

BlinkSession Service Agreement

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Effective: April 20, 2020

Hereinafter referred to as “Blink Session” and “Customer” respectively (individually, a “Party” and collectively, the “Parties”). The Customer and Blink Session agree to the following Terms of Use. **Herein, “Customer” applies to all users of the Blink Session software platform, including paying parties, “Staff” users, “Client” users, and “API” developers.**

Notice: You might be using a branded (white-labeled) version of Blink Session which was purchased and set up by the company or person who invited you to use the software. In such cases, understand that the terms contained within equally apply as if you were using the Blink Session branded version.

1) BLINK SESSION SOFTWARE SERVICES

This Agreement provides Customer access and use of the Blink Session’s internet-based subscription services, as specified on the electronic or written order between the parties. Customer understands that use of the Service is also governed by Blink Session’s Privacy Policy and Business Associate Agreement (if entered into), which may be changed at a future date.

2) PRIVACY POLICY

What information we collect: We only collect information which is necessary to maintain your account, including your name, email address, phone number, and timezone. If you are a “Staff” user, we might also need to collect your credit card information, address, and other information.

“Client” users: If you are a “Client” user, the “Staff” users you receive services from might add other personal information about you to Blink Session, including personal health information. In that case, data which they add, and how they choose to share it with you is bound by their company’s privacy policy. Blink Session is not responsible if the “Staff” user or company does not have their own privacy policy or violates any laws or regulations in sharing or storing your data.

IP Address: Blink Session will store your public IP address every time you login. This is for security purposes to check for abnormal login behavior of your account.

Cookies: We will assign a cookie to your Internet browser every time you login. This is used only to authenticate you and is never used for marketing or any other purpose.

Updating or Removing Data: If you are a “Staff” user and your personal information changes, or if you no longer desire our Service, you may correct it or request deletion by contacting us by phone or email at the contact information listed above. We will respond to your request to access within a reasonable timeframe. If you are a “Client” user, please contact the company you are receiving services from to change or delete your information.

Security: While we follow generally accepted industry standards to protect the personally identifiable information submitted to us, both during transmission and once we receive it, no method of transmission over the Internet, or method of electronic storage, is 100% secure. Therefore, while we strive to use commercially acceptable means to protect your personal information, we cannot guarantee its absolute security. If you have any questions about security on our web site, you can contact us at info@blinksession.com.

3) USE OF SERVICES

a. Blink Session Responsibilities

Availability. Blink Session internet-based software is available at all times except during planned or unplanned outages. Blink Session will make commercially reasonable efforts to maintain uptime of 99%. Availability will be calculated on based on all minutes in a calendar year. Blink Session does not guarantee 99% availability during the times and days the Customer chooses to use the software. **Availability only applies to the customer’s access to the software, not to support or other human-based services.**

Equipment and Software. Blink Session will provide support only for users who access the service on the following operating systems and Internet browsers:

Operating Systems:

Microsoft Windows 10 or later

Mac 10.14 (Mojave) or later

Chrome OS

iPad or iPhone with iOS 12 or later

Android 8 (Oreo) or later

Internet Browsers:

Google Chrome version 28 and later except iPad or iPhone

Firefox version 25.0.1 except iPad or iPhone

Safari on Mac 10.14 (Mojave) or later

Safari on iPad or iPhone iOS 12 or later

Business Hours. Blink Session will provide support, accounting, and other human-based services only during business hours unless another arrangement is made. Blink Session business hours are 8:30 AM – 5 PM (MST), Monday-Friday. Blink Session is closed on New Year’s Day, Memorial Day (US), July 4, Labor Day (US), Thanksgiving Day (US), the day after Thanksgiving (US), and Christmas Day.

Support Channels. “Staff” users of Blink Session may submit a help request by logging on to their account, going to Help and filling out the help request form. They also may email support@blinksession.com. **Blink Session will not provide direct support to “Client” users** unless a custom service arrangement has been made.

