

# Opendatum

## - Terms of Use-

LAST MODIFIED: September 10, 2020

Welcome to Opendatum, provided by Opendatum, Inc. (“**Opendatum**,” “**we**,” “**our**,” or “**us**”). These Terms of Use govern your use of our website (“**Site**”) and the software applications, hardware (if any) and platform (the “**Software**”) and systems and data facilities (the “**Network**”) made available on our Site, as well as any other websites, subdomains, or services owned or controlled by Opendatum that provide you with access to the Software and Network (collectively, the “**Service**”). To access the Service, users must at all times agree to and abide by these Terms. The Service allows you to submit, store, and access certain business data and other information related to you, your customers, or your business (collectively, “**User Data**”) Please note, any and all medical information and data subject to HIPPA rules and regulations will be held in strict confidence and subject to an executed Business Associate Agreement between user and Opendatum and any conflicting terms between this Terms of Use and the Business Associate Agreement, will be subject to and controlled by the Business Associate Agreement.

These Terms of Use constitute a legal contract between you, the representative who is authorized to legally bind a single company, organization, or entity (“**you**” or “**Customer**”, or collectively with other users, “**Users**”) and Opendatum regarding your use of the Service. Opendatum may have different roles with respect to different types of Users, and “**you**” as used in these Terms will apply to the appropriate type of User under the circumstances.

Please read carefully the following terms of Use. By registering for and/or accessing, browsing, using or subscribing to the Service, or by clicking “I Agree,” or otherwise affirmatively manifesting your intent to be bound by these Terms of Use, you signify that you have read, understood, and agree to be bound by the following terms, the Business Associate Agreement available here or such other Business Associate Agreement that you and Opendatum have agreed to in writing, the quotation or service agreement that has been issued by Opendatum to you (hereinafter referred to collectively as the “**Order**”) and any additional guidelines and any future modifications (collectively, the “**Terms**”), and to the collection and use of your User Data as set forth in the Opendatum Privacy Policy.

If you are using or opening an account with Opendatum on behalf of a company, entity, or organization (collectively, the “**Subscribing Organization**”) then you represent and warrant that you: (i) are an authorized representative of that entity with the authority to bind such entity to these Terms; (ii) have read these Terms; (iii) understand these Terms, and (iv) agree to these Terms on behalf of such Subscribing Organization.

PLEASE READ THESE TERMS CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION. THIS AGREEMENT CONTAINS A MANDATORY INDIVIDUAL ARBITRATION AND CLASS ACTION/JURY TRIAL WAIVER PROVISION THAT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS.

1. **License Grant.** Subject to the terms and conditions of these Terms, Opendatum hereby grants to you a limited, personal, non-transferable and revocable license to use the Service in the manner contemplated by these Terms solely for your internal business purposes. Users shall have no right to sub-license or resell the Service or any component thereof.
2. **Privacy.** User privacy is important to us. Please read our [Privacy Policy](#) carefully for details relating to the collection, use, and disclosure of your personal information.
3. **Business Associate Agreements (“BAA”).** In addition to these Terms, relationships with our Covered Entities (“CE”) will be subject to separate terms and conditions applicable to each specific CE (each a, “**Business Associate Agreement**”). A BAA supplements these Terms and is hereby incorporated by reference. If any term of these Terms expressly conflicts with any term of a BAA, the conflicting term in the BAA will control. Further, you will be subject to any additional Guidelines or rules applicable to a specific BAA which may be included in the BAA or posted from time to time. All such Guidelines are hereby incorporated by reference into these Terms.
4. **Modification of the Terms.** Opendatum reserves the right, at its sole discretion, to change, modify, add, or remove portions of these Terms at any time. You agree to review these Terms and any Guidelines periodically for changes. When we change the Terms in a material manner, we will update the ‘last modified’ date at the top of this page and notify you that material changes have been made to these Terms. If any such revision is unacceptable to you, your only remedy is to terminate your Opendatum User Account.
5. **Mobile Software.** We may make available a version of the Software to access the Service via a mobile device (“**Mobile Software**”). To use the Mobile Software you must have a mobile device that is compatible with the Mobile Software. Opendatum does not warrant that the Mobile Software will be compatible with your mobile device. You may use mobile data in connection with the Mobile Software and may incur additional charges from your wireless provider for these services. You agree that you are solely responsible for any such charges. Opendatum hereby grants you a non-exclusive, non-transferable, revocable license to use a compiled code copy of the Mobile Software for one Opendatum account on one mobile device owned or leased solely by you, for your personal use. You may not: (a) modify, disassemble, decompile or reverse engineer the Mobile Software, except to the extent that such restriction is expressly prohibited by law; (b) rent, lease, loan, resell, sublicense, distribute or otherwise transfer the Mobile Software to any third party or use the Mobile Software to provide time sharing or similar services for any third party; (c) make any copies of the Mobile Software; (d) remove, circumvent, disable, damage or otherwise interfere with security-related features of the Mobile Software, features that prevent or restrict use or copying of any content accessible through the Mobile Software, or features that enforce limitations on use of the Mobile

