

Terms of Use

THIS AGREEMENT (Agreement) is made by and between Carosh Media and Marketing LLC, dba Carosh Compliance Solutions LLC ("Carosh"), a Indiana Limited Liability Company with its principal place of business in Crown Point, Indiana; and the Subscriber identified below (collectively, and together with any Users as identified below, the Parties). As used in this Agreement, the term Subscriber shall include the entity identified to CAROSH as the HIPAA Suite® Subscriber, together with its Permitted Affiliates and Registered Users as defined below.

In consideration of the following mutual covenants and commitments, the receipt and sufficiency of which are hereby acknowledged and confessed, the Parties hereby agree as follows:

1. Grant of License

Subject strictly to the terms and conditions of this Agreement, CAROSH hereby grants to Subscriber and Subscriber hereby accepts a personal, nonexclusive, nontransferable, and limited license (the License) to use the following:

(a) HIPAA Suite®. HIPAA Suite®, as may be amended from time to time, during the Term of this Agreement; beginning on the Effective Date, and thereafter for the remainder of the Term of this Agreement, provided Subscriber is in compliance with the terms and conditions of this Agreement, elects to continue with access; and pays the corresponding subscription fee.

2. Delivery

Upon acceptance of this Agreement by CAROSH, and while Subscriber is in compliance with its obligations hereunder, CAROSH shall make available to Subscriber access to HIPAA Suite®, as applicable, for delivery by the Internet from the server(s) on which they are hosted. Access is unauthorized to any but Registered Users. CAROSH will use commercially reasonable efforts to make HIPAA Suite® available at all times, subject however to interruption for reasonable periods of time for maintenance, upgrade and management, and Subscriber acknowledges that it may also be subject to interruption, delay, reduced graphics quality, or other reasons not subject to CAROSH's control such as events affecting Internet service providers or data hosting services.

3. Use of License

The License granted pursuant to this Agreement authorizes Subscriber to engage in only the following activities:

(a) For Internal, Limited Use Only. Subscriber may use HIPAA Suite® solely for the purposes of satisfying the Office of Civil Rights Security Rule to conduct a periodic Risk Analysis, educational and information storing, information-sharing and privacy and security program development and maintenance purposes to fulfill **its own** internal business needs. HIPAA Suite® is a HIPAA compliance management solution.

The information in this document is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is strictly prohibited. If you are not the intended recipient, please contact Carosh Compliance Solutions by phone or email and destroy all copies of this document.

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(b) Permitted Affiliates Included. "Permitted Affiliates" shall be authorized to use HIPAA Suite® under and subject strictly to the terms and conditions of this Agreement. Permitted Affiliates shall include Registered Users as defined herein, and entities which are under common ownership or control with Subscriber and are specifically identified to CAROSH. Subscriber shall be fully responsible to CAROSH for any breach of this Agreement by its Permitted Affiliates, or any of its or their agents, representatives, employees, and any other person or entity to which Subscriber or any of its Permitted Affiliates gives access.

(c) Users to be Registered. Subscriber may sponsor one or more individuals to access and use HIPAA Compliance under Subscriber's authority (Registered Users). Registered Users may be employees or agents of Subscriber, but must need to use HIPAA Suite® in order to provide internal services or perform internal functions for the Subscriber, be accessible through the Subscriber's standard email convention, and shall be strictly subject together with Subscriber to the terms and conditions of this License. Subscriber shall maintain a list of all current and past Registered Users at all times and shall identify its Registered Users to CAROSH. Subscriber shall be solely responsible for insuring that only Registered Users use HIPAA Suite® under Subscriber's authority, and for promptly notifying CAROSH when s/he is no longer authorized by Subscriber. Registered Users will be responsible for insuring that no one other than the Registered User gains access with his/her user name and/or password. CAROSH may terminate a Registered User's access at any time upon misuse of HIPAA Suite® in breach of the Terms of Use below. Upon termination of a Registered User's authorization under this License for any reason, Subscriber shall take steps to prevent the individual's further electronic access to HIPAA Suite® and remove any such electronic files or paper copies of HIPAA Suite® from his or her possession, custody or control.

