

# Vivature Terms of Use Agreement

IMPORTANT-READ CAREFULLY. The Vivature website and NExTT software is operated by Vivature Inc., a Texas corporation (collectively, "we", "us", or "our"). The Vivature Website provides personal health data and records management including consolidation of health related data documents. The Vivature Website also provides physician and patient encounter management tools, including a personal way for patients to interact more effectively with providers at student medical center(s) to book appointments, provide immunization compliance, exchange information, and follow up on treatment plans. We also provide personal health management tools through our Vivature Website, including individualized treatment and wellness via prevention reminders, risk assessments, disease management tools, goal organizers, and educational materials.

Any access to, use, installation, or downloading of the Vivature Website, Vivature Website content, or any computer programs, object code software, other software, or other proprietary materials, documents and information, (collectively "**Vivature Services**"), constitutes assent to and acceptance of all of the terms and conditions of this Terms of Use Agreement, our Privacy Policy, and our Security Policy (collectively, "**Agreement**") on the part of you and any individual or business entity on behalf of whom (or which) you access, use, install, or download our Vivature Services (collectively, "you", or "your"), whether you are a "**Visitor**" (which means that you simply access the publicly available portions of the Vivature Website) or you are a "**Member**" (which means that you have registered with and log onto the Vivature Website or otherwise use the Vivature Services). The term "User" refers to a Visitor or a Member.

We reserve the right, at our sole discretion, to change, modify, add, or delete portions of this Agreement at any time without further notice. If we do this, we will post the new, modified version of this Agreement to <https://www.vivature.com>. Your continued access or use of the Vivature Services after any such changes constitutes your acceptance of the new Agreement. Your written approval is not a prerequisite to the validity or enforceability of this Agreement, and no solicitation of such written approval by or on behalf of Vivature shall be construed as an inference to the contrary. If this Agreement is considered an offer by Vivature, your acceptance is expressly limited to all of its terms and conditions. If you do not agree to abide by this or any future Agreement, do not use or access (or continue to use or access) the Vivature Services. It is your responsibility to regularly check for changes to this Agreement and to review such changes.

PLEASE READ THESE TERMS OF USE CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES AND OBLIGATIONS. THESE INCLUDE VARIOUS LIMITATIONS AND EXCLUSIONS.

## Acknowledgement of Intellectual Property Ownership

You acknowledge that Vivature, and its licensors, own all right, title, and interest in the Vivature Services and that the Vivature Services are protected by state, federal, and international laws relating to the protection of intellectual property, including without limit laws relating to copyrights, trademarks, and service marks. All trademarks and copyrights set forth on the Vivature Website and in or on the Vivature Services are the sole property of Vivature or its respective licensors. Unless set forth specifically in writing in this Agreement, no other rights are granted to you. Nothing in this Agreement shall be construed as

conferring any license to intellectual property rights, whether by estoppel, implication or otherwise. All other rights are reserved solely and exclusively for Vivature and its respective licensors.

No portion of the Vivature Services may be reproduced, reverse engineered, decompiled, disassembled, modified, republished, distributed, displayed, transmitted, exported, re-exported, rented, leased, loaned, sold, sublicensed, or used to create derivative works in any form or by any means, electronic or mechanical, for any purpose, without the express written permission of Vivature. The Vivature brand, logo, and domain name vivature.com and the Vivature brand, logo, and domain name vivaturehealth.com are trademarks and service marks of, and the exclusive property of, Vivature. Other trademarks, service marks, and domain names referenced are the intellectual property of their respective holders and are used here for informational purposes only.

## Eligibility Representations & Warranties

Use of, and membership, in conjunction with the Vivature Services is void where prohibited. By accessing or using the Vivature Services, you hereby represent and warrant that:

- You have the right to enter into this Agreement;
- You are currently an enrolled student at a college or university;
- You have been authorized by your college or university to use the Vivature Website in conjunction with services provided by your college or university's student medical center(s);
- All information you submit to the Vivature Services is truthful and accurate;
- You will maintain the accuracy of such information;
- Your use of the Vivature Services does not violate any applicable law or regulation; and

We reserve the right to monitor Users of the Vivature Services to verify that they meet the eligibility requirements outlined above, but we have no obligation to do so. Vivature may terminate your membership at any time, for any or no reason, without warning.

