

Terms of Use for Noah ES Solution and HIPAA BAA

By using this website and the Noah ES Solution ("Noah ES") Customer agrees to be bound by these Terms of Use (the "Terms") and to the collection and use of any information as set forth in our Privacy Policy ([esprivacypolicy.himsa.com](https://www.himsa.com/es/privacypolicy.himsa.com)). CUSTOMER SHOULD READ THESE TERMS AND CONDITIONS BECAUSE THEY MAY LIMIT ITS LEGAL RIGHTS. PLEASE REVIEW THE ARBITRATION TERMS BELOW AS THEY WILL REQUIRE CUSTOMER TO AGREE TO BINDING ARBITRATION. THESE TERMS APPLY TO ALL USERS AND OTHERS WHO ACCESS NOAH ES ("Users").

1. About Noah ES, functionality, right of use, and access

- 1.1 The Noah ES solution is a web-based service intended for use by the Hearing Care Business ("Customer") only, whereby an employee or external consultant with a Hearing Care Business (a "Hearing Care Professional"), may enter or use a patient's data in order to provide Hearing Health Care Services.
- 1.2 Noah ES is produced and marketed by HIMSA America Inc. ("HIMSA"), a Minnesota corporation.
- 1.3 The legal entity on whose behalf these Terms are accepted becomes HIMSA's Customer.
- 1.4 By accepting this Agreement, Customer acknowledges and accepts the functionality of Noah ES, which may change from time to time, as documented on [noah-es.com](https://www.noah-es.com).
- 1.5 Customer is responsible for ensuring that only Users that Customer trusts to have sufficient knowledge about how to use Noah ES will be added as Users. Sufficient knowledge includes but is not limited to having sufficient training, knowledge, and knowhow as to the use of Noah ES.
 - 1.5.1 Customer is responsible for ensuring that each User is set up with an individual User account in Noah ES.
 - 1.5.2 Customer is also responsible for any use of Noah ES undertaken by an external consultant or User using Customer's account/access. Customer acknowledges and accepts that an external User may only use Noah ES on behalf of Customer.
- 1.6 Customer furthermore accepts that the functionality and the User interface of Noah ES may be changed from time to time in connection with development and updates of Noah ES.
- 1.7 Upon timely payment to HIMSA of the fees due, Customer acquires a non-exclusive right to access and use Noah ES in accordance with these Terms.

1.8 The Customer can get access to Noah ES and can start using Noah ES after entering and paying a Noah ES subscription from the website. The Customer will need to use a Noah ES compatible Client application(s) to process Patient data in Noah ES. The Noah ES compatible Client application can be produced by HIMSA or member companies of HIMSA, and it is the responsibility of the Customer to install or use this application(s) and grant it access to the Customers data.

1.8.1 HIMSA provides a Noah ES Client for free, which is available from the download section of noah-es.com.

1.9 The Customer has access to Noah ES for as long as the subscription is maintained and paid for by the Customer. If the Customer does not close its account a new Subscription period will automatically be entered and charged on the credit card.

1.10 The details of the subscription model and prices can be found here: noah-es.com.

2. Scope of access

2.1 During the Term HIMSA grants to Customer a limited, non-transferable, revocable, non-exclusive license to access and use Noah ES services and related documentation, solely for the Users(s) for which access has been purchased. The foregoing license is not a sale and HIMSA retains all rights therein. In consideration of this authorization, Customer agrees that any copies of information obtained from Noah ES shall display all copyright, trademark and all other proprietary notices of HIMSA. HIMSA reserves all rights not expressly granted under these Terms.

2.2 Noah ES can only be accessed via the Internet using a Client workstation with adequate internet access, a supported browser and, if applicable, a Noah ES Compatible Client application (see minimum requirements on noah-es.com). It is Customer's sole responsibility to ensure adequate access to the Internet and to ensure that the Client workstation is using one or more supported Noah ES Compatible Client application(s) or browser and that the Client workstation is adequately protected against unauthorized access and use.

2.3 Access includes, unless otherwise agreed, the standard functionality of Noah ES.

2.4 In order to adhere to section 1.5 Customer shall create access for additional Users or delete Users as appropriate, provided however that the Users always adhere to the specific requirements for using Noah ES, and it is within the limits of the chosen subscription.

