

IMPORTANT - READ CAREFULLY BEFORE INSTALLING!

GATEWAY PROFESSIONAL NETWORK, LLC TERMS OF SERVICE

Last Updated: September 1, 2021

1. Acceptance.

PLEASE READ THIS TERMS OF SERVICE AGREEMENT CAREFULLY BEFORE USING THE WEBSITE OR SERVICE SOFTWARE.

Gateway Professional Network, LLC ("GPN") owns and operates the website <https://www.gatewaypn.com/> (the "Site"). GPN also develops, operates and distributes (i) certain software applications, including EDGEPro®, which include hosted applications and related service software (the "Service Software"), and (ii) certain data services, including custom dashboards enrolled from GPN or through a 3rd party company (the "Data Services"). Through the Site, Service Software and Data Services, GPN delivers performance management solutions by providing the tools to redefine the way eye care professionals run their practices. The Site, Service Software and Data Services, along with related communication tools, data collection and transmission, storage, analysis and reporting tools, functions and related services, are collectively referred to in these Terms of Service as the **Service**.

The Service is offered and provided subject to acceptance without modification of all of the terms and conditions contained herein ("**Terms of Service**" or "**Agreement**"). The Terms of Service shall be deemed to include all other operating rules, conditions, policies and procedures that are referred to herein or that may otherwise be published by GPN, from time to time, at the Site or through the Service Software (collectively, **Policies**), including without limitation, GPN's [Privacy Policy](#).

BY CLICKING "I ACCEPT" YOU AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS (THE "AGREEMENT") GOVERNING YOUR ACCESS AND USE OF THE SERVICE. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU ARE AUTHORIZED TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY.

IF YOU DO NOT AGREE TO ALL OF THESE TERMS OF SERVICE, OR IF YOU ARE NOT ELIGIBLE OR AUTHORIZED TO ENTER INTO THIS AGREEMENT, THEN DO NOT REGISTER FOR, ACCESS OR USE THE SERVICE. COMPLETING OUR REGISTRATION PROCESS OR OTHERWISE ACCESSING OR USING ALL OR ANY PART OF THE SERVICE WILL CONSTITUTE ACCEPTANCE OF, AND CREATE A LEGALLY ENFORCEABLE CONTRACT UNDER WHICH YOU AGREE TO BE BOUND BY, ALL OF THESE TERMS OF SERVICE, WITHOUT MODIFICATION.

FINALLY, TO THE EXTENT THAT YOU ARE SUBJECT TO A SEPARATE BUSINESS AND/OR SUBSCRIPTION AGREEMENT WITH GPN, THEN THE TERMS OF THAT SEPARATE AGREEMENT SHALL SUPERSEDE THESE TERMS OF SERVICE WHENEVER THERE SHALL BE A CONFLICT BETWEEN THEM.

2. Definitions.

Capitalized terms referred to in this Agreement and not defined herein shall have the following meanings:

- a. **Confidential Information:** All information that is written, graphic, machine readable or other tangible form and is marked "confidential", "proprietary", "source code", or in some other manner to indicate its confidential nature, or which under the circumstances of disclosure reasonably ought to be considered as confidential. Confidential Information of GPN shall expressly include the Hosted Materials (as defined in Section 4(b) below), including all source and object code, Documentation, and the terms and pricing under this Agreement. For clarification, Confidential Information does not

include Personal Data.

- b. **Content:** Any and all of your content and material uploaded to GPN's Servers in connection with the Service, including (but not limited to) Confidential Information and Personal Data.
- c. **Documentation:** The documentation, if any, for Service generally supplied by GPN to assist a user in the use of the Service, including user and system administrator guides and manuals and other written materials.
- d. **Enrollment Form:** The document signed by both parties from time to time that incorporates by reference this Agreement and when completed, sets forth the specific products and Service ordered from and provided by GPN, and which sets forth all applicable fees, certain restrictions and any other terms that GPN and you agree upon.
- e. **GPN Technology:** All of GPN's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by GPN in providing the Service, including without limitation EDGEPro® or Data Services.
- f. **Personal Data:** Includes both Personally Identifiable Information ("PII") and Protected Health Information ("PHI"). PII includes information about you that is personally identifying such as your name, email address, and phone number and which is not otherwise publicly available. PHI includes information relating to your health, for example medical history, health conditions, test and laboratory results, vision screenings, physician referrals, insurance information and other data that a healthcare professional may collect to identify an individual and determine appropriate care. PII and PHI may include other types of information depending on the legal definition that applies in your physical location.
- g. **Service Data:** All data and information that are provided by you during registration and subsequent use of the Service and all other data and information about you that are otherwise discerned or collected by GPN based on your access and use of the Service. For clarity, Service Data includes (but is not limited to): Personal Data; browser or device type; operating system; time of day; identification of Site page views; use of particular Service features; and geographic location.

3. Updates.

GPN reserves the right, at its sole discretion, to update, modify or replace the Terms of Service (including any Policy), in whole or in part, at any time. GPN will use reasonable efforts to notify you of any material change in advance of the effective date of any change. Change notices may be communicated by postings at the Site, e-mail or otherwise. In any case, you should periodically check the Policies and Terms of Service for changes. Continued access or use of the Service following any change to the Terms of Service constitutes your acceptance of those changes. The Terms of Service may not otherwise be amended, as they apply to you, except by a written agreement executed by you and GPN.