(d) Updates. CAROSH may, in its sole discretion, provide updates, enhancements, new versions and/or supplements of HIPAA Suite® (Updates) to Subscriber. Updates shall be deemed to be included in HIPAA Suite® and therefore governed by this License, unless CAROSH expressly notifies Subscriber that the Update or Updates are provided under other licensing terms. Subscriber acknowledges that such Updates may reflect new or different requirements for certification, and therefore agrees to monitor and be familiar with Updates as they occur.

(e) Terms of Use; Changes. Subscriber agrees to comply with the Terms of Use at all times. CAROSH may, in its sole discretion, change the Terms of Use from time to time, to take effect immediately upon notice. Ordinarily CAROSH will endeavor to make a reasonable effort to provide email notice of such changes, but such changes will take effect upon their posting on the CAROSH websites regardless of whether email or other actual notice has been given.

(f) Content Contribution. Registered Users may upload or post truthful, non-defamatory content they create to HIPAA Suite®, provided that (i) such content shall not be considered personally identifiable information or personal health information (e.g. ePHI); (ii) CAROSH accepts no obligation to review content at any time, but may remove it at any time in its sole discretion; (iii) all such contributions become the sole and exclusive property of CAROSH, including but not limited to all rights in and to copyright and moral rights (and including without limitation all rights to create derivative

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works, recover for infringement, register and renew in all countries, languages and media now known or hereafter developed); (iv) the confidential or proprietary nature of information uploaded or posted shall be deemed waived; (v) CAROSH shall not be deemed the publisher of any such contributions, will not be attributed to CAROSH, and will be attributed only to the Registered User who posted them; and (vi) a user who contributes content to HIPAA Suite®, and the Subscriber sponsoring the user, shall be liable jointly and severally to indemnify, hold harmless and defend CAROSH, its officers and agents, from and against any claims, losses or liabilities arising from or relating to any violation of this section by the user or Subscriber, or other liability arising from or pertaining to the user's contribution of the content.

4. Restrictions of Use.

Any use of HIPAA Suite® not expressly permitted by this Agreement is prohibited, including but not limited to the following:

- (a) Use for Third Parties. Using part or all of HIPAA Suite® to provide analyses, assessments, or services or products of any kind to any person or entity;
- (b) Derivative Works. Creating any Derivative Work of HIPAA Suite® for any purpose not permitted hereunder without CAROSH's express prior consent;
- (c) Unauthorized Access. Accessing unlicensed components of HIPAA Compliance or related services without express authorization;
- (d) Reverse Engineering. Disassembling, decompiling or otherwise reverse engineering any part of HIPAA Suite®, or removing, modifying or obscuring any copyright, trade secret or other proprietary legend;
- (e) Unauthorized Copying. Copying all or any part of HIPAA Suite® except for the purposes and to the extent authorized herein; or
- (f) Assignments. Assigning this Agreement, or sublicensing, distributing, or otherwise transferring any part of HIPAA Suite® except in the connection with the sale or transfer of all or substantially all of the Subscriber's stock or assets.
- (g) Commercial Uses. For any commercial or personal use, including but not limited to "scraping," surveys, contests, pyramid schemes, chain letters, junk mail, spamming or unsolicited messages (commercial or otherwise), advertising, or offering to sell or buy goods or services for any personal or business purposes.
- (h) Use Contrary to Law. Use in any way which violates any applicable law or regulation, including but not limited to hacking, password cracking, "spoofing" or other unauthorized access; attempting to obtain any materials or information through any means not intentionally made available through HIPAA

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Suite®; use of viruses, Trojan horses, worms, spyware, or other malware; use to defame, stalk, threaten or otherwise violate the legal rights of others (including rights of privacy, publicity, copyright or otherwise); transmission of materials in violation of intellectual property laws; or false or misleading use of proprietary designations or labels.

