

TRANSMEDICS, INC.
OCS CONNECT APPLICATION TERMS OF USE

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PLEASE READ THESE TERMS CAREFULLY BEFORE DOWNLOADING OR USING THE APPLICATION. BY DOWNLOADING OR USING THE APPLICATION (OR BY CLICKING TO ACCEPT OR AGREE TO THESE TERMS IF THIS OPTION IS MADE AVAILABLE TO YOU), YOU AGREE THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE LEGALLY BOUND BY THESE TERMS, AND FURTHER AGREE TO ACCEPT AND AGREE TO COMPLY WITH THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT ACCESS OR USE THE APPLICATION AND DELETE IT FROM YOUR MOBILE DEVICE.

BACKGROUND

These Terms of Use (collectively, the “**Terms**”) are entered into by and between you (“**You**,” “**Your**” or “**User**”) and TransMedics, Inc. (“**TransMedics**,” “**we**,” “**us**” or “**our**”). These Terms govern Your access to and use of our Application (defined below). You and TransMedics may be referred to herein individually as a “**Party**” and collectively as “**Parties**.”

This Application is intended for use solely by (i) TransMedics’ employees and other authorized users of TransMedics (“**TransMedics Users**”) in connection with the communication, coordination, scheduling and provision of organ transplant services and other services provided on our on behalf of TransMedics (“**TransMedics Services**”); or (ii) employees and other authorized users of TransMedics’ customers (“**Institution Users**”) in connection with the receipt of TransMedics Services.

If You are an Institution User, access to the Application may be provided to You subject to a separate agreement between TransMedics and You, Your employer, or a hospital, health care provider or other person or entity for whom You are an authorized user or customer (each an “**Institution**”), (such agreement, the “**Institution Agreement**”). Such Institution Agreement may set forth further terms and conditions for use of the Application, including payment of fees for Your use of the Application. Your continued use of the Application shall be subject to Your compliance with the applicable terms and conditions set forth in any such Institution Agreement, and such terms and conditions shall be incorporated by reference into these Terms. In the event of a conflict between these Terms and the Institution Agreement, the Institution Agreement shall control, solely to the extent of such conflict.

In addition, access to the Application may be provided to You through third party platforms, including the Apple App Store, Google Play store, and other platforms directed to the delivery of mobile applications to android phones and tablets, iPhones, iPads, and other mobile devices. Your use of the Application is further subject to, and You agree to comply with, any third party terms and conditions applicable to such third party platforms. Should any such third party terms and conditions conflict with these Terms, then these Terms will control, solely to the extent such provisions apply to the Application.

TransMedics may update these Terms from time to time, with or without notice to You. Each time You access the Application, Your continued access and use of the Application indicates your full acceptance and agreement to abide by these Terms in its then-current form, including any updates made by TransMedics.

GRANT OF RIGHTS

End-User License

“**Application**” means TransMedics’ proprietary software, OCS Connect, including any website, browser, online implementations or versions and mobile applications, together with any Updates, printed materials, electronic documentation, and associated media.

“**Authorized Use**” means use by You in connection with the provision or receipt of the TransMedics Services, and for Institution Users, any other permitted use(s) set forth in the applicable Institution Agreement.

Subject to Your compliance with these Terms, we grant to You a limited, non-exclusive, non-transferable, non-sublicensable and revocable license, during the Term, to download, install, access and use the Application, only in the United States and only on a mobile device including android phones and tablets, iPhone, iPad, or iPod Touch (“**Mobile Device**”) owned or controlled by You or, if applicable, Institution, in each case, solely for the Authorized Use. All other use is expressly prohibited, and all rights not expressly granted by TransMedics to You herein are reserved for TransMedics. This license is revocable at any time by TransMedics without notice and with or without cause.

Prohibited Uses

TransMedics allows You to use the Application for the Authorized Use only. You may not use the Application for any other purpose, including any of the prohibited uses set forth below.

