. Other Agreements and Terms.**

As previously described elsewhere in these Terms of Use:

- our collection of certain information about you, including personal information, is subject to our [Privacy Statement](#) which is incorporated into these Terms of Use by this reference and made a part hereof;
- our collection of certain information subject to the Health Insurance Portability and Accountability Act of 1996 and amendments and the regulations promulgated thereunder in our role as a Business Associate of a Covered Entity is subject to the [Business Associate Agreement](#) attached hereto as **Attachment A**, which is incorporated into these Terms of Use by this reference and made a part hereof; and
- our collection of certain personal data from data subjects located in the European Economic Area is subject to our [Data Processing Addendum](#) attached hereto as **Attachment B**, which is incorporated into these Terms of Use by this reference and made a part hereof.

## **9. Warranty Disclaimer; Liability and Indemnity.**

THE APP, AND ANY OTHER INFORMATION, FEATURES, AND FUNCTIONS OR SERVICES ON IT ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, RESEARCH HIVE, ITS AFFILIATES, AND ITS AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, MEMBERS, MANAGERS, SHAREHOLDERS, AND REPRESENTATIVES (THE “RH PARTIES”) DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, OR STATUTORY INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR PURPOSE, COMPLETENESS, NON-INFRINGEMENT AND THOSE CONFERRED BY UCITA OR SIMILAR LAWS. WE DO NOT WARRANT THAT THE APP WILL MEET YOUR REQUIREMENTS, OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE. IF YOU ARE DISSATISFIED, YOUR SOLE REMEDY IS TO DISCONTINUE USE OF THE APP.

THE RH PARTIES HAVE NO LIABILITY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, PUNITIVE, SPECIAL, OR INCIDENTAL DAMAGES, (INCLUDING CLAIMS OF DEFAMATION, ERRORS, LOSS OF DATA, OR INTERRUPTION IN AVAILABILITY OF DATA), OR OTHER INTANGIBLE LOSSES ARISING OUT OF OR RELATING TO YOUR USE OF, OR THE INABILITY TO USE, THE APP, ITS FEATURES AND FUNCTIONS, AND ANY ACCOUNTS OR SERVICES THAT YOU ACCESS THROUGH IT. THESE LIMITATIONS SHALL APPLY TO ANY THEORY OF LIABILITY, WHETHER BASED ON WARRANTY, CONTRACT, STATUTE, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, AND WHETHER OR NOT THE RH PARTIES HAVE BEEN INFORMED OF THE POSSIBILITY OF ANY SUCH DAMAGE.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU. IN SUCH JURISDICTIONS, THE LIABILITY OF THE RH PARTIES IS LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW. IN NO EVENT SHALL RESEARCH HIVE’S TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND/OR CAUSES OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, ARISING OUT OF OR RELATING TO THE APP OR THESE TERMS OF USE EXCEED THE AMOUNT YOU ACTUALLY PAID TO US FOR THE APP RIGHTS. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE. YOU MUST BRING ALL CLAIMS AND CAUSES OF ACTION WITHIN SIX MONTHS OF THEIR BEING DISCOVERED OR ONE YEAR AFTER EXPIRATION OR TERMINATION OF THESE TERMS OF USE, WHICHEVER OCCURS FIRST.

You agree to defend, indemnify, and hold the RH Parties harmless from any and all claims, liabilities, costs, and expenses, including reasonable attorneys’ fees, arising in any way from your use of the App, your Account, or your breach or violation of applicable laws or of these Terms of Use. Research Hive reserves

the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and in such case, you agree to cooperate with our defense of such claim.

