

Terms of Use

SECURE EXCHANGE SOLUTIONS, INC. ("VENDOR") AGREES TO PERMIT YOU TO ACCESS AND USE ITS SERVICES, INCLUDING THE PROGRAMS DESCRIBED BELOW (COLLECTIVELY, THE "SERVICES") IN ACCORDANCE WITH YOUR SUBSCRIPTION AGREEMENT ("SUBSCRIPTION AGREEMENT") WITH THE CHESAPEAKE REGIONAL INFORMATION SYSTEM FOR OUR PATIENTS ("CRISP") ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS AND CONDITIONS CONTAINED IN THESE STANDARD TERMS (THESE "STANDARD TERMS"). THE SERVICES REQUIRE USE OF CERTAIN COMPUTER SOFTWARE APPLICATIONS, DOCUMENTATION, OR OTHER PROPRIETARY MATERIAL THAT ARE THE PROPERTY OF VENDOR AND ITS SUPPLIERS AND ARE REQUIRED TO BE USED IN ORDER FOR VENDOR TO PROVIDE THE SERVICES (THE "PROGRAMS"). YOUR LIMITED REVOCABLE RIGHT TO ACCESS AND USE THE SERVICES IS SUBJECT TO YOUR ACCEPTANCE OF THESE STANDARD TERMS. YOU REPRESENT AND WARRANT THAT YOU ARE A HEALTH CARE PROVIDER AS DEFINED BY HIPAA, A BUSINESS ASSOCIATE OR OTHER AFFILIATE OF A HEALTH CARE PROVIDER, A STATE REGULATORY AGENCY OR A SIMILAR HEALTH CARE INDUSTRY FOCUSED INDIVIDUAL OR ENTITY AUTHORIZED BY CRISP TO ACCESS THE SERVICES. IF YOU ARE PROCURING THESE PROGRAMS ON BEHALF OF AN ENTITY OR ORGANIZATION, YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED TO ENTER INTO THIS AGREEMENT ON BEHALF OF SUCH ENTITY OR ORGANIZATION AND THAT ALL REPRESENTATIONS MADE BY YOU ON BEHALF OF SUCH ORGANIZATION ARE TRUE AND CORRECT. IF YOU DO NOT AGREE TO THESE STANDARD TERMS, VENDOR IS UNWILLING TO PERMIT YOU TO ACCESS THE SERVICES. THESE TERMS OF USE DO NOT MODIFY THE TERMS AND CONDITIONS OF YOUR SUBSCRIBER AGREEMENT BETWEEN YOU AND CRISP.

1. **Specifications.** You agree that the specifications for the Services are as described by CRISP and as fully set forth in the Subscription Agreement in accordance with the certain Health Information Service Provider Subscription Agreement by and between Vendor and CRISP (the "Specifications").

2. **Availability of Services.** (a) Vendor shall provide you with access to the Services, including, among other things, the Support Services described in the Subscription Agreement. (b) You shall provide all things other than the Services for You to receive and make use of the Services including, without limitation, facilities, hardware, software, staff, equipment, communications access and operating systems required for the operation of the Programs, except to the extent provided by CRISP in the Subscription Agreement. (c) You acknowledge that through normal operation and use the Services provide periodic electronic reporting to Vendor on the use and status of Your operation and use of the Services, including, without limitation, tracking user identification information, reporting the internet protocol addresses of the computers or accessing or using the Services for the purposes of identifying and authenticating the persons within Your organization using the Services and the identification and authentication of You as an organization.

3. **Data; License for Data Use; Business Associate.** (a) You represent, warrant and covenant that you and your organization on whose behalf You are accepting these Standard Terms have secured any and all authorizations and rights to use data input by your into the Services or otherwise provided by you to be processed by the Services ("Data"), as applicable, under all applicable federal, state and local laws, including, without limitation, the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and all applicable regulations promulgated thereunder concerning the privacy and security of such data (collectively, "HIPAA"). (b) You acknowledge and agree that data processing performed with the Programs in the course of use and performance of the Services is subject to the possibility of human and machine errors, omissions, delays, and losses, including inadvertent loss of Data or damage to media, that may give rise to loss or damage and that Vendor shall not be liable for any such errors, omissions, delays, or losses except to the extent such errors result from a breach by Vendor of its obligations under these Standard Terms or that certain Health Information Service Provider Subscription Agreement by and between Vendor and CRISP or from the negligence or willful misconduct of Vendor, in (for example only) training or supervising its work force, establishing adequate security for the Services or its core technologies, or failure to follow the Disaster Recovery Plan provided under the Service Level Agreement included within that certain Health Information Service Provider Subscription Agreement by and between Vendor and CRISP. (c) You and Your organization are responsible for adopting reasonable measures to limit the impact of such problems, including backing up Data, and adopting procedures to ensure the accuracy of input Data; adopting procedures to identify and correct errors and omissions,, and reconstruct Data, provided that the foregoing shall not constitute a defense to a breach of these Standard terms by Vendor or operate to waive or limit the obligations of Vendor to You under these Standard Terms or the warranties provided by Vendor in these Standard Terms. (d) On behalf of Your organization, You hereby grant vendor a limited right to access, store, view, display, adapt, import, reproduce, distribute, prepare derivative works from and otherwise process Data for reporting, monitoring and other uses of Vendor in connection with the provision of the Services and, subject to the remainder of this Subsection 3(d) and to Subsection 3(e) of these Standard Terms, to provide secure messaging or transaction solutions provided by Vendor to third parties generally in accordance with the Direct Protocol (as identified at <http://wiki.directproject.org/Applicability+Statement+for+Secure+Health+Transport>) or any successor or coincident protocol (the "Permitted Use"), *except that* the foregoing right expressly does not extend to any Data which is individually-identified health information or protected health information as defined by HIPAA or as defined by any other federal or