You will not, and will not permit or encourage others to:

- use the Application for any purpose other than the Authorized Use;
- use the Application for any unlawful purpose, or to violation any national or international law, statute, decree, rule or regulation;
- reverse engineer, disassemble, decompile, decode, adapt, copy, or otherwise attempt to derive or gain access to the source code of the Application, in whole or in part;
- modify, publish, translate, adapt, or create derivative works or improvements to the Application or any portion thereof;
- resell, lease, lend, sublicense, assign, publish, transfer, or otherwise distribute or grant access to the Application to any other person, including on or in connection with any time-sharing, service bureau, software as a service, cloud, or other technology or service;
- access or use the Application in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other TransMedics user or customer);
- remove or modify any copyright, trademark, or other proprietary rights notice that appears on any portion of the Application;
- collect or store personal data about others through the Application;
- attempt to interfere with the proper working of the Application or circumvent any security or technological measures that control access to the Application or any part of the Application;
- disrupt or interfere with the Application or our systems, servers, or networks, or disobey any requirements, procedures, policies, or regulations of networks connected to the Application, or

transmit any viruses, worms, defects, Trojan horses, spyware, malware, ransomware, or any items of a destructive nature through Your use of the Application; or

- use the Application in an abusive way as determined in TransMedics' discretion.

End-User Data and OPR Data

“End-User Data” means any data or information about or identifying You, including Your name, Account Credentials, email address and other contact information and employer information.

“OPR Data” means any organ procurement-related data, information, or material provided or submitted to the Application by or on behalf of You or the Institution in connection with Your use of the Application that is not End-User Data, including but not limited to organ procurement scheduling data, text messages and other communications, address and other location information of donor and/or recipient addresses, and UNOS IDs and other organ identifying information.

“Usage Data” means any metrics, patterns, trends, metadata, benchmarking, log, system, or usage data derived from Your use of the Application.

During Your use of the Application, You may provide certain End-User Data and OPR Data to TransMedics. By providing this End-User Data and OPR Data to TransMedics in connection with Your use of the Application, You represent and warrant that You, and if applicable, the Institution, has all rights, consents and licenses necessary to transmit and provide access to such End-User Data and OPR Data to TransMedics and to permit TransMedics to use such End-User Data and OPR Data as contemplated herein, including in connection with the provision of the TransMedics Services by or on behalf of TransMedics, and for data benchmarking, data aggregation and data analytics, and that use of the End-User Data or OPR Data by TransMedics as contemplated herein does not and will not infringe, misappropriate, or otherwise violate any intellectual property rights or any privacy or other rights of any third party, or violate any applicable law.

You grant to TransMedics a non-exclusive, worldwide, royalty-free, transferable, irrevocable, sublicensable (through multiple tiers), perpetual, fully paid up right and license to use, reproduce, modify and otherwise exploit the End-User Data and OPR Data for the following purposes:

- to provide the Application to You and to operate the Application in connection with Your Authorized Use; and
- to maintain, support, enhance and improve the Application and TransMedics' other products and services, including by performing analytics and analyzing, generating and extracting Usage Data.

You may be required to provide access to TransMedics or its designee to Usage Data, log data, bug reports, and other information generated by the Application in connection with Your use of the Application. You agree that TransMedics may use such information for the purpose of maintaining, supporting, enhancing and improving the Application and TransMedic' other products and services.

You may provide suggestions, comments, and feedback to TransMedics regarding the Application and the TransMedics Services, including but not limited to, usability, feature requests or enhancement, content, performance, operation, output, bug reports and test results (the **“Feedback”**). You agree that TransMedics may use and analyze the Feedback to improve and develop the Application and TransMedics' other products and services, without any obligation to You.