## 10. Disputes.

**IF EITHER YOU OR RESEARCH HIVE WANT TO BRING A CLAIM OR CAUSE OF ACTION AGAINST THE OTHER UNDER THESE TERMS OF USE, OR IF ANY DISPUTE ARISES BETWEEN THE PARTIES AS A RESULT OF THESE TERMS OF USE OR YOUR USE OF THE APP, EACH PARTY AGREES TO USE ARBITRATION AS THE SOLE AND EXCLUSIVE MEANS TO BRING SUCH A CLAIM OR CAUSE OF ACTION OR TO RESOLVE SUCH A DISPUTE. YOU UNDERSTAND THAT BY AGREEING TO THE FOREGOING AND THE MORE SPECIFIC TERMS BELOW, EACH OF YOU AND RESEARCH HIVE ARE GIVING UP THEIR RIGHT TO FORM OR BE A PART OF A CLASS ACTION OR OTHER REPRESENTATIVE LAWSUIT. YOU ARE NOT, HOWEVER, WAIVING YOUR ABILITY TO RECOVER DAMAGES. ALTHOUGH ARBITRATION PROCEDURES ARE DIFFERENT FROM COURT PROCEDURES, AN ARBITRATOR CAN AWARD YOU INDIVIDUALLY THE SAME DAMAGES AND RELIEF AS A COURT, AND JUDGMENT ON THAT AWARD MAY BE ENTERED AND ENFORCED IN ANY COURT OF COMPETENT JURISDICTION.**

As such, both you and Research Hive specifically agree that:

### Arbitration.

Except for small claims court cases or a claim by us related to intellectual property infringement, all claims, causes of actions and disputes (collectively, “**Disputes**”) that cannot be resolved by the parties after a good faith effort at negotiation shall be submitted for arbitration administered by the American Arbitration Association (“**AAA**”). The AAA will apply the [Commercial Arbitration Rules](#) to the arbitration of any Dispute pursuant to these Terms of Use. You can get procedures (including the process for beginning an arbitration), rules, and fee information from the AAA website ([www.adr.org](http://www.adr.org)).

The party seeking to commence arbitration must first notify the other party in writing at least 30 days in advance of initiating the arbitration. Notice to Research Hive should be sent to Research Hive, LLC, ATTN: Legal Department, 25568 Genesee Trail Road, Golden, CO 80401 and to [info@researchhive.com](mailto:info@researchhive.com). We will provide notice to your email address(es) and street address(es), if any, associated with your Account at the time the notice is sent. The notice must describe the nature of the claim and the relief being sought.

Regardless of such notice, no arbitration may be commenced if barred by the statute of limitations applicable to the Dispute. The arbitrators shall have no power to award punitive damages or any other damages not measured by the prevailing party’s actual damages or damages in excess of the limitations set forth in Section 9. Even if other portions of these arbitration provisions are held to be invalid or unenforceable, the arbitrators shall not have the power to award or impose any remedy that could not be made or imposed by a court sitting in the jurisdiction and venue agreed to by the parties and deciding the matter in accordance with the governing law agreed to by the parties. All aspects of the arbitration including the result shall be treated as confidential and shall not be disclosed unless required by legal, audit, or regulatory requirements. The amount of any settlement offer made by either party prior to arbitration cannot be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. The arbitration proceedings are subject to the U.S. Federal Arbitration Act and hereby declared to be self executing, and it shall not be necessary to petition a court to compel arbitration. The award of the arbitrators shall be binding and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction.

Unless you and Research Hive agree otherwise, the arbitration will occur in U.S. English and take place in Denver, Colorado. Payment of any fees will be decided by the applicable AAA rules.

### Class Action Waiver.

YOU AND RESEARCH HIVE AGREE THAT EACH MAY BRING CLAIMS TO THE FULLEST EXTENT LEGALLY PERMISSIBLE AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING (COLLECTIVELY, THE “**CLASS ACTION WAIVER**”). Further, unless both you and Research Hive agree otherwise, the arbitrator may not consolidate more than one person’s claims and may not otherwise preside over any form of a representative or class proceeding. If for any reason the Class Action Waiver set forth above cannot be enforced as to some or all of the Dispute, then the agreement to

arbitrate will not apply to that Dispute or portion thereof. Any Disputes covered by any deemed unenforceable Class Action Waiver provision may only be litigated in a court of competent jurisdiction, but the remainder of the agreement to arbitrate will be binding and enforceable. For the avoidance of doubt, the parties do not agree to class arbitration or to the arbitration of any claims brought on behalf of others.

