

Please review the following Terms of Use for the VIVUS HEALTH PLATFORM.

BY CHECKING THE BOX BELOW AND ENTERING YOUR NAME AS A DIGITAL SIGNATURE , YOU ARE ENTERING INTO A LEGALLY BINDING AGREEMENT (the "Agreement") TO BE BOUND BY THESE TERMS OF USE (the "Terms") AND CONFIRMING THAT YOU HAVE READ AND UNDERSTAND THE TERMS.

These Terms set forth the terms and conditions governing your use of the VIVUS Health Platform telemedicine service (the "Service") and compliance with the Terms is a condition of Your use of the Service. The Service is offered by VIVUS, Inc., its Affiliates and its contractors ("VIVUS") to you as a licensed health care provider. The terms "Provider", "You and "Your" refer to a healthcare provider accessing the Services to provide health care as part of an individual medical practice or a healthcare system with multiple healthcare providers (a "Healthcare System"). Please read the Terms carefully before using the Service. If you are entering this agreement on behalf of a Healthcare System you hereby certify that you are authorized to legally bind the Healthcare System.

ACCOUNT ENROLLMENT

To access the Service, you must first enroll to establish an administrator account ("Admin Account") for your community of users (Community), by providing certain information. Your Admin Account is protected by a username and password and You are solely responsible for maintaining the security and confidentiality of the username and password and for any unauthorized access to Your Admin Account. In the event Your Admin Account is accessed without authorization, You agree to notify VIVUS immediately. VIVUS reserves the right to restrict access to, suspend, or disable an Admin Account at any time, in its sole discretion, and without prior warning. Providers that are enrolling on behalf of a Healthcare System will be responsible for adding additional individual healthcare providers to their Community. All accounts associated with a Healthcare System's Community will be administered collectively for billing purposes.

PAYMENT TERMS AND PROVIDER OBLIGATIONS

Provider will be billed in accordance with the pricing schedule attached as Exhibit A. You agree to utilize the designated VIVUS invoice and payment system and authorize VIVUS to set up a Shopify eCommerce account on your behalf on the VIVUS Health Platform (VHP) Store. You understand that this account will utilize the same credentials as those used for the VHP. Invoices will be transmitted on a monthly basis. You understand that you must have an active VHP Shopify account and will be required to remit payment using a credit card through your VHP Shopify account monthly in order to continue using the Services.

Provider agrees not to access or use the Service in an unlawful way or for an unlawful or illegitimate purpose or in any manner that contravenes this Agreement. Provider is responsible for determining what uses of the Services are permissible in Provider's jurisdiction, including compliance with all

applicable medical board rules and regulations. Provider represents and warrants that Provider is responsible for any liability arising out of or relating to Provider's use of the Services and that Provider will not use the Services in any manner that will violate any applicable law, statute, ordinance or regulation and that Provider has all necessary licenses to use the Services. Any decision about the appropriateness of medical treatment is Provider's sole responsibility.

Provider is solely responsible for all consents, notices and other interactions with Provider's patients and for all billings and collections from patients and insurance providers.

INTELLECTUAL PROPERTY

All of the content available on or through the Service is the property of VIVUS or its licensors and is protected by copyright, trademark, patent, trade secret and other intellectual property law. We give you permission to display, download, store and print the content only as necessary to use the Services. You agree not to reproduce, retransmit, distribute, disseminate, sell, publish, broadcast, or circulate the content received through the Service to anyone, including but not limited to others in your organization, except as provided herein. All software and accompanying documentation made available for download from the Service is the copyrighted work of VIVUS or its licensors.

Subject to the terms of this Agreement, VIVUS hereby grants you a limited, revocable, non-transferable and non-exclusive license to use the software, network facilities, content and documentation on and in the Service to the extent, and only to the extent, necessary to access and use the Service.

DISCLAIMERS

ACCESS TO THE SERVICE AND THE INFORMATION CONTAINED THEREIN IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, VIVUS DISCLAIMS ALL WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

