TERMS AND CONDITIONS OF SERVICE

These Terms and Conditions of Service (these “Terms” or this “Agreement”), govern the relationship between The University of Hawai‘i, for the benefit of its John A. Burns School of Medicine (hereinafter ”UH”) and you, the client (hereinafter “User”) accessing or otherwise making use of the Service (defined below). These Terms constitute a legally binding agreement between the User and UH. Accordingly, UH advises the User to read these Terms carefully before accessing or otherwise making use of the Site or Service.

User desires to access and use the Service all in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein, it is agreed by and between the parties as follows:

1. NOT THE PRACTICE OF MEDICINE; NO ENDORSEMENT

The Service on the Site does not constitute the practice of medicine or any other professional health care advice, diagnosis or treatment. Reliance on the Service and information provided by the Service and Site is solely at your own risk. Any health care provider seen by User is solely responsible for any health care services or health care advice provided to User. UH does not approve, recommend or endorse any specific health care provider or health care services or products that may be accessed through the Service or Site.

2. ACCEPTANCE OF THIS AGREEMENT; RESTRICTIONS ON ACCEPTANCE

   (a) Acceptance. When User accesses or otherwise makes use of the Service, User acknowledges, agrees to, and is bound by, the terms and conditions of this Agreement. If User does not agree to be bound by this Agreement, do not continue to access or otherwise make use of the Service.

   (b) Restrictions on Acceptance. When User accesses or otherwise makes use of the Service, User acknowledges and agrees that:

   • User is accepting this Agreement on behalf of themselves, and, if User is accepting this Agreement and using the Service on behalf of any legal entity, including any company, organization, government, or governmental agency, User represent and warrants that User has been authorized to do so and to act on behalf of such legal entity;

   • User has read and understands all of the provisions, terms and conditions set forth in this Agreement;

   • User will be bound by all of the provisions, terms and conditions set forth in this Agreement;

   • User is at least eighteen (18) years of age;

   • User has a valid email address; and

   • User is a resident of Hawaii and has a valid postal mailing address confirming the same;
3. DEFINITIONS

“Authorized Site” or “Site” means www.visuwell.io, www.wecounsel.com, or any other related website, webpage, or URL operated or used for the purpose of providing the Service.

“Site Data” means data, information and/or records collected, stored, submitted, or inputted by User into or otherwise processed or recorded through the Service.

“Documentation” means all user manuals and other written material provided pursuant to this Agreement that describe the functionality or assist in the use of the Service.


“Service” means the interactive platform, including software products provided on a software-as-a-service basis. “Service” means the interactive platform, including certain software products provided on a software-as-a-service or installed basis, that: (a) allows health care providers and their patients to interact online for the purpose of receiving and providing professional medical services related to the patient’s treatment; and (b) provides health care providers with certain practice management tools including, but not limited to, virtual video visits, real-time chat, virtual triage, scheduling, messaging, note taking, and record keeping tools in addition to other Service that support the provision of professional or medical services.

4. LICENSE

a. License Restrictions. This Agreement does not transfer ownership rights of any description in the software products, Service, documentation, or any related materials to User or any third party. User shall not copy, modify, reverse engineer, or decompile the software products, or create derivative works based on the software products. Customer shall not remove copyright and trademark notices on the software and documentation and shall take necessary steps to protect intellectual property rights at all times.

b. Usage Restrictions. User shall not (i) permit any third party to access the Service, except as expressly permitted herein, (ii) create derivative works based on the software, program code or user interfaces comprising the Service, (iii) copy, frame or mirror the Service other than copying or framing on Users own intranets or otherwise for Users own internal business purposes, (iv) reverse engineer the Service, (v) systematically access the Services using “bots” or “spiders”, or any automated system that calls to the Services more frequently than may reasonably be performed by a human user using a standard web browser, or attempt to gain unauthorized access to the Service or the related systems or networks, or (vi) access the Service in order to (A) build a competitive commercial product or service of comparable function and features, or (B) use the Service in an unlawful manner. UH may, without limiting its other rights and remedies, immediately suspend access to the Service if User is in violation of any of the above.

c. Reservation of Rights. Subject to the limited rights expressly granted hereunder,
VISUWELL reserves all rights, title and interest in the software products and Service, including all related intellectual property rights. No rights are granted to User hereunder other than as expressly set forth herein.

