

DGNCT LLC

# TERMS & CONDITIONS

## TERMS & CONDITIONS DGNCT LLC

Last Updated: March, 2024.

DGNCT LLC, a company established under the laws of Florida, U.S.A., address: 333 SOUTHEAST 2ND AVE., 20TH FLOOR #563, MIAMI, FL, 33131, may be referred to as “we”, “us”, “our”, “Diagnocat” or the “Company”.

Customer is referred to as “you”.

These Terms & Conditions (the “Terms” or the “Agreement”) are subject to, and incorporate the terms of the Company’s Privacy Policy (the “Privacy Policy”), which can be found here: <https://legal.diagnocat.com/privacy-policy/en/>.

This Agreement governs your acquisition and use of our Software as a Service (“SaaS”) Product. By creating a login and creating a user account on the Company website: [www.diagnocat.com](http://www.diagnocat.com) (the “Website”), you are accepting this Agreement and you agree to its terms and conditions. If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its affiliates to these Terms, in which case the terms “you”, “Customer” or “your” shall refer to such entity and its affiliates. If you do not have such authority, or if you do not agree with these Terms, you must not accept this Agreement and may not access or use the Product.

You agree that you have the authority, under the laws of the state or jurisdiction in which you reside, to make the representations, acknowledgments, and agreements in this Agreement. In case of breach of any one of these representations, acknowledgments, or agreements, we have the right to suspend or terminate your Account and refuse any and all current or future use of the Product (or any portion of it thereof) and you will defend and indemnify us and our affiliates against any liability, costs, or damages arising out of the breach of the representation, acknowledgment or agreement.

## 1. PURPOSE OF THE PRODUCT

Diagnocat is an innovative SaaS software product available online to subscribers and based on artificial intelligence. Diagnocat is designed to assist healthcare professionals in identifying anatomical areas, general conditions, and previous treatments during initial dental consultations, follow-up patients, control X-rays, and other situations that require examination and interpretation of digital images (the “Product”). It creates a template of a configurable dental report, automatically creating a panorama and cross-sections of areas

of interest. Under each image, it generates a radiological description with a list of all detected findings.

The Diagnocat Product may not be approved or available in your region or country. Please consult the approved indications for use or the Diagnocat team. Content on specific Diagnocat products is not intended for users in markets that do not have authorization for use.

## **2. TERMS OF USE**

You are granted permission to utilize the Product under the following conditions: you must be a duly registered dental professional, be at least 18 years of age, and not be prohibited by relevant legislation from availing yourself of such services.

For the use of the Product you agree to pay the subscription fees based on the type of subscription that you chose.

### **2.1. Access to Products.**

We shall make access to the Products available to you pursuant to this Agreement and the relevant Subscription Sign-up Page during the subscription term. Subject to the timely payment by you of the fees for your relevant subscription, we grant a non-exclusive, non-transferable right to you and your authorized employees, agents and independent contractors to use the Product, during the term of your subscription, solely for your company's business operations. Any other use of the Products by you or any person, business, corporation, or any other entity is strictly forbidden and is a violation of this Agreement.

You shall use all reasonable efforts to prevent any unauthorized access to, or use of, the Product and, in the event of any such unauthorized access or use, promptly notify us.

The usage of the product is restricted to the country of its purchase, and it is imperative for the Customer to inform Diagnocat via email of any alterations to their country of residence.

The Company reserves the right to deactivate the customer's account if they relocate to a country where regulatory approval for company services is not obtained.

### **2.2. Authorized Use of the Product.**

As a condition of using the Product, you agree not to use the Product for any purpose that is prohibited by this Agreement. You are responsible for all of your activity in connection with the Product and you shall abide by all local, state, national, and international laws and regulations and any applicable regulatory codes.

