

Aperture Credentialing End User License Agreement

IMPORTANT - - READ CAREFULLY: Your access to and use of Aperture’s CredentialSmart, ApplySmart and other applications (collectively, the “Aperture Applications”) provided or made available to you (“you”) by Aperture Credentialing, LLC (“Aperture”) or its Licensee (as defined herein) shall be subject to your compliance in all respects with all terms and conditions of this End User License Agreement (“EULA”). The limited license to access and use the Aperture Applications granted to you by this EULA is granted pursuant to an agreement between Aperture and Licensee (the “Agreement”), and the license granted to you by this EULA shall be limited and controlled in all respects by the Agreement. In the event of any conflict between the Agreement and this EULA, this EULA shall control. This EULA constitutes and expresses the entire agreement and understanding between you, Aperture and Licensee with respect to your access to and use of the Aperture Applications and supersedes all previous communications, representative presentations, or agreements, whether written or oral, with respect to the subject matter hereof. Specifically, this EULA shall prevail over any license terms for the Aperture Applications contained in any agreement between you and Licensee.

BY CLICKING ON THE "I AGREE" BUTTON, YOU ARE AGREEING THAT YOU HAVE READ, UNDERSTOOD AND AGREE TO BE BOUND BY THIS EULA. IF YOU ARE ENTERING INTO THIS EULA ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOUR ACCEPTANCE REPRESENTS THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS EULA, IN WHICH CASE "YOU" OR "YOUR" SHALL REFER TO YOUR ENTITY. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS EULA, OR IF YOU DO NOT HAVE THE AUTHORITY TO BIND YOUR ENTITY, CLICK THE "I DO NOT AGREE" BUTTON AND YOU WILL NOT BE GRANTED ACCESS TO USE THE APERTURE SOLUTION.

1. DEFINITIONS.

The capitalized terms below will have the following meanings when used in this EULA. All other capitalized terms shall have the meaning ascribed to them throughout this document.

- (a) “Documentation” means all printed or electronic material relating to the Aperture Applications provided by Aperture.
- (b) “Aperture Platform” means a website, intranet or extranet site, WAN or LAN network site, other online facility, or pages or portions thereof, through which you are provided remote access to the functionality of the Aperture Applications.
- (c) “Licensee” means the authorized licensee of Aperture who provides or makes available the Aperture Applications to you pursuant to the Agreement.
- (d) “User Data” means any data or information supplied by you to Aperture or to or through the Aperture Applications, and any reports, data queries, responses to data queries, or other output generated by the Aperture Applications using or based on such data or information.

2. LICENSE.

- (a) Subject to the conditions herein, Aperture hereby grants you, and you hereby accept, a nontransferable, nonsublicenseable, nonexclusive, limited license to access and use the Aperture

Applications only through the Aperture Platform, solely for your internal, personal use. Other than your use of the Aperture Applications as permitted under the terms and conditions of this EULA, you may not resell, distribute, use on a timeshare or service bureau basis, or use to operate a web-site or otherwise generate income from, the Aperture Applications.

(b) The Aperture Applications and this EULA may not be sold, assigned, leased, sublicensed, or otherwise transferred or made available for use by third parties, in whole or in part, by you without Aperture's prior written consent. You shall not (a) create derivative works based on the Aperture Applications, (b) copy, frame, mirror or utilize any framing techniques to enclose any part or content of the Aperture Applications, including any trademarks or service marks contained therein, (c) reverse engineer, decompile or otherwise attempt to discover the source code of, the Aperture Applications, (d) access the Aperture Applications in order to (i) build a competitive product or service, or (ii) copy any features, functions or graphics of any Aperture Applications, (e) use the Aperture Applications to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (f) use the Aperture Applications to store or transmit viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs, (g) interfere with or disrupt the integrity or performance of any Aperture Applications or third-party data contained therein, or (h) attempt to gain unauthorized access to any Aperture Applications or their related systems or networks.

