

MCC TERMS AND CONITIONS

Welcome to MNCred.org, which is owned by Minnesota Credentialing Collaborative, LLC (“we,” “us” or “MCC”) a joint effort of the Minnesota Council of Health Plans (MCHP), Minnesota Hospital Association (MHA) and the Minnesota Medical Association (MMA). This web site is currently hosted by the MHA. Through this website (the “MCC Website”) and through websites developed and hosted by our online service provider, Digital Online Technologies, Inc. (“DOTI”), you can enter and maintain all your credential data and professional information in one place and send this data to hospitals, health plans and other institutions (each, a “Recipient”) when needed. . By clicking “I Agree” and by using the MCC Website and related links, you as the provider of credential information (“you” or “Credential Provider”) agree to be bound by these terms and conditions (these “Terms and Conditions”). MCC reserves the right to make changes to these Terms and Conditions. If we make changes to these Terms and Conditions, we will notify you at the email address you have provided.

1. Grant of Rights.

1.1. MCC Grant of Rights. MCC hereby grants to Credential Provider and its authorized employees and contractors a limited, nontransferable right to access the CredentialSmart System during the Term, through an Internet portal developed by MCC, solely for the purpose of sending and using information submitted by participating health-care providers (“Credential Information”) and, except as permitted herein, solely for use in Minnesota. Credential Provider shall also become a party to a user agreement directly with DOTI (a “User Agreement”) prior to accessing the CredentialSmart System. The rights granted to Credential Provider in this Agreement are conditioned on compliance with the User Agreement and may be terminated by MCC if Credential Provider breaches the User Agreement.

2. Authorized Use.

2.1. Credential Provider Use in Minnesota. Credential Provider may, consistent with this Agreement and the User Agreement, (a) access, open, display, download and use Credential Information as permitted by the functionality of the CredentialSmart System and to send such Credential Information anywhere in the state of Minnesota to those health plans and hospitals (“Recipients”) that are participants in the CredentialSmart System, and (b) print copies of any single provider’s Credential Information for the maintenance of paper records.

2.2. Credential Provider Use Outside of Minnesota. Credential Provider may use the CredentialSmart System as provided in Section 2.1 at facilities owned by Credential Provider outside of the state of Minnesota only if MCC obtains prior written consent from DOTI permitting such use. Credential Provider has set forth on Exhibit A hereto a list of all facilities outside of the state of Minnesota where it intends to use the CredentialSmart System.

2.3. Sending Credential Information Outside of Minnesota. Credential Provider may send Credential Information to facilities not listed on Exhibit A provided that Credential Provider pays all required fees to DOTI and to any other third party as provided in Section 7 (and the related Exhibit B) and as provided in the User Agreement. Credential Provider may send Credential Information to a Recipient’s facilities

outside of Minnesota without additional charge if such Recipient has received approval from DOTI and MCC waiving such charges.

3. Restriction of Use.

3.1. Unauthorized Use. Except as permitted in Section 2, Credential Provider shall not:

- (a) Copy, reproduce, store, print or redistribute Credential Information, provided that, for the sake of clarity, nothing herein shall prevent Credential Provider from printing copies of provider's Credential Information for the maintenance of paper records;
- (b) License, sublicense, sell, resell, transfer, assign, distribute, commercially exploit or make available to a third party the CredentialSmart System, provided that Credential Provider may use the CredentialSmart System for internal business purposes as provided in Section 3.2;
- (c) Modify or make derivative works based upon the CredentialSmart System;
- (d) Establish Internet links to the CredentialSmart System without prior written approval of DOTI;
- (e) Frame or mirror the CredentialSmart System or Credential Information on any other server or on any wireless or Internet-based device;
- (f) Reverse engineer, decompile or disassemble the CredentialSmart System or access the CredentialSmart System or its content (i) to build a competitive product or service, (ii) to build a product using similar ideas, features, functions or graphics of the CredentialSmart System or (iii) to copy any ideas, features, functions or graphics of the CredentialSmart System;
- (g) Send spam or other duplicative or unsolicited messages in violation of applicable laws;
- (h) Send or store infringing, obscene, threatening, libelous or otherwise unlawful or tortious material, including material that is harmful to children or that violates third-party privacy rights;
- (i) Send or store material that contains software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs;
- (j) Interfere with or disrupt the integrity or performance of the CredentialSmart System or the data contained therein; or
- (k) Attempt to gain unauthorized access to the CredentialSmart System or its related systems or networks.