Software; or (e) delete the copyright and other proprietary rights notices on the Mobile Software.

In addition, you acknowledge that Opendatum may from time to time issue upgraded versions of the Mobile Software, and may automatically electronically upgrade the version of the Mobile Software that you are using on your mobile device. You consent to such automatic upgrading on your mobile device, and agree that the terms and conditions of these Terms will apply to all such upgrades. Any third-party code that may be incorporated in the Mobile Software is covered by the applicable open source or third-party license EULA, if any, authorizing use of such code. The foregoing license grant is not a sale of the Mobile Software or any copy thereof, and Opendatum or its third-party partners or suppliers retain all right, title, and interest in the Mobile Software (and any copy thereof). Any attempt by you to transfer any of the rights, duties or obligations hereunder, except as expressly provided for in these Terms, is void. Opendatum reserves all rights not expressly granted under these Terms. If the Mobile Software is being acquired on behalf of the United States Government, then the following provision applies. The Mobile Software will be deemed to be “commercial computer software” and “commercial computer software documentation,” respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, reproduction, release, performance, display or disclosure of the Service and any accompanying documentation by the U.S. Government will be governed solely by these Terms of Use and is prohibited except to the extent expressly permitted by these Terms of Use. The Mobile Software originates in the United States, and is subject to United States export laws and regulations. The Mobile Software may not be exported or re-exported to certain countries or those persons or entities prohibited from receiving exports from the United States. In addition, the Mobile Software may be subject to the import and export laws of other countries. You agree to comply with all United States and foreign laws related to use of the Mobile Software and the Service.

**6. Term and Termination.**

- a) **Term.** Unless the applicable Order states otherwise, the term for these Terms shall commence upon the date you sign up for the Services, and shall remain in effect on a month-to-month basis (the “**Term**”) until one party notifies the other of its intent to terminate in accordance with Section 7 below.
- b) **Termination for Convenience.** Either party may terminate these Terms upon thirty (30) days’ advance written notice.
- c) **Termination for Cause.** Either party may terminate these Terms upon thirty (30) days’ advance written notice if: (i) the other party has breached this Agreement (including through non-payment of amounts owed hereunder) and not cured such breach within such notice period; or (ii) the other party becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, initiates or becomes subject to any proceeding under any bankruptcy or insolvency law, or has wound up or liquidated its business.
- d) **Suspension of Uses.** You agree that Opendatum may suspend your access to the Services immediately if Opendatum reasonably believes you are, or any communications sent via or through the Service are, in violation of these Terms or

applicable law or in the event that you are not up to date on all amounts owed to Opendatum hereunder.

- e) **Effects of Termination.** Upon expiration or termination of these Terms, all licenses granted shall immediately terminate and, if applicable, each party shall promptly cease all use of the other party's logos and promptly cease representing itself as the customer or commercial partner of the other. If any fees are outstanding, you shall pay such fees within thirty (30) days of the effective date of termination or expiration.