## Access and Use Grant

Vivature grants to you a personal, revocable, non-exclusive, nontransferable, non-sublicensable, and limited right to access and use the Vivature Services, subject to the terms and conditions of this Agreement, solely for personal, non-commercial purposes.

## Restrictions and Prohibitions on Use

The rights to access and to use the Vivature Services granted to you under this Agreement do not include the right to:

- Copy, sublicense, rent or lease, sale, or publicly perform or use with a public performance any portion of the Vivature Services;
- Transfer any rights granted to you under this Agreement to any other party;
- Reverse engineer, decompile, disassemble, modify, translate, make any attempt to discover the source code of the Vivature Services, or modify, or otherwise create derivative works of, the Vivature Services;
- Make known or allow to be made known information relating to the Vivature Services, including serial numbers, accounts, passwords, device identification numbers, or any other information that could reveal or jeopardize the integrity of your membership account;

- Access or use the Vivature Services if you are not eligible, as defined herein.
- Use the Vivature Services for, or as a part of, any criminal or tortious activity, including fraud, drug dealing, gambling, harassment, stalking, spamming, spimming, sending of viruses or other harmful files, copyright infringement, patent infringement, or theft of trade secrets;
- Use scripts, or any other automation tool to input or collect data from the Vivature Website;
- Interfere with, disrupt, or create an undue burden on the Vivature Services or the networks or services connected to the Vivature Services;
- Attempt to impersonate another Member or person;
- Use the account, username, or password of another Member at any time;
- Disclose your password to any other person;
- Permit any other person to access your account;
- Sell otherwise transfer your Personally Identifiable Information or your Non-Personally Identifiable Information to any other person;
- Use any information obtained from the Vivature Services in order to harass, abuse, or harm another person; or
- Use the Vivature Services in a manner inconsistent with any and all applicable laws and regulations.

Additionally, the Vivature Services may also contain text, software, scripts, graphics, photos, images, sounds, music, video, interactive features, downloads, works of authorship, advertisements, or other materials (collectively "Third Party **Content**") from Vivature licensors and other third parties. You may not copy, modify, translate, publish, broadcast, transmit, distribute, perform, display, or sell any Third Party Content or User Content (herein defined below) (collectively, "**Content**") appearing on or through the Vivature Services.

The restrictions outlined above are only a partial list of the kind of activity that is illegal or prohibited with respect to the Vivature Website or your use of the Vivature Services. Vivature reserves the right to monitor, police, and investigate your conduct with respect to the Vivature Services. We also reserve the right to take appropriate legal action against anyone who, in Vivature's sole discretion, violates any of these restrictions, including without limitation, reporting you to law enforcement authorities. Additionally, Vivature reserves the right, in its sole discretion, to reject, refuse to post, or remove any information (including Personally Identifiable Information, as herein defined below) posted by you, or to restrict, suspend, or terminate your access to all or any part of the Vivature Services at any time, for any or no reason, with or without prior notice, and without liability.

You understand that your violation of any of the restrictions listed above may cause irreparable harm to Vivature and may cause Vivature to incur damages and liabilities, or both. You agree, therefore, that if you violate any of these restrictions, Vivature has the right to seek an injunction prohibiting you from engaging in any further such violation, without the posting of any bond, and you shall indemnify, hold harmless, and otherwise compensate Vivature for all damages and liabilities that Vivature incurs as a result of your violation.

