

D-Scope® Report Application APPLICATION LICENSE AGREEMENT

By creating an account with Medical Digital Developers LLC (“D-Scope Systems”), you agree to the following terms and conditions (“Agreement” or “License”) on your use of the D-Scope® Report Application. This is a legal agreement between you (either an individual or an entity) and D-Scope Systems which is created upon your registration of an account with D-Scope systems.

1. GRANT OF LICENSE D-Scope grants to you, a personal, non-exclusive, terminable, non-transferable license to Use (defined below) the D-Scope® Report Application and any published updates (the “Application”). “Use” means that you may download, run and employ the Application for the purposes of its normal operation, but you may not reverse-engineer the **Application, nor copy, distribute, or modify any part of the Application; you may reproduce the D-Scope** examination report templates (“Templates”), and may create your own Templates and libraries. Templates may be saved to your local device(s). PLEASE NOTE; only libraries may be saved to your account. Please ensure that you have removed all PHI (defined below) from any library you intend to save to your account.

2. TRIAL PERIOD. Unless you cancel your account within 30-days then your credit card will be charged the full purchase price for the Application.

3. COPYRIGHT. The Application is owned by D-Scope or its licensors and is protected by copyright laws and international treaty provisions. Therefore, you must treat the Application like any other copyrighted material (e.g., a book or musical recording). You may not use or copy the Application or any accompanying materials for any purposes other than what is described in this License agreement.

4. PROTECTED HEALTH INFORMATION. In using the Application, you understand and acknowledge that any and all Protected Health Information, as defined in Health Insurance Portability and Accountability Act (“HIPAA”) in 45 CFR § 160.103 (“PHI”), **MUST NOT** be stored in Templates saved to Your D-Scope account. D-Scope Systems **does not accept and is not responsible for PHI stored in your D-Scope Account or transmitted to D-Scope in any other manner.** In the event that D-Scope Systems comes into possession of PHI associated with your account then the HIPAA Business Associates provisions found at the end of this License shall govern with respect to any PHI transmitted in connection with your use of the D-Scope® Report Application.

5. ACCESS CREDENTIALS It is your responsibility to safeguard all access credentials necessary to the Application. D-Scope shall bear no responsibility or liability for lost, shared, or misused access credentials. Upon expiration or termination, D-Scope shall destroy all of your Templates.

6. NOT RESPONSIBLE FOR MEDICAL DECISIONS OR INSURANCE CODING RESULTS. You shall be solely responsible for the supervision, management control and use of the Application and related products and documentation. The Application is not intended to substitute for or replace the skill, knowledge, and experience of licensed physicians or other care providers. D-Scope® Systems assumes no responsibility for patient care and expressly states that it is not providing the Application to you as a substitute or replacement for Your medical judgment or that of other physicians or care providers. You are also solely responsible for any decisions with respect to the selection of appropriate medical or insurance codes.

7. ENTIRE AGREEMENT. This License agreement is the entire agreement between you and D-Scope in connection with the Application. This License agreement does not change the terms of your relationship with D-Scope with regard to any other D-Scope System Products you may have other than the Application.

8. APPLICABLE LAW. If there are any disputes arising out of this License, you consent to the jurisdiction and venue of the courts or an arbitrator (as the case may be) in New York, New York. All disputes (except as to intellectual property rights or Proprietary Information) shall be the subject of binding arbitration pursuant to the rules of the American Arbitration Association.

9. DISCLAIMER OF WARRANTY. TO THE FULLEST EXTENT PERMITTED BY LAW, (A) THE APPLICATION IS LICENSED "AS-IS," "WITH ALL FAULTS," AND "AS AVAILABLE" AND YOU BEAR ALL RISK OF USING IT; (B) D-SCOPE, AND EACH OF OUR RESPECTIVE AFFILIATES, VENDORS, AGENTS AND SUPPLIERS, GIVES NO EXPRESS WARRANTIES, GUARANTEES, OR CONDITIONS IN RELATION TO THE APPLICATION; (C) D-SCOPE EXCLUDES ANY IMPLIED WARRANTIES OR CONDITIONS, INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT AND (D) D-SCOPE IS NOT RESPONSIBLE NOR LIABLE FOR THE USE, MISUSE, OR BREACH OF PRIVACY WITH RESPECT TO ANY PHI.

10. LIMITATION ON AND EXCLUSION OF REMEDIES AND DAMAGES.

TO THE EXTENT NOT PROHIBITED BY LAW, YOU CAN RECOVER FROM D-SCOPE ONLY DIRECT DAMAGES UP TO THE AMOUNT YOU PAID FOR THE APPLICATION OR \$1.00, WHICHEVER IS GREATER. YOU WILL NOT, AND WAIVE ANY RIGHT TO, SEEK TO RECOVER ANY OTHER DAMAGES, INCLUDING CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES FROM THE APPLICATION DEVELOPER. This limitation applies to, but it not limited to: anything related to the application or services made available through the application; and claims for breach of contract, breach of warranty, guarantee or condition, strict liability, negligence, or other tort to the extent permitted by applicable law. It also applies even if: repair, replacement or a refund for the application does not fully compensate you for any losses; or application developer knew or should have known about the possibility of the damages.

