

## HCX SWITCH TERMS AND CONDITIONS

These Terms constitute a binding contract between:

The **Participant** (which expression shall mean and include its successors-in-interest and permitted assignees) identified in the accompanying **HCX Switch Participant Information Sheet and Acceptance**, on the one hand,

AND

**Swasth Digital Health Foundation**, a company incorporated under Section 8 of the Companies Act, 2013 having its registered office at No. 881, 6th Cross, Koramangala Club Road, 6th Block, Koramangala, Bangalore, Karnataka-560095 ] (for convenience, “**Swasth**”, which expression shall mean and include its successors-in-interest and assignees), on the other.

### 1. DEFINITIONS

- 1.1. “**Confidential Information**” shall mean and include all information that is designated “confidential” or “proprietary” or comparable legend or information which, given its nature and the circumstances of disclosure, ought to be treated confidentially. Without limitation, Confidential Information includes technical, financial, or personnel-related information, business plans, sales and marketing data, design documents, computer programs, source code, data of or related to vendors, customers, partners or affiliates, Data (as defined below), proprietary information relating to development, marketing, sales, operating, performance, cost, know-how, designs, licenses, details of present and proposed businesses, formulas, ideas, strategies, techniques, policy, data, information regarding research and development, details of new products and services, marketing and selling, clientele details, process information, unpublished financial statements, budgets and other financial details, computer programming techniques, methodologies and related technical information, software programs and files, operating manuals, whether in electronic form or otherwise, of the Disclosure (as defined below) or its incubates.
- 1.2. “**Data**” shall mean the data related to health insurance.
- 1.3. “**Guideline**” shall mean any non-binding best practice released by Swasth and recommended for adoption by the Participant.
- 1.4. “**HCX Protocol / Protocol**” shall mean the specialized protocol and network, administered by Swasth, which has been more clearly set out in clause 2 of these Terms.
- 1.5. “**HCX Switch**” - that facilitates the exchange of information in a standardized and secure manner, improving the efficiency and accuracy of claims processing, thereby reducing the administrative care and augmenting patient care.
- 1.6. “**Policy**” shall mean a binding instruction or set of instructions released by Swasth from time to time and required to be adhered to by the Participant.
- 1.7. “**Service / Services**” shall mean the data exchange provided by Swasth based on the HCX Protocol.

### 2. ABOUT HCX, HCX SWITCH AND HCX PROTOCOL

- 2.1. **“HCX” or “Health Claims Exchange”** is a specialized protocol and network for the secure exchange of healthcare claims-related information between various stakeholders such as healthcare providers, insurance companies, and government agencies. The HCX Protocol is designed to facilitate the transmission of claims-related data with consistency, security, privacy and durability. The HCX Protocol is implemented as a switch that facilitates the exchange of information in a standardized and secure manner, improving the efficiency and accuracy of claims processing, thereby reducing the administrative care and augmenting patient care. The HCX Switch is operated by Swasth.

### 3. **COMPLETION OF THE SANDBOX**

- 3.1. Swasth had provided a software infrastructure known as the **“HCX Sandbox”** or simply **“Sandbox”** to the Participant. For reference, a sandbox environment is a separate testing environment that is not connected to the production environment. The HCX Sandbox enabled the Participant to evaluate the processes, protocols, and other features of the HCX Protocol. The Sandbox was available for a period of ninety (90) days to the Participant (**“Sandbox Period”**). The Participant has evaluated the HCX Switch using the Sandbox facility provided during the Sandbox Period and wishes to adopt the HCX Switch for the Participant’s production environment.

### 4. **RESPONSIBILITIES OF SWASTH**

- 4.1. Swasth shall make the best efforts to deliver Data dispatched by the Participant to the addressee. Provided that the details of the addressee are correctly submitted by the Participant.
- 4.2. Swasth shall make best efforts to ensure that the HCX Switch has an up-time of ninety-nine point nine nine per cent (99.99%) except in the event of scheduled downtime for maintenance or unscheduled downtime for reasons of Force Majeure (as defined below).

### 5. **RESPONSIBILITIES OF THE PARTICIPANT**

- 5.1. The Participant shall use the HCX Switch strictly in accordance with these Terms and applicable Policy (if any).
- 5.2. The Participant shall make commercially best efforts to implement and adopt any and all Guideline/s issued by Swasth. The Participant shall adhere to any and all Policies issued by Swasth. In the event of any ambiguity between a Policy and these Terms, the interpretation placed by Swasth shall be final and binding on the Participant.
- 5.3. It shall be the Participant’s sole responsibility to adopt and use the latest version of HCX Protocol as made available by Swasth.
- 5.4. The Participant has been made aware that in the event the Participant does not use the latest version of the HCX Protocol, the Services provided may be affected.
- 5.5. The Participant shall conduct themselves in a professional manner as regards other participants.

