



## Exhibit E –User Terms and Conditions including Business Associate Agreement

### 1. Introduction.

The Circadiancance Synergy Cloud platform includes a computer software application accessed through a portal website (“Website” and collectively the “Platform”) that is owned and operated by Circadiancance LLC, (“Circadiancance,” “we,” or “us”). The Platform connects prescribing physicians and their staff or designated agents (“Physicians”) and end user patient’s monitoring devices (“Devices”) for patient data collection (“Patient Data”). The Platform enables a registered Physician to observe Patient Data and provide commentary and/or instructions. All Physicians must be registered users to access the Platform. You must read this Agreement in its entirety and consent to abide by these terms and conditions in order to access and use the Platform.

This Agreement, which is a legal agreement between you as a Physician or other authorized user (“You” or “User”), with Circadiancance. This Agreement shall govern Your use of and access to the Platform. By checking or clicking on any acceptance boxes, submitting any data, text or content or simply by making use of the Website, You (a) accept this Agreement and agree to be bound by each of its terms, and (b) represent and warrant to Circadiancance that (i) You are at least 18 years of age and have the authority to enter into this Agreement, (ii) this Agreement is binding and enforceable against You, (iii) to the extent You are accepting this Agreement on behalf of an entity, You have the right and authority to agree to all of the terms set forth herein on behalf of such entity, and (iv) You have read and understand Circadiancance’s Privacy and Security Policy, the terms of which are posted at XXXXXXXXXXXXXXX on the Website and incorporated herein by reference (the “Privacy Policy”), and agree to abide by the Privacy Policy and the limitations of this Agreement. Circadiancance may unilaterally amend this Agreement or the Privacy Policy from time to time, each of which amendments shall be required to be reviewed and accepted prior to accessing the Platform after publication.

### 2. Purpose.

The purpose of this Agreement is to set forth the terms and conditions under which, among other things, (i) Circadiancance will grant access of the Platform to You, such that You can utilize the Platform through a computing device (collectively, the “Purpose”). For purpose of clarity, the nature of the relationship between between You and Circadiancance while using the Platform shall be solely to facilitate Your ability to view and/or manage content, devices and Patient Data and to provide responsive information thereto.

### 3. Authorization for Access.

Circadiancance hereby grants You non-transferable, non-exclusive, revocable, access to use the Platform through the Website during the Term (as defined below) solely for the Purpose. Circadiancance may, from time to time, update or modify the Platform, release new versions of the Platform and/or create new modules related thereto, each of which may, at Circadiancance’s discretion, be included within the authorization described above.

### 4. Restrictions.

Except as provided herein, You shall not directly or indirectly modify, reproduce, duplicate, copy, photocopy, print, republish, display, translate, transmit, distribute, sell, resell, rent, lease, loan, exploit, reduce to any electronic medium or machine-readable form, or otherwise make available in any form or by any means all or any portion of the Platform, whether electronically, mechanically or otherwise, in any form including, but not limited to, the copying of presentation, style or organization. You may not create compilations or derivative works of the Platform, content or any other materials. You shall not reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from the Platform, including, without limitation, any of the software comprising or in any way making up a part thereof.

You shall use the Platform solely for its intended Purpose and shall not use the Platform for the benefit of any third party except as specifically contemplated under this Agreement. You shall not use the Platform to post, transmit, convey, submit, distribute, store or destroy or modify any content, photographs, descriptions, drawings, content, audio materials, text, messages or other information (collectively, “Platform Information”): (a) in violation of any applicable law, statute, ordinance or regulation; (b) in a manner that will infringe the intellectual property rights of others; (c) that is defamatory, obscene or trade libelous; (d) that contains any viruses, Trojan horses, worms, time bombs, cancel bots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information; (e) that is false, misleading or inaccurate in any way; or (f) in violation of any applicable acceptable use policy or other privacy policy. You shall not violate or attempt to violate the security of the Platform. You may not engage in any conduct in conjunction with the Platform that misidentifies You or impersonates any person or entity, or falsely states, implies, or otherwise misrepresents Your affiliation with a person or entity by, for example, pretending to be someone other than You or pretending to represent a company or organization that You are not affiliated with or authorized to represent; or could otherwise reasonably be deemed or viewed to be unethical, illegal or offensive.

You may not use the Platform or any content associated with the Platform in any manner that may infringe upon any copyright or other intellectual property right of Circadiancance or any third party.

