

## **Authorized User Agreement (“Agreement”)**

Welcome to the **MaxMD® Mobile Application and Direct Secure Messaging Service** (the “Service”) operated by Park Avenue Capital, LLC, doing business as “MaxMD” (“MaxMD”, “we”, or “us”), located at 2200 Fletcher Ave, 5th Floor, Fort Lee, NJ 07024, USA.

Please read this Agreement carefully. This Agreement is a binding contract between us and you, the authorized user (“Authorized User”, “you” or “your”), and governs your use of the Service.

**BY CLICKING ON THE “I ACCEPT” BUTTON AFTER THIS AGREEMENT OR USING THE SERVICE, YOU AGREE TO BE BOUND BY THIS AGREEMENT.**

**IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, PLEASE DO NOT CLICK ON THE “I ACCEPT” BUTTON AND DO NOT ACCESS OR USE THE SERVICE.**

**YOU REPRESENT AND WARRANT THAT YOU ARE AT LEAST 18 YEARS OLD.**

MaxMD takes privacy matters very seriously. All personal information and any protected health information (collectively, “Personal Data”) provided by you to MaxMD or transmitted through the Service is subject to our Privacy Policy located at <https://www.directmdemail.com/documents/PrivacyPolicy>. Please see our Privacy Policy for more information.

**PLEASE NOTE THIS AGREEMENT INCLUDES A CLASS ACTION WAIVER AND LIMITS THE REMEDIES THAT MAY OTHERWISE BE AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.**

**WE RESERVE THE RIGHT TO CHANGE OR AMEND THIS AGREEMENT AT ANY TIME.** If we make a change, we will post the revised Agreement or amended terms on the MaxMD Mobile Application homepage and revise the “Last Updated Date” at the top of this page. If you have provided us with your email address, we will also notify you by email of material changes to this Agreement by sending an email to the email we have on file prior to the effective date of the changes. We will also provide a notification to registered users the next time they login to the Services with the revised Agreement and users will be asked to acknowledge that they have read and accept the changes by clicking “I Accept.” We recommend that you read this Agreement each time you use the Service in case you missed our notice of changes. Your continued use of the Service following the posting of changes to this Agreement also means you accept those changes. Any amendment or change to this Agreement will not apply to any dispute that we had actual notice of prior to the effective date of the amendment or change.

**1. We do not Provide Medical Advice.** MaxMD does not provide medical advice or services.

**NO LICENSED MEDICAL PROFESSIONAL/PATIENT RELATIONSHIP IS CREATED BETWEEN YOU AND MAXMD BY USING THE SERVICE.**

**NOTHING STATED OR POSTED ON OR THROUGH THE SERVICE IS INTENDED TO BE, AND MUST NOT BE TAKEN TO BE, THE PRACTICE OF MEDICINE, DENTISTRY, NURSING, OR OTHER PROFESSIONAL HEALTHCARE ADVICE, OR THE PROVISION OF MEDICAL CARE BY MAXMD.**

**THE SERVICE IS NOT FOR MEDICAL EMERGENCIES. PLEASE CALL 911 OR SEEK THE ADVICE OF YOUR PHYSICIAN OR OTHER QUALIFIED HEALTH PROVIDER DIRECTLY WITH ANY QUESTIONS YOU MAY HAVE REGARDING A MEDICAL CONDITION OR EMERGENCY.**

2. **The Service.** The Service provides hosted software that allows you to retrieve your health care data and documents from your healthcare providers who participate in the Service via a supported mobile device (currently Android® Version 6.0 or greater, or iOS® Version 11.3). The Service also allows you to exchange health care records and other information through Direct Secure Messaging.

Direct Secure Messaging is designed to achieve security, privacy, data integrity, authentication and delivery confirmation for the electronic exchange of health information. The Direct Protocol is a set of standards, services and policies enabling the secure exchange of health information over the Internet. The Direct Protocol was developed in connection with The Direct Project administered by DirectTrust, a not-for-profit standards organization accredited by the American National Standards Institute (ANSI). For more information about DirectTrust and The Direct Protocol, please visit <https://standards.directtrust.org/>.

