



Aceso Interactive, Inc. (“Aceso”)
Purchase Order Terms and Conditions

1. Terms of Agreement

1.1. Supplier agrees to be bound by and to comply with all terms set forth on the purchase order, to which these terms and conditions are incorporated by reference (collectively, the “Order”). Acknowledgment of this Order, including without limitation, by beginning performance of the work called for by this Order, shall be deemed Supplier’s acceptance of this Order. The terms set forth in this Order take precedence over any alternative terms in any other document connected with this transaction, unless such alternative terms are set forth in a written supply, purchase, professional services, or license agreement

(a “Previous Agreement”), which has been executed by the Parties and which the Parties have expressly agreed shall override these pre-printed terms in the event of conflict.

1.2. In the event the Parties have previously executed a Previous Agreement, the terms of such Previous Agreement, and not these Purchase Order Terms and Conditions, shall govern this transaction.

1.3. **SUPPLIER’S ACCEPTANCE OF THIS ORDER IS EXPRESSLY LIMITED TO EITHER A) THE PREVIOUS AGREEMENT, OR B) THESE TERMS AND CONDITIONS, WHICHEVER APPLIES. ANY ATTEMPTED ACKNOWLEDGMENT FROM SUPPLIER OF ACESO’S PURCHASE ORDER CONTAINING TERMS INCONSISTENT WITH OR IN ADDITION TO THE TERMS OF THIS ORDER SHALL NOT BE BINDING UNLESS SPECIFICALLY ACCEPTED BY ACESO, IN WRITING. ACESO EXPRESSLY LIMITS ITS ACCEPTANCE**

OF SUPPLIER’S OFFER TO THE EXPLICIT TERMS OF THIS ORDER AND REJECTS ANY ADDITIONAL OR VARIED TERMS SET FORTH IN SUPPLIER’S OFFER, INCLUDING TERMS SET FORTH IN SUPPLIER’S QUOTATION OR ON SUPPLIER’S WEBSITE.

2. Definitions

2.1. “Change” means a change Aceso directs or causes within the general scope of this Agreement, the applicable SOW or both.

2.2. “Deliverable(s)” means the deliverables specified in the Purchase Order (and any Supplier Statement of Work or Supplier Proposal, to which the Order includes by reference) to be delivered on or before the Delivery Date.

2.3. “Delivery Date” means the date or dates specified in the Purchase Order by which the Supplier is required to provide the Deliverable(s). If the Purchase Order does not specify such delivery date, then the Delivery Date shall be what the parties have mutually agreed.

2.4. “Harmful Code” means any software intentionally designed to (i) disrupt, disable, harm, or impede operation, or (ii) impair operation based on the lapse of time, including but not limited to viruses, worms, time bombs, time locks, drop-dead devices, access codes, security keys, back doors, or trap door devices.

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- 2.5. “Intellectual Property Rights” means any and all tangible and intangible: (i) copyrights and other rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms, utility models, and other industrial property rights, and all improvements thereto; (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract license, or otherwise, and (vi) all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force (including any rights in any of the foregoing).
- 2.6. “Preexisting Materials” means any Intellectual Property Rights or tangible personal property of Supplier or Aceso created before the date of this Purchase Order or is otherwise outside the scope of this Purchase Order.
- 2.7. “Products” means tangible goods specified in the Purchase Order to be delivered on or before the Delivery Date.
- 2.8. “Purchase Order” means the Aceso purchase order to which these terms and conditions are attached.
- 2.9. “Supplier” means the vendor or service provider listed on the Purchase Order.
- 2.10. “Services” means the services that Supplier is to perform for Aceso, if applicable, and specified in the Purchase Order or SOW.
- 2.11. “Statement of Work” or “SOW” means the document, including Supplier’s proposal or quotation, if any, specifying the scope, objective, and time frame of the Services that Supplier will perform for Aceso.
- 2.12. “Subcontractor” means a third party performing Services on behalf of or with Supplier.
- 2.13. “Supplier Personnel” means Supplier’s employees, consultants, agents, and Subcontractors.
- 2.14. “Third Party Intellectual Property” means the Intellectual Property Rights of a third party, which Supplier uses or incorporates into the Deliverable(s).
3. Delivery
- 3.1. Time is of the essence in Supplier’s performance of its obligations. Supplier will immediately notify Aceso if Supplier’s timely performance is either delayed, or is likely to be delayed.
- 3.2. If Supplier delivers Deliverable(s) after the agreed upon Delivery Date, Aceso may reject such Deliverable(s).
- 3.3. Aceso will hold any Deliverable and/or Product(s) rejected under this Order at Supplier’s risk and expense, including storage charges, while awaiting Supplier’s return shipping instructions. Supplier will bear all return shipping charges, including without limitation, insurance charges Aceso incurs on Supplier’s behalf.

