

ACCUSHIELD, LLC - SALES ORDER TERMS AND CONDITIONS

Effective date: April 1, 2020

1. **Acceptance of Terms.** These Terms and Conditions are incorporated by reference into Sales Orders for the products and services offered to Communities by Accushield, LLC ("Accushield"). When executed by a Customer and accepted by Accushield, each such Sales Order, together with these Terms and Conditions, constitutes a binding agreement between Accushield and the Customer identified in the Sales Order (the "Agreement"). Customer's use of any Accushield product or service listed on the Sales Order constitutes Customer's agreement to be bound by such Agreement, including these terms. In the event of any conflict between these Terms and Conditions and the Sales Order, the provision in the Sales Order will govern. ***These Terms and Conditions are subject to change by Accushield as described in section 14 below.***
2. **Certain Definitions.** As used herein, the following terms have the meanings set forth below. Other capitalized terms used herein may be defined elsewhere in these Terms and Conditions or in the Sales Order.
 - a. "Application" means Accushield's software system used to verify and record Community sign-in data, verify if a Vendor satisfies a Community's credentialing criteria, and otherwise enable the Services.
 - b. "Community" means one or more skilled nursing communities, or assisted living, independent living, memory care or continuing care retirement communities, operated by Customer.
 - c. "Documentation" means all user guides, FAQs, manuals, specifications, tutorials, or similar items provided by Accushield, in written or electronic form only, as the same may be updated by Accushield from time to time.
 - d. "Sales Order" means one or more Sales Orders for the Services and related equipment.
 - e. "Resident" means a registered resident or patient of a Community.
 - f. "Resident Guest" means a family member or other intended guest of a Community Resident or the Community, other than a Vendor.
 - g. "Services" means the services provided by Accushield to Customer and its Communities pursuant to Customer's monthly service fee, including (i) the Application used to validate the authorized entry of outside caregivers, service providers and other visitors, permit caregiver and visitor reporting to families of Community residents, and provide such other services as may be added to the Application by Accushield; (ii) if credentialing is indicated on the Sales Order, a system whereby certain credentials of outside caregivers and other service providers are collected and validated; (iii) an online Community Portal offering enhanced data reporting tools and other services to the Community, such as social media publication, health screening and surveys; (iv) warranty coverage on replacement of any hardware related to the Application; (v) certain allocation of badge tape as set forth in the Sales Order; and (vi) technical support and any online or live training related to Customer's use of the Application.

- h. “Term” means the initial term of this Agreement and any renewal or extension thereof.
 - i. “Vendor” means a person having a business need to access a Community and employed or contracted by, or as, a vendor or service provider to Customer or to a Resident.
- 3. **Term of Agreement.** The initial term of this Agreement begins on acceptance of the Sales Order and, unless terminated earlier pursuant to its terms, will continue until *each* Community set forth in the Sales Order has received the Accushield Services for a period equal to the service period set forth in the Sales Order. At the end of the initial term, this Agreement will automatically renew for an additional period of time equal to such initial service period, unless Customer notifies Accushield at least ninety (90) days prior to such date (or whatever other notice period is set forth in the Sales Order) that it is electing not to renew. ***If this Agreement is renewed, Customer agrees to pay Accushield a renewal fee as set forth in the Sales Order. Customer should contact Accushield if it is not sure of the expiration date for this Agreement.***
- 4. **Equipment and Limited Warranty.** Upon payment of the kiosk sales price as set forth in the Sales Order, Accushield will provide Customer with the kiosk equipment designated in the Sales Order. If Customer’s Sales Order provides for payment over time for the kiosk equipment, then Customer will not own such equipment until paid for in full. Throughout the initial term of this Agreement, so long as Customer is not in breach of its obligation to pay the monthly fee under this Agreement, Accushield will repair or replace, at its option and at its expense, any component of such equipment that fails to operate in accordance with the Documentation. The same will apply during any renewal of the initial Term, provided the renewal administration fee set forth in the Sales Order is paid. Notwithstanding the foregoing, Customer may be charged for any repair or replacement due to (a) theft or loss from a Community, (b) Customer’s misuse, alteration or attempted modification, or (c) the negligence of Customer or any Community staff. This section sets forth Customer’s sole and exclusive remedy with respect to equipment provided by Accushield.
- 5. **Application and Services and Limited Warranty.** Throughout the Term of the Agreement, Accushield will host, manage and operate the Application in conformance with the Documentation. Customer shall also have access to Accushield’s Community Portal data service (the “Portal”). Customer will only authorize use of the Application or Portal by those of its personnel who have been properly trained and assigned login credentials. Customer will promptly notify Accushield if it becomes aware of any actual or attempted use by unauthorized persons. In the event of any unplanned Application downtime or failure to operate in accordance with the Documentation due to factors within Accushield’s reasonable control, upon request, Accushield will provide Customer with a prorated credit of any monthly fees paid with respect to such downtime, calculated based on the number of days in which Service was materially impaired. This section sets forth Customer’s sole and exclusive remedy with respect to the Application and Services.
- 6. **Credentialing; Other Entry.**
 - a. If Customer has elected to utilize Accushield’s credentialing services, it shall select those particular credentials and other criteria for Accushield to collect. Such selection will be made during implementation and agreed to by both parties. In addition, from time to time, Customer may notify Accushield that certain Vendors or other persons are to be permitted access to Customer’s Communities without regard to their credential status. Accushield

