

# MDVita® Suite of Software User Agreement

This **MDVita® Suite of Software User Agreement** (“Agreement”) constitutes a legally binding agreement between you and Health Care 2000, Inc. This Agreement governs the access and use of the MDVita® Suite of Software i.e. MDVita® EHR, MDVita® Patient Portal and MDVita® Analytics by any user i.e. Healthcare Providers, Healthcare Providers’ Staff, Authorized Users or Patients. For purposes of this Agreement, henceforth, known as MDVita®.

By agreeing to this Agreement you agree that you understand and agree to be bound by the Terms and Conditions with respect to your access to and use of MDVita®. In the event of any inconsistency between this Agreement and the Terms and Conditions, this Agreement shall govern with respect to your access to and use of the MDVita®.

**Note that Section 14 of this Agreement contains a mandatory arbitration provision that requires the use of arbitration on an individual basis and limits the remedies available to you in the event of disputes or claims in connection with this Agreement or MDVita®.**

**YOU AGREE TO BE BOUND BY THIS AGREEMENT WHEN YOU CLICK “I AGREE” AND/OR CONTINUE TO ACCESS OR USE MDVita®. IF YOU DO NOT UNDERSTAND OR AGREE TO BE BOUND BY THIS AGREEMENT, DO NOT ACCESS OR USE MDVITA®.**

## **1. Description of MDVita®**

Health Care 2000, Inc. is providing MDVita® to you so you can conveniently store, access, and manage medical records as provided by Healthcare Providers and Authorized Users within your MDVita® Account. Through use of MDVita®, you maybe also able to authorize others, to access the information stored on MDVita® with access through your MDVita® Account. Such information may not always be accurate or up-to-date depending on the Healthcare Providers or Authorized Users.

## **2. Information Provided Through MDVita®**

Information provided through MDVita® is governed by the patients’ Healthcare Providers and Authorized Users. **Always seek the advice of your Healthcare Provider with any questions you may have regarding interpretation of your medical conditions, or other health related issues.**

**IN THE CASE OF A HEALTH EMERGENCY, SEEK IMMEDIATE ASSISTANCE FROM EMERGENCY PERSONNEL OR CALL 911. NEVER DELAY OBTAINING MEDICAL ADVICE OR DISREGARD MEDICAL ADVICE BECAUSE OF INFORMATION YOU ACCESSED ON OR THROUGH MDVITA®.**

## **3. Changes to this Agreement**

MDVita® and Health Care 2000, Inc. may, at any time and from time to time, supplement, amend, or otherwise change this Agreement. Any changes to this Agreement will be effective immediately upon providing notice of the changes to you either when you log in to MDVita®. You agree to comply with, and be bound by, the modified Agreement either or (i) by continuing

to use or access MDVita® after receiving notice of the changes as described above (ii) by not requesting to terminate your MDVita® Account after receiving a notice of the changes as described above.

#### **4. Changes to MDVita®**

MDVita® and Health Care 2000, Inc. may add features to or delete features from MDVita® at any time, without notice to you.

#### **5. Right to Use the MDVita®**

By agreeing to this Agreement, you confirm that you are a resident of the United States, Puerto Rico, or the Virgin Islands and are at least 18 years of age. You agree to comply with this Agreement, the Terms and Conditions, all applicable laws, and other applicable MDVita® and Health Care 2000, Inc. policies, practices, and notices provided or referenced herein at all times when using MDVita®. MDVita® and Health Care 2000, Inc. retains the right to block or otherwise prevent delivery of any type of e-mail or other communication to or from MDVita® as part of our efforts to protect MDVita®, protect Patients and their Healthcare Providers, or stop you from breaching this Agreement.