(c) You hereby acknowledge and agree that Aperture and its licensors are the sole owners of all copyright, patent, trademark, trade secret and other proprietary or intellectual property rights in and to the Aperture Applications, including but not limited to the structure, organization, design, algorithms, methods, templates, data models, data structures, flow charts, logic flow, screen displays, and report formats associated therewith and trademarks associated or displayed therein. Aperture and its licensors reserve all rights in and to the Aperture Applications and the Aperture Platform not expressly granted to you hereunder. You hereby grant to Aperture a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Aperture Applications any suggestions, enhancement requests, recommendations or other feedback provided by you relating to the operation of the Aperture Applications.

(d) You shall contact Aperture Customer Support if you become aware of misuse of the Aperture Applications by any person. Aperture cannot guarantee the accuracy of any information submitted by you or any other person, nor any identity information about any other end-user. Aperture or its licensors may investigate any complaints and violations that come to Aperture's or its licensors' attention and may take any action that they believe is appropriate, including, but not limited to issuing warnings, terminating accounts and/or user profiles or reporting you or your users to law enforcement authorities.

3. LOGIN.

You will be issued a username and password (collectively, "Login") that will allow you to access the Aperture Applications through the Aperture Platform. You shall not assign or transfer your Login to any other person or entity without Aperture's permission. You shall maintain and be responsible for the security of your Login and shall be liable for any access or use occurring through your Login. You must promptly inform Aperture of any apparent breach of security, such as loss, theft or unauthorized disclosure or use of your Login of which you are aware.

4. USER OBLIGATIONS.

(a) You agree that you are solely responsible for any and all User Data displayed, uploaded, exchanged or transmitted on, through or by the Aperture Platform. Neither Aperture, its licensors, suppliers or partners, or any of its or their affiliates, suppliers or resellers accept, and each hereby expressly disclaims, any and all liability with respect to same. Under no circumstances will Aperture, its licensors, suppliers or partners, or any of its or their affiliates, suppliers or resellers be liable in any way for the User Data, including, but not limited to, any errors or omissions in any User Data, or any loss or damage of any kind incurred as a result of the use of, access to, denial of access to or loss of the User Data.

(b) You hereby agree to comply with all applicable federal, state and local laws, rules, regulations and orders (collectively, "Laws") including, without limitation, all present and future laws and regulations relating to the privacy of individually identifiable medical, financial or other information including, without limitation, the Health Insurance Portability and Accountability Act of 1996, Subtitle D (Privacy) of the HITECH Act of 2009, and the rules and regulations promulgated thereunder (collectively "HIPAA"). You shall take all reasonable measures to safeguard, and take all precautions reasonably necessary, including but not limited to sufficient testing and investigation of the Aperture Applications, to ensure the security and privacy of all Protected Health Information (as defined by HIPAA) received, stored or used by you pursuant to this EULA; and will in all matters and transactions fully comply with the Privacy Standards and Security Provisions of HIPAA.

(c) You shall not delete, remove, modify, obscure, fail to reproduce or in any way interfere with any proprietary, trade secret, or copyright notice appearing on or incorporated in the Aperture Applications or the Aperture Platform

(d) The Aperture Applications constitutes a "Commercial Item", consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are defined the U.S. Code of Federal Regulations. Consistent with such provisions, to the extent that the Aperture Applications are licensed to United States Government end users, any license shall be limited to only those rights granted to all other end users, according to the terms and conditions contained in this EULA.

5. TERMINATION.

(a) This EULA shall terminate immediately upon the earlier of:

- (i) a breach of this EULA by you;
- (ii) expiration or termination of any agreement between you and Licensee; or
- (iii) expiration or termination of the Agreement.

(b) Aperture may terminate this EULA if you become insolvent or bankrupt or cease to do business; become unable or admit in writing your inability to pay all debts as they mature; make a

general assignment for the benefit of or enter into any composition or arrangement with creditors; authorize, apply for, or consent to the appointment of a receiver, trustee, or liquidator of all or a substantial part of your assets or has proceedings seeking such appointment commenced against you which are not terminated within thirty (30) days of such commencement; file a voluntary petition under any bankruptcy or insolvency law, or has proceedings under such laws instituted against it which are not terminated within thirty (30) days of such commencement.