state privacy of personal medical information law or regulation (“Protected Health Information”) and is expressly also limited to Data that is not personal clinical or personal financial information derived from the content of individual messages sent using the Services, even if such personal clinical or such personal financial information is not protected under applicable medical or personal information privacy laws (the “Business Data”) (collectively, the “Data Use License”). (e) The Data Use License does not permit Vendor to make any use or disclosure of Data which is Protected Health Information for any other purpose other than as specifically required to provide the Services to You and Your organization as contemplated by these Standard Terms or to make any use of Business Data, except to the extent the Business Data does not include personal clinical or personal financial information and then only for the Permitted Use. In addition, the Data Use License does not permit Vendor to aggregate or deidentify either Protected Health Information or Business Data, even if such aggregation or deidentification is done in accordance with HIPAA, for use by Vendor, or for use or disclosure to an affiliate of Vendor or to any third party for “Data Mining”, defined as the extraction of actionable aggregated or deidentified information from a database in order to use such extracted aggregated or deidentified information for analytic, predictive or other business purposes, even if such Data Mining is not prohibited law or regulations applicable to You or to Vendor. In the event that a law or regulation applicable to You, Your organization or Vendor contains a broader definition of Data Mining than the foregoing, then that broader definition shall apply. Any use or disclosure of Data which is not among the Permitted Use or otherwise expressly permitted by the Data Use License is prohibited. (f) Vendor (i) may use the Data under the Data Use License which constitutes Protected Health Information only as expressly allowed by this Agreement and then only strictly in accordance with the privacy rules under HIPAA or other applicable state and federal privacy laws and the Business Associate Agreement attached to that certain Health Information Service Provider Subscription Agreement by and between Vendor and CRISP (the “BAA”); (ii) is prohibited from making any use or disclosure of Data which is not Business Data permitted to be disclosed under Section 7(e) to any person or party other than You or Your organization, or any patient or other individual otherwise permitted access to such Data under HIPAA or other applicable state or federal privacy laws, including, among others, any individual or entity providing such Data; and (iii) shall have the right to continue to use Business Data for the Permitted Use in accordance with the Data Use License notwithstanding any expiration or termination of Your use of the Services, unless such termination is for breach of the Data Use License. (g) Vendor is and at all times shall be and remain a Business Associate of You and Your organization as a Sub-Business Associate of CRISP and agrees to comply with the terms and conditions of the BAA. (h) The functionality provided by the Services permits You and Your organization to perform certain processes to Data among and between various data formats and standards (the “Data Services”), however, under no circumstances under this Agreement is Vendor performing any Data Services for or on behalf of You or Your organization and Vendor is not functioning as a health care clearinghouse, service bureau or other such similar entity or organization otherwise defined under HIPAA as a “Covered Entity” in performing any Data Services coincident to any use of or access to the Services.