2.4.1 The granted right of use includes Customer's use of Noah ES for internal use only. Access to Noah ES may take place at Customer's premises or remotely by Customer's Users.

2.5 Customer shall be liable for all configuration and use of Noah ES.

3. Communications

- 3.1 The parties may communicate with each other with binding effect using electronic means (e.g., via the Noah ES support portal and email).
- 3.2 The Customer's communication options rely on the purchased subscription as described on noah-es.com.

4. System requirements

- 4.1 Detailed system requirements for access to and the use of Noah ES can be found at www.noahes.com.

5. Commencement of use

- 5.1 Prior to using Noah ES, Customer shall create a Noah ES account from the HIMSA website, where Customer must select the subscription model which meets the Customer's requirements.
- 5.2 Once the Customer has accepted these terms and the payment is accepted the subscription will be active and the Customer can commence using Noah ES.
- 5.3 Commencement of use shall begin when the effective payment of the fees is completed, and the commencement date shall set the time for the future renewal dates. Any attempt by Customer to transfer any of the rights, duties, or obligations hereunder, except as expressly provided for in these Terms, is void.
- 5.4 The Customer's subscription model may be adjusted to reflect the actual usage and may result in an upgraded subscription should the Customer's use of Noah ES exceed the chosen subscription model. The Customer will be notified of a potential price change and Customer accepts any price change by the continued use of Noah ES. As an alternate, the Customer shall bring its use of Noah ES in line with its current subscription model.

6. Number of Users and data storage

- 6.1 Customer may create the number of Users that the subscription allows for, provided that the Users fulfil the requirements in section 1.5.
- 6.2 The subscription model selected will define the available data storage that is included in the Customer's account.

7. Consultancy assistance

- 7.1 Configuration of Noah ES to suit Customer's specific requirements, import and/or export of data or any other assistance are not included in these terms and may be undertaken under a separate agreement with payment based on time and materials.

8. Support

- 8.1 Customer will have access to technical support via electronic means. HIMSA will respond to enquiries within the agreed terms for the chosen subscription.
- 8.2 Any support regarding the use of Noah ES will only include Support of Noah ES functionality. Support on integrated third-party software or hardware must be directed to the third-party provider.
- 8.3 The support response times are dependent on the Subscription selected, but HIMSA will usually respond within 2 business days. Should the response time exceed the promised subscription support time, Customer will receive information about the expected response time.
- 8.4 If the chosen subscription model includes HIMSA Direct Support, the Customer may contact HIMSA directly via phone or email within Business hours (Central Standard Time).

9. Maintenance

- 9.1 HIMSA will on an on-going basis maintain Noah ES to keep the Service up to date, in particular when required due to agreed regulatory changes from time-to-time, we may issue upgraded versions of the Noah ES. Customer agrees that these Terms will apply to all such upgrades. We may add or remove features, and while we will do our best to give Customer advance notice about any major changes, Customer acknowledges that HIMSA may stop, suspend, or change the Noah ES at any time without prior notice. Customer shall be responsible for notifying HIMSA in writing of any new regulatory changes that impact Noah ES in the jurisdiction in which it operates. Customer accepts that it may take as much as 12 months to update Noah ES to any new regulation within the supported jurisdictions, from the point in time where a Customer in writing informs HIMSA about the new regulatory changes.
- 9.2 Maintenance does not by default include new functionality, as HIMSA can chose to release new functionality in new modules and provide them to Customer. Access to and use of any new modules may be subject to payment of an additional and/or separate fee. HIMSA reserves the right from time to time to make changes to Noah ES. These changes may include discontinuing, temporarily or permanently, any service offered by, or through Noah ES (or any part thereof) with or without notice. Customer agrees that HIMSA shall not be liable to it for any changes to Noah ES.

10. Availability and maintenance windows

- 10.1 HIMSA intends that Noah ES has an availability of at least 99 % of the time, which is measured and calculated in accordance with the sub-processor's Service Level Agreement.
- 10.2 In order to maintain and update Noah ES, HIMSA will from time-to-time plan and execute maintenance work, where Noah ES may be unavailable. Where HIMSA has announced such maintenance work at least 24 hours in advance, this unavailability does not affect the measured target availability.

