

# Terms of Service

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## Online Subscription Agreement: TERMS & CONDITIONS

Updated on December 1, 2008

IMPORTANT – READ CAREFULLY:

BY COMPLETING THE ELECTRONIC ACCEPTANCE PROCESS AND CLICKING THE ACCEPTANCE BUTTON, YOU REPRESENT AND WARRANT THAT YOU: **(i)** ARE 18 YEARS OF AGE OR OLDER; **(ii)** ARE, OR ARE AUTHORIZED TO SIGN FOR AND BIND, THE CONTRACTING PARTY DEFINED BELOW AS “CUSTOMER;” AND **(iii)** HAVE READ, UNDERSTAND AND AGREE ON BEHALF OF CUSTOMER TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS ONLINE SUBSCRIPTION AGREEMENT. OTHERWISE, DO NOT CLICK THE ACCEPTANCE BUTTON TO PROCEED AND YOUR REGISTRATION PROCESS WILL BE DISCONTINUED.

This Online Subscription Agreement (this “**Agreement**”) is a legal and binding instrument entered into as of the date of electronic acceptance by Customer (the “**Effective Date**”), by and between Primary Technologies, LLC listed in Section 10 (“**Primary Technologies**”), and “**Customer**,” the individual or entity entering into this Agreement. Primary Technologies, LLC reserves the right to amend this Agreement from time to time without notice to Customer

1. **Description of Services.** Primary Technologies, LLC’s services such as Healthcare Webconferencing™ and Patient Videoconferencing® (individually and collectively referred to as the “**Services**”), as more fully described in subsections (a) through (b) immediately below. The selection(s) made and submitted by Customer during the registration process will identify the specific Service(s) subscribed to by Customer hereunder and the number of Named Authorized User(s) for each Service. “**Named Authorized Users**” shall mean **(i)** for the Healthcare Webconferencing and Patient Videoconferencing Services, the Customer-designated individuals (i.e., employees, contractors, consultants, etc.) who may access the Services in accordance with this Agreement. The following describes the Services currently offered by Primary Technologies, LLC:
  - a. **Healthcare Webconferencing™.** By subscribing to the Healthcare Webconferencing Service, Customer may access and use the Healthcare Webconferencing screen-sharing application for the sole purpose of conducting online meetings between Named Authorized Users and their respective invited attendees.
  - b. **PATIENT VIDEOCONFERENCING.** By subscribing to the PATIENT VIDEOCONFERENCING Service, Customer may access the application for the sole purpose of conducting online PATIENT visits between Named Authorized Users and their respective invited attendees.
  - c. **Payment Information.** As part of the online registration process, Primary Technologies will collect certain additional information related to billing and payment matters (“**Payment Information**”). Such Payment Information will include a valid debit card or credit card number with available credit sufficient to pay the applicable Subscription Fees, an election of a preferred billing frequency, and other information as required by Primary Technologies, LLC. All Payment Information provided by or on behalf of Customer must be current, complete and accurate, and Customer is solely responsible for updating such Payment Information as necessary. Customer hereby authorizes Primary Technologies, LLC, from time to time, to take steps to determine whether the debit card or credit card number provided is valid. Primary Technologies, LLC reserves the right to terminate this Agreement immediately in the event any Payment

Information is found to be inaccurate, incomplete or not current at any time. Primary Technologies, LLC shall not be responsible for any overdraft charge or other fees that may be incurred by Primary Technologies, LLC's use of Customer's debit card or credit card.

- d. Trial and Promotional Offers.** From time to time, Primary Technologies, LLC may offer certain trial and/or promotional offers. Primary Technologies, LLC reserves the right to discontinue or modify coupons, credits, trials and promotional offers at its discretion and without notice. Any such trial or promotional offers may not be combined with other coupons, credits, trials, promotions or any other discounts, and are limited to one (1) per Customer.
- e. Privacy.** Primary Technologies, LLC's use of any information provided by Customer, including without limitation, Registration Data and Payment Information, is set forth in Primary Technologies, LLC's current Privacy Policy for each of the applicable Service(s), which can be found by clicking on the "Privacy Policy" hypertext link located at the bottom of the respective Web page for each Service.

