

# Terms of Use

## USER AGREEMENT

THIS USER AGREEMENT (“AGREEMENT”) GOVERNS YOUR USE OF THE PROXI SERVICE AS DEFINED BELOW. THIS AGREEMENT IS BETWEEN YOU AND INCENTE, L.L.C., A LIMITED LIABILITY COMPANY LOCATED AT 6 PURLING BROOKS, HANOVER, NH 03755, UNITED STATES OF AMERICA.

This Agreement was last updated on 7/26/2016. It is effective between You and Us as of the date of Your acceptance of this Agreement.

### 1. DEFINITIONS

“Proxi Service” means a digital care management module that allows a clinician to communicate with a mental health patient and the patient’s healthcare team, owned and operated by Incente, L.L.C. It includes a software-based assessment tool for mental health practitioners, known as “SERAS,” owned and operated by Wisser Systems, LLC (“Wisser”), and licensed to Incente, L.L.C.

“We”, “Us”, “Our” or “Licensor” means Incente, L.L.C., a Limited Liability Company.

“Your Data” means all electronic data or information submitted by You to the Proxi Service.

### 2. PROVISION AND USE OF PROXI SERVICE

**2.1 Provision of the Proxi Service.** We shall make a subscription of the Proxi Service available to You subject to the terms of this Agreement. Your subscription is for Your use only and cannot be shared or used by anyone else. We may suspend or terminate Your access to the Proxi Service immediately without any liability, upon notice to You, if in Our sole judgment You have violated the terms of this Agreement. We may also suspend or terminate Your use of the Proxi Service, or condition Your continued use on additional terms communicated to You, in the event that Your continued use, in Our sole judgment, poses an undue or disproportionate burden on the Proxi Service, Our systems, or Our networks. We may modify the functionality of the Proxi Service and its Application Programming Interface at any time in Our sole discretion.

**2.2 Your Responsibilities.** You shall (i) be responsible for Your compliance with this Agreement and all activities occurring within or from Your account, (ii) be solely responsible for the accuracy, quality, integrity and legality of, and for the means by which You acquired Your Data, and Your use of the Proxi Service, (iii) use best commercially reasonable efforts to prevent unauthorized access to or use of the Proxi Service, and notify Us promptly of any such unauthorized access or use, and (iv) use the Proxi Service only in accordance with applicable laws and government regulations. You shall not (a) make the Proxi Service available to anyone else, (b) sell, resell, rent or lease the Proxi Service, (c) use the Proxi Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Proxi Service to store or transmit malicious code or malware, or to engage in phishing or other fraudulent activity, (e) interfere with or disrupt the integrity or performance of the Proxi Service or third-party data contained therein, and/or (f) attempt to gain unauthorized access to the Proxi Service or Our systems or networks.

**2.3 Tracking and Analysis.** We may track and analyze Your use of the Proxi Service for the purpose of helping Us improve both the Proxi Service and Your experience in using the Proxi Service. We may disclose such data about Your use of the Proxi Service (“Usage Statistics”) to third parties for the purpose of assisting Us in such tracking and analysis, or as required by law; We may also disclose data about Your use of the SERAS assessment tool to Wiser; We will not disclose such Usage Statistics to third parties for any other purpose. Except when required by law, in disclosing Usage Statistics to a third party, We will de-identify such Usage Statistics so as to not disclose Your identity to such third party.

**2.4 Data Storage.** The amount of Your Data which We retain and/or the time period for which We retain it at no charge, may be limited in Our discretion.

**2.5 Children.** USE OF THE PROXI SERVICE IS NOT PERMITTED FOR CHILDREN 12 YEARS OF AGE OR YOUNGER.

### **3. THIRD-PARTY PROVIDERS**

**3.1 Acquisition of Third-Party Products and Services.** Any acquisition or use by You of third-party products or services, including but not limited to Third-Party Applications or websites or services operated by third parties, and any exchange of data between You and any third-party provider, is solely between You and the applicable third-party provider. We do not warrant or support third-party products or services, whether or not they are designated by Us as “certified” or otherwise, and whether or not You are introduced to such third party products or services by Us or anyone else in connection with Your use of the Proxi Service.

**3.2 Third-Party Applications and Your Data.** If You install or enable a Third-Party Application for use with the Proxi Service, You acknowledge that We may allow the provider of that Third-Party Application to access Your Data as required for the interoperation or support of such Third-Party Application with the Proxi Service. We shall not be responsible for any disclosure, modification, use or deletion of Your Data resulting from any such access by a Third-Party Application provider or any other user of the Proxi Service.

