
DAY PROTOCOL SERVICE AGREEMENT

This **DAY PROTOCOL SERVICE AGREEMENT** (the "Agreement"), dated _____ (the "Effective Date"), is made by and between Triage Logic Management and Consulting, LLC, with mailing address 8834 Goodby's Executive Dr, #1 Jacksonville, FL 32217 ("TL"), and _____ (the "Customer"), with offices located at _____.

PURPOSE OF THIS AGREEMENT

This Agreement shall set forth the terms and conditions pursuant to which TL will provide Customer with on-line, internet based access to and use of the day-time protocol developed by Barton Schmitt, MD and David Thompson, MD (such protocol shall be referred to as the "Protocol"; the access and use to the Protocol provided by TL, as more fully described in Exhibit A to this Agreement, shall be referred to as the "Service").

TERMS AND CONDITIONS

1. Term; Termination; Survival of Provisions

- 1.1. The term during which the Service shall be provided by TL to Customer shall commence on the date set forth in the Exhibit A and continue until terminated pursuant to Section 1.2 below (the "Term").
- 1.2. Customer shall have the right to terminate this Agreement for convenience at any time with thirty (30) days prior written notice; such termination shall be effective on the date notice of such termination is given (as set forth in Section 8.4 below). TL shall have the right to terminate this Agreement for convenience on thirty (30) days prior written notice. In addition, TL shall have the right to terminate this Agreement in the event that Customer fails to cure a breach of this Agreement within ten (10) days of the notice of such breach. The following sections of this Agreement shall survive termination of this Agreement or expiration of the Term: 4, 5, 6 and 8.

2. Licenses

- 2.1. TL grants to the Customer a non-exclusive, non-transferable, revocable limited license to use the Service during the Term. Except for the license granted in this Section 2.1, the Customer acknowledges that it acquires no other rights to the Service and that all right, title and interest in and to the Service and the Protocol shall remain with TL and its licensors. The Customer shall not decompile copy, disassemble, modify, decrypt, translate or otherwise reverse engineer the Service or the Protocol.
- 2.2. Customer shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service or the Protocol; (ii) modify or make derivative works based upon the Service or the Protocol; (iii) create Internet "links" to the Service or "frame" or "mirror" the Service; or (iv) attempt to gain unauthorized access to the Service or its related systems or networks.

3. Use of Service, Support and Customer Data

- 3.1. The Customer shall, at its own cost, obtain any necessary equipment (including computer hardware and software), connectivity, and authorizations to enable the Customer to connect to and use the Service.
- 3.2. TL shall provide Customer with a User ID and password that will permit Customer to access and use the Service. Customer is solely responsible for the security and use of the user ID and password. If the security of the user ID and/or password is comprised, Customer shall promptly contact TL.
- 3.3. TL shall provide email-based support concerning use of the Services Monday through Friday (excluding Federal holidays) from 9:00AM to 5:00PM (Eastern Standard Time). All inquiries concerning support and use of the Service shall be sent by one named representative selected by Customer.
- 3.4. As part of the Service, TL shall provide Customer with the ability to access and print certain forms in which the Customer can use to create a record of their use of the Service (the "Service Form"). TL does not have access to or own any data, text, information, graphics or other materials that the Customer uses in conjunction with the Service Form

(such material shall be collectively referred to as the "Customer Data"). The Customer, not TL, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and TL shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. **CUSTOMER SHALL HAVE THE SOLE RESPONSIBILITY REGARDING THE MANAGEMENT, STORAGE, SECURITY, PRIVACY AND USE OF THE SERVICE AND CUSTOMER DATA (INCLUDING, BUT NOT LIMITED TO, REQUIREMENTS MANDATED BY THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996, PUBLIC LAW 104-191). THE SERVICE DOES NOT MANAGE, COPY OR STORE THE SERVICE FORM CREATED OR THE CUSTOMER DATA.**

3.5. The Customer represents and warrants to TL that Customer Data: (a) they the legal right to use the Customer Data in conjunction with the Service; and (b) does not contain any content that is unlawful, tortuous, defamatory, libelous, deceptive, fraudulent or invasive of another party's privacy or publicity.

3.6. Licensee acknowledges that TLMC may compile certain general information related to use of the System. Such data may be used for general scientific research, improvements to the Software and triage practices, disease tracking and epidemic surveillance. The data used for such purposes will not include any identifiable practice or patient information of Licensee.

3.7. **CUSTOMER AGREES THAT THE SERVICE AND PROTOCOL (INCLUDING ANY UPDATES TO THE PROTOCOL) SHALL NOT BE USED UNLESS THEY HAVE BEEN REVIEWED AND APPROVED BY APPROPRIATE MEDICAL PROFESSIONALS EMPLOYED OR RETAINED BY CUSTOMER OR CUSTOMER'S MEDICAL ADVISORY PANEL, WHICH IS SOLELY RESPONSIBLE FOR OVERSEEING THE USE OF THE PROTOCOL BY CUSTOMER. TL AND ITS LICENSORS DISCLAIM ANY AND ALL LIABILITY FOR THE USE OF THE PROTOCOL, WHICH IS TO BE USED AT THE CUSTOMER'S OWN RISK AND RESPONSIBILITY, AND IN PARTICULAR DISCLAIMS RESPONSIBILITY FOR ANY HARMFUL CONSEQUENCE, LOSS, INJURY, OR DAMAGE ASSOCIATED WITH THE USE AND APPLICATION OF INFORMATION OR ADVICE INCLUDED IN THE PROTOCOL. TL AND ITS LICENSORS MAKE NO WARRANTY OF ANY KIND REGARDING THE PROTOCOL, EITHER EXPRESS OR IMPLIED. USE OF THE PROTOCOL REQUIRES THE INTELLECT AND JUDGMENT OF A TRAINED AND CLINICALLY EXPERIENCED LICENSED HEALTH PROFESSIONAL WHO IS ALSO TRAINED AND FAMILIAR WITH THE PROTOCOL. NON-LICENSED AND NON-HEALTH PROFESSIONALS SHOULD NOT USE THE PROTOCOL.**

3.8. TL shall have the right during the Term of this Agreement to list and name the Customer as a user of the Service.

4. Payment and Billing

4.1. The Service shall be provided at the fee set forth in Exhibit A (the "Service Fee"). Customer shall pay the Service Fee, plus all applicable sales, use, value-added, excise or other applicable taxes and duties, on the date set forth in Exhibit A. TL shall have no obligation to refund any portion of the Service Fee in the event this Agreement is terminated pursuant to Section 1.1 above.

4.2. TL reserves the right to suspend or terminate this Agreement and the Customer access to the Services if the Customer fails to pay for Services. Delinquent payments are subject to interest of one percent (1.0%) per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all reasonable expenses of collection.

5. Limitation of Liability

EXCEPT FOR THE OBLIGATIONS SET FORTH IN SECTION 6 (INDEMNIFICATION), IN NO EVENT WILL (A) EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES; OR (B) EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM THE CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

6. Indemnification

6.1. The Customer shall indemnify and hold TL, its licensors and each such party's parent organizations, subsidiaries, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or

in connection with: (i) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by the Customer of warranties set forth in Section 7.2 below; (iii) the Customer's breach of Sections 2, 3.5 or 3.6 above; (iv) a third party claim brought against TL related to Customer's use of the Service or Protocol, or (v) negligent acts or omissions of the Customer or its employees.

- 6.2 TL shall indemnify and hold the Customer and its parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (a) a claim alleging that the Service directly infringes a copyright, a U.S. patent issued as of the Effective Date, or a trademark of a third party; or (b) a claim, which if true, would constitute a violation by TL of its warranties set forth in Section 7.1 below.
- 6.3 The party seeking indemnification shall (i) promptly give written notice of the claim to the other party; (ii) give the party providing indemnification sole control of the defense and settlement of the claim (provided that the party providing indemnification may not settle or defend any claim unless it unconditionally releases the other party of all liability); (iii) provide to the party providing indemnification all available information and assistance.

7. Warranties

- 7.1 TL warrants that: (i) it has the power and authority to enter into this Agreement and to perform all of its obligations; and (ii) it is the owner or authorized licensee of the Service.
- 7.2 The Customer represents and warrants that: (i) it has the power and authority to enter into this Agreement and to perform all of its obligations; and (ii) its performance under this Agreement shall comply with all applicable laws, rules and regulations.
- 7.3 TL warrants to the Customer that the Service shall be performed in substantial accordance with the functional descriptions of the Service found in Exhibit A to this Agreement. If the Service fails to so conform to that description of the Service, then TL shall, as Customer's sole remedy, make a commercially reasonable effort to correct the Service.
- 7.4 OTHER THAN AS SET FORTH IN THIS SECTION 7, TL SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. Other Provisions

- 8.1 Customer may not assign this Agreement to any person or entity. TL may assign this Agreement in the case of a merger, acquisition, divestiture, consolidation, or corporate reorganization (whether or not TL is the surviving entity).
- 8.2 This Agreement, along with Exhibits A, which is hereby incorporated by reference, constitutes the entire understanding of the parties and supersedes all prior negotiations, agreements and understandings. This Agreement may be amended only by written instrument signed by both parties.
- 8.3 If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. The failure of TL to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision.
- This Agreement shall be governed by the laws of the State of Florida, excluding its choice of law rules.
- The exclusive venue for all disputes under this Agreement shall be the state courts in Duval County, Florida or the Federal Courts of Florida.
- 8.4 Either party may give notice by written communication sent by first class mail or by pre-paid post to the other party's address set forth in the introductory paragraph of this Agreement or by e-mail to the e-mail address provided by Customer as part of the Service registration process and, in the case of TL, to legalnotices@triagelogic.com. Such notice shall be deemed to have been given upon the expiration of forty-eight (48) hours after mailing or posting (whether sent by first class mail, pre-paid post or e-mail).
- 8.5 This Agreement may be executed in one or more counterparts, each of which shall be deemed a duplicate original and all of which, when taken together, shall constitute one and the same document.

EXHIBIT A to the Day Protocol Service Agreement dated _____ by and between Triage Logic Management and Consulting, LLC and _____ (the "Agreement")

Service to be provided: The Services provide access to the "day" medical triage protocol developed by Barton Schmitt MD and David Thompson, MD. The user accesses the Services through a web browser. A key function of the Service is the ability to create a record of Protocol usage and the advice given regarding such usage. The Service provides the user with access to the Services' standard note template. This template shall allow the user to fill-out information concerning their use of the Protocol. After filling out the template, the user can print the completed template to a local user printer. For those user's with an electronic medical record system, the Service will provide the user with the ability to "cut and paste" the notes on the template to the user's electronic record system. TL shall provide a unique username and password for each user authorized by this Agreement.

Service Fee

For the first user of the Service the Customer shall pay TL a onetime, nonrefundable Set Up fee of ~~\$ 400~~ waived and a licensing fee of \$50 per month for one set of protocols (adult or pediatric) OR \$70 per month for both sets of protocols. For each additional user of the Service, the Customer shall pay TL a onetime nonrefundable Set Up fee of ~~\$ 400~~ waived and a licensing fee of 50 per month for one set of protocols (adult or pediatric) OR \$70 per month for both sets of protocols. The right to use the Services is based on a concurrent user model (i.e. the number of medical staff permitted to use the Services at the same time).

Customer has elected to purchase the right to have _____ concurrent users of the Services for the _____ set(s) of protocols. The onetime set up fee associated with this number of concurrent users is \$ waived. The monthly Service Fee associated with this number of concurrent user is \$ _____. The Customer may increase or decrease the number of concurrent users on ten (10) days written notice to TL. The monthly Service Fee is an advance payment for the next calendar month's Service.

Optional Add-On Features

Data Analytics and Reporting Portal	_____ \$250 Annually with a \$250 Setup Fee
Custom Orders Module/Email Care Advice	_____ \$100 Annually with \$250 Setup Fee

Payment of Service Fee and Consulting Fees

The set up and annual fee for each annual term shall be invoiced by TL no more than thirty (30) days prior to the anniversary of the first and each subsequent annual payment period. Payment will be due within thirty (30) days of the date of TL's invoice.

To the extent that TL consents to Customer's payment of the above fees by credit card, Customer (a) shall provide TL with the credit card information necessary for TL to use Customer's credit card to pay such fees; and (b) does hereby authorize, by signing the Agreement, TL's use of such credit card information to facilitate Customer's payment of the above fees on the invoice due dates. Payments not received by such time shall accrue interest at the rate of one percent (1%) per month.

- Consulting Fee: please contact us if you need consulting on setting up an emergency system for your organization

This Exhibit A is subject to the terms and conditions of the Agreement.

SIGNATURE PAGE:

**TRIAGE LOGIC MANAGEMENT AND CONSULTING,
LLC**

CUSTOMER _____

Signature: _____

Signature: _____

Name: **Charu Raheja**

Name: _____

Title: **CEO**

Title: _____

Date: _____

Date: _____

Credit Card Information

(no Amex)

I have Selected to use the credit card option:

_____. Yes

_____. No – send me an annual invoice

Payment Method :

Card Number :

Expiration Date:

Security Code on the back:

Customer Billing Information

Customer ID N/A

First Name

Last Name

Company

Address

City

State/Province

Zip Code

Phone

Fax

Email

Client Signature _____.

Date _____