7. **Account Activity Responsibility.**

- a) User Accounts. In order to use certain aspects of the Service, you will have to register for the Service and create an account or an account will be created for you through the system ("**User Account**"). When creating your account or working with Opendatum to create an account for the Service, you agree to provide true, accurate, current, and complete information. You further agree to maintain and update your personal information as needed to keep it true, accurate, current, and complete. 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 account is no longer secure (for example, in the event of a loss, theft or unauthorized disclosure or use of your ID, password, or any credit, debit or charge card number), you agree to immediately notify Opendatum. You may be liable for the losses incurred by Opendatum or others due to any unauthorized use of your User Account.
- b) Administrator Accounts. The person who first completes the Service registration on behalf of any Subscribing Organization is the initial "**Administrator**" for purposes of such Subscribing Organization's use of the Service, and exercises certain options to initially determine the level of access, privacy, and security for the Service related to the Subscribing Organization ("**Administrator Account**"). For example, the Administrator will determine who can be a User of the Service under the organization associated with that Administrator and Subscribing Organization and the level of privileges that such Users will possess. Each Administrator may designate other Users as additional and/or successor Administrators, and is responsible for confirming that those person(s) accept such responsibility. Upon becoming an Administrator, each person will be deemed to agree to the obligations hereunder. In addition, any person designated as the billing contact in the Service billing record for a Subscribing Organization will be deemed to assume the rights and obligations of an Administrator. Administrator Accounts must comply in all respects with all terms and conditions applicable to User Accounts.
- c) System Access. You may choose to allow Opendatum to automatically retrieve data from your system(s) or third-party systems or services on your behalf (collectively, the "**Systems**"). You hereby represent and warrant that you have the permission, authority, and rights to allow Opendatum to so automatically access such System(s) and you hereby grant Opendatum permission to access such system(s) and retrieve User Data therefrom by indicating the same within your User Account. Opendatum disclaims any and all liability associated with accessing and retrieving User Data from such System(s) on your or your Subscribing Organization's behalf. In order to connect the Service with any third-party System to enable certain functionality of the

Services, you hereby designate Opendatum as your agent and attorney-in-fact in connection with such System access and further authorize Opendatum to: (a) store your User Data relating to such System; (b) access such System using User Data you provide us; (c) use any materials you provide us in order to provide you the Service; (d) gather and export from such System any User Data reasonably necessary for us to provide the Service to you; and (e) otherwise take any action in connection with such System as is reasonably necessary for us to provide the Service to you. You agree that those third-party System providers are entitled to rely on the foregoing authorization, agency, and power of attorney granted by you. IF AT ANY TIME YOU DO NOT HAVE THE RIGHT AND AUTHORITY TO ALLOW OPENDATUM AUTOMATIC ACCESS TO SUCH SYSTEM(S), THEN YOU HEREBY AGREE TO IMMEDIATELY DISABLE SUCH FUNCTIONALITY WITHIN YOUR USER OR ADMINISTRATOR ACCOUNT.

- d) Account Information. You acknowledge and agree that Opendatum may access, preserve and disclose your account information and related contents if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce these Terms; (c) respond to claims that any User Data violates the rights of third parties; (d) respond to your requests for customer service; or (e) protect the rights, property or personal safety of Opendatum, its users, or the public.

8. **Restrictions.** When using the Service you agree not to:

- a) Upload or transmit via the Service pornographic, threatening, embarrassing, hateful, racially or ethnically insulting, libelous, or otherwise inappropriate content;
- b) Use the Service for any purpose that is unlawful or is otherwise prohibited by these Terms;
- c) Use the Service in any manner that in our sole discretion could damage, disable, overburden, or impair it;
- d) Attempt to gain unauthorized access to the Service, or any part of them, other User Accounts, computer systems or networks connected to the Service, or any part of them, through hacking, password mining or any other means or interfere or attempt to interfere with the proper working of the Service or any activities conducted on the Service;
- e) Modify the Service in any manner or form, or use modified versions of the Service, including but not limited to for the purpose of obtaining unauthorized access to the Service;
- f) Use any robot, spider, scraper, or other automated means to access the Service for any purpose without our express written permission, or bypass any measures we may use to prevent or restrict access to the Service;
- g) Impersonate another person or access another User's Account without that User's permission or to violate any contractual or fiduciary relationships;
- h) Share Opendatum-issued passwords with any third party or encourage any other User to do so;
- i) Misrepresent the source, identity, or content of User Data;
- j) Modify, adapt, translate or create derivative works based upon the Service;