3.2. Internal Use. Credential Provider agrees to use the CredentialSmart System only for internal business purposes. As used herein, "internal business purposes" means use only by Credential Provider, its wholly owned subsidiaries and the entities, if any, listed on Exhibit A and for the purpose of sending, receiving and/or using Credential Information.

4. Access to Credential Information; Grant-back License.

4.1. Authorized Personnel. Subject to the terms and conditions of this Agreement, Credential Provider may authorize its employees and contractors and the employees and contractors of any wholly owned subsidiary to enter Credential Information into the CredentialSmart System, to print copies of Credential Information for record-keeping purposes and to send such Credential Information to recipients using the functionality of the CredentialSmart System (each such person, a "Credential Administrator"). Duly authorized Credential Providers may authorize their staff members to enter data into the CredentialSmart System on their behalf, subject to the review and control of such Credential Provider, but each Credential Provider shall digitally sign and send his or her Credential Information.

4.2. Selection of Authorized Personnel. Credential Provider shall use reasonable best efforts to select employees who will be Credential Administrators. All Credential Administrators shall be over the age of eighteen (18). Prior to authorizing any employee as a Credential Administrator and as a condition of such authorization, Credential Provider shall ensure that each such person:

(a) Has agreed to the terms of the User Agreement and, as required by DOTI, has executed such agreement in paper or electronic form;

(b) Has acknowledged that failure to comply with the terms of this Agreement, including the provisions setting out unauthorized use and the provisions of Section 9 herein, may result in termination of Credential Provider's rights to access the CredentialSmart System and the loss of all of Credential Provider's prepaid fees.

4.3. Obligations of Credential Provider. Credential Provider shall use reasonable best efforts to maintain control of passwords and other security measures related to the CredentialSmart System to prevent Unauthorized Use. Credential Provider shall (a) maintain a current list of all Credential Administrators, along with each such person's user name and password and shall supply such list to MCC upon written request, and (b) cancel the user name, password and other security measures of any person who for any reason is no longer a Credential Administrator. As between Credential Provider and MCC, Credential Provider is solely responsible for all acts and omissions of Credential Administrators under this Agreement.

4.4. Policies and Procedures.

(a) MCC may establish reasonable policies and procedures ("MCC Procedures") relating to access of the CredentialSmart System, including procedures for creating user accounts and passwords, managing access to the CredentialSmart System, and regulating the use of Credential Information and any other personal information, as necessary or desirable to assure the performance and accuracy of the services provided under this Agreement and to comply with any federal, state or local law or regulation.

(b) Credential Provider agrees to conform to all applicable MCC Procedures adopted after the Effective Date.

4.5. License Grant by Credential Provider. Credential Provider hereby grants to Recipients and their affiliates, agents and employees a perpetual, worldwide, non-exclusive, royalty-free and transferable

license to use, reproduce, distribute and display the Credential Information in any media format for the purposes of (a) permitting Recipients to confirm that its medical professionals hold the proper credentials and (b) permitting Recipients to make employment-related decisions. Credential Provider further grants to MCC, solely for the purpose of analyzing the performance and usefulness of the CredentialSmart System and modifications thereto, a perpetual, nontransferable, royalty-free license to access, display and print Credential Information submitted through the CredentialSmart System and to use aggregated, non-personally identifiable information collected through the CredentialSmart Systems.

5. Data Privacy.

5.1. Protection of Data. Each of the parties acknowledges that the CredentialSmart System permits the transmission of sensitive personal information of Credential Providers. Each of the parties agrees to use commercially reasonable efforts to protect the security of personal information submitted through the CredentialSmart System. Without limiting the generality of the preceding sentence,

(a) MCC agrees to limit access to Credential Information to employees, representatives and agents only as is necessary to assure the performance and accuracy of the CredentialSmart System, and

(b) Credential Provider agrees to limit access to the CredentialSmart System only to permitted Credential Administrators and to comply with the obligations set forth in Section 4.

