



FOOTHOLD TECHNOLOGY, INC. TERMS OF USE

SERVICE: Foothold Technology, Inc. (“*Supplier*”) shall provide to the subscriber, specifically identified on the signature page to this Agreement (which does not include any affiliate, such as a parent or subsidiary thereof, except for those expressly identified in this Agreement as being included hereunder) (such specified subscriber, “*Subscriber*”), a service (the “*API*”) which uses proprietary software called Affordable Wide-Area Relational Database System (“*AWARDS*”) to track and store electronic data generated by day to day operations and issues related reports based on the same via the Internet according to the Service Description in the Addendum for use solely for Subscriber’s internal business activities. Notwithstanding anything contained herein to the contrary, Subscriber may utilize the API. The Subscriber is solely and absolutely responsible for all such use, including compliance with each of the terms of this Agreement. Subscriber covenants and agrees to cause its affiliates, if any are expressly identified and included under the terms of the Agreement, to comply with each of the terms hereof as if said affiliates were originally named herein as Subscriber. Subscriber agrees to be responsible for its affiliates to conform to and abide by the terms herein.

FHIR API FEES: Please refer to our [AWARDS Certified edition page](#) for our current FHIR API pricing.

TERMINATION AND EFFECT OF TERMINATION: Supplier may terminate this Agreement immediately upon a material breach of this Agreement by Subscriber upon providing written notice of a material breach of the agreement by Subscriber that remains uncured for thirty (30) days after such notice. Supplier may temporarily suspend the API at any time, without cause and without liability to Subscriber, in order to protect the integrity of the API, or the software behind it, as determined by Supplier in Supplier’s sole discretion, or in the event Subscriber has failed to pay any amount due under this Agreement when due, or otherwise materially breached this Agreement, provided, absent emergency circumstances, Supplier uses commercially reasonable efforts to notify Subscriber at least 48 hours prior to suspension.

SUBSCRIBER’S OBLIGATIONS: Subscriber shall comply with each obligation hereunder. Subscriber acknowledges that Supplier’s obligation to provide the API is dependent on Subscriber complying with its obligations. Accordingly, Subscriber acknowledges and agrees that Supplier shall not be liable for any failure or delay in providing the API in the event Subscriber fails to comply with its obligations under this Agreement and the Addendum.

OWNERSHIP AND USAGE RESTRICTIONS: Supplier retains all right, title, interest and ownership in and to the API and AWARDS, and any and all related documentation, including any customization, modification, or derivative thereof, and Subscriber will not copy any documentation related to API or AWARDS other than for internal business purposes, nor shall Subscriber disassemble, decompile or reverse engineer API or AWARDS or, except as otherwise provided herein, use API or AWARDS on behalf or for the benefit of any other person or entity or otherwise infringe upon any of Supplier’s trademarks, trade secrets, copyrights, patents or other intellectual property rights. Subscriber shall include all Supplier copyright and other proprietary notices contained on any copy of the documentation related to API and/or AWARDS made by Subscriber. Subscriber retains all right, title, interest and ownership in and to the information, data and other content stored by Subscriber or on its behalf through or in the API (“*Subscriber Data*”) and other information, data and content provided by Subscriber or on its behalf to Supplier under this Agreement or through Subscriber’s use of the API (collectively with the Subscriber Data, “*Subscriber Materials*”). Subscriber shall be solely responsible for the Subscriber Materials, including the accuracy, quality, integrity, legality, reliability and appropriateness thereof, and for any use, collection, retention, disclosure, addition, modification, deletion or other processing (collectively “*Processing*”) of Subscriber Data or other Supplier Materials by Subscriber or initiated by or otherwise made at the request of Subscriber, including without limitation Processing that is enabled by the functionality of API or AWARDS or by Supplier in compliance with this Agreement (any such Processing, “*Authorized Processing*”). Without limiting the foregoing, except as otherwise required by law or provided in the BAA (as hereinafter defined), Subscriber is solely responsible for ensuring that the Authorized Processing is in compliance with HIPAA and other local, state, federal and international laws, regulations and conventions relating to confidentiality, privacy and/or data protection, including without limitation HIPAA and other laws, regulations and conventions relating to Processing of personally identifiable information and patient health information (“*Privacy Laws*”). Subscriber shall, where appropriate, ensure that due notice is given and sufficient consent obtained from all relevant persons or entities, to permit the Authorized Processing, and warrants and represents that it has and shall retain sufficient rights in the Subscriber Data to permit such Authorized Processing. To the extent Subscriber requests a modification or deletion of Subscriber Data, Subscriber is responsible for keeping and maintaining any records with respect to such requested modification or deletion required for compliance with applicable Privacy Laws. Subscriber hereby grants to Supplier a royalty-free, non-exclusive license during the Term to use, copy, reformat, display, disclose and distribute the Subscriber Materials solely for the purpose of providing the API and as otherwise necessary for exercising Supplier’s rights or performing Supplier’s obligations under this Agreement.

