



**MODERNIZING
MEDICINE**

MODERNIZING MEDICINE TERMS OF SERVICE

The following Terms of Service (the “**Terms of Service**” or “**Terms**”) apply to all users of the Modernizing Medicine, Inc. (“**Modernizing Medicine**”) Electronic Medical Assistant (“**EMA**”) and its associated websites and services (collectively, the “**Site**”). The Terms of Service are a contract between you, an individual user (“**You**”), and Modernizing Medicine regarding Your use of the Site. When using the Site, You will be subject to any additional guidelines or rules applicable to specific services and features which may be posted from time to time (the “**Guidelines**”). All Guidelines are hereby incorporated by reference into the Terms of Service.

BEFORE USING THE SITE, PLEASE READ THE TERMS OF SERVICE CAREFULLY. BY REGISTERING FOR AND/OR ACCESSING, BROWSING, OR USING THE SITE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE TERMS OF SERVICE.

1. Eligibility. If You are using a login on the Site on behalf of a company, entity, or organization (collectively “**Subscribing Organization**”), then You represent and warrant that You are an authorized representative of that Subscribing Organization and that you have reached the age of majority in your jurisdiction.

2. Privacy Notice. Your privacy is important to Modernizing Medicine. Modernizing Medicine’s Privacy Policy is located at <http://www.modernizingmedicine.com/privacy> (the “**Privacy Policy**”). The Privacy Policy is hereby incorporated into the Terms by reference. You agree that, subject to applicable state laws, Modernizing Medicine may share information provided by You through the Site, that has been de-identified in accordance with the Health Insurance Portability and Accountability Act of 1996, (Pub. L. 104-191, August 21, 1996, 110 Stat. 1936), 42 U.S.C. § 1320d - 1320d-8, as amended (“**HIPAA**”) or that is not Protected Health Information (as defined by HIPAA), with other third-party organizations without Your consent.

3. Modification of the Terms. From time to time, Modernizing Medicine may change, remove, add to (including without limitation by way of additional terms) or otherwise modify the Terms, and reserves the right to do so in its discretion. In that case, we will post the updated Terms, as relevant, to the Site and indicate the date of revision. All new and/or amended Terms automatically take effect thirty (30) days after they are initially posted to the Site. Your continued use of the Site after new and/or revised Terms have been posted indicates that You have read, understood and agreed to the current version of the Terms. Notwithstanding the foregoing, in the event of any conflict between the provisions of the Terms of Service and the master license agreement governing the Subscribing Organization’s use of EMA (the “**Subscribing Organization Agreement**”), the terms of the Subscribing Organization Agreement shall prevail to the extent of any inconsistency. Additionally, You agree to be bound by the terms of the Subscribing Organization Agreement as if such terms were fully set forth herein.

4. Site Access. Modernizing Medicine grants You permission to use the Site, as set forth in the Terms and the Subscribing Organization Agreement, provided that and for so long as: (i) You use the Site solely for Your business use in accordance with the terms of the Subscribing Organization Agreement; (ii) You only access those portions of the Site to which Your login permits access; (iii) You do not download, reproduce, redistribute, retransmit, publish, resell, distribute, publicly display or otherwise exploit any portion of the Site in any medium without Modernizing Medicine's prior written authorization; (iv) You do not alter or modify any part of the Site other than as may be reasonably necessary to use the Site for its intended purposes; (v) You do not engage in any of the prohibited uses described below; (vi) You comply with all applicable laws, including, without limitation any and all laws in Your relevant state(s) and locality(ies) pertaining to the security, confidentiality, and protection of medical records, personally identifying information, protected health information, and sensitive health information, and (vii) You otherwise fully comply with the Terms. The Site is controlled and offered by Modernizing Medicine from its facilities in the United States of America. Modernizing Medicine makes no representations that the Site is appropriate or available for use in any other locations.

5. Prohibited Uses of the Site. As a condition of Your use of the Site, You hereby represent and warrant that You will not use the Site for any purpose that is unlawful or prohibited by these Terms including, without limitation, the prohibitions in this Section. You agree not to defame, harass, abuse, threaten, stalk or defraud users of the Site or patients of the Subscribing Organization, or collect, or attempt to collect, personal information about other users of the Site or individuals who are not your patients for use in violation of HIPAA. You agree not to intentionally interfere with or damage, impair or disable the operation of the Site including any security-related features of the Site or any user's enjoyment of it, by any means, including uploading or otherwise disseminating viruses, worms, spyware, adware, or other malicious code. You agree not to attempt to gain unauthorized access to the Site, or any part of it, other accounts, computer systems or networks connected to the Site through hacking, password mining, use of any robot, spider, scraper or other automated process or any other means or interfere or attempt to interfere with the proper working of the Site or any activities conducted through the Site. You agree not to impersonate another person or entity, or falsely state or otherwise misrepresent Your affiliation with a person or entity. You agree not to utilize framing techniques to enclose any trademark, logo, or other content, visual interfaces, interactive features, information, graphics, design, compilation, computer code, products, software, services, or any other elements of the Site that are provided by Modernizing Medicine without Modernizing Medicine's express written consent, except for use on a local intranet of a Subscribing Organization. You also agree not to use any meta tags or any other "hidden text" utilizing Modernizing Medicine's name or trademarks without Modernizing Medicine's express written consent. You agree not to deep-link to the Site and will promptly remove any links to the Site that Modernizing Medicine finds objectionable in its sole discretion. You agree not to use any Modernizing Medicine logos, graphics, or trademarks as part of the link without Modernizing Medicine's express written consent. You agree not to reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Site or any part thereof or to modify, adapt, translate, or create derivative works based upon the Site or any part thereof.

6. Login Information. In order to access some features of the Site, You will have to utilize an administrative login provided to You by Modernizing Medicine or a user account login provided by Your practice administrator. You represent and warrant that the information You provide to Modernizing Medicine upon registration and, at all other times, will be true, accurate, current, and complete. You also represent and warrant that You will ensure that this information is kept accurate and up-to-date at all times. You acknowledge, consent, and agree that Modernizing Medicine may access, preserve and disclose Your login information and any User Content (as defined below) posted by You on the Site if required to do so by law or in a good faith belief that such access, preservation, or disclosure is reasonably necessary to (i) comply with legal process; (ii) enforce the Terms and/or the Subscribing Organization Agreement; (iii) respond to a claim that any of Your User Content violates the rights of third

parties; (iv) provide certain customized features of the Site to You, if any; (v) respond if You contact Modernizing Medicine for any reason; or (vi) protect the rights, property, or personal safety of Modernizing Medicine, the users of the Site, and the public.

7. Password. You will be asked to provide a password upon Your initial login, which will have been created for You by Your practice administrator. You will be responsible for all activities that occur under Your password and You should keep Your password confidential. You are solely responsible for maintaining the confidentiality of Your account and password and for restricting access to Your computer, and You agree to accept responsibility for all activities that occur under Your account or password. If You have reason to believe that Your login information is no longer secure (for example, in the event of a loss, theft, or unauthorized disclosure or use of Your login or password), You shall immediately notify Modernizing Medicine.

8. Links and Third Party Websites. Modernizing Medicine, users, or third parties may provide links on the Site to other sites including the content therein (“**Reference Sites**”). Modernizing Medicine has no control over such Reference Sites or their content and therefore makes no claim or representation regarding, and expressly disclaims responsibility for, the accuracy, quality, legality, nature, availability, or reliability of Reference Sites or content linked to by the Site. Modernizing Medicine provides links to You only as a convenience, and the inclusion of any link on the Site does not imply our affiliation, endorsement, or adoption of the linked site or any information therein. Our terms and policies do not govern Your use of any site other than the Site.

9. User Content. The Site may now or in the future permit users of the Site to post or link media, text, audio and video recordings, photos, graphics, commentary or any other content (collectively, “**User Content**”), and to host and/or share such User Content. User Content is not controlled by Modernizing Medicine. Except as expressly provided in the Subscribing Organization Agreement to the contrary, Modernizing Medicine makes no representations that any User Content will remain available via the Site in any way and may remove User Content in its sole discretion. Excepting Protected Health Information (as defined by HIPAA), or similar terms under applicable state laws, by submitting User Content to Modernizing Medicine, You grant Modernizing Medicine and its affiliates a worldwide, non-exclusive, fully paid-up, royalty-free, perpetual, irrevocable, transferable license, with the right to grant and authorize sublicenses, to use, reproduce, distribute, modify, adapt, prepare derivative works of, display, perform, and otherwise exploit Your User Content in connection with the Site and Modernizing Medicine’s (and its successor’s) business. You also agree to irrevocably waive (and cause to be waived) any claims and assertions of moral rights or attribution with respect to Your User Content. You also hereby grant to each other user of the Site a non-exclusive license to access the User Content that you elect to share with other users of the Site, and to use, reproduce, distribute, prepare derivative works of, display, and perform such User Content as permitted by the functionality of the Site and the Terms.