Support Response Timing: Help requests submitted through the channels above will be answered within 24 hours during business hours. If the twenty-four hour window following the submission of the request falls on a non business day, or outside of business hours, the request will be answered anytime during the next business day. **If customer requests help using channels other than those outlined above, including emailing, calling, texting, or messaging Blink Session staff directly,** Blink Session has no obligation to provide help.

b. Customer Responsibilities

Access by Employees and Contractors. Customer may allow its employees and contractors to access the Service in compliance with the terms of this Agreement and the applicable Order, which access must be for the sole benefit of the Customer. Customer is responsible for the compliance with this Agreement by its employees and contractors. Customer may allow their clients (students, customers) to be assigned a “Client Login” and linked “Client”.

Reasonable Use. Blink Session provides video conferencing services for telehealth, teletherapy, online tutoring and other related services. As such, Blink Session may limit, suspend or terminate access if any user’s use exceeds reasonable standards, and monitors usage based on:

- Session lengths

- Calls made outside of the Customer’s business hours

- Other calling patterns indicative of an attempt to evade enforcement of Reasonable Use

Use of Blink Session video conferencing may qualify as **unreasonable** if Customer:

- (a)** Engages in business activities that involve continual, uninterrupted, or consistently excessive use

- (b)** Uses Blink Session in any manner that harms Blink Session's network or facilities or interferes with the use of the service by other Customers.

- (c)** Uses Blink Session services in a manner and volume inconsistent with the types and levels of usage by typical customers on the same plan may be used as an indicator of abnormal or unreasonable use, including but not limited to abnormal session lengths, frequency, duration, or session patterns that indicate an attempt to evade enforcement of this Reasonable Use Policy.

Blink Session reserves the right to review Customer use to determine if it is consistent with this Reasonable Use Policy. In the event Blink Session determines that Customer may be engaging in unreasonable use, Blink Session will take action to remedy any unreasonable use, including, at its sole discretion, discussing the use with the Customer, moving the Customer to an appropriate plan, terminating certain users, and/or otherwise modifying, suspending or terminating Customer’s services.

Restrictions and Responsibilities. Customer may **NOT**:

- (a)** Sell, resell, rent or lease the Service, use the Service beyond its internal operations **or reverse engineer the Service**

- (b)** Use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party rights (including without limitation any privacy rights)

- (c) Interfere with or disrupt the integrity or performance of the Service
- (d) Attempt to gain unauthorized access to the Service or its related systems or networks
- (e) Reverse engineer the Service or remove or modify any proprietary marking or restrictive legends in the Service
- (f) Use the Service in violation of any law, including without limitation, HIPAA, Telephone Consumer Protection Act and any spam laws (for example, CAN SPAM)
- (g) Access the Service to **build a competitive product or service, or copy any feature, function or graphic of the Service for competitive purposes.**
- (h) Engage in any activity that is harmful, obscene, or indecent. This includes displays of nudity, violence, pornography, sexually explicit material, or criminal activity.
- (i) Engage in any activity attempts to circumvent restrictions on access, usage or security of the Services. This includes transmitting viruses, malware or other malicious or destructive code or using tools that mask IP address location, including VPNs.

Name of User Accounts. All user accounts, including “Staff” and “Client” must be a real person who either works for, is contracted with, or is receiving services from the organization under which the account belongs. **Customer agrees that their use of any non-human name for a user account, such as “Office” or “Therapist”, will be considered an attempt to circumvent Blink Session security and payment policies** defined within, and will be grounds for termination.

Unauthorized Access and Account Sharing. Customer and any user of Blink Session is forbidden from sharing Staff or Client-Login accounts. In the event that any user of Blink Session violates this provision and shares their login credentials, Blink Session must be held blameless in regards to any negative ramifications. Customer is solely responsible for Customer Information (defined within), must use commercially reasonable efforts to prevent unauthorized access to the Service, must notify Blink Session promptly of any such unauthorized access, and may use the Service only in accordance with its user guide and applicable law.