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- 3.4. Supplier will preserve, pack, package and handle the Deliverables and/or Product(s) to protect the Deliverables and/or Product(s) from loss or damage and in accordance with best commercial practices in the absence of any specifications Aceso may provide. Without limiting the foregoing, Supplier shall observe the requirements of any local laws and regulations relating to hazardous work, including, without limitation, with respect to its accompanying information, packing, labeling, reporting, carriage and disposal.
- 3.5. Supplier will include with each delivery of Products a packing list identifying the Purchase Order number, and a description and quantity of each of the Products, and the date of shipment.
- 3.6. Unless Aceso expressly instructs otherwise, Supplier will deliver all Deliverable(s) to Aceso's destination at the address set forth in the Purchase Order. Supplier assumes responsibility for all shipping and delivery charges including, without limitation, customs, duties, costs, taxes and insurance. Risk of loss for the Deliverables and/or Products, as applicable, does not pass to Aceso until acceptance in accordance with Section 6 herein.

4. Price and Payment

- 4.1. Unless otherwise specified in the Purchase Order, the price for the Service(s) and/or Product(s) includes all taxes and other charges such as shipping and delivery charges, duties, customs, tariffs, imposts and government-imposed surcharges. Supplier will, at Aceso's request, break-out from the price all such taxes and other charges, in its invoices. Supplier shall use its best efforts to assist Aceso in all legal efforts to minimize the taxes resulting from the performance of this Purchase Order.
- 4.2. Aceso will pay Supplier the price in accordance with the payment terms set forth in the Purchase Order following the later of: (i) the Delivery Date, (ii) the date of Aceso's acceptance of the Deliverable(s), or (iii) Aceso's receipt of a properly prepared invoice. If no alternative payment terms are specified on the Purchase Order, Aceso shall pay Supplier within 45 days of Aceso's receipt of Supplier's invoice. A properly prepared invoice must include the Purchase Order number and, if required in the Purchase Order, Supplier's certification of conformance of the Deliverable(s) to the requirements. Payment will be in United States dollars. Aceso may, at any time, set-off any amounts Supplier owed Aceso against any amounts Aceso owes to Supplier or any of its affiliated companies.

5. Ownership and License

- 5.1. Unless otherwise specified in the applicable Purchase Order or SOW, and except as provided in Section 5.2 below, Aceso is the sole and exclusive owner of all Deliverables and Supplier hereby irrevocably assigns and transfers to Aceso all its worldwide right and title to, and interest in, the Deliverables, including all associated Intellectual Property Rights.
- 5.2. Unless otherwise specified in an SOW, each party owns all right, title, and interest in and to any of its Preexisting Materials. Supplier hereby grants Aceso a perpetual, irrevocable, worldwide, transferable, royalty-free, nonexclusive license, with the right to sublicense and authorize the granting of sublicenses, to use and reproduce Supplier's Preexisting Materials in the Deliverables to the extent necessary for Aceso's exercise and exploitation of its rights in the Deliverables.
- 5.3. Unless otherwise specified in an SOW, Supplier will obtain and assign to Aceso a non-exclusive, royaltyfree, worldwide, perpetual, irrevocable, transferable, sub-licensable license to use all Third Party Intellectual Property Rights incorporated into, required to use, or delivered with the Work. Supplier will deliver copies of the above releases and licenses to Aceso upon Aceso's request.