## Agreement Termination

If you materially breach any term or condition of this Agreement, this Agreement, including, but not limited to, the access and use rights granted above, shall terminate immediately and automatically, except that the restrictions set forth in the **Acknowledgement of Intellectual Property Ownership, Eligibility Representations & Warranties, Restrictions and Prohibitions on Use, Agreement Termination, Fees, Non-Commercial Use by Members, Personally Identifiable Information, Non-Personally Identifiable Information, User Content, Disclaimer of Warranty, Limitation on Liability, No Medical**

**Advice, Disclaimers, Indemnity, Member Disputes, Privacy, U.S. Export Controls, Disputes and Forum, Governing Law, Entire Agreement, No Waiver, Headings, Severability, Notice, and Acceptance of this Agreement** Sections and such provisions as are necessary to give meaning and effect to the foregoing shall survive the termination of this Agreement.

In addition, you may terminate your membership with the Vivature Services at any time, for any reason, by contacting your student medical center(s) and requesting to terminate your membership with the Vivature Services.

Upon the termination of this Agreement or your membership with the Vivature Services, your right to use the Vivature Services or any component or part thereof shall end immediately, and you shall destroy all media containing the Vivature Services or any such component or part and delete all copies of the Vivature Services, or such component or part from each computer and communications network on which you have installed or downloaded the Vivature Services, or any component or part thereof at any time.

## **Fees**

You acknowledge that Vivature reserves the right to charge for access to and use of the Vivature Services, including membership to the Vivature Services, and to change its fees from time to time in its discretion. If Vivature terminates your membership because you have breached the Agreement, you shall not be entitled to the refund of any unused portion of subscription fees.

## **Password**

When you sign up to become a Member of the Vivature Services, you will be assigned a password by the Vivature Services. You will be given an opportunity to change your password when you first log into your new account. Additionally, you can change your password at any time by clicking on the "Change my Password" Drop Down once you are logged into the Vivature Website. You are solely responsible for all actions taken using your Vivature Services account, whether or not you are the person using your account. Accordingly, you are entirely responsible for maintaining the confidentiality of your password. You agree not to use the Vivature Services username or password of another Member at any time or to disclose your password to any third party. You agree to notify Vivature immediately if you suspect any unauthorized use of your Vivature Services membership account or access to your password.

## **Non-commercial Use by Members**

The Vivature Services are for the personal use of Members and, where appropriate, Visitors only and may not be used in connection with any commercial endeavors except those that are specifically endorsed or approved by Vivature. Illegal or unauthorized use of the Vivature Services, including data mining, robots, scraping or similar data gathering or extraction methods, for the purpose of sending unsolicited email or unauthorized framing of or linking to the Vivature Services, is prohibited. Appropriate legal action will be taken for any illegal or unauthorized use of the Vivature Services.

## **Personally Identifiable Information**

From time to time, you, your student medical center(s), or your healthcare providers may input or submit certain information, called Personally Identifiable Information, to the Vivature Services that personally

identifies you and is used by the Vivature Services, your student medical center(s), or your healthcare providers to assist you in school registration, facilitate medical appointments, and provide you with healthcare services. For the purposes of this Agreement, Personally Identifiable Information includes, without limitation: names, addresses, email addresses, phone numbers, preferred communication methods, user names, passwords, emergency contact information, healthcare provider information, medical insurance information, protected health information, electronic protected health information, health and medical records, medical information, immunization records, health and medical histories, family health and medical histories, social wellness histories, physical examination records, appointment request information, medical concerns, appointment preferences, and apparent symptoms.

You hereby acknowledge that Vivature owns all right, title, and interest in and to any and all Personally Identifiable Information inputted into the Vivature Services, whether directly or indirectly through importation of data files and databases. Personally Identifiable Information is protected from disclosure as provided under our Privacy Notice and Policy, a copy of which can be found at <https://www.vivature.com>