- k) Reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation;
- l) Rent, lease, loan, resell, sublicense, distribute or otherwise transfer the Service to any third party; provide time sharing or similar services for any third party; or use the Service for any purpose other than your own internal business use;
- m) Remove, circumvent, disable, damage or otherwise interfere with security-related features of the Service, features that prevent or restrict use or copying of any content accessible through the Service, or features that enforce limitations on use of the Service;
- n) Access the Service if you are a direct competitor of Opendatum, except with Opendatum's prior written consent, or for any other competitive purposes; or
- o) Collect or harvest any personally identifiable information, including account names, from the Service.

## 9. User Data

- a) Use of User Data. By submitting User Data to Opendatum or by otherwise providing Opendatum with access to your User Data, you hereby grant, and represent and warrant that you have all rights necessary to grant, all rights and licenses to the User Data required for Opendatum and its subcontractors and service providers to provide the Service. Opendatum shall have no right to sublicense or resell User Data, except however, that you agree that Opendatum may collect, analyze, and use data derived from User Data, which may include personal data and/or information collected from or about an individual but which does not identify the individual personally, as well as data about you, and other Users' access and use of the Service, for purposes of operating, analyzing, improving, or marketing the Service and any related services. If Opendatum shares or publicly discloses information (*e.g.*, in marketing materials, or in application development) that is derived from User Data, such data will be aggregated or anonymized to reasonably avoid identification of a specific individual or the User. By way of example and not limitation, Opendatum may: (a) track the number of users on an anonymized aggregate basis as part of Opendatum's marketing efforts to publicize the total number of Users of the Service; (b) analyze aggregated usage patterns for product development efforts; or (c) use anonymous data derived from User Data in a form which may not reasonably identify either a particular individual or the User to develop further analytic frameworks and application tools. You further agree that Opendatum will have the right, both during and after the Term of these Terms, to use, store, transmit, distribute, modify, copy, display, sublicense, and create derivative works of the anonymized, aggregated data. Please note, Opendatum's use of User Data does not include, in any manner whatsoever, any protected and confidential patient data subject to HIPPA and confidentiality provisions thereof.
- b) Your Responsibilities for User Data. In connection with User Data, throughout the Term of these Terms, you hereby represent, warrant, and agree that: (a) you have obtained the User Data lawfully, and the User Data does not and will not violate any applicable laws or any person or entity's proprietary or intellectual property rights; (b) the User Data is free of all viruses, Trojan horses, and other elements that could interrupt or harm the Network or Software used by Opendatum or its subcontractors

- to provide the Service; (c) all User Data has and will be collected by you in accordance with a privacy policy that permits Opendatum to share, collect, use, and disclose such User Data as contemplated under these Terms, and if required by applicable law, pursuant to consents obtained by you to do each of the foregoing; (d) you are solely responsible for ensuring compliance with all privacy laws in all jurisdictions that may apply to User Data provided hereunder; (e) Opendatum may exercise the rights in User Data granted hereunder without liability or cost to any third party; and (f) the User Data complies with the terms of these Terms. For purposes of clarity, Opendatum takes no responsibility and assumes no liability for any User Data, and you will be solely responsible for its User Data and the consequences of sharing it hereunder.
- c) Security Incidents. In the event that User Data is disclosed to or accessed by an unauthorized party, Opendatum will promptly notify you and use reasonable efforts to cooperate with your investigation of the incident; and if such incident triggers any third party notice requirements under applicable laws, you agree that as the owner of the User Data, you will be responsible for the timing, content, cost and method of any such notice and compliance with such laws.
  - d) No Responsibility for Backups. Opendatum will not be responsible for any backup, recovery or other steps required to ensure that User Data is recoverable in the case of data loss. You are solely responsible for backing up your User Data on a regular basis, and taking appropriate steps to safeguard and ensure the integrity of your User Data.
  - e) Rights to User Data. Except for the rights you grant in these Terms, as between the parties, you own all right, title and interest (including all intellectual property rights) in and to your User Data. Please note, Opendatum's User Data does not include, in any manner whatsoever, any protected and confidential patient data subject to HIPPA and confidentiality provisions thereof.
10. **Ownership; Proprietary Rights**. The Service is owned and operated by Opendatum. The visual interfaces, graphics, design, compilation, information, computer code, products, Software, Network, and all other elements of the Service provided by Opendatum, but expressly excluding any of the foregoing owned or licensed by and posted to the Service at the direction of Users (including without limitation User Data) (collectively "**Opendatum Materials**") are protected by intellectual property and other applicable laws. Except for any technology licensed by Opendatum, which is owned by and provided by our third-party licensors, all Opendatum Materials contained in the Service, including without limitation the intellectual property rights therein and thereto, are the sole and exclusive property of Opendatum or its subsidiaries or affiliated companies. All trademarks, service marks, and trade names are proprietary to Opendatum or its affiliates and/or third-party licensors. Except as expressly provided herein, nothing in these Terms shall be deemed to create a license in or under any such Opendatum Materials or the intellectual property rights therein or thereto, you agree not to sell, license, distribute, copy, modify, publicly perform or display, transmit, publish, edit, adapt, create derivative works from, or otherwise make unauthorized use of the Opendatum Materials.

