



# Terms of Service

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## Terms of Service for Cozeva®

These Terms of Service constitute a binding agreement between Applied Research Works, Inc., (“ARW”), a Delaware corporation, and \_\_\_\_\_, a \_\_\_\_\_ [corporation, LLC, association, etc.] (herein after “Organization”), a user of ARW’s Cozeva®, a Software-as-a-Service platform, and optionally, an Electronic Health Record (EHR), for the purposes of patient Treatment, Payment, and Health Care Operations. By indicating your acceptance of these Terms of Service you agree that your Organization will be bound by these Terms of Service. The terms “we”, “us”, and “our” refer to ARW. The terms, “User”, “you”, and “your” refer to the Organization and each individual physician, practice group, delegate, employee, unincorporated entity, or any agent of Organization, who uses Cozeva, and to anyone using Cozeva on behalf of such a physician, practice group, Health Plan, or organization. To enter into this Agreement with ARW and use Cozeva, you must be a licensed Health Care Provider, an authorized representative of one or more licensed Health Care Providers, a Healthcare organization, a Health Plan, or an authorized representative of a Health Plan.

### 1. DEFINITIONS

The following terms have the meaning as set forth in 45 CFR § 160.103, and this section is incorporated herein by reference: Business Associate, CMS, Covered Entity, Disclosure, EIN, Electronic Media, Electronic Protected Health Information, Group Health Plan, HHS, Health Care, Health Care Clearinghouse, Health Care Provider, Health Information, Health Maintenance Organization, Health Plan, Individually Identifiable Health Information, Person, Protected Health Information, Transaction, Use, and Workforce.

The following terms have the meaning as set forth at 45 CFR § 164.501, and this section is incorporated herein by reference: Treatment, Payment, and Health Care Operations.

HIPAA means the Health Insurance and Portability and Accountability Act as set forth in Title 42 of The United States Code.

## **2. SERVICES.**

- a. Purpose of Cozeva. The purpose of Cozeva is to provide medical and health information about patients to Health Care Providers, payers, and healthcare organizations. Cozeva also computes various metrics pertaining to the performance of Health Care Providers and performs various analytic functions based on Health Information. You authorize ARW, as your business associate, to use and disclose your Health Information, as follows, subject to the recipient's agreement to comply with ARW's terms pertaining to Business Associates and with applicable laws and regulations relating to the use and disclosure of Health Information.
- b. ARW will use commercially reasonable efforts to provide Cozeva in accordance with this Agreement.
- c. The Health Information in each Patient's profile viewable by Health Care Provider in Cozeva may not be complete, and may contain inaccuracies. ARW does not control, verify, or endorse the content that Patients, Health Plans, or others make available in Cozeva. The Health Information stored in Cozeva is supplemental to other customary sources of Health Information and is not intended to be and should not be relied upon for diagnosis or treatment. You are advised to rely on your own records, data, observations, Patient consultation, and any other customary and reliable sources of information in your diagnosis and treatment of Patients.
- d. You acknowledge that the successful and timely rendering of Cozeva requires your cooperation. ARW shall not be liable for any issue that arises from your failure to fully cooperate with ARW.
- e. ARW has implemented commercially reasonable security measures to prevent unauthorized access to computer hardware and other equipment and/or software possessed and used by ARW to provide Cozeva. You are solely responsible for the security of your computer systems and operating environment.

## **3. USE OF COZEVA, PROPRIETARY RIGHTS, RESTRICTIONS.**

a. Permitted Uses. Subject to the terms of this Agreement, ARW authorizes you to access and use Cozeva for treatment and for obtaining payment for treatment, rendering treatment, operating your organization, and delivering Health Care, subject to the following: (i) you may access only information pertaining to individuals with whom you have a treatment relationship or for whom a Health Care Provider who has a treatment relationship with the patient has requested a professional consultation from you, or from whom you have received

authorization to use a patient's Health Information; and (ii) you may use only the minimum necessary information for treatment or payment purposes. You shall not access Cozeva for any other purposes, and will not abuse or misuse Cozeva, including gaining or attempting to gain unauthorized access to the Cozeva; altering or destroying information in Cozeva except in accordance with accepted practices; using Cozeva in such a manner that interferes with other users' use of Cozeva; or using Cozeva in any manner that violates this Terms of Service.