### 6. **REPRESENTATIONS, WARRANTIES AND DISCLAIMERS [QL: This is what we said for the Sandbox T&Cs. Need to discuss the edits we need to make for the production T&Cs.]**

- 6.1. HCX shall not be responsible for any uptime of Participant's systems; it shall be solely the Participant's responsibility to maintain the uptime of the Participant's systems such that they may utilise HCX optimally.

## 7. **CONFIDENTIAL INFORMATION**

- 7.1. In the course of the activities under these Terms, either party ("**the Discloser**") may disclose to the other ("**the Recipient**") Confidential Information. The Recipient shall not, during or subsequent to the Term (as defined hereunder), use the Confidential Information for any purpose whatsoever other than for fulfilling its obligations or exercising its rights hereunder. The Recipient shall not disclose the Confidential Information to any third party, and it is understood that such Confidential Information shall remain the sole property of the Discloser. The Recipient further agrees to take all reasonable precautions to prevent any unauthorized disclosure of such Confidential Information including, but not limited to:

7.1.1. The Recipient shall use the Confidential Information solely for the purpose of fulfilling its obligations or exercising its rights under these Terms and for no other purpose.

7.1.2. The Recipient shall not make use of, disseminate, or in any way disclose any Confidential Information to any person, firm, or entity without the prior written consent of the Discloser.

7.1.3. The Recipient shall disclose Confidential Information only to such of its employees or representative who need to know such information.

7.1.4. The Recipient shall ensure, by executing appropriate agreements to this effect, that its employees or representatives who have access to the Confidential Information shall maintain such information in strict confidence and shall not disclose the Confidential Information to any person for any reason whatsoever.

7.1.5. Neither the Recipient nor its employees or representatives shall under any circumstance release the Confidential Information to any form of public media or any third person.

7.1.6. The Recipient shall treat all Confidential Information with the same degree of care as it accords to its own Confidential Information, however not less than reasonable care.

7.1.7. The Recipient shall not make copies of the Confidential Information except as may be necessary in good faith to achieve the purpose of these Terms.

7.1.8. The Recipient shall keep the Discloser informed of any compromise of Confidential Information.

- 7.2. In the event the Recipient receives any notice from any regulatory authorities requiring disclosure of Confidential Information, the Recipient shall notify the Discloser of the same and shall make best efforts to ensure that the Discloser has an opportunity to oppose such disclosure failing which the Recipient shall make best efforts to oppose such disclosure.

- 7.3. The obligations under this clause shall continue in perpetuity unless one or more of the exceptions to the obligations of confidentiality is satisfied.

- 7.4. Confidential Information does not include information which:

7.4.1. is known to the Recipient at the time of disclosure by the Discloser as evidenced by written records of the Recipient;

7.4.2. has become publicly known and made generally available through no wrongful act of the Recipient;

7.4.3. has been rightfully received by the Recipient from a third party who is authorized to make such disclosure; or

7.4.4. has been independently developed by the Recipient without the Discloser's information at the time of disclosure as evidenced by written records of the Recipient.

## 8. OWNERSHIP AND DATA

8.1. Swasth and its licensors shall be the sole owners of the HCX Switch and the HCX Protocol, and except for the Services made available by Swasth pursuant to these Terms, the Participant shall not have any license or right in respect of the HCX Switch or the HCX Protocol.

8.2. All Data shall be owned, subject to applicable law, by the Participant or the individual data subject. Swasth shall not claim any ownership over the Data.

8.3. The Participant shall share with HCX the usage and experience data regarding Participant's use of the HCX Protocol for the purpose of facilitating HCX to obtain insights into the HCX Protocol and improve the HCX Protocol.

## 9. INDEMNITY AND LIMITATION OF LIABILITY

9.1. Either party shall defend, indemnify and hold harmless (the "**Indemnifying Party**") the other party together with their directors, officers, employees, and agents (the "**Indemnified Party**") from and against any loss, liabilities, breach, settlements, costs and expenses (including reasonable attorney's fees) arising from or relating to: (i) a breach of these Terms; or (ii) gross negligence, fraud, wilful misconduct, breach of trust or wilful default.

9.2. In no event shall either party be liable to the other party for any incidental, indirect, special, consequential or punitive damages, loss of goodwill or business profits, regardless of the nature of the claim, even if such party knew or should have known of the possibility of such damages or claims.