4. **Disclaimer of Warranty and Limited Warranty.** (a) The Services are provided on an “AS-IS” basis. Vendor expressly disclaims any and all warranties, express or implied, regarding or concerning the Services or the results or output produced by the Services. You, not Vendor, are responsible for ensuring the correctness of Data entered during use of the Programs. You acknowledge that You are responsible for compliance with all applicable statutory and regulatory requirements of HIPAA concerning the privacy, security, transmission and format of data, provided that Vendor will comply with the terms and conditions of that certain Health Information Service Provider Subscription Agreement by and between Vendor and CRISP, including the Business Associate Agreement that forms a part of that agreement. No use of the Programs shall make them consumer goods for purposes of federal or state warranty laws, and they are not consumer goods for such purposes. (b) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION 4, VENDOR MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT BY ANYONE SHALL BE DEEMED TO BE OR CREATE A WARRANTY FROM VENDOR OR BY ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION, OR DELIVERY OF THE PROGRAMS OR THE SERVICES OR ANY DATA CONTAINED THEREIN.
5. **Support Services.** Support Services, to be provided by Vendor as described in the Subscription Agreement will be provided in accordance with the Service Level Agreement included with the Subscription Agreement subject to those limitations described in that certain Health Information Service Provider Subscription Agreement by and between Vendor and CRISP.
6. **Ownership of the Services.** (a) You acknowledge and agree that the Services are the property of Vendor, and that the entire right, title, and interest (including any interest arising out of copyright laws) in the Services and all materials relating to the Services belong to Vendor and are made available to You for use only in accordance with the Subscription Agreement. (b) Unless otherwise expressly agreed, all changes, modifications or improvements made or developed with regard to the Services by Vendor, whether or not made or developed at Your request, shall remain the property of Vendor and, upon disclosure or availability to or use by You, shall be deemed to have been part of the Services as of the date upon which you first made use of the Services. (c) You acknowledges and agrees that (i) the Services may include applications, products, materials, systems, data, techniques, processes, information, methodologies and the other information and

services that are proprietary to third-party suppliers and vendors of Vendor (the "Third Party IP"); (ii) Vendor holds valid licenses for all Third Party IP sufficient to permit Vendor to grant you the rights to use such Third Party IP only as part of the your access to and use of the Services; and (iii) You shall neither have nor obtain any rights in any Third Party IP under this Agreement except coincident to your use of the Services.

7. **Damages; Injunctive Relief.** You agree that, if any unauthorized use of the Services occurs, or the Services are used in violation of this Agreement, Vendor shall have the right to seek an injunction against that unauthorized use, in addition to any other rights to which Vendor may be entitled.
8. **Limitation of Liability.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, VENDOR'S ENTIRE AGGREGATE LIABILITY TO YOU, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION OR THEORY OF LIABILITY (INCLUDING CONTRACT, TORT, OR WARRANTY), SHALL BE LIMITED TO AMOUNT OF ANY FEE PAID BY YOU TO VENDOR. UNDER NO CIRCUMSTANCES SHALL VENDOR HAVE ANY LIABILITY TO YOU FOR ANY CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES OR COSTS, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR LOSS OF GOODWILL, RESULTING FROM ANY VIOLATION OF THIS AGREEMENT EVEN IF VENDOR HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY THEREOF.
9. **Miscellaneous.** (a) This Agreement represents the entire agreement between the You and the Vendor as to its subject matter and shall be governed by and construed in accordance with the laws of the State of Maryland without regard to the conflicts of laws provisions thereof. (b) Neither the Uniform Computer Information Transactions Act ("UCITA") (if and to the extent enacted in Maryland or any other state), nor the United Nations Convention on Contracts for the International Sale of Goods shall apply to this Agreement. To the extent UCITA is applicable notwithstanding the foregoing, Vendor and You agree to opt out of the applicability of UCITA pursuant to the "opt out" provisions contained therein. (c) The Services and any related documentation are (i) "Commercial Items," as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable; and (ii) provided with RESTRICTED RIGHTS limiting the use, duplication, or disclosure by the United States Government subject to the restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and computer software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software—Restricted Rights at 48 C.F.R. §52.227-19, as applicable. (d) Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (i) only as Commercial Items and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions set forth in this Agreement. Unpublished-rights reserved under the copyright laws of the United States. The manufacturer of the Services is Secure Exchange Solutions Inc., 7709 Holiday Terrace, Bethesda, Maryland 20817. (e) To the extent applicable, Vendor agrees to comply with all applicable equal opportunity laws including, if appropriate, the provisions of Executive Order 11246, as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 U.S.C. §4212), and Section 503 of the Rehabilitation Act of 1973, as amended, and the regulations at 41 C.F.R. Parts 60-1 through 60-60, 60-250, and 60-741. The affirmative action clause and regulations contained in the preceding sentence shall be incorporated by reference. (f) Except as otherwise provided in this Agreement, this Agreement may be modified only in a writing signed by both parties, provided, however, that changes made by Vendor to the materials, policies, terms and conditions applicable to this Agreement or use of the Services available to You in accordance with the Vendor's Agreement with CRISP shall be incorporated by reference into this Agreement upon publication to You without any action of either You or Vendor. (g) Any and all notices required of Vendor may be made to You by electronic mail or other convenient means and notices generally applicable to all third parties similarly situated with You. (h) Each such notice shall be effective when transmitted by Vendor regardless of when or if such notice is received by You. (i) If any provision of this Agreement is alleged to be invalid or unenforceable, that provision shall be construed to have the broadest interpretation that would make it valid and enforceable. Invalidity or unenforceability of one provision shall not affect any other provision of this Agreement. (k) Failure or delay by either party in exercising any right or power under this Agreement shall not operate as a waiver of that right or power.