GPN may modify, suspend or terminate the Service (including the Site), in whole or in part, at any time.

4. Service.

- a. **Service.** Subject to the terms and conditions of this Agreement, GPN will provide you with access to EDGEPro® or Data Services. In order to use the Service, you are responsible at your own expense to maintain access to the Internet, either directly or through devices that access Web-based content. You shall be solely responsible for any and all Service Fees (as defined in Section 6(a) below) associated with such access.
- b. **Hosted Materials.** In connection with the performance of the Service, GPN shall install, operate and support the hosted environment, including the GPN Technology, applicable GPN server hardware, disk storage, firewall protection, GPN server operating systems, management programs, Web server programs, Documentation and all other information developed or provided by GPN or its suppliers under this Agreement, as well as all other audio and visual information, documents, software, products and services contained or made available to you in the course of using the Service (collectively, the "Hosted Materials").

- c. **Availability of Services.** Subject to the terms and conditions of this Agreement, GPN shall use commercially reasonable efforts to provide the Service for twenty-four (24) hours a day, seven (7) days a week throughout the term of this Agreement. Nevertheless, from time to time the Service may be inaccessible or inoperable for various reasons, including (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs that GPN may undertake from time to time; or (iii) causes beyond the control of GPN or that are not reasonably foreseeable by GPN, including interruption or failure of telecommunication or digital transmission links, hostile network attacks or network congestion or other failures or other force majeure (collectively "Downtime"). GPN shall have no obligation during Downtime to mirror Content on any other server or to transfer Content to any other server. GPN shall use commercially reasonable efforts to minimize any disruption, inaccessibility and/or inoperability of the Service in connection with Downtime, whether scheduled or not.
- d. **Professional Services.** GPN or its designated subcontractors shall make available to you certain installation, configuration, consulting, training services and/or other services ("Professional Services"), if and as specified on an Enrollment Form.

5. License Grant/Restrictions.

- a. **License of Content.** In consideration of GPN's performance of its obligations under this Agreement, for the term specified in the applicable Enrollment Form, you grant to GPN a non-exclusive, worldwide, royalty free license to copy, store, use, transmit and display (including on and via the Internet) the Content in accordance with this Agreement. GPN shall have the unrestricted right to use, distribute, market, exploit and display the Content and any information, analysis, statistics and other data generated by the Service (or derived from your use of the Service), including compilation of aggregated statistics about the Service or online marketing, so long as GPN shall not publicly disclose or distribute any such Content or data unless such data is in an aggregated and de-identified form that would not permit a third party to identify the data as associated with you or any specific individual, and GPN's use of the Content as specified in this Section 5(a) shall be in compliance with all applicable privacy laws and regulations, including the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").
- b. **License Grant to You.** Subject to the terms and conditions of this Agreement, upon the execution of an Enrollment Form by GPN and you, GPN grants to you a non-exclusive, non-transferable license, solely during the term of the applicable Enrollment Form, to access and use the Service, as well as the accompanying Documentation, solely for your internal use and solely in accordance with the restrictions set forth in these Terms of Service. You are responsible for maintaining and safeguarding the security of your account passwords, and you shall not share your password with any other person or allow any other person to access the Service under your account.
- c. **Further Restrictions.** You shall not modify, adapt, resell, rent, lease, loan, create or prepare derivative works based upon the Service, the GPN Technology or any part thereof. You may not use the Service as a service bureau, as an application service provider, to perform consulting or training services for a third party or in any commercial timeshare arrangement. You may not use the Service in contravention to any applicable laws or government regulations. You shall not decompile, disassemble or otherwise reverse engineer the Service or the GPN Technology. You shall not remove any proprietary label or notice contained within the Service and shall not remove, alter or modify any logo found on the Service's user interface. You shall take all measures necessary to ensure compliance by all of your personnel with all terms and conditions of this Agreement.

6. Charges and Payment of Fees.

- a. **Service Fees.** As consideration for the access and use of the Service, you will pay GPN the non-refundable fees set forth on the applicable Enrollment Form ("Service Fees") and such are due and payable immediately upon execution by you of the Enrollment Form.
- b. **Payment Terms and Taxes.** All Service Fees shall be paid by you on a monthly basis pursuant to

an authorized and recurring online credit card transaction between you and GPN. Overdue balances may be subject to a service charge of one and one-half percent (1.5%) per month, or the maximum allowed by law, whichever is less. You shall be responsible for any and all taxes levied on any transaction under this Agreement, including all federal, state, and local taxes, levies and assessments, excluding any tax based on GPN's net income. Except as otherwise specifically set forth in this Agreement, all fees are non-refundable.

- c. **Suspension of Service.** If your account becomes more than thirty (30) days overdue, in addition to and not in lieu of any of its other rights or remedies under this Agreement or at law or in equity, GPN reserves the right to suspend the Service. GPN also reserves the right to impose a separate reconnection fee should you thereafter again request access to the Service. Content will be made available to you when all outstanding amounts owed to GPN are paid in full.