11. Intellectual Property Rights

- 11.1 Subject to the limited access granted hereunder, HIMSA reserves all rights, title, and interest in and to Noah ES and all subsequent versions of Noah ES, including all copyrights and related intellectual property and proprietary rights. No rights are granted to Customer under this Agreement other than the limited license and use rights.

HIMSA will own any suggestions, enhancement requests, recommendations or other feedback provided by Customer and its Users relating to the operating and use of Noah ES or its future development

- 11.2 Neither Customer nor any User may, or may attempt to, (a) modify, alter, tamper with, repair, or otherwise create derivative works of Noah ES (and must use them strictly as they are provided), (b) reverse engineer, disassemble, or decompile Noah ES or apply any other process or procedure to derive the source code of any software, (c) access or use Noah ES in a way intended to avoid incurring fees or exceeding usage limits or quotas, or (d) resell or sublicense the Noah ES services. All access rights granted are conditional on continued compliance with this Agreement
- 11.3 HIMSA has no rights, title, or interest to Customer's data.
- 11.4 HIMSA has enabled Noah ES to gather information and report this information to HIMSA.
- 11.4.1 The information gathered is information about the configuration of Customer's IT installation including, but not limited to, the configuration of the Client Workstations from which the Noah ES is accessed, the use of the Noah ES and the location of the Client Workstation.
- 11.4.2 The information gathered may also include information about the use of applications created by HIMSA.
- 11.4.3 HIMSA will not gather any patient-related data.

11.4.4 HIMSA will use the information gathered in order to improve the Noah ES and HIMSA-created applications and to ensure that only copies of the HIMSA-created applications with a duly valid license are in use. HIMSA may also use the gathered information in accordance with its Privacy Policy: esprivacypolicy.himsa.com.

12. Benchmark services

12.1 HIMSA may use the gathered information and information from the Customer's use of Noah ES (storage, number of users, usage of Noah ES, etc.) to produce and offer benchmark services to Customer either for free or against payment of a fee.

13. Liability and waiver

13.1 Customer shall be solely liable for any and all use of Noah ES, including access to Noah ES and any handling of Customer's data.

13.2 Customer shall also be solely liable for any and all settings and data produced by Customer with Noah ES and any subsequent amendments, deletions, etc. thereof.

13.3 CUSTOMER'S USE OF THIS SITE AND NOAH ES IS AT ITS SOLE RISK. THE SERVICES PROVIDED BY NOAH ES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. HIMSA ASSUMES NO RESPONSIBILITY FOR CUSTOMER'S ABILITY (INCLUDING ANY RELATED COSTS) TO OBTAIN ACCESS TO NOAH ES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, HIMSA EXPRESSLY DISCLAIMS ALL WARRANTIES WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT AND INCLUDING ANY WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT (INCLUDING CUSTOMER DATA OR THIRD-PARTY DATA) WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED.

13.4 HIMSA does not assume any responsibility for the use of Noah ES for which it is not intended or does not support. The instructions for Users explain the only intended use for Noah ES service. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM HIMSA OR FROM ANY SERVICE PROVIDED ON THE SITE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS OF USE.

13.5 HIMSA shall not assume any liability whatsoever for any use by Users where the Customer cannot document that the User(s) in question at the time of creation fulfilled the specific requirements of the Noah ES system.

13.6 HIMSA shall not be liable for any inability to access Noah ES caused by:

13.6.1 Customer's lack of internet access regardless of the reason.

- 13.6.2 Telecommunication problems, i.e., cable breakdown, unusually heavy traffic, etc. that makes it impossible to access Noah ES.
 - 13.6.3 Updates and other required maintenance of Noah ES or the underlying IT-infrastructure.
 - 13.6.4 Such extraordinary circumstances which are Acts of God or outside the control of HIMSA or its sub-suppliers, and which could not or should not reasonably have been foreseen and should not have been avoided or overcome when entering into this Agreement.
- 13.7 IN NO EVENT SHALL HIMSA BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR EXEMPLARY DAMAGES ARISING IN CONNECTION WITH THE USE OF THE NOAH ES OR THESE TERMS OF USE, OR ITS SUBJECT MATTER, INCLUDING LOSS OF DATA OR LACK OF ACCESS TO NOAH ES OR ANY OTHER THEORY OF LIABILITY GIVING RISE TO SUCH DAMAGES, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE AND REGARDLESS OF WHETHER HIMSA WAS ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES. Specifically excluded are damages caused by HIMSA's wilful misconduct or gross negligence.
- 13.8 Under all circumstances, HIMSA's liability for damages shall be limited to the total consideration received from Customer in the most recent twelve (12) months before the claim is made, however, with an absolute maximum of US\$10,000 during the entire term of the Customer's use of Noah ES.