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6. Inspection and Acceptance

Aceso may reject any, or all, of the Deliverable(s) which do not conform to the applicable requirements and/or specifications within 10 business days of Supplier's delivery of the Deliverable(s). At Aceso's option, Aceso may (i) return the non-conforming Deliverable(s) to Supplier for a refund or credit; or (ii) require Supplier to replace the non-conforming Deliverable(s) at Supplier's sole expense; or (iii) require Supplier to repair the non-conforming Deliverable(s) so that it meets the requirements. As an alternative to the foregoing, Aceso may accept the non-conforming Deliverable(s) conditioned on Supplier providing a refund or credit in an amount Aceso reasonably determines to represent the diminished value of such non-conforming Deliverable(s). Aceso's payment to Supplier for Deliverable(s) prior to Aceso's timely rejection of such Deliverable(s) as non-conforming will not be deemed as acceptance by Aceso.

7. Changes

- 7.1. Aceso, by written change order (each a "Change Order"), may make Changes, in accordance with this Section 7.
- 7.2. If Supplier asserts that Aceso has directed or caused a Change to the cost of or time for performance for which Aceso has not issued a Change Order, Supplier will promptly notify Aceso in writing of such Change, providing (i) a description of the action or inaction asserted to have caused the Change; (ii) an estimate of the equitable adjustment that would be required for Supplier to perform the changed Deliverable; and (iii) a date no less than 30 days from the date of notice by which Aceso must respond to Supplier's notice, so that Supplier may proceed with the Work unchanged. Aceso will evaluate Supplier's notice of Change in good faith, and if Aceso agrees that it has made a constructive change, Aceso will issue a Change Order to Supplier.
- 7.3. Supplier shall, as promptly as is practicable after giving the notice of the Change, or within 10 days of receiving a Change Order, submit a request for equitable adjustment specifying the adjustment in the price or time for performance resulting from the Change.
- 7.4. The parties shall negotiate an amendment to the applicable SOW to incorporate a Change Order providing for an equitable adjustment to the price, time for performance, or both.

8. Representations and Warranties

- 8.1. Supplier represents and warrants that:
 - It has the full power to enter this Order and to perform its obligations hereunder;
 - It has the right and unrestricted ability to assign the Work to Aceso including, without limitation, the right to assign any Work performed by Supplier Personnel;
 - The Deliverable(s), and Aceso's or Aceso's customers' use of the Deliverable(s), do not and will not infringe upon any third party's Intellectual Property Rights, right of publicity or privacy, or any other proprietary rights, whether contractual, statutory or common law;
- 8.2. Supplier will not disclose to Aceso, bring onto Aceso's premises or, if applicable, Aceso's client's premises, or induce Aceso to use any confidential or proprietary information that belongs to anyone other than Aceso or Supplier which is not covered by a non-disclosure agreement between Aceso and Supplier;

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- 8.3. Software supplied by Supplier, if any, does not contain any Harmful Code;
- 8.4. All Deliverable(s) performed by Supplier Personnel shall be performed in a professional and workmanlike manner, and in accordance with industry standards.
- 8.5. Supplier's work conforms to Aceso's specifications, Supplier's quotation or proposal, and Supplier's brochures or catalogs, and if none of the foregoing is applicable, then such Deliverable(s) is/are suitable for the intended use;
- 8.6. Aceso warrants and represents to Supplier it has the full power to enter the Order, and to perform its obligations under such Purchase Order.
- 8.7. TO THE EXTENT ALLOWED BY APPLICABLE LAW, NO OTHER WARRANTIES ARE MADE, EITHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE.