As a user of the Service, you will be provided a Direct Address and granted access to the DirectTrust network after we have verified your identity as provided in Section 3 below. A Direct Address looks a lot like an email address. However, it is a special type of address that contains two secure private keys that allow for secure signing and encrypted transmission of your health care records and information between you and your health care providers, such as your doctor, hospital, laboratory or pharmacy. Your Direct Address should be given to your health care providers. Then, you may ask your doctor or other health care provider to send your medical records to your Direct Address, and if they have implemented a certified electronic health records system that has enabled Direct Secure Messaging, your provider will be able to send your medical records and information to your Direct Address.

The MaxMD Mobile Application portion will only display the health care records and information you select to retrieve. **PLEASE NOTE THAT THE INFORMATION YOU SELECT TO RECEIVE WILL BE STORED ON YOUR SUPPORTED DEVICE UNTIL YOU CHOOSE TO DELETE IT OR YOUR LICENSE TO USE THE SERVICE IS TERMINATED.** The MaxMD Mobile Application requires a pin or biometric lock on the Supported Device in order for you to use and view such information.

If you chose to view or download your records, videos, or other file types to your Supported Device or a third-party application, such as a DropBox® account, MaxMD is no longer responsible for the security of such information.

Please note that by using the MaxMD Mobile Application, you may incur charges with your wireless or cellular provider. Please be aware that we have no control over these charges, and if you do not wish to be charged, you should stop using the Service.

3. **Verification of Your Identity.** We, or our trusted agents, are required by the Direct Protocol to verify your identity in accordance with NIST 800-63-2 Level of Assurance 3 (or any successor standard adopted) before we provision a Direct Address to you. This is to ensure your health care records and information do not end up in the hands of someone who is not authorized to view or obtain them, such as a cyber impersonator. Once your identity is verified, you will be issued a Direct Address and granted access to the secure DirectTrust Network. This verification process is meant to provide assurances to all participants in the DirectTrust Network that the persons on the other end of Direct Message exchanges are who they say they are, and not impersonators.
4. **Accounts.** You will either be assigned a unique username or, if not, you may choose a username. You will then be asked to set up a password. Please keep your username and password confidential. MaxMD will never ask you for your password, so refuse to give it to anyone who requests it. Please do not share your password with anyone. You will be responsible for all activity that occurs under your account and password. If you need to grant a family member, loved one or care giver access to your records, a separate account can be set up for them. Then, you can securely share your records by sending such records to your family member's account.
5. **Privacy.** In certain cases, the Service may attach certain personally identifiable information, such as first name, last name and date of birth. This may be done to authenticate you for access to remote systems to access personal health records. Please refer to MaxMD's Privacy Policy located at <https://www.directmdemail.com/documents/PrivacyPolicy> for an explanation of how MaxMD uses your personal health information and personally identifiable information.
6. **License to Use Service.** Upon completion of your registration and setting up of your account to use the Service, MaxMD grants you during the term of this Agreement a non-exclusive, non-transferable, non-sub-licensable, limited right and license to (a) access and use the Service solely to send, receive and view your records and information from health care providers who have a certified electronic health records system that has enabled Direct Secure Messaging, and (b) retrieve and view your medical record and information from enabled EHR systems. All rights in and to the Service, and MaxMD's and its licensors' software and systems used to provide the Service, are hereby expressly reserved to MaxMD.