b. Limitations on Use. Cozeva is not for time-critical communication. While Cozeva provides mechanisms for communications with patients, healthcare providers, and others, such communication mechanisms do not guarantee timely delivery. **You understand and acknowledge that Cozeva is not to be used for any communication that is time-critical, or during emergencies.** You will not use Cozeva for medical emergencies or time sensitive communications, and you agree to instruct its Patients to not use Cozeva for any such purposes.

c. Effect on Other Systems. ARW provides certain tools, instructions and guidelines for exchange of information to and from your Health Information technology systems (e.g., EMR/EHR and Practice Management Systems). You acknowledge and agree that you are solely responsible for implementing any such exchange of information or integration with any other system, network, or software.

d. Safeguards.

(i) You will implement and maintain appropriate administrative, physical and technical safeguards to protect information within Cozeva from improper or unauthorized access, use or alteration. Such safeguards shall comply with federal, state, and local requirements, including the Privacy Rule and the Security Rule (set forth at 45 CFR parts 160-164, subparts A-E), whether or not you are otherwise subject to HIPAA. You agree you will maintain appropriate security with regard to all personnel, systems, and administrative processes used by you or members of your workforce to transmit, store and process electronic Health Information through the use of Cozeva.

(ii) **You agree you will notify ARW within twenty-four (24) hours of any breach or suspected breach of the security of the Cozeva of which you become aware, or any unauthorized use or disclosure of information within or obtained from the Cozeva, and you will take such action to mitigate the breach or suspected**

**breach as ARW may direct, and will cooperate with ARW in investigating and mitigating the breach.**

e. Compliance. You agree you will comply with the terms of this Agreement, and all applicable laws and regulations, and will ensure that your workforce does the same. You are solely responsible for the use of the Cozeva by you and your workforce. You are solely responsible for ensuring that your use of Cozeva complies with applicable law. You agree you will not undertake or permit any unlawful use of the Cozeva, or take any action that would render the operation or use of Cozeva by ARW or any other user unlawful. ARW offers no assurance that your use of the Cozeva under the terms of this Agreement will not violate any law or regulation applicable to you.

f. User Identification. ARW authorizes you and your workforce to use the User IDs assigned to you by ARW. User acquires no ownership rights in any User ID, and User IDs may be revoked or changed at any time in ARW's sole discretion. You will adopt and maintain reasonable and appropriate security precautions for User IDs to prevent their disclosure to or use by unauthorized persons. Each member of your workforce shall have and use a unique identifier. You will use your best efforts to ensure that no member of your workforce uses a User ID assigned to another person.

g. No Third-Party Access. Except as required by law, you will not permit any third party (other than your workforce) to have access to the Cozeva without ARW's prior written agreement. You will promptly notify ARW of any order or demand for compulsory disclosure of Health Information if the disclosure requires access to or use of Cozeva. You will cooperate fully with ARW in connection with any such demand.

h. Your Workforce. You may permit your Workforce to use the Cozeva on your behalf, subject to the terms of this Agreement. You will:

- (i) obtain a unique User ID from ARW for each member of your Workforce;
- (ii) immediately terminate the access rights of any member of your Workforce whose employment with you, or your organization, is terminated or whose job responsibilities have changed to the extent that such access is no longer necessary to perform his or her duties, and immediately notify ARW of the termination of employment

of any member of your workforce, or of your withdrawal of authorization for any member of your Workforce to access Cozeva.

i. Professional Responsibility. You are solely responsible for the professional services you provide. ARW makes no representations concerning the completeness, accuracy or utility of any information in the Cozeva, or concerning the qualifications or competence of Individuals who placed it there. ARW has no liability for the consequences to you or your patients of your use of Cozeva. You acknowledge and agree that the information ARW obtains from other entities, providers, and from the patient or the patient's family may be delayed, inaccurate or incomplete. You agree that you will not use the information in Cozeva as the sole or primary basis for diagnosis, treatment or discussion of medical conditions.

j. Ownership and Proprietary Rights. ARW owns all right, title and interest in and to the Cozeva. ARW hereby grants to you a non transferable, non-exclusive, limited license during the term of this Agreement, to access and use Cozeva for your own use and not for use by any third party practice, subject to your compliance in all respects with this Agreement. You will obtain no rights to Cozeva except for the limited rights to use the Cozeva expressly granted by this Agreement.

k. Grant of License. User and User Organization hereby grants to ARW a worldwide, non-exclusive, fully paid-up license to use, copy, modify, enhance, display, publish, distribute, create derivative works of and otherwise use the Content in any manner necessary, in ARW's reasonable determination, to provide Cozeva, and for the other purposes permitted by this Agreement. Health Care Provider represents and warrants that it has all rights necessary to grant ARW the foregoing license.

l. Use of Cozeva.