shall be permitted to conclusively rely on such notice (which may be by email, notwithstanding anything to the contrary elsewhere herein) without liability whatsoever.

- b. Customer acknowledges that Vendors who first register with Accushield are allowed thirty (30) days to submit valid credentials and that, in order to avoid any interruption of vital services to Residents, such Vendors will be given provisional access to applicable Communities during such period. Customer also acknowledges that Vendors (or their employers), may be required to pay a monthly fee to Accushield for the validation and collection of required credentials (unless Customer has agreed to pay the expense of Vendor Credentialing as set forth in Customer's Sales Order), and that failure to pay such fee will cause them to be denied access to Communities.
 - c. Whether or not Customer utilizes credentialing services, Customer acknowledges and agrees that (a) Resident Guests will be given access to communities through Accushield's sign-in kiosk without Accushield having collected any credential information, and (b) Accushield will have no liability for any act or omission of a Resident Guest or of any other person that Community staff elect to grant access to without such person having had his or her credentials submitted to, and approved by, Accushield.
 - d. Customer shall include in its agreement with each Resident, or otherwise obtain in writing, an acknowledgment by such Resident (or his or her personal representative) that Resident Guests or Vendors (including medical caregivers) may have access to the Community denied or limited by Customer for reasons of safety or security or for the failure to properly submit and maintain credentials to Accushield and pay all required credentialing fees, or otherwise follow any Community rules and procedures.
- 7. Fees and Payment.** Customer agrees to pay Accushield the amounts set forth in the Sales Order throughout the Term. Fees for equipment are due upon execution of the Sales Order, and equipment will not be shipped and title will not pass until such payment is received, unless otherwise agreed to between Accushield and Customer. Monthly fees will be due once per month. Customer hereby consents to Accushield obtaining such payment by ACH or credit card in accordance with instructions provided by Customer, if any. If any such payment is rejected, Customer will remain responsible for all payments due hereunder as well as any expenses incurred to collect late payments.
- 8. Proprietary Rights.** Customer agrees to use the Accushield Services and Application, and the data generated by them, only as described in the Documentation and only for its internal business purposes. Accushield hereby grants Customer, for use during the Term and only to the extent necessary for such permitted use, a non-exclusive, non-transferable license to the Accushield intellectual property incorporated into or embodied by such items. Subject only to the foregoing, Accushield, for itself and for its own licensors, retains all right, title and interest to such intellectual property, including all trade secrets and all data generated by the Application or any other Service. Customer acknowledges and agrees that all data generated by the Application and other Services that is not personal to Customer or Customer's Residents shall be owned by Accushield, and that Accushield shall be free to create additional products or services that utilize such data (subject to applicable law) without compensation to Customer. Accushield shall also have the right, without

obligation or compensation to Customer, to use and commercialize any feedback regarding Accushield products and Services provided by Customer or any visitor to its Communities.