5. FEES AND PAYMENT

User agrees to pay any fees set by the health care provider for use of the Service and any health care services received utilizing the Service.

6. TERM AND TERMINATION

This Agreement shall commence on the date User first makes use of the Service and will remain in effect until either User or UH terminate this Agreement or the use of Service.

7. USER OBLIGATIONS

a. Responsibility for Users. User will (a) remain responsible for all obligations under this Agreement arising in connection with any use of the Service by any other person or entity authorized by, through or as a result of an act or omission of User ("Other User"), including without limitation any Authorized User; (b) be liable for any act or omission by any Other User, which, if performed or omitted by User, would be a breach of this Agreement; and (c) any such act or omission of any Other User will be deemed to be a breach of this Agreement by User.

b. Unauthorized Use. User shall use reasonable efforts to prevent unauthorized access to or use of the software and the Authorized Site and shall notify UH promptly of any such unauthorized access or use.

c. Compliance with Applicable Laws. User shall comply with all federal, state and county laws, ordinances, codes, rules, and regulations (including without limitation those pertaining to unsolicited email) ("Applicable Laws"), as the same may be amended from time to time, which in any way affect User’s performance under this Agreement. User shall use the Software and Service only in accordance with Applicable Laws.

d. User Participation. User acknowledges that provision of the Service may be dependent upon User providing access to certain data, information or assistance to UH from time to time, and that the same may be essential to the performance of the Service. User agrees to provide such data, information or assistance to UH upon UH’s request.

e. Protected Health Information. User acknowledges and understands that use of the Service will permit or require provision of certain Site Data to UH and WeCounsel Solutions, LLC, (dba VISUWELL). Site Data may include protected health information ("Protected Health Information") as defined under the HIPAA Regulations. As between the Parties, all Site Data shall be considered proprietary to User. Unless expressly provided otherwise, UH will only use Site Data for performing the Service and as authorized under this Agreement. UH and/or VISUWELL may use and is hereby granted a license to use Site Data on an anonymized and de-identified basis consistent with 45 CFR 164.514(b) to improve the Service or develop new products or Service.
8. **CONFIDENTIALITY**

User acknowledges that the software products, documentation, and Service and all information relating to the business and operations of UH that User learns or has learned during or prior to the term of this Agreement, may be the valuable, confidential, and proprietary information of UH. During the period this Agreement is in effect, and at all times afterwards, User will (a) safeguard the confidential information with the same degree of care that User uses to protect Users own confidential information; (b) maintain the confidentiality of this information; (c) not use the information except as permitted under this Agreement; and (d) not disseminate, disclose, sell, publish, or otherwise make available the information to any third party without the prior written consent of UH.

User may disclose Confidential Information of UH if it is compelled by law to do so, provided the User gives UH prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at UH’s cost, if UH wishes to contest the disclosure. If User is compelled by law to disclose UH’s Confidential Information as part of a civil proceeding to which UH is a party, and UH is contesting the disclosure, the User will reimburse UH for its reasonable cost of compiling and providing secure access to such Confidential Information.

9. **“AS IS” DISCLAIMER**

All work product and services provided by UH relating to the Service are provided “AS IS”. UH MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. UH DOES NOT WARRANT THAT THE SERVICE OR ANY PORTION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED OR THAT THE SERVICE OR THE SERVER THAT MAKES IT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. UH ASSUMES NO LIABILITY ARISING FROM OR RELATING TO THE DELAY, FAILURE, INTERRUPTION, OR CORRUPTION OF ANY DATA OR OTHER INFORMATION TRANSMITTED IN CONNECTION WITH USE OF THE SERVICE.

10. **LIMITATION OF LIABILITY**

IN NO EVENT SHALL UH BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES WHATSOEVER RESULTING FROM ANY LOSS OF USE, LOSS OF PROFITS, LOSS OF DATA, LITIGATION, OR ANY OTHER PECUNIARY LOSS, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE SERVICE OR THE PROVISION OF OR FAILURE TO MAKE AVAILABLE ANY SUCH PRODUCTS, GOODS, OR SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. **NO AGENCY**

NO AGENCY RELATIONSHIP IS CREATED BY USER’S USE OF THE SERVICE, AND UH HAS NO RESPONSIBILITY FOR THE EXISTENCE, CONTENT OR ANY OTHER
CHARACTERISTICS OF CONNECTIONS OR CONVERSATIONS BETWEEN HEALTH CARE PROVIDER AND USER OR ANY OTHER PERSON, REGARDLESS OF WHETHER THE SERVICE IS USED TO MAKE SUCH CONNECTION OR FACILITATE SUCH CONVERSATION.