(i) The Cozeva are provided to you and your organization for use only as expressly set forth in this Agreement, and you will not use the Cozeva in whole or in part for any other use or purpose. You will not, and will not allow any third party to decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of Cozeva or any ARW software or databases by any means, or disclose any of the foregoing. You will not, and will not permit or assist anyone else to: (a) upload, post, email, or otherwise transmit any data or images that ARW, in its sole discretion, deems

inappropriate, unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically, or otherwise objectionable; (b) use any automated tool (e.g., robots, spiders) to use Cozeva; (c) rent, lease, or sub-license your access to Cozeva to another person except as expressly permitted by this Agreement; (d) circumvent or disable any usage rules or other security features of Cozeva; (e) use Cozeva in a manner that threatens the integrity, performance, or availability of Cozeva or other Cozeva offerings; (f) remove, alter, or obscure any proprietary notices (including copyright notices) on any portion of Cozeva; (g) copy, reverse engineer, decompile or disassemble Cozeva, in whole or in part, or otherwise attempt to discover the source code to the software used in Cozeva; or (h) modify the Cozeva or associated software or combine the Services or Cozeva with any other software or services not provided or approved by ARW.

(ii) Health Care Provider shall take all actions required to ensure that its use of the Cozeva is in compliance with all applicable laws, rules, regulations and professional standards.

(iii) Health Care Provider shall not transmit into or over the Cozeva any material that infringes upon or misappropriates the intellectual property or privacy rights of any third party.

m. User's Profile. You shall ensure that the information in your profile maintained in its Cozeva account is complete and accurate. You shall (a) maintain the confidentiality of the username and password for your Cozeva account and shall change that information if it is believed that it is no longer confidential and (b) ensure that the account is exited at the end of each session.

n. Responsibility for Treatment. Only appropriately licensed Health Care Providers shall assess, diagnose, and recommend treatment for patients. You acknowledge and agree that ARW is not engaged in the practice of medicine, or any other health profession, through the provision of Cozeva or any services contemplated herein. ARW and Cozeva shall not interfere with, control, or otherwise influence the physician-patient relationship established between a physician and a patient or between a patient and any other Health Care Provider. You agree that you will use Cozeva only within your lawful scope of practice, ARW SHALL HAVE NO OBLIGATION, RESPONSIBILITY OR LIABILITY FOR ANY PHYSICIAN'S OR

HEALTHCARE PROVIDER'S PROVISION, DIRECTLY OR THROUGH STAFF, OF PROFESSIONAL, MEDICAL OR HEALTHCARE ADVICE OR SERVICES, NOR FOR PROVISION OF PROFESSIONAL, MEDICAL OR HEALTHCARE ADVICE OR SERVICES BY ANY THIRD PARTY.

o. Electronic Signatures. You agree that electronic signatures submitted through Cozeva shall have the same legal effect as a written signature on paper. You agree that you will only provide an electronic signature for lawful purposes. You agree you will not use Cozeva to sign on behalf another or to misrepresent your identity and you agree you will not allow others to use Cozeva to assume your identity. Electronic signatures may be used for prescriptions, certifications, attestations, declarations, affirmations, and other instruments.

p. No Obligation to Refer. Nothing in this Agreement shall be construed as an offer for payment by one party to the other party or any affiliate of the other party of any cash or other remuneration, whether directly or indirectly, overtly or covertly, for patient referrals or for recommending or for arranging, purchasing, leasing or ordering any item or service, and the parties have no obligation or incentive to make any such referrals, recommendations or arrangements.