## 11. Confidentiality

- a) **Definition.** “Confidential Information” means: (i) any information disclosed (directly or indirectly) by one party to the other party pursuant these Terms that is in written, graphic, machine readable or other tangible form (including, without limitation, research, product plans, products, services, equipment, customers, markets, software, inventions, processes, designs, drawings, formulations, specifications, product configuration information, marketing and finance documents, prototypes, samples, data sets, and equipment) and is marked “Confidential,” “Proprietary” or in some other manner to indicate its confidential nature; (ii) oral information disclosed (directly or indirectly) by one party to the other party pursuant these Terms; provided that such information is designated as confidential at the time of its initial disclosure and reduced to a written summary by the disclosing that is marked in a manner to indicate its confidential nature and delivered to the receiving party within thirty (30) days after its initial disclosure; and (iii) information otherwise reasonably expected to be treated in a confidential manner under the circumstances of disclosure under these Terms or by the nature of the information itself. Confidential Information may include information of a third party that is in the possession of the disclosing party and is disclosed to the receiving party under this Agreement. For the avoidance of doubt, the Opendatum Materials are deemed Confidential Information of Opendatum.
- b) **Confidentiality Obligations.** Each party shall treat as confidential all Confidential Information of the other, shall not use such Confidential Information except as set forth in these Terms, and will not disclose such Confidential Information to any third party except as expressly permitted herein without the disclosing party’s written consent; provided, however, that Opendatum may disclose your Confidential Information to employees, contractors, advisors and service providers who are required to know such Confidential Information in order to perform the Service. The receiving party shall use at least the same degree of care which it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of the disclosing party’s Confidential Information, but in no event less than reasonable care. The receiving party shall promptly notify the disclosing party of any actual or suspected misuse or unauthorized disclosure of any of the Confidential Information. In the event of any termination or expiration of these Terms, each party will either return or, at the disclosing party’s request, destroy the Confidential Information of the other party; provided however, that each party may retain copies of the other’s Confidential Information for routine backup and archival purposes.
- c) **Exceptions.** Notwithstanding the foregoing, the obligations set forth in this Section shall not apply with respect to any information to the extent that it is: (i) already in the possession of the receiving party prior to the first disclosure hereunder as shown by records or files; (ii) is already part of the public knowledge or becomes part of the public knowledge after the time of disclosure other than as a result of any improper action by the receiving party; (iii) is approved in writing by the disclosing party; (iv) is required to be disclosed by applicable legal authority provided that, if practicable, adequate notice and assistance is given by the receiving party to the disclosing party for the purpose of enabling the disclosing party to prevent and/or limit the disclosure; or (v) is independently developed by either party without use of the Confidential



Information from the other party, as proven by the receiving party's then-contemporaneous written records.

