

Cresta Diagnostic Services Agreement

PLEASE CAREFULLY READ THIS AGREEMENT, AS IT CONSTITUTES A LEGALLY BINDING AGREEMENT AND GOVERNS YOUR RECEIPT AND USE OF CRESTA'S DIAGNOSTIC SERVICES (AS DEFINED BELOW). BY USING THE DIAGNOSTIC SERVICES, YOU ACCEPT THIS AGREEMENT WITH CRESTA INTELLIGENCE, INC. ("CRESTA"). IF YOU DO NOT OR CANNOT ACCEPT THIS AGREEMENT, YOU MUST NOT ACCESS OR USE THE DIAGNOSTIC SERVICES. BY ENTERING INTO THIS AGREEMENT ON BEHALF OF A LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THAT LEGAL ENTITY TO THIS AGREEMENT. TOGETHER, THE INDIVIDUAL ACCEPTING THESE TERMS AND ANY SUCH ENTITY ARE REFERRED TO AS "CUSTOMER".

1. Definitions

- 1.1 Cresta Content means all Content provided by Cresta to Customer during Cresta's performance of the Diagnostic Services.
- 1.2 Content means text, images, documents, materials, and all other forms of data or communication.
- 1.3 Customer Content means all Content Customer or its Users provide to Cresta during Cresta's performance of the Diagnostic Services.
- 1.4 Diagnostic Services means Cresta's provision of analytic services for Customer and includes the Cresta Content.
- 1.5 Users mean individuals authorized by Customer to use the Diagnostic Services. Users include employees or independent contractors of Customer using the Diagnostic Services.

2 License

- 2.1 Cresta Content. Subject to the terms of this Agreement, Cresta grants to Customer, a non-exclusive, non-transferable license to access the Cresta Content solely for Customer's review of the Diagnostic Services. Customer may not use the Diagnostic Services on behalf of any third party.

3 Confidentiality

- 3.1 Confidential Information. During the term of this Agreement, each Party will regard any information provided to it by the other Party and designated in writing as proprietary or confidential to be confidential ("Confidential Information"). Confidential Information shall also include information which, to a reasonable person familiar with the disclosing Party's business and the industry in which it operates, is of a confidential or proprietary nature. The receiving Party shall hold in confidence, and shall not disclose (or permit or suffer its personnel to disclose) any Confidential Information to any person or entity except to a director, officer, employee, outside consultant, or advisor (collectively "Representatives") who has a need to know such Confidential Information in the performance under this Agreement. The receiving Party and its Representatives shall use such Confidential Information only for the purpose for which it was disclosed and shall not use or exploit such Confidential Information for its own benefit or the benefit of another without the prior written consent of the disclosing Party. Each Party accepts responsibility for the actions of its Representatives and shall protect the other Party's Confidential Information as it protects its own valuable confidential information, but in no event shall less than reasonable care be used. The receiving Party shall promptly notify the disclosing Party upon learning of a breach or threatened breach and shall cooperate with any reasonable request of the disclosing Party in enforcing its rights.
- 3.2 Exclusions. Information is not Confidential Information if such information: (i) is known before receipt from the disclosing Party, with no obligation of confidentiality; (ii) becomes known to the receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the receiving Party without using the disclosing Party's Confidential Information. The receiving Party may disclose Confidential Information under the requirements of law, legal process or government regulation, provided that a protective order is in place or it gives the disclosing Party reasonable prior written notice to permit the disclosing Party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

- 3.3 *Injunctive Relief*. Any use of the disclosing Party's Confidential Information in a manner inconsistent with this Agreement may cause the disclosing Party irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, without limiting any other remedy available, the disclosing party may file for an injunction or injunctions to restrain such use.
- 3.4 *Data Deletion*. Cresta is under no obligation to store or archive any Customer Content. Customer shall maintain backups of all Customer Content and Cresta shall not be liable for losing Customer Content. Upon expiration of this Agreement, Cresta will irretrievably delete all Customer Content in its possession or control.