5.2. Privacy Policy. The terms of the privacy policy set forth on the MCC Website as amended from time to time by MCC in its sole discretion shall be incorporated into and deemed a part of this Agreement.

6. Ownership/Intellectual Property Rights.

6.1. Ownership of CredentialSmart System. Credential Provider acknowledges that Credential Provider receives only a limited right to use, and no other right, title or interest in the CredentialSmart System, including all modifications thereto and all documentation distributed by MCC or DOTI relating thereto, and that DOTI retains ownership of the CredentialSmart System.

6.2. Ownership of MCC Website. Credential Provider acknowledges that Credential Provider receives only a limited right to use, and no other right, title or interest in the MCC Website, including all modifications thereto and all documentation distributed by MCC or any affiliate relating thereto, and that MCC retains ownership of the MCC Website.

6.3. Ownership of Credential Information. MCC acknowledges that MCC receives only a limited right to use, and no other right, title or interest in Credential Information provided under this Agreement, and that as between Credential Provider and MCC, Credential Provider retains ownership of the Credential Information.

7. Fees; Refunds.

7.1. Fee. Credential Provider shall pay to MCC the fees set forth on Schedule C.

7.2. No Refunds. Credential Provider shall not be entitled to a refund of any fee for any reason.

8. Term and Termination.

8.1. Term of Agreement. The initial term of this Agreement shall be for the period beginning on the Effective Date and continuing one (1) year thereafter (the "Initial Term"). This Agreement shall automatically renew each year for an additional twelve (12) months (each a "Renewal Term" and together with the Initial Term, the "Term") unless either party provides thirty (30) days' written notice of intent to terminate.

8.2. Termination for Cause.

(a) Either party may terminate this Agreement for a material breach that remains uncured for thirty (30) days after delivery of written notice of such breach. Material breaches by Credential Provider include, without limitation, any violation of Section 3 and any failure to pay any fee under Section 7 when due.

(b) MCC may terminate this Agreement immediately if DOTI terminates Credential Provider's right to use the CredentialSmart System because Credential Provider breached or was alleged to have breached the User Agreement or any other agreement between Credential Provider and DOTI.

8.3. Termination for Changed Circumstances. If DOTI terminates the Services Contract or License Agreement for any reason (including, for purposes of clarity, any breach or alleged breach by MCC), MCC may terminate this Agreement by providing thirty (30) days' written notice to Credential Provider.

8.4. Termination for Insolvency. In the event either party becomes insolvent, files for bankruptcy, ceases to do business or is generally unable to meet its financial obligations, the other party may terminate this Agreement immediately by providing notice.

8.5. Effect of Termination. If this Agreement is terminated for any reason: (a) Each party shall return any Confidential Information in the other party's possession or certify to the other party that such information has been destroyed; and (b) All licenses granted under Section 1 shall immediately cease, provided that (i) Credential Provider may continue to use the MCC Website as necessary to exercise Credential Provider's right to collect Credential Information from DOTI and (ii) MCC shall have no obligation to remove from any file or database aggregate information collected from Credential Provider in compliance with Section 4.5.

9. Confidentiality.

9.1. Protection of Confidential Information. In the course of accomplishing the intended tasks hereunder, the parties may receive or learn certain information about one another that is "Confidential Information" (as defined herein), the unauthorized disclosure of which would cause economic or irreparable harm to either party. Each party agrees to hold any Confidential Information disclosed in confidence and not to directly or indirectly duplicate, copy, reproduce, distribute, manufacture, duplicate, reveal, report, publish, disclose, cause to be disclosed, or otherwise transfer the Confidential Information for any purpose whatsoever other than as expressly provided by this Agreement. Each party agrees to use best efforts to prevent the unauthorized, direct or indirect, disclosure of Confidential

Information to any third party or entity and to cause their respective officers, directors, employees, physicians and agents to use similar care.