## Non-Personally Identifiable Information

From time to time, Vivature may also collect certain non-personally-identifiable information from Users of the Vivature Services including without limitation: Internet protocol addresses, Member profile information, aggregate User-data, demographic information, geographical information, browser types, operating system types, Vivature Website browsing history, and Vivature Website usage statistics (collectively, "**Non-Personally Identifiable Information**"). The term Non-Personally Identifiable Information also includes certain Personally Identifiable Information, as defined above, that has been de-identified by Vivature as provided under applicable state and federal law. We may, from time to time use this Non-Personally Identifiable Information to, among other things, manage the Vivature Website, track Vivature Website usage, and improve the Vivature Services. This Non-Personally Identifiable Information may also be shared with third-parties to, for example, provide relevant services to Users and display relevant Third Party Content to Users on the Vivature Website. Internet protocol addresses of Users may also be recorded for security and monitoring purposes. In addition, cookies may be used by Vivature to gather and record Non-Personally Identifiable Information. Accordingly, you hereby acknowledge that Vivature is the sole owner of the Non-Personally Identifiable Information collected in conjunction with the Vivature Services.

## User Content

We do not anticipate that you will input or submit any information to the Vivature Services other than Personally Identifiable Information, as defined above. Nevertheless, you may from time to time input or submit to the Vivature Services information that is not Personally Identifiable Information such as creative text, software, scripts, graphics, photos, images, sounds, music, video, interactive features, downloads, works of authorship, or other creative materials (collectively, "**User Content**"). Vivature does not claim ownership rights in User Content. After inputting or submitting your User Content to or through the Vivature Services, you continue to retain ownership rights in such User Content, and you continue to have the right to use your User Content in any way you choose. By inputting, submitting, displaying, or posting any User Content on or through the Vivature Services, you hereby grant to Vivature

an irrevocable, perpetual, non-exclusive, fully-paid and royalty-free, sublicensable, worldwide license to use, modify, publicly perform, publicly display, reproduce, and distribute such User Content and any derivative works thereof, whose creation is hereby authorized, for any purpose.

You represent and warrant that:

- You own the User Content inputted, submitted, displayed, or posted by you to or through the Vivature Services or otherwise have the rights to input, submit, display and post the User Content to or with the Vivature Services and to grant the license to Vivature set forth in this section;
- You have not misappropriated rights from a third party for use, input, submittal, display, or posting in conjunction with the Vivature Services; and
- The inputting, submitting, displaying, or posting of your User Content on or through the Vivature Services does not violate the privacy rights, publicity rights, copyrights, contract rights or any other rights of any person. You agree to pay for all royalties, fees, and any other monies owing any person by reason of any User Content inputted, submitted, displayed, or posted by you to or through the Vivature Services.

## **DISCLAIMER OF WARRANTY**

THE MATERIALS IN AND CONTENTS OF THE VIVATURE SERVICES ARE PROVIDED ON AN "AS IS" BASIS. THE WARRANTY SET FORTH IN THIS SECTION IS EXCLUSIVE AND IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF VIVATURE FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE, OR PERFORMANCE OF THE VIVATURE SERVICES PROVIDED UNDER THIS AGREEMENT. VIVATURE EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NON-INTERFERENCE, COMPATIBILITY OF COMPUTER SYSTEMS, INTEGRATION, NON-INFRINGEMENT, OR THOSE ARISING FROM THE COURSE OF DEALING, COURSE OF TRADE, OR THOSE ARISING UNDER STATUE.

VIVATURE DOES NOT WARRANT THAT THE VIVATURE SERVICES WILL MEET YOUR REQUIREMENTS, THAT OPERATION OF THE VIVATURE SERVICES WILL BE UNINTERRUPTED, THAT THE VIVATURE SERVICES WILL BE ERROR-FREE OR VIRUS-FREE, THAT THE MEDIA ON WHICH THE VIVATURE SERVICES ARE PROVIDED TO USERS WILL BE FREE OF DEFECTS IN MATERIAL AND WORKMANSHIP; THAT KNOWN DEFECTS IN MATERIAL AND WORKMANSHIP WILL BE CORRECTED; THAT THE VIVATURE SERVICES WILL POSSESS THE FUNCTIONS AND FEATURES CONTEMPLATED BY ANY ACCOMPANYING DOCUMENTATION, THAT THE VIVATURE SERVICES WILL PERFORM IN ACCORDANCE WITH ANY ACCOMPANYING DOCUMENTATION, OR THAT THE VIVATURE SERVICES WILL NOT ALTER, DAMAGE, OR ERASE ANY COMPUTER DATA OR COMPUTER PROGRAMS. VIVATURE DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OF OR THE RESULT OF THE USE OF THE VIVATURE SERVICES AND THE CONTENT IN TERMS OF CORRECTNESS, ACCURACY, TIMELINESS, RELIABILITY, APPLICABILITY, OR OTHERWISE. IN ADDITION TO THE FOREGOING, YOU AGREE THAT YOUR USE OF THE VIVATURE SERVICES AND CONTENT IS AT YOUR OWN RISK.