7. Ownership and Proprietary Rights.

- a. **Ownership.** With the exception of any Personal Data you submit that is maintained in accordance with our Privacy Policy (and which may be governed by HIPAA), the Service (including the Site, GPN Technology and Hosted Materials), and all content, materials, data and other information created by or for GPN (or its affiliates or licensors) and made available via the Service are protected by copyrights, trademarks, service marks, patents, trade secrets or other proprietary rights and laws, and GPN (and its applicable affiliates and licensors) shall own and retain all rights, title and interests, including all intellectual property and proprietary rights therein and thereto. Unless and only to the extent expressly authorized by GPN, you shall not sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works of any part of the Service or related Documentation. You may not retrieve data or other Content from the Service to create or compile, directly or indirectly, a collection, database or directory. To the extent that any right, title or interest in or to any GPN intellectual property may not automatically vest in GPN by operation of law, you irrevocably transfer, assign and convey all such right, title, and interest to GPN. At GPN's request and expense you will promptly take any action and execute any documents necessary to vest full title in GPN or its licensor. GPN reserves all rights not expressly granted by it to you under this Agreement. There are no implied rights.
- b. **Privacy and Confidentiality.**
 - i. **Privacy.** GPN's current **Privacy Policy** is available at <https://shared.gatewaypn.com/legal/GPN-Privacy-Policy.pdf>. It is important that you read and understand the Privacy Policy, especially because the nature of the Service necessarily involves the collection and use of PII and, in the case of patients, likely involves the collection and use of PHI. PII includes information about you that is personally identifying such as your name, email address, and phone number and which is not otherwise publicly available. PHI includes information relating to your health, for example medical history, health conditions, test and laboratory results, vision screenings, physician referrals, insurance information and other data that a healthcare professional may collect to identify an individual and determine appropriate care. PII and PHI may include other types of information depending on the legal definition that applies in your physical location. Only the definitions of PII and PHI that apply in your location will apply to you under the Privacy Policy. The term **Personal Data** refers to and includes both PII and PHI. The most current Privacy Policy will apply to any and all use of the Site, and other aspects of the Service. GPN will not intentionally edit, modify, delete, use or disclose Personal Data or other Service Data (as defined below) in connection with the Service unless (A) reasonably necessary for GPN (or its service providers) to operate the Service, including processing your queries, responses and other messages; (B) to communicate with patients, clinicians and clinical partners; (C) to assist with your enrollment in another platform or service offered by a third party affiliated with GPN; (D) otherwise permitted under the Privacy Policy or elsewhere in the Terms of Service; (E) GPN reasonably

believes that such action is necessary to conform or comply with any legal, regulatory, law enforcement or similar requirement or investigation, to protect or defend the rights or property of GPN or any third party or to enforce the Terms of Service; or (F) as otherwise authorized by you.

FOR COVERED ENTITIES ONLY: If you are a Covered Entity under HIPAA and you are using the Service, you agree to also be bound by the [Business Associate Agreement](#) accompanying these Terms of Service.

- ii. **Confidentiality.** Except as reasonably required to exercise its rights under this Agreement, each party shall maintain the confidentiality of the other Party's Confidential Information. Each party shall use commercially reasonable efforts to prevent and restrain any unauthorized disclosure, communication, copying, use, distribution, installation or transfer of possession of Confidential Information by any of its employees, consultants, and agents to others or use it for any purpose, except pursuant to and in order to carry out, the terms and objectives of this Agreement. At a minimum, each party shall maintain at least the same procedures regarding the other party's Confidential Information that it maintains with respect to its own. A party's Confidential Information shall not include Personal Data, which is protected according to GPN's Privacy Policy, nor any information that: (A) becomes part of the public domain through no act or omission of the other party; (B) is lawfully acquired by the other party from a third party without any breach of confidentiality to the party to whom the information relates; (C) is disclosed by a party to a third party without any obligation of confidentiality to the party to whom the information relates; (D) is independently developed without reference to Confidential Information; or (E) is disclosed in accordance with judicial or other governmental order. Without limiting the generality of the foregoing, you shall take all reasonable steps to prevent any personnel from removing any proprietary or other legend or restrictive notice contained or included in any material provided by GPN.
- c. **Service Data and Analytics.** The Service collects, stores, processes and analyzes Service Data and produces Analytics (each as defined below in this Section 7(c)). Accordingly, whenever you interact with the Service, a variety of technologies are employed to automatically or passively collect Service Data.

The term **Service Data** means all data and information that are provided by you during registration and subsequent use of the Service and all other data and information about you that are otherwise discerned or collected by GPN based on your access and use of the Service. For clarity, Service Data includes, but is not limited to: Personal Data; browser or device type; operating system; time of day; identification of Site page views; use of particular Service features; and geographic location. Our purpose in collecting information related to your use of the Site is to better understand how you use the Site in order for GPN to continuously improve the features and experience you have. As such, when you access the Site, we collect information on your use, such as pages visited, links clicked, text entered, mouse movements, the referring URL, browser, operating system, cookie information, and Internet Service Provider.

The term **Analytics** means user profiles and statistics, metrics, abstractions and other analyses that are based on or derived from the Service, Service Data or your use of the Service (including measurements of Service usage and performance), developed in a manner that de-identifies data such that it does not disclose the identity of any patient or any specific Service Data (unless in aggregated or de-identified form).

You authorize GPN to use your Service Data and Analytics in the manner and for the purposes described in these Terms of Service, including to: (i) use Service Data to communicate with you and (as applicable) your patients, and clinicians; (ii) access, record, collect, copy, store, process, analyze and use Service Data to provide the Service; (iii) develop, improve, extend and test the

Service (and underlying technology platforms); (iv) design, develop and produce Analytics; (v) market and promote GPN and the Service using Analytics; and (vi) disclose, distribute and transmit Service Data and/or Analytics to third parties.