#### **6. Sharing Information and Co-Custodians**

**By agreeing to this Agreement, you acknowledge that you understand that when you give others access to your MDVita® Account, they can use, disclose, reproduce, distribute, share, display, and/or transmit that information, including communicating that information to the public. If you do not want others to have this ability, you should not provide others with access to information through your MDVita® Account. You acknowledge and agree that you are responsible for maintaining the confidentiality of your MDVita® login ID and password, and for all uses of your login ID, password, and/or account, whether by you or any other person.**

#### **7. Accessing the Information of Others**

**If you are given access to another person's MDVita® Account, you agree that you will only access such information to the extent you have permission or legal authority to do so. You further agree that you will not use, disclose, reproduce, distribute, share, display, and/or transmit that information in a way that infringes the privacy or other rights of another person.**

**For the avoidance of doubt, all users of MDVita®, including without limitation, those accessing another person's MDVita® Account, shall be bound by the terms of this Agreement in the same manner as an MDVita® user.**

#### **8. Disclaimer of Liability; Limitation of Your Right to Sue MDVita® and Health Care 2000, Inc. for Damages**

**BECAUSE YOU CONTROL THE EXTENT TO WHICH THE INFORMATION STORED IN MDVITA® WITH ACCESS THROUGH YOUR MDVITA® ACCOUNT IS SHARED, MDVITA® AND HEALTH CARE 2000, INC. ASSUMES NO LIABILITY OR RESPONSIBILITY FOR HOW THE INFORMATION STORED ON YOUR MDVITA® ACCOUNT IS USED OR DISCLOSED ONCE IT HAS BEEN SUBMITTED TO AND STORED ON MDVITA®. IN ADDITION, MDVITA® AND HEALTH CARE 2000, INC. ASSUME NO LIABILITY FOR ANY ACTIONS TAKEN, INCLUDING ANY FURTHER USE OR DISCLOSURE OF INFORMATION, BY PERSONS TO WHOM YOU HAVE PROVIDED ACCESS TO YOUR MDVITA® ACCOUNT**

OR BY PERSONS THEY MAY HAVE SHARED THE ACCESS OF YOUR MDVITA® ACCOUNT.

YOU AGREE THAT YOU WILL HOLD MDVITA® AND HEALTH CARE 2000, INC. HARMLESS FROM AND AGAINST ANY AND ALL ACTIONS, CLAIMS, OR DAMAGES RESULTING FROM ANY USE OR MISUSE OF MDVITA®, OR ANY USE OR DISCLOSURE OF INFORMATION STORED IN OR ACCESSED THROUGH YOUR MDVITA® ACCOUNT.

## **9. Data**

MDVITA® IS A PRIVATE SUITE OF SOFTWARE OPERATED BY HEALTH CARE 2000, INC. FOR THE CONVENIENCE OF HEALTHCARE PROVIDERS. IT HAS BEEN DESIGNED SO THAT YOU MAY ACCESS HEALTH-RELATED INFORMATION STORED ON MDVITA® WITH ACCESS THROUGH YOUR MDVITA® ACCOUNT AS PROVIDED BY THE HEALTHCARE PROVIDER OR AUTHORIZED USERS.

**MEDICAL INFORMATION IS GENERATED AND GOVERNED BY HEALTHCARE PROVIDERS OR AUTHORIZED USERS; IT MAY BE RELEASED BY THE HEALTHCARE PROVIDERS OR AUTHORIZED USERS ACCORDING THE HEALTH CARE PROVIDERS POLICIES AND REGULATIONS. TO GET HEALTH INFORMATION RELEASED OR UPDATED ON MDVITA®, MDVITA® ACCOUNT HOLDERS MUST CONTACT THE CORRESPONDING HEALTHCARE PROVIDER.**

## **10. Privacy**

PATIENT PRIVACY IS IMPORTANT TO US AND WE ARE COMMITTED TO PROTECTING PATIENT INFORMATION IN ACCORDANCE WITH APPLICABLE LAWS AND REGULATIONS AND CONSISTENT WITH OUR ESTABLISHED POLICIES.

