

Covivitas eChecker's Terms and Conditions of Use

1. Definitions

- (a) "Service" means the Covivitas eChecker or any successor on-line, remote or local service offered by Covivitas.
- (b) "Subscriber" means a person who establishes an authorized account ("Account") for access to and use of the Service.
- (c) "Computer" means Subscriber's personal computer or system server that will be used to access the Service. A Computer will need to meet certain requirements that will be specified by Covivitas .
- (d) "Equipment" means the cable modems, NIC Cards and any other equipment including cabling, if necessary, to be installed at a Subscriber's premises, as described in Section 4.
- (e) "Software" means the computer software licensed by Covivitas to Subscriber to enable a single Computer to access the Service through the Equipment, as described in Section 4.
- (f) "Terms" means these Terms and Conditions of Use.

2. General

- (a) These Terms set forth the terms and conditions which apply to the use of the Service by Subscriber. No representation, warranty, term or condition, other than as specifically set forth in these Terms, shall be binding on Covivitas.
- (b) Covivitas shall have the right to change or discontinue any aspect or feature of the Service, including but not limited to content, hours of availability, and Equipment needed for access to and use of the Service. Either Covivitas or Subscriber may terminate the Service to Subscriber with a 30 day written advance notice. Covivitas further has the right to add to or modify any rules, terms and conditions governing use of the Service. Subscriber will be provided advance notice of changes.
- (c) Subscriber is responsible in all respects (including all payment obligations) for all use of Subscriber's Account in all circumstances, including under any screen name or password by any person. Subscriber will ensure that all use of Subscriber's Account complies fully with the provisions of these Terms and any operating rules that may be promulgated from time to time by Covivitas, and all use by others of Subscriber's Account is subject to the terms hereof. Subscriber and Covivitas shall be responsible for protecting the confidentiality of Subscriber's passwords.
- (e) Subscriber represents and warrants that he or she is at least 18 years of age.
- (f) Transfer of the Account by Subscriber to any other person, or to a new clinic entity or site, is prohibited.

3. Charges.

- (a) Subscriber agrees to pay for the Service that he or she has subscribed to, including applicable charges for installation and all applicable local, state or federal fees or taxes. Monthly charges for the Service are set forth on a separate price list and are subject to change in the future. Service charges will be billed monthly in advance and are payable on the due date specified on the bill.
- (b) An administrative late charge may be charged on accounts for Covivitas eChecker services that are past due. Payment for your Covivitas eChecker service must be received by Covivitas on or before the due date stated on your Covivitas eChecker monthly bill. Failure to deliver payment by the due date is a breach of your Covivitas eChecker subscription agreement. This individual breach causes Covivitas to suffer damages in an amount that is difficult to ascertain with certainty. Covivitas has made a reasonable estimate to determine the damages caused by late payments generally and has used this estimate to set a liquidated damages late fee amount. The current late fee is listed in your quote and rider to this contract or can be provided upon request. Covivitas reserves the right to change the late fee amount in the future upon 30 day written notice to you of the new amount, provided that the terminating party provides the other party with 30 days prior written notice.
- (c) If Subscriber discontinues the Service or the Service is discontinued for non-payment, he/she will be required, in addition to payment of all overdue balances, to pay a reconnect charge of \$35.00 or trip charge, where applicable, for on site reconnection for distances greater than 60 miles from the Covivitas Corporate Offices before reconnection.
- (d) Covivitas may charge a service fee for all returned checks and bank card or charge card chargebacks. Charge not to exceed \$15.00.
- (e) Subscriber will be responsible for all expenses (including reasonable attorneys' fees) incurred by Covivitas in collecting any amounts due in accordance with these Terms and unpaid by Subscriber.

4. Equipment and Software.

- (a) The charges for the Service include (1) purchase or lease, if necessary, of an eChecker server provided by Covivitas, and (2) license of the Software. Connection of additional Computers may require payment of additional charges.
- (b) Covivitas will install the Equipment and software if necessary. Covivitas, upon notification to the subscriber, may access Subscriber's computer system and have access to Subscriber's Computer periodically during the term hereof to install, connect, inspect, maintain, repair or alter-Covivitas supplied Equipment or associated hardware or the Software, or to disconnect and remove the Equipment.
- (c) Covivitas shall have the right to upgrade Covivitas supplied Equipment and Software from time to time through "downloads" from the network or otherwise, to conform the Equipment and Software to its current network specifications. This may include limitations on the throughput available through individual modems.

(d) If Subscriber is not the owner of the premises upon which Equipment and Software are to be installed, Subscriber warrants that he/she has obtained the consent of the owner of the premises for Covivitas personnel or its agents to enter the premises for the purposes described in Section 4(b).

(e) Equipment.

(i) The Equipment, if necessary, is and at all times shall remain the sole and exclusive personal property of Covivitas, and Subscriber shall acquire no interest therein by virtue of the payments provided for herein or the attachment of any portion of the Equipment to the Subscriber's residence or otherwise. Upon installation by Covivitas eChecker, the ethernet card shall become and shall remain the sole and exclusive personal property of Subscriber.

