

Welligent Telehealth Service End User License Agreement

Introduction.

Please read this End User License Agreement (“EULA”) carefully before accessing and using the Welligent Telehealth Service (as defined below). The Telehealth Service is available for use with the Welligent electronic health records system (the “System”). Welligent’s Privacy Policy related to the Telehealth Service, located at www.WelligentCommunity.com, is incorporated by this reference into this EULA. The Welligent Telehealth Service end user documentation and other technical materials and documentation provided by Welligent that describe the installation, operation, use and/or technical specifications of the Telehealth Service (the “Documentation”) are located at www.WelligentCommunity.com.

Binding Agreement.

This EULA constitutes a binding agreement between you and Welligent, Inc. and its affiliates and subsidiaries (“Welligent,” “we,” or “us”).

Acceptance.

WELLIGENT PROVIDES THE TELEHEALTH SERVICE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS EULA AND ON THE CONDITION THAT YOU ACCEPT AND COMPLY WITH THEM. BY CLICKING “I ACCEPT”, YOU (A) ACCEPT THIS EULA AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS, AND (B) REPRESENT AND WARRANT THAT (I) YOU, INDIVIDUALLY, ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT, AND (II) YOU, INDIVIDUALLY, HAVE THE RIGHT, POWER AND AUTHORITY TO ENTER INTO THIS EULA. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, DO NOT CLICK “I ACCEPT” AND YOU MUST NOT ENABLE, DOWNLOAD, USE OR ACCESS THE TELEHEALTH SERVICE OR THE RELATED DOCUMENTATION.

Revisions to EULA.

We may revise this EULA at any time by posting an updated version in the Welligent System and at www.WelligentCommunity.com. You should visit the page periodically to review the most current EULA, because you are bound by the terms and conditions of the then-current EULA. Your continued access or use of the Telehealth Service after any change to this EULA constitutes your binding acceptance of this EULA.

The Telehealth Service.

The “Telehealth Service” means, collectively, the third party telehealth software and applications, including related video, chat, invitation and other features, integrated into Welligent’s electronic health record system (the “System”) and accessible through the Welligent website, www.Welligent.com. The Telehealth Service is designed to support aspects of your organization or healthcare provider’s business process, which may include clinical process, coordination of services and service delivery and communication. The Telehealth Service enables you to conduct or participate in video, audio and chat communications in real-time with clients, patients, consumers, providers and other participants (collectively, “Participants”). In order to conduct or participate in telehealth sessions, you may receive or use the Telehealth Services to generate invitations by email or SMS text to one or more Participants designated by you. By clicking on the email or SMS invitation, Participants are able to join the session using a web browser, video camera and microphone connected to the Internet, provided that the Participant agrees to participate in the telehealth session. Once connected in the same telehealth session, you and other Participants should be able to hear and see each other in real-time. Welligent’s Telehealth Service supports both one-on-one video telehealth sessions between two individuals, or group video telehealth sessions between you and multiple Participants.

Welligent has integrated the Telehealth Service into various screens in the System only as a convenience. Welligent makes no representations about accuracy, reliability, completeness, or timeliness of any of the content of the Telehealth Service. You are using the Telehealth Service at your own risk. Additionally, Welligent may change, suspend or discontinue the Service or aspect or feature of the Service at any time, without notice or liability.

Internet Connectivity.

A dedicated connection to the Internet is necessary in order to use the Telehealth Service. You are solely responsible to obtaining and maintaining all minimum network requirements, connections, servers, peripherals, equipment, hardware, wiring, software, devices and other materials necessary to download, install, access and use the Telehealth Service. Welligent is not liable for any charges or costs incurred by you or any Users to enable you or such Users to access and/or use the Telehealth Service.

Users.

You are solely responsible for (a) ensuring that your use of the Telehealth Service complies with the terms and conditions of this EULA, the Documentation, and Welligent's Privacy Policy, a current copy of each of which is located at www.WelligentCommunity.com; and (b) obtaining all consents necessary or required for Participants to access and participate in the Telehealth Services.