SUBSCRIBER DATA: Supplier will employ commercially reasonable administrative, physical and technical safeguards to maintain the security, confidentiality and integrity of Subscriber Data. Upon termination of this Agreement for any reason, Supplier shall either provide Subscriber with a copy of the Subscriber Data then stored in the API in the format in which it is stored in the API or shall provide Subscriber the ability to export or retrieve its Subscriber Data from the API for a period of 30 days after the effective date of termination. After the earlier of delivery of a copy of the Subscriber Data to Subscriber or 30 days after termination, Supplier will have no obligation to maintain or provide any Subscriber Data and may thereafter, unless legally prohibited, delete all Subscriber Data in its systems or otherwise in its possession or under its control. If Subscriber requests Subscriber Data in a different format or requests additional services to facilitate the transition and migration of the Subscriber Data to Client or its designee, Supplier may provide such services at its option for a mutually agreed additional fee,



WARRANTIES; DISCLAIMER: THE API AND AWARDS ARE PROVIDED “AS-IS” AND SUPPLIER EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, (X) ANY IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, NON-INFRINGEMENT, AND/OR DATA ACCURACY OR USE OF THE API, AWARDS, SUPPORT SERVICES OR ANY OTHER MATERIALS OR INFORMATION GIVEN OR ASSUMED BY SUPPLIER OR ITS AGENTS (DEFINED BELOW), AND (Y) ALL WARRANTIES, REPRESENTATIONS, TERMS, CONDITIONS, UNDERTAKINGS, AND OBLIGATIONS IMPLIED BY STATUTE OR COMMON LAW, TRADE USAGE, COURSE OF DEALING OR OTHERWISE ARE HEREBY EXCLUDED. SUPPLIER DOES NOT WARRANT THAT THE API, AWARDS OR ANY OTHER SERVICES PROVIDED BY SUPPLIER WILL MEET CLIENT’S REQUIREMENTS OR THAT THE OPERATION OF THE API OR AWARDS WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. THE API AND AWARDS MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS AND SUPPLIER EXPRESSLY IS NOT AND WILL NOT BE RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM ANY SUCH PROBLEMS.

DISCLAIMER OF DAMAGES AND LIMITATIONS OF LIABILITY: Supplier shall not be liable for the performance of its obligations under this Agreement (including the SLA and Addendum) caused by the lack of consistency of electrical power; negligence, abuse or misuse caused by Subscriber’s personnel, representatives, or agents (“**Agents**”); environmental conditions; the failure of Subscriber to fully comply with its material obligations under this Agreement; the failure or delay of the Internet or other transmission medium; or any other cause such as war, terrorism, insurrection, fire, weather, labor disputes, lack of supplies, failure of public utilities, systems or other infrastructure, or any other cause outside Supplier’s reasonable control. NOTWITHSTANDING THE FOREGOING, IN NO EVENT WILL THE AGGREGATE, CUMULATIVE LIABILITY OF SUPPLIER TO SUBSCRIBER, ITS AGENTS, OR ANY THIRD PARTY FOR ANY AND ALL CLAIMS RELATED TO THIS AGREEMENT (INCLUDING THE SLA AND ADDENDUM) INCLUDING WITHOUT LIMITATION ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER EQUITABLE OR LEGAL GROUND, EXCEED THE TOTAL AMOUNT OF FEES PAID TO SUPPLIER DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE FIRST SUCH CLAIM. UNDER NO CIRCUMSTANCES SHALL SUPPLIER OR ITS AGENTS BE LIABLE TO SUBSCRIBER, ITS AGENTS, OR ANY THIRD PARTIES FOR ANY CONSEQUENTIAL, EXEMPLARY, MULTIPLE, INCIDENTAL, PUNITIVE OR OTHER NON-DIRECT DAMAGES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR ANY LOST DATA, LOST PROFITS OR LOST SAVINGS) ARISING OUT OF OR IN CONNECTION WITH THE INSTALLATION, TRANSLATION, PROCESSING, USE, IMPROPER USE, INABILITY TO USE OR INACCURACY OF THE API, AWARDS, SUPPORT SERVICES AND/OR ANY OTHER INFORMATION OR MATERIAL OBTAINED OR DEVELOPED THROUGH THE USE OF THE API, AWARDS OR OTHERWISE UNDER THIS AGREEMENT (INCLUDING THE SLA AND ADDENDUM)