ACCOUNT MANAGEMENT

To securely access the Application, the Application requires You to have a user account associated with a username and password (“**Account Credentials**”). The Account Credentials used for accessing the Application must belong to a single individual and only that individual may use those Account Credentials. You are solely responsible for maintaining the strict confidentiality of Your Account Credentials. You shall not share Your Account Credentials with any other person and shall not permit any other person to access, use, or download the Application using Your Account Credentials. You will be solely responsible for any damages or losses that may be incurred or suffered by TransMedics as a result of Your failure to maintain the strict confidentiality of Your Account Credentials. You shall immediately inform TransMedics in writing of any need to deactivate Your account due to potential or actual security concerns. TransMedics disclaims any liability for any harm related to the misappropriation of Your Account Credentials, Your intentional or negligent disclosure of such Account Credentials to another person, or Your unauthorized sharing of Account Credentials that may allow another person or entity to access, use, or download the Application without TransMedics’ authorization. You shall not utilize alter-egos or other disguised identities when accessing, using, or downloading the Application. We prohibit all forms of indirect and “spoofed” access.

INTELLECTUAL PROPERTY

Ownership

Subject to the licenses granted under these Terms, each Party retains all rights, title, and interests in and to such Party’s pre-existing or independently created technology, data, and intellectual property rights. Notwithstanding the foregoing, You acknowledge and agree that the Application and all trademarks, service marks, graphics and logos used by TransMedics in connection with the Application are proprietary to TransMedics and are protected under applicable copyright, trademark and other intellectual property laws. TransMedics owns and will retain ownership of TransMedics’ intellectual property rights, know-how, technology, and data, including all rights, title, and interests in and to the Application and all trademarks, service marks, graphics and logos used in connection with the Application (including all goodwill associated therewith) and all associated intellectual property rights. Except for the limited, revocable license granted to you herein, these Terms do not grant you any ownership or other rights or interests in or to the Application, whether by implication, estoppel, or otherwise.

Third Party Functionality

The Application may allow You to use third-party content and functionality. You use such content or functionality subject to any applicable third party terms and conditions.

CONFIDENTIALITY

“**Confidential Information**” means any information (in whatever form, including written, oral, or stored in any information storage and/or retrieval medium or device) that TransMedics treats as confidential or proprietary, and will not include any information which You can demonstrate: (a) was previously known to You; (b) is or becomes publicly available, through no fault of You; or (c) is disclosed to You by a third party having no obligation of confidentiality to TransMedics.

You will protect and keep confidential all Confidential Information that is disclosed to You by TransMedics, including any non-public information marked as confidential. You will not, except as may be authorized in writing by TransMedics or to the extent required to comply with applicable law, disclose any Confidential Information of TransMedics to any third party, and will not use such Confidential Information except as required to access or use the Application as contemplated in these Terms. Upon termination of these Terms, at TransMedics' request, You will return or destroy all Confidential Information, including any tangible materials that contain any Confidential Information.

UPDATES

TransMedics may, from time to time, develop and provide Application updates, including bug fixes, patches, error corrections, and/or new features (collectively, “**Updates**”), and You acknowledge and agree that You may be required on a periodic or as-needed basis to apply such Updates or reinstall the Application to address security, interoperability, or performance issues. TransMedics will have no obligation to provide Updates to the Application. Based on your Mobile Device settings, when your Mobile Device is connected to the internet either: (a) the Application may automatically download and install all available Updates; or (b) you may receive notice of or be prompted to download and install available Updates.

You agree to promptly download and install all available Updates as they are made available to you and acknowledge and agree that the Application or portions thereof may not properly operate should you fail to do so. You further agree that all Updates will be deemed part of the Application and be subject to these Terms.

DATA PRIVACY AND DATA SECURITY

TransMedics Security Measures

TransMedics maintains commercially reasonable administrative, technical and organizational measures and procedures designed to ensure a level of security appropriate to protect End-User Data and OPR Data in TransMedics possession or under its control, against accidental or unlawful destruction, loss, alternation, or unauthorized disclosure or access.

TransMedics Privacy Notice

Please refer to [TransMedics Privacy Policy](#), which sets out the terms on which we process any personal data we collect from You, or that You provide to us.

TERM AND TERMINATION

The term of these Terms and the license granted herein (the “**Term**”) commences when You download the Application and will continue to be in effect until terminated by You or TransMedics, or until the expiration or termination of any applicable Institution Agreement. You may terminate these Terms by deleting the Application and all copies thereof from a Mobile Device. TransMedics may terminate this Agreement at any time without notice for any reason in its sole discretion.

Upon the termination of these Terms, You will immediately cease and desist from all use of the Application and will return or, at TransMedics' request, destroy at Your cost, all copies of the Application and Confidential Information. Those provisions of these Terms which by their nature must survive termination of these Terms will continue in force upon any termination, including, but not limited to, Your confidentiality obligations, Your obligations relating to intellectual property, ownership of intellectual

property, Your license to TransMedics hereunder to use the Usage Data, and the provisions herein regarding limitation of liability, indemnity, and disclaimer of warranties.

USER QUALIFICATIONS

By using the Application, You represent and warrant that You meet the following qualifications:

- You are either (a) a TransMedics User; (b) an Institution User; or (c) an individual otherwise authorized in writing by TransMedics to use the Application.
- You are a resident of the United States of America.
- You are at least 18 years old. The Application is not intended for or directed to children under 18 years old.

If You do not meet any of the user qualifications above, You must discontinue use of the Application and uninstall it immediately.

DISCLAIMER OF WARRANTIES

TRANSMEDICS' APPLICATION, INCLUDING ANY THIRD PARTY APPLICATION INCLUDED THEREIN, AND CONTENT ARE BEING PROVIDED "AS IS", WITH ALL FAULTS, AND WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR ARISING BY CUSTOM OR COURSE OF TRADE OR PERFORMANCE. TRANSMEDICS SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR OF FITNESS FOR A PARTICULAR PURPOSE. THERE IS NO WARRANTY OR GUARANTEE THAT THE APPLICATION AND THE APPLICATIONS THAT IT INTEROPERATES WITH WILL OPERATE IN YOUR ENVIRONMENT, UNINTERRUPTED OR ERROR-FREE. TRANSMEDICS DOES NOT ENDORSE OR REPRESENT OR GUARANTEE THE TRUTHFULNESS, ACCURACY, OR RELIABILITY OF ANY DATA PROVIDED BY THE APPLICATION. YOU ACCEPT THE ENTIRE RISK OF THE ACCURACY, RELIABILITY, SECURITY, OR OTHER PERFORMANCE WITH RESPECT TO YOUR USE OF THE APPLICATION. NO ORAL OR WRITTEN INFORMATION GIVEN BY ANY PERSON, INCLUDING ANY INSTITUTION, WILL CREATE A WARRANTY IN ANY WAY WHATSOEVER RELATING TO TRANSMEDICS.

LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL TRANSMEDICS OR ITS AFFILIATED COMPANIES, DIRECTORS, EMPLOYEES, AGENTS AND SUBCONTRACTORS, BE LIABLE FOR: (A) ANY LOSS OR DAMAGE RESULTING FROM YOUR USE OF THE APPLICATION; AND/OR (B) ANY SPECIAL, INCIDENTAL, INDIRECT, TORT (INCLUDING ANY DAMAGES RESULTING FROM CLAIMS OF DEFAMATION, LIBEL, OR SLANDER), OR CONSEQUENTIAL DAMAGES (INCLUDING ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, OR LOSS OF BUSINESS) ARISING OUT OF OR IN CONNECTION WITH THE USE OF THE APPLICATION OR THESE TERMS, EVEN IF TRANSMEDICS OR ITS AFFILIATED COMPANIES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TRANSMEDICS AND ITS AFFILIATED COMPANIES SHALL NOT BE LIABLE FOR LOST PROFITS, REVENUES, OR DATA OR FINANCIAL LOSSES ASSOCIATED WITH USE OF THE APPLICATION.

SUBJECT TO ANY APPLICABLE LIABILITY CAPS AGREED UPON BETWEEN TRANSMEDICS AND YOU OR INSTITUTION IN THE INSTITUTION AGREEMENT RELATING TO THE USE OF THE APPLICATION, IN NO EVENT WILL THE COMBINED AGGREGATE LIABILITY OF TRANSMEDICS AND ITS AFFILIATED COMPANIES, DIRECTORS, EMPLOYEES, AGENTS AND SUBCONTRACTORS TO YOU ARISING OUT OF OR IN CONNECTION WITH THE APPLICATION OR THESE TERMS EXCEED THE GREATER OF (A) ONE THOUSAND DOLLARS (\$1,000); AND (B) FEES PAID BY YOU OR INSTITUTION FOR USE OF THE APPLICATION, INCLUDING UNDER THE INSTITUTION AGREEMENT.

INDEMNIFICATION

You agree to indemnify, defend, and hold harmless TransMedics, its affiliated companies, subcontractors, their respective current and former officers, directors, employees, and agents, and the respective successors, heirs, and assigns of the foregoing (the “**TransMedics Indemnitees**”) from any third party claims, liability, damages, losses, penalties, and costs of any kind (including reasonable attorney’s fees and expenses) made due to or arising out of: (1) Your use of the Application, (2) Your violation of these Terms, (3) TransMedics’ use of Your End-User Data or OPR Data as permitted in these Terms, (4) Your violation of any applicable law, rule or regulation or rights of a third party, (5) any actual or alleged infringement, misappropriation or violation of a third party’s intellectual property rights by the End-User Data or OPR Data or any other materials or data provided by You to TransMedics, or (6) Your gross negligence, willful misconduct or fraud. You agree, at your own expense, to provide attorneys reasonably acceptable to TransMedics to defend against any such claim, suit, investigation, action, demand, or judgment. The TransMedics Indemnitees will reasonably cooperate with You, at Your expense, in such defense and will permit You to conduct and control such defense and the disposition of such claim, suit, investigation, action, demand, or judgment; provided, however, that each TransMedics Indemnitee will have the right to retain its own counsel, at Your expense, if representation of such TransMedics Indemnitee by the counsel retained by You would be inappropriate because of actual or potential differences in the interests of such TransMedics Indemnitee and any other party represented by such counsel. You agree to keep TransMedics informed of the progress of such defense and disposition of such claim, suit, investigation, action, demand, or judgment and to consult with TransMedics with regard to any proposed settlement. Notwithstanding anything to the contrary in these Terms, You will not enter into any settlement, consent judgment, or other voluntary final disposition of any claim, suit, investigation, action, demand, or judgment that has an adverse effect on the rights of any TransMedics Indemnitee hereunder or admits any wrongdoing or fault by any TransMedics Indemnitee or imposes on any TransMedics Indemnitee any payment or other liability, without the prior written consent of such TransMedics Indemnitee.

GENERAL PROVISIONS

Section Titles

The section titles and headers are for convenience or reference only and in no way define, limit, or affect the scope or substance of any section of these Terms.

Entire Agreement

These Terms, together with any agreement or order referenced herein, including the Agreement, constitute the entire agreement between You and TransMedics with respect to the Application and supersedes any previous agreements and understandings between the Parties.

Severability

If any provision of these Terms is held to be unenforceable for any reason, such provision will be reformed only to the extent necessary to make it enforceable, and such holding will not impair the validity, legality, or enforceability of the remaining provisions.

Waiver

No delay or omission by TransMedics in exercising any right under these Terms shall operate as a waiver of that or any other right. A waiver or consent given by TransMedics on any one occasion shall be effective only in that instance and shall not be construed as a bar or waiver of any right on any other occasion.

Governing Law and Jurisdiction

These Terms shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, United States, without giving effect to any choice of law provision or rule that would cause the application of laws of any other jurisdiction. Each Party irrevocably agrees that the state and federal courts having jurisdiction over the Commonwealth of Massachusetts, United States, shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Terms.

Notices

All notices required or permitted under these Terms will be made in writing and will be sent by courier service or personal delivery to TransMedics.

COMMUNICATIONS

You agree to receive email from TransMedics, using contact information You have provided to TransMedics, in connection with Your access to and use of the Application and for customer service-related purposes.

Contact Information

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200 Minuteman Road, Suite 302
Andover, MA 01810
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