Customer Information. All data, information, images and files entered or uploaded by Customer to the Service remains the sole property of Customer, unless they are submitted to be sold in the Resource Catalog. Customer grants Blink Session a non-exclusive, royalty-free license to modify, store, transmit and otherwise use the Customer Information for purposes of Blink Session performing under this Agreement. Notwithstanding the foregoing, if Customer’s access to the Services is suspended for non-payment of fees in accordance with the termination provision below, Blink Session will have no obligation to provide Customer Information to Customer until Customer remedies such non-payment as provided in this Agreement.

Accuracy of Information Provided by Customer. Customer represents and warrants to Blink Session that all Customer Information, Content (defined below) and other material provided under Customer’s account, by Customer or on its behalf, is true, correct and accurate. If Customer learns that any Customer Information or Content provided to Blink Session as part of the Service is not true, correct or accurate, Customer must immediately notify Blink Session by phone and in writing of this fact, and provide the true, correct and accurate information. Blink Session relies on Customer representations regarding the truth, accuracy and compliance with laws of Customer Information and Content. **BLINK SESSION IS NOT LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY CUSTOMER’S FAILURE TO COMPLY WITH THIS PARAGRAPH, IRRESPECTIVE OF ANY ACT OR OMISSION ON THE PART OF BLINK SESSION.**

Aggregation Services and De-identified Data. Blink Session may use protected health information to provide Customer with data aggregation services (as that term is defined by HIPAA) and to create de-identified data in accordance with 45 CFR 164.514(a)-(c) retaining any and all ownership claims related to the de-identified data it creates from protected health information. Blink Session may use, during and after this Agreement, all aggregate anonymized information and de-identified data for purposes of enhancing the Service, technical support and other business purposes, all in compliance with the HIPAA Privacy Standards, including without limitation the limited data set and de-identification of information regulations.

Warranties. Customer represents and warrants to Blink Session that: **Any Content submitted to the Service, including uploaded Resources,** do not violate any copyright, trade secret, privacy or other third party right, It will not submit any Content that is untrue, defamatory, harmful to any person, or violates HIPAA Privacy Rules, State or Federal laws on patient privacy.

4) PAYMENT TERMS

Payment. Customer agrees to allow Blink Session to make automatic debits and/or credits to the bank account and/or credit card on file for any charges incurred for the duration of this Agreement at intervals determined by Blink Session. Customer agrees that the charges and fees incurred while using Blink Session must be paid, and are nonrefundable, except as noted below.

Duration and renewal. Parties agree to the fees and included services set herein this Agreement for the specified duration and that this Agreement will be automatically renewed as a month to month Agreement upon expiration. Agreements are renewed on the first day of every month. To prevent renewal of this Agreement, written notification in the form of an email to support@blinksession.com must be provided by the customer by the last business day of the previous month. Customers understand, if they are currently under a 12-month, or other term-length agreement, they will need to pay a termination fee to cancel.

12-Month Agreement. If customer has signed up for service under a 12-month agreement, customer agrees to have their subscription auto-renewed each month for 12-month agreement. In this case, customer agrees to be bound by the terms outlined in their 12-month agreement.

Termination. Blink Session will automatically suspend service on the 2nd of the month after the customer's monthly credit or debit card transaction is denied or payment by check to satisfy the next month's fees is not received. Blink Session will make commercially reasonable efforts to send a notice of failed payment transaction to the Customer prior to suspension. Customer is responsible updating its credit or debit card information, including changed card expiration date, in the 'Organization Admin' section of the software.

Resubscribing: In the event that the customer's service is terminated **because of lack of payment**, any un-paid charges must be paid before service can be restored for up to three calendar months. For example, if the customer's account is terminated because their credit or debit card transaction on the 1st of a month failed, they will be required to pay for the entire month if they decide to

resubscribe during that month. Customer will not be allowed to resubscribe by paying a prorated amount, regardless if they did not have access to the service. Once the customer's account has been delinquent for three calendar months, they will be released from this requirement and will be allowed to resubscribe without paying unpaid charges.