- d. **Injunctive Relief.** Both parties acknowledge that any use of the disclosing party's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the disclosing party irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, both parties agree that, in addition to any other remedy to which the disclosing party may be entitled hereunder, at law or equity, the disclosing party shall be entitled to an injunction or injunctions, without the posting of any bond and without proof of actual damages, to restrain such use in addition to other appropriate remedies available under applicable law.

8. User Rules and Conduct.

- a. **Content.** GPN does not control the Content uploaded or otherwise transmitted by you via the Service and, as such, does not guarantee the accuracy, integrity or quality of such Content. Moreover, GPN does not create or maintain a back-up copy of the Content that you provide pursuant to these Terms of Service. You shall be solely responsible for providing, updating, uploading and maintaining all of the Content in accordance with this Agreement. In all cases, the accuracy of the Content shall be your sole responsibility. Any unauthorized use of the Service (including accessing any aspect of the Service for which you are not authorized, or any unauthorized commercial use by you) is expressly prohibited. You are solely responsible for all acts or omissions that occur under your account, username or password, including messaging conducted via the Service.

As a condition of use, you promise not to use the Service for any purpose that is unlawful, or commercial in nature (e.g., collecting money, or advertising or promoting any product, service, pyramid scheme or other venture) or that is prohibited by the Terms of Service, or for any other purpose not reasonably intended by GPN. You shall abide by all applicable local, state, national and international laws, regulations and rules. By way of example, and not limitation, you agree not to take any action in any manner, that:

- is unlawful, deceptive, misleading, fraudulent, threatening, abusive, harassing, libelous, invasive of another's privacy, tortious, obscene, pornographic, profane or that otherwise violates the Terms of Service;
- infringes on any patent, trademark, trade secret, copyright, right of publicity, privacy right or other right of any person or entity;
- reveals any confidential, proprietary or other information that you are required to keep secret, including non-public personal data about another individual;
- discovers or reveals any personal information about another individual, or any other information that could be used to track, contact or impersonate that person, unless such information has been provided by that person in any public communication or forum;
- constitutes unauthorized or unsolicited advertising, junk or bulk e-mail ("spamming"), chain letters, or any form of lottery or gambling;
- imposes an unreasonable or disproportionately large load on GPN's computing, storage or communications systems and networks, or attempts to gain unauthorized access to the Site, or other aspect of the Service (including the underlying technology platform), someone else's Service data, accounts, computer systems or networks connected to the Service, through password mining or otherwise;
- contains software viruses or any other computer codes, files or programs that are designed or intended to disrupt, damage, limit or interfere with the proper function of any software, hardware or network system or to damage or obtain unauthorized access to any system, data or other information of GPN or any patient, clinical partner or other third

party;

- registers for or creates user accounts by any automated means or under false or misleading pretenses, including by the use of a false, misleading or disguised e-mail address;
- harvests, scrapes or collects any information from the Service;
- uses any script, bot or other automated means that only simulates compliance with the Terms of Service or other requirement applicable to the Service;
- disguises the source of data; or
- impersonates any person or entity, including any employee or representative of GPN.

GPN may, at its sole discretion, immediately suspend or terminate your access to the Service should your conduct appear to fail to strictly conform to any provision of this section.

- b. Content Ownership.** All Content submitted by you to the Service, whether posted by you or by third parties, shall remain the sole property of you or such third parties, as applicable, unless specifically notified in advance. If this Agreement is terminated (other than by reason of your breach), GPN will make available to you the Content within thirty (30) days of your written notice of termination, if you so request. GPN reserves the right to withhold or remove Content without notice for any breach, including your non-payment of fees. GPN reserves the right to immediately terminate your right to access or use the Content if you materially breach any of these Terms of Service.

9. Warranty.

- a. Warranty.** GPN represents and warrants that the Service will comply in all material respects with the Documentation. The foregoing shall not be construed as a warranty that the Service will function without error, and you acknowledge that errors may exist in the Service, and agree that the presence of such errors shall not be a breach of this Agreement.
- b. Exclusive Remedy.** For any breach of the warranty set forth above in Section 9(a), your sole and exclusive remedy and GPN's entire liability shall be, in GPN's sole discretion, either: (i) correction of the defect or error that caused the breach of warranty; (ii) replacement of the nonconforming item of the Service; or (iii) if GPN reasonably determines that it is unable to cure such breach, termination of your right to use the particular defective module(s) of the Service and return the Service Fees paid for the previous six (6) months for such nonconforming module related to the Service.
- c. Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS SECTION 9, GPN AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE, ANY PROFESSIONAL SERVICES, OR ANY CONTENT; GPN AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (I) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA; (II) THE SERVICE OR PROFESSIONAL SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS; (III) ANY STORED DATA WILL BE ACCURATE OR RELIABLE; (IV) ERRORS OR DEFECTS WILL BE CORRECTED; OR (V) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE, ALL THIRD PARTY PRODUCTS AND ALL CONTENT IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS; AND ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING (WITHOUT LIMITATION) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY GPN AND ITS LICENSORS. THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. GPN IS NOT RESPONSIBLE FOR ANY DELAYS,

DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

10. Limitation of Liability.

Except for (a) a party's breach of its obligations under Section 7 above or (b) a party's willful misconduct, in no event will either party, or their respective affiliates, employees or agents, or GPN's suppliers, be liable for loss of profits, business, use or data, or for interruption of business, or any other indirect, incidental, consequential or punitive damages even if advised of the possibility of such damages, regardless of the form of action, notwithstanding the failure of essential purpose of any limited remedy. In no event will GPN's aggregate, cumulative monetary liability for any damages arising from or related to this Agreement, whether in contract or in tort or under any other legal theory (including strict liability and negligence), exceed the fees actually paid by you to GPN for the applicable Service or Professional Services that is related to the claim during the twelve (12) month period immediately preceding the event giving rise to the claim.