### 5. Certain Responsibilities.

You as a User shall be solely responsible for: (i) all Platform Information you input into the Platform; (ii) complying with all applicable laws, rules and regulations at all times; and (iii) securely maintaining all passwords and access codes to the Platform, and refraining from sharing or otherwise permitting third parties to use any such passwords and/or access codes to access the Platform.



#### 6. Circadiance Rights.

Circadiance shall be entitled, at its sole discretion, to suspend, restrict and/or terminate, without notice of any kind, Your access to the Platform or Your account for any reason. Circadiance reserves the right to remove any of Your Platform Information from the Platform, block the sending of any inquiry or other content Circadiance deems inappropriate in its sole discretion, and may terminate all access to the Platform at any time in its sole discretion for any or no reason. Circadiance reserves the right to monitor all content provided within the Platform.

#### 7. Indemnification.

By accepting the terms of this Agreement, and using the Platform, You agree that You shall defend, indemnify and hold Circadiance, its affiliates, licensors, and each of their officers, directors, other users, 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) Your violation or breach of any term of the terms of this Agreement or any applicable law or regulation, whether or not referenced herein; (b) Your violation of any rights of any third party, including any information shared with other users through the Platform or otherwise, or (c) your use or misuse of the Platform.

#### 8. Intellectual Property.

##### (A) General Ownership.

Nothing in this Agreement shall be deemed to confer any intellectual property rights to any party. Circadiance is the sole owner of (i) all names and marks associated with the Platform, including, without limitation "Circadiance" and "Synergy," (ii) all copyrights associated with the content and operation of the Platform, including, without limitation all source and object code, (iii) any technology, whether patentable or not, and all trade secrets and other intellectual property related to the operation of the Platform. All suggestions, recommendations, bug-fixes, error-fixes or other communications from You to Circadiance regarding the Platform shall, upon submission, be owned solely and exclusively by Circadiance.

##### (B) Use of Posted Information.

In exchange for Your use of the Platform, You hereby grant to Circadiance an unlimited, perpetual, irrevocable, fully-paid, transferable, assignable, sub-licensable, worldwide license to use, reproduce, modify, publish, edit, translate, distribute, commercially exploit, repurpose, perform and display any and all Platform Information You provide as required for the operation of the Platform and the retention and use of Patient Data.

#### 9. Business Associate.

To the extent that Circadiance or any of its subscriber entities (collectively "Business Associate") discloses Protected Health Information to You pursuant to your use of the Platform, and as required by the Health Insurance Portability and Accountability Act of 1996, as amended, ("HIPAA"), You and Business Associate agree to the following terms and conditions, which are intended to comply with HIPAA, the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), and their implementing regulations:

The parties contemplate that Business Associate will rely on You to assist with and assume responsibility for certain HIPAA and HITECH Act compliance obligations, to the extent they relate to information accessed within or in conjunction with the Platform by You.

##### A. General Terms and Conditions

(1) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and subparts A and E of part 164.

(2) "Security Rule" shall mean the Standards for Security of Individually Identifiable Health Information at 45 C.F.R. part 160 and subparts A and C of part 164.

(3) Capitalized terms used but not otherwise defined in this BA Agreement shall have the same meaning as those terms in the Privacy Rule and Security Rule, including 45 CFR §160.103 and 164.501.

##### B. Your Obligations and Activities.

(1) You agree to not use or disclose Protected Health Information other than as permitted or required by these Terms and Conditions or as Required By Law.

(2) You agree to use appropriate safeguards to prevent use or disclosure of the Protected Health Information as provided for by these Terms and Conditions.

(3) You agree to report to Business Associate's Privacy Official, within five (5) business days, any use or disclosure of the Protected Health Information not provided for by these Terms and Conditions, including the identification of each individual whose unsecured Protected Health Information has been, or is reasonably believed by You to have been, accessed, acquired, or disclosed during such breach.

(4) You agree to ensure that any person or entity to whom you provide Protected Health Information received from, or created or received by You pursuant to the Platform, agrees in writing to the same restrictions and conditions that apply through these Terms and Conditions to You with respect to such information.



(5) To the extent You have Protected Health Information in a Designated Record Set, You agree to provide access to Protected Health Information in a Designated Record Set to Business Associate in order to meet the requirements under 45 C.F.R. § 164.524, including provision of records in electronic form to the extent required by the HITECH Act.

(6) You agree to make any amendment(s) to Protected Health Information in your possession contained in a Designated Record Set that Business Associate directs or agrees to pursuant to 45 C.F.R. § 164.526, at the request of Business Associate.

