



E-Prescription Terms and Conditions

These E-Prescription Terms and Conditions (“**E-Prescription Terms and Conditions**”) govern the provision of Cority’s E-Prescription module and form part of the Hosted Software and Services Agreement or the software as a service agreement (the “**Agreement**”) between Cority Software Inc. or its affiliate (“**Cority**”) identified on the order form or statement of work, and the entity identified as “**Client**” on the order form or statement of work.

By entering into an order form, statement of work and/or an agreement that references and incorporates these E-Prescription Terms and Conditions, Client accepts the terms and conditions set forth herein. If the individual accepting this Agreement is accepting on behalf of a company or other legal entity, such individual represents that they have the authority to bind such entity to these E-Prescription Terms and Conditions.

All capitalized terms not otherwise defined herein shall have the meaning given to them in the Agreement.

1. **DEFINITIONS**

1.1. “**Data Source**” means any data providers, such as health plans, that have entered into written agreements with Surescripts, either directly or indirectly, in order to allow access through the Surescripts network to information in its possession.

1.2. “**FDB**” means First Data Bank, Inc. which develops the FDB Licensed Solutions.

1.3. “**FDB Licensed Solutions**” means the First Data Bank software accessed through Cority’s E-Prescription Module which may include, without limitation, FDB MEDKNOWLEDGE™ Enhanced Package – via Cloud Connector and the FDB Interoperability Module, Core Package – via Cloud Connector.

1.4. “**Prescriber End-User**” means an individual that is located in the United States or a United States territory, that: (1) is employed by, is an active member of the medical staff of, or is otherwise performing healthcare services as a legally authorized representative of the Client; and (2) if required by applicable laws to be licensed, registered, or otherwise authorized by a Governmental authority, is properly and duly licensed, registered, or otherwise authorized with the appropriate governmental authority to perform the applicable healthcare services and has been issued a National Provider Identifier (“**NPI**”) by the appropriate Governmental authority.

1.5. “**Satisfactory Background Screening**” means, collectively, the following: (1) national federal criminal database check; (2) seven (7) year country of residence criminal conviction search (i.e., search of all countries in which individual has resided within the preceding seven (7) year period); (3) in each of (1) and (2) above, containing no felony or misdemeanor conviction that related to fraud or theft (including but not limited to, shoplifting, larceny, embezzlement, forgery, credit card fraud, or check fraud), the disposition of which is within seven (7) years; and (4) obtaining a piece of identification with a facial picture from each Prescriber End-User.

1.6. “**Surescripts**” means Surescripts, LLC which develops the Surescripts network.

1.7. “**Surescripts Data**” means any data or information relating to Surescripts, or its services or operations, provided to Client and/or its Prescriber End Users by or on behalf of Surescripts, including statistics collected by Surescripts regarding transactions processed by the Surescripts network, test data, test cases, configuration information, and problem description and resolution information.

1.8. “**Surescripts Materials**” means Surescripts Certification and Implementation Guides, the Surescripts network Certification Requirements document, the Surescripts Network Operations Guide, the Surescripts Style and Usage Guide, the Directory Guide, the CA Certification Practices Statement, privacy and patient consent policies, and other materials that Surescripts provides to enable access to the Surescripts network.

2. **ACCESS TO AND USE OF THE E-PRESCRIPTION MODULE**

2.1. Cority has agreed to provide to the Client access to Cority’s E-Prescription module through which licensed Client’s Prescriber End-Users can prescribe medications electronically (the “**E-prescription Module**”).

2.2. Client shall only allow Prescriber End-Users to access and to use the E-Prescription Module within the United States or a United States Territory.