Fee Changes. Fees and, or rates may be changed with 15 days' advance email notice to Customer, unless a customer pricing contract or Agreement is in place.

5) AGREEMENT/DISCLAIMERS

Mutual Compliance with Laws. Each party represents and warrants to the other party that it will comply with all applicable laws regarding its performance under this Agreement.

Customer Compliance With Medical Retention Laws and Patient Records Access. Customer is responsible for understanding and complying with all state and federal laws related to retention of medical records, patient access to information and patient authorization to release data. Customer agrees that it will obtain any necessary patient consent prior to adding patient personal identifiable and medical information to the platform, and will apply settings to exclude information from availability in the Patient Portal as necessary to comply with state or federal law.

DISCLAIMERS. BLINK SESSION DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR FREE OR WITHOUT DELAY, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WHILE BLINK SESSION TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, BLINK SESSION DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED. BLINK SESSIONS DISCLAIMS ANY WARRANTY REGARDING ANY PERCENTAGE OF COLLECTION OF CLAIMS FOR CUSTOMER.

6) MUTUAL CONFIDENTIALITY

Definition of Confidential Information. Confidential Information means all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). Blink Session's Confidential Information includes without limitation the non-public portions of the Service.

Protection of Confidential Information. The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this Agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees, contractors and clients (as the case may be) who need such access for purposes consistent with this Agreement and who have signed confidentiality Agreements with Recipient no less restrictive than the confidentiality terms of this Agreement. The Recipient may disclose Confidential Information (i) to the extent required by law or legal process; (ii) to its legal or financial advisors, provided that such advisors are bound by a duty of confidentiality that includes use and disclosure restrictions; and (iii) as required under applicable securities regulations. In addition, each Party may disclose the terms and conditions of this Agreement on a confidential basis to current and prospective investors,

acquirers and lenders and their respective legal and financial advisors in connection with due diligence activities.

Exclusions. Confidential Information excludes information that: is or becomes generally known to the public without breach of any obligation owed to Discloser; was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser; is received from a third party without breach of any obligation owed to Discloser; or was independently developed by the Recipient without use or access to the Confidential Information.

7) PROPRIETARY RIGHTS

Reservation of Rights by Blink Session. The software, user interface, designs, know-how and other technologies provided by Blink Session as part of the Service are the **proprietary property of Blink Session** and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with Blink Session. Blink Session reserves all rights unless expressly granted in this Agreement.

8) LIMITS ON LIABILITY.

No Indirect Damage. Blink Session is not liable for any indirect, special, or consequential damages (including without limitation, costs of delay, loss of data or information, lost profits or revenues or loss of anticipated cost savings) arising under or related to this Agreement, even if advised of the possibility of such loss or damage.

Limit. Blink Session's total liability for all damages arising under or related to this Agreement (in contract, tort or otherwise) does not exceed the actual amount paid by Customer within the 6-month period preceding the event which gave rise to the claim.

9) VIOLATIONS AND RETURN OF DATA

Suspension or Termination of Service for Violation of Law or the Agreement. Blink Session may immediately suspend or terminate the Service and remove applicable Customer Information or Content if it in good faith believes that, as part of using the Service, Customer may have violated a law or any term of this Agreement. Blink Session may try to contact Customer in advance, but it is not required to do so.

Return of Data. Blink Session will have no obligation to provide Customer Information to Customer upon termination of this Agreement. Notwithstanding the foregoing, Blink Session may retain Customer Information for 60 days from such termination and Blink Session may provide Customer access to such information upon Customer's request.

10) INDEMNITY

General Indemnity. To the extent allowed by applicable law, Customer must indemnify, defend, and hold harmless Blink Session against all third-party claims (including without limitation by governmental agencies), demands, damages, costs, penalties, fines, and expenses (including reasonable attorneys' fees and costs) arising out of or related to:

- (a) The use of the Service by Customer
- (b) Customer's breach of any term in this Agreement
- (c) Any unauthorized use, access or distribution of the Service by Customer, or
- (d) Violation of any individual's privacy rights related to information submitted under Customer's account, or fraudulent, invalid, duplicate, incomplete, unauthorized, or misleading information submitted under Customer's account or by Customer.