(c) Notwithstanding anything herein to the contrary, Aperture and/or its licensors may suspend, limit and/or terminate your access to or use of the Aperture Applications, or any portion thereof, in the event of a breach by you or occurring under your account. Aperture and its licensors shall have no liability to you, your users, Licensee or any third party for any termination of this Agreement or suspension of access or use of any Aperture Applications. Upon termination or expiration of this EULA, you shall immediately (a) discontinue all use of the Aperture Applications and the Aperture Platform, and (b) at your expense, return to Aperture all Documentation.

(d) Notwithstanding anything to the contrary herein, the provisions of Sections 2(b), 2(c), 2(d), 4, 5, 6, 7, 8, 9, 10 and 11, as well as any other provisions of this EULA necessary to interpret the respective rights and obligations of the parties hereunder, shall survive the expiration or termination of this EULA.

6. CONFIDENTIAL AND PROPRIETARY INFORMATION.

You agree to hold the Aperture Applications in confidence, and to protect the confidential nature thereof, and shall not disclose any trade secrets contained, embodied or utilized therein, to anyone other than your authorized users having a need for such disclosure, and then only to allow use of the Aperture Applications as authorized herein. You shall take all necessary steps to ensure that the provisions of this Section are not violated by any of your employees, agents, consultants, contractors, or any other person under your control or in your service. Under no circumstances shall you permit any competitors of Aperture to access or use the Aperture Applications or the Aperture Platform. The obligations set forth in this Section 6.0 shall survive expiration or termination of this Agreement.

7. DISCLAIMER OF WARRANTY.

(a) THE APERTURE APPLICATIONS ARE PROVIDED BY APERTURE, ITS LICENSORS, SUPPLIERS, AND PARTNERS AND EACH OF ITS AND THEIR AFFILIATES, SUPPLIERS AND RESELLERS, "AS IS" WITHOUT WARRANTY OF ANY KIND, AND APERTURE, ITS LICENSORS, SUPPLIERS, AND PARTNERS AND EACH OF ITS AND THEIR AFFILIATES, SUPPLIERS AND RESELLERS HEREBY SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER APERTURE NOR ITS LICENSORS, SUPPLIERS, OR PARTNERS, NOR ANY OF ITS OR THEIR AFFILIATES, SUPPLIERS AND RESELLERS WARRANT THAT: (A) OPERATION OF THE APERTURE APPLICATIONS SHALL BE UNINTERRUPTED OR ERROR FREE, (B) FUNCTIONS CONTAINED IN THE APERTURE APPLICATIONS SHALL OPERATE IN COMBINATIONS WHICH MAY BE SELECTED FOR USE BY YOU, OR (C) THE APERTURE APPLICATIONS WILL MEET YOUR REQUIREMENTS. ANY WARRANTIES WITH RESPECT TO THE APERTURE APPLICATIONS OR APERTURE PLATFORM MADE BY LICENSEE SHALL BE BETWEEN YOU AND LICENSEE AND ANY WARRANTY CLAIMS SHALL BE MADE DIRECTLY TO LICENSEE.

(b) You are solely responsible for the accuracy and adequacy of the User Data and all other information and data furnished for processing with the Aperture Applications. To the extent that data is

being transmitted over the Internet hereunder, you acknowledge that Aperture has no control over the functioning of the Internet and Aperture makes no representations or warranties of any kind regarding the performance or security of the Internet. The successful operation of the Aperture Applications is dependent on your use of proper procedures and systems and input of correct data.

(c) If at any time you are dissatisfied with the Aperture Applications, or any portion thereof, your sole remedy is to cease using the Aperture Applications. You acknowledge and agree that Aperture's licensors have no control over how you interact with Aperture, the Aperture Platform, or any other product or service offered by or through Aperture.