2.3. Client shall monitor the use of the E-Prescription Module by its Prescriber End-Users and confirm that all messages transmitted via the E-Prescription Module originate from Prescriber End Users who have been approved to use the E-Prescription Module. Client warrants and represents that Client has obtained, in a manner compliant with all applicable law, a Satisfactory Background Screening for all of its Prescriber End Users and employees and contractors whose job descriptions or functional duties require or contemplate access to any private information accessible via the E-Prescription Module. Client agrees to update such Satisfactory Background Screening upon reasonable request by Cority. Promptly upon written request, Client shall verify in writing its compliance with the foregoing requirements by providing Cority with a written affidavit signed by an executive officer of the Client.

3. **CONFIDENTIALITY**

3.1. Client shall keep confidential, in accordance with the Agreement, any Surescripts proprietary and/or confidential information.

4. **ADHERENCE TO APPLICABLE LAW AND COMMERCIAL MESSAGING RULES**

4.1. Client shall comply with any and all applicable federal, state, local, common law, rules, regulations, directives, and guidelines, including but not limited to the Health Insurance Portability and Accountability Act (“HIPAA”) and related regulations; the Health Information Technology for Economic and Clinical Health Act (“HITECH”) and related regulations; the Anti-Kickback provisions of the Social Security Act and related regulations; and the federal Physician Self-Referral Prohibition provisions of the Social Security Act and related regulations.

4.2. Client shall obtain all necessary patient consents and authorizations in accordance with applicable law.

4.3. Client shall not and shall ensure that Prescriber End Users do not use any means, program, or device, or permit any other person to use any means, program, or device, including, but not limited to, advertising, instant messaging, and pop-up ads, to influence or attempt to influence, through economic incentives or otherwise, the prescribing decision of a Prescriber End User at the point of care if: (i) such means, program, or device (as described above) is triggered by, initiated by, or is in specific response to, the input, selection, and/or act of a prescriber or his/her agent prescribing a pharmaceutical or selecting a pharmacy for a patient; and (ii) that prescription shall be delivered via the Surescripts network. Notwithstanding the foregoing, Client may: (A) show information regarding a payer’s formulary and benefit plan design, including patient lowest cost options, on/off tier, prior authorization, step therapy, coverage status, and co-pay information; and/or (B) deliver or have delivered to Prescriber End Users clinical alerts that are sourced from payers and/or are attributed to generally recognized and reputable sources providing clinical information to the prescriber, even if, in the event of either (A) or (B), such information influences the patient or prescriber’s choice of pharmacy or other prescribing decisions. In addition, in the event of either (A) or (B) above, Client and Prescriber End-Users may access all pharmaceuticals known through generally available sources used in the industry, and all pharmacies, including all retail and mail service pharmacy options available; and (ii) not be designed to preclude a physician or patient from selecting any particular pharmacy or pharmaceutical. Any custom lists created and maintained by Prescriber End Users within Cority’s software product, including but not limited to: (i) an individual Prescriber End User’s most often prescribed medication list; (ii) an individual Prescriber End User’s most often used pharmacy list; and/or (iii) an individual Prescriber End User’s most often used SIGs (*i.e.*, instructions for the use of medications), are considered a violation of this Section. Any violation of this Section shall be deemed a material breach of this Agreement, and Cority may suspend or terminate access to the E-Prescription Module upon written notice as a result thereof.

5. **DISCLAIMERS**

5.1. Cority, Surescripts and the Surescripts Data Sources (together, “Service Providers”) make no representation or warranty regarding the availability through the E-Prescription Module of any particular data source in the E-Prescription Module. At any time, data sources in the E-Prescription Module may be added to or deleted from the E-Prescription Module or may limit Client’s access to their data, such changes may occur without prior notice to Client. Any Data Source, in its sole discretion, may elect not to receive prescriptions and other messages pursuant to this Agreement from any client and/or Prescriber End User.