(i) Use Injurious or Obstructive to Others. Use in any way that could damage, disable, overburden, or impair or interfere with any other party's use of the services or access to HIPAA Suite®.

5. License Fees and Payments.

(a) Fees. Fees for subscriptions and for other products or services will be charged according to CAROSH's current terms and prices, which are subject to change without notice. No refund or credit will be given in event of early termination.

(b) Payment Terms; Taxes. All amounts which may be due and payable to CAROSH and which are not paid in full when due will bear interest at the rate of one percent (1%) per month simple interest until paid in full, or the highest amount allowed by law, whichever is less. Fees will not include taxes now or hereafter levied, all of which shall be for Subscriber's account. Subscriber agrees to indemnify CAROSH and hold it harmless from any taxes or related costs, interests or penalties paid or payable by Subscriber other than taxes related to CAROSH's income.

6. CAROSH Ownership of Intellectual Property

(a) Sole and Exclusive Ownership by CAROSH. Subscriber acknowledges CAROSH's sole and exclusive ownership, right and title in and to HIPAA Suite® and all documentation related thereto, together with all copies, and all changes, modifications, deletions, translations, derivations or additions thereto, including but not limited to any text, images, photographs, animations, video and audio incorporated into them. The Parties further agree that HIPAA Suite® constitutes copyrighted and/or proprietary information of CAROSH which is protected by copyright, and that any and all rights, inventions and copyrights arising out of or related to HIPAA Suite® or related documentation, and all rights to license, market or otherwise develop or dispose of HIPAA Compliance or related documentation, are and shall be the exclusive property of CAROSH.

(b) CAROSH Trade Secrets. The Parties further agree that HIPAA Suite® includes valuable, confidential information, compilations, methods, techniques, procedures and processes not generally known or readily ascertainable by proper means, which can only be obtained from CAROSH. CAROSH has implemented reasonable protections, including the terms of this License, to prevent their unauthorized disclosure or use. To further those measures, Subscriber agrees that it will take all measures as may be reasonably requested by Subscriber, and in no event less than reasonable measures, to ensure that HIPAA Suite® and related documentation are held in confidence and are not used or disclosed except as permitted under this Agreement or with CAROSH's express prior consent. This obligation will survive the termination or expiration of this Agreement or the Parties' relationship for any reason.

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(c) Exclusions. These prohibitions shall not apply to information, compilations, methods, techniques, procedures or processes included in HIPAA Suite® that are or have become generally known in the industry through no fault of Subscriber; or which Subscriber can show from written records were (i) known to it before entering this License, (ii) independently developed by it without use of or reference to HIPAA Suite®, or (iii) lawfully obtained by it from a third party not in breach of any obligation to CAROSH. They will also not apply to residual knowledge retained in intangible, non-electronic form by Registered Users due to their access to HIPAA Suite®, such as general ideas, concepts, and know-how.

(d) Certification; Injunctive Relief. Upon CAROSH's request, an officer of Subscriber shall certify in writing that it is in full compliance with the terms and conditions of this License. Subscriber hereby acknowledges that any violation of this License by it or an affiliated person or entity would cause irreparable injury to CAROSH, and, as a result, CAROSH shall be entitled to seek any injunctive relief or other rights or remedies to which CAROSH is or may be entitled to under law to prevent or mitigate the effects of such violation.

7. Defense of Infringement and Misappropriation Claims.

(a) Notice and Cure. If CAROSH receives notice that any component of HIPAA Suite® may infringe any valid U.S. copyright, U.S. trademark or U.S. patent or constitute a misappropriation of a valid trade secret under the law of any state, CAROSH may, at its sole discretion: (i) procure for Subscriber the right to continue using the potentially or allegedly infringing or misappropriated component, or (ii) modify HIPAA Suite® to provide for substitute materially equivalent functioning or a materially functional equivalent which does not infringe and/or is not misappropriated. If CAROSH elects to provide substitute equivalent functioning or a functional equivalent, upon notice Subscriber shall stop using the allegedly infringing or misappropriated component and shall cooperate with CAROSH in implementing use of the functional substitute.