### **2.3. You agree you shall not, and shall not allow others to:**

- display, distribute, publish, reproduce, duplicate, sell, modify, or transmit for any commercial purposes, all or any portion of the Product, without a written agreement between you and Diagnocat;
- resell, rent, lease, loan, sublicense, distribute, or otherwise transfer rights to the Product;

- modify, reverse engineer, decompile or disassemble the Product;
- copy, adapt, alter, modify, translate, or create derivative versions of the Product without written authorization of Diagnocat;
- permit other individuals to use the Product, including but not limited to shared use via a network connection, except under the terms of this Agreement;
- circumvent or disable any technological features or measures in the Product for protection of intellectual property rights;
- use the Product in an attempt to, or in conjunction with, any device, program, or service designed to circumvent technological measures employed to control access to, or the rights in, a content file or other work protected by the copyright laws of any jurisdiction;
- use or access the Product to compile data in a manner that is used or usable by a competitive product or service;
- access the Product for purpose of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes;
- use the Product to engage in any illegal conduct;
- upload or transmit any communications or documents that infringe or violate the rights of any party;
- upload media of any kind that contain expressions of hate, abuse, offensive images or conduct, obscenity, pornography, sexually explicit or any material that could give rise to any civil or criminal liability under applicable law or regulations or that otherwise may be in conflict with this Agreement and Diagnocat's Privacy Policy; or
- upload any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software, the Product, or the Website.

We may terminate your access to and use of the Product and the Website if we reasonably believe that you have violated or acted inconsistently with the letter or spirit of this Agreement, or violated our rights or the rights of any third party, have failed to make appropriate payments for access to the Product, or for any other reason, with or without notice to you.

#### **2.4. Account Registration; Account Security.**

To use the Product, you will be asked to provide certain registration details or other information. You acknowledge and agree that all information you provide to register an account ("Account") on the Website is accurate, current and complete. Our use of your information is governed by our Privacy Policy (<https://legal.diagnocat.com/privacy-policy/en/>), and you consent to all actions we take with respect to your information consistent with our Privacy Policy.

You agree that you will not disclose your Account password to anyone and you must notify us immediately of any unauthorized access to or use of your user name or password or in the event that any other breach of security occurs. You are responsible for all activities that occur under your Account, whether or not you know about them.

You are solely responsible for activity that occurs on your Account and it is your responsibility to protect your personal data and maintain the confidentiality of your user information and password. You are also responsible for immediately notifying Diagnocat of any unauthorized use of your Account, or breach of your Account information or password. Diagnocat will not be liable for any loss that you may incur as a result of someone else using your username or password, either with or without your knowledge.

You are solely responsible for maintaining your database(s) in the X-ray software, as well as for any other system damage during the process of setting up the integration between your X-ray equipment software and the Product.

#### **2.5. Use of Data.**

You understand that by providing data inputs into the Products or Diagnocat's Website, you acquire no rights in any publication, research or commercial products that may be developed by us or our collaborating partners. Particularly, you acknowledge that you will not receive any benefit for any publication or research resulting from the data you have provided.

You will have the right to submit a request to download the data you previously uploaded to the Product in its raw uninterrupted format. Within one month from the receipt of the request you will be notified by Diagnocat of whether your request satisfies the requirements to be allowed to download your data. For the avoidance of doubt, data download rights are not guaranteed and are subject to the approval of Diagnocat, in its sole discretion. If Diagnocat cannot identify you, you may be requested to provide additional information necessary to confirm your identity. Upon approval of your submitted request, you will receive your requested data.

#### **2.6. Product Not for Diagnostic Purposes; for Information Purposes Only.**

You acknowledge that any information provided by Diagnocat to you is not intended for any independently analytical or diagnostic purposes nor is it intended to treat any condition or disease or to ascertain the state of your health relating to the main anatomical areas (jaws, teeth, periapical space), in the absence of medical and clinical information. You understand that the Product is for information purposes only. While our information may indicate a diagnosis or possible treatment, it should always be confirmed and supplemented by additional medical testing and information. We do not provide medical advice in any way.