7. **License Restrictions.** You agree to use the Service in compliance with all applicable laws and shall not decompile, disassemble, or reverse engineer any part of the Service or any related applications and software. You further agree not to (i) access or use any portion of the Service that you are not authorized to use, (ii) circumvent any usage or other restrictions imposed, (iii) copy, print, alter, or translate the Service any associated software or applications, (iv) create any derivative work of the Service or any associated software or applications, or use the foregoing for application development purposes, (v) disclose or publish performance benchmark results or test results to non-affiliated third parties with respect to the Service, (vi) export the Service or any associated software or applications in violation of U.S. Department of Commerce export administration regulations, (vii) delete, fail to reproduce or modify any patent, copyright, trademark or other proprietary rights notices which appear on, in or through the Service, (viii) sublicense, sell, lease, rent, timeshare, distribute, or otherwise attempt to transfer its rights to access and use the Service to any other person or entity; or (ix) use the Service in a facility management or service bureau manner or permit third parties to access such software over the Internet or through an application service provider model except as expressly provided herein.
8. **Support.** If you have technical questions with respect to the Service or wish to report a Service outages or failure, please contact the appropriate person at the business or entity who purchased a license for you to use the Service. You acknowledge and agree that except as expressly provided in this Section 8, MaxMD does not grant you any right to receive maintenance or support with respect to your use of the Service.
9. **Suspension.** MaxMD or its licensors may suspend the Service without liability if (a) we have reason to believe that you are in violation of this Agreement or are investigating a potential breach; (b) there is an attack on the hosting environment used for the Service, (ii); ( MaxMD is required or requested to do so by law or law enforcement agency; or (iii) there is another event for which MaxMD reasonably believes that the suspension of the Service is necessary or appropriate to protect its, authorized user or third party systems, networks or data.
10. **No Other Warranties.** **THE SERVICE IS PROVIDED “AS IS”, WITHOUT WARRANTY OF ANY KIND, AND MAXMD HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND OR NATURE WITH RESPECT TO THE SERVICE OR THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.** You understand and agree that the Service, and MaxMD’s and its licensors’ software and systems used to provide the Service, may be subject to limitations, unavailability, delays and other problems inherent in the use of the Internet and electronic communications not provided by MaxMD. MaxMD is not responsible for any delays, delivery failures, or any loss or damage to the extent resulting from the same. MaxMD does not make any guarantees of speed or availability of end-to-end connections. You acknowledge and agree that MaxMD does not control the transfer of data

over the Internet or to or from MaxMD's technology platform and other portions of the Internet, and MaxMD does not warrant that it will be able to prevent third party disruptions of such transfers. MaxMD does not warrant the correctness, completeness, merchantability or fitness for a particular purpose of any data transmitted through the Service. **MAXMD WILL NOT BE RESPONSIBLE FOR ANY ADVERSE CONSEQUENCES WHATSOEVER RESULTING FROM CONNECTION TO OR USE OF THE INTERNET.**

**11. Taxes.** Excluding taxes based on MaxMD's net income, you or the business purchasing a license for you to use the Service are liable and responsible for paying all federal, state and local sales, foreign withholding, value added, use, property, excise, service and other taxes, if any, and all duties, tariffs and customs fees relating to your use or receipt of the Service.

## **12. Intellectual Property Rights.**

**12.1. Ownership of MaxMD's Intellectual Property.** You acknowledge and agree that, as between you and MaxMD, all intellectual property rights and proprietary interests in and to the Service, and MaxMD's and its licensors' software and systems used to provide the Service, and all related documentation are vested solely in MaxMD and its licensors. You agree not to challenge the validity of MaxMD's intellectual property rights or proprietary interests therein. Nothing herein shall be construed to convey any ownership or proprietary right or interest in or to the Service, or its or its vendors' software and systems used to provide the Service, or related documentation, to you or any other person.

**12.2. License to Transmit Data.** You hereby grant MaxMD a license to receive and transmit your personal health information and other applicable personal data (the "Data") through the Service as contemplated herein.

**12.3. No Implied Licenses.** Neither party shall be deemed to have any rights by implied license.

## **13. Termination.**

**13.1. Termination by Us.** We reserve the right to terminate or restrict your access to or use of the Service, without notice or liability, for any or no reason whatsoever. In addition, we may terminate your account and license to use the Service with us by sending notice to you at the email address you provided in your application for membership, or pursuant to Section 21 below. In addition, your license to use the Service shall automatically expire upon termination of any agreement between MaxMD and the business or person who purchased a license for you to use the Service. Upon termination of this Agreement, you will not be entitled to any refund of any unused fees or other prepaid amounts. All decisions regarding the termination of accounts and your license to use the Service shall be made by us in our sole discretion. We are not required, and may be prohibited, from disclosing to you the reason for termination of your Account, membership or license to use the Service.