VIVATURE MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, THAT THE VIVATURE SERVICES OR ANY OF THE CONTENT WILL ASSIST YOU IN IDENTIFYING A HEALTHCARE PROVIDER, A MEDICAL TREATMENT OR PROCEDURE, OR ANY OTHER PURPOSE. VIVATURE DISCLAIMS ALL RESPONSIBILITY AND LIABILITY WITH RESPECT TO ANY AGREEMENTS YOU MAKE WITH YOUR STUDENT MEDICAL CENTER(S), YOUR HEALTHCARE PROVIDERS, OR WITH THIRD PARTIES WHO OFFER PRODUCTS OR SERVICES ON OR THROUGH THIS SITE. YOU AGREE TO LOOK SOLELY TO YOUR STUDENT MEDICAL CENTER(S), YOUR HEALTHCARE PROVIDERS, AND THIRD PARTIES WITH RESPECT TO ANY AND ALL CLAIMS ARISING OUT OF SUCH AGREEMENTS AND SUCH PRODUCTS OR SERVICES, INCLUDING MEDICAL APPOINTMENT SCHEDULING.

ANY WARRANTIES GRANTED HEREIN ARE CONDITIONED UPON (1) YOU NOT BEING IN BREACH OF THIS AGREEMENT OR HAVING ANY LIABILITY HEREUNDER; (2) YOU GIVING VIVATURE WRITTEN NOTICE OF ANY BREACH OF WARRANTY PROVIDED HEREUNDER WITHIN THIRTY (30) DAYS OF THE TIME THE BREACH BECOMES APPARENT; (3) THE BREACH OF WARRANTY BEING REPEATEDLY DEMONSTRABLE; (4) THE VIVATURE SERVICES BEING AT VIVATURE'S MOST CURRENT AVAILABLE RELEASE LEVEL; AND (5) NO ADDITION TO, OR MODIFICATION OF, THE VIVATURE SERVICES HAVING BEEN UNDERTAKEN BY YOU OR ANY THIRD PARTY NOT ACTING AT VIVATURE'S DIRECTION.

## **LIMITATION ON LIABILITY**

IN NO EVENT SHALL VIVATURE BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS OR DAMAGES ARISING FROM LOST DATA OR CONTENT OR DAMAGES ARISING FROM YOUR USE OF THE VIVATURE SERVICES, EVEN IF VIVATURE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, VIVATURE'S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO VIVATURE DURING THE TERM OF THIS AGREEMENT. BUT IN NO CASE WILL THE VIVATURE'S LIABILITY TO YOU EXCEED THIRTY UNITED STATES DOLLARS (US \$30.00). YOU ACKNOWLEDGE THAT IF NO FEES ARE PAID TO VIVATURE, YOU SHALL BE LIMITED TO INJUNCTIVE RELIEF ONLY, UNLESS OTHERWISE PERMITTED BY LAW, AND SHALL NOT BE ENTITLED TO DAMAGES OF ANY KIND FROM VIVATURE, REGARDLESS OF THE CAUSE OF ACTION.