10. Availability of Service. Except as expressly provided in the Subscribing Organization Agreement, Modernizing Medicine may make changes to or discontinue any of the media, web communities, products, or services available within the Site at any time, and without notice. Except as expressly provided in the Subscribing Organization Agreement, the media, products, or services on the Site may be out of date, and Modernizing Medicine makes no commitment to update these materials on the Site.

11. User Disagreements. You are solely responsible for Your involvement with other users of the Site. MODERNIZING MEDICINE DISCLAIMS ALL LIABILITY RELATED TO ANY USER DISAGREEMENT.

12. Terms of Service Violations; Termination.

(a) **Modernizing Medicine.** Except as expressly provided in the Subscribing Organization Agreement, You agree that Modernizing Medicine, in its sole discretion and for any or no reason, may terminate any login (or any part thereof) You may have for the Site or Your use of the Site, and remove and discard all or any part of Your login or any User Content, at any time. Except as expressly provided in the Subscribing Organization Agreement, You agree that Your access to the Site or any login You may have, or portion thereof, may be terminated without prior notice, and You agree that Modernizing Medicine shall not be liable to You or any third-party for any such termination. These remedies are in addition to any other remedies Modernizing Medicine may have at law or in equity.

(b) **User.** If You are dissatisfied with the Site, please let us know at support@ModernizingMedicine.com. Your input is valuable to us. Without limiting any remedy that the Subscribing Organization may have pursuant to the Subscribing Organization Agreement, Your only remedy with respect to any dissatisfaction with (i) the Site, (ii) any term of the Terms, (iii) any policy or practice of Modernizing Medicine in operating the Site, or (iv) any content or information transmitted through the Site, is to terminate Your login and discontinue Your use of the Site.

13. **Digital Millennium Copyright Act Compliance.** If You are a copyright owner or an agent thereof, and believe that any User Content or other non-Modernizing Medicine third party content infringes upon Your copyrights, You may submit a notification pursuant to the Digital Millennium Copyright Act (“DMCA”) by providing our Copyright Agent with the following information in writing (see 17 U.S.C. § 512(c)(3) for further detail): (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works on the Site are covered by a single notification, a representative list of such works from the Site; (iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit Modernizing Medicine to locate the material; (iv) Information reasonably sufficient to permit Modernizing Medicine to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted; (v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and (vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Modernizing Medicine’s designated Copyright Agent to receive notifications of claimed infringement is: Daniel Cane, 3600 FAU Boulevard, Suite #202, Boca Raton, Florida 33431, email: legal@ModernizingMedicine.com, Telephone: 866-799-2146, Fax: 561-423-5912.

14. Miscellaneous.

(a) **Governing Law.** These Terms shall be governed by and construed in accordance with the laws of the State of Florida, without giving effect to any principles of conflicts of law.

(b) **Jurisdiction.** You agree that any action at law or in equity arising out of or relating to the Terms or the Site shall be filed only in the state or federal courts in and for Palm Beach County, Florida and You hereby consent and submit to the personal and exclusive jurisdiction and venue

of such courts for the purposes of litigating any such action. YOU AGREE THAT ANY CAUSE OF ACTION BROUGHT BY YOU ARISING OUT OF OR RELATED TO THE SITE MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

(c) **Waiver.** A provision of the Terms may be waived only by a written instrument executed by the party entitled to the benefit of such provision. The failure of Modernizing Medicine to exercise or enforce any right or provision of these Terms will not constitute a waiver of such right or provision.

(d) **Severability.** If any provision of the Terms shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from the Terms and shall not affect the validity and enforceability of any remaining provisions.

(e) **Disclosures.** The services hereunder are offered by Modernizing Medicine, Inc., located at 3600 FAU Boulevard, Suite #202, Boca Raton, Florida 33431, email: info@ModernizingMedicine.com, Telephone: 866-799-2146. If you are a California resident, you may have this same information emailed to you by sending a letter to the foregoing address with your email address and a request for this information.

15. Third Party Software. Certain third party software embedded within The Site may be subject to the accompanying license(s), if any, of its respective owner(s). Acceptance of this agreement and your use of such third party software represents acceptance of the license(s) and term(s) of service accompanying such third party software.

VisualDx: You may obtain a copy of the VisualDx End User Licensing Agreement at <http://www.visualdx.com/public/EULA.htm>

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