#### **4. USE OF INFORMATION**

a. ARW may use and disclose your Health Information as follows:

(i) ARW may permit access to your Health Information to you and your workforce;

(ii) ARW may permit access to your Health Information by the Individuals to whom it relates or their legal representatives who are entitled or permitted under applicable law to have access to such information;

(iii) Subject to applicable restrictions on the disclosure of Health Information, ARW may permit access to your Health Information relating to any patient by:

a. Other Health Care Providers having a treatment relationship with any such patient and their business associates;

- b. Health Insurer, Health Plan, or administrator responsible for paying for, or managing, Health Care provided to the patient, subject to applicable restrictions on the disclosure of Health Information to Health Plans;
  - c. other Covered Entities, for the purpose facilitating the operation and management of such Covered Entities;
- (iv) ARW may De-Identify your Health Information, and use and disclose De-Identified Information as provided by herein;
- (v) ARW may create limited data sets from your Health Information, and disclose them for any purpose for which you may disclose a limited data set, subject to ARW obtaining an appropriate data use agreement from the recipient; and you hereby authorize ARW to enter into data use agreements on your behalf for the use of limited data sets, in accordance with applicable law and regulation;
- (vi) ARW may aggregate your Health Information with that of other users, and share aggregated information among other users, provided such users have agreed to maintain the confidentiality of any such Health Information in accordance with applicable laws and regulations;
- (vii) ARW may obtain on your behalf medical, personal, and payment information on your patients from others involved in their care, including by the way of example, Health Plans, clinical labs, pharmacies, and care coordination Health Care Providers. You acknowledge and agree that this flow of information from such other entities may pause, be delayed, be disrupted, or be terminated with or without notice;
- (viii) ARW may share medical, personal, and payment information on your patients with others involved in the care of such patients, and the patients themselves (or their parents/legal guardian if 12 or younger), subject to the limitations imposed by applicable law and regulation. You agree that (a) ARW will then enable such patient (or their parents/legal guardian if 12 or younger) to share all such information with any other individual or organization they choose, and that (b) applicable local laws may limit or prohibit disclosure of certain confidential information to parents, legal guardians and other individuals and

organizations. You further agree to not enter into Cozeva any information whose disclosure to any individual or organization other than the patient himself/herself will violate any applicable laws.

(ix) ARW may use your Health Information for the proper management and administration of Cozeva and ARW's business, and to carry out ARW's legal responsibilities. ARW may also disclose your Health Information for such purposes if the disclosure is required by law, or ARW obtains reasonable assurances from the recipient that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the recipient, and the recipient notifies ARW of any instances of which it is aware in which the confidentiality of the information has been breached. Without limiting the foregoing, ARW may permit access to Cozeva by ARW's contracted system developers under appropriate confidentiality agreements.

b. Limitation on Use. Except as provided in herein, and notwithstanding any other provision of this section, ARW will not use or disclose your Health Information in any manner that would violate any law or regulation if done by you.

c. Your Health Information. You shall be solely responsible for ensuring that your Health Information may properly be disclosed for the purposes set forth herein. In particular, You will:

(i) not make available through Cozeva any information subject to any restriction on use or disclosure (whether arising from your agreement with the individual or under law), other than the general restrictions contained set forth under HIPAA;

(ii) obtain any necessary consents, authorizations or releases from Individuals required for making their Health Information available through Cozeva for the purpose set forth herein;

(iii) include such statements (if any) in your notice of privacy practices as may be required in connection with your use of Cozeva;

(iv) not store or transmit any information that you know or have reason to believe is false or materially inaccurate.

2. You acknowledge that ARW will function as your Business Associate as defined under HIPAA. **YOU AGREE THAT YOU WILL NOT USE COZEVA UNTIL A BUSINESS ASSOCIATE AGREEMENT IS IN PLACE BETWEEN YOU AND ARW. YOU AGREE THAT YOU WILL IMMEDIATELY CEASE ALL ACCESS AND USE OF COZEVA IN THE EVENT A BUSINESS ASSOCIATE AGREEMENT IS TERMINATED OR EXPIRES.**

## **5. ARW'S RIGHTS TO INFORMATION.**

a. You agree that ARW may use, disclose, market, and license such De-Identified Health Information for any purpose without restriction, and that user has no interest in such information, or in the proceeds of any license or other commercialization thereof.

b. You acknowledge and agree that the information generated by ARW in course of your use, and your patients and their families will be the sole property of ARW and you disclaim all rights and interest in such information. Examples of such information include: Analytics, Healthcare Provider engagement, personal and professional relationships, and demographic information.