Reports provided by us have not been clinically confirmed.

### **3. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY**

#### **3.1. Intellectual Property.**

We own all legal right, title, and interest in and to the Product, including any intellectual property rights (including but not limited to patents).

You acknowledge that rights in the Product are licensed (not sold) to you, and that you have no rights in, or to, the Product other than the right to use them in accordance with these Terms and Conditions.

You acknowledge that you have no right to have access to the Product in source code form or in unlocked coding or with comments except to the extent required by applicable law.

Nothing in these Terms and Conditions grants you any right in connection with trademarks or service marks of Diagnocat.

You agree that you will not sell re-sell the Product or use the Product for any illegal purpose or in any unlawful manner and will use it only for the uses set forth in this Section 3.

#### **3.2. Confidential Information.**

“Confidential Information” means all confidential information disclosed by Diagnocat to you, 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. Diagnocat’s Confidential Information shall include the Product, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by Diagnocat to you in the process of using the Product or otherwise. Confidential Information shall not include any information that is or becomes generally known to the public without breach of any obligation owed to Diagnocat. You agree to use the same degree of care that you uses to protect the confidentiality of your own confidential information (but in no event less than reasonable care) and agree not to use any Confidential Information for any purpose outside the scope of this Agreement.

### **4. DATA PRIVACY**

#### **4.1. Definitions:**

In these Terms and Conditions, the following terms will have the following meanings.

(a) "**Data Protection Law**" means the applicable data protection or privacy laws or regulations in the country in which you provide dental care to patients, including any relevant national application of the EU Data Protection Directive (95/46/EC), the General Data Protection Regulation (2016/679), and the Privacy Directive and Electronic Communications (2002/58/EC) (all as amended), as well as the US Health Insurance Continuity and Accountability Act (HIPAA) and regulations adopted in accordance with it, including Standards for the Confidentiality of Personally Identifiable Medical Information and Security Standards for the Protection of Electronic Legally Protected Health Information in 45 CFR, Parts 160 and 164; security and Confidentiality provisions of the American Economic Recovery and Reinvestment Act of 2009;

(b) Each of the terms "**Personal Data**", "**Confidential personal data**", "**Process/Processing**", "**Controller**" (in these Terms and Conditions, this term means "**Operator**" if the term "Operator" is used in the local data protection law) and "**Data Processor**" will have the meaning assigned to it in accordance with the Data Protection Law; and

(c) The term "**Patient Data**" means the Personal Data (including confidential personal data) of your patient and "Protected Medical Information" as defined by HIPAA, including x-ray images, patient records, intraoral scans, research models and treatment plans

#### **4.2. Data Processing**

(a) Controller/Data Processor: You are the Controller of any Patient Data processed for the purpose of providing dental treatment and are responsible for compliance with the Data Protection Law with respect to Patient Data.

Throughout Diagnocat's processing of any such Patient Data, Diagnocat will do so as a Data Processor on your behalf and in accordance with your instructions (as set out in these Terms and Conditions). Diagnocat, as a Data Processor, will not use or use the data for purposes other than those set out in these Terms and Conditions, and will not disclose this data to third parties without your permission. You warrant that you have obtained valid consent and are entitled to disclose the Personal Data to Diagnocat so as to allow Diagnocat to lawfully process through the collection and transfer of any Personal Data in accordance with these Terms and Conditions on behalf of you.

(b) Transparency and integrity: You must inform your patients in accordance with any requirements and/or prescriptions of applicable law, including the purpose for which Patient Data is collected, the intended recipients of Patient Data, the name and address of the person collecting and storing Patient Data (including any Subcontracted Data Processors, such as defined below), as well as the right of patients to data protection and to obtain any necessary consents in the format required by local law, to process their Patient Data in accordance with these Terms and Conditions. In addition, patients should be notified that Diagnocat can use subcontractors' services and process Patient Data in non-EU countries. You agree to compensate and guarantee compensation to Diagnocat, its directors, employees, agents, subcontractors and affiliates for losses arising from any claims, damages, liabilities, costs or penalties that Diagnocat may incur in connection with your disclosure of Patient Data to Diagnocat, or any of our agents, subcontractors or affiliates in accordance with these Terms and Conditions.