9.2. Permitted Disclosures. Either party may disclose Confidential Information to its employees and contractors performing services hereunder who has a legitimate need to know and who will agree in writing to protect the Confidential Information consistent with the provisions of this Agreement. Each party shall be liable for any breach of this Section 9 by its employees or contractors. This Section 9 imposes no obligation on a receiving party (a "Receiving Party") with respect to Confidential Information that (a) is or becomes available to the general public through no fault of the Receiving Party, (b) is disclosed to the Receiving Party without restriction on disclosure by a person who has a lawful right to disclose the Confidential Information, (c) is disclosed by the Receiving Party' with the other party's prior written consent, or (d) is independently developed by the Receiving Party without the use of any Confidential Information.

9.3. Definition. "Confidential Information" means any technical, business, economic, and personal information which the disclosing party (the "Disclosing Party") deems proprietary and confidential, including, any and all information or data, whether in oral, audio, visual, written or other form, communicated to the Receiving Party which is either identified as confidential or which by its nature is generally considered proprietary and confidential, regardless of whether such information is specifically labeled as such. Confidential Information includes, without limitation, all Credential Information and information and data concerning the Disclosing Party's business, including financial information, customers, vendors, marketing and financial plans, methods, formulae, systems, data, processes, designs, technology, tables, calculations, agreements, documents, and know-how.

10. Noncompetition.

10.1 Noncompetition. During the current period of this Agreement and for a period of twelve (12) months following the end date of the current contract period, Authorized User agrees that it will not, without the prior written consent of CREDENTIALSMART (i) develop and make available to unaffiliated third parties for a fee any software application that is competitively similar to ApplySmart (in the form actually used by Authorized User under this Agreement or (ii) integrate the ApplySmart application into another software application. As used in this section, "integrate" means to modify the ApplySmart application in any way not permitted by the license terms of this Agreement and to make such modifications available through another software application. For purposes of clarity, nothing in this Agreement shall be deemed to prevent Authorized User from using any third-party software commercially available to the health-care industry so long as Authorized User does not permit the third-party vendor to access ApplySmart in violation of the license terms of this Agreement and the third party vendor does not integrate the application with or into ApplySmart.

10.2 Third Party Beneficiary. CREDENTIALSMART is the third party beneficiary of the non-compete set forth in Section 10.1, with the right to directly take action to enforce that provision.

10.3 Breaches. Notwithstanding the foregoing Section 10.2 Authorized User shall be responsible solely for breaches of this section 10 committed by it and not for breaches by others.

11. Representations and Warranties.

11.1. Representations and Warranties of MCC. MCC represents and warrants that (a) it has the authority to enter into this Agreement, and (b) that it will use commercially reasonable efforts to protect sensitive personal information contained in Credential Information.

11.2. Representations and Warranties of Credential Provider. Credential Provider represents and warrants that (a) it has the authority to enter into this Agreement, (b) the execution and performance of this Agreement will not cause a breach of this Agreement or any other agreement to which Credential Provider is a party, (c) Credential Provider is not a direct competitor to DOTI, (d) Credential Provider is a Minnesota-based entity and that, except as set forth on Exhibit A, it intends to use and will use the CredentialSmart System only in Minnesota and (e) Credential Provider will use the CredentialSmart System only as permitted under this Agreement.

12. Disclaimer of Warranties.

12.1. No Warranties. MCC DISCLAIMS ALL WARRANTIES, OBLIGATIONS AND LIABILITIES NOT SPECIFIED IN THIS AGREEMENT WITH RESPECT TO THE CREDENTIALSMART SYSTEM, TRADEMARKS, OR ANYTHING ELSE FURNISHED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. EACH OF THE MCC WEBSITE AND CREDENTIALSMART SYSTEM IS PROVIDED "AS IS" AND "AS AVAILABLE."

THE CREDENTIALSMART SYSTEM WILL NOT BE HOSTED, MANAGED OR MAINTAINED BY MCC, AND MCC DOES NOT WARRANT THAT THE USE OF THE CREDENTIALSMART SYSTEM WILL BE UNINTERRUPTED, SECURE OR ERROR-FREE OR THAT INFORMATION PROVIDED THROUGH THE CREDENTIALSMART SYSTEM WILL BE COMPLETE OR ACCURATE.