4 Ownership

- 4.1 *Customer Content*. Customer retains ownership of all right, title, and interest in all Customer Content. Customer will not provide personal information relating to its own customers without Cresta's prior written consent. If Customer provides such information to Cresta without Cresta's prior written consent, Cresta shall not be responsible and liable for any breach of any data protection laws and regulations resulting from Customer providing such personal information.
- 4.2 *Customer Content License Grant*. By submitting, uploading, providing, transmitting or otherwise providing Customer Content on or through the Diagnostic Services, Customer grants to Cresta a nonexclusive, royalty-free, worldwide, perpetual, irrevocable, transferable and sublicensable right and license to collect, access, use, process, transmit, display, publish, adapt and modify the Customer Content as required for Cresta and its subcontractors and service providers to provide, improve, and enhance its product offerings. Customer has and will have all necessary rights to provide to Cresta the Customer Content, including without limitation obtaining any necessary third-party consents to provide such Customer Content. During the term of this Agreement and thereafter, Cresta may collect and use anonymized or aggregated Customer Content to provide and improve its products and services (subject to Cresta's compliance with legal and confidentiality obligations).
- 4.3 *Diagnostic Services*. All right, title, and interest in the Diagnostic Services and any derivatives and copies thereof, including any patents, copyrights, trade secret rights, registered and/or unregistered trademarks, trade names and associated goodwill, and moral rights ("Intellectual Property Rights") are and shall remain Cresta's or its licensors'. The Diagnostic Services are licensed, not sold, and Customer acquires no ownership of the Diagnostic Services or other Intellectual Property Rights. During the term of this Agreement, Cresta grants to Customer a limited, worldwide, non-exclusive, non-transferable, royalty-free right to use the Cresta Content solely in connection with Customer's licensed use of the Diagnostic Services. Customer's right to use the Diagnostic Services is valid only during the term of this Agreement and only in strict compliance with this Agreement. All rights not granted to Customer in this Agreement are reserved to Cresta and its licensors.
- 4.4 *Customer Obligations*. Customer is responsible for 1) all activities conducted under its User logins, 2) its Users' compliance with this Agreement, and 3) all Customer Content. Unauthorized use, resale or commercial exploitation of the Diagnostic Services is prohibited. Cresta may terminate the Diagnostic Services if any User violates this Agreement.
- 4.5 *License Restrictions*. Customer shall not (and shall allow no third party to): 1) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the Diagnostic Services or access the Diagnostic Services to build a competitive product or service or copy ideas, features, functions, or graphics of the Diagnostic Services, or 2) copy, license, sell, transfer, make available, lease, time-share, distribute, or assign this license, the Diagnostic Services to any third party, 3) use the Diagnostic Services to: (a) send, upload or otherwise transmit any Customer Content that is unlawful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable; (b) upload or otherwise transmit, display or distribute any Customer Content that infringes any proprietary or intellectual property rights of any person; (c) upload or otherwise transmit any material that contains software viruses or any other harmful code, files or programs; (d) interfere with or disrupt the Diagnostic Services or networks connected to the Diagnostic Services; or (e) violate any law or regulation.

5 Data Privacy

- 5.1 If Customer believes it is a “Covered Entity” or “Business Associate” and, to the extent Cresta receives, maintains, transmits, uses, or discloses Protected Health Information (“PHI”) pursuant to the federal Health Insurance Portability and Accountability Act (“HIPAA”), the Health Information Technology for Economic and Clinical Health Care Act (“HITECH”), the U.S. Department of Health and Human HRIS Services regulations entitled “Standards for Privacy of Individually Identifiable Health Information” (“Privacy Rule”), Security Standards for the Protection of Electronic Protected Health Information (“Security Rule”) and the Breach Notification for Unsecured Protected Health Information (“Breach Notification Rule”), the Diagnostic Services provided hereunder are subject to the additional terms of the Business Associate Agreement at <https://cresta.com/legal/> (“BAA”), as may be modified at any time and without notice, regardless of whether Customer has executed such BAA. Cresta is not a “Health Care Clearinghouse” within the meaning of HIPAA, and Customer shall not request or otherwise require Cresta to act as such. To the extent any provision in the BAA or any other document you agree to with Cresta for purposes of providing Cresta with access to PHI is inconsistent with this Agreement, then the provision of the BAA or such other document will govern, as applicable.
- 5.2 To the extent Customer is processing Personal Information subject to the Applicable Data Protection Law (each defined within the DPA), the terms of the Data Processing Addendum at <https://cresta.com/legal/> (“DPA”), as may be modified at any time and without notice, are incorporated herein. To the extent Personal Data from the European Economic Area (EEA), the United Kingdom and Switzerland are processed, the Standard Contractual Clauses shall apply, as further set forth in the DPA. For the purposes of the Standard Contractual Clauses, Customer and its applicable affiliates are each the data exporter.
- 5.3 Cresta makes no representation regarding the compliance of the Diagnostic Services with any law. Customer has an independent duty to comply with all laws applicable to it, including data privacy laws.