License.

Subject to and conditioned upon your strict compliance with all terms and conditions set forth in this EULA, Welligent hereby grants you a non-exclusive, non-transferable, non-sublicenseable, limited license to access and use the Telehealth Service and Documentation, solely for your internal business purposes and solely as set forth in this paragraph and subject to all terms, conditions and limitations as set forth in this EULA. This license grants you the right, exercisable solely by and through your Users, to: (a) access and use the Telehealth Service in accordance with this EULA and the Documentation, and (b) download or otherwise make one (1) copy of the Documentation for yourself and use such Documentation, solely in support of your licensed use of the Telehealth Service in accordance with this EULA. All such copies shall remain the sole and exclusive property of Welligent, are subject to the terms of this EULA and must include all trademark, copyright, patent and other intellectual property rights notices contained in the original.

Responsibility for Use of the Telehealth Service.

You are responsible and liable for all access to and uses of the Telehealth Service and Documentation through access thereto provided by you, directly or indirectly. Specifically, and without limiting the generality of the foregoing, you are responsible and liable for all actions and failures to take actions with respect to the Telehealth Service and Documentation by you or by another person to whom you may provide access to or use the Telehealth Service and/or Documentation, whether such access or use is permitted by or in violation of this EULA. You are responsible for ensuring that you comply with the terms of this Agreement and all other terms incorporated herein by reference and are knowledgeable about and take appropriate measures to maintain the security of you computer(s) and device(s) when using the Telehealth Service. You are responsible for obtaining all necessary consents and permissions needed to use the Telehealth Service, including, but not limited to consents required in the event use of the Telehealth Service is recorded.

Content Ownership and Use.

a. The contents of the Telehealth Service include: designs, text, graphics, images, video, information, logos, button icons, software, computer code, and other Welligent content (collectively, "Welligent Content"). All Welligent Content and the compilation (meaning the collection, arrangement, and assembly) of all Welligent Content are the property of Welligent or its licensors and are protected under copyright, trademark, and other laws.

b. Welligent Marks. Welligent, the Welligent logo, and other Welligent logos, product and service names or designs are or may be trademarks of Welligent (the "Welligent Marks"). Without our prior written permission, and except as solely enabled by any link as provided by us, you agree not to display or use in any manner the Welligent Marks.

c. Your Content. Any data, communication and content that you create or make available through the Telehealth Service or otherwise to, and any other data, communication or content that the Telehealth Service collects from you ("Your Content"), will be owned by you and/or your organization, as applicable. You grant to Welligent an irrevocable, royalty-free right and license to analyze and use Your Content for the internal purposes of improving the Telehealth Service as determined by Welligent.

d. Use of PHI. the Telehealth Service is designed as an extension of Welligent's electronic health record system. As such, the Telehealth Service permits users to access, transmit, and share Protected Health Information (as such term is defined by the Health Insurance Portability and Accountability Act and its implementing regulations). When using the Telehealth Service, you should not inappropriately disclose PHI, you should take appropriate measures to maintain the security of your computer(s) and device(s), and use the same degree of care and precautions whether using the Telehealth Service or Welligent's electronic health record software. **IN NO WAY LIMITING ANY OTHER PROVISIONS CONTAINED IN THIS EULA, WELLIGENT SHALL NOT BE LIABLE FOR ANY USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION BY YOU OR ANY USER THROUGH THE TELEHEALTH SERVICE.**

Limitations and Prohibitions.