(c) Patient Data Disclosure: You may disclose to us the Patient Data necessary to achieve the purpose of using the Product, as well as in accordance with the Patient's consent form and any other consent(s) signed by the patient, in accordance with the requirements of applicable Data Protection Law.

(d) Confidentiality and Security: You and Diagnocat agree to adhere to the principles of medical confidentiality with respect to Patient Data and any confidentiality and security requirements established by applicable law. You must use security features (including a password, key, PIN, token or smart card) individually issued to you by Diagnocat to ensure the security of Patient Data and the confidentiality of such security features without providing, distributing, transmitting or otherwise using them improperly. You acknowledge that Diagnocat may change its security features on an irregular basis. In addition, Diagnocat will take appropriate technical and organizational measures to protect Patient Data from accidental loss, alteration, unauthorized disclosure or access ("Data Vulnerability").

(e) Data Vulnerabilities: Diagnocat will notify you as soon as possible if it becomes aware of a confirmed Data Vulnerability and will keep you informed of any relevant changes. Diagnocat will take all reasonable measures to mitigate or eliminate the consequences of any such Data Vulnerability.

(f) Subcontracting data processing: You agree that Diagnocat may subcontract the processing of patient data to third parties ("**Subcontracted Data Processors**") provided that: (i) Diagnocat has a written agreement with the Data Processor for subcontracting in accordance with applicable law. This agreement requires the processing of Patient Data only in accordance with these Terms; (ii) all consents required by applicable law have been obtained; and (iii) Diagnocat is responsible to you for ensuring that its Subcontracted Data Processors process Patient Data in accordance with these Terms.

(g) Supervision: If required by applicable law, you agree that you will supervise Diagnocat with respect to data processing and comply with any disclosure requirements. Diagnocat agrees that it will supervise the Subcontractors' Data Processors and comply with any disclosure requirements in connection with this supervision.

(h) Data Transfer: You acknowledge that Diagnocat may transfer Patient Data for processing to one or more of its affiliates or third-party data processors under a subcontract in the course of providing services to you, including countries outside your country of residence and/or the European Economic Area ("EEA"). You agree that, subject to the provision of information by Diagnocat, you will receive any necessary consent to the transfer of data and/or notify the subjects of such Patient Data in accordance with applicable law, and also agree and confirm that Diagnocat is not responsible for any failure by you to perform this action.

(i) Data Storage: Diagnocat may store the Patient's Data provided by you for as long as you continue using the Product and also within the periods of time (a) required by the applicable regulations or legislation to store data in relation to patients and (b) that are necessary for Diagnocat to achieve the purposes specified in clause (k) and Section 4.4. below.

(j) Patient Notification: If required by applicable law, you agree that you will notify patients of the period of use and storage of their Patient Data before obtaining consent.

(k) Anonymised data: You agree that Diagnocat may use Patient Data for promotional, educational and/ or research purposes, publication in professional journals or use in professional collateral materials, provided that such Patient Data has first been anonymised in a way that neither you nor any patient are identifiable. Where applicable law requires consent for such use of Patient Data, you agree that you will obtain such consent.