14. Assignment

- 14.1 HIMSA is free to assign rights and/or liabilities in connection with Noah ES to a third party without prior written consent from Customer. Furthermore, HIMSA may use sub-suppliers to fulfil all or parts of its obligations.

15. Security, backup and local storage of data

- 15.1 In accordance with present industry standards for security, Noah ES services have been secured against unauthorized access as further detailed in the Data Processing Agreement or at esdataprocessing.himsa.com.
- 15.2 HIMSA has configured routines to ensure a quick recovery of Noah ES in the event of a crash. No warranty for the restore time is granted.
- 15.3 Noah ES is backed up daily. The backup includes all data.
 - 15.3.1 The backup copies are stored following best practices, and HIMSA conducts periodic restore-tests to ensure that the backups can be used to restore Noah ES.

15.3.2 Backups cannot be used to restore Customer's data if those data are lost as a result of actions or omission on the part of Customer.

15.4 Before closing an account, Customer shall ensure that all patient data have been copied/downloaded locally to Customer's system, as it is not possible for Customer to retrieve data after the account has been closed. Please see esdatadeletion.himsa.com for further information on how data is deleted in connection with the cancellation, termination, or migration of an Account within the HIMSA Services

16. Applicable law and arbitration

16.1 These Terms and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to these Terms, their formation (including any non-contractual disputes or claims) and Customer's use of and access to Noah ES shall be governed by and construed exclusively in accordance with the laws of the State of New York without *giving effect to any choice or conflict of law provision or rule.*

16.2 Any dispute arising out of or in connection with this Agreement or Customer's use of and access to Noah ES, including any disputes regarding the existence, validity or termination thereof, shall be finally settled by arbitration arranged by the American Arbitration Association ("AAA") in accordance with the rules of arbitration procedure adopted by the AAA and in force at the time when such proceedings are commenced.

16.3 The place of arbitration shall be New York, New York. The language of the arbitration shall be English, unless otherwise agreed between the parties. All aspects of the arbitration shall be treated as Confidential Information subject to the terms of this Agreement.

16.4 This arbitration clause shall not prevent a party from seeking injunctive relief or any other interim relief from a court of competent jurisdiction.

17. Termination, Disablement of Access and Miscellaneous

17.1 The access to and use of Noah ES may be terminated as follows:

17.1.1 If the Customer fails to pay the subscription access fee on the due date.

17.1.2 If Customer does not want to continue use of Noah ES, the Customer shall terminate its access to Noah ES in accordance with 17.3.

17.1.3 Customer may terminate the access to Noah ES at the end of the subscription period for which the access is paid. If the access is not terminated the access will automatically be extended for another subscription period and Customer will be liable to pay a new

access fee. The Customer will receive notice of the extension of the subscription period at least 15 days prior to the expiry of any term.

