

## **Terms & Conditions**

The proposal offered by Stimulus Medical LLC ("SM") (the "Proposal") is subject to the following Terms & Conditions. If you accept the Proposal, then the Proposal, together with these Terms & Conditions, will constitute the customer agreement (the "Customer Agreement"). The products and services identified in the Proposal will be referred to as the "Products."

### **1. Our Role as a Reseller**

At this time SM operates only as a reseller of products and services from third party manufacturers and providers ("Third Party Providers"). As such, SM arranges for shipping products to you, getting you access codes to online services, billing you for the Products, and otherwise endeavoring to provide you with a positive customer experience. Further, in some cases SM's Third Party Providers have subcontracted with SM to provide certain services to you (such as training, installation and level one help desk services).

To the extent that you are unsatisfied with any of the Products, SM will work with you to seek a satisfactory resolution from the applicable Third Party Provider. Please note, however, that:

You agree to look solely to the applicable Third Party Provider for any claims related to the Products.

As a condition of receiving online services and installed software you will be required to enter into one or more user agreements (each a "User Agreement") and business associate agreements (each a "BAA") directly with Third Party Providers. A copy of the User Agreement for the online EMR and practice management system provided by Waiting Room Solutions LLLP ("WRS") and the WRS BAA are attached to these Terms & Conditions. IF YOU SIGN THE PROPOSAL, YOU ARE ALSO AGREEING TO BE BOUND BY THE WRS USER AGREEMENT AND THE WRS BAA ATTACHED TO THESE TERMS & CONDITIONS. A copy of the applicable User Agreement and BAA with respect to all other Third Party Providers' online services and installed software is available from SM upon request.

### **2. Changes to the List of Products**

If you would like to purchase additional products and services, or to change the products and services covered by the Proposal, then you may request that SM provide an additional proposal or a change order (neither of which will be valid unless signed by both SM and you).

### **3. Term**

The initial term of this Customer Agreement is the duration set forth in the Proposal, or if the Proposal does not specify a duration, then 36 months. This Customer Agreement will automatically renew for successive 12 month terms unless either you or SM gives written notice to the other at least thirty days prior to the end of the then-current term.

### **4. Payment**

Except as otherwise stated on the Proposal, you will pay each invoice within thirty days from the date that SM issues the invoice. In the event payment is not received within such thirty day period, any unpaid balance will bear interest from the 31st day at the rate of eighteen percent per annum, or the highest rate allowed by applicable law, whichever is lower, until fully paid. Should you become delinquent in the payment of any sum due SM, SM will have the right to suspend or terminate further performance under any agreement with you, including suspending or terminating access to any online services. You will pay any collection fees, legal fees, or court costs incurred by SM to collect past due amounts. No offsets or setoffs of payments due to SM hereunder are allowed with respect to any other agreement between the parties. Any payments made are non refundable under any circumstances. SM may increase the prices for the Products for renewal terms by providing you with written notice at least sixty days prior to the end of the then-current term. Each increase will be no more than 5% or CPI, whichever is less.

In addition to the fees under this Customer Agreement, you are responsible to pay promptly all government taxes, duties, tariffs, levies and similar assessments or charges due or levied by reason of or based upon sale or provision of the Products to you, including without limitation any excise, use, sales, service or transfer taxes, but excluding taxes on SM's net income.

### **5. Changes to the Number of Users**

As is set forth in the Proposal, pricing for certain of the Products is based on the number of certain types of your users (e.g., the number of physicians, nurse practitioners and physician assistants). You agree to notify SM prior to adding any users beyond those set forth in the Proposal and to cooperate with SM in ascertaining the number of your users. You agree to pay SM for all users, retroactive to the date that each user began to use the Products.

### **6. Warranties**

You understand that SM is not the manufacturer or provider of the Products and the only warranties offered are those of the Third Party Providers, not SM. In purchasing the Products, you are relying on the Third Party Providers' specifications only and are not relying on any statements, specifications, photographs or other illustrations representing the Products that may be provided by SM. EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED BY THE APPLICABLE THIRD PARTY PROVIDER, ALL PRODUCTS ARE PROVIDED "AS IS" AND SM HEREBY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, USE AND IMPLIED FROM A COURSE OF DEALING OR COURSE OF PERFORMANCE. NO PERSON (INCLUDING ANY EMPLOYEE, REPRESENTATIVE, AGENT OR DEALER OF SM) IS AUTHORIZED TO MAKE ANY REPRESENTATION OR WARRANTY CONCERNING PRODUCTS EXCEPT TO REFER CUSTOMERS TO THE WARRANTIES (IF ANY) PROVIDED BY THE APPLICABLE THIRD PARTY PROVIDER.