THE LIMITATIONS ON LIABILITY SET FORTH HEREIN ARE FUNDAMENTAL ELEMENTS OF THIS AGREEMENT. THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT BOTH PARTIES WOULD NOT BE ABLE TO PERFORM HEREUNDER ON AN ECONOMIC BASIS WITHOUT SUCH LIMITATIONS. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

## No Medical Advice

The Vivature Services are not a referral service and do not recommend or endorse any particular student medical center or healthcare providers. Rather, the Vivature Services is only a "conduit" or intermediary that provides the aforementioned student medical center services and the aforementioned Content. The Content on the Vivature Services is presented in summary form, is general in nature, and is provided for informational purposes only. Vivature does not offer any advice regarding any particular student medical center(s), healthcare providers, health conditions, or medical treatments. No information on the Vivature Services should be construed as medical or health advice. You should obtain any additional information necessary and consult with a healthcare provider prior to making any healthcare decisions. Always seek the advice of your healthcare provider or student medical center(s) for answers to any questions you may have regarding a medical condition. Neither the Content nor any other service offered through the Vivature Services is intended to be relied upon for medical diagnosis or treatment. Never disregard medical advice or delay in seeking it because of something you have read on the Vivature Services. Vivature does not assume responsibility or liability for any advice, treatment, or other services rendered by any healthcare provider or student medical center(s) or for any malpractice claims and other claims that may arise directly or indirectly from such advice, treatment, or other services.

## Disclaimers

You hereby acknowledge that you are accessing and using the Vivature Services from a computer or computers not within the ownership or control of Vivature. We are not responsible in any way for the computers you use to access the Vivature Services or for any damages that such computers may cause. Use of any computers to access the Vivature Services is solely at your own risk.

Vivature is not responsible for any incorrect or inaccurate Content or Personally Identifiable Information inputted into, displayed through, accessed by, or otherwise associated with Vivature Services, whether the inaccuracy is caused by Users of the Vivature Services, Vivature, third parties, or by any of the equipment or programming associated with or utilized in the Vivature Services. Vivature takes no responsibility for Third Party Content which is posted to or through the Vivature Services, nor does it take any responsibility for the goods or services provided by its Third Party Content providers. All Content inputted into, displayed through, accessed by, or otherwise associated with the Vivature Services is for your information only. We are not responsible for any damages associated with your reliance on any Content. Vivature is not responsible for the conduct, whether online or offline, of any User of the Vivature Services.

You hereby absolve and release Vivature from any claim of harm resulting from cause(s) over which we do not have direct control, including, but not limited to, failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems, computer viruses or other damaging code or data, delays in operation or transmission, theft or destruction, criminal activity, operator errors, severe weather, earthquakes, natural disasters, strikes or other labor problems, wars, acts of terrorism, governmental relations, or unauthorized access to, or alteration of, any User communication. Vivature assumes no responsibility for any error, omission, interruption, deletion, defect, delay in operation or transmission, communications line failure, theft or destruction or unauthorized access to, or alteration of, any User communication or Personally Identifiable Information. Vivature is not responsible for any



problems or technical malfunction of any telephone network or lines, computer online systems, servers or providers, computer equipment, software, failure of any email or players due to technical problems or traffic congestion on the Internet or on any of the Vivature Services or combination thereof, including any injury or damage to Users or to any person's computer related to or resulting from participation or downloading materials in connection with the Vivature Services. Under no circumstances shall Vivature be responsible for any loss or damage, including personal injury or death, resulting from use of the Vivature Services, from any Content or Personally Identifiable Information posted to or through the Vivature Services, or from the conduct of any Users of the Vivature Services, whether online or offline.

## **Indemnity**

You agree to indemnify and hold Vivature, its subsidiaries, and affiliates, and their respective officers, agents, partners and employees, harmless from any loss, liability, claim, or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your use of the Vivature Services in violation of this Agreement, or arising from a breach of this Agreement, or any breach of your acknowledgements set forth above, or if any Personally Identifiable Information that you post to or through the Vivature Services causes Vivature to be liable to another.