**13.2. Termination by You.** You may terminate your account and license to use the Service at any time, and termination will be effective immediately upon receipt of notice in accordance with Section 6.3 below. Subject to our 3-day cancellation policy discussed below, WE DO NOT PROVIDE REFUNDS OR CREDITS FOR ANY AMOUNTS PREPAID BY YOU OR ANY BUSINESS OR ENTITY WHO PURCHASE A LICENSE FO YOU TO USE THE SERVICE, AND YOU WILL NOT RECEIVE ANY REFUND FOR ANY PREPAID FEES.

**13.3. Effect of Termination.** Upon termination of this Agreement for any reason, those provisions which, by their nature survive termination (including, but not limited to, Sections 1, 10, 11, 12, 13.3, 14, 15, 15, 17, 19, 20, 21, 22, 23, 24, 25, 28, 29, 30 and 31 shall survive termination in accordance with their respective terms.

**14. Aggregated Data.** MaxMD will own and shall have the right to use aggregated, non-personally identifiable statistical data derived from the operation of the Service across its subscriber base, including without limitation, the number of records in the Service, the number and types of transactions, configurations, and reports processed in the Service and the performance results for the Service (collectively, the “Aggregated Data”).

**15. Interactions with other Providers and Users.** In the event that you have a dispute with one or more other providers or users, you hereby release MaxMD, its parent, subsidiaries and affiliated entities, and their respective shareholders, directors, officers, employees, agents, successors and assigns from any and all claims, demands, damages (actual and consequential), losses and liabilities of every kind or nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way related to such disputes. If you are a California resident, you waive California Civil Code Section 1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor."

**16. Limitation of Liability.**

**WHEN PERMITTED BY LAW, MAXMD, AND MAXMD’S LICENSORS AND SUPPLIERS, WILL NOT BE RESPONSIBLE OR LIABLE FOR LOST PROFITS, REVENUES, OR DATA, FINANCIAL LOSSES OR INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES.**

**TO THE EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF MAXMD, AND ITS LICENORS AND SUPPLIERS, FOR ANY CLAIMS UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO FOR ANY IMPLIED WARRANTIES, IS LIMITED TO THE GREATER OF THE AMOUNT YOU PAID US TO USE THE SERVICE OR \$50.**

**IN ALL CASES, MAXMD AND ITS LICENSORS AND SUPPLIERS, WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE THAT IS NOT REASONABLY FORESEEABLE.**

- 17. Indemnification.** You agree to indemnify and hold us, our parent, subsidiaries, and affiliated entities, and our and their shareholders, directors, officers, employees, agents, contractors, licensors and licensees harmless from any loss, liability, claim, demand or expense, including but not limited to, reasonable attorney's fees, made by any third party due to or arising out of your use of the Service or any breach or violation of this Agreement, or any content or data provided by you or on your behalf through the Service.
- 18. U.S. Export Controls.** All software and content provided through the Service is subject to United States export controls. No software or content from the services may be downloaded or otherwise exported or re-exported (a) into (or to a national or resident of) a country including Cuba, North Korea and Syria, to which the U.S. has embargoed goods; or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders.
- 19. Choice of Law.** This Agreement shall be governed by the laws of the State of New Jersey, without regard to its conflict of laws rules or principles.
- 20. Venue.** You agree to exclusive jurisdiction in New Jersey and venue in Fort Lee, New Jersey for all arbitration and other legal proceedings arising out of this Agreement.
- 21. Arbitration of Disputes.** **ANY CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, WHETHER PRE-EXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT AND EQUITABLE CLAIMS) BETWEEN YOU AND MAXMD OR ANY OF OUR AFFILIATED ENTITIES OR OUR OR THEIR AGENTS, EMPLOYEES, PRINCIPALS, SUCCESSORS, OR ASSIGNS ARISING FROM OR RELATING TO THIS AGREEMENT, ITS INTERPRETATION, OR THE BREACH, TERMINATION OR VALIDITY HEREOF, OR THE RELATIONSHIPS WHICH RESULT FROM THIS AGREEMENT (INCLUDING, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, RELATIONSHIPS WITH THIRD PARTIES WHO ARE NOT SIGNATORIES TO THIS AGREEMENT), SHALL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION ADMINISTERED BY JAMS BEFORE A RETIRED JUDGE IN FORT LEE, NEW JERSEY.** In the event such a JAMS proceeding is unavailable for any reason, such disputes shall be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this Agreement, and will be administered by the AAA before a single retired judge. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. This Section and Section 5 below are subject to