(7) You agree to make your internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by You on behalf of Business Associate, available to Business Associate and/or the Secretary, in a time and manner designated by the Business Associate and/or the Secretary, as applicable, for purposes of determining Business Associate's compliance with HIPAA or the HITECH Act.

(8) You agree to document such disclosures of Protected Health Information in its possession and information related to such disclosures as would be required for Business Associate to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 and the HITECH Act.

(9) You agree to provide to Business Associate information collected in accordance with Section 9(B)(8) of these Terms and Conditions, to permit Business Associate to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 and the HITECH Act.

(10) You agree to, subject to subsection 9(D)(3)(b) below, return to the Business Associate or destroy, within fifteen (15) days of the termination of this Agreement, any Protected Health Information in Your possession other than contained within the Platform or otherwise authorized under a separate agreement with relevant patients or Business Associate agreements and retain no copies.

(11) You agree to mitigate, to the extent practicable, any harmful effect that is known to either party, of a use or disclosure of Protected Health Information in violation of these Terms and Conditions.

(12) You agree to indemnify, insure, defend and hold harmless Business Associate and Business Associate's employees, directors, officers, subcontractors, affiliates, agents, and members of its Workforce, each of the foregoing hereinafter referred to as an "indemnified party," against all actual and direct losses suffered by the indemnified party and all liability to third parties arising from or in connection with any breach of these Terms and Conditions or of any warranty hereunder or from any negligence, wrongful acts, or omissions, including the failure to perform your obligations under HIPAA, as well as the additional obligations under the HITECH Act, by You or Your employees, directors, officers, subcontractors, agents, or members of Your workforce. This includes, but is not limited to, expenses associated with notification to individuals and/or the media in the event of a breach of Protected Health Information held by You. Accordingly, on demand, You shall reimburse any indemnified party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any indemnified party by reason of any suit, claim, action, proceeding or demand by any third party which results from the indemnifying party's breach hereunder. The provisions of this paragraph shall survive the expiration or termination of these Terms and Conditions or any relevant Subscriber Agreement for any reason.

(13) In addition to its overall obligations with respect to Protected Health Information, to the extent required by the Security Rule, You will:

(a) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic Protected Health Information (EPHI) that you create, receive, maintain, or transmit on behalf of Business Associate as required by HIPAA;

(b) Ensure that any agent or subcontractor to whom You provide such EPHI agrees in writing to implement reasonable and appropriate safeguards to protect the EPHI; and

(c) Report to Business Associate any Security Incident of which You become aware.

(14) Except as otherwise allowed in these Terms and Conditions, HIPAA, and the HITECH Act, You shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an Individual unless the Individual has provided a valid, HIPAA-compliant authorization.

(15) You shall use and disclose only the minimum necessary Protected Health Information to accomplish the intended purpose of such use, disclosure or request. Prior to any use or disclosure, You shall determine whether a Limited Data Set would be sufficient for these purposes.

(16) Business Associate, in its sole and absolute discretion, may elect to delegate to You the requirement under HIPAA and the HITECH Act to notify affected Individuals of a breach of unsecured Protected Health Information if such breach results from, or is related to, an act or omission of Yours or the agents or representatives of Yours. If Business Associate elects to make such delegation, You shall perform such notifications and any other reasonable remediation services (i) at Your sole cost and expense, and (ii) in compliance with all



applicable laws including HIPAA and the HITECH Act. You shall also provide Business Associate with the opportunity to review and approve of the form and content of any breach notification that You provide to Individuals.

(17) You agree to comply with the following:

(a) Sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards) and 164.316 (policies and procedures and documentation requirements) of the Security Rule shall apply to You in the same manner that such sections apply to Business Associate. The additional requirements of the HITECH Act that relate to security and that are made applicable with respect to Covered Entities shall also be applicable to You and shall be and by this reference hereby are incorporated into these Terms and Conditions.

(b) Unless Business Associate agrees, in writing, that this requirement is infeasible with respect to particular data, You shall secure all Protected Health Information by a technology standard that renders Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute and is consistent with guidance issued by the Secretary specifying the technologies and methodologies that render Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals, including the use of standards developed under Section 3002(b)(2)(B)(vi) of the Public Health Service Act, as added by the HITECH Act.