5.2. The E-Prescription Module uses available technology to match patient identities to provide the services in accordance with this Agreement. Because patient information is maintained in multiple places, not all of which are accessible to Service Providers, and because not all patient information is kept in a standard fashion or is regularly updated, it is possible that false matches may occur or that there may be errors or omissions in the prescription benefit and/or medication history information provided pursuant to the Services. Therefore, it is the responsibility of any treating physician or other health care provider or facility (not the responsibility of Service Providers) to verify prescription benefit or medication history information through other means with each patient and/or the patient's representatives before such information is relied upon or utilized in diagnosing or treating the patient. Cority and Surescripts are not a health plan, health care provider or prescriber. Service Providers do not and cannot independently verify or review the information transmitted through the E-Prescription Module for accuracy or completeness. Pursuant to the foregoing, Client acknowledges that, and shall cause each Prescriber End User to acknowledge in writing that, the prescription benefit and medication history information provided hereunder is not complete or accurate, and that Service Providers do not provide any representations or warranties with respect to the accuracy or completeness of the prescription benefit or medication history information, and Client releases and holds harmless, and by contract shall cause each Prescriber End User to release and hold harmless, Service Providers and any person or legal entity providing prescription benefit or medication history information from any liability, cause of action, or claim related to the completeness or lack thereof of the prescription benefit or medication history information. In addition, Client shall by contract require that each Prescriber End User to confirm the accuracy of the prescription benefit and medication history information with his/her/its patient prior to providing any medical services based thereon, and that the Prescriber End User shall use his/her/it professional judgment in the provision of care. Client and Cority agree that Surescripts and its Data Sources shall be third-party beneficiaries to this section 5.2.

5.3. The E-Prescription Module is not intended to serve as a replacement for: (i) a written prescription where not approved as such by the appropriate Governmental authorities or where such written prescription is required for record keeping purposes; or (ii) applicable prescription documentation. Use of the E-Prescription Module is not a substitute for a health care provider's standard practice or professional judgment. Any decision with regard to the appropriateness of treatment, or the validity or reliability of information, is the sole responsibility of a patient's health care provider.

5.4. Client acknowledges and shall inform its Prescriber End-Users that Surescripts has unlimited rights to use all directory and related information on Prescriber End-Users that shall come to reside within the Surescripts network database, whether provided by Cority or otherwise, including all root, identity, and location-related information subject to compliance with applicable law (including, without limitation, all laws regarding the protection of PHI) and the terms of the Business Associate Agreement entered into between Surescripts and Cority.

5.5. Client acknowledges that Surescripts can decertify Cority's software at any time upon written notice to Cority, upon a good faith showing that such software is not compatible with (1) the Surescripts network, (2) patient safety, (3) certification requirements in Surescripts documentation, or (4) the terms and conditions of the agreement between Surescripts and Cority.

6. SURESCRIPTS DATA SOURCES

6.1. Any Data Source, in its sole discretion, may elect not to receive prescriptions and other messages pursuant to this Agreement from Client and/or Prescriber End User.

7. AUDIT

7.1. Client shall allow Cority and/or Surescripts to access, inspect, and audit records of the Client only to the extent relating to the use of the Surescripts network, Surescripts Data, and data or information provided by Service Providers, in such a manner as to not unduly interfere with Client's operations.

8. SURESCRIPTS MATERIALS

8.1. Client shall comply with Surescripts materials provided by Cority.

9. USE OF DATA

9.1. Client shall not retain a copy of, store in any medium, perform analytics on, aggregate in any manner, or otherwise perform any action with relation to any Surescripts Data other than as specifically permitted under

this Agreement; and (2) except as specifically set forth in this Agreement, Client shall act solely as a passive conduit of Surescripts Data.

9.2. If and only if Client has pharmacy operations, Client shall maintain all data and information provided by Surescripts data sources on a partitioned server on the non-pharmacy side of an internal firewall that is separated or "walled off" from all other pharmacy operations. Client shall not use data or information provided to Cority or to Client or its affiliates pursuant to Cority's agreement with Surescripts or this Agreement to promote dispensing pharmacy services or to augment Client's own medication history records.