SUBSCRIBER ACKNOWLEDGES, AGREES, AND UNDERSTANDS THAT THE DISCLAIMERS, EXCLUSIONS, REMEDY PROVISIONS, AND LIMITATIONS ON LIABILITY SET FORTH IN SECTIONS 8, 9 AND 10 OF THIS AGREEMENT FORM AN ESSENTIAL BASIS OF THE AGREEMENT BETWEEN THE PARTIES AND THAT ABSENT AGREEMENT TO SUCH PROVISIONS, THE TERMS AND CONDITIONS OF THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT AND THE COSTS OF THE API WOULD BE MATERIALLY GREATER.

FOOTHOLD HEREBY INDEMNIFIES AND AGREES TO HOLD HARMLESS SUBSCRIBER, ITS OFFICERS, DIRECTORS, AND EMPLOYEES, FROM ANY AND ALL CLAIMS, LOSSES, LIABILITIES, DAMAGES, EXPENSES, AND COSTS (INCLUDING ATTORNEYS’ FEES AND COURT COSTS) ARISING FROM ANY AND ALL THIRD PARTY ALLEGATIONS THAT THE API OR AWARDS INFRINGE such third party’s U.S. patents, or infringe or misappropriate, as applicable, such third party’s copyrights or trade secret rights under applicable laws of any jurisdiction within the United States (a “CLAIM”). The foregoing indemnification obligation is subject to: (a) Subscriber notifying Foothold in writing promptly upon learning of the Claim; (b) Foothold having sole control of the defense or settlement of the Claim; and (c) Subscriber reasonably cooperating with the defense of the Claim, at Foothold’s expense. If a claim is made or is likely, Subscriber agrees to permit Foothold, at Foothold’s sole discretion, to enable it to continue to use the API or AWARDS, as applicable, or to modify or replace any such infringing material to make it non-infringing. If Foothold determines that none of these alternatives is reasonably available, Subscriber shall, upon written request from Foothold, cease use of, and, if applicable, return, such materials as are the subject of the claim. Foothold EXPRESSLY EXCLUDES from liability: (1) settlements and their related costs and expenses where Subscriber settles Claims without Foothold’s prior written consent; and (2) any Claims arising out of (a) use of API OR AWARDS in a manner not authorized by Foothold, as set forth in the applicable documentation for API OR AWARDS or written instructions by Foothold; (b) modification of API OR AWARDS except modifications performed by Foothold or pursuant to Foothold’s instructions; (c) combination of API or AWARDS with any other equipment, apparatus, software, processes, or materials not furnished by Foothold; (d) compliance by Foothold with Subscriber’s designs, specifications, or instructions; or (e) methods of use of API or AWARDS, unless API OR AWARDS has no substantial non-infringing use; IN EACH CASE TO THE EXTENT such infringement would not have occurred but for such use, modification, combination, or compliance. THIS SECTION STATES FOOTHOLD’S ENTIRE OBLIGATION AND LIABILITY WITH RESPECT TO ANY CLAIM OF INFRINGEMENT BY API OR AWARDS.

CONFIDENTIALITY. Each party (“**Recipient**”) may be exposed to certain information of the other party (“**Discloser**”) which is confidential to the Discloser and is valuable to Discloser and not generally known to the public (“**Confidential Information**”). Confidential Information shall be designated as “Confidential”, “Proprietary” or similar legend by the Discloser, or information which, under the circumstances taken as a whole, should reasonably be deemed to be confidential. Except as expressly allowed in this Section, Recipient will hold Discloser’s Confidential



Information in confidence and will treat Discloser's Confidential Information with the same degree of care taken to protect its own similar confidential information but in no event with less than reasonable care. Recipient further agrees to limit disclosure of such information to those of its directors, employees, contractors, and agents who have a need for such information to effect the use permitted under this Agreement and who are bound under a written agreement or legal obligation to keep such information confidential on terms substantially as protective of such Confidential Information as this Section. Recipient will not be required to protect or hold in confidence any information which: (1) becomes publicly known through no wrongful act or omission of Recipient; (2) was previously disclosed by Discloser to Recipient without indication of confidentiality; (3) becomes known to Recipient, without confidential restriction from a third party unless Recipient had or should have had knowledge of its confidentiality; (4) is approved by Discloser for disclosure without restriction in a written document which is signed by a duly authorized officer of the Discloser; or (5) is independently developed by Recipient without use of Discloser's Confidential Information. Disclosure of Confidential Information will not be precluded by this Section if such disclosure is: (a) necessary to establish rights under this Agreement (subject to Recipient's obligation at its expense to make a good faith attempt to obtain a protective order prior to such disclosure); or (b) required by law or regulation or in response to a valid order of a court or request of other governmental body of a country or political subdivision thereof, provided that Recipient notifies Discloser of such order on a timely basis and if possible prior to such disclosure. All Confidential Information, including copies made by Recipient, will remain the property of Discloser. The obligations of confidentiality imposed by this Agreement shall survive any termination of this Agreement. This Section shall not apply to any Confidential Information covered by a separate business associate agreement between the parties. Supplier reserves the right to use de-identified, completely anonymous data for research purposes or for Supplier's internal business purposes, in each case from time to time and at any time.