(l) Data Breaches: Except where an incident or breach gives rise to a risk of unauthorised disclosure, loss, destruction or alteration of the Personal Data held in manual or electronic form by or on behalf of the Diagnocat (as Processor), Diagnocat will notify you of such incident or without undue delay. Diagnocat will take all reasonable steps to mitigate or negate the effects of any such Data Breach. In the event of a Data Breach happens with respect to Personal Data uploaded by you to the Product in your IT systems or devices that you use, you will notify Diagnocat you as soon as possible if you become aware of a verified Data Breach and keep us informed of any related developments. In addition, Diagnocat shall provide you with all co-operation and assistance as may be reasonably required in order to report the breach to appropriate Data Protection Authorities and Data Subjects as required under Data Protection Laws and to mitigate or negate the effects of any such Data Breach. Diagnocat will maintain records of any known or suspected Diagnocat breaches in accordance with commercially accepted industry practices and will make such records reasonably available to you upon request, subject to restrictions that may be placed on Diagnocat by contractual obligations of confidentiality to third parties, Regulatory Authorities, or Applicable Law. Except as may be strictly required by Applicable Law, no public notice issued by Diagnocat regarding the incident or breach will disclose the name of, or refer to, you without your prior written consent.

#### **4.3. Collection of information**

You understand and agree that by using the Product, that you may be electronically transferring information of a confidential nature.

The daily information that shall be collected by data sources and applications of the Product includes:

- your Personal Data — personal information including name, last name, date of birth, Diagnocat may collect daily information from the data sources and applications and within 30 days of obtaining the data it will inform you that it has done so and the purpose for why it keeps your personal data in its system; and
- Patient Data.

#### **4.4. Use and disclosure of your content**

You acknowledge and agree that we have the right to monitor and research your images and the data you have uploaded or provided in the Product at any time, and we have the right to maintain copies documenting such monitoring and research.

All publication, research, or commercial products that result from using the data and images you provide are the sole property of Diagnocat. We have permanent access to your data and information to send you relevant notifications, and to apply possible Product improvements and other changes.

You grant Diagnocat a perpetual, irrevocable, worldwide, non-exclusive, royalty-free, sub-licensable, transferable right where permissible by applicable law to copy, translate, modify and use all digital images, photos, data and other content that you upload to the Product storage system ("**Your Content**") so that Diagnocat may provide the Product, other products and services to you and your patients and use Your Content for research and development, internal data analytics, business administration purposes, and improvement and provision of Diagnocat products, services, and as set out in these Terms and Conditions. The license granted by you to Diagnocat under this condition will survive termination of your use of the Product.

You agree that:

(a) you will only upload Your Content to Diagnocat storage system where you have the right to do so and where you have the right to grant Diagnocat the license in accordance with this Section 4.4.;

(b) you have obtained all necessary consents and permissions from your patients in relation to the use of Your Content by you and/or Diagnocat in accordance with Terms and Conditions;

(c) you give consent to function – RPA (Robotic process automation). The function is that our application will use a program that takes control of the screen and presses buttons instead of the doctor. It controls the doctor's computer (mouse and keyboard);

(d) you assume full responsibility for sharing data outside the country where you obtained approval.

Company strongly advise against uploading scans that include personal information about the patient within the image. Unfortunately, company is unable to anonymize such data.

You will indemnify Diagnocat and keep Diagnocat indemnified against all claims, legal proceedings, losses, costs (including legal costs), penalties and fines that Diagnocat suffers or incurs as a result of any claim by any third party that Diagnocat's use of Your Content in accordance with this License infringes the intellectual property, data privacy or image rights of any person. Diagnocat does not share your personally identifiable information with other, third-party companies for their commercial or marketing use. As we develop our business, we may buy or sell assets or business offerings. Customer, email, and visitor information is generally one of the transferred business assets in these types of transactions. We may also transfer such information in the course of corporate divestitures, mergers, or dissolution. From time to time, we may enter into relationships with third parties who provide services to us (e.g., data management and storage services

or credit card processing services). In those circumstances, we disclose personally identifiable information that is necessary for such service providers to perform those services.