YOU REPRESENT AND WARRANT THAT YOU HAVE NOT RELIED ON ANY WARRANTIES OR REPRESENTATIONS OTHER THAN THOSE OFFERED BY THE APPLICABLE THIRD PARTY PROVIDERS. The disclaimer contained in this paragraph does not affect the terms of any Third Party Provider's warranty.

### **7. Waiver of Claims**

YOU WAIVE ANY CLAIM OF ANY KIND THAT IT MAY HAVE AGAINST SM BASED ON OR RELATED TO THE PRODUCTS, THIS CUSTOMER AGREEMENT AND ANY USER AGREEMENT.

### **8. Indemnity**

You will indemnify, defend and hold harmless SM and its directors, officers, employees and agents from any loss, liability, damage, cost or expense (including, without limitation, attorneys' fees) or settlement amount to the extent arising out of any claim arising from or related to (i) any willful or negligent conduct of you or any of your employees, contractors or representatives; (ii) your use of the Products; (iii) your breach of any User Agreement; and (iv) injury or death of persons or damage to property to the extent caused by or arising out of any acts or omissions of you, your agents, employees, and contractors, or in connection with the Products.

### **9. Limitation of Liability**

IN NO EVENT WILL SM BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING LOSS OF PROFITS, LOSS OF USE, COST OF COVER), OR PUNITIVE DAMAGES. TO THE EXTENT SM IS HELD LEGALLY LIABLE TO YOU, WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, TO THE MAXIMUM EXTENT PERMITTED BY LAW, SM'S TOTAL LIABILITY IS LIMITED TO THE PRICE OF THE PRODUCTS AT ISSUE OR THE COST OF REPAIR OR REPLACEMENT OF THE PRODUCTS AT ISSUE, WHICHEVER IS LESS.

### **10. Allocation of Risk**

The prices, limitations of liability, warranty exclusions, and indemnification set forth in the Customer Agreement reflect the allocation of risk agreed to by the parties. You acknowledge that SM would not sell the Products without these limitations, exclusions, and indemnifications and that these limitations, exclusions, and indemnifications will apply notwithstanding any failure of essential purpose of any limited remedy.

### **11. Survival**

These Terms & Conditions will survive any termination or expiration of the Proposal.

### **12. Governing Law, Arbitration**

This Customer Agreement will be governed by, and construed in accordance with, the laws of the State of Florida without giving effect to the conflict of law provisions thereof. Any unresolved disputes between the parties relating to or arising from the Products or this Customer Agreement will be settled solely by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA Rules") before a single neutral and competent arbitrator selected in accordance with the AAA Rules. Such arbitration will be held in West Palm Beach, Florida and conducted in the English language. The cost and expense of arbitration will be shared equally by the parties to the arbitration, regardless of which party prevails. The decision or award of the arbitrator will be final and binding upon the parties, and to the same extent and to the same degree as if the matter had been adjudicated by a court of competent jurisdiction and will be enforceable under the Federal Arbitration Act.

### **13. Assignment**

You may not assign or transfer this Customer Agreement or any of your rights, duties, or obligations herein without the prior written consent of the SM, and any purported attempt to do so will be null and void. SM may assign, transfer or subcontract this Customer Agreement or all or any portion of its rights or obligations under this Customer Agreement, including assigning the right to receive payments, without your consent.

### **14. Miscellaneous**

SM's failure to exercise any of its rights hereunder will not constitute or be deemed a waiver or forfeiture of such rights. If any provision of this Customer Agreement is, for any reason, held invalid or illegal in any respect, such invalidity or illegality will not affect the validity of this Customer Agreement itself and the parties will promptly substitute for the affected provision, a valid and enforceable provision which most closely approximates the intent and economic effect of the invalid provision.

### **15. Sole and Entire Agreement**

This Customer Agreement constitutes the complete and exclusive agreement between SM and you pertaining to the Products. If you issued any order form, purchase order, acknowledgement, confirmation or other document (each an "Order"), your Order is accepted only on the terms and conditions contained in this Customer Agreement, and SM's acceptance of any Order is conditioned on your assent to the terms and conditions contained in this Customer Agreement. SM hereby objects to any additional or different terms and conditions contained in any Order. No action by SM will be construed as acceptance of any additional or different terms and conditions in any Order. You are deemed to have accepted all of the terms and conditions of this Customer Agreement by signing and returning a copy of the Proposal or by other written indication of acceptance, by accepting any whole or partial shipment of the Products, by any online access to any of the Products, by making any whole or partial payment to SM, or by any other means commonly signaling lawful agreement to be bound.