## **6. INDIVIDUALS' RIGHTS.**

You are solely responsible for affording Individuals their rights with respect to your Health Information, such as the rights of access and amendment.

## **7. PAYMENTS.**

Certain features of Cozeva may be offered to you free of charge. Other features may be provided subject to payment by you, or another entity, for your use. ARW may terminate access to paid features in the event of nonpayment.

## **8. CHANGES TO COZEVA AND TERMINATION.**

a. ARW may change Cozeva or delete features at any time and for any reason. ARW may cancel or suspend your account in Cozeva at any time, with or without cause, and thereby terminate this Agreement. ARW may cancel or suspend any account in Cozeva at any time, with or without cause. If ARW cancels service, ARW may make good faith efforts to provide you with advance notice if feasible under the circumstances. Upon cancellation of service or termination of this Agreement, rights to use Cozeva and access to Cozeva will stop immediately.

b. Notwithstanding anything to the contrary in this Agreement, ARW has the right, immediately to amend this Agreement upon notice to User, without liability: (a) to comply with any order issued or proposed to be issued by any governmental agency; (b) to comply with any provision of law, any standard of participation in any reimbursement program, or any accreditation standard; or (c) if performance of any term of this Agreement by either Party would cause it to be in violation of law.

c. ARW may suspend access to Cozeva immediately pending your cure of any breach of this Agreement, or in the event ARW determines in ARW's sole discretion that access to or use of Cozeva by you or your workforce may jeopardize Cozeva or the confidentiality, privacy, security, integrity or availability of information within Cozeva, or that you or your workforce has violated or may violate this Agreement or has jeopardized or may jeopardize the rights of any third party, or that any person is or may be making unauthorized use of Cozeva. ARW may terminate the access of any member of your workforce upon termination or change in status of his or her employment with User.

## **9. DISCLAIMER, EXCLUSION OF WARRANTIES, AND LIMITATION OF LIABILITY.**

a. NO WARRANTIES. ACCESS TO COZEVA AND THE INFORMATION CONTAINED ON COZEVA IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. USER IS SOLELY RESPONSIBLE FOR ANY AND ALL

ACTS OR OMISSIONS TAKEN OR MADE IN RELIANCE ON COZEVA OR THE INFORMATION IN COZEVA, INCLUDING INACCURATE OR INCOMPLETE INFORMATION. IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL ARW BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, LOSS OF INFORMATION OR DATA, OR REPUTATIONAL DAMAGE, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY, EVEN IF ARW HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. WITHOUT LIMITING THE FOREGOING PROVISIONS: (1) YOU ASSUME SOLE RESPONSIBILITY FOR THE USE OF, AND RESULTS OBTAINED FROM COZEVA AND/OR ITS CONTENT; (2) ARW MAKES NO REPRESENTATION OR WARRANTY THAT COZEVA AND/OR ITS CONTENT OR ITS USE WILL BE FREE OF ERRORS, SECURE, FREE FROM MALICIOUS CODE, OR FREE FROM INTERRUPTIONS, DEFECTS, OR OTHER FAILURES OR HARMFUL COMPONENTS OR THAT COZEVA AND/OR ITS CONTENT WILL SATISFY YOUR SPECIFIC REQUIREMENTS OR BE COMPATIBLE WITH YOUR EQUIPMENT OR OTHER HARDWARE, SOFTWARE, OR BROWSER CONFIGURATION OR THAT INACCURACIES OR ERRORS WILL BE CORRECTED; (3) ARW MAKES NO REPRESENTATION OR WARRANTY THAT THE INFORMATION OBTAINED FROM THIRD PARTY SOURCES USED ON OR WITH COZEVA OR RECEIVED IN CONNECTION WITH CONVERTING OR TRANSMITTING ANY DATA RECEIVED IN DIFFERENT FORMATS IS ACCURATE, TIMELY, OR ERROR FREE, AND ARW IS NOT RESPONSIBLE IN ANY WAY FOR THE INFORMATION OBTAINED FROM SUCH SOURCES; AND (4) ARW MAKES NO REPRESENTATION OR WARRANTY THAT THE INFORMATION PROVIDED BY USERS TO GAIN ACCESS AND PERMISSION TO USE COZEVA OR OTHER INFORMATION POSTED BY USERS IS ACCURATE OR ERROR FREE..