12. YOU ACKNOWLEDGE THAT OPENDATUM DOES NOT MANAGE OR CONTROL THE USER DATA THAT YOU ACCESS, STORE OR DISTRIBUTE THROUGH THE SERVICE, AND ACCEPTS NO RESPONSIBILITY OR LIABILITY FOR THAT INFORMATION REGARDLESS OF WHETHER SUCH USER DATA IS TRANSMITTED TO OR BY YOU IN BREACH OF THESE TERMS. OPENDATUM MAKES NO WARRANTY WITH RESPECT TO SUCH USER DATA YOU MAY ACCESS, STORE OR DISTRIBUTE THROUGH THE SERVICE. IN PARTICULAR, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, OPENDATUM MAKES NO WARRANTY THAT SUCH USER DATA WILL BE FREE OF ANY VIRUS, WORM, TROJAN HORSE, EASTER EGG, TIME BOMB, CANCELBOT, OR OTHER DESTRUCTIVE OR MALICIOUS CODE OR PROGRAMS. YOU AGREE TO WAIVE, AND HEREBY DO WAIVE, ANY LEGAL OR EQUITABLE RIGHTS OR REMEDIES YOU HAVE OR MAY HAVE AGAINST OPENDATUM WITH RESPECT TO THIRD PARTY AND/OR USER DATA THAT YOU CHOOSE TO ACCESS, STORE OR DISTRIBUTE, THROUGH THE SERVICE.
13. **Security and Privacy Settings.** We have implemented commercially reasonable technical and organizational measures designed to secure your User Data from accidental loss and from unauthorized access, use, alteration or disclosure. However, we cannot guarantee that unauthorized third parties will never be able to defeat those measures or use your User Data for improper purposes. You understand that internet technologies have the inherent potential for disclosure. You acknowledge that you are under no obligation to provide personal data or other sensitive information in order to use the Service and that you provide any such information at your own risk.
14. **Warranties**
  - a) **Opendatum Warranty.** Opendatum represents and warrants that it possesses sufficient rights, approvals, licenses, consents and permissions as are necessary to perform its obligations hereunder, exercise its rights hereunder and to grant the licenses granted by it under this Agreement.
  - b) **DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS, THE SERVICE AND ANY THIRD-PARTY DATA, SOFTWARE, INCLUDING SOFTWARE, SUPPLIED HARDWARE, OPENDATUM MATERIALS, SERVICES, OR APPLICATIONS MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, OPENDATUM, ITS SUPPLIERS, LICENSORS, AND PARTNERS DISCLAIM ALL WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS.
  - c) OPENDATUM, ITS SUPPLIERS, LICENSORS, AND PARTNERS DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT THE SERVICE WILL MEET YOUR REQUIREMENTS, THAT DEFECTS WILL BE CORRECTED, OR THAT

THE SERVICE OR THE SERVER THAT MAKES IT AVAILABLE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

- d) OPENDATUM, ITS SUPPLIERS, LICENSORS, AND PARTNERS DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SERVICE IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. YOU UNDERSTAND AND AGREE THAT YOU DOWNLOAD OR OTHERWISE OBTAIN THIRD PARTY OR USER DATA, OPENDATUM MATERIAL, OR DATA THROUGH THE USE OF THE SERVICE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH THIRD PARTY OR USER PROVIDED INFORMATION, MATERIAL, OR DATA. OPENDATUM WILL NOT BE RESPONSIBLE OR LIABLE FOR THE DELETION, CORRECTION, DESTRUCTION, DAMAGE, LOSS, OR FAILURE TO STORE OR MAINTAIN ANY THIRD-PARTY OR USER DATA.