(ii) Subscriber will not open, alter, misuse, tamper with or remove the Equipment as and where installed by Covivitas, and will not remove any markings or labels from the Equipment indicating Covivitas ownership. Subscriber will safeguard the Equipment from loss or damage of any kind, and will not permit anyone other than an authorized representative of Covivitas to perform any work on the Equipment.

(iii) Upon termination of the Service, for whatever reason, Subscriber acknowledges that his/her right to possess and use the Equipment shall likewise terminate. In such event, the Equipment shall be returned to Covivitas in the same condition as when received, ordinary wear and tear excepted. If the foregoing conditions are met, Covivitas will return to Subscriber his/her security deposit, if any, within a reasonable time thereafter.

(iv) If the Equipment is damaged, destroyed, lost or stolen while in Subscriber's possession, except for circumstances beyond subscribers control, including with limitations, acts of God, natural disasters, civil disturbance or weather, Subscriber shall be liable for the cost of repair or replacement of the Equipment. If the Equipment is not returned to Covivitas as described in Section 4(e)(iii) upon termination of the Service, Subscriber will pay Covivitas the sum of Five Hundred Dollars (\$500.00) representing the replacement cost of the Equipment without any reduction for depreciation, wear and tear or the physical condition of such Equipment; unreturned power supply units (Other Equipment) will represent a replacement cost of Fifty Dollars (\$50.00). Covivitas may apply any security deposit to any such obligation of Subscriber, and collect any remaining balance from Subscriber. In the event any amount is deducted from the security deposit, the Subscriber must replace the amount so deducted.

(f) Software.

(i) Covivitas grants to the Subscriber a limited, non-exclusive license to use the Software, in object code form only, solely for the purpose of connecting Subscriber's single Computer to the Service. This license will permit such use by Subscriber to use the Account, under any password or screen name, provided that Subscriber shall be responsible for all use of the Account as described in Section 2(d). This license will commence upon acceptance of Subscriber's subscription for the Service and will terminate immediately upon termination of the Service to Subscriber for any reason. Covivitas retains all rights and interests in and to the Software.

(ii) Subscriber is permitted to archive the Software, provided that all such copies contain the same copyright notices and proprietary markings as the original Software. Subscriber will not engage in, and will not permit, any other copying, or any translation, reverse engineering or reverse compiling, disassembly or modification of, or preparation of any derivative works based on the Software, all of which are prohibited.

(iii) Subscriber will destroy all Software and any related written material together with any copies promptly upon termination of the Service to Subscriber for any reason.

5. Subscriber Conduct.

- (a) Subscriber shall use the Service for lawful purposes only. Subscriber shall not post or transmit through the Service any material (including any message or series of messages) that violates or infringes in any way upon the rights of others (including copyright or trademark rights), that is unlawful, threatening, abusive, obstructive, harassing, libelous, invasive of privacy or publicity rights, or in the circumstances would be obscene or indecent, constitutes hate speech or is otherwise offensive or objectionable, or that encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law. Subscriber also shall not link his/her Internet browser home page to material or content that violates the Service's standards of conduct as reflected in this Section 5 or as specified by rules that the Covivitas may, from time to time, promulgate to govern Subscriber conduct. Covivitas shall have the sole and unreviewable right to determine whether content violates these standards.
- (b) Subscriber will not resell the Service, or any portion thereof, or otherwise charge others to use the Service, or any portion thereof. The Service is for subscriber internal use only, and Subscriber agrees not to use the Service for an outsource operation as a method to verify California Medi-Cal eligibility and health plan eligibility.
- (c) Without Covivitas's prior written approval, Subscriber shall not post or transmit through the Service any material that constitutes or contains advertising or any solicitation with respect to products or services, nor shall Subscriber transmit bulk e-mail without prior written permission from Covivitas.
- (d) Except as allowed by applicable law, Subscriber shall not upload, post or otherwise make available on the Service any material protected by copyright, trademark, or trade secret or other proprietary right without the express permission of the owner thereof. Subscriber may upload public domain materials and is responsible for and assumes all risks with respect to the determination of whether materials are in the public domain.
- (e) The Service contains copyrighted material, trademarks and other proprietary information, and the entire contents of the Service are copyrighted as a collective work under the United States copyright laws. Covivitas grants Subscriber the right to download the Service's copyrighted material solely for Subscriber's personal use. Except as granted here and as otherwise expressly permitted under copyright law, no copying, redistribution, publication or commercial exploitation of downloaded material will be permitted without the express prior written consent of Covivitas and, where applicable, the third party

copyright owner. In the event of any permitted copying, redistribution or publication of copyrighted material, no changes in or deletion of author attribution or copyright notice shall be made.

7. Service and Repairs

Covivitas will repair damage to or, at Covivitas option, replace Equipment, modify Software, and otherwise attempt to correct interruptions of Service, due to reasonable Equipment wear and tear or technical malfunction, at Covivitas 's expense. Other repair or replacement will be at Subscriber's expense under Section 4(e).