You agree to use the Telehealth Service solely as intended through the provided functionality of the Telehealth Service and as permitted under this EULA. You must use the Telehealth Service in compliance with all privacy, data protection, intellectual property, medical licensure, and other applicable laws. In addition, you must comply with the following:

a. Unless expressly permitted in this EULA, you agree not to copy, reproduce, distribute, publish, display, perform, transmit, stream or broadcast any part of the Telehealth Service or Documentation without Welligent's prior written authorization.

b. You agree not to bypass, circumvent, damage or otherwise interfere with any security or other features of the Telehealth Service designed to control the manner in which the Telehealth Service is used, harvest or mine any content, data or information from or using the Telehealth Service, or otherwise access or use the Telehealth Service in a manner inconsistent with individual human usage.

c. You agree not to undertake, cause, permit or authorize the translation, reverse engineering, disassembling or hacking of any aspect of the Telehealth Service, including any Welligent Content available on or through the Telehealth Service.

- d. You agree not to use, display, mirror, frame or utilize framing techniques to enclose the Telehealth Service, including any Welligent Content available on or through the Telehealth Service, or any portion thereof, through any other application or website.
- e. You agree not to gain unauthorized access to the Telehealth Service, to other users' accounts, names or personally identifiable information, or to other computers, websites, or web services connected or linked to the Telehealth Service.
- f. You agree not to post, transmit or otherwise make available any virus, worm, spyware or any other computer code, file or program that may or is intended to disable, overburden, impair, damage or hijack the operation of any hardware, software or telecommunications equipment, or any other aspect of the Telehealth Service or communications equipment and computers connected to the Telehealth Service.
- g. You agree not to interfere with or disrupt the Telehealth Service, or networks or servers connected to the Telehealth Service, or violate the regulations, policies or procedures of such networks or servers.
- h. You agree not to violate any applicable federal, state or local laws or regulations or this EULA when using the Telehealth Service, including by posting or submitting to the Telehealth Service any content that infringes any third party intellectual property or other right.
- i. You agree not to use the Telehealth Service to build a competitive product or service.
- j. You agree not to submit through the Telehealth Service any content, or use the Telehealth Service in any manner, that is or could be interpreted to be defamatory, libelous, inaccurate, unlawful, harmful, threatening, abusive, harassing, vulgar, offensive, obscene, pornographic, objectionable, hateful, or promotes discrimination, bigotry, racism, or hatred, as determined by Welligent in its sole discretion.
- k. You agree not to assist or permit any persons in engaging in any of the activities described above. A breach of these restrictions may subject you to prosecution and damages, as well as liability for infringement of intellectual property rights.
- l. You agree that you will use the Telehealth Service in compliance with all state and federal laws and regulations related to the delivery of medicine, including, without limitation, any laws or regulations governing medical licensure or the provision of medical services through telemedicine.
- m. You agree not to use the Telehealth Service for medical emergencies.

Intellectual Property Rights.

You acknowledge and agree that the Telehealth Service and Documentation are provided under license, and not sold to you. You do not acquire any ownership interest in or to the Telehealth Service or Documentation under this EULA, or any other rights or interest in or to the Telehealth Services or Documentation, other than to access and use the same in accordance with the license granted herein and subject to all terms, conditions and restrictions under this EULA. We reserve the right and shall retain the entire right, title and interest in and to the Telehealth Service and the Documentation and all intellectual property rights arising out of or relating to the Telehealth Service and Documentation, including all improvements, modifications, enhancements and derivative works. You shall safeguard the Telehealth Service and Documentation from infringement, misappropriation, theft, misuse or unauthorized access.

Term and Termination.

- a. This EULA as the license granted hereunder shall remain in effect until terminated as set forth herein.
- b. You may terminate this EULA by ceasing use of the Telehealth Service and destroying all copies of the Documentation.
- c. We may terminate this EULA effectively immediately if (a) you breach this EULA, (b) you cease to be authorized by your organization to access and use the Telehealth Service, or (c) if we elect to discontinue the Telehealth Service. We reserve the right to suspend or terminate your account, or the account of any user, and prevent access to the Telehealth Service for any reason, at our discretion. We reserve the right to refuse to provide the Telehealth Service to you in the future.
- d. Upon expiration or termination of this EULA, the license granted herein shall also terminate, and you shall cease using the Telehealth Service and Documentation and destroy all copies of the Documentation.