**15. Limitation of Liability**

- a) OPENDATUM AND ITS AFFILIATES, CONTRACTORS, EMPLOYEES, AGENTS, OR THIRD-PARTY PARTNERS, LICENSORS, AND SUPPLIERS WILL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION LOSSES OR LIABILITY RESULTING FROM LOSS OF DATA, LOSS OF REVENUE, ANTICIPATED PROFITS, OR LOSS OF BUSINESS OPPORTUNITY) THAT RESULT FROM YOUR USE OR YOUR INABILITY TO USE THE INFORMATION OR OPENDATUM MATERIALS OR THE SERVICE, OR ANY OTHER INTERACTIONS WITH OPENDATUM, EVEN IF OPENDATUM OR A OPENDATUM AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN SUCH CASES, OPENDATUM'S LIABILITY WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.
- b) IN NO EVENT WILL OPENDATUM OR ITS AFFILIATES', CONTRACTORS', EMPLOYEES', AGENTS', OR THIRD-PARTY PARTNERS', LICENSOR'S, OR SUPPLIERS' TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO THESE TERMS OR THE USE OF THE SERVICE, (WHETHER IN CONTRACT, TORT INCLUDING NEGLIGENCE, WARRANTY, OR OTHERWISE) EXCEED THE AMOUNT PAID BY YOU, IF ANY, FOR ACCESSING THE SERVICE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DAY THE ACT OR OMISSION OCCURRED THAT GAVE RISE TO YOUR CLAIM OR \$10,000, WHICHEVER IS GREATER.
- c) YOU ACKNOWLEDGE AND AGREE THAT OPENDATUM HAS OFFERED ITS PRODUCTS AND SERVICES, SET ITS PRICES, AND ENTERED INTO THESE TERMS IN RELIANCE UPON THE DISCLAIMERS OF WARRANTY AND THE

LIMITATIONS OF LIABILITY SET FORTH HEREIN, THAT THE DISCLAIMERS OF WARRANTY AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN THE PARTIES (INCLUDING THE RISK THAT A CONTRACT REMEDY MAY FAIL OF ITS ESSENTIAL PURPOSE AND CAUSE CONSEQUENTIAL LOSS), AND THAT THE DISCLAIMERS OF WARRANTY AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN YOU AND OPENDATUM.

16. **Indemnification.** You agree to defend, indemnify and hold harmless Opendatum and its subsidiaries, agents, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from or related to: (a) any alleged or actual breach of any representation, warranty or covenant made by you under these Terms; (b) violations of any law, rule or regulation of the United States or any other country by you; (c) any claim for damages that arise as a result of any of your User Data or any other data that are submitted via your account. You shall not, without the prior written consent of Opendatum, compromise or consent to the entry of any judgment with respect to any pending or threatened claim unless the settlement, compromise or consent provides for and includes an express, unconditional release of such claim against Opendatum.
17. **Location of the Service.** The Service is controlled and operated from our facilities in the United States. Opendatum makes no representations that the Service is appropriate or available for use in other locations. Those who access or use the Service from other jurisdictions do so at their own volition and are entirely responsible for compliance with local law, including but not limited to export and import regulations. You may not use the Service if you are a resident of a country embargoed by the United States, or are a foreign person or entity blocked or denied by the United States government. Unless otherwise explicitly stated, all materials found on the Service are solely directed to individuals, companies, or other entities located in the U.S. By using the Service, you are consenting to have your personal data transferred to and processed in the United States.
18. **Governing Law; Arbitration; and Class Action/Jury Trial Waiver**
  - a) Governing Law. You agree that: (a) the Service shall be deemed solely based in California; and (b) the Service shall be deemed a passive one that does not give rise to personal jurisdiction over us, either specific or general, in jurisdictions other than California. This Agreement shall be governed by the internal substantive laws of the State of California, without respect to its conflict of laws principles. The parties acknowledge that these Terms evidences a transaction involving interstate commerce. Notwithstanding the preceding sentences with respect to the substantive law, any arbitration conducted pursuant to the terms of these Terms shall be governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16). The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. You agree to submit to the personal jurisdiction of the federal and state courts located in Sacramento, California for any actions for which we retain the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of our copyrights, trademarks, trade secrets, patents, or other intellectual property or proprietary rights,

as set forth in the Arbitration provision below, including any provisional relief required to prevent irreparable harm. You agree that Sacramento, California is the proper forum for any appeals of an arbitration award or for trial court proceedings if the arbitration provision below is found to be unenforceable.