b. Conditions for Breach. ARW will not be deemed to be in violation of this Agreement unless you have first given ARW written notice specifying the nature of the default, and ARW has failed within thirty (30) days of receipt of the notice either to cure

the default or, if cure within such period is not practicable, to be diligently proceeding to cure the default.

c. OTHER USERS. YOU ACKNOWLEDGE THAT OTHER USERS HAVE ACCESS TO COZEVA AND ARE RECEIVING THE SERVICES. ARW DOES NOT ASSUME ANY LIABILITY FOR OR RELATING TO ANY IMPAIRMENT OF THE PRIVACY, SECURITY, CONFIDENTIALITY, INTEGRITY, AVAILABILITY, OR RESTRICTED USE OF ANY INFORMATION ON COZEVA RESULTING FROM ANY OTHER USER'S ACTIONS OR FAILURES TO ACT.

d. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, ARW'S AGGREGATE LIABILITY TO USER, REGARDLESS OF THEORY OF LIABILITY, SHALL BE LIMITED TO THE AGGREGATE FEES ACTUALLY PAID BY USER UNDER THIS AGREEMENT FOR THE SIX (6) MONTH PERIOD PRECEDING THE EVENT FIRST GIVING RISE TO THE CLAIM.

## **10. INDEMNITY.**

- a. YOU AGREE TO INDEMNIFY AND HOLD ARW AND ITS SHAREHOLDERS, EMPLOYEES, REPRESENTATIVES, AGENTS, ATTORNEYS, AFFILIATES, DIRECTORS, OFFICERS, MEMBERS, AND MANAGERS ("INDEMNIFIED PARTIES") HARMLESS FROM ANY AND ALL DAMAGES, LOSSES, COSTS, OR EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEY'S FEES AND COSTS) INCURRED IN CONNECTION WITH ANY THIRD PARTY CLAIM, DEMAND, OR ACTION ("CLAIM") BROUGHT OR ASSERTED AGAINST ANY OF THE INDEMNIFIED PARTIES: (I) ALLEGING FACTS OR CIRCUMSTANCES THAT WOULD CONSTITUTE A BREACH BY YOU OF ANY PROVISION OF THESE TERMS OF USE; (II) ARISING FROM, RELATED TO, OR CONNECTED WITH YOUR USE OF THIS SITE AND/OR ITS CONTENT; OR (III) ARISING FROM, RELATED TO, OR CONNECTED WITH YOUR NON-COMPLIANCE WITH ANY HEALTHCARE LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE PRIVACY LAWS.

## **11. CONFIDENTIAL INFORMATION.**

The following confidentiality provisions apply to information other than “Protected Health Information”. Information will be considered Confidential Information if either (i) it is disclosed by ARW party in tangible form and marked “Confidential”, “Proprietary” or the like, or (ii) it is disclosed by ARW in tangible or non-tangible form and described as confidential or reasonably should be regarded as such under the circumstances of its disclosure. Information will not be deemed Confidential Information if such information: (i) is known to you prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to ARW; (ii) becomes known (independently of disclosure by the ARW) to the you directly or indirectly from a source other than one having an obligation of confidentiality to ARW; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement you; or (iv) is independently developed by you.

- a. Except as expressly permitted in this Section, you will not, without the prior written consent of ARW, disclose any Confidential Information of ARW to any third party.
- b. You will secure and protect the Confidential Information of ARW in a manner consistent with the steps taken to protect its own trade secrets and confidential information, but not less than a reasonable degree of care.
- c. You may disclose Confidential Information of ARW where (i) the disclosure is required by applicable law or regulation or by an order of a court or other governmental body having jurisdiction after giving such notice to ARW as may be reasonably practical under the circumstances for such other party to seek a protective order; or (ii) the disclosure is reasonably necessary and is to you or your affiliates’, employees, officers, directors, consultants, attorneys, accountants or other advisors, or the disclosure is otherwise necessary for you to exercise your rights and perform your obligations under this Agreement, or operate your business, so long as in all cases the disclosure is no broader than necessary and the person or entity who receives the disclosure agrees prior to receiving the disclosure to keep the information confidential.
- d. You agree that ARW will suffer irreparable harm if User fails to comply with its obligations set forth in this Section, and User further agree that monetary damages will be inadequate to compensate ARW for any such breach. Accordingly, User agree that ARW will, in addition to any other remedies available to ARW at law or in equity, be entitled to

the issuance of injunctive relief to enforce the provisions hereof, immediately and without the necessity of posting a bond.