11. HIPAA BUSINESS ASSOCIATE PROVISIONS (if applicable)

A. This Agreement does not permit you to disclose to D-Scope Systems PHI that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 and amended by HITECH (as defined below) and the regulations adopted pursuant to each of them (collectively, "HIPAA"). However, if such disclosure occurs the parties are subject to HIPAA, and D-Scope Systems and its Subcontractors are acting as D-Scope Systems, Sections ___ through ___ (the "HIPAA Provisions") shall apply.

B. Capitalized terms used herein without definition shall have the respective meanings assigned to those terms in HIPAA. In addition, as used herein, (a) "HITECH" means the Health Information Technology for Economic and Clinical Health Act, part of the American Recovery and Reinvestment Act of 2009, (b) "Secretary" means the Secretary of the Department of Health and Human Services or his or her designee and (c) "PHI" means Protected Health Information.

C. Microsoft Corporation ("Subcontractor") is currently a subcontractor to the D-Scope Systems with respect to the Application. If D-Scope Systems and its Subcontractor later amend their agreement in order to comply with applicable law or regulations or in any other respect that will benefit the You, or if the D-Scope Systems replaces the Subcontractor with respect to the Application resulting in revised terms that do not have a material adverse effect on the You, the D-Scope Systems may amend this Agreement to reflect such an amendment or revised terms by providing written notice and a revised Agreement to the You. Such a revised Agreement shall become effective on the date specified therein without further action by the parties.

D. Obligations and Activities of D-Scope Systems.

1. D-Scope Systems may use or disclose PHI to perform the obligations set forth in this Agreement, any future agreement for support or maintenance of the Application and as otherwise permitted in this Agreement or as Required by Law;

provided that any such use of disclosure would not violate HIPAA done by You unless expressly permitted for D-Scope Systems under HIPAA.

2. Notwithstanding the foregoing, D-Scope Systems may use and disclose PHI for the following purposes:

- (a) The proper management and administration of D-Scope Systems,
- (b) To provide Data Aggregation services to the You if D-Scope Systems or its Subcontractors determine that Data Aggregation, as it relates to the health care operations of You, is necessary to provide or improve the services for the benefit of the You, and
- (c) To carry out the legal responsibilities of the D-Scope Systems; provided, however, that any disclosure by the D-Scope Systems in connection with the purposes described in Subsections 2.2(a) or (c) above that are not Required by Law shall be subject to the following additional requirements: (i) the D-Scope Systems obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person and (ii) the person notifies the D-Scope Systems of any instances of which it becomes aware in which the confidentiality of the information has been breached.

3. D-Scope Systems shall report to you: (a) any use and/or disclosure of PHI that is not permitted or required by this Agreement of which D-Scope Systems becomes aware; (b) any Security Incident of which it becomes aware, provided that notice is hereby deemed given for Unsuccessful Security Incidents and no further notice of such Unsuccessful Security Incidents shall be given; and/or (c) any Breach of your Unsecured Protected Health Information that D-Scope Systems or its Subcontractors may discover. Notification of a Breach (and any other event for which reporting is required under subsections (a) or (b) of the preceding sentence) will be made without unreasonable delay, but in no event more than thirty (30) calendar days after discovery of a Breach or other event that requires reporting. Taking into account the level of risk reasonably likely to be presented by the use, disclosure, incident, or breach, the timing of other reporting will be made consistent with the legal obligations of D-Scope Systems, its Subcontractors and You.

“Unsuccessful Security Incidents” means, without limitation, pings and other broadcast attacks on D-Scope Systems’ or its Subcontractor’s or agent’s firewalls, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI. D-Scope Systems’ obligations to report under this Section is not and will not be construed as an acknowledgement by D-Scope Systems of any fault or liability with respect to any use disclosure, Security Incident or Breach.

4. D-Scope Systems and its Subcontractors shall use reasonable and appropriate: (1) safeguards to prevent use and disclosure of PHI other than as provided for in this Agreement; and (2) administrative, physical, and technical safeguards that appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of You.

5. D-Scope Systems shall require all of its Subcontractors to whom it provides Protected Health Information to agree in writing to: (1) the same restrictions and conditions that apply to D-Scope Systems with respect to such Protected Health Information; and (2) implement reasonable and appropriate safeguards to protect

Protected Health Information.

6. If D-Scope Systems and its Subcontractors maintain Protected Health Information in a Designated Record Set for You, Microsoft shall make access to such Protected Health Information available to You in accordance with HIPAA and the HITECH Act.

7. If D-Scope Systems and its Subcontractors maintain Protected Health Information in a Designated Record Set for You, Microsoft shall make available such Protected Health Information to You for amendment and incorporate any such amendment in the PHI as may be reasonably requested by You in accordance with HIPAA.