- b) **Arbitration.** READ THIS SECTION CAREFULLY BECAUSE IT REQUIRES THE PARTIES TO ARBITRATE THEIR DISPUTES AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM OPENDATUM. For any dispute with Opendatum, you agree to first contact us at support@myopendatum.com and attempt to resolve the dispute with us informally. In the unlikely event that Opendatum has not been able to resolve a dispute it has with you after sixty (60) days, we each agree to resolve any claim, dispute, or controversy (excluding any claims for injunctive or other equitable relief as provided below) arising out of or in connection with or relating to these Terms, or the breach or alleged breach thereof (collectively, “**Claims**”), by binding arbitration by JAMS, under the Optional Expedited Arbitration Procedures then in effect for JAMS, except as provided herein. JAMS may be contacted at [www.jamsadr.com](http://www.jamsadr.com). The arbitration will be conducted in Sacramento, California, unless you and Opendatum agree otherwise. If you are using the Service for commercial purposes, each party will be responsible for paying any JAMS filing, administrative and arbitrator fees in accordance with JAMS rules, and the award rendered by the arbitrator shall include costs of arbitration, reasonable attorneys’ fees and reasonable costs for expert and other witnesses. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Nothing in this Section shall be deemed as preventing Opendatum from seeking injunctive or other equitable relief from the courts as necessary to prevent the actual or threatened infringement, misappropriation, or violation of our data security, intellectual property or other proprietary rights.
- c) **Class Action/Jury Trial Waiver.** WITH RESPECT TO ALL PERSONS AND ENTITIES, REGARDLESS OF WHETHER THEY HAVE OBTAINED OR USED THE SERVICE FOR PERSONAL, COMMERCIAL OR OTHER PURPOSES, ALL CLAIMS MUST BE BROUGHT IN THE PARTIES’ INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION OR OTHER REPRESENTATIVE PROCEEDING. THIS WAIVER APPLIES TO CLASS ARBITRATION, AND, UNLESS WE AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON’S CLAIMS. YOU AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND OPENDATUM ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION, OR OTHER REPRESENTATIVE PROCEEDING OF ANY KIND.

#### 19. **Miscellaneous**

- a) **Identification Rights.** Both parties have the right to identify the other as a customer or service provider, as applicable.
- b) **Notices.** All notices under these Terms must be in writing and delivered either by hand, e-mail, certified mail (return receipt requested, postage pre-paid) or nationally recognized overnight delivery service (all delivery charges pre-paid) and addressed, if

- to you, to the contact identified in your most recent order and, if to Opendatum, to Opendatum PO Box 2017, Penn Valley, CA 95946
- c) Waiver. The failure of Opendatum to exercise or enforce any right or provision of these Terms will not constitute a waiver of such right or provision. Any waiver of any provision of these Terms will be effective only if in writing and signed by Opendatum.
  - d) Severability. If any provision of these Terms, an Individual Service Agreement, or any Guideline is held to be unlawful, void, or for any reason unenforceable, then that provision will be limited or eliminated from these Terms to the minimum extent necessary and will not affect the validity and enforceability of any remaining provisions; except that in the event of unenforceability of the universal Class Action/Jury Trial Waiver, the entire arbitration agreement shall be unenforceable.
  - e) Assignment. These Terms, Individual Service Agreements, and related Guidelines, and any rights and licenses granted hereunder, may not be transferred or assigned by you, except in the event of a merger, consolidation or sale of substantially all of the Subscribing Organizations assets, but provided that such assigned party agrees in writing to be bound by the Terms. Opendatum may assign its rights and obligations hereunder without restriction.
  - f) Survival. Upon termination of these Terms, any provision which, by its nature or express terms should survive, shall survive such termination or expiration.
  - g) Headings. The heading references herein are for convenience only, do not constitute a part of these Terms, and will not be deemed to limit or affect any of the provisions hereof.
  - h) Entire Agreement. This Agreement, including the agreements incorporated by reference including the BAA, together with any order form or online service agreed upon by you and Opendatum, constitutes the entire agreement between you and Opendatum relating to the subject matter herein and will not be modified except in writing, signed by both parties, or by a change made by Opendatum as set forth in these Terms.
  - i) Claims. You and Opendatum agree that any cause of action arising out of or related to the Service must commence within one (1) year after the cause of action accrues. Otherwise, such cause of action is permanently barred.
  - j) Disclosures for California Residents. The Service is offered by Opendatum contacted at PO Box 2017 Penn Valley, CA 95946. If you are a California resident, (a) 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; and (b) in accordance with Cal. Civ. Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 1625 North Market Blvd., Suite N 112 Sacramento, CA 95834, or by telephone at (800) 952-5210 or (916) 445-1254.