HIPAA; PHI. In providing the API, Supplier may receive or be provided access to protected health information ("PHI") as such term is defined in the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), by or from Subscriber. If such receipt or access is to occur, the business associate addendum found at the following URL address: <http://footholdtechnology.com/awards-software/compliance/> (the "BAA", and together with the Addendum, the "Addenda") shall apply and is incorporated by reference into this Agreement. Notwithstanding the foregoing, to the extent applicable, each Party agrees to comply with all relevant terms of HIPAA.

MISCELLANEOUS: This Agreement, including the SLA and the Addenda, constitutes the entire agreement between the Parties pertaining to the specific subject matter hereof. In the event of a conflict between the main body of this Agreement and the SLA or an Addenda, the main body of this Agreement will control. This Agreement becomes binding upon the parties on the last date on which a party executes this Agreement. Any notice to be given to either party hereunder shall be sent by certified mail, postage prepaid, or by electronic mail, to the physical or email addresses (as applicable) listed below receiving party's name on the signature page hereto or at such other address that the party to receive the notice has designated in writing and shall be effective when received by the recipient. The Agreement shall be governed by and construed in accordance with the internal, substantive laws of the State of New York, without regard to its laws regarding conflicts of law. No modification or amendment of this Agreement shall be binding unless it is in writing and is signed by each party hereto. Either party may waive any of its rights or benefits under this Agreement in a signed writing. Notwithstanding termination of the Agreement, the following sections shall survive, along with all definitions required thereby: Sections 4, 5, 7 and 9 - 15. The Agreement may not be assigned or otherwise transferred by Subscriber without prior written consent of Supplier, which may be granted or denied in Supplier's sole discretion. Supplier may assign this Agreement without consent. If any provision of this Agreement shall be held invalid, illegal, or unenforceable the remainder of this Agreement shall not in any way be affected or impaired thereby. Any dispute arising hereunder shall be exclusively settled by confidential and binding arbitration under the then current Commercial Arbitration Rules of the American Arbitration Association (the "AAA"); *provided, however*, that nothing in this Agreement shall prohibit (i) either party from seeking injunctive or other equitable relief in any court of competent jurisdiction in the event of a breach by the other party or any of its Agents of the provisions of Section 7 (Confidentiality) or to prevent any other unauthorized copying, disclosure, use, retention or distribution of its Confidential Information or intellectual or other property or (ii) Supplier from bringing a Collection Action in any court of competent jurisdiction. Any such arbitration shall be conducted in the New York, NY area by one arbitrator appointed by the AAA. Judgment upon an arbitrator's award may be entered and enforced in any court of competent jurisdiction. The arbitration award shall be final and binding, shall be the sole and exclusive remedy regarding any and all claims and counterclaims presented, and may not be reviewed by or appealed to any court except for enforcement. An arbitrator shall have no authority to amend this Agreement. This Agreement may be signed and delivered in counterparts, including facsimile, PDF, and other electronic counterparts. During the Term and at any point thereafter, Supplier may publicly refer to Subscriber orally and in writing, including on Supplier's website and in its sales presentations and materials, as a customer and may use Subscriber's name and logo for such purposes. The section and other headings and captions in this Agreement have been inserted solely for purposes of convenience and will not affect the meaning, construction, or interpretation of this Agreement. This Agreement and the terms and provisions hereof are intended solely for the benefit of the parties, their respective successors and their respective permitted assigns. Nothing herein, whether express or implied, will confer upon any person or entity, other than the parties, their respective successors and their respective permitted assigns, any legal or equitable right whatsoever to enforce or benefit from any provision of this Agreement. The parties are and will remain and act at all times as independent contractors, and nothing contained in this Agreement will be construed, implied to, or act to create an agency, partnership, joint venture, or similar relationship between them.

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