9. **Confidentiality.** During the Term, each party may obtain access to information of the other that is of a confidential or proprietary nature. Such information is collectively referred to as “Confidential Information.” A party may not use Confidential Information of the other party except as expressly contemplated by this Agreement, and shall not disclose it to any third party without the other party’s prior written consent. Notwithstanding the foregoing, disclosure is permitted to the extent required by law or court order, provided the party subject to such law or order first gives reasonable notice to the other party (unless prohibited by law or court order) and, if requested, provides reasonable assistance in obtaining a protective order or limiting the scope of such disclosure. Confidential Information does not include information (a) that a party independently develops (without use of any other Confidential Information of the other party), (b) that was rightfully given to such party by a third party without any conflicting obligation of confidentiality, or (c) that becomes public through no fault of the party in receipt of the other’s Confidential Information.
10. **Insurance.** Throughout the Term, Customer shall carry and maintain in full force and effect at least the following types and amounts of insurance coverages (a) commercial general liability with limits no less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate, including bodily injury and property damage, (b) technology errors and omissions with limits of \$1,000,000 in the aggregate, and (c) workers’ compensation insurance in accordance with minimums required by applicable law.
11. **Termination.** Unless otherwise provided for in the Sales Order, this Agreement may only be terminated prior to the end of its Term (a) by immediate notice from the non-breaching party in the event of a material breach by the other party which, if curable, remains uncured for thirty (30) days following written notice from the non-breaching party, (b) by immediate notice from either party in the event any legal or regulatory requirement makes it unlawful or economically impractical for such party to continue its performance hereunder, or (c) as set forth in Section 14 below.
12. **Indemnification.**
 - a. Accushield agrees to indemnify, defend and hold harmless Customer, its successors and assigns and each of their respective directors, officers, employees and agents from any and all claims, losses, liabilities, damages, expenses and costs (including attorneys’ fees and court costs) (collectively “Losses”) incurred by such persons as a result of any intentional breach by Accushield of its obligations under this Agreement.
 - b. Customer agrees to indemnify, defend and hold harmless Accushield, its successors and assigns and each of their respective directors, officers, employees and agents, against any and all Losses arising out of or related to a claim by any third party, including Community staff, Residents, Resident Guests, or any other person who was present at a Community alleging (i) any harm in connection with Customer’s use of the Services for visitor validation or credentialing or alleging a failure by Accushield to adequately protect against such harm, (ii) any negligent act or willful misconduct by Customer or its employees or agents, or (iii) any breach of this Agreement by Customer.

13. Acknowledgment; Disclaimer and Limitation of Liability.

- a. CUSTOMER ACKNOWLEDGES THAT (I) THE VERIFICATION SERVICES PROVIDED BY ACCUSHIELD ARE LIMITED TO VERIFYING IF THE INFORMATION SUBMITTED BY OR ON BEHALF OF VENDORS SATISFIES CREDENTIALS ESTABLISHED BY THE CUSTOMER, AND DO NOT INCLUDE INDEPENDENT VERIFICATION AS TO THE ACCURACY OR LEGITIMACY OF SUCH INFORMATION, AND (II) ACCUSHIELD DOES NOT PERFORM ANY BACKGROUND OR CRIMINAL CHECKS AND RELIES ON THIRD PARTY SERVICE PROVIDERS FOR SUCH INFORMATION, WHICH INFORMATION MAY CHANGE AFTER THE TIME IT IS REVIEWED BY ACCUSHIELD. THE SERVICES PROVIDED BY ACCUSHIELD ARE NOT A SUBSTITUTE FOR CUSTOMER'S DUE DILIGENCE WITH RESPECT TO COMMUNITY VISITORS OR FOR IMPLEMENTATION OF OTHER APPROPRIATE SECURITY MEASURES.
- b. EXCEPT AS EXPRESSLY SET FORTH HEREIN, (I) ACCUSHIELD MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, BY STATUTE, COURSE OF DEALING OR OTHERWISE, REGARDING THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, ALL OF WHICH ARE HEREBY DISCLAIMED, AND (II) EQUIPMENT AND SERVICES ARE PROVIDED "AS IS" AND ACCUSHIELD MAKES NO WARRANTY THAT THE SERVICES OR EQUIPMENT WILL FUNCTION AS INTENDED OR THAT THEY WILL BE AVAILABLE OR FREE FROM BUGS OR OTHERWISE MEET CUSTOMER'S NEEDS.
- c. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EXCEPT FOR ITS INDEMNITY OBLIGATION AND THE LIMITED WARRANTIES PROVIDED HEREIN, IN NO EVENT WILL ACCUSHIELD BE LIABLE TO CUSTOMER WITH REGARD TO ANY MATTER ARISING OUT OF THE AGREEMENT FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL, INCLUDING LOST PROFITS OR BUSINESS INTERRUPTION, UNDER CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, EVEN IF ACCUSHIELD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIMS, AND EVEN IF A LIMITED WARRANTY PROVIDED HEREIN FAILS OF ITS ESSENTIAL PURPOSE. IN THE EVENT ANY PORTION OF THE FOREGOING IS DEEMED UNENFORCEABLE, THE MAXIMUM LIABILITY OF ACCUSHIELD TO CUSTOMER HEREUNDER SHALL BE AN AMOUNT EQUAL TO THE FEES PAID TO ACCUSHIELD BY CUSTOMER DURING THE 12 MONTH PERIOD PRECEDING THE DATE OF THE EARLIEST EVENT GIVING RISE TO CUSTOMER'S CLAIM.