**3.3 Third-Party Data Processors.** We may, at Our discretion, use third party data processors to assist Us in providing the Proxi Service, including but not limited to processing and/or storing Your Data at the third party's site. If We do so, any such third party data processor's access to and use of Your Data will be limited to the purpose of assisting Us in providing the Proxi Service.

## **4. LICENSES**

### **4.1 Our License to You.**

**a.** We grant You a worldwide, non-exclusive, non-transferable license during the term of this Agreement to use the Proxi Service in accordance with this Agreement.

**b.** You shall not (i) permit any third party to access the Proxi Service except as permitted herein, (ii) create derivate works based on the Proxi Service, (iii) copy, frame or mirror any part or content of the Proxi Service, (iv) reverse engineer the Proxi Service, or (v) access the Proxi Service in order to build a competitive product or service or to copy any features, functions or graphics of the Proxi Service.

**4.2 Your License to Us.** You grant Us a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into Our services any suggestions, enhancement requests, recommendations or other feedback provided by You, including users, relating to the operation of Our services. You also grant to Us a royalty-free, worldwide, transferable, sublicenseable license to use and display Your Data for the purposes of providing the Proxi Service, and to transfer such data to Our third party service providers used by Us in providing the Proxi Service.

**4.3 Federal Government End Use Provisions.** We provide the Proxi Service, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Proxi Service include only those rights customarily

provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under this Agreement, it must negotiate with Us to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

## **5. PROPRIETARY RIGHTS**

**5.1 Our Proprietary Rights.** Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Proxi Service, including all related intellectual property rights subsisting therein. We grant no rights to You hereunder other than as expressly set forth herein.

**5.2 Your Applications and Code.** If You create applications or program code using the Proxi Service, You authorize Us to host, copy, transmit, display and adapt such applications and program code, solely as necessary for Us to provide the Proxi Service in accordance with this Agreement. Subject to the above, We acquire no right, title or interest from You or Your licensors under this Agreement in or to such applications or program code, including any intellectual property rights therein, unless You and We expressly agreed otherwise in writing.

**5.3 Your Data.** Subject to the limited rights granted by You hereunder, We acquire no right, title or interest from You (or Your licensors) under this Agreement in or to Your Data, including any intellectual property rights therein provided that all patient records, reports and charts produced as a result of customers' use of the Proxi Service shall remain Our property.

## **6. EXCLUSION OF WARRANTIES**

WE MAKE NO WARRANTIES OF ANY KIND WITH RESPECT TO THE PROXI SERVICE, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND WE SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WE DO NOT REPRESENT OR WARRANT THAT YOUR USE OF THE PROXI SERVICE WILL MEET YOUR REQUIREMENTS OR THAT YOUR USE OF THE PROXI SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR.

HEALTH RELATED INFORMATION STORED ON PROXI, INCLUDING HEALTH CARE INFORMATION COPIED FROM A HEALTH CARE PROVIDER'S SYSTEMS CONNECTED TO PROXI, MAY NOT ALWAYS BE ACCURATE OR UP-TO-DATE AND SHOULD BE VIEWED BY ANY HEALTH CARE PROVIDER AS INFORMATIONAL ONLY.

THE PROXI SERVICE DOES NOT PROVIDE MEDICAL OR ANY OTHER HEALTH CARE ADVICE, DIAGNOSIS OR TREATMENT. ALWAYS SEEK THE ADVICE OF A PHYSICIAN OR OTHER QUALIFIED HEALTH PROVIDER WITH ANY QUESTIONS REGARDING A MEDICAL CONDITION. NEVER DISREGARD PROFESSIONAL MEDICAL ADVICE OR DELAY IN SEEKING IT BECAUSE OF INFORMATION ACCESSED ON OR THROUGH THE SERVICE.

## **7. INDEMNIFICATION**

You shall indemnify Us for any damages, costs, and expenses arising out of any claim, demand, suit, or proceeding ("Claim") made or brought against Us by a third party alleging that Your use of the Proxi Service in violation of this Agreement or applicable law, and for reasonable attorney's fees incurred by Us in connection with any such Claim.

## **8. LIMITATION OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WE HAVE ANY LIABILITY TO YOU FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, WE SHALL HAVE NO LIABILITY FOR STATUTORY DAMAGES, LOSS OF PROFITS, REVENUE OR DATA OR FOR INTERRUPTIONS IN SERVICE.