- 17.2 Termination, save for termination in accordance with clause 17.8, does not entitle Customer to a proportional refund of any unused vouchers or prepaid access fee or subscription fee.
- 17.3 If the Customer, after being given at least ten (10) days written notice, has not paid any outstanding fees or other amounts due to HIMSA, HIMSA is entitled to disable the Customer's access to Noah ES.
- 17.4 The access to Noah ES cannot be restored until Customer has paid all amounts due, including all costs.
- 17.5 If Customer in a 30-day period has not paid the subscription fee and thereby restored the account, HIMSA may delete the account and delete all data with the consequence that the account can no longer be restored.
- 17.6 In addition, either party may terminate this access of use without notice if the other party has not remedied a material breach at the latest ten (10) working days after having received a written demand thereof.
- 17.7 Customer agrees **that**, except as otherwise expressly **provided** in this **Terms of USE**, there shall be **no** third-party beneficiaries to this agreement.
- 17.8 The failure of HIMSA to exercise or enforce any right or provision of these Terms of Use shall not constitute a waiver of such right or provision. If any provision of these Terms is found by a court of competent jurisdiction to be invalid, the other terms and provisions of the Terms shall remain in full force and effect.
- 17.9 Customer agrees that its Noah ES account is non-transferable and its access to its account or its contents may be terminated at any time in HIMSA's sole discretion for breach of these Terms, fraudulent or illegal activity or based on inactivity on the Noah ES service.
- 17.10 Customer agrees that any claim or cause of action that it may have arising out of or related to use of any services provided by HIMSA or these Terms must be filed within one (1) year after the date that such claim or cause of action arose or be forever barred.
- 17.11 These Terms constitute the entire agreement between Customer and HIMSA and govern its use of Noah ES and the Noah ES service. They may not be amended, except by a signed written agreement between HIMSA and the Customer.

BUSINESS ASSOCIATE AGREEMENT

This Privacy Agreement ("Agreement") is entered into by and between the Noah ES Customer, the "Covered Entity" as defined in 45 CFR 160.103 (hereinafter "Customer" and HIMSA America Inc., the "Business Associate", as defined in 5 CFR 160.103 (hereinafter "HIMSA").

WHEREAS, the Customer has retained HIMSA to provide certain services, which are more fully described in a separate agreement for services between the Parties (the "Terms of Use"). In connection with providing its services HIMSA may use certain individual protected health information that is subject to protection under the HIPAA Privacy and Security Rules, and related statutes; and

WHEREAS, the Parties intend to ensure the confidentiality, privacy and security of any protected health information as required by HIPAA and the related regulations published by the U.S. Department of Health and the terms of the HITECH Act and other applicable laws; and

WHEREAS, the Parties wish to set forth the terms under which the HIMSA may use PHI (as defined herein) so that the Customer complies with the applicable rules of HIPAA and the terms of HITECH Act applicable to business associates.

NOW THEREFORE, in consideration of the mutual promises and agreements set forth below, the Customer and HIMSA agree as follows:

1. Term. The Term of this Agreement shall be effective as of effective as of the date on which the authorized party accepting this Business Associate Agreement completes the electronic acceptance process and clicks the "Accept" button and shall terminate on the date the Customer elects to notify HIMSA that it wishes to terminate the use of Noah ES or on the date Customer terminates for cause as authorized in section (3) of this Agreement, whichever is sooner.

2. Responsibilities of HIMSA. HIMSA agrees to use PHI (as defined herein) only as necessary to provide the services described in Terms of Use and shall limit any disclosure of PHI to the minimum necessary to accomplish the purposes of the Services Agreement. HIMSA will not use, disclose or distribute any PHI other than permitted by this Agreement or the Terms of Use or as required by law.

2. HIPAA Assurances. In the event HIMSA creates, receives, maintains, or otherwise is exposed to personally identifiable or aggregate patient or other medical information defined as Protected Health Information ("PHI") in the Health Insurance Portability and Accountability Act of 1996 or its relevant regulations ("HIPAA") and otherwise meets the definition of Business Associate as defined in the HIPAA Privacy Standards (45 CFR Parts 160 and 164), HIMSA shall:

(a) Recognize that HITECH (the Health Information Technology for Economic and Clinical Health Act of 2009) and the regulations thereunder (including 45 C.F.R. Sections 164.308, 164.310, 164.312, and 164.316), apply to a HIMSA in the same manner that such sections apply to the Customer;

(b) Not use or further disclose the PHI, except as permitted by law;

(c) Not use or further disclose the PHI in a manner that had Customer done so, would violate the requirements of HIPAA;

(d) Use appropriate safeguards (including implementing administrative, physical, and technical safeguards for electronic PHI) to protect the confidentiality, integrity, and availability of and to prevent the use or disclosure of the PHI other than as provided for by this Agreement;