8. The D-Scope Systems and its Subcontractors shall make internal practices, books, and records, relating to the use and disclosure of PHI received from You available to the Secretary for purposes of the Secretary determining You's compliance with HIPAA, subject to attorney-client and other applicable legal privileges to the extent permitted under HIPAA.

9. D-Scope Systems and its Subcontractors shall make available to You such information relating to disclosures made by D-Scope Systems and its Subcontractors as required for You to make any requested accounting of disclosures in accordance with HIPAA and HITECH.

10. With respect to any D-Scope Systems functions, D-Scope Systems and its Subcontractors shall comply with all requirements of the security rule included in HIPAA that are made applicable to D-Scope Systems by HITECH including the administrative, physical, and technical standards of the security rule and the requirements to maintain policies, procedures and documentation of security safeguards.

11. To the extent that the D-Scope Systems is to carry out the your obligation under HIPAA, the D-Scope Systems shall comply with the requirements of HIPAA that apply to the You in the performance of such obligation.

E. Your Obligations and Activities.

1. You shall notify D-Scope Systems of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that the changes or revocation may affect D-Scope Systems' use or disclosure of Protected Health Information.

2. You shall not request D-Scope Systems or any of its Subcontractors or agents to use or disclose PHI in any manner that would not be permissible under HIPAA if done by You.

3. You acknowledges that PHI will be stored on Microsoft Corporation's Azure Cloud Services platform. You accepts responsibility for the decision to transmit and store its PHI to that storage site.

4. You is responsible for implementing appropriate privacy and security safeguards in order to protect its Protected Health Information in compliance with HIPAA. Without limitation, it is your obligation to:

- i. Not include Protected Health Information in any correspondence or communications with D-Scope Systems or any of its Subcontractors. D-Scope Systems and its Subcontractors do not act as or have the obligations of, a D-Scope Systems or a Subcontractor under HIPAA with respect to You data once it is sent to or from You outside the services of the D-Scope Systems and its Subcontractors, for example, over the public Internet.

- ii. Implement appropriate privacy and security safeguards in the systems and software You controls and configures.
- iii. Conduct and document a risk analysis and risk management process with respect to Protected Health Information.
- iv. Develop appropriate privacy, security, and breach notification policies and procedures.

F. Term and Termination.

1. Term. The Term of these HIPAA Provisions shall be effective as of the Effective Date, and shall terminate when all of this Agreement terminates and all of the Protected Health Information provided by You to D-Scope Systems, or created or received by D-Scope Systems on behalf of You, is destroyed or returned to You. If it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in these HIPAA Provisions.
2. Termination for Cause by You. Upon your knowledge of a material breach of these HIPAA Provisions by D-Scope Systems, You shall give D-Scope Systems written notice of such breach and provide reasonable opportunity for D-Scope Systems to cure the breach or end the violation. You may terminate this Agreement, and D-Scope Systems agrees to such termination, if D-Scope Systems has breached a material term of these HIPAA Provisions and does not cure the breach within a reasonable time or cure is not possible.
3. Termination for Cause by D-Scope Systems. Upon D-Scope Systems' knowledge of a material breach of these HIPAA Provisions by You, D-Scope Systems shall give You written notice of such breach and provide reasonable opportunity for You to cure the breach or end the violation. D-Scope Systems may terminate this Agreement, and You agrees to such termination, if You has breached a material term of these HIPAA Provisions and does not cure the breach within a reasonable time or cure is not possible.
4. Effect of Termination.
 - i. Except as provided in Subsection (b) below, upon termination of this Agreement for any reason, D-Scope Systems shall return or destroy all PHI received from, or created or received by D-Scope Systems on behalf of You, if any. This provision shall also apply to Protected Health Information that is in the possession of Subcontractors of D-Scope Systems. D-Scope Systems shall retain no copies of the PHI.
 - ii. In the event that D-Scope Systems determines that returning or destroying the PHI is infeasible, D-Scope Systems shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as D-Scope Systems maintains such PHI.

G. Miscellaneous.

1. These HIPAA Provisions supersede all other prior and contemporaneous written and oral agreements and understandings between You and D-Scope Systems regarding the Application.
2. Except as otherwise provided herein, these HIPAA Business Associates terms may be modified only by a signed written agreement between You and D-Scope Systems.
3. Regulatory References; Changes in Law. A reference in this Agreement to

HIPAA means the rule or statute as then in effect or as amended. Except as otherwise provided herein, if there is a change in any of the foregoing provisions or additional rules or laws are adopted that are applicable to PHI, D-Scope Systems may amend the HIPAA Provisions to the extent reasonably necessary to allow each party to comply with such rules and laws, effective upon receipt by the You.

4. Interpretation. Any ambiguity in this Addendum shall be resolved to permit both parties to comply with HIPAA to the extent applicable.

5. Agency. It is expressly agreed that D-Scope Systems is an independent contractor and not an agent of the You and has no authority to act for or on behalf of the You or to bind the You to any contract or in any other matter. You shall not control or direct the manner in which D-Scope Systems and its Subcontractors provide the Application.