the Federal Arbitration Act, 9 U.S.C. sec. 1-16 (FAA), as amended. Any award of the arbitrator shall be final and binding on each of the parties, and may be entered as a judgment in any court of competent jurisdiction. The arbitration proceeding will be limited solely to the dispute or controversy between you and us. YOU ACKNOWLEDGE THAT YOU ARE GIVING UP YOUR RIGHTS TO LITIGATE CLAIMS IN A COURT OR BEFORE A JURY WITH RESPECT TO ANY SUCH CLAIM. Nothing in this Section 14 shall be deemed to prohibit us from seeking an injunction or other equitable relief in any court of competent jurisdiction to protect or preserve ours or our licensors' rights in and to intellectual property or confidential information.

- 22. Class Action Waiver.** IN ANY DISPUTE, NEITHER YOU NOR ANY OTHER PERSON SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER AFFILIATES OR PERSONS, OR ARBITRATE ANY CLAIM AS A REPRESENTATIVE OR CLASS ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY. YOU ACKNOWLEDGE THAT YOU ARE GIVING UP YOUR RIGHTS TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO ANY SUCH CLAIM.
- 23. Electronic Communications.** By using the Service, you consent to receiving electronic communications, e.g., email, from us or our subsidiaries and affiliated entities. These communications will include notices about your account and information concerning or related to the Service. These communications are part of your relationship with us and you receive them as part of your membership. You agree that any notice, agreements, disclosures or other communications that we send to you electronically will satisfy any legal communication requirements, including but not limited to, any requirements that such communications be in writing.
- 24. Severability.** If any provision of this Agreement is held to be unenforceable under applicable law, such provision shall be excluded from this Agreement, and the balance of this Agreement shall be interpreted as if such provision was so excluded and shall be enforceable in accordance with its modified terms.
- 25. Merger; Translations.** This Agreement represents the entire understanding between us parties with respect to the subject matter hereof and supersede all previous understandings, written, oral or implied. Where we have provided you with a translation of the English language version of this Agreement, then you agree that the translation is provided for your convenience only and that the English language versions of this Agreement will govern your relationship with us. If there is any contradiction between what the English language version of this Agreement and any translation, the English language version shall take precedence.
- 26. Force Majeure.** Neither you nor we shall be held responsible for any delay or failure in performance hereunder caused by acts of God (or natural disasters), terrorism, strikes, embargoes, fires, war, or other causes beyond the affected party's reasonable control.

- 27. Notices.** Except as explicitly stated otherwise, legal and other notices (including but not limited to notices of legal proceedings) shall be delivered to Park Avenue Capital LLC by U.S. mail at 2200 Fletcher Ave, 5th Floor, Fort Lee, NJ 07024, USA, Attn: Scott Finlay, or to you at the email address you provided us (a) at the time you registered; (b) through a subsequent notice of an address change; or (c) through a posting through the Service. Physical notices shall be effective when received. Email notices allowed hereunder shall be deemed given 24 hours after the email is sent, unless the sending party is notified that the email address is invalid. In addition, we may provide notice by certified mail, postage prepaid and return receipt requested. In such case, notice shall be deemed given when received.
- 28. Waiver.** Failure to enforce any provision of this Agreement shall not constitute a waiver of any term hereof. No waiver of a breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless granted in writing and signed by an authorized representative of us at our director level or above.
- 29. Limitations of Claims.** You agree that any claim or cause of action arising out of or related to this Agreement or your use of the Service must be filed within one (1) year after such claim or cause of action arose or be forever barred.
- 30. No Assignment.** You may not resell, assign or transfer any of your rights or obligations under this Agreement without our prior written consent.
- 31. Agreement Binding.** This Agreement shall be binding upon the parties and their successors and permitted assigns.