## **2. Customer Rights and Restrictions.**

- a.** During the Term of this Agreement, and upon Customer's payment of all applicable Subscription Fees, Primary Technologies, LLC will enable Customer to access and utilize the Services as contemplated herein, and Customer may access and use the Services subscribed to hereunder pursuant to and in accordance with the provisions of this Agreement.
- b.** Customer shall be solely responsible for all content transferred by Customer or any other party in connection with Customer's access and/or use of the Services, including all visual, written and/or audible communications. Customer hereby agrees not to access and/or use the Services **(i)** to send unsolicited commercial email in violation of applicable law; **(ii)** request, collect and/or store sensitive data (such as credit card numbers or social security numbers) from online meeting or Webinar attendees; **(iii)** to communicate any message or material that is deemed harassing, threatening, indecent, obscene, libelous, slanderous, or otherwise unlawful; **(iv)** in a manner which violates the intellectual property rights of any party; or **(v)** in a manner which constitutes or encourages conduct that could be a criminal or civil offense under any applicable law or regulation. Although Primary Technologies, LLC is not responsible for any such content or communications, Primary Technologies, LLC reserves the right to take any action it deems necessary or appropriate in its sole discretion, with respect to any such content or communications of which Primary Technologies, LLC may become aware, at any time and without notice to Customer.
- c.** Customer may not reverse engineer, decompile or otherwise attempt to decipher any code in connection with the Services or any other aspect of Primary Technologies, LLC's technology.
- d.** Customer may reassign Named Authorized Users without incurring additional fees.
- e.** Customer may inform its Named Authorized Users, customers and employees that the Services subscribed to hereunder are powered by Primary Technologies, LLC.
- f.** Customer may not resell, distribute, or otherwise use any of the Services on a timeshare or service bureau basis.
- g.** Customer shall not access and/or use any of the Services in any manner that could damage, disable, overburden, impair or otherwise interfere with or disrupt the Primary Technologies, LLC Services or any networks or security systems of Primary Technologies, LLC.
- h.** No other rights are granted hereunder except as expressly set forth in this Agreement.