9. Assignment, Subcontracting

- 9.1. Supplier may not assign any of its rights or obligations under the Order without Aceso's prior written consent. If Aceso consents to the use of a Subcontractor, Supplier will: (i) guarantee and will remain liable for the performance of all subcontracted obligations and/or any actions of such Subcontractor; and (ii) make all payments to its Subcontractors.
- 9.2. To the extent allowed by applicable law, no person who is not a party to the Order shall be entitled to enforce or take the benefit of any of its terms.
- 9.3. Supplier shall perform a background check, which shall include a criminal record check, of all Supplier Personnel who will have access to any Aceso customer premises. Supplier shall not allow any Supplier Personnel to access any Aceso customer premises if Supplier knows, or reasonably should know, that such Supplier Personnel has been convicted of any felony or has been terminated from employment by any employer or contractor for theft, identity theft, misappropriation of property, or any other similar illegal acts.

10. Term and Termination

- 10.1. The Purchase Order will remain in effect with respect to any SOW already issued prior to expiration of the term of the Purchase Order until such SOW is either terminated or the Work is completed and accepted.
- 10.2. Aceso may terminate this Purchase Order and/or any SOW, or both, at any time and for no reason or for any reason, upon 15 days' written notice to Supplier. Upon receipt of notice of such termination, Supplier will inform Aceso of the extent to which it has completed performance as of the date of termination and Supplier will collect and deliver to Aceso whatever Deliverable(s) then exist. Aceso will pay Supplier for all Deliverable(s) performed and accepted through the effective date of termination, provided Aceso will not be obligated to pay any more than the payment that would have become due had Supplier completed and Aceso had accepted the Deliverable(s). Aceso will have no further payment obligation about termination.
- 10.3. Either party may terminate the Purchase Order, any SOW, or both, immediately by delivering written notice to the other party upon the occurrence of any of the following events: (i) a receiver is appointed

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for either party or its property; (ii) either makes a general assignment for the benefit of its creditors; (iii) either party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, if such proceedings are not dismissed within 60 days; or (iv) either party is liquidating, dissolving, or ceasing to do business in the ordinary course.

- 10.4. Aceso may immediately terminate the Order upon written notice to Supplier if there is a change in ownership representing 20 percent or more of the equity ownership of Supplier.
- 10.5. Either party may terminate this Order, any SOW or both, immediately by delivering written notice to the other party for any material breach not cured within 30 days of receipt of notice of the breach. Aceso shall have no further payment obligation to Supplier under any terminated SOW if Aceso terminates the Purchase Order under this Section 10.5.
- 10.6. Any obligations or duties which, by their nature, extend beyond the expiration or termination of the Order shall survive the expiration or termination of the Order.

11. Confidential Information and Publicity

- 11.1. Defined. The term "Confidential Information" shall mean: (a) Aceso's marketing and other business methods and processes; (b) all technical and operational aspects of the Aceso, including all Aceso software, user manuals and/or other documentation; (c) Aceso's client's information; (d) information which derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (e) PHI (as defined in Section 11.5 below) concerning Aceso's clients' patients.
- 11.2. Protection, Use and Disclosure. Supplier will maintain all Confidential Information of Aceso or its clients, if applicable, in strict confidence and will not at any time or for any reason disclose any Confidential Information to any unauthorized third party without Aceso's prior written consent. Supplier will use any Confidential Information solely for the purpose in performing its duties under this Order. Supplier shall not disclose any Confidential Information to any Supplier Personnel who do not participate directly in the performance of its duties under this Order, or otherwise have a bona fide reason to know such Confidential Information, and Supplier will advise such Supplier Personnel who are permitted access to any Confidential Information of the restrictions upon disclosure and use and shall be responsible for any failure by such Supplier Personnel to comply with the provisions of this Section.
- 11.3. Exclusion. Confidential Information does not include any information or development: (a) which is or subsequently becomes available to the general public through no fault of Supplier; (b) which is already known to the Supplier before disclosure and can be evidenced as such; (c) which is independently developed by the Supplier without use of or reference to the Confidential Information; or (d) which the Supplier rightfully receives from third parties not under a duty of confidentiality.
- 11.4. Supplier shall obtain Aceso's prior written consent to any publication, presentation, public announcement, or press release concerning its relationship as a supplier of Aceso.
- 11.5. HIPAA Compliance. Supplier acknowledges that, during the course of performing the Services, Supplier may obtain access to, use, or disclose confidential personal health information ("PHI") of some Aceso customers, who are "Covered Entities", as defined under the Health Insurance Portability and Accountability Act of 1996; the American Recovery and Reinvestment Act of 2009 and associated Health Information Technology for Economic and Clinical Health Act and the Final