11. Term and Termination.

- a. **Term.** This Agreement shall continue until either party notifies the other of its intent to terminate this Agreement in accordance with this Section 11(a). If either party fails to comply in any material respect with any of the covenants, agreements or conditions herein and such failure continues for thirty (30) days after written notification from the non-breaching party, the non-breaching party may, at its sole discretion and in addition to any other right or remedy available under applicable law or in equity, immediately terminate this Agreement. The termination of a single Enrollment Form for cause will have no effect upon the parties' respective obligations under any other Enrollment Form in effect under this Agreement. However, termination of this Agreement shall terminate all outstanding Enrollment Forms. GPN may also terminate this Agreement immediately if you become the subject of any voluntary or involuntary petition in bankruptcy or any voluntary or involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing.
- b. **Renewal.** These Terms of Service shall continue unless otherwise terminated as set forth in section 11(a) above. GPN reserves the right to change the rates, applicable charges and usage policies and to introduce new charges for any renewed term.
- c. **Effect of Termination.** Upon any termination or expiration of this Agreement or any Enrollment Form: (i) all applicable licenses and rights granted hereunder shall terminate and GPN shall no longer provide such Service to you; (ii) you shall cease and cause any user to cease using the Service; (iii) each party will promptly return to the other party or, at the other party's request, destroy, any Confidential Information of such other party, in all forms and types of media, and provide such other party with an officer's written certification, certifying such party's compliance with the foregoing; and (iv) GPN, in its sole discretion, and upon advance payment of a mutually-agreed fee, shall reasonably assist you in any transition to a third party designated by you. GPN has no obligation to retain the Content and may delete such Content, once the file of Content has been provided to you or you have indicated in writing that you do not want the file of Content. Except as expressly provided herein, termination of this Agreement by either party will be a nonexclusive remedy for breach and will be without prejudice to any other right or remedy of such party. All provisions of this Agreement that by their nature are intended to survive the termination of this Agreement (including, without limitation, Sections 6, 7, 10, 11, 12 and 13) shall survive such termination.

12. Indemnification.

- a. **Indemnity.** You shall defend, indemnify and hold harmless GPN, its affiliates and its suppliers, and each of their respective partners, employees, representatives and agents, from and against all claims, losses, costs, damages, liabilities, and expenses (including but not limited to attorney fees) arising out of: (i) your activities in connection with the Site; (ii) your use of EDGEPro[®], and

related software, the Services or other materials provided by GPN based on your request made on the Site; (iii) any violation or alleged violation of the Terms of Service of any third party website by GPN, or other claim of violation or alleged violation made by any third party against GPN, arising out of the provision of the Service to you based on your request made on the Site; (iv) any violation of this Agreement by you; (v) any improper or unauthorized use of the Site, Software, the Service and other materials by you; or (vi) any allegation that anything you transmit through or in connection with the Site infringes or otherwise violates the copyright, trademark, trade secret, privacy, or other rights of any third party.

- b. Infringement Injunctions.** If your use of the Service is, or in GPN's opinion is likely to be, enjoined as an infringement or misappropriation of any third-party intellectual property right, your sole and exclusive remedy, and GPN's entire liability shall be, at GPN's discretion and expense, for GPN to: (i) procure for you the right to continue to use the Service under the terms of this Agreement; or (ii) replace or modify the Service or portions thereof so that it is non-infringing and substantially equivalent in function to the Service as enjoined; or (iii) terminate this Agreement.
- c. Exclusions.** Notwithstanding the foregoing, GPN will have no liability for any claim of any kind to the extent such liability arises from: (i) modification of the Service made other than by GPN; (ii) the combination, operation or use with the Service of any product or services not supplied by GPN to the extent such claim could have been avoided if the products or services were not used in such combination; (iii) failure of you to use updates or modifications provided by GPN, including those provided to avoid infringement; or (iv) compliance by GPN with designs, plans or specifications furnished by or on behalf of you.
- d. SOLE REMEDY.** THE PROVISIONS OF THIS SECTION 12 SET FORTH GPN'S SOLE AND EXCLUSIVE OBLIGATIONS, AND YOUR SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