8. Service Interruptions; Force Majeure

In the event of complete failure of the Service due to technical malfunction for twenty-four (24) consecutive hours or more, Subscriber is entitled to a prorated credit upon request. To qualify for an adjustment, Subscriber must request a credit within thirty (30) days of the failure. Covivitas , its corporate parents, affiliates and subsidiaries shall have no liability, including as set forth in this Section 9, for interruption of Service due to circumstances beyond its control, including without limitation, acts of God, natural disaster, regulation or governmental acts, fire, civil disturbance, strike or weather.

9. Disclaimer of Warranty; Limitation of Liability.

SUBSCRIBER EXPRESSLY AGREES THAT USE OF THE SERVICE IS AT SUBSCRIBER'S SOLE RISK. NEITHER COVIVITAS, ITS CORPORATE PARENTS, AFFILIATES, SUBSIDIARIES, NOR ANY OF THEIR RESPECTIVE EMPLOYEES OR AGENTS WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE; NOR DO THEY MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICE, OR AS TO THE ACCURACY, RELIABILITY OR CONTENT OF ANY INFORMATION, SERVICE OR MERCHANDISE PROVIDED THROUGH THE SERVICE.

THE SERVICE, THE EQUIPMENT AND THE SOFTWARE ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES THAT ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION UNDER THE LAWS APPLICABLE TO THESE TERMS.

NEITHER COVIVITAS, ITS CORPORATE PARENTS, AFFILIATES OR SUBSIDIARIES NOR ANY OF ITS SUPPLIERS SHALL HAVE ANY RESPONSIBILITY OR LIABILITY WITH REGARD TO THE OPERATION OR REPAIR OF SUBSCRIBER'S COMPUTER, OR FOR ANY LOSS OF DATA BY SUBSCRIBER, HOWEVER CAUSED.

EXCEPT FOR THE REFUND OR CREDIT AS EXPRESSLY PROVIDED IN SECTIONS 6(b) AND 9 RESPECTIVELY, IN NO EVENT (INCLUDING NEGLIGENCE) WILL COVIVITAS, ITS CORPORATE PARENTS, AFFILIATES, SUBSIDIARIES, OR ANY PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING OR DISTRIBUTING THE SERVICE (INCLUDING THE CONTENT INCLUDED THEREIN OR THE INFORMATION SERVICES ACCESSED THEREBY), THE EQUIPMENT OR THE SOFTWARE, BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICE, ACTION TAKEN TO PROTECT THE SERVICE OR OUT OF THE BREACH OF ANY WARRANTY.

SUBSCRIBER HEREBY ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION 10 SHALL APPLY TO ALL CONTENT OR INFORMATION SERVICES INCLUDED IN, OR ACCESSIBLE THROUGH, THE SERVICE, AND ARE FOR THE BENEFIT OF COVIVITAS, ITS CORPORATE PARENTS, AFFILIATES, SUBSIDIARIES, AND THEIR RESPECTIVE EMPLOYEES AND AGENTS.

10. Privacy

Subscriber's privacy interests, including Subscriber's ability to limit disclosure of certain information to third parties, are addressed by, among other laws, the federal Cable Communications Act and the Electronic Communications Privacy Act. Those two Acts and information required to be disclosed by the Cable Act with regard to personally identifiable information are described in the Subscriber Privacy Notice delivered to Subscriber and incorporated by reference. Subscriber acknowledges receipt of the Subscriber Privacy Notice. In addition to the categories of disclosure specifically authorized by statute and described in the Privacy Notice, Covivitas also reserves the right to disclose and Subscriber hereby consents to the disclosure of any information that suggests that any individual's physical safety is in peril.

13. Entire Agreement

These Terms and any rules specified by Covivitas for the Service established by Covivitas now or hereafter constitute the entire agreement of the parties with respect to the subject matter hereof, and supersede all previous written or oral agreements between the parties with respect to such subject matter. Acceptance of Service shall constitute acceptance of the terms and conditions herein. Subscriber's continued acceptance of the Service following notice of any new or modified rules, terms or conditions for use thereof provided by Covivitas by any means (including online posting thereof in the Service) shall constitute acceptance.

14. Term and Revisions

These Terms will remain in effect until canceled by either party in writing with a 30 day advance notice or superseded by revised Terms and Conditions of Use. Terms can be cancelled immediately if either party violates any significant part of this agreement or if both parties agree verbally or in writing. Subscriber acknowledges that Covivitas may from time to time promulgate revisions to these Terms. Subscriber shall be notified of any revisions on-line or otherwise and shall be given the opportunity to accept such changes or cancel his/her subscription and receive a refund of prepaid fees minus any amount due Covivitas with 30 days notice.

15. Serviceability

In the event that any portion of these Terms is held to be invalid or unenforceable, the invalid or unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties as set forth herein, and the remainder of these Terms shall remain in full force and effect.

16. Waiver

No waiver by either party of any breach or default shall be deemed to be a waiver of any preceding or subsequent breach or default.

Representative, Covivitas _____
Date

Printed Name _____
Title

Representative, clinic entity _____
Date

Printed Name _____
Title

Clinic Name _____
Address