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Omnibus Rule of 2013 (collectively “HIPAA”). Supplier agrees to handle such PHI in a confidential manner during and after the Term, and commits to the following additional obligations regarding PHI:

- to request, obtain or communicate PHI only as necessary to perform the Services, and to refrain from requesting, obtaining or communicating more PHI than is necessary to accomplish the Services;
- to take reasonable care to properly secure PHI residing on a computer in use by Supplier and to take steps to ensure that third parties, other than Aceso employees, cannot view or access PHI. When Supplier is away from the computer then in use, Supplier shall either a) log off such computer, or b) use a password-protected screensaver, to prevent access by unauthorized users;
- not to disclose Supplier’s personal password(s) to anyone without the express written permission of Aceso’s management or record or post such password in an accessible location. Additionally, Supplier shall refrain from performing any tasks using another’s password;
- to immediately notify Aceso if Supplier becomes aware of any accidental disclosure or potential disclosure to third parties (e.g. theft of laptop containing PHI).

12. Indemnification

- 12.1. As used in this Section 12, a “Claim” is any claim, demand, loss, damage, liability, cost or expense for which one party (the “Indemnifying Party”) may be obligated to defend, indemnify and hold the other party (the “Indemnified Party”) harmless.
- 12.2. Supplier shall defend, indemnify and hold Aceso harmless from and against any Claim as incurred, arising out of any (i) act or omission of Supplier (including its Supplier Personnel, in the performance of the Services; or (ii) a breach by Supplier of Section 9.3 herein; or (ii) any infringement of a third party’s Intellectual Property Rights or any other rights in the Deliverables.
- 12.3. Aceso shall indemnify and hold Supplier harmless from and against any Claims, as incurred, arising out of: (i) Supplier’s use of Aceso’s products or services about the Services; or (ii) Supplier’s use of information or materials provided to Supplier by Aceso.
- 12.4. Each party will indemnify and hold the other party harmless from and against any Claims, as incurred, arising out of any negligent or willful acts or omissions of the Indemnifying Party which results in personal injury (including death) or damage to tangible property (not including lost or damaged data).
- 12.5. The Indemnified Party will provide the Indemnifying Party prompt written notice of the Claim and permit the Indemnifying Party to control the defense, settlement, adjustment, or compromise of any Claim. The Indemnified Party may employ counsel at its own expense to assist it with respect to any Claim. The Indemnified Party will have no authority to settle any Claim on the Indemnifying Party’s behalf.
- 12.6. If a third party enjoins or interferes with Aceso’s use of any Deliverable, then in addition to Supplier’s obligations under Section 12.2, Supplier will use its best efforts to (i) obtain licenses necessary to permit Aceso to continue to use the Deliverable; (ii) replace or modify the Deliverable, as necessary, to permit Aceso to continue to use the Deliverable; or if (i) and (ii) are not commercially reasonable, then (iii) promptly refund to Aceso the amount paid for any Deliverable for which a third party enjoins or interferes with Aceso’s use of such Deliverable.
- 12.7. Nothing in this Section 12 shall limit any other remedy of the parties.