DISCLAIMER OF WARRANTIES.

THE TELEHEALTH SERVICE, DOCUMENTATION AND WELLIGENT CONTENT IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE TELEHEALTH SERVICE DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, WELLIGENT PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT (i) THE TELEHEALTH SERVICE WILL MEET YOUR REQUIREMENTS, (ii) THE TELEHEALTH SERVICE WILL ACHIEVE ANY INTENDED RESULTS, (iii) THE TELEHEALTH SERVICE WILL BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, (iv) THE TELEHEALTH SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE, (v) THE TELEHEALTH SERVICE WILL MEET ANY PERFORMANCE, RELIABILITY STANDARDS OR YOUR EXPECTATION, OR (vi) ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE TELEHEALTH SERVICE IS AT YOUR SOLE RISK. ANY APPLICATIONS OR CONTENT THAT YOU DOWNLOAD, INSTALL, ACCESS OR USE ON OR THROUGH THE TELEHEALTH SERVICE IS DONE SO AT YOUR SOLE DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY AND ALL DAMAGE RESULTING THEREFROM, INCLUDING, BUT NOT LIMITED TO, DAMAGE TO YOUR COMPUTERS, SYSTEMS, MOBILE DEVICES OR THOSE OF YOUR USERS, OR ANY LOSS OR CORRUPTION OF DATA.

WELLIGENT DOES NOT PROVIDE MEDICAL CARE OR PRACTICE MEDICINE OR ANY OTHER LICENSED PROFESSION. FURTHER, WELLIGENT DOES NOT INTERFERE WITH THE PRACTICE OF MEDICINE OR ANY OTHER LICENSED PROFESSION BY PROVIDERS USING THE TELEHEALTH SERVICE.

YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE TELEHEALTH SERVICE IS BEING PROVIDED TO YOU AS A TOOL TO USE IN YOUR MEDICAL PRACTICE AND THAT YOU AND EACH MEDICAL PROVIDER WHO USES THE TELEHEALTH SERVICE WILL BE SUBJECT TO APPLICABLE FEDERAL AND STATE LAWS AND REGULATIONS REGARDING THE PROVISION OF MEDICAL SERVICES THROUGH TELEMEDICINE. WELLIGENT DOES NOT MAKE ANY REPRESENTATION OR WARRANTY OF ANY KIND THAT THE TELEHEALTH SERVICE WILL SATISFY ANY STATE OR FEDERAL REQUIREMENTS FOR THE PROVISION OF MEDICAL SERVICES THROUGH TELEMEDICINE. YOU ARE RESPONSIBLE FOR ENSURING THAT YOU USE THE TELEHEALTH SERVICE IN COMPLIANCE WITH SUCH LAWS AND REGULATIONS.

WELLIGENT MAKES NO REPRESENTATION OR WARRANTY AS TO THE CONTENT OF ANY TREATMENT RESPONSE FROM ANY PROVIDER USING THE TELEHEALTH SERVICE. WELLIGENT DOES NOT GUARANTEE THAT A VIDEO AND/OR TELEPHONE CONSULTATION USING THE TELEHEALTH SERVICE IS THE APPROPRIATE COURSE OF TREATMENT FOR ANY PARTICULAR HEALTH CARE PROBLEM. TELEMEDICINE IS NOT A SUBSTITUTE FOR A PRIMARY CARE PHYSICIAN. YOU ACKNOWLEDGE AND AGREE THAT WELLIGENT DOES NOT PROVIDE MEDICAL ADVICE, DIAGNOSIS, OR TREATMENT, BUT STRICTLY PROVIDES A TECHNOLOGY PLATFORM AND INFRASTRUCTURE FOR CONNECTING PATIENTS WITH ITS HEALTHCARE PROVIDERS THROUGH THE TELEHEALTH SERVICE.