## **Member Disputes**

You are solely responsible for your interactions with other Members. Vivature reserves the right, but has no obligation, to monitor disputes between you and other Members.

## **Privacy**

Vivature take reasonable measures to protect your Personally Identifiable Information and to uphold your privacy. Accordingly, use of the Vivature Services is also governed by our Privacy Notice and Policy, which is incorporated into this Agreement by reference. A copy of our Privacy Notice and Policy can be found at <https://www.vivature.com>

## **U.S. Export Controls**

Vivature controls and operates the Vivature Services from the United States of America and makes no representation that the Vivature Services or Content are appropriate or available for use in other locations. If you use the Vivature Services from other locations, you are responsible for compliance with applicable local laws including, without limitation, all export laws. Some of the Vivature Services and Content may be subject to export control imposed by the United States and may not be downloaded or otherwise exported or re-exported: (1) into (or to a national or resident of) any country to which the U.S. has placed an embargo, including without limitation, Cuba, Iran, Iraq, Libya, North Korea, Syria, or Yugoslavia; (2) to anyone in the U.S. Treasury Department's Specially Designated national list; or (3) to anyone on the U.S. Commerce Department's Table of Denial Orders. If you download or use the Vivature Services or Content you represent and warrant that you are not located in, or under the control of, or a national or resident of any such country or on any such list. Downloading or using the Vivature Services or Content is at your sole risk.

## **Disputes and Forum**

Each party agrees that any dispute regarding this Agreement or the matters contemplated hereby shall be litigated only in the federal or state courts located in Dallas County, Texas. Each party agrees that it shall not commence any legal proceeding against the other party in any other court or before any other authority. Each party hereby submits to the exclusive jurisdiction of the federal or state courts located in Dallas County, Texas, and each party hereby waives any objection to the jurisdiction of such courts. Any downloading or use of the Vivature Services or Content subjects you to the jurisdiction of the United States, even if you are not a citizen, national, or resident of the United States. You hereby agree to be bound by this Disputes and Forum clause even if you are not a citizen, national, or resident of the United States.

## **Governing Law**

This Agreement and all claims related to it, its execution or the performance of the parties under it, shall be governed by the laws of the State of Texas without regard to the conflicts of law rules of the State of Texas.

## **Entire Agreement**

This Agreement, including any other terms, conditions, and policies incorporated hereto, constitutes the entire agreement between you and Vivature regarding the use of the Vivature Services. This Agreement supersedes any prior agreement, written or oral, express or implied, including any prior versions of this Terms and Conditions Agreement, our Privacy Notice and Policy, or our Security Policy to or with you.

## **No Waiver**

The failure of Vivature to exercise or enforce any right or provision of this Agreement shall not operate as a waiver of such right or provision.

## **Headings**

The section titles and headings in this Agreement are for convenience only and have no legal or contractual effect.

## **Severability**

This Agreement operates to the fullest extent permissible by law. If any provision of this Agreement is found unlawful, void or unenforceable by a court based upon any written decree, that provision is deemed severable from this Agreement and does not affect the validity and enforceability of any remaining provisions.

## **Notice**

Any notice required under this EULA shall be delivered by hand or courier or sent, through registered mail, return receipt requested, to: Vivature Inc., ATTENTION: VIVATURE SERVICES TERMS AND

CONDITIONS, 5050 Spring Valley Road, Dallas, TX 75244. All notices shall be effective upon the actual receipt of such notice by Vivature.

## **Acceptance of this Agreement**

In order to access or use the Vivature Services, you must first agree to this Agreement. You may not access or use the Vivature Services if you do not accept this Agreement. You can accept this Agreement by: (1) clicking to accept or agree to this Agreement, where this option is made available to you in the user interface; or (2) by actually using the Vivature Services. In this case, you understand and agree that Vivature will treat your use of the Vivature Services as acknowledgement, consent, acceptance, and agreement of the terms, conditions, and policies of Vivature and this Agreement in accordance with the laws of the State of Texas. Before you continue, you should print off or save a copy of this Agreement for your personal records.