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13. Limitation of Liability

- 13.1. NOTWITHSTANDING ANYTHING ELSE IN THE PURCHASE ORDER OR OTHERWISE, ACESO WILL NOT BE LIABLE TO SUPPLIER WITH RESPECT TO THE SUBJECT MATTER OF THE ORDER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY AMOUNTS IN EXCESS IN THE AMOUNT ACESO PAID TO SUPPLIER IN THE SIX MONTHS PRECEDING THE EVENT OR CIRCUMSTANCE GIVING RISE TO SUCH LIABILITY.
- 13.2. IN NO EVENT WILL ACESO BE LIABLE TO SUPPLIER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS ARISING OUT OF THE ORDER, WHETHER ACESO WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
- 13.3. THE LIMITATIONS STATED HEREIN WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. NOTHING IN THE ORDER LIMITS EITHER PARTY'S LIABILITY FOR BODILY INJURY OF A PERSON, DEATH, OR PHYSICAL DAMAGE TO PROPERTY OR ANY LIABILITY WHICH CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

14. Insurance

Throughout the Term, Supplier will secure and maintain insurance providing coverage for liabilities to third parties for bodily injury (personal injury) and damage to property in amounts sufficient to protect Aceso in the event of such injury or damage, and will follow all laws, regulations or orders addressing the liabilities of an employer to its employees for injuries and disease suffered about employment. Supplier further will maintain such additional types and limits of insurance as is customary for a company of similar size and similar operations to Supplier in the jurisdiction or jurisdictions in which Supplier's operations take place.

15. Compliance with Laws

Supplier represents and warrants that it will comply with all applicable local and national law and regulations pertaining to its performance of its obligations under this Order. In particular, and without limitation, Supplier shall not act in any fashion or take any action that will render Aceso liable for a violation of any applicable anti-bribery legislation (including without limitation, the U.S. Foreign Corrupt Practices Act and the UK Bribery Act of 2010), which prohibits the offering, giving or promising to offer or given, or receiving, directly or indirectly, money or anything of value to any third party to assist them or Aceso in retaining or obtaining business or in performing the Services. Supplier's failure to comply with this provision shall constitute a material breach of this Order.

16. Governing Law

The Order will be construed in accordance with, and all disputes will be governed by, the laws of the Commonwealth of Massachusetts, without regard to its conflict of laws rules. The parties specifically waive application of the UN Convention on Contracts for the International Sale of Goods. Supplier irrevocably consents to the personal jurisdiction of the state and federal courts in and for Boston, Massachusetts, and irrevocably waives any claim it may have that any proceedings brought in such courts have been brought in an inconvenient forum.

17. General

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- 17.1. Any notice to be given under the Order will be in writing and addressed to the party at the address stated in the front of the Purchase Order. Notices will be deemed given and effective (i) if personally delivered, upon delivery, (ii) if sent by an overnight service with tracking capabilities, upon receipt; (iii) if sent by fax or electronic mail, when the party which sent the notice receives confirmation of receipt by the applicable method of transmittal; or (iv) if sent by certified or registered mail, within five days of deposit in the mail.
- 17.2. If there is a conflict between or among the Order and any documents attached to and incorporated by reference, the conflict will be resolved as follows:
- A conflict between the terms of the Order and those set forth in an exhibit or hyperlink will be resolved in favor of the Order.
 - A conflict between the terms of the Order and those set forth in an SOW will be resolved in favor of the SOW.
 - A conflict between the terms of an exhibit or hyperlink and those set forth in an SOW will be resolved in favor of the SOW.
- 17.3. If any court of competent jurisdiction holds that any provision of the Order is illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining provisions of the Order will not be affected or impaired, and all remaining terms of this Order remain in full force and effect, provided this provision shall not be applied to defeat the intent of the parties.