WITHOUT LIMITING THE FOREGOING, VIVUS DOES NOT WARRANT THAT ACCESS TO THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS, IF ANY, WILL BE CORRECTED; NOR DOES VIVUS MAKE ANY REPRESENTATIONS ABOUT THE ACCURACY, RELIABILITY, CURRENCY, QUALITY, COMPLETENESS, USEFULNESS, PERFORMANCE, SECURITY, LEGALITY OR SUITABILITY OF THE SERVICE OR ANY OF THE INFORMATION CONTAINED THEREIN. YOU EXPRESSLY AGREE THAT YOUR USE OF THE SERVICE AND YOUR RELIANCE UPON ANY OF ITS CONTENTS IS AT YOUR SOLE RISK. YOU SHALL BE SOLELY AND FULLY RESPONSIBLE FOR ANY DAMAGE TO THE SERVICE OR ANY COMPUTER SYSTEM, ANY LOSS OF DATA, OR ANY IMPROPER USE OR DISCLOSURE OF INFORMATION ON THE SERVICE CAUSED BY YOU OR ANY PERSON USING YOUR USERNAME OR PASSWORD. VIVUS CANNOT AND DOES NOT ASSUME ANY RESPONSIBILITY FOR ANY LOSS, DAMAGES OR LIABILITIES ARISING FROM THE FAILURE OF ANY TELECOMMUNICATIONS INFRASTRUCTURE, OR THE INTERNET

OR FOR YOUR MISUSE OF ANY PROTECTED HEALTH INFORMATION, ADVICE, IDEAS, INFORMATION, INSTRUCTIONS OR GUIDELINES ACCESSED THROUGH THE SERVICE.

LIMITATIONS OF LIABILITY

IN THE EVENT OF ANY PROBLEM WITH THE SERVICE OR ANY OF ITS CONTENT, YOU AGREE THAT YOUR SOLE REMEDY IS TO CEASE USING THE SERVICE. UNDER NO CIRCUMSTANCES SHALL VIVUS, ANY VIVUS LICENSOR OR SUPPLIER, OR ANY THIRD PARTY WHO PROMOTES THE SERVICE OR PROVIDES YOU WITH A LINK TO THE SERVICE BE LIABLE IN ANY WAY FOR YOUR USE OF THE SERVICE OR ANY OF ITS CONTENT, INCLUDING, BUT NOT LIMITED TO, ANY ERRORS OR OMISSIONS IN ANY CONTENT, ANY INFRINGEMENT BY ANY CONTENT OF THE INTELLECTUAL PROPERTY RIGHTS OR OTHER RIGHTS OF THIRD PARTIES, OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT.

UNDER NO CIRCUMSTANCES SHALL VIVUS, ITS LICENSORS OR SUPPLIERS OR ANY THIRD PARTY WHO PROMOTES THE SERVICE OR PROVIDES YOU WITH A LINK TO THE SERVICE, BE LIABLE FOR ANY PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY PERSONAL INJURY, LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF PROGRAMS OR OTHER DATA ON YOUR COMPUTER OR OTHERWISE) ARISING FROM OR IN CONNECTION WITH YOUR USE OF THE SERVICE, WHETHER UNDER A THEORY OF BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, MALPRACTICE OR OTHERWISE, EVEN IF WE OR THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT ANY ASPECTS OF THE FOREGOING LIMITATIONS OF LIABILITY ARE NOT ENFORCEABLE, THE MAXIMUM LIABILITY OF VIVUS TO YOU WITH RESPECT TO YOUR USE OF THE SERVICES IS THE AMOUNT OF ACCESS FEES PAID BY YOU IN THE PRIOR TWELVE (12) MONTHS, FOR CLARITY THIS DOES NOT INCLUDE UTILIZATION FEES.

The Service is designed for and intended for users in the United States. Accessing the Service from outside the United States is prohibited.

TERMINATION

VIVUS may suspend or terminate Your access to the Service at any time, for any reason or for no reason at all. VIVUS has the right (but not the obligation) to refuse to provide access to the Service to any person, agency or organization at any time, for any reason or for no reason at all, in our sole discretion. VIVUS reserves the right to change, suspend, or discontinue all or part of the Service, temporarily or permanently, without prior notice. Provider may terminate this Agreement at any time by providing notice of such termination to VIVUS. Termination shall not relieve Provider of the obligation to pay any fees that have accrued prior to the date of termination and no refunds will be provided.

INDEMNIFICATION.

Provider shall be solely responsible for its use of the Services, and the provision of healthcare to Provider's patients. Provider will indemnify, defend (or settle) and hold harmless VIVUS, its licensors, suppliers and contractors ("VIVUS Indemnities") from all claims, actions, proceedings, losses, settlements, judgments, liabilities, suits, damages, disputes or demands, including without limitation any proceeding, investigation or claim by a self-regulatory organization, state or federal securities agency or commission, and including reasonable attorneys fees and all other costs, fees, and expenses (collectively, "Claims") against any of VIVUS Indemnities to the fullest extent permitted by law arising out of or in connection with (1) Provider's conduct while using the Services, or such actions by any third party through Provider, (2) Provider's violation of the rights of another person or party, (3) any materials provided or made available by Provider in connection with Provider's use of the Services, and (4) any breach or violation by Provider of your obligations under these Terms, including without limitation any breach of your representations and warranties herein. Provider will not settle any indemnified claim without the prior written consent of VIVUS, such consent not to be unreasonably withheld. In connection with any Claims that may give rise to Provider's indemnification obligations as set forth above, VIVUS shall have the exclusive right, at their option, to defend, compromise and/or settle the suit, action or proceeding, and Provider shall be bound by the determination of any suit, action or proceeding so defended or any compromise or settlement so effected. The remedies provided in this Section are not exclusive of and do not limit any other remedies that may be available to VIVUS pursuant to this Section.