13. General.

- a. Entire Agreement and Controlling Documents.** This Agreement (including any existing and current Enrollment Forms) contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes all proposals, understandings, representations, warranties, covenants, and any other communications relating thereto (whether written or oral) between the parties and is binding upon the parties and their permitted successors and assigns. Only a written instrument that refers to this Agreement and is duly signed by authorized representatives of both parties may amend this Agreement. Any conflicting terms contained in any purchase Enrollment Form issued by you shall be of no force or effect, even if the order is accepted by GPN. In the event of a conflict in terms among the Agreement and the Enrollment Form, the Agreement shall control.
- b. Assignment.** This Agreement shall be binding upon and for the benefit of GPN and you and their respective legal representatives, successors, and assigns; provided, that you shall not assign, sublicense or otherwise transfer any of its rights or obligations under this Agreement without GPN's prior written consent (such consent not to be unreasonably withheld).
- c. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to (i) its conflict of law provisions, and (ii) the applicability, if any, of the United Nations Convention on Contracts for the International Sale of Goods. Each party consents to, and agrees that each party is subject to the exclusive jurisdiction of the state and federal courts of the State of New York with respect to any actions for enforcement of or breach of this Agreement.
- d. Headings; Counterparts.** The headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be an original instrument.
- e. Relationship of the Parties.** GPN and you are independent contractors, and nothing in this Agreement shall be construed as making them partners or as creating the relationship of

employer and employee, master and servant, or principal and agent between them, for any purpose whatsoever. Neither party shall make any contracts, warranties or representations or assume or create any other obligations, express or implied, in the other party's name or on its behalf.

- f. **Force Majeure.** Except for the obligation to make payments, nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing party.
- g. **Notices.** Any demand, notice, consent, or other communication required by this Agreement to be given in writing shall be given either (i) by being hand-delivered to the receiving party, or (ii) by being deposited in the mail (registered or certified) or delivered to a recognized private express common carrier, postage or freight prepaid, addressed to the receiving party at its address set forth on an Enrollment Form. Either party may change its address by giving written notice to the other party of the changed address.
- h. **Waiver and Severability.** The waiver or failure of either party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of the subject right or any further right under this Agreement. If any provision of this Agreement or the application thereof to any party or circumstance shall be declared void, illegal or unenforceable, the remainder of this Agreement shall be valid and enforceable to the extent permitted by applicable law. In such event, the parties shall use their best efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by applicable law, achieves the purposes intended under the invalid or unenforceable provision.
- i. **Use of Name.** GPN may use your name and may disclose that you are a customer of GPN in GPN advertising, press, promotion and similar public disclosures upon your prior written consent (such consent not to be unreasonably withheld or delayed). You also hereby grant GPN a non-exclusive license during the term of this Agreement to list your name and display your logo in the "customer" or similar section of GPN's website.
- j. **Compliance with Laws; Export.** You shall comply with all U.S., foreign, and international laws and regulations, including the U.S. Foreign Corrupt Practices Act, U.K. Bribery Act, other anti-corruption laws, U.S. Export Administration and Treasury Department's Office of Foreign Assets Control regulations, and other anti-boycott and import regulations. You agree: (i) that the export, re-export, transfer, re-transfer, sale, supply, access to, or use of GPN's products or services to or in a country other than the country in which same were first provided to you, or to, by, or for a different end user or end use may require a U.S. or other government license or other authorization; and (ii) not to, directly or indirectly, export, re-export, transfer, re-transfer, sell, supply, or allow access to or use of GPN's products or services to, in, by, or for sanctioned, embargoed, or prohibited countries, persons, or end uses under U.S. or other applicable law (collectively, "Prohibited Uses"). You are solely responsible for screening for Prohibited Uses and obtaining any required licenses or other authorizations and shall indemnify GPN for any violation of any applicable export controls and/or economic sanctions laws and regulations. GPN may terminate this Agreement immediately if it determines, in its sole discretion, that you have breached, intend to breach, or insist upon breaching any of the provisions in this Section 13(j).

ACKNOWLEDGEMENT

I acknowledge and agree that I have read this Agreement and agree to the Terms of Service as described herein. If I am executing this acknowledgement on behalf of an organization, I declare that I am duly authorized to accept this Agreement on behalf of the organization.

Signature

Printed Name

Title

Date

GATEWAY PROFESSIONAL NETWORK LLC

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is made effective as of this ___ day of ____, 20__ (hereinafter the “Effective Date”) by and between

(“**Covered Entity**”) and Gateway Professional Network, LLC d/b/a GPN Technologies (“**Business Associate**”) (individually, a “Party” and collectively, the “Parties”).

WHEREAS Covered Entity and Business Associate have entered into a certain agreement for services (“Services”) whereby Business Associate provides or assists Covered Entity with a function or activity that may involve the use or disclosure of protected health information (PHI) (hereinafter the “Services Agreement”);

WHEREAS, both Parties desire to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 as amended by the American Recovery and Investment Act of 2009 (“HIPAA”), and implementing regulations which are codified at 45 C.F.R. Part 160, 162 and 164, as such regulations may be amended from time to time and the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 and implementing regulations and guidance issued by the Secretary, all as may be amended from time to time (“HITECH”) (collectively referred to hereinafter as the “HIPAA Standards”); and

WHEREAS, such HIPAA Standards require Covered Entity to enter into a Business Associate Agreement with its Business Associates that provide or assist Covered Entity with a function or activity which may involve the use or disclosure of protected health information (“PHI”);

WHEREAS, Covered Entity and Business Associate agree to enter into this Business Associate Agreement (“BAA”) to ensure compliance with the HIPAA Standards including the amendments thereto set forth in HITECH Act and any applicable state laws and

THEREFORE, in consideration of the Parties’ continuing obligations to each other, compliance with the HIPAA Security and Privacy Rules and the HITECH Act, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement.

1. DEFINITIONS.

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Standards: **Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Protected Health Information (PHI), Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.** Capitalized terms used in this Agreement, but not otherwise defined, shall have the same meaning as those terms in the HIPAA Standards, as they apply to Business Associate Agreements.

In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Standards, the HIPAA Standards in effect at the time shall control. Where provisions of this Agreement are different than those mandated by the HIPAA Standards, but are nonetheless permitted by such

regulations, the provisions of this Agreement shall control. Any reference herein to the HIPAA Standards or other federal or state regulation shall be a reference to such rule or regulation as in effect or as subsequently updated, amended or modified

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a. **Use or Disclosure.** Business Associate agrees to not use or further disclose PHI other than to perform the services set forth in the Service Agreement, as expressly permitted or required by this Business Associate Agreement or as Required By Law.
- b. **Safeguards and Compliance with the HIPAA Security Regulations.** Business Associate agrees to use appropriate, commercially reasonable safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement.
- c. **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- d. **Reporting.** Business Associate agrees to report to Covered Entity within thirty (30) business days from the date Business Associate knew or reasonably should have known, any of the following:
 - (1) Any use or disclosure of PHI not permitted by this Agreement of which Business Associate becomes aware.
 - (2) Any Security Incident of which Business Associate becomes aware.
 - (3) The discovery of a Breach of Unsecured PHI.

For purposes of this Agreement, “Security Incident” shall mean the successful unauthorized access, use, disclosure, modification or destruction of PHI. The Parties acknowledge and agree that this Section 2.d constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined herein). “Unsuccessful Security Incidents” shall include, but not be limited to, pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denials of service, malware such as worms or viruses and any combination of the above, so long as such incidents do not result in unauthorized access, use or disclosure, modification or destruction of PHI.

- e. **Business Associates and Agents.** To the extent applicable, Business Associate shall ensure that any subcontractors that create, receive, maintain, or transmit PHI belonging to Covered Entity on behalf of Business Associate agree in writing to substantially the same, but no less restrictive conditions, restrictions, and requirements that apply to the Business Associate with respect to such PHI;

- f. **Access to PHI.** In the event Business Associate maintains Protected Health Information in a Designated Record Set, Business Associate agrees to provide access to PHI in such Designated Record Set to Covered Entity, within thirty (30) business days of Covered Entity's written request in order to meet the requirements under 45 CFR § 164.524. In the event any individual requests access to PHI directly from Business Associate, Business Associate shall promptly notify Covered Entity of such request so that Covered Entity can respond directly to such individual in accordance with 45 C.F.R. § 164.524. Any denials of access to the PHI requested by an individual shall be the responsibility of Covered Entity.
- g. **Amendment of PHI.** Upon receipt of a written request by Covered Entity for the amendment of an individual's PHI or record contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall provide such information to Covered Entity for amendment, within thirty (30) business days of receipt of such written request from Covered Entity, and if applicable, incorporate any such amendments to such PHI as required by 45 C.F.R. § 164.526. In the event any individual requests amendment to PHI directly from Business Associate, Business Associate shall notify Covered Entity of such request so that Covered Entity can respond directly to such individual in accordance with 45 C.F.R. § 164.526.
- h. **Records.** Business Associate shall make its internal practices, books, and records relating to the Use and Disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary upon written request for purposes of determining compliance with the HIPAA Standards.
- i. **Documentation of Disclosures.** To the extent applicable, Business Associate agrees to document Disclosures of PHI and information related to such Disclosures as required for Covered Entity to respond to a request by an Individual for an accounting of Disclosures in accordance with 45 CFR § 164.528.
- j. **Accounting of Disclosures.** Within thirty (30) days of receipt of written notice from the Covered Entity that Covered Entity has received a request by an individual for an accounting of disclosures of PHI, Business Associate agrees to provide to the Covered Entity such information as necessary for Covered Entity to satisfy its obligations under 45 C.F.R. § 164.528.
- k. **Prohibition on Sale of PHI.** Business Associate agrees to comply with the prohibition of sale of PHI without authorization unless an exception under 45 C.F.R. § 164.508 applies.
- l. **Minimum Necessary Use and Disclosure.** In conducting functions and/or activities under this Agreement that involve the use and/or disclosure of PHI, Business Associate agrees to limit the use and/or disclosure of PHI to the minimum amount of information necessary to accomplish the intended purpose of the use or disclosure.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- a. **General Use and Disclosure Provisions.** Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI in connection with its performance of the Services if such use or disclosure of PHI would not violate the HIPAA Standards if done by Covered Entity or such use or disclosure is expressly permitted under Section 3.b ("Specific Use and Disclosure Provisions") of this Agreement.

b. **Specific Use and Disclosure Provisions.**

- (1) Except as otherwise limited in this Agreement, Business Associate may use and disclose PHI for the proper management and administration of the Business Associate or to meet its legal responsibilities; provided, however, that such PHI may only be disclosed for such purposes only if the disclosures are required by law or the Business Associate obtains certain reasonable assurances from the person to whom the information is disclosed. The required reasonable assurances are that:
 - (a) the information will remain confidential;
 - (b) the information will be used or further disclosed only as required by law or for the purpose for which the information was disclosed to the person; and
 - (c) the person will notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (2) Business Associate may use and disclose PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).
- (3) **Data Aggregation.** Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).
- (4) **De-Identification.** Business Associate may de-identify any and all Protected Health Information, provided that such de-identification is performed in accordance with 45 CFR § 164.514(b). The parties agree that such de-identified information is no longer deemed PHI under the HIPAA Standards.