(f) Report promptly to Customer any breach or security incident or other use or disclosure of PHI not provided for by this Agreement of which HIMSA becomes aware. In the event of a breach or security incident, Customer will have the sole right to determine whether notice will be given to any individuals, regulators, law enforcement agencies, consumer reporting agencies, media outlets, the U.S. Department of Health and Human Services or any other party as required by law or in its discretion. Customer will also have the exclusive right to decide the contents of any notice, whether to offer any remediation and the nature of such remediation for the affected individuals;

(g) Ensure that any subcontractors or agents who receive or are exposed to PHI (whether in electronic or other format) are explained HIMSA's obligations under this paragraph and agree to the same restrictions and conditions;

(h) Make available PHI in accordance with the individual's rights as required under the HIPAA regulations;

(i) Account for PHI disclosures for up to the past six (6) years as requested by Customer, which shall include:

(1) Dates of disclosure, (2) names of the entities or persons who received the PHI, (3) a brief description of the PHI disclosed, and (4) a brief statement of the purpose and basis of such disclosure;

(j) Make its internal practices, books, and records that relate to the use and disclosure of PHI available to the U.S. Secretary of Health and Human Services for purposes of determining HIMSA's compliance with HIPAA;

(k) Incorporate any amendments or corrections to PHI when notified by Customer or enter into a Business Associate Agreement or other necessary Agreements to comply with HIPAA; and

(l) Cooperate and coordinate with Customer in the investigation of any violations of the terms of this Agreement or any security breach.

3. Termination upon Breach of Provisions. Notwithstanding any other provision of this Agreement, Customer may immediately terminate this Agreement if it determines that HIMSA has intentionally breached any term in this Agreement. Alternatively, Customer may give written notice to HIMSA in the event of a breach and give HIMSA ten (10) business days to cure such breach. Customer shall also have the option to immediately stop all further disclosures of PHI to HIMSA if Customer reasonably determines that HIMSA has breached its obligations under this Agreement. In the event that termination of this Agreement and the Terms of Use is not feasible, HIMSA hereby acknowledges that the Customer shall be required to report the breach to the Secretary of the U.S. Department of Health and Human Services, notwithstanding any other provision of this Agreement or any other agreement to the contrary.

4. Return or Destruction of Protected Health Information upon Termination. Upon the termination of this Agreement, unless otherwise directed by Customer, HIMSA shall either return or destroy all PHI received from the Customer or created or received by HIMSA on behalf of the Customer in which HIMSA maintains in any form. HIMSA shall not retain any copies of such PHI. Notwithstanding the foregoing, in the event that HIMSA determines that returning or destroying the Protected Health Information is infeasible upon termination of this Agreement, HIMSA shall provide to Customer notification of the condition that makes return or destruction infeasible. To the extent that it is not feasible for HIMSA to return or destroy such PHI, the terms and provisions of this Agreement shall survive such termination or expiration and such PHI shall be used or disclosed solely as permitted by law for so long as HIMSA maintains such Protected Health Information.

5. No Third-Party Beneficiaries. The parties agree that the terms of this Agreement shall apply only to themselves and are not for the benefit of any third-party beneficiaries. No term or condition herein shall be construed to make HIMSA and agent of Customer.

7. Amendment. HIMSA and Customer agree to amend this Agreement to the extent necessary to allow either party to comply with the Privacy Standards, the Standards for Electronic Transactions, the Security Standards, or other relevant state or federal laws or regulations created or amended to protect the privacy of patient information. All such amendments shall be made in a writing signed by both parties.

8. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Customer to comply with the then most current version of HIPAA and the HIPAA privacy regulations.

9. Definitions. Capitalized terms used in this Agreement shall have the meanings assigned to them as outlined in HIPAA and its related regulations.

10. Governing Law. This Agreement shall be governed by the law of the state of New York and any action relating to this Agreement shall be filed in the appropriate State or Federal court located in New York, New York. Each Party consents to the jurisdiction of such courts and waives any right to challenge the appropriate forum, whether based on the doctrine of *forum non conveniens* or otherwise.

11. Survival. The obligations imposed by this Agreement shall survive any expiration or termination of this Agreement.

12. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein and it supersedes and replaces any former business associate agreement.

Your Questions. If Customer has any questions regarding these Terms of Use, you should open a support issue at essupport.himsa.com with using "Terms of Use" in the subject line.