THE LIMITATIONS OF LIABILITY IN THIS SECTION 8 WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW TO ANY DAMAGES OR OTHER LIABILITY OF LICENSOR, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER DERIVED FROM CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE BY THE LICENSOR) OR OTHERWISE, EVEN IF THE LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITY AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE HEREUNDER FAIL OF THEIR ESSENTIAL PURPOSE. THE PARTIES AGREE THAT THE LICENSE AND OTHER FEES CHARGED BY THE LICENSOR AND PAID BY LICENSEE ARE

BASED ON AND REFLECTIVE OF THE ALLOCATION OF RISK CONTEMPLATED BY THIS ARTICLE 8 AND THAT THE LIMITATIONS IN THIS ARTICLE 8 ARE AN ESSENTIAL ELEMENT OF THE AGREEMENT BETWEEN THE PARTIES.

## **9. TERM AND TERMINATION**

**9.1 Term.** This Agreement commences on the date You accept it and continues until its termination in accordance with Section 9.2 (Termination).

**9.2 Termination.** We may terminate Your Proxi Service at any time without cause upon 30 days notice to You.

**9.3 Deletion of Data Upon Termination.** Your Data will be permanently deleted after a period of 7 years upon any termination of this Agreement unless, prior to or concurrent with such termination, You enter into a new agreement with Proxi.

**9.4 Surviving Provisions.** Sections 5 (Proprietary Rights), 6 (Exclusion of Warranties), 7 (Indemnification), 8 (Limitation of Liability), 11 (Relationship to Other Agreements), and 12 (General Provisions) shall survive any termination or expiration of this Agreement.

## **10. CHANGES TO TERMS**

We may make changes to this Agreement from time to time. When these changes are made, We will make a new copy of the Agreement available on this web page with a notation indicating the date on which this Agreement was last updated. You understand and agree that if You use the Proxi Service after the date on which this Agreement has changed, Your use will signify Your acceptance of the updated Agreement.

## **11. RELATIONSHIP TO OTHER AGREEMENTS**

This Agreement will govern Your access to the Proxi Service but not Your access to other services that may be provided by Incente L.L.C.

## **12. GENERAL PROVISIONS**

**12.1 Notices.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (a) personal delivery, (b) the second business day after mailing, (c) the second business day after sending by confirmed facsimile, or (d) the first business day after sending by email. Notices to Us shall be addressed to

the attention of Proxi, L.L.C., 6 Purling Brooks Dr., Hanover, NH 03755, U.S.A., Attention: CEO. Notices to You shall be addressed to the system administrator designated by You for Your relevant Proxi Service account.

**12.2 Governing Law and Jurisdiction.** This Agreement, and any disputes arising out of or related hereto, shall be governed exclusively by the internal laws of the State of New Hampshire and controlling United States federal law, without regard to their conflicts of laws rules or the United Nations Convention on the International Sale of Goods.

**12.3 Venue; Waiver of Jury Trial.** The state courts located in Grafton County, New Hampshire or the Federal Court located in Concord, New Hampshire shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the exclusive jurisdiction of such courts. Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement. Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

**12.4 Confidentiality.** As used herein, “Confidential Information” means all information exposed or provided to You by Us (a) within the Proxi Service, or (b) otherwise that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including but not limited to the Proxi Service. However, Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to Us, (ii) was known to the You prior to its disclosure by Us without breach of any obligation owed to Us, as demonstrated by written records, (iii) is received from a third party without breach of any obligation owed to Us, or (iv) was independently developed by You without reference to the Confidential Information, as demonstrated by written records. Except as otherwise permitted in writing by Us, You shall not disclose or use any Confidential Information of Ours for any purpose outside the scope of this Agreement. If You are compelled by law to disclose any Confidential Information, You shall give Us prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance if We wish to contest the disclosure. Notwithstanding anything to the contrary in this Agreement, usage statistics are not Confidential Information and do not constitute Your Data.

**12.5 Export Compliance.** Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Proxi Service. Without limiting the foregoing, (a) each party represents that it is not named on any U.S. government list of persons or entities prohibited

from receiving exports, and (b) it shall not access or use the Proxi Service in violation of any U.S. export embargo, prohibition or restriction.

**12.6 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

**12.7 No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

**12.8 Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**12.9 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

**12.10 Assignment.** You may not assign any of Your rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of Incente, L.L.C. Incente, L.L.C. may assign this Agreement, in whole or in part, without Your consent in its sole discretion. This Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**12.11 Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted.