

## **END USER LICENSE AGREEMENT FOR THE POINTCLICKCARE MOBILE APP**

**ATTENTION: YOU MUST SCROLL DOWN TO THE END OF THIS END-USER LICENSE AGREEMENT (THE “EULA”) BEFORE YOU AGREE TO IT AND CONTINUE WITH THE INSTALLATION.**

**PLEASE READ CAREFULLY BEFORE DOWNLOADING OR USING THE POINTCLICKCARE MOBILE APP.**

This EULA is a legal agreement between you (“you”) and Wescom Solutions Inc. (d.b.a. “PointClickCare”) for the PointClickCare mobile application software, all modules downloaded via the application, the data supplied with the software, and the associated media (the “App”).

We license use of the App to you on the basis of this EULA and subject to any rules or policies applied by any appstore provider or operator from whose site (“Appstore”), you downloaded the App (“Appstore Rules”). The Appstore Rules include Google Play’s Business and Programme Policies, which can be found at <https://play.google.com/about/android-developer-policies.html>, and the Google Play Terms of Service, which can be found at [https://play.google.com/intl/en\\_us/about/play-terms.html](https://play.google.com/intl/en_us/about/play-terms.html). PointClickCare does not sell the App to you; however, PointClickCare remains the owner of the App at all times.

All users of the App will already have contractual arrangements and agreements with PointClickCare. All existing agreements and arrangements shall remain in full force and effect and shall not be deemed amended by this EULA. Any inconsistency between this EULA and any prior agreement between you and PointClickCare shall be resolved in favor of this EULA and not the other agreements, solely to the extent of the inconsistency.

### **Important Notice**

BY DOWNLOADING THE APP OR CLICKING ON THE "ACCEPT" BUTTON BELOW YOU AGREE TO THE TERMS OF THIS LICENSE WHICH WILL BIND YOU. The terms of the EULA include, in particular, provisions under the headings “Privacy”, “No Warranty” and “Limitation of Liability.”

If you do not agree to the terms of this EULA, do not click “Accept” or download, install, copy and/or use the App. If you do not agree to the terms of this EULA, we will not license the App to you and you will not be able to access any modules or other functions of the App; however, the terms of any other agreements between you and PointClickCare shall remain in full force and effect, unamended by this EULA.

You should print a copy of this EULA for future reference.

### **Application of EULA**

The terms of this EULA apply to the App and to any of the services or functionality (including the operation modules available for download) accessible through the App (“Service(s)”)

including any updates that replace or supplement the App or any Service, unless they come with separate terms, in which case those terms apply. You will be assumed to have obtained permission from the owners of the mobile devices described under the heading “Grant and Scope of License” (“Devices”) that are controlled but not owned by you, to download a copy of the App onto these Devices. You and they may be charged by your and their service providers for internet access on the Devices. You accept responsibility in accordance with the terms of this EULA for the use of the App or any Service on or in relation to any Device, whether or not it is owned by you.

## **Changes and Updates**

We may change these terms of this EULA at any time by sending you an e-mail or in-App message with details of the change or notifying you of a change when you next start the App. The new terms may be displayed on-screen and you may be required to read and accept them to continue your use of the App and the Services. From time to time, updates to the App may be issued through the Appstore. Depending on the update, you may not be able to use the App or the Services until you have downloaded the latest version of the App and accepted any new terms.

## **Privacy**

The terms of our privacy policy (as amended from time to time), currently available at <http://www.pointclickcare.com/us/privacy-policy/> (“Privacy Policy”), are incorporated into this EULA by reference and apply to your use of the App and the Services, and are in addition to the agreement entered into by the covered entity that is the direct customer for the Services.

Additionally, by using the App or any Service, you acknowledge and agree that internet and data transmissions are never completely private or secure. You understand that any message or information you send using the App or any Service may be read or intercepted by others, even if there is a special notice that a particular transmission is encrypted. By using the App or any of the Services, you consent to us collecting and using technical information about the Devices and related software, hardware and peripherals (including, but not limited to, the serial number and IMEI number of your wireless device) to facilitate the provision of software updates or otherwise to improve our products and to provide any Services to you. This information and other information which may be deemed personal information shall be collected in accordance with the Privacy Policy.

## **Third-Party Links**

The App or any Service may contain links to other independent third-party websites (“Third-party Sites”). Third-party Sites are not under PointClickCare’s control, and PointClickCare is not responsible for and does not endorse their content or their privacy policies (if any). You will need to make your own independent judgement regarding your interaction with any Third-party Sites, including the purchase and use of any products or services accessible through them. You also acknowledge that, if we enable third parties to add content directly to the App or Services or to submit marketing messages or other communications within the App,

we will not be responsible for such content, messages or communications.

### **Location of Use**

PointClickCare makes no representation that the App or Services are appropriate for, or permitted to be used in, any location other than Canada and the United States. You are therefore responsible for ensuring that you comply with all applicable laws in your location in relation to your downloading and use of the App and the Services. If we become aware of any legal or other risk associated with the availability of the App or the Services, whether in a particular location or more generally, we reserve the right to change, suspend, withdraw or disable access to the App or Services at any time without notice, and we shall have no liability to you in respect of such action.

### **Legal Compliance**

You represent and warrant that: (i) you are not located in a country that is subject to a U.S. Government embargo or that has been designated by the U.S. Government as a “terrorist supporting country”; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

### **Terms Relating to Google Play**

The EULA is concluded between you and PointClickCare only, and not with Google Play. PointClickCare, not Google Play, is solely responsible for the App and the content thereof. Google Play has no obligation whatsoever to furnish any maintenance and support services with respect to the App. In the event of any third party claim that the App or your possession and use of the App infringes that third party’s intellectual property rights, PointClickCare, and not Google Play, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim. PointClickCare, and not Google Play, is responsible for addressing any claims made by you or any third party relating to the App or your possession and/or use of the App, including, but not limited to: (i) product liability claims; (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. Google Play, and Google Play’s subsidiaries, are third-party beneficiaries of this EULA and, upon your acceptance of the terms and conditions of the EULA, Google Play will have the right (and will be deemed to have accepted the right) to enforce the EULA against you as a third-party beneficiary thereof. To the maximum extent permitted by applicable law, Google Play will have no other warranty obligation whatsoever with respect to the App, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be our sole responsibility.

### **Grant and Scope of License**

In consideration of your agreeing to abide by the terms of this EULA, we grant you a non-transferable, non-exclusive license to use the App on the Devices, subject to these terms, the Privacy Policy and the Appstore Rules (including the Usage Rules), all of which are incorporated

into this EULA by reference. We reserve all other rights. You may download a copy of the App to – and view, use and display the App on – any iPhone, iPad or iPod Touch that you own or control for your personal purposes only, and as permitted by the Usage Rules.

## **Protection and Security**

You acknowledge that you (and the covered entity that is the direct customer for the Services pursuant to its contract with PointClickCare) are solely responsible for the legal and regulatory aspects of your health care operations and services, including, without limitation, ensuring that any information of your residents that is inputted, cached or otherwise stored on your mobile device through your use of the App is properly safeguarded via password protections or otherwise, and that the information is only accessed, used, and/or disclosed for proper purposes and to authorized personnel. You, including any related account holder, shall take all reasonable steps to ensure that no person without authorized usage shall have access to the App or the Services. You, including any related account holder, shall not divulge, sub-license, assign or transfer to any third party any user name and password established during registration or provided to you. You, including any related account holder, understand that provision of the App user name and password may be required prior to each use of the App. The App and content are the valuable property of PointClickCare, the unauthorized use or disclosure of which would irreparably harm PointClickCare. Upon learning of any unauthorized possession or use of or access to the App or the Services, you or an agent of a related account holder, will notify PointClickCare, will promptly furnish details of such occurrence, will assist in preventing any recurrence thereof, and will cooperate fully in any litigation or other proceedings undertaken to protect PointClickCare's rights.

You acknowledge that it is prohibited to run the App on a jailbroken or otherwise modified version of the Device's factory-supplied operating system. To use the App in this fashion is prohibited and is deemed to be a violation of this EULA. You acknowledge that you are fully liable for any resulting legal or financial consequences which may arise from operating the App on such a Device.

## **License Restrictions**

Except as expressly set out in this EULA or as permitted by any local law, you agree: (a) to use the App for its intended purpose(s) only and in connection with the PointClickCare hosted application; (b) not to copy the App except where such copying is incidental to normal use of the App, or where it is necessary for the purpose of back-up or operational security; (c) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the App; (d) not to make alterations to, or modifications of, the whole or any part of the App, or permit the App or any part of it to be combined with, or become incorporated in, any other programs; (e) not to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the App or attempt to do any such thing; (f) not to use or distribute the software (in object code format or otherwise) comprising the App other than as part of your authorized use of the App.

## **Use Restrictions**

You agree to: (a) not use the App or any Service in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with this EULA, or act fraudulently or maliciously (for example, by hacking into or inserting malicious code, including viruses, or harmful data, into the App, any Service or any operating system); (b) not infringe our intellectual property rights or those of any third party in relation to your use of the App or any Service (to the extent that such use is not licensed by this EULA); (c) not transmit any material that is defamatory, offensive or otherwise objectionable in relation to your use of the App or any Service; (d) not use the App or any Service in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users; (e) not collect or harvest any information or data from any Service or our systems or attempt to decipher any transmissions to or from the servers running any Service; and, (f) not allow the App or the Services to be used by your personnel, or those for whom you are legally responsible, in any manner which could result in liability to PointClickCare.

## **Intellectual Property Rights**

You acknowledge that all intellectual property rights in the App and in all content, information and material made available to you via the App, wherever in the world such rights arise, belong to PointClickCare, Google Play or our licensors, that these rights are licensed (not sold) to you, and that you have no rights in, or to, the App, content, information or material other than the right to use each of them in accordance with the terms of this EULA. You acknowledge that you have no right to have access to the App in source-code form.

## **No Warranty**

The App is provided to you “AS IS.” Subject to any applicable legislation prohibiting the following exclusions, PointClickCare does not offer or provide any warranties or representations in relation to the quality or performance of the App, nor does PointClickCare guarantee that the App and Services will always be available or that access to them will be uninterrupted. PointClickCare will not be liable to you if for any reason the App or Services do not perform as described or are unavailable at any time or for any period. PointClickCare and its licensors cannot and do not warrant that the App will be free from viruses and errors. You assume responsibility for the operation of the App and for the installation, use and results obtained from the App. POINTCLICKCARE AND ITS LICENSORS MAKE NO WARRANTIES OF ANY KIND RELATED TO THE APP OR SOFTWARE COMPRISING THE APP, EITHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT, AND FITNESS FOR A GENERAL OR PARTICULAR PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, OR HAVE LEGISLATION THAT IMPOSES CERTAIN STATUTORY WARRANTIES WHICH CANNOT BE EXCLUDED, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. Although we make reasonable efforts to update the information on the App, we make no representations, warranties or guarantees, whether express or implied, that the content on the App is accurate, reliable, complete or up to date.

## **Limitation of Liability**

You acknowledge that the App has not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the App meet your requirements. Your use of the App and the Services is entirely at your own risk. Under no circumstance will PointClickCare, its agents, licensors or suppliers be liable to you on account of your use or misuse of, or reliance on, the App or the Services. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE OF POINTCLICKCARE OR ITS LICENSORS), WILL POINTCLICKCARE, ITS LICENSORS, SUPPLIERS OR DEALERS BE LIABLE TO YOU FOR ANY ACTUAL, DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING ANY LOST PROFITS, LOST SAVINGS, COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES OR OTHER DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE APP, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS AND COUNTRIES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR HAVE LEGISLATION WHICH RESTRICTS THE LIMITATION OR EXCLUSION OF LIABILITY, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. IN NO EVENT WILL THE TOTAL LIABILITY OF POINTCLICKCARE OR ITS LICENSORS FOR ALL DAMAGES EXCEED THE LICENSE FEES PAID BY YOU OR ANY RELATED ACCOUNT HOLDER FOR THE APP FOR THE CURRENT TERM OF THE EULA.

## **Use of Your iOS device and Release of Liability**

You hereby acknowledge that the use of an iOS device in connection with the App carries specific risks for which you, as the user, assume full liability. These risks include, but are not limited to, the partial or complete loss and exposure of data to unauthorized viewers as a result of theft, a crash of the OS, errors, bugs, viruses, and/or other software or hardware failures, or programming errors which could render an iOS device inoperable.

## **Term and Termination**

This EULA is effective until terminated. You may terminate this EULA at any time by deleting or otherwise destroying the App, together with all copies in any form. This EULA also will automatically terminate if you fail to comply with any term or condition of this EULA. You agree that PointClickCare also may, at its sole discretion, temporarily or permanently terminate the EULA with prior notice to you and/or terminate the Services without prior notice to you. Upon termination, for any reason, you agree: (a) all rights granted to you under this EULA shall cease; (b) to permanently delete or remove the App from all Devices and immediately destroy all copies of the App in your possession, custody or control and certify to PointClickCare that you have done so; and, (c) cease all activities authorized by this EULA, including use of the Services. Provisions which, by their nature, should remain in effect beyond termination of this EULA shall survive.

## **Communication**

If you wish to contact us in writing, or if any condition in this EULA requires you to give us notice in writing, you can send this to us by e-mail at [accountservices@pointclickcare.com](mailto:accountservices@pointclickcare.com) or by prepaid mail to Wescom Solutions Inc. at 6975 Creditview Road, Unit #4, Mississauga, Ontario, Canada L5N 8E9. All questions, complaints or claims with respect to the App and the Services should be directed to us using these contact details, or any updated contact details that we provide from time to time. We will confirm receipt of your communication by contacting you in writing, normally by e-mail. If we have to contact you or give you notice in writing, we will do so by e-mail to the email address you provide to us when downloading the App.

## **Federal Acquisitions**

This section applies to all acquisitions of the App by or for the United States federal government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the United States federal government. The App is a “commercial item” as that term is defined in 48 C.F.R. §2.101 consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. §227.7202-3 and §227.7202-4. If you are in the United States Government or any agent or department thereof, the App is licensed: (a) only as a commercial item; and, (b) with only those rights as are granted hereunder.

## **Governing Law**

This EULA shall be deemed to be made in the State of Delaware, US, for American users of the App, and in the Province of Ontario, Canada, for Canadian users of the App. It shall in all respects be interpreted, construed and governed by and in accordance with the applicable jurisdiction to contracts executed and to be wholly performed therein, and without regard to its conflicts of laws principles. You irrevocably submit to the jurisdiction of the state, provincial and/or federal courts of your country of residence and any action or proceeding arising out of this EULA will be heard and determined in such courts. This EULA will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

## **Indemnity for Damages Arising from Your Actions**

With regard to any third-party threatened or asserted claims or actions for personal injury, tort, medical malpractice, or for other acts, errors or omissions in the delivery of medical care or medical information, or that otherwise arise out of or are in any way connected with your access to or use of the Service and/or the App or any of your affiliates’ delivery of medical care (a “Medical Claim”), any and all liabilities, damages, costs, expenses or losses arising out of your use of the App or the Services, your negligent or wrongful acts, your violation of any applicable laws or regulations, and/or your breach of any provision of this EULA, You shall indemnify, hold harmless and defend PointClickCare, and its respective licensors, officers, directors, employees, agents, and subcontractors, including but not limited to, parties retained by PointClickCare to provide services or products directly to you or indirectly through incorporation

of their services or products in PointClickCare's services and products, from and against any such claims, including but not limited to Medical Claims, and against any and all losses, damages, expenses (including reasonable attorneys' and expert fees), claims, liabilities, suits or actions resulting therefrom, whether or not such claims or Medical Claims are foreseeable as at the effective date hereof, **UNLESS SUCH CLAIMS RESULT FROM THE GROSSLY NEGLIGENT ACTS OR OMISSIONS BY POINTCLICKCARE.**

With regard to secure messaging Services, you fully understand and acknowledge that: (i) PointClickCare's secure messaging services are wireless services intended to deliver non-critical, non-emergency messages between Users; (ii) the Services are dependent upon a number of factors outside the control of PointClickCare, including but not limited to, the operation of third-party-provided hardware and network services; (iii) the Services are not a substitute for any medical facility's current systems of administering and safeguarding medical treatment and/or medicine; (iv) there may be occasional communication failures or delays in the delivery or receipt of properly sent text messages that are beyond the control of PointClickCare; and, (v) PointClickCare's messaging Services are not expected to perform at the same level of performance and/or reliability one might expect from medical devices used in the delivery of critical medical care environments and, in using the Service or the App, you accept all risk (whether known or unknown) associated with the foregoing.

### **Additional Important Terms**

PointClickCare may transfer its rights and obligations under this EULA to another organization, but this will not affect your rights under this EULA. You may not transfer your rights or obligations under this EULA to another person. If PointClickCare fails to insist that you perform any of your obligations under this EULA, or if PointClickCare does not enforce its rights against you, or if PointClickCare delays in doing so, that will not mean that PointClickCare has waived its rights against you and will not mean that you do not have to comply with those obligations. If PointClickCare does waive a default by you, it will only do so in writing, and that will not mean that PointClickCare will automatically waive any later default by you. Each of the conditions of this EULA operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect. PointClickCare shall have the right to bring proceedings for injunctive relief in any jurisdiction.