## **3. Term and Termination.**

- a. **Term.** This Agreement shall commence on the Effective Date and continue for the subscription period as stated on.
  - b. **Termination for Cause.** Primary Technologies, LLC reserves the right to terminate this Agreement immediately if Customer breaches any of its material obligations under this Agreement.
  - c. **Effect of Termination.** Upon termination of this Agreement, Customer will immediately discontinue all access to and use of the Services. Primary Technologies, LLC shall not be liable for any damages resulting from a termination of this Agreement as provided for herein; provided, however, the termination of this Agreement shall not affect any claim arising prior to such termination.
4. **Subscription Fees.** Customer is responsible for all Subscription Fees, and hereby authorizes Primary Technologies, LLC to obtain payment of all such Subscription Fees in accordance with the Payment Information. Customer shall also be responsible for all applicable taxes (withholding tax, sales tax, services tax, value-added tax (VAT), goods and services tax (GST), etc.) or duties imposed by any government entity or collecting agency EXCEPT those taxes based on Primary Technologies, LLC net income.
  5. **Confidential Information.** Unless expressly authorized in writing by the other party, neither party shall disclose to any third party any non-public information or materials provided by the other party under this Agreement and reasonably understood to be confidential ("**Confidential Information**"), or use such Confidential Information in any manner other than to perform its obligations under this Agreement. The foregoing restrictions do not apply to any information that **(i)** is in or becomes available through the public domain, **(ii)** is already lawfully in the receiving party's possession, **(iii)** was known to the receiving party prior to the date of disclosure, **(iv)** becomes known to the receiving party from a third party having an apparent bona fide right to disclose the information, or **(v)** Confidential Information that the receiving party is obligated to produce pursuant to an order of a court of competent jurisdiction or a valid administrative subpoena, providing receiving party provides disclosing party timely notice of such court order or subpoena. Furthermore, Customer will keep in strict confidence all passwords and other access information to the Services.
  6. **DISCLAIMER OF WARRANTIES.** CUSTOMER HEREBY ACKNOWLEDGES AND AGREES THAT THE SERVICES ARE PROVIDED BY Primary Technologies, LLC ON AN "AS IS" BASIS, AND CUSTOMER'S ACCESS TO AND/OR USE OF THE SERVICES IS AT ITS SOLE RISK. Primary Technologies, LLC EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. Primary Technologies, LLC MAKES NO WARRANTY THAT ANY OF THE SERVICES WILL MEET THE REQUIREMENTS OF CUSTOMER OR THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY OR ERROR-FREE, NOR DOES Primary Technologies, LLC MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR THE ACCURACY OF ANY OTHER INFORMATION OBTAINED THROUGH THE SERVICES OR THAT ANY DEFECTS IN THE PLUG-IN WILL BE CORRECTED. CUSTOMER UNDERSTANDS AND AGREES THAT ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED (INCLUDING PLUG-INS) THROUGH THE USE OF ANY OF THE SERVICES IS DONE AT THE SOLE RISK OF CUSTOMER AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO ITS COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA. NO INFORMATION OR ADVICE, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM Primary Technologies, LLC OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO CUSTOMER.
  7. **LIMITATION ON LIABILITY.** IN NO EVENT SHALL Primary Technologies, LLC BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL, MULTIPLE, PUNITIVE OR OTHER

DAMAGES RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, LOSS OF DATA, LOSS OF INCOME, LOSS OF OPPORTUNITY, LOST PROFITS, COSTS OF RECOVERY OR ANY OTHER DAMAGES), HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY, AND WHETHER OR NOT FOR BREACH OF CONTRACT, NEGLIGENCE, OR OTHERWISE, AND WHETHER OR NOT Primary Technologies, LLC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Primary Technologies, LLC's LIABILITY HEREUNDER IS LIMITED TO \$50. SOME JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER.

8. **Indemnification.** Customer hereby agrees, at its sole expense, to indemnify, defend and hold Primary Technologies, LLC harmless from and against any loss, cost, damages, liability or expense arising out of or relating to **(i)** a third-party claim, suit, proceeding, action or allegation of infringement based on information, data, files or other content submitted by Customer or otherwise related to Customer's access to and/or use of the Services; or **(ii)** any fraud or manipulation, or other breach of this Agreement by Customer.
9. **Contracting Party, Choice of Law and Location for Resolving Disputes.** This Agreement is between Customer and the Primary Technologies, LLC entity for Customer's country or region. In this section, find the country or region where Customer is located, where Customer lives (if Customer is signing up for the Services as an individual person) or where Customer's business is located (if Customer is signing up for the Services as business) in the subsections below, and in that subsection Customer will find the Primary Technologies, LLC entity that Customer is contracting with and the choice of law and the location for resolving disputes with such Primary Technologies, LLC entity. If any provision of this Agreement is invalid or unenforceable under applicable law, it shall be to that extent deemed omitted and the remaining provisions will continue in full force and effect. To the extent a provision is deemed omitted, the parties agree to comply with the remaining terms of this Agreement in a manner consistent with the original intent of the Agreement.
10. **Additional Terms.**
  - a. **Authority.** Each party hereby represents and warrants to the other party that it has all necessary authority to enter into and perform its obligations under this Agreement without the consent of any third party or breach of any contract or agreement with any third party.
  - b. **Assignment.** Customer may not assign its rights or delegate its duties under this Agreement either in whole or in part, and any such attempted assignment or delegation shall be void.
  - c. **Force Majeure.** Primary Technologies, LLC will not be responsible for any delay, interruption or other failure to perform under this Agreement due to acts beyond the control of Primary Technologies, LLC.
  - d. **Choice of Law.** This Agreement and any dispute arising out of or in connection with this Agreement shall be governed by and construed under the laws of the State of Illinois, without regard to the principles of conflict of laws.
  - e. **Export.** Both parties agree to comply with applicable United States export and import laws and regulations.
  - f. **High-Risk Use.** Customer hereby acknowledges that the Services are not designed or intended for access and/or use in or during high-risk activities including, but not limited to: medical procedures; on-line control of aircraft, air traffic, aircraft navigation or aircraft communications; or the design, construction, operation or maintenance of any nuclear facility. Primary Technologies, LLC hereby expressly disclaims any express or implied warranty of fitness for such purposes.