10. SAFEGUARDING DATA

10.1. Client shall maintain appropriate safeguards to protect against the destruction, loss, or alteration of Surescripts Data or participant data that are no less rigorous than those maintained by Client for its own information of a similar nature, but no less than reasonable safeguards. Client shall have in place appropriate administrative, technical, and physical safeguards to protect the privacy and security of Private Information and PHI. Client shall reasonably safeguard Private Information and PHI from any intentional or unintentional use or disclosure that is in violation of the Privacy Rule under HIPAA, and limit incidental uses or disclosures made pursuant to otherwise permitted or required disclosures.

11. TERMINATION

11.1. Client acknowledges that Surescripts may terminate the use of the Surescripts network (with no cure period) with respect to Client or its Prescriber End-User if (1) Client or its Prescriber End-User is not duly licensed under applicable law to use Cority's software for the Surescripts services for which Surescripts has certified the application, or (2) an act or omission of such Client or its Prescriber End-User would constitute a material breach of Cority's agreement with Surescripts, effective upon Surescripts' delivery of written notice of such act or omission to Cority, which Cority shall forward to Client and/or Prescriber End-User, as applicable, within five (5) business days of receipt.

12. FIRST DATA BANK END USER PASS-THROUGH TERMS AND CONDITIONS

12.1. LICENSE GRANT AND RESTRICTIONS ON USE

- (a) Client shall only use and access, and ensure that Prescriber End-Users only use and access the FDB Licensed Solutions through Cority's Software in the United States of America and its territories and possessions solely as a source of drug product information within Cority's CorityOne™ EMR/ePrescribing to support outpatient clinics and physician offices.
- (b) Under no circumstances shall Client use or allow Prescriber End-Users to use the FDB Licensed Solutions or Cority Software, or any portion thereof, to develop a competitive product.
- (c) Client and its Prescriber End-Users shall obtain no implied license rights to the FDB Licensed Solutions. Any rights with respect to the FDB Licensed Solutions not expressly granted to Prescriber End-User under this Section 12 shall be retained by FDB.
- (d) Client and its Prescriber End-Users will not alter, amend, modify, or change in any respect, any of the FDB Licensed Solutions unless authorized to do so by FDB and will not alter, amend, modify or change in any respect, any of the Cority Software unless authorized to do so by Cority. Without limiting the foregoing, (i) Client and its Prescriber End-Users shall have no right to use, modify, reproduce or distribute the FDB Licensed Solutions, nor the right to license third parties to exercise any rights with regard to the FDB Licensed Solutions other than as expressly permitted by FDB and (ii) Client and its Prescriber End-Users shall have no right to use, modify, reproduce or distribute the Cority Software, nor the right to license third parties to exercise any rights with regard to the Cority Software other than as expressly permitted by Cority;

12.2. **DISCLAIMER OF WARRANTY. CLIENT AGREES THAT THE FDB LICENSED SOLUTIONS ARE PROVIDED ON AN "AS IS" BASIS. FDB MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR RELIABILITY OF THE DATA FROM WHICH THE FDB LICENSED SOLUTIONS ARE COMPILED, NOR THE COMPATIBILITY OF THE LICENSED**

SOLUTIONS WITH CORITY'S HARDWARE AND SYSTEMS, AND SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CLIENT AGREES THAT THE CORITY SOFTWARE IS PROVIDED ON AN "AS IS" BASIS. CORITY MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR RELIABILITY OF THE DATA ACCESSED THROUGH THE FDB LICENSED SOLUTIONS OR CORITY'S E-PRESCRIPTION MODULE, NOR THE COMPATIBILITY OF THE LICENSED SOLUTIONS OR CORITY'S SOFTWARE WITH PRESCRIBER END-USER'S OR CLIENT'S HARDWARE AND SYSTEMS, AND SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

12.3. Assumption of Risk. Without limitation of the disclaimer of warranties set forth above, Client acknowledges and agrees and shall ensure that its Prescriber End-Users acknowledge and agree that:

- (a) FDB represents and warrants that it has utilized reasonable care in collecting and reporting the information contained in the FDB Licensed Solutions and has obtained such information from sources believed to be reliable. FDB and by extension Cority do not, however, warrant the accuracy of codes, prices or other data contained in the FDB Licensed Solutions. Information reflecting prices is not a quotation or offer to sell or purchase. The clinical information contained in the FDB Licensed Solutions is intended as a supplement to, and not a substitute for, the knowledge, expertise, skill, and judgment of physicians, pharmacists, or other healthcare professionals in patient care. The absence of a warning for a given drug or drug combination should not be construed to indicate that the drug or drug combination is safe, appropriate or effective in any given patient.
- (b) The professional duty to the patient in providing healthcare services lies solely with the healthcare professional providing patient care services. FDB and Cority do not assume any responsibility for actions of Prescriber End-User or any personnel which may result in any liability or damages due to malpractice, failure to warn, negligence or any other basis.
- (c) Client, its Prescriber End-User and the other health care providers responsible for patient care shall retain full responsibility for all decisions relating to patient care, and the FDB Licensed Solutions and Cority Software shall not be used as a substitute or replacement for diagnosis or treatment recommendations or other clinical decisions or judgment.
- (d) The foregoing allocation of liability fairly reflects the economic circumstances and risks that Client, Prescriber End-User, FDB and Cority are willing to undertake in view of the amounts paid and/or payable by Client or its Prescriber End-Users for the license of the FDB Licensed Solutions and Cority's Software.

12.4. LIMITATION OF LIABILITY; INDEMNITY. WITH RESPECT TO CORITY'S SOFTWARE AND FDB LICENSED SOLUTIONS, IN NO EVENT WILL FDB OR CORITY BE LIABLE TO CLIENT AND ITS PRESCRIBER END-USER FOR ANY LOST REVENUES, PROFITS, DATA OR OTHER INFORMATION, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, ARISING OUT OF THE USE OF OR INABILITY TO USE THE FDB LICENSED SOLUTIONS OR THE CORITY SOFTWARE OR ARISING OUT OF OR IN ANY OTHER WAY CONNECTED WITH THE LICENSE GRANTED TO CLIENT AND PRESCRIBER END-USERS UNDER THE ORDER FORM, STATEMENT OF WORK OR AGREEMENT THAT REFERENCES THESE TERMS AND CONDITIONS, EVEN IF FDB AND CORITY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FDB'S AND CORITY'S TOTAL LIABILITIES, WHETHER ARISING UNDER CONTRACT OR OTHERWISE, ARE LIMITED TO TEN THOUSAND DOLLARS (\$10,000) IN AGGREGATE. CLIENT HEREBY COVENANTS AND AGREES AND SHALL ENSURE THAT IT'S PRESCRIBER END-USERS COVENANT AND AGREE TO INDEMNIFY, DEFEND, AND HOLD FDB AND CORITY HARMLESS FROM AND AGAINST ANY LIABILITY, LOSS, INJURY OR EXPENSE (INCLUDING REASONABLE ATTORNEYS' FEES AND COURT COSTS) IMPOSED UPON, INCURRED OR SUFFERED BY FDB AND/OR CORITY RELATING TO OR ARISING OUT OF ANY ALLEGATION OR CLAIM BY ANY THIRD PARTY THAT THE USE OF THE FDB LICENSED SOLUTIONS AND CORITY SOFTWARE, OR ANY INFORMATION CONTAINED THEREIN, CAUSED OR CONTRIBUTED TO THE PERSONAL INJURY OR DEATH OF AN INDIVIDUAL.

12.5. **Third Party Beneficiary.** Client and Prescriber End-Users acknowledge and agree that FDB is a third party beneficiary of these Terms and Conditions.

13. CONFLICT

13.1. In the event of any conflict between this Appendix and the Software and Services Agreement of which it is a part, this Appendix will control.