## **11. No Warranty Limitation of Liability**

MDVITA® AND ALL MATERIALS, INFORMATION, SOFTWARE, PRODUCTS, TOOLS, AND SERVICES INCLUDED IN OR AVAILABLE THROUGH MDVITA® ARE PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. MDVITA® AND ITS SUPPLIERS DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES WITH REGARD TO THE MDVITA® AND ALL MATERIALS, INFORMATION, SOFTWARE, PRODUCTS, TOOLS, AND SERVICES INCLUDED IN OR AVAILABLE THROUGH THE MDVITA®, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. YOUR USE OF MDVITA® IS AT YOUR OWN RISK. ACCESS TO MDVITA® MAY BE INTERRUPTED AND THE MATERIALS, INFORMATION, SOFTWARE, PRODUCTS, TOOLS, AND SERVICES INCLUDED IN OR AVAILABLE THROUGH MDVITA® MAY NOT BE ERROR-FREE. NONE OF HEALTH CARE 2000, INC. AND ITS AFFILIATES AND SUBSIDIARIES, ITS SUPPLIERS, OR ANYONE ELSE INVOLVED IN CREATING, PRODUCING, OR DELIVERING MDVITA® OR THE MATERIALS, INFORMATION, SOFTWARE, PRODUCTS, TOOLS, AND SERVICES INCLUDED IN OR AVAILABLE THROUGH MDVITA® WARRANTS THAT THE MATERIALS, INFORMATION, SOFTWARE, PRODUCTS, TOOLS, AND SERVICES INCLUDED IN OR AVAILABLE THROUGH THE MDVITA® ARE ACCURATE, RELIABLE, COMPLETE, USEFUL, OR CORRECT; THAT MDVITA® WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT MDVITA® ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. PLEASE NOTE THAT SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. CHECK YOUR LOCAL LAWS FOR ANY RESTRICTIONS OR LIMITATIONS REGARDING THE EXCLUSION OF IMPLIED WARRANTIES.

ADDITIONALLY, HEALTH CARE 2000, INC. MAKES NO REPRESENTATIONS OF ANY KIND, EXPRESSED OR IMPLIED: (I) REGARDING THE SAFETY, ACCURACY, OR EFFICACY OF MDVITA®, OR THE INFORMATION STORED ON MDVITA®; (II) THAT THE MDVITA® WILL OPERATE IN A MANNER THAT IS UNINTERRUPTED OR ERROR-FREE, OR (III) REGARDING ANY OTHER SUBJECT MATTER OF THIS AGREEMENT.

YOU ACKNOWLEDGE THAT ANY CLAIMS RELATED TO THE ESTABLISHMENT OR PERFORMANCE OF MDVITA® SHALL BE BROUGHT TO THE ATTENTION THE CORRESPONDING HEALTHCARE PROVIDER.

UNDER NO CIRCUMSTANCES SHALL MDVITA®, ITS SUPPLIERS, OR ANYONE ELSE INVOLVED IN CREATING, PRODUCING, OR DELIVERING MDVITA® OR THE MATERIALS, INFORMATION, SOFTWARE, PRODUCTS, TOOLS, AND SERVICES INCLUDED IN OR AVAILABLE THROUGH MDVITA® BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING LOSS OF DATA, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF, OR INABILITY TO USE, MDVITA®. THIS LIMITATION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL THEORY, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF DAMAGES TO THE EXTENT INDICATED ABOVE, OUR LIABILITY IN SUCH JURISDICTIONS SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW.

YOU ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THIS AGREEMENT AND MDVITA® WOULD NOT BE PROVIDED TO YOU ABSENT SUCH LIMITATIONS.

## **12. Liability Release; Indemnification**

YOU HEREBY EXPRESSLY RELEASE HEALTH CARE 2000, INC. AND ITS AFFILIATES AND SUBSIDIARIES, AND AGREE TO INDEMNIFY AND HOLD HEALTH CARE 2000, INC. AND ITS AFFILIATES AND SUBSIDIARIES, HARMLESS FROM ANY AND ALL CLAIMS, INCLUDING ANY AND ALL CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURIES AND/OR CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES WHICH ARISE, OR ARE ALLEGED TO HAVE ARISEN, IN CONNECTION WITH THE USE, OPERATION OR FUNCTIONING OF MDVITA®.