- g. Proprietary Rights.** Primary Technologies, LLC retains ownership of all proprietary rights in or associated with all its products and services (including the Services), and Customer may not use the Primary Technologies, LLC logo, or any other name, logo, icon or mark identifying Primary Technologies, LLC's products and/or services (including the Services) without prior written permission of Primary Technologies, LLC.
- h. Compliance with Laws.** Customer shall comply with all applicable laws, rules and regulations relating to Customer's access to and/or use of the Services.
- i. No Waiver.** The failure of either Customer or Primary Technologies, LLC in any one or more instance(s) to insist upon strict performance of any of the terms of this Agreement will not be construed as a waiver or relinquishment of the right to assert or rely upon any such term(s) on any future occasion(s).
- j. Severability.** If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be severed from this Agreement and the other provisions shall remain in full force and effect.
- k. No Third Party Beneficiaries.** No person or entity not a party to this Agreement will be deemed to be a third party beneficiary of this Agreement or any provision hereof.
- l. Entire Agreement.** This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and understandings with respect to the same. No waiver or amendment of any term or condition of this Agreement shall be valid or binding on either party unless agreed to in writing by both parties.
- m. Captions and Headings.** Captions and headings are used herein for convenience only, are not a part of this Agreement, and shall not be used in interpreting or construing this Agreement.
- n. Language.** Only the most current English version of this Agreement is binding. In the event of inconsistency or discrepancy between the English version and any other language version of this Agreement, the English-language version shall prevail.
- o. Beta version.** The terms of this subsection 11(o) shall only apply to Customer with respect to any "Beta" version of any of the Services (the "**Beta Services**") made available to Customer for purposes of evaluation and feedback. Customer acknowledges that the Beta Service(s) Customer is evaluating may contain bugs, errors and other problems and is provided to Customer "as-is." Therefore, Primary Technologies, LLC disclaims any warranty or liability obligations to Customer of any kind with respect to the Beta Services. Customer further acknowledges the importance of communication between Primary Technologies, LLC and Customer during Customer's use of the Beta Services and participation in Primary Technologies, LLC's Beta program and hereby agrees to receive related correspondence and updates from Primary Technologies, LLC. In the event Customer requests to opt-out from such communications, Customer's participation in the Primary Technologies, LLC Beta program will also be canceled. Customer also hereby acknowledges that Primary Technologies, LLC has not made any representations, promises or guarantees that the Beta Services will ever be announced or made available to anyone in the future and that Primary Technologies, LLC has no express or implied obligation to Customer to announce or introduce the Beta Services. During the Primary Technologies, LLC Beta program, Customer will be asked to provide feedback regarding Customer's use of the Beta Service(s) and Customer hereby grants to Primary Technologies, LLC a perpetual, royalty-free worldwide license to use and/or incorporate such feedback into any Primary Technologies, LLC product or service (including the Beta Services) at any time at the sole discretion of Primary Technologies, LLC. With respect to the Beta Services, this subsection shall supersede any other terms and conditions contained herein, but only to the extent necessary to resolve conflict.