(c) You may use and disclose Protected Health Information that You obtain or create only if such use or disclosure, respectively, is in compliance with each applicable requirement of Section 164.504(e) of the Privacy Rule, relating to business associate contracts. The additional requirements of Subtitle D of the HITECH Act that relate to privacy and that are made applicable with respect to Business Associate shall also be applicable to You and shall be and by this reference hereby are incorporated into these Terms and Conditions.

(d) In accordance with Section 164.504(e)(1)(ii) of the Privacy Rule, each party agrees that, if it knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party's obligation under these Terms and Conditions, the non-breaching party will take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the contract or arrangement, if feasible, or if termination is not feasible, report the problem to the Secretary.

(18) You represent and warrant that, as of the effective date of these Terms and Conditions, You have implemented compliance programs, including written policies and procedures, designed to ensure compliance with all Business Associate Agreements, as well as applicable state and federal privacy laws. These policies and procedures include, but are not limited to, policies related to mitigation of security breaches, training employees, documenting disclosures as required for an "accounting" (as that term is defined in HIPAA and as contemplated by subsection 9(B)(8) and (9) of these Terms and Conditions), and maintaining the physical and technical security of electronic data, including encryption. You represent and warrant that You are currently conducting business in material compliance with all applicable laws governing the privacy, security or confidentiality of individually identifiable health information and/or other records generated in the course of providing or paying for health care services.

C. Permitted Uses and Disclosures of Protected Health Information by You

(1) General Use and Disclosure Provisions

Except as otherwise limited in these Terms and Conditions, You may use or disclose Protected Health Information obtained from or on behalf of Business Associate to perform functions, activities, or services for, or on behalf of, Business Associate as specified in these Terms and Conditions, provided that such use or disclosure complies with HIPAA. You acknowledge and agree that You acquire no title or rights to the Protected Health Information as a result of these Terms and Conditions.

(2) Specific Use and Disclosure Provisions

(a) You may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Business Associate and fulfill its obligations under any underlying agreement with Business Associate, provided that such use or disclosure would not violate the Privacy Rule or Security Rule if done by the Business Associate.

(b) You may use and disclose Protected Health Information for the proper and necessary management and administration of Your functions or to carry out the legal responsibilities of You, provided that, as to any such disclosure, the following requirements are met:

(i) the disclosure is Required By Law; or

(ii) You obtain reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law, and the person notifies You of any instances of which it is aware in which the confidentiality of the information has been breached.



D. Survival and Termination

(1) Survival

Your obligations under these Terms and Conditions shall survive the termination of these Terms and Conditions and shall end when all of the Protected Health Information provided by Business Associate to You, or created or received by You on behalf of Business Associate, is destroyed or returned to Business Associate. If it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

(2) Termination for Cause

Upon Business Associate's knowledge of a material breach by You, Business Associate shall provide written notice to You and may terminate these Terms and Conditions and any underlying agreement with You if You do not cure the breach or end the violation within 30 days.

(3) Effect of Termination

(a) Except as provided below in paragraph 9(D)(3)(b) of these Terms and Conditions, upon termination of this Agreement, for any reason, You shall return or destroy all Protected Health Information received from Business Associate, or created or received by You on behalf of Business Associate. This provision shall apply to Protected Health Information that is in the possession of You or Your agents. You shall retain no copies of the Protected Health Information.

(b) In the event that You determine that returning or destroying the Protected Health Information is infeasible, You shall provide to Business Associate written notification of the conditions that make return or destruction infeasible, and, if Business Associate agrees, in writing, that return or destruction is infeasible, You shall extend the protections of these Terms and Conditions to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as You maintain such Protected Health Information. If it is infeasible for You to obtain any Protected Health Information in the possession of the You or Your agents, You must provide a written explanation to Business Associate and agree in writing to extend any and all protections, limitations and restrictions contained in these Terms and Conditions to Your and/or Your agents' use and/or disclosure of any Protected Health Information retained after the termination of these Terms and Conditions, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the Protected Health Information infeasible.

E. Interpretation and Amendment of these Terms and Conditions

A reference in these Terms and Conditions to a section of the Privacy Rule means the section as in effect or as amended. Any ambiguity or inconsistency in these Terms and Conditions shall be resolved in favor of a meaning that permits Business Associate to comply with the Privacy Rule, the Security Rule, and the HITECH Act.

F. No Third Party Rights/Independent Contractors

The parties to these Terms and Conditions do not intend to create any rights in any third parties. The parties agree that You are an independent contractor and not an agent of Business Associate.