Choice of Law; Jurisdiction and Venue; Waiver of Jury Trial. This Agreement is governed by the laws of the State of California, without reference to its choice of law rules to the contrary. The parties hereby irrevocably consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in the Santa Clara County, California, for the purposes of adjudicating any dispute arising out of this Agreement. Each party hereto specifically waives any right it might otherwise have to a jury trial with respect to any matter arising under this Agreement.

MISCELLANEOUS

Headings. Section headings and other captions in these Terms are used solely for the convenience of the parties, have no legal or contractual significance, and shall not be used in interpreting, construing or enforcing any of the provisions of these Terms.

Force Majeure and Delays. In the event either party shall be delayed or hindered in or prevented from the performance of any act required hereunder by reasons of strike, lockouts, labor troubles, inability to procure materials, failure of power or restrictive government or judicial orders, or decrees, riots, insurrection, war, terrorism, Acts of God, inclement weather or other similar reason or cause beyond that party's control, then performance of such act (except for the payment of money owed unless that is affected by an act of force majeure) shall be excused for the period of such delay; provided, however, if such delay continues for thirty (30) days, either party shall have the right, but not the obligation, to terminate without penalty.

Survival. The provisions of the following sections shall specifically survive any termination or expiration of these Terms of Use: Sections: Disclaimers, Indemnification, Intellectual Property, Choice of Law; Jurisdiction and Venue; Waiver of Jury Trial, and Miscellaneous.

No Waiver. The failure of VIVUS to enforce any provision of these Terms will not be construed as a waiver or limitation of VIVUS's right to subsequently enforce and compel strict compliance with that provision or any other provision of these Terms.

Relationship of the Parties. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between VIVUS and Provider. Except as set forth in the Agreement, nothing in this Agreement, expressed or implied is intended to give rise to any third-party beneficiary.

Assignment. No assignment, delegation or other conveyance of these Terms may be made by Provider (by operation of law or otherwise) without the prior written consent of VIVUS, to be given in its sole discretion. VIVUS may assign its rights and obligations under this Agreement to an Affiliate as part of a reorganization, or to a purchaser of its business entity or substantially all of its assets or business to which rights and obligations pertain without Provider's consent.

Agreement Binding. In the event that any provision of these Terms is deemed to be unenforceable, said provision will be interpreted to reflect the original intent of the parties in accordance with applicable law, and the remainder of these Terms will continue in full force and effect.

Any rights not expressly granted herein are reserved. A printed version of these Terms and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

I have reviewed and AGREE with VIVUS' Terms of Use

Electronic Signature: _____

Date:

Exhibit A: Pricing Schedule

The first month of service will be provided at no charge as a free trial period for the service.

<u>Access Fees:</u>	Monthly Contract		Annual Contract	
Number of HCPs	Monthly/HCP	Total Annual Cost	Monthly/HCP	Total Annual Cost
1	\$ 28	\$ 336	\$ 26	\$ 312
2	\$ 28	\$ 672	\$ 26	\$ 624
3	\$ 28	\$ 1,008	\$ 26	\$ 936
4	\$ 28	\$ 1,344	\$ 26	\$ 1,248
5	\$ 28	\$ 1,680	\$ 26	\$ 1,560
6	\$ 28	\$ 2,016	\$ 26	\$ 1,872
7	\$ 28	\$ 2,352	\$ 26	\$ 2,184
8	\$ 28	\$ 2,688	\$ 26	\$ 2,496
9	\$ 28	\$ 3,024	\$ 26	\$ 2,808
Or 10 and Above	\$ 250	\$ 3,000	\$240	\$ 2,880

Per Use Utilization Fees	Monthly Contract	Annual Contract
Billing Code Fee CPT Code Utilization	\$0.15	\$0.10
Billing Code Fee CPT Code Utilized After 1000 per month	\$0.08	\$0.05
RPM Medicare Patient	\$40	\$36
RPM Commercial	\$20	\$18