Except as otherwise described in the Privacy Policy, Diagnocat will not disclose personal information to any third party unless required to do so by law or subpoena or if we believe that such action is necessary to (a) conform to the law, comply with legal process served on us or our affiliates, or investigate, prevent, or take action regarding suspected or actual illegal activities; (b) to take precautions against liability, to investigate and defend ourselves against any third-party claims or allegations, to assist government enforcement agencies, or to protect the security or integrity of our Website or the Diagnocat Products; and (c) to exercise or protect the rights, property, or personal safety of Diagnocat, our Diagnocat Product users or others.

## **5. MODIFICATIONS TO THE PRODUCT**

We reserve the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Product (or any part thereof) with or without notice. You acknowledge and agree that (i) modifications may result in a delay in computations for some of the Product features, and (ii) we shall not be liable to you or to any third party for any modification, suspension, or discontinuance of the Product.

The software that you use may from time to time automatically download and install updates from the Product. These updates are designed to improve, enhance, and further develop the Product. You agree to receive such updates (and permit us to deliver these to you) as part of your use of the Product.

## **6. LEGAL DISCLAIMER**

THE CONTENT OF THESE TERMS AND CONDITIONS IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO BE A SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS, OR TREATMENT. ALWAYS SEEK THE ADVICE OF YOUR DENTIST OR OTHER QUALIFIED HEALTH PROVIDER WITH ANY QUESTIONS YOU MAY HAVE REGARDING A MEDICAL CONDITION. RELIANCE ON ANY INFORMATION PROVIDED BY US, IS SOLELY AT YOUR OWN RISK. THE SITE AND ITS CONTENT ARE PROVIDED ON AN "AS IS" BASIS. WE TAKE GREAT CARE TO PROTECT YOUR PRIVACY. HOWEVER, IF THERE IS A LOGIN OR PERSONAL DATA BREACH, IT MAY BECOME POSSIBLE TO IDENTIFY YOU. IN SUCH A CASE, DIAGNOCAT WILL TAKE THE NECESSARY STEPS TO MINIMIZE THE RISKS, INCLUDING INFORMING THE AFFECTED INDIVIDUAL AND/OR INFORMING THE RELEVANT SUPERVISORY AUTHORITY. WE TAKE GREAT CARE TO PROTECT YOUR PRIVACY. YOUR DATA WILL BE CODED, IF THERE IS A BREACH, DIAGNOCAT WILL TAKE THE NECESSARY STEPS TO MINIMIZE THE RISKS, INCLUDING INFORMING THE AFFECTED INDIVIDUAL AND/OR INFORMING THE RELEVANT SUPERVISORY AUTHORITY.

## **7. DATA STORAGE**

We shall use good faith efforts to follow appropriate data protection standards. We take the security of your data very seriously. We will use commercially reasonable efforts to maintain the security of your data collected in connection with any of our Products or services. Our systems and software are configured with security measures for secure operation and storage of your Data.

## **8. DISCLAIMER OF WARRANTIES**

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT: (1) YOUR USE OF THE PRODUCT IS AT YOUR SOLE RISK. THE PRODUCT IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. DIAGNOCAT EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. (2) DIAGNOCAT MAKES NO WARRANTY THAT (a) THE PRODUCT WILL MEET YOUR REQUIREMENTS; (b) THE PRODUCT WILL BE UNINTERRUPTED, TIMELY, UNFAILINGLY SECURE, OR ERROR-FREE; (c) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE PRODUCT WILL BE ACCURATE OR RELIABLE; (d) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE PRODUCT WILL MEET YOUR EXPECTATIONS AND (e) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED. (3) ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE PRODUCT IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL. (4) NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM DIAGNOCAT OR THROUGH OR FROM THE PRODUCT SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TERMS AND CONDITIONS. (5) YOU SHOULD ALWAYS USE CAUTION WHEN GIVING OUT ANY PERSONALLY IDENTIFYING INFORMATION ABOUT YOURSELF OR THOSE FOR WHOM YOU HAVE LEGAL AUTHORITY. DIAGNOCAT DOES NOT CONTROL OR ENDORSE ANY ACTIONS RESULTING FROM YOUR PARTICIPATION IN THE PRODUCT AND, THEREFORE, DIAGNOCAT SPECIFICALLY DISCLAIMS ANY LIABILITY WITH REGARD TO ANY ACTIONS RESULTING FROM YOUR PARTICIPATION IN THE PRODUCT