8. LIMITATION OF LIABILITY; DISCLAIMER OF DAMAGES.

(a) IN NO EVENT WILL APERTURE, ITS LICENSORS, SUPPLIERS, OR PARTNERS OR ANY OF ITS OR THEIR AFFILIATES, SUPPLIERS OR RESELLERS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOST BUSINESS, REVENUES, DATA OR PROFITS, OR OTHER SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, WHETHER BASED ON CLAIMS FOR BREACH OF CONTRACT, TORT, STRICT OR PRODUCTS LIABILITY, OR OTHERWISE, EVEN IF ANY OF THE FOREGOING HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) IN NO EVENT SHALL APERTURE, ITS LICENSORS, SUPPLIERS, OR PARTNERS OR ANY OF ITS OR THEIR AFFILIATES, SUPPLIERS OR RESELLERS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DAMAGES RESULTING FROM OR RELATED TO ANY FAILURE OF THE APERTURE SOLUTION, INCLUDING, WITHOUT LIMITATION, LOSS OF DATA, OR DELAY IN THE DELIVERY OF THE APERTURE APPLICATIONS (OR ANY REVISIONS OR UPDATES THERETO) UNDER THIS EULA.

(c) THE MAXIMUM LIABILITY OF APERTURE, ITS LICENSORS, SUPPLIERS, AND PARTNERS AND ANY OF ITS OR THEIR AFFILIATES, SUPPLIERS OR RESELLERS UNDER THIS EULA SHALL BE LIMITED TO TEN DOLLARS.

(d) You specifically understand and agree that Aperture, in providing the Aperture Applications may serve as a conduit for information provided by third parties and that Aperture may rely on such information and services and products provided to it by third parties. Aperture assumes no responsibility or liability for the accuracy, completeness, propriety, necessity or advisability of the information which may be provided, directly or indirectly, to you, or of the medical or other services to which such information may relate. Performance by Aperture of its obligations hereunder shall not give rise to any implication that Aperture is making any credentialing determination or otherwise assuming any responsibility for the scope or quality of medical care afforded to patients by you, your employees, agents, contractors or other health care consumers or providers. The Aperture Applications are not intended to supplant or replace the professional judgment of you or your employees, agents, contractors or other health care providers in treating patients.

9. INDEMNITY.

You hereby agree to defend, indemnify and hold Aperture, its licensors, suppliers and partners and its and their respective officers, directors, managers, members, employees, agents, affiliates, suppliers, resellers and subcontractors harmless from and against any losses, liabilities, damages, demands, penalties and expenses (including, without limitation, court costs and attorneys' fees) arising out of or in connection with (a) access to and use of the Aperture Applications or the Aperture Platform by you and/or any third party, whether or not authorized by you, who accesses the Aperture

Applications or the Aperture Platform by means of the Login provided to you, (b) any breach or alleged breach of this EULA or any Law by you, (c) any failure of the User Data to be accurate, complete or error-free, or (d) any claim, demand or action alleging medical malpractice, wrongful death, personal injury, damage to property, errors or misrepresentations in credentialing, or any other professional, general, statutory or regulatory claim whatsoever, without regard to whether such claim, demand or action is alleged to arise or arising by negligent, intentional or reckless conduct or by action or omission.

10. ADDITIONAL TERMS FOR APPLYSMART PLUS.

If you subscribe to Applymart Plus as part of the Aperture Applications, the following terms shall also apply:

- a. Your access to and use of ApplySmart Plus, including storage of any User Data therein, is at your sole risk, and neither Aperture nor any of its licensors shall be liable to you in any way or under any cause of action for any loss, misuse, or corruption of, or unauthorized access to, any User Data.
- b. ApplySmart Plus is not intended to serve as or replace a backup service, and you are solely responsible for maintaining copies of any User Data you upload to ApplySmart Plus. In no event shall Aperture or any of its licensors be liable to you for any failure of the ApplySmart Plus application or your inability to access ApplySmart Plus.
- c. You are solely responsible for complying with all laws applicable to the transmission and storage of User Data in ApplySmart Plus, and for determining whether ApplySmart Plus is suitable for the User Data you intend to upload to ApplySmart Plus.
- d. As part of your subscription to ApplySmart Plus, Aperture provides you with a reasonably amount of storage space for your User Data. Aperture reserves the right to limit the storage space or bandwidth available to you, and further reserves the right to suspend access to ApplySmart Plus in the event of any excessive or abnormal usage.