(b) Defense. CAROSH will defend Subscriber against any claims by an unaffiliated third party that any component of HIPAA Suite® infringes any valid U.S. copyright, U.S. trademark or U.S. patent or misappropriates any trade secret valid under the law of any applicable state, provided Subscriber gives CAROSH prompt written notice of such a claim with all information known to it, gives CAROSH sole control over its defense or settlement, and provides CAROSH with complete and timely assistance and cooperation in such defense.

(c) Limitation of Duty to Defend. CAROSH shall have no obligation to defend Subscriber against any claim (i) that is based upon an allegedly infringing use or use of misappropriated intellectual property after CAROSH has notified Subscriber of a functional substitute as provided above; (ii) that results from any use or disclosure of HIPAA Suite®, in whole or in part, in breach of any term of this License; (iii) for any claim based in whole or in part on Subscriber's acts or omissions; or (iv) use by Subscriber in any manner, purpose or combination not expressly authorized by CAROSH.

d) Exclusive Remedy. The rights and remedies stated in this Section state CAROSH's entire liability and the exclusive remedy of Subscriber with respect to any claim of infringement or misappropriation of the intellectual property rights of any third party, whether arising under statutory or common law or otherwise.

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8. Representations and Warranties.

(a) Subscriber hereby represents and warrants to CAROSH that Subscriber is a healthcare organization or otherwise involved in the responsible handling of healthcare information; that it is fully authorized to enter into this Agreement; and that it will comply in all respects with its obligations hereunder.

(b) HIPAA Suite® AND ACCESS TO HIPAA Suite® ARE PROVIDED "AS IS, WITH ALL FAULTS. CAROSH, ITS AGENTS AND ITS SUPPLIERS HEREBY DISCLAIM ALL EXPRESS, IMPLIED OR STATUTORY WARRANTIES, DUTIES AND CONDITIONS, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, QUIET POSSESSION, SECURITY, CONFORMITY TO DESCRIPTION, NON-INFRINGEMENT, RELIABILITY, ACCURACY OR COMPLETENESS, OR RESULTS. THE ENTIRE RISK AS TO THE QUALITY OR ARISING OUT OF THE USE OF HIPAA Compliance AT ALL TIMES REMAINS WITH THE SUBSCRIBER, ITS PERMITTED AFFILIATES AND ITS REGISTERED USERS.

9. Exclusion of Incidental, Consequential and Certain Other Damages.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL CAROSH OR ITS AGENTS OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER DATA OR INFORMATION, BUSINESS INTERRUPTION, PERSONAL INJURY, LOSS OF PRIVACY, FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, NEGLIGENCE, OR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE TM or [®], THE PROVISION OF OR FAILURE TO PROVIDE HIPAA Suite®, OR OTHERWISE ARISING OUT OF THE USE OF HIPAA Suite®, OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF CAROSH OR ANY AGENT OR SUPPLIER, AND EVEN IF CAROSH OR ANY AGENT OR SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. Limitation of Liability and Remedies.

(a) UNDER NO CIRCUMSTANCES, AND UNDER NO THEORY, SHALL THE LIABILITY OF CAROSH OR ANY OF ITS AFFILIATES, SUPPLIERS, OFFICERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES TO SUBSCRIBER OR ANYONE IN PRIVITY WITH SUBSCRIBER EXCEED THE TOTAL AMOUNT ACTUALLY RECEIVED BY CAROSH AS FEES UNDER THIS AGREEMENT.

(b) THESE DISCLAIMERS AND LIMITATIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.

11. Indemnification.

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Subscriber hereby agrees to defend, indemnify and hold harmless CAROSH, its officers, directors, shareholders, employees and agents at Subscriber's own expense from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind in nature, including settlement amounts, expert witness fees and attorney's fees and costs, arising out of or in connection with or incident to the use of HIPAA Compliance or any related good or service by Subscriber, its Permitted Affiliates, its Registered Users or any other person or entity affiliated with it, or any breach of this Agreement by Subscriber or any of the above-referenced persons or entities.