#### **11. Term and Termination.**

These Terms of Use and your App Rights become effective upon your acceptance of these Terms of Use and continue until terminated in accordance herewith (the “**App Rights Term**”). We may suspend and/or terminate these Terms of Use and the App Rights immediately at any time if you breach your obligations under these Terms of Use, or engage in conduct, whether or not involving the App, that infringes our intellectual property rights, or if the licensing agreement with your sponsor is terminated or expires, if applicable. Upon termination or expiration you must immediately discontinue all use of the App and return or destroy all copies of its documentation and certify to such return or destruction in writing. Sections 6, 7, 9, and 10, and those portions of this Section 11 and Section 4 and 14 that by their nature should survive, each shall survive termination or expiration of these Terms of Use.

#### **12. Notice.**

We may provide notices to you via the email address provided in your Account. We will provide copies of notices of breach via reputable overnight courier. Notices to Research Hive will be provided via reputable overnight courier to the address specified below with “ATTENTION: [your name] Account” in the address. All such notices by either party shall be deemed given three business days after being sent.

Research Hive, LLC, 25568 Genesee Trail Road, Golden, CO 80401.

#### **13. Changes to these Terms of Use.**

We may revise these Terms of Use at any time to reflect, among other things, changes in technology, our business model, or law or regulation. Although we ask that you check this page periodically for such revisions, we will try to post notice that a material revision has been made somewhere within the App. However, whether or not we provide, or you see, such notice, by continuing to access and use the App after the revisions are made, you will have accepted and agreed to the revised Terms of Use.

#### **14. Miscellaneous Provisions.**

These Terms of Use, the Business Associate Agreement, the Data Processing Addendum, and the Privacy Statement are the entire and exclusive agreement between Research Hive and you with respect to the App and supersedes all previous or contemporaneous written and verbal agreements or proposals relating to the same subject matter. Neither any course of conduct between the parties nor trade practice will modify these Terms of Use. We may assign our rights and duties under these Terms of Use to any party at any time without notice to you. You may not assign your rights or obligations hereunder without our prior express written consent. Headings and captions are for convenience of reference. No joint venture, partnership, employment, or agency relationship exists between you and Research Hive as a result of these Terms of Use. Whenever these Terms of Use require or contemplate any action, consent, or approval, such party will act reasonably and in good faith and (unless these Terms of Use expressly allow exercise of a party’s sole discretion) will not unreasonably withhold or delay such action, consent, or approval. Failures in performance beyond our reasonable control are excused. Unenforceable provisions will be reformed to permit enforceability with maximum effect to the original intent. Waiver of a breach is not waiver of other or later breaches. References to days are references to calendar days unless otherwise specified. The word “**including**” is exemplary meaning “including, without limitation” or “including, but not limited to” unless otherwise indicated. The words “**shall**”, “**will**”, and “**must**” are each intended to be obligatory and to require performance of the stated condition, etc., at the applicable time during the App Rights Term. The word “**may**” is permissive, imparting a right, but not an obligation, to perform the stated action.

# ATTACHMENT A TO TERMS AND CONDITIONS OF USE

## BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (this "**Agreement**") is entered into as of the Effective Date by and between Research Hive, LLC ("**Business Associate**") and the individual or entity who entered into the Terms of Use in order to obtain App Rights to access and use the App ("**Covered Entity**"). This Agreement defines the rights and responsibilities of each party with respect to Protected Health Information as defined in the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder, as each may be amended from time to time (collectively, "**HIPAA**"). This Agreement shall be applicable only in the event and to the extent Business Associate meets, with respect to Covered Entity, the definition of a Business Associate set forth at 45 C.F.R. §160.103, or applicable successor provisions. This Agreement also provides basic terms and confidentiality.

### 1. DEFINED TERMS

Certain words and phrases in this Agreement have special meanings that are provided either where they first appear as indicated by bold text or in this Section, or if not defined herein, in the Privacy Rule or the Terms of Use.