11. MISCELLANEOUS.

(a) Assignment; Binding Effect. This EULA and your right to access and use the Aperture Applications and Aperture Platform may not be assigned or transferred by you, in whole or in part, whether by operation of law or otherwise, without the prior written consent of Aperture. Aperture shall have the right to assign this EULA, in whole or in part, to an affiliate or, in whole, to a third party in connection with a sale of assets or other transfer or disposition of its business operations. Any attempted assignment in violation of this Section 10(a) shall be null and void and of no force or effect.

(b) Force Majeure. Aperture shall not be liable for non-performance or delays caused by acts of God, wars, terrorist acts, riots, strikes, fires, shortage of labor or materials, labor disputes, governmental restrictions, failures or interruptions of the Internet, utilities, communications, satellite or network services (including those of Aperture and its service providers), or other causes beyond Aperture's reasonable control.

(c) Governing Law; Jurisdiction. This Agreement shall be deemed to be made under and shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, without regard to its conflicts of law rules. All actions brought with respect to this Agreement shall be

brought exclusively in the U.S. District Court for the District of Kentucky or the state courts located in Jefferson County, Kentucky and you consent to personal jurisdiction and venue therein. You hereby irrevocably waive all claims you may now or hereafter have that any such court lacks jurisdiction over you and agree not to plead or argue otherwise. In addition, you hereby irrevocably waive all claims you may now or hereafter have that any such court is an inconvenient forum for an action or proceeding arising out of or in connection with this EULA and you agree not to plead or argue otherwise.

(d) Equitable Relief. You agree that any violation by you of the provisions or covenants of this EULA contained in Sections 2 (License) and 6 (Confidential and Proprietary Information) will cause immediate and irreparable harm to Aperture for which money damages will not constitute an adequate remedy at law. Therefore, you agree that, in the event you breach or threaten to breach said provisions or covenants, Aperture shall be entitled to injunctive and/or other preliminary or equitable relief, in addition to any other remedies available at law, without having to prove actual damages or to post a bond.

(e) Third Party Beneficiaries. Aperture's licensors, suppliers and partners and their respective affiliates, suppliers and resellers are all third-party beneficiaries of this Agreement, and shall have the right to enforce the provisions of this EULA directly. Except for the foregoing and except as otherwise set forth herein, nothing in this EULA shall confer any rights upon any person other than the parties and their respective successors and permitted assigns.

(f) Severability. Any provisions of this EULA that are determined to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability in such jurisdiction, without rendering invalid or unenforceable the remaining provisions of this EULA or affecting the validity or enforceability of such provisions in any other jurisdiction. If a court of competent jurisdiction declares any provision of this EULA to be invalid or unenforceable, the parties hereto agree that the court making such determination shall have the power to reduce the scope, duration, or area of the provision, to delete specific words or phrases, or to replace the provision with a provision that is valid and enforceable and that comes closest to expressing the original intention of the parties hereto, and this EULA shall be enforceable as so modified.

(g) Entire Agreement; Amendment. This EULA sets forth the entire agreement between you and Aperture with respect to your access to and use of the Aperture Applications and the Aperture Platform. Aperture reserves the right to amend, modify or supplement this EULA at any time, which amendments, modifications or supplements shall be effective when posted on the Aperture Platform. You shall be solely responsible for monitoring the Aperture Platform for such amendments, modifications and/or supplements.

(h) Waiver. No term or provision of this EULA will be considered waived and no breach will be considered consented to by Aperture, unless such waiver or consent is in a writing signed by Aperture. No consent to or waiver of a breach of this EULA by Aperture, whether express or implied, will constitute a consent to, waiver of, or excuse for any other, different, or subsequent breach of this EULA by you.

(i) Headings. Headings used in this EULA are for convenience of reference only and shall in no way be used to construe or limit the provisions herein.