12.2. Other Subscribers. Credential Provider acknowledges that other entities and persons have access to the CredentialSmart System and that the actions of other parties are beyond the control of MCC. Accordingly, to the fullest extent permitted by law, MCC assumes no liability for or relating to any impairment of the privacy, security, confidentiality, integrity or availability of any information on the CredentialSmart System resulting from any other entity or person's actions or failures to act.

12.3. Inaccurate Data. All information which is made available through the CredentialSmart System originates from other parties making data available through the CredentialSmart System. MCC neither initiates the transmission of any data nor monitors the content of data being transmitted. Accordingly, to the fullest extent permitted by law, MCC assumes no liability for or relating to the accuracy, currency, completeness, content or delivery of any information through the CredentialSmart System.

13. Limitation on Liability.

13.1. Limitation on Liability. IF MCC, ITS AFFILIATES, OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, LICENSORS, SUPPLIERS OR OTHER REPRESENTATIVES IS HELD OR FOUND TO BE LIABLE TO CREDENTIAL

PROVIDER FOR ANY MATTER RELATING TO OR ARISING FROM A BREACH OF ANY COVENANT OR AGREEMENT CONTAINED IN THIS AGREEMENT, WHETHER BASED ON AN ACTION OR CLAIM IN CONTRACT, NEGLIGENCE, TORT OR OTHERWISE, THE AMOUNT OF DAMAGES RECOVERABLE FROM MCC WILL NOT EXCEED THE AMOUNT OF REVENUE COLLECTED BY MCC UNDER THIS AGREEMENT IN THE PREVIOUS TWELVE (12) MONTH PERIOD, PROVIDED THAT THIS SECTION 13.1 SHALL NOT APPLY TO ANY CLAIM ARISING FROM A BREACH OF SECTIONS 9 OR 10 OR A BREACH OF AN OBLIGATION OF CREDENTIAL PROVIDER TO PAY ANY REQUIRED FEE TO MCC.

14. Miscellaneous.

14.1. Notice. Notices permitted or required to be given hereunder shall be deemed sufficient if given by registered or certified mail, postage prepaid, return receipt requested, by private courier service, or by facsimile addressed to the respective addresses of the parties as set forth below or at such other addresses as the respective parties may hereafter designate by like notice. Notices so given shall be effective upon (a) receipt by the party to which notice is given or (b) on the fifth (5th) day following mailing, whichever occurs first:

Minnesota Credentialing Collaborative:
2550 University Avenue West, Suite 254 South
St. Paul, Minnesota 55114
Tel: 612-360-9793

14.2. Entire Agreement; Modification. This Agreement constitutes the entire agreement between the parties pertaining to its subject matter, and it supersedes any and all written or oral agreements previously existing between the parties with respect to such subject matter. Except as permitted under Section 4.4, no supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by both parties.

14.3. Waiver. Either party's failure to insist on strict performance of any provision of this Agreement shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligation strictly in accordance with the terms of this Agreement. No waiver shall be effective unless it is in writing and signed by the party against whom enforcement is sought.

14.4. Choice of Law; Choice of Forum. This Agreement shall be governed by and construed in accordance with the applicable federal laws of the United States and with Minnesota law, without regard to its rules regarding conflicts of law. Each of the parties consents to the jurisdiction of the courts located in the State of Minnesota with respect to all matters relating to this Agreement.

14.5. Survival. The provisions of Sections 4.5, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 shall survive the termination or expiration of this Agreement.

14.6. Assignment. This Agreement may not be assigned by either party in whole or in part without the prior written consent of the other party. Any purported assignment in violation of this Section 14.6 shall be void.

14.7. Captions. The captions of the various sections and subsections of this agreement are for the convenience of reference only and are not binding provisions of this agreement, nor shall they have delimiting effect or interpretive weight hereunder.

14.8. Relationship of the Parties. This Agreement does not constitute, and is not intended to give rise to, a partnership or joint venture between the parties. Each party will operate under the terms of this Agreement as an independent entity and not as an agent for, or an employee of, the other