- "**CFR**" means the Code of Federal Regulations.
- "**Effective Date**" means the date you accepted the Terms of Use.
- "**Individual**" shall have the same meaning as the term "individual" in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- "**Privacy Rule**" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- "**Protected Health Information**" shall have the same meaning as the term "protected health information" and "PHI" in 45 CFR §160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- "**Referring Provider**" means any site personnel who regularly pre-screen medical data or charts for potential study participants. They do NOT have to be licensed practitioners, but are anyone who regularly refers patients into studies.
- "**Required By Law**" shall have the same meaning as the term "required by law" in 45 CFR §164.103.
- "**Secretary**" means the Secretary of the Department of Health and Human Services or his designee.
- "**Study Staff**" shall mean any staff, medical or non-medical who do NOT regularly refer or pre-screen medical data or charts for potential study participants.
- "**Terms of Use**" means the terms and conditions of use to which this Agreement is attached and incorporated by reference and made a part thereof.

### 2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law and to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- b. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.

- c. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- d. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- e. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.
- f. Business Associate agrees to provide to Covered Entity or an Individual, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.
- g. To the extent Business Associate is to carry out an obligation of Covered Entity's under the Privacy Rule, Business Associate agrees to comply with the requirements applicable to such obligation.

### **3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Section, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. Permitted use includes provision of patient identifiers for use within a clinical research department, as generated by employees of the institution, for purposes of recruitment and retention of subjects who may or may not participate in clinical trials.

### **4. OBLIGATIONS OF COVERED ENTITY**

Covered Entity confirms that all employees who will be provided access to software provided by Business Associate understand the safeguards required to secure a mobile device and desktop. Covered Entity will provide training for all users in regards to the following safeguards, in addition to any other HIPAA training deemed necessary by HIPAA guidelines:

- a. Modification of settings to require a passcode upon hibernation of the device, and that such passcode is kept secure and private.
- b. Hibernation of the device within a short period of time after inactivity.
- c. Remote wiping capability is enabled. For example, iCloud must be enabled on an Apple product for this to be possible, or another 3rd party software must be utilized.

Covered Entity agrees to provide adequate training to all employees regarding Protected Health Information and all HIPAA laws.

Additional obligations:

- d. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- e. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.



- f. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.
- g. Covered Entity shall not cause Business Associate to violate HIPAA in any way.

## 5. SPECIFIC USE AND DISCLOSURE PROVISIONS

Except as otherwise limited in this Agreement, Business Associate may:

- a. use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- b. disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- c. use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B).

Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

## 6. PERMISSIBLE REQUESTS BY COVERED ENTITY

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

## 7. TERM AND TERMINATION

- a. Term. The Term of this Agreement shall be effective as of Effective Date, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - i. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement under the terms of the Terms of Use or applicable Statement of Work, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
  - ii. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
  - iii. If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.
- c. Effect of Termination.
  - i. Except as provided in Section 7a, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of

subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

- ii. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon written notification to Covered Entity that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

## 8. MISCELLANEOUS, TERMS and CONDITIONS, CONFIDENTIALITY

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule 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 Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- c. Survival. The respective rights and obligations of Business Associate under this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.
- e. Notices. Unless otherwise specifically specified herein, any notices to be given hereunder shall be deemed effectively given when personally delivered, received by facsimile or email or sent via overnight courier, and addressed to the addresses in the heading of this Agreement.
- f. Confidentiality of Trade Secrets and Personal Information. Covered Entity and Business Associate agree to keep all trade secrets of both parties confidential, including but not limited to: contact information of all employees and contractors of both parties, protocols and contracts of Covered Entity, trade secrets of the App provided by Business Associate, functionality of the App provided by Business Associate. In the event either party wishes to disclose confidential information they must obtain express permission in writing prior to doing so. Recoverable damages for breach of this section could include but are not limited to: lost revenue from future business, attorney's fees, and expenses associated with resolving any breach of confidentiality.
- g. Users. Covered Entity confirms that each Referring Provider and Study Staff given access to the App are either Employees or Business Associates of the Covered Entity. It is the responsibility of the Covered Entity to manage access to all users and confirm which staff are given certain access privileges. Business Associate bears NO LIABILITY for access provided to unauthorized users by any staff of the Covered Entity.
- h. Primary Business and Purpose of Use. The Covered Entity confirms that the primary business purpose of the Covered Entity is the performance of Clinical Research Trials, and if not, then express permission has been provided by Business Associate to utilize the App for the intended Purpose.
- i. Right of Refusal to Transact Business. Business Associate reserves the right at any time to terminate access to the App.
- j. Refunds. Refunds will be pro-rated monthly and provided for Covered Entities who provide written notice to terminate and who have pre-paid annually. Monthly licenses will not be refunded.
- k. Updates. From time to time, updates will be provided to the software, the timely installation of which is mandatory. The App may no longer function if regular updates are not made.