14. Amendment to Terms. Except as otherwise set forth herein, no change to the terms set forth in the Sales Order will be effective unless signed by both parties. Accushield reserves the right to update and revise these Terms and Conditions from time to time. In such event, it will provide Customer at least thirty (30) days' prior notice (which may be electronic or written). Unless Customer objects to such change, it shall be effective as of the date provided in the notice. If Customer objects to such change, it must provide Accushield with a written objection at least ten (10) business days prior to the effective change date. Accushield shall have ten (10) business days from receipt of an objection to provide Customer written notice that, as to such Customer only, the change is rescinded. If Accushield does not provide such notice, Customer shall be entitled, during the 30-day period following the effective date of the change, to terminate this agreement without penalty. If it does

not terminate during such period, the change shall be deemed agreed to and applicable to Customer.

15. Other Terms.

- a. **Dispute Resolution.** Any controversy or claim arising out of or relating to this Agreement shall be settled solely by binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Claims shall be heard by a single arbitrator and the place of arbitration shall be Cobb County, Georgia. The arbitration shall be governed by the laws of the State of Georgia (other than choice of law principles thereof). The prevailing party shall be entitled to an award of reasonable attorney fees. Notwithstanding the foregoing, each party agrees that the other shall be entitled to specific performance of the other's obligations under Sections 8 and 9 without any requirement to post a bond or prove damages.
- b. **Assignability; Successors.** This Agreement may be assigned by Customer, or transferred by operation of law, unless Accushield otherwise does not consent to such assignment in writing. Any direct or indirect change in management of Customer or transfer of a controlling interest in Customer, or any merger which results in a change in the ownership of a controlling interest of Customer, shall be deemed an assignment of this Agreement unless otherwise objected to by Accushield in writing. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of Customer and Accushield and their respective successors and assigns.
- c. **Severability.** If any of the provisions of this Agreement are determined to be unenforceable, the enforceability of the remaining provisions shall not in any way be affected or impaired, and the parties shall substitute an enforceable provision for the affected provision which approximates the intent and economic effect of the affected provision as closely as possible.
- d. **Entire Contract.** This Agreement, including these Terms and Conditions and the Sales Order, comprises the entire agreement of the parties concerning the subject matter hereof, and supersedes all prior writings, discussions, representations and understandings with respect thereto.
- e. **Waiver.** No failure to exercise any right hereunder will be deemed a waiver of such right, and any waiver must be set forth in writing signed by the waiving party. The waiver of a breach of any provision of this Agreement on one occasion shall not operate as a waiver of any subsequent breach or of any other provision.
- f. **Third Party Beneficiaries.** Except for the indemnified parties identified in Section 12, there are no third-party beneficiaries to this Agreement.
- g. **Construction.** The parties agree that "including" shall not be construed as a term of limitation, so that references to "included" matters shall be regarded equivalent to the term "including, but not limited to." The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms. The captions and other headings

contained in this Agreement are inserted for convenience of reference only and shall not affect the interpretation or meaning of this Agreement.

- h. **Notices.** Except as set forth in Section 14, any notice, request, consent, waiver or other communication required or permitted under the Agreement shall be effective only if it is in writing and shall be deemed to have been duly given (i) on the date of delivery, if given personally, (ii) one business day after being sent by national overnight carrier for next day delivery, charges prepaid, or (iii) on the third day after mailing by first class mail, registered or certified, return receipt requested, with postage prepaid. Notices shall be sent to each party at the address set forth on the Sales Order or to such other address as a party may provide using one of the methods permitted herein.