- e. This Section will survive the termination or expiration of this Agreement for any reason.

## **12. THIRD PARTY RELATIONSHIPS.**

- a. ARW may have or enter into relationships with third parties with products, services, or offerings ancillary to Cozeva. With respect to such third parties, ARW shall be permitted to place Internet links, icons, advertisements or displays within Cozeva that are accessed through Cozeva, for which ARW may receive payment. ARW does not assume responsibility for the content or information contained on third party sites, and does not exert any editorial or other control over or take responsibility for those sites or their privacy policies or practices. ARW may screen, modify, refuse, or remove certain third party content or third party services, but is not responsible for and does not endorse any third party content or services or wellness resources; nor does ARW endorse or recommend any third party service providers, Health Care Providers, Health Plans, or other products, services, opinions, or web sites advertised or accessed through Cozeva.
- b. USE OF THIRD PARTY SERVICES, SITES OR RESOURCES AND RELIANCE ON THIRD PARTY CONTENT IS SOLELY AT YOUR OWN RISK. YOU AGREE THAT ARW WILL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATED TO YOUR USE OF ANY THIRD PARTY SERVICE, SITE, RESOURCE OR CONTENT.

## **13. COPYRIGHT AND TRADEMARK NOTICES.**

Contents of Cozeva which are not personally identifiable, are Copyright Applied Research Works, Inc.. Notices give to ARW under Digital Millennium Copyright Act (DMCA), and all other requests to remove any content that may infringe another's copyright may be send in writing to

Applied Research Works, Inc.  
1003 Elwell Court,  
Palo Alto, CA 94303 U.S.A.

Or by email to support@cozeva.com

We own the title, copyright, and other intellectual property rights in the Cozeva and its non-personally identifiable content. Cozeva, Applied Research Works, and their respective logos, may also be either trademarks or registered trademarks of ARW in the United States and/or other countries.

#### **14. CONDITIONS PERTAINING TO SPECIFIC PRODUCTS AND FUNCTIONS**

- a. **Secure Messaging.** You agree and acknowledge that Cozeva is designed, in part, to facilitate communication and interaction between patients and Health Care Providers. You may receive secure messages from patients, other Health Care Providers, payers, and others through Cozeva. **Such messages are not intended to be used for urgent or emergent communications with patients.** ARW may, at its option, terminate messaging service to users of Cozeva for any reason including, but not limited to, use of messaging to send spam or commercial solicitations, and any improper or unauthorized use of messaging or messaging that is inconsistent with these Terms of Service.
- b. **Sharing of User Activity.** Cozeva may share your activity with other users within the same organization. Such user activity may include, but is not limited to, date and time a given user last logged into Cozeva, whether a given user is currently logged into Cozeva, what activities a given user has performed on Cozeva.
- c. **Delegation of Activities.** You and your organization may authorize a delegate to perform certain activities on behalf of you or your organization. You are responsible for all activities performed by a delegate on your behalf. Users and User Organizations may restrict delegates from performing certain tasks. It is your responsibility to monitor the permissions granted to each delegate and grant or rescind permissions granted to delegates in accordance with the responsibilities and job function of each delegate.

## 15. GENERAL PROVISIONS.

- a. Term. The initial term of this Agreement shall commence on the date of your acceptance of these Terms of Service, and continue until the earlier of (1) terminated by you or ARW, or (2) termination in accordance with the terms of this Agreement.
- b. Interpreting the Agreement. This Agreement (with the documents incorporated into this Agreement by reference) constitutes the entire contract and understanding between you and ARW and supersedes (if any) all prior written and oral agreements, conflicting statements on ARW's web site, and understandings regarding our legal relationship.. If a court holds that ARW cannot enforce a part of this Agreement as written, you and we will replace those terms with similar terms to the extent enforceable under applicable law, but the rest of this Agreement will not change.
- c. Severability. Any provision of this Agreement that shall prove to be invalid, void, or illegal, shall in no way affect, impair, or invalidate any other provision of this Agreement, and such other provisions shall remain in full force and effect.
- d. Assignment. ARW may assign or transfer our rights and obligations under this Agreement, in whole or in part, at any time without notice. You may not assign this Agreement or transfer any rights to use Cozeva, and any attempt to do so shall be null and void.
- e. Notices. A notice from ARW to you pursuant to this Agreement will be considered delivered by ARW when ARW submits an email message to your then-current or last known contact email address in your Cozeva account profile. In addition, you agree that we may provide you with any required information via email to such email address, and delivery will be deemed completed when email is sent. Any notice from you to ARW pursuant to this Agreement shall be provided by submitting an email message to ARW by email to an address identified on Cozeva and delivering a copy of the same by US mail or a national overnight delivery service to the executive headquarters of ARW addressed to the attention of ARW's Chief Executive Officer at the following address: Applied Research Works, Inc., Office of the Chief Executive Officer, 1000 Elwell Ct. Ste. 238, Palo Alto, CA 94303.

- f. Survival. All provisions of this Agreement relating to proprietary rights, payment of fees accrued, confidentiality and non-disclosure, indemnification, choice of law, arbitration, and limitation of liability shall survive any termination of this Agreement.
- g. Force Majeure. ARW shall not be liable for failure to meet its obligations under this Agreement where such failure is caused by events beyond its reasonable control such as fire, failure of communications networks, riots, civil disturbances, embargos, storms, acts of terrorism, pestilence, war, floods, tsunamis, earthquakes or other acts of God.
- h. Authority. The individuals entering into this Agreement represent and warrant that they are competent and capable of entering into a binding contract, and that they are authorized to enter into this Agreement on behalf of the Parties.
- i. Advice of Counsel. Each Party acknowledges: (a) having fully read this Agreement in its entirety; (b) having had full opportunity to study and review this Agreement; (c) having been advised that all parties have the right to consult and should consult independent counsel respecting their rights and duties under this Agreement; and (d) having had access to all such information as has been requested.

## **16. CHOICE OF LAW AND RESOLUTION OF DISPUTES.**

- a. This Agreement is governed by the laws of the State of California, without regard to conflicts of law principles. Any legal actions against us must be commenced within one year after the claim arose, or else claims shall be permanently barred. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Santa Clara County, California before one arbitrator. **YOU WAIVE ANY RIGHT TO FILE ANY OTHER CLAIM OF ANY KIND IN COURT OR HAVE A JURY TRIAL.** The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and pursuant to JAMS' Streamlined Arbitration Rules and Procedures. In any arbitration arising out of or related to this Agreement, the arbitrator shall award to the prevailing party, if any, the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration. If the arbitrator

determines a party to be the prevailing party under circumstances where the prevailing party won on some but not all of the claims and counterclaims, the arbitrator may award the prevailing party an appropriate percentage of the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration.

- b. Judgment on the Award may be entered in any court having jurisdiction. The Parties adopt and agree to implement the JAMS Optional Arbitration Appeal Procedure (as it exists on the effective date of this Agreement) with respect to any final award in an arbitration arising out of or related to this Agreement. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
- c. Any such controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration, or any other judicial or administrative action, with any claim or controversy of any other party.
- d. Notwithstanding the foregoing, either party may seek any interim or preliminary injunctive relief, as necessary to protect, the party's rights or property pending the completion of arbitration. The state and Federal courts sitting in, or having jurisdiction over, Santa Clara County, California, shall have exclusive jurisdiction over any dispute, claim, or controversy arising through your use of Cozeva. You and ARW expressly waive all defenses of lack of personal jurisdiction and forum non conveniens.

## **17. CHANGES TO THE TERMS OF SERVICE.**

ARW may change the Services and/or the terms under which they are provided to User (including terms set forth in this Agreement) by providing User electronic notice of any change. When we do, we will notify you of such revision by posting a prominent notice on the site. The continued use of Cozeva by you or any member of your workforce after such notification shall comprise your agreement to such revised agreement as of the effective date of such revision. Upon receipt of such a notice, you may terminate this Agreement by giving written notice to ARW on or before further use of Cozeva. You agree that your failure to give notice of termination prior to such further use constitutes your acceptance of the change, which shall thereupon become part of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives, each of whom personally represent and warrant each is duly authorized to bind his or her respective organization.

**Applied Research Works, Inc.**