LIMITATION OF LIABILITY AND INDEMNIFICATION

IN NO EVENT WILL WELLIGENT, OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES OR AGENTS, BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY OR INABILITY TO USE THE TELEHEALTH SERVICE; LOST REVENUES OR PROFITS; LOSS OR CORRUPTION OF DATA; LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION OR SHUTDOWN; FAILURE TO ACCURATELY TRANSFER, READ, OR TRANSMIT INFORMATION; FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION; SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION; OR BREACHES IN SYSTEM SECURITY; OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS EULA, YOUR USE OR INABILITY TO USE THE TELEHEALTH SERVICE, YOUR RELIANCE ON CONTENT MADE AVAILABLE ON OR THROUGH THE TELEHEALTH SERVICE, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT WELLIGENT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS IN THIS PARAGRAPH MAY NOT APPLY TO YOU.

THE LIMITATIONS SET FORTH IN THIS EULA SHALL APPLY EVEN IF YOUR REMEDIES UNDER THIS EULA FAIL OR THEIR ESSENTIAL PURPOSE.

Any cause of action or claim you may have arising out of or relating to this EULA or the Telehealth Service must be commenced within one (1) year after the cause of action accrues or otherwise such cause of action or claim is permanently barred.

You agree to defend, indemnify, and hold harmless the Welligent and its affiliates and its and their respective officers, directors, employees, representatives and agents from and against any claims, actions, demands, suits, damages, fines, penalties, costs and expenses, including without limitation reasonable legal fees, accounting fees and expert fees, alleging or resulting from (i) your use of, or reliance on, the Telehealth Service or Documentation, (ii) your use of, or reliance on, any Welligent Content, or (iii) your breach of this EULA.

We are not responsible for any disputes or disagreements between you and any user you interact with when using the Telehealth Service. You assume all risk associated in interacting with such third parties, and you release Welligent of all claims, demands, and damages in connection with such disputes. You also agree not to involve us in such disputes in any way. Use caution and common sense when using the Telehealth Service.

General Terms.

This EULA and the Privacy Policy constitute the entire agreement between you and Welligent concerning your use of the Telehealth Service, and supersede any prior or contemporaneous terms, whether oral or written. Our failure to exercise or enforce any right or provision of this EULA shall not constitute a waiver of such right or provision. If any provision of this EULA is found by a court of competent jurisdiction to be invalid, the remaining portions of this EULA shall remain in full force and effect in accordance with its terms, disregarding such unenforceable or invalid provision(s). The Section titles and annotations in this EULA are for convenience only and have no legal or contractual effect. You may not assign or otherwise transfer any of your rights, or delegate or otherwise transfer any of your obligations or performance under this EULA, in each case whether voluntary, involuntary, by operation of law or otherwise, without our prior written consent. You may be subject to additional policies, terms and conditions of our third-party provider found at <https://www.vidyo.com/eula> and such other terms, conditions and policies as may be incorporated in such terms.

Force Majeure.

Welligent will not be responsible or liable to you, or deemed in default or breach of hereunder by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to strike, labor dispute, civil disturbance, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, act of God, flood, fire, sabotage, fluctuation or non-availability of electrical power, heat light, air conditioning, or your equipment, loss and destruction of property, or any other circumstances or causes beyond Welligent's reasonable control.

Export Regulation.

The Telehealth Service may be subject to US export control laws, including the US Export Administration Act and its associated regulations. You shall not, directly or indirectly, export, re-export or release the Telehealth Service to, or make the Telehealth Service or Documentation accessible from, any jurisdiction or country to which export, re-export or release is prohibited by law, rule or regulation. You shall comply with all applicable federal laws, regulations and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing or otherwise making the Telehealth Service available outside the US.

Governing Law.

This EULA and the relationship between you and Welligent shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Virginia, without regard to its conflict of law provisions. You and Welligent agree to submit to the exclusive venue and jurisdiction over all disputes arising hereunder in the United States District Court for the Eastern District of Virginia located in Norfolk, Virginia.