## **13. Term and Termination**

Either party may terminate this Agreement at any time. You understand that you are solely responsible for backing up the data that you store on MDVita®, and that upon termination, you must immediately discontinue use of the MDVIta®. This section of this Agreement, as well as other provisions that should by their context survive, shall survive termination of this Agreement for whatever reason.

## **14. Arbitration and Class Action Waiver**

PLEASE READ THE FOLLOWING SECTION CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE DISPUTES WITH HEALTH CARE 2000, INC. AND ITS AFFILIATES AND SUBSIDIARIES, ARISING IN CONNECTION WITH THIS AGREEMENT OR MDVITA®, AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM US.

YOU AND HEALTH CARE 2000, INC. AND ITS AFFILIATES AND SUBSIDIARIES, AGREE THAT ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT OR MDVITA® SHALL BE FINALLY DECIDED BY BINDING ARBITRATION UNDER THE CONSUMER ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION. ARBITRATION USES A SINGLE, NEUTRAL ARBITRATOR TO DECIDE A DISPUTE (INSTEAD OF A JUDGE OR JURY); ARBITRATION ALLOWS FOR MORE LIMITED DISCOVERY THAN IN A COURT CASE; AND THE ARBITRATION PROCESS AND RESULT IS SUBJECT TO VERY LIMITED REVIEW BY COURTS. IN AN ARBITRATION YOU HAVE THE RIGHT, AT YOUR EXPENSE, TO BE REPRESENTED BY AN ATTORNEY OF YOUR CHOOSING. ARBITRATORS CAN AWARD THE SAME DAMAGES AND RELIEF UNDER THIS AGREEMENT THAT A COURT CAN AWARD UNDER THIS AGREEMENT. YOU AND HEALTH CARE 2000, INC. AND ITS AFFILIATES AND SUBSIDIARIES, AGREE THAT ANY IN-PERSON ARBITRAL HEARING WOULD OCCUR IN THE UNITED STATES IN MIAMI-DADE COUNTY, FL. HEALTH CARE 2000, INC. AND ITS AFFILIATES AND SUBSIDIARIES, FURTHER AGREES THAT YOUR FILING FEE FOR AN ARBITRATION WILL BE CAPPED AT THE AMOUNT SET BY THE AMERICAN ARBITRATION ASSOCIATION. YOU AGREE THAT, BY AGREEING TO THIS AGREEMENT, THE U.S. FEDERAL ARBITRATION ACT GOVERNS THE INTERPRETATION AND ENFORCEMENT OF THIS PROVISION, AND THAT YOU AND HEALTH CARE 2000, INC. AND ITS AFFILIATES AND SUBSIDIARIES, ARE EACH WAIVING THE RIGHT TO PARTICIPATE IN A CLASS ACTION. THIS ARBITRATION PROVISION SHALL SURVIVE TERMINATION OF THIS AGREEMENT AND THE TERMINATION OF YOUR USE OF THE MDVITA®. REGARDLESS OF THE FORUM, YOU AND HEALTH CARE 2000, INC. AND ITS AFFILIATES AND SUBSIDIARIES, AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. FURTHER, THE ARBITRATOR MAY NOT JOIN OR CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING. IF THIS SPECIFIC PROVISION IS FOUND TO BE UNENFORCEABLE, THEN THE ENTIRETY OF THIS ARBITRATION PROVISION SHALL BE NULL AND VOID. THE ARBITRATOR MAY AWARD DECLARATORY OR INJUNCTIVE RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT PARTY'S INDIVIDUAL CLAIM.

## **15. Entire Agreement**

This Agreement and any other policies or notices referenced herein, represent the entire agreement of the parties with respect to the subject matter hereof. Certain provisions of this Agreement may be incorporated herein via hyperlink. You agree that if at the time of accepting this Agreement, such hyperlinks do not redirect you to the appropriate web page, you will notify your Healthcare Provider immediately. Failure to notify the corresponding Healthcare Provider immediately shall be deemed as acceptance of the provisions incorporated herein by hyperlink as though they redirected you to the appropriate web page.