## **9. LIMITATION OF LIABILITY**

WITHIN THE LIMITS ALLOWED BY APPLICABLE LAWS, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT DIAGNOCAT SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF DIAGNOCAT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (a) THE USE OR THE INABILITY TO USE THE PRODUCT; (b) ANY ACTION YOU TAKE BASED ON THE INFORMATION YOU RECEIVE IN, THROUGH, OR FROM THE PRODUCT, (c) YOUR FAILURE TO KEEP YOUR PASSWORD OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL, (d) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION, OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR

TRANSACTIONS ENTERED INTO THROUGH OR FROM THE PRODUCT; (e) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (f) THE IMPROPER AUTHORIZATION FOR THE PRODUCT BY SOMEONE CLAIMING SUCH AUTHORITY; or (g) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE PRODUCT.

## **10. INDEMNITY**

You agree to defend and hold us, and our subsidiaries, affiliates, associated organizations, officers, agents, contractors, partners, employees, successors, and assigns harmless from any claim, or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your violation of the Terms and Conditions or your use of the Product.

## **11. WAIVER**

The failure of Diagnocat to exercise or enforce any right or provision of the Terms and Conditions shall not constitute a waiver of such right or provision. If any provision of these Terms and Conditions is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Terms and Conditions remain in full force and effect.

## **12. CHANGES OF TERMS AND CONDITIONS**

We may make changes to the Terms and Conditions from time to time. When these changes are made, we will make a new copy of the Terms and Conditions available on our Website and any new additional terms will be made available to you.

## **13. SURVIVAL OF TERMS**

Notwithstanding of the fact that you have deleted your account or upon other termination, all provisions of this Agreement, which, by their nature, shall survive termination, including, without limitation, your representations, agreements, and acknowledgements, intellectual property and confidential information provisions, modifications to the products, legal disclaimers, disclaimer of warranties, limitation of liability, indemnity, waivers, survival of terms and other provisions shall be in full force and effect.

## **14. MISCELLANEOUS**

**14.1.** Any dispute arising from this Agreement shall be governed by the laws of the State of California without regard to its conflict of law provisions. SOLE AND EXCLUSIVE JURISDICTION FOR ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE IN AN APPROPRIATE STATE OR FEDERAL COURT LOCATED IN SAN FRANCISCO COUNTY, STATE OF CALIFORNIA AND THE PARTIES UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL.

**14.2.** Any cause of action you may have with respect to your use of the Product must be commenced within one (1) year after the claim or cause of action arises.

- 14.3.** You and Diagnocat are independent contractors, and no agency, partnership, joint venture, employer-employee relationship is intended or created.
- 14.4.** Diagnocat shall not be liable for any costs or damages due to delay or nonperformance under this Agreement arising out of any cause or event beyond Diagnocat's control, including, without limitation, cessation of services hereunder or any damages resulting therefrom to the other party as a result of work stoppage, power or other mechanical failure, computer virus, natural disaster, governmental actions and regulatory acts, restrictive economic measures (sanctions), pandemic or pandemic response, or communication disruption.
- 14.5.** All claims between the parties related to this Agreement will be litigated individually and the parties will not consolidate or seek class treatment for any claim, unless previously agreed to in writing by the parties.  
In the event of any dispute with respect to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and other costs and expenses incurred in resolving such dispute.

## **CONSENT**

I agree that I have read, abide and understood each paragraph contained in these Terms and Conditions and further agree to be legally bound by same.