9.3. Notwithstanding anything to the contrary contained in these Terms, each party's total aggregate liability for any claims, losses, costs or damages arising out of or related to these Terms shall be limited to the consideration admittedly due under these Terms with respect to which the liability arose.

## 10. TERM AND TERMINATION

10.1. Unless terminated earlier in accordance with these provisions, these Terms will commence on the [Insert Date] ("**Effective Date**") and will remain in full force and effect for a period of [Insert duration] year ("**Term**"). These Terms may be renewed in writing for such further term as the parties deem fit.

10.2. Termination due to Breach: In the event either party materially breaches these Terms, the innocent party may, without prejudice to its other rights and remedies, terminate these Terms by giving prior written notice of thirty (30) days, provided that the breach remains uncured at the end of such notice period.

10.3. Termination for Insolvency: Either party may terminate these Terms upon written notice to the other party in the event such other party: (i) seeks reorganization or release under applicable law; or (ii) seeks the appointment of a

trustee, receiver or custodian; or (iii) becomes the subject of a proceeding seeking the liquidation, winding-up, dissolution, reorganization or the like of such party, and such proceeding is not dismissed within sixty (60) days of the commencement thereof; or (iv) makes an assignment for the benefit of creditors; or (v) has a substantial part of such party's property become subject to any levy, seizure, assignment, application or sale for or by any creditor or government agency.

- 10.4. Termination for Convenience: Either party may terminate these Terms for convenience, without further liability to the other party, upon written notice to the other party of thirty (30) days.
- 10.5. Consequences of Termination: Upon termination of these Terms for any reason whatsoever, Participant's access to the HCX Switch shall be disabled by Swasth. Swasth shall have the right to inform other participants of the exit of the Participant from the HCX Switch.

## **11. GOVERNING LAW AND DISPUTE RESOLUTION**

- 11.1. These Terms shall be governed by the laws of India and the courts at Bangalore shall have the exclusive jurisdiction to entertain any dispute which may arise from these Terms.
- 11.2. Any disputes in connection with these Terms, including those pertaining to the terms and conditions, alleged breaches of contract, and remedies, shall be attempted to be resolved by negotiation. If the dispute remains unresolved after thirty (30) days of negotiation, the dispute shall be referred to mediation by a mediator who shall be appointed jointly by the parties. If the dispute remains unresolved after thirty (30) days of mediation, the dispute shall be referred to binding arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, by a sole arbitrator to be appointed jointly by the parties. The proceedings of arbitration shall be conducted in English. The venue of arbitral proceedings shall be Bangalore.

## **12. MISCELLANEOUS**

- 12.1. Non-Disparagement: During the validity of these Terms and thereafter, neither Participant nor HCX shall disparage the other or their respective managements and founders.
- 12.2. Assignments: These Terms may not be assigned by either party without the other party's prior written consent which shall not be unreasonably withheld. Subject to the foregoing, these Terms shall be binding upon and shall inure to the benefit of the parties, their successors and permitted assigns.
- 12.3. Notices: Communications of a routine nature may be transacted by email. Communications of a non-routine nature, including notices for termination shall be given in writing and transmitted by prepaid registered mail addressed to the address first written above and marked to the attention of the principal points of contact indicated in these Terms.
- 12.4. Independent Contractor: The relationship of the Parties to each other shall be that of independent contractors and shall not be interpreted to constitute an agency, partnership or joint venture.
- 12.5. Severability: If any provisions of these Terms are held to be illegal, invalid or unenforceable, the same shall not affect the remaining provisions hereof, which will remain in full force and effect. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as part of these Terms, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

- 12.6. Force Majeure: If the whole or any part of the performance of the respective obligations of the parties hereunder is prevented or delayed by reasons not in the reasonable control of either or both of them, including earthquake, flood or any other natural calamity, or any governmental action, civil disturbance, pandemic, endemic, war, and fire (“**Force Majeure**”), then to the extent either party shall be prevented or delayed from performing all or any part of their respective obligations under these Terms despite due diligence and reasonable efforts to do so, then such party shall be excused from performance hereunder for so long as reasons of Force Majeure shall continue to prevent or delay such performance. Force Majeure shall not affect the payment obligations of the parties unless there is legal bar to the making of the payments.
- 12.7. Entire Agreement/Amendment: These Terms and any exhibits attached hereto shall form the entire agreement between the Parties with respect to the subject matter hereof and shall supersede all prior or contemporaneous negotiations and agreements, oral or written, between them regarding the subject matter hereof.
- 12.8. Counterpart Execution: These Terms may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.