12. Term and Termination

(a) Term. The term of this Agreement ("Term") shall begin on the date accepted by Subscriber and shall expire one (1) calendar year later, unless terminated sooner.

(b) Termination. Subscriber may terminate this Agreement at any time for any reason. CAROSH may terminate this Agreement upon breach or threatened breach by Subscriber or any person acting under Subscriber's authority (i) which occurs or remains uncured ten (10) days after notice from CAROSH, or (ii) which relates to confidentiality of any CAROSH confidential or proprietary information or CAROSH's sole and exclusive ownership of intellectual property rights related to HIPAA Compliance or related documentation. In the latter event this Agreement may be terminated by CAROSH immediately upon notice.

(c) Events Upon Termination. Immediately upon termination or expiration of this Agreement, Subscriber and all persons acting under Subscriber's authority will cease access to and use of HIPAA Suite® and related documentation, and will remove all electronic and paper copies from their possession, custody and control. All provisions relating to the protection of CAROSH's confidential and proprietary information and to CAROSH's sole and exclusive ownership of intellectual property rights related to HIPAA Suite® or related documentation shall survive expiration or termination of this Agreement.

13. Miscellaneous.

(a) Notices. Notices required or permitted to be given under this Agreement shall be deemed delivered when sent by email, without notification of transmittal failure, to the email addresses provided by the Parties in this Agreement. Such addresses may be changed upon written notice to the other party, provided such notice is conspicuous and clear. Subscriber will be solely responsible for insuring that any such notice from CAROSH is timely forwarded to Permitted Affiliates and Registered Users acting under CAROSH's authority.

(b) Entire Agreement. This Agreement contains the entire agreement of the Parties relating to the subject matter hereof, superseding all prior written or oral agreements, commitments, representations or understandings. Each party represents and warrants to the other that in entering into and performing its obligations hereunder, it is not relying on any promise, inducement, course of dealing or trade, or representation not contained herein.

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- (c) Severability. If any provision of this Agreement is found for any reason to be invalid or unenforceable, it will be deemed severed and the remainder of the Agreement enforced, and in place of the invalid or unenforceable portion there shall be deemed substituted, as of the effective date of this Agreement, a provision as nearly similar to it as possible while still being valid and enforceable.
- (d) Further Assurances. Each party agrees to cooperate fully with the others and to execute such further instruments as may be reasonably requested by the other party to carry into effect the intents and purposes of this Agreement.
- (e) No Waiver. The failure or delay of any party at any time to require performance by the other party of any provision of this Agreement shall not be construed as a waiver of such performance, or of any continuing or succeeding breach of such provision.
- (f) Force Majeure. Either party shall be excused from delay in or failure of performance to the extent it results from causes beyond that party's reasonable control, provided that the party acts diligently to remedy the cause of the delay or failure. Inability or failure to pay or to control one's own affiliates, employees, or agents will not be considered an event of force majeure.
- (g) No agency. Each party is acting as an independent contractor and in no way is the agent or partner of the other in any respect. No party has the authority to make commitments for or bind the other to any obligation.
- (h) Export Restrictions. Subscriber agrees to comply in all respects with any governmental laws, orders or other restrictions (Export Restrictions) on the export or re-export of HIPAA Suite® or related documentation imposed by the governments of the United States or the country to which it is shipped. Subscriber shall not commit any act or omission that will result in a breach of Export Restrictions.
- (i) Choice of Law and Forum; Jury Waiver. This Agreement and the relationship between and among the Parties shall be interpreted, governed and enforced under Indiana law, excluding its choice of law provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any action arising from or pertaining to this Agreement or the relationship between or among the Parties shall be heard in the state or federal courts in or for Utah County, Utah and in no other location. Subscriber and all persons or entities in privity with it hereby waive all defenses of lack of personal jurisdiction forum non conveniens. TO THE FULLEST EXTENT PERMITTED BY LAW, THE PARTIES HEREBY WAIVE TRIAL BY JURY.

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