6 Indemnification

- 6.1 Customer Indemnification. Customer will defend Cresta, its affiliates, licensors, and subcontractors, against claims brought against Cresta by any third party related to: (a) Customer’s use of the Diagnostic Services other than as expressly permitted in the Agreement; and (b) Customer Content. Customer will indemnify Cresta against all damages, attorney fees, and costs finally awarded against Cresta (or the amount of any settlement Customer enters into) with respect to these claims.
- 6.2 Indemnification Procedure. In the event of an infringement claim, Cresta will 1) terminate the Diagnostic Services, 2) promptly notify Customer in writing of the claim for which indemnity is claimed (but a late notice will not remove the Customer’s obligation except to the extent prejudice is shown), and 3) allow Customer to solely control the defense of the claim and all negotiations for settlement. Cresta will provide Customer with reasonable cooperation and assistance in defending such claim (at Customer’s cost).

7 Warranty Disclaimer

- 7.1 EXCEPT AS EXPRESSLY SET FORTH IN THIS DIAGNOSTIC SERVICES AGREEMENT, THE DIAGNOSTIC SERVICES ARE PROVIDED BY CRESTA “AS IS” WITHOUT WARRANTY, SUPPORT, OR INDEMNITIES OF ANY KIND, AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, CRESTA, ITS AFFILIATES, LICENSORS, AND SUBCONTRACTORS MAKE NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, OR THAT THE USE OF THE DIAGNOSTIC SERVICES WILL BE SECURE, UNINTERRUPTED OR ERROR FREE. CRESTA DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY PROVISION OR USE OF THE DIAGNOSTIC SERVICES, THIRD PARTY PRODUCTS, OR CONNECTIVITY ISSUES.

8 Limitation of Liability

- 8.1 Consequential Damage Waiver. Except as may arise out of either party’s breach of the confidentiality provisions contained herein or violation of a party’s intellectual property rights, neither party will be liable to the other or any third party for loss of profits, or special, indirect, incidental, consequential or exemplary damages, in connection with this Agreement, even if it knows the possibility of such damages.

- 8.2 Limitation of Liability. Except as may arise out of either party's breach of the confidentiality provisions contained herein, violation of a party's intellectual property rights, or the indemnification obligations contained herein, the total cumulative liability of a Party for any claims and damages under this Agreement, whether arising by statute, contract, tort or otherwise, will not exceed ten thousand dollars (\$10,000).

9 Term and Termination

- 9.1 Term. This Agreement will commence on the date of Customer's acceptance of this Agreement and will continue for thirty (30) calendar days, unless extended in writing by the parties (the "Term").
- 9.2 Termination. Either Party may terminate this Agreement immediately at any time, with or without cause. All rights and obligations of the parties which are reasonably intended to survive such termination or expiration will survive termination or expiration of this Agreement.
- 9.3 Effect of Termination. Upon any termination or expiration of this Agreement, Cresta shall no longer provide the Diagnostic Services to Customer and Customer and its Users shall cease using the Diagnostic Services. Termination of this Agreement by either Party will be a nonexclusive remedy and will be without prejudice to any other right or remedy of the terminating. Upon termination of this Agreement, each party shall promptly return or destroy all Confidential Information of the other party in its possession.

10 Miscellaneous

- 10.1 Notice. All notices to Customer will be in writing and deemed given when delivered to Customer's email address entered in the applicable online Order Form. All legal notices to Cresta shall be in writing and deemed given when delivered to legal@cresta.ai.
- 10.2 Entire Agreement and Controlling Documents. This Agreement contains the entire agreement between the parties regarding the subject hereof, and supersedes all prior or contemporaneous proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) is binding upon the Parties and their permitted successors and assigns. Only a written instrument signed by the Parties may amend this Agreement. Any inconsistent or conflicting terms in any document issued by Customer are rejected and shall be of no force or effect. This Agreement shall be construed and interpreted fairly, under the plain meaning of its terms, and there shall be no presumption or inference against the Party drafting this Agreement in construing or interpreting the provisions hereof.
- 10.3 Assignment. This Agreement shall be binding upon and to the benefit of Cresta and Customer and their permitted successors and assigns. Either Party may assign this Agreement as part of a corporate reorganization, consolidation, merger, or sale of stock or substantially all of its assets. Otherwise, neither Party may assign this Agreement without the prior written consent of the other Party, and any attempted assignment without such consent will be void. Cresta may use independent contractors, sub processors or subcontractors to assist in the delivery of the Diagnostic Services.
- 10.4 Governing Law. This Agreement and any claim arising between the Parties shall be governed by and construed under the laws of the State of California without regard to its conflict of law provisions. Any legal action or proceeding between the Parties or regarding this Agreement shall be brought in the state or federal courts in San Francisco, California. The Parties agrees to the exclusive jurisdiction and venue in San Francisco, California. The prevailing Party shall be entitled to recover its reasonable attorneys' fees.
- 10.5 Modification. This Agreement supersedes all prior written or oral agreements between Customer and Cresta with respect to the subject matter of the Agreement. Unless otherwise specified herein, Cresta may modify this Agreement at any time and will provide written notice of any material changes to the Agreement.