- I. Access to Data. In the event of termination by Business Associate, Covered Entity will be provided access to the database for up to 10 days for one single user, in order to facilitate the removal of any needed information.

**ATTACHMENT B**  
**TO TERMS AND CONDITIONS OF USE**  
**DATA PROCESSING ADDENDUM**

THIS DATA PROCESSING ADDENDUM (this “**DPA**”) supplements and is a part of the Research Hive Terms of Use entered into between Research Hive, LLC, the owner and operator of the App (“**Research Hive**”, “**we**”, “**us**” and “**our**”), and the individual or entity who accepted the Terms of Use in order to obtain App Rights to access and use the App (“**you**” and “**your**”). Certain words and phrases in this DPA have special meanings that are provided either where they first appear as indicated by bold text, or in Section 7, or if not defined herein, in the Terms of Use. This English language version controls regardless of any translation.

**1. SCOPE AND PURPOSE.**

**1.1 App Personal Data.** After you executed the Terms of Use: (a) you allowed us to collect on your behalf from you and other workforce members at your site who are located in Switzerland, the United Kingdom (“**UK**”), and/or European Union (“**EU**”) Member States, certain data including limited personal data such as name and email address for the purposes of issuing you log-in credentials, securing and improving the App and detecting and preventing fraud (the “**Study Staff Personal Data**”); and (b) upon using the App for your site’s clinical research trials or studies, you collect data including the personal data from prospective and current study participants who are located in Switzerland, the UK, and/or EU Member States (the “**Participant Personal Data**”); together with the Study Staff Personal Data, referred to collectively herein as “**App Personal Data**”). You collect the Participant Personal Data you deem necessary for the applicable trial or study. You act as the controller of the App Personal Data and we, in turn, act as your processor when you store the App Personal Data on our systems when using the App.

**1.2 Purpose; GDPR.** The purpose of this DPA is to supplement the Terms of Use by establishing the parties’ respective rights and obligations under the GDPR with respect to the App Personal Data.

**2. YOUR CONTROLLER OBLIGATIONS.**

As between Research Hive and you, you are solely responsible for all controller obligations with respect to App Personal Data. That means you will, among other things, determine your legitimate interests or other lawful bases for processing App Personal Data, provide all required notices, and manage and respond to all data subject attempts to exercise their rights. To the extent your other workforce members or study participants make any claim that you failed to do the foregoing, or any investigation or action is commenced against us as a result of your processing, sharing or transferring of App Personal Data (except if caused by our failure to fulfill our obligations under Section 3 of this DPA) you will indemnify, defend and hold us and our agents and representatives harmless.

**3. OUR PROCESSOR OBLIGATIONS.**

We act as your processor when you store App Personal Data on our systems via the App. The subject-matter of our processing is the App Personal Data you provide to us. The duration of our processing is generally commensurate with the duration of your contractual relationship with us. The nature and purpose of our processing is limited to storage for retrieval by you, issuing you log-in credentials, securing and improving the App and detecting and preventing fraud. The types of personal data processed for Participant Personal Data are determined by you, and the categories of data subjects are your workforce members and the study participants you evaluate or register for your clinical research trials and studies. All of our processing of App Personal Data further adheres to the following obligations:

**3.1 Appropriate measures.** We will implement appropriate technical and organizational measures in such a manner that our processing on your behalf will meet the requirements of applicable law.

**3.2 Appointment of Subprocessors.** We will not engage another processor (sometimes called a “subprocessor”) without your prior specific or general written authorization. In the case of general written authorization, we will inform you of any intended changes concerning the addition or replacement of other processors, thereby giving you the opportunity to object to such changes.

