

API License and Usage Agreement

This API License and Usage Agreement (the “Agreement”) is entered into by and between Elation Health Inc. (“Elation Health”) and you, a developer on behalf of yourself or your organization, (the “Developer”) as of the date that you click the “I Accept” box or otherwise access, use or install the service.

BY CHECKING OR CLICKING THE “I ACCEPT” BOX OR ACCESSING, USING OR INSTALLING ANY PART OF THE ELATION HEALTH API (DEFINED BELOW) SERVICE, DEVELOPER EXPRESSLY AGREES TO AND CONSENTS TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT. IF DEVELOPER DOES NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, DEVELOPER SHOULD NOT SELECT THE “I ACCEPT BOX” AND MAY NOT ACCESS USE OR INSTALL ANY PART OF THE ELATION HEALTH API SERVICE.

Background

Elation Health has developed a proprietary application program interface known as the Elation Health API (“Elation Health API”) which facilitates access and data transfer to a proprietary service (“Elation Health Service”) that includes the Elation EMR v3.0 product and is operated by Elation Health. The Elation Health API and the Elation Health Service are more particularly described at <https://docs.elationhealth.com/reference>. Subject to the terms and conditions of this Agreement, the parties desire that Elation Health license and provide access to the Elation Health API for use in connection with the Elation Health Service.

Now, therefore, intending to be legally bound hereby, Elation Health and Developer agree as follows:

1. Elation Health API

1.1 License Grant

Subject to the terms and conditions of this Agreement, during the term of this Agreement, Elation Health hereby grants to Developer and its Developers a non-exclusive, non-transferable license to use the Elation Health API for the following uses in connection with the Elation Health Service, on behalf of Eligible Customers only:

- (a) Creating applications that access patient data in Elation
- (b) Synchronizing appointment and billing data
- (c) Exporting patient data in the CCDA format

“Eligible Customers” include any entity who (a) has an active service agreement with Elation Health to access the Elation Health Service and (b) either (i) employs Developer or (ii) has a service

agreement with Developer that authorizes Developer to access protected health information on behalf of the entity.

1.2 Usage Restrictions

Elation reserves the right to restrict or revoke usage of the Elation Health API for the above use cases at any time and prohibits use of the API for use cases not described above. In addition, usage of the API is limited to fewer than three (3) API calls per second, and fewer than 150,000 calls per twenty-four (24) hours. Elation Health reserves the right to edit, update, or add additional limits and allocations at any time and at its sole discretion. In addition, Elation reserves the right to suspend Developer's access to the Elation Health API at any time and in its sole discretion if Elation reasonably determines that (a) there is a threat or attack affecting the Elation Health Service; (b) Developer is using the Elation Health API in violation of this Agreement or any applicable law, rule or regulation; or (c) any other event occurs that may create a risk to the Elation Health Service, Elation Health's customers, Elation Health, or any third party.

2. Elation Health Service

2.1 Access

Elation Health agrees to provide Developer with access to the Elation Health Service during the term of this Agreement. Elation Health reserves the right to modify the Elation Health Service at any time. Elation Health will endeavor to provide Developer with written notice of any modifications to the Elation Health Service on the Elation Health website.

2.2 Availability

Elation Health will use commercially reasonable efforts to provide the Elation Health Service 7 days per week and 24 hours per day. However, no specific availability is guaranteed by Elation Health. Elation Health, from time to time, may schedule downtime during which the Elation Health Service will not be available.

2.3 Changes to Developer Programs

Developer shall immediately inform Elation Health in the event of: (i) any changes made to any developer programs that would implicate the Elation Health API or the Elation Health Service (the "Developer Programs"), (ii) the appearance of unauthorized access, if any, to the Elation Health API or the Elation Health Service, and (iii) any plans for publishing of any upgrades or sequels of the Developer Programs.

3. Intellectual Property Rights, Confidentiality, and Compliance with Laws

3.1 Intellectual Property Rights

Developer hereby recognizes that Elation Health retains all Intellectual Property Rights in the Elation Health API and the Elation Health Service, including any updates and improvements. The provisions of this Agreement shall have no effect on the ownership of the Developer Program with which the Elation Health API and Elation Health Service will be used.

3.2 Confidentiality

Elation Health and Developer agree not to disclose, or permit any third party or entity access to, the Confidential Information received from the other party. "Confidential Information" means confidential or other proprietary information that is disclosed by one party to the other party under the terms of this Agreement, including, without limitation, software, specifications, documentation and other confidential business information, including the Elation Health API or the Elation Health Service. Confidential Information shall not include information which: (i) is or becomes public knowledge without any action by, or involvement of, the recipient of the information; or (ii) is publicly disclosed by the recipient with the prior written approval of the disclosing party.

3.3 Publicity

Elation Health may include the other party in a list of Developers or suppliers that Elation Health or Developer make available to third parties. After three months of use, Developer agrees to accept a reasonable number of reference phone calls from potential Elation Health developers for purposes of discussing the Elation Health API or the Elation Health Service.

3.4 HIPAA Compliance

Developer hereby represents and warrants that it has executed a Business Associate Agreement with all Eligible Customers on whose behalf Developer will use the Elation Health API to access data. In addition, Developer agrees to use and disclose any data accessed via the Elation Health API in a manner consistent with permitted and required uses under HIPAA, in accordance with other applicable federal, state and local laws and regulations, and in accordance with the terms of Developer's Business Associate Agreement with Eligible Customer, as applicable. Finally, Developer represents and warrants that it is authorized to communicate any data submitted by Developer to the Elation Health API.

4. Limited Warranty

4.1 Material Defects

Elation Health warrants that the Elation Health API and the Elation Health Service shall perform substantially in accordance with the applicable published specifications. Elation Health's sole responsibility for a breach of the above warranty (a "Material Defect") shall be to either repair or replace the Elation Health API or the Elation Health Service.

4.2 Limitations

Elation Health shall have no obligation to provide warranty services if the Material Defect in the Elation Health API or the Elation Health Service is caused by malfunction of any non-Elation Health hardware or software, or by modification or misuse of the Elation Health API or the Elation Health Service by Developer. Without limiting the above, Elation Health shall not be responsible for curing defects with an individual end-user's iPhone, where the Developer Programs are generally operational on iPhones.

4.3 Disclaimer

EXCEPT FOR THE WARRANTIES SPECIFICALLY STATED IN THIS SECTION 5, ELATION HEALTH MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5. Limitation of Liability

Elation Health's aggregate liability arising out of or relating to this agreement shall be limited to the fees paid by developer to Elation Health hereunder during the three-month period prior to the claim. In no event shall Elation Health be liable for lost data, system downtime, loss of profits or any other any special, consequential or indirect damages, however caused, on any theory of liability, and whether or not Elation Health has been advised of the possibility of such damages.

6. Miscellaneous

This Agreement shall be governed by the laws of the State of California. The parties agree that the state and federal courts sitting in the State of California shall have exclusive jurisdiction and venue regarding any matter arising from this Agreement. This Agreement sets forth the entire agreement

and understanding of the parties relating to the subject matter. No amendment to, or any waiver of any rights under, this Agreement shall be effective unless signed in writing by the party to be charged. All notices and other communications hereunder shall be in writing and shall be deemed effective when delivered by hand or by facsimile transmission or email. Except for obligations to make payments, nonperformance of either party shall be excused to the extent the performance is rendered impossible by strike, fire, governmental acts, or any other reason beyond the control of the non-performing party. Developer shall not assign this Agreement (in whole or part) without Elation Health's prior written consent. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.