4. OBLIGATIONS OF COVERED ENTITY

- a. Covered Entity shall provide Business Associate with a copy of its Notice of Privacy Practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520, and shall promptly notify Business Associate in writing of any changes to such Notice of Privacy Practices to the extent such changes may affect Business Associate's Use or Disclosure of PHI.
- b. Covered Entity shall promptly notify Business Associate in writing of any changes in, or revocation of, permission by Individual to use or disclose PHI, if and to the extent such changes affect Business Associate's permitted or required uses and disclosures to the extent that such changes may affect Business Associates use or disclosure of PHI.
- c. Covered Entity shall promptly notify Business Associate in writing of any restriction to the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by in accordance with 45 C.F.R. § 164.522, if and to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

- d. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.
- e. To the extent applicable, Covered Entity shall obtain any consent, authorization, or permission that may be required by the Privacy Rule or state laws and regulations before disclosing to Business Associate the Protected Health Information pertaining to an Individual.

5. TERM AND TERMINATION

- a. **Term.** This Agreement shall continue in effect until the later of (a) termination or expiration of the underlying Services Agreement or (b) when all of the PHI provided by Covered Entity to Business Associate or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity in accordance with Section 5(c) below.
- b. **Termination for Cause.** Upon either Party's knowledge of a material breach by the other Party, the terminating Party shall notify the other Party in writing and provide an opportunity for the breaching Party to cure the breach or end the violation within thirty (30) days of such notice, and terminate this Agreement if the breaching Party does not cure the breach or end the violation within the time specified. If a cure is not reasonably possible, the terminating Party may immediately terminate this Agreement and any such other agreement upon its knowledge of the material breach, upon written notice to the other Party.
- c. **Effect of Termination.** Upon termination of this Agreement for any reason, Business Associate shall return or destroy (as directed by Covered Entity) all PHI received from Covered Entity or created or received by Business Associate or any Subcontractor on behalf of Covered Entity and neither Business Associate nor any Subcontractor shall retain copies of the PHI. In the event Business Associate determines that returning or destroying (as directed by Covered Entity) the PHI is infeasible, Business Associate shall extend the protections of this Agreement 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 Business Associate maintains such PHI.

6. MISCELLANEOUS

- a. **No Third Party Beneficiaries.** There are no intended third party beneficiaries to this Agreement. Without in anyway limiting the foregoing, it is the parties' specific intent that nothing contained in this Agreement give rise to any right or cause of action, contractual or otherwise, in or on behalf of any Individual whose PHI is used or disclosed pursuant to this Agreement.
- b. **Relationship of the Parties.** In the performance of the work, duties and obligations described in this Agreement or in any other agreement between the parties, the parties acknowledge and agree that each party is at all times acting and performing as an independent contractor and at no time shall the relationship between the parties be construed as a partnership, joint venture, employment, principal/agent relationship, or master/servant relationship.

- c. **Interpretation.** Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits the Parties to comply with the HIPAA Standards.
- d. **Amendment.** This Business Associate Agreement shall only be amended or modified upon written consent of the Parties. The Parties agree to take such action as is necessary to amend this Agreement from time to time as necessary for compliance with the requirements of the HIPAA Standards and any other applicable law.
- e. **Severability.** If any provision of this Business Associate Agreement shall be declared invalid or illegal for any reason whatsoever, then notwithstanding such invalidity or illegality, the remaining terms and provisions of this Business Associate Agreement shall remain in full force and effect in the same manner as if the invalid or illegal provision had not been contained herein, and such invalid, unenforceable or illegal provision shall be valid, enforceable and legal to the maximum extent permitted by law.
- f. **Governing Law.** The validity, interpretation, and performance of this Agreement, shall be construed in accordance with the laws of the State of New York without reference to its conflict of laws principles.
- g. **Notices.** Any notice or other communication given pursuant to this Business Associate Agreement must be in writing and (i) delivered by hand, (ii) delivered by overnight express, or (iii) sent by registered or certified mail, postage prepaid, to the address set forth above and shall be considered given upon delivery.
- h. **Prior Agreements.** This Agreement supersedes and terminates all prior agreements (with the exception of any existing Services Agreement, whether written or oral, to which the Parties or any of them are also parties concerning its subject matter, and as of the execution of this Agreement, none of such other agreements shall any longer have any force or effect. This Agreement and any Services Agreement previously executed between the Parties contains the entire understanding of the Parties with respect to the subject matter of this Agreement, and the terms of this Agreement are contractual and not a mere recital.
- i. **Modification.** No addition or modification to this Agreement shall be valid unless made in writing and signed by both parties.
- j. **Waiver.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

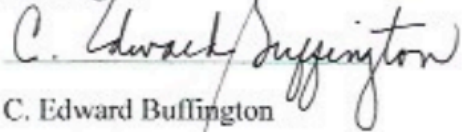
IN WITNESS WHEREOF, the undersigned have read, understand and execute this Agreement and agree to be bound by its terms as of the Effective Date first set forth above. **Each signatory below hereby declares that he/she is duly authorized to sign on behalf of the Party indicated.**

By: _____

Print: _____

Title: _____

Gateway Professional Network, LLC d/b/a
GPN Technologies

By: 

Print: C. Edward Buffington

Title: President/CEO, GPN Technologies