12. NO INDEMNIFICATION

UH is not authorized under the laws of the State of Hawaiʻi to indemnify, defend, or hold harmless User or any party under this Agreement, and, as such, UH shall not have any such obligations for any reason.

13. INDEMNIFICATION

User agree to defend, indemnify and hold harmless UH, the Research Corporation of the University of Hawaiʻi (“RCUH”), their officers, employees, agents, representatives, or any person acting for or on behalf of the University or RCUH, from and against any and all claims, demands, suits, actions, causes of action, judgments, injunctions, orders, rulings, directives, penalties, assessments, liabilities, losses, damages, costs, and expenses (including, without limitation, reasonable attorneys' fees, expert witness fees and costs, discovery and pretrial costs, and costs incurred in the investigation, prosecution, defense, and/or handling of any action), resulting from or alleged to result from User’s violation of these Terms or User’s use of the Service. UH is not liable to User or anyone else for any decision made or action taken based on use of the Service.

14. SURVIVAL OF OBLIGATIONS

Upon any termination or expiration of this Agreement, all rights and obligations of the parties shall cease except those rights and obligations that have accrued or are intended to or expressly survive such termination or expiration, as provided under this Agreement, including without limitation, the rights and obligations under Sections 7, 8, 9, 10, 11, 12, 13 and 14.

15. GENERAL PROVISIONS

a. Governing Law. This Agreement shall be governed by and construed, interpreted, and enforced in accordance with the laws of the State of Hawaiʻi, and the courts of the Circuit Court of the First Circuit of the State of Hawaiʻi shall have exclusive jurisdiction in any action to interpret or enforce this Agreement. The provisions of this paragraph shall survive expiration or other termination of this Agreement regardless of the cause of the termination.

b. Force Majeure. UH shall not be liable for any delay in performance or any failure in performance of services under this Agreement caused in whole or in part by reason of force majeure, which shall be deemed to include the occurrence of any event beyond the control of UH, such as war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot and other acts of civil disobedience, action of a public enemy, or acts of any national, state or local government (or any agency, subdivision or instrumentality thereof), judicial action, accident, fire, explosion, flood, storm, epidemic, quarantine, disease outbreak, or other public health related emergency, including, without limitation, Severe Acute Respiratory Syndrome, avian influenza A (H5N1), swine influenza (H1N1) and coronavirus (including but not limited to COVID-19 and
related/mutated forms) or other act of God, and national shortage of fuel or raw materials, or interruption of telecommunications services.

c. Severability. If any provision of this Agreement or the application thereof to any person, entity, or circumstance shall, to any extent, be deemed invalid, void, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid, void, or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and enforceable to the full extent permitted by law.

d. Assignment. This Agreement and the software access granted hereunder cannot be assigned, sublicensed, or otherwise transferred by the User without prior written consent from UH.

e. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior or concurrent oral or written agreements, understandings, and communications relating to such subject matter between the parties hereto.

f. Waiver. This Agreement may be modified, waived, or discharged only in writing, signed by a duly authorized officer of UH and User. No waiver by either party to this Agreement of any breach by the other party or of compliance with any term, condition or provision of this Agreement shall be deemed a waiver of any other term, provision or condition of this Agreement.

g. Amendment. This Agreement may be amended at any time by UH without notice to User. The latest version of the Agreement will be posted on the Site, and User should review this Agreement prior to using the Service or Site. By continuing to access or use the Service or Site after revisions are made, User agrees to be bound by the revised Agreement. If User does not agree to the new terms and conditions of the revised Agreement, User shall stop using the Service or Site.

h. Anything on the Site inconsistent or in conflict with the terms of this Agreement is superseded by the terms of this Agreement.

Yes I accept and agree: ☐  No I do not accept and do not agree: ☐