**3.3 Processing Governed by Law and Contract.** Our processing will be governed by this DPA under EU or Member State law. Your rights and obligations as controller are set forth in the Terms of Use and this DPA. In addition to the general statement above, we specifically will:

(a) process App Personal Data in accordance with the Terms of Use and this DPA and only on your documented instructions including with regard to transfers to a third country or an international organization, unless our actions are required by applicable law to which we are subject; in such a case we will inform you before processing, unless prohibited by that law;

(b) ensure that persons authorized to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

(c) take all measures required under GDPR Article 32;

(d) respects the conditions referred to in Sections 4.2 and 4.4 for engaging another processor;

(e) taking into account the nature of the processing, assist you by appropriate technical and organizational measures, insofar as possible, in fulfilling your obligation to respond to requests for exercising the data subject's rights under applicable law;

(f) assist you in ensuring compliance with your obligations under GDPR Articles 32 to 36, taking into account the nature of processing and the information available to us;

(g) at your election, delete or return all App Personal Data to you at end of our relationship under the Terms of Use, and delete existing copies unless applicable law requires storage of the personal data; and

(h) make available to you all information necessary to demonstrate our compliance with this DPA and allow for and contribute to audits, including inspections, conducted by you or another auditor mandated by you.

We will immediately inform you if, in our opinion, an instruction you gave us infringes the GDPR.

**3.4 Obligations of Subprocessors.** If we engage a subprocessor to carry out specific processing activities on your behalf, the same obligations in this DPA will be imposed on that other processor by way of a contract or other legal act under EU or Member State law, in particular providing sufficient guarantees to implement appropriate technical and organizational measures in such a manner that the processing will meet the requirements of the GDPR. If the subprocessor breaches those obligations, we will be responsible to you.

**3.5 Participant Requests.** We will, to the extent legally permitted, promptly notify you if a study participant seeks to exercise its data subject access and related rights under applicable law through us instead of you, and we will reasonably cooperate with you to fulfill your obligations provided that you are responsible for any reasonable costs arising therefrom.

**3.6 Breach Notification.** We will notify you without undue delay after becoming aware that there has been a breach of the security of our systems leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to the App Personal Data transmitted, stored or otherwise processed by us. Such notification will include that information a processor must provide to a controller under GDPR Article 33(3) to the extent such information is reasonably available to us.

#### **4. INTERNATIONAL DATA TRANSFERS.**

The parties agree that, to the extent App Personal Data is transferred to a country or territory outside of Switzerland, the UK, and/or European Economic Area that has not received a binding adequacy decision by the European Commission, such transfer shall be made via appropriate data transfer mechanism under the GDPR such as the EU Standard Contractual Clauses found [here](#).

#### **5. PRECEDENCE; BINDING CONTRACT.**

Conflicts between the Terms of Use and/or our Privacy Statement on the one hand, and this DPA on the other hand, with respect to a party's rights or obligations governing, related to, or arising out of App Personal Data shall be resolved in favor of this DPA. By continuing to use the App to submit Study Staff Personal Data and/or Participant Personal Data following the Effective Date of this DPA, you will have affirmatively

manifested your intent to be bound to the terms and subject to the conditions of this DPA.

## 6. GLOSSARY.

"**App Personal Data**" has the meaning given to it in Section 1.1.

"**Controller**" has the meaning given to it in the GDPR.

"**Data subject**" has the meaning given to it in the GDPR.

"**Effective Date**" means the date you accepted the Terms of Use.

"**GDPR**" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC and all national legislation implementing or supplementing it, as the foregoing are amended from time to time.

"**Legitimate interests**" has the meaning given to it in the GDPR.

"**Participant Personal Data**" has the meaning given to it in Section 1.1.

"**Personal data**" has the meaning given to it in the GDPR.

"**Process**"/"**Processing**" has the meaning given to it in the GDPR.

"**Processor**" has the meaning given to it in the GDPR.

"**Study Staff Personal Data**" has the meaning given to it in Section 1.1.