11) GOVERNING LAW AND ARBITRATION

Governing Law. This Agreement is governed by the laws of the State of Colorado (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this Agreement.

Enforcement. Blink Session may enforce its rights and obligations under these Terms in any court of competent jurisdiction.

Equitable Relief. Notwithstanding anything above, Blink Session may seek and obtain injunctive and equitable relief in any court of competent jurisdiction without restriction or required process in this Agreement.

PROHIBITION OF CLASS AND REPRESENTATIVE ACTIONS. EACH PARTY MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL PARTY BASIS, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PARTY'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, CLASS OR REPRESENTATIVE PROCEEDING.

12) OTHER TERMS

Consent to Electronic Notice, Communications and Transactions. For purposes of messages and notices about the Service (including without limitation, collections and payments issues), Blink Session may send email notices to the email address associated with Customer's account or provide in-service notifications. For certain notices (e.g., notices regarding termination or material breaches), Blink Session may send notices to the postal address provided by Customer. **Blink Session has no liability associated with Customer's failure to maintain accurate contact information within the Service or its failure to review any emails or in-service notices.** Customer will have the ability to enter into Agreements, authorizations, consents and applications; make referrals; order lab tests; prescribe medications; or engage in others transactions electronically. CUSTOMER AGREES THAT ITS ELECTRONIC SUBMISSIONS VIA THE SERVICES IN CONNECTION WITH SUCH ACTIVITIES CONSTITUTE ITS AGREEMENT TO BE BOUND BY SUCH AGREEMENTS AND TRANSACTIONS, AND APPLIES TO ALL RECORDS RELATING TO SUCH TRANSACTIONS. Customer represents and warrants that it has the authority to take such actions.

Entire Agreement and Changes. This Agreement and the Order constitute the entire Agreement between the parties, and supersede all prior or contemporaneous negotiations or Agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this Agreement. No representation, promise or inducement not included in this Agreement is binding. No modification or waiver of any term of this Agreement is effective unless signed by both parties. Notwithstanding the foregoing, Blink Session may modify this Agreement by posting modified Terms of Service on the Blink Session Dashboard and electronically notifying Customer of the changes fifteen (15) days prior to the effective date of such changes. Customer agrees that by continuing to use the Service after posting of the modified Terms of Service. Customer agrees to be bound by the changes.

Feedback. If Customer provides feedback or suggestions about the Service, Blink Session may use such information without obligation to Customer.

Beta Features. If Customer is invited to access any beta features of the Service or a Customer accesses any beta features of the Service, Customer acknowledges that: (a) such features have not been made commercially available by Blink Session; (b) such features may not operate properly, be in final form or fully functional; (c) such features may contain errors, design flaws or other problems; (d) it may not be possible to make such features fully functional; (e) use of such features may result in unexpected results, corruption or loss of data, or other unpredictable damage or loss; (f) such features may change and may not become generally available; and (g) Blink Session is not obligated in any way to continue to provide or maintain such features for any purpose in providing

the ongoing Service. These beta features are provided AS IS, with all faults. Customer assumes all risk arising from use of such features, including, without limitation, the risk of damage to Customer's computer system or the corruption or loss of data.

No Assignment. Neither party may assign or transfer this Agreement or an Order to a third party, except that this Agreement with all Orders may be assigned (without the consent) as part of a merger, or sale of all or substantially all of the business or assets, of a party.

Survival of Terms. All terms survive termination of this Agreement that by their nature survive for a party to assert its rights and receive the protections of this Agreement. The Convention on Contracts for the International Sale of Goods does not apply.

Customer Name. Blink Session may use Customer's name and logo in customer lists and related promotional materials describing Customer as a customer of Blink Session, which use must be in accordance with Customer's trademark guidelines and policies, if any, provided to Blink Session.