



## CONTRACT MODIFICATION

**Date:** May 11, 2023  
**Contract #:** UCPJMU5198  
**Service:** Pharmacy Operations System  
**Modification #:** One  
**Issued By:** James Madison University  
Colleen Johnson, Buyer Senior  
Ph: 540-568-3137  
Fx: 540-568-7935  
**Contractor:** Kalos, Inc.  
Attn: Bryan Jakovcic  
3418 SE 21st Street, Suite B  
Topeka, KS 66607  
**Contract Administrator:** Chris Ouren, University Health Center

### **Description of Modification Notice:**

The attached Fusion End User License agreement is hereby incorporated into the contract, which shall be governed by the terms of UCPJMU5198 and the Commonwealth of Virginia Agency Contract Form Addendum to Contractor's Form dated September 25, 2017 in the event of conflict.

Except as provided herein, all terms and conditions of Contract Number UCPJMU5198 shall remain unchanged and in full force and effect.

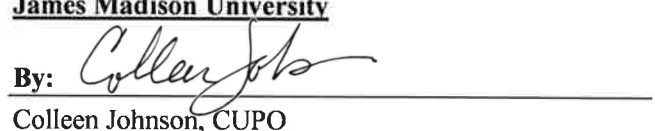
### **Kalos, Inc.**

**By:**   
Bryan Jakovcic

*Name (print)*

President 5-16-2023  
*Title Date Signed*

### **James Madison University**

**By:**   
Colleen Johnson, CUPO

*Name (print)*

Buyer Senior 5-16-2023  
*Title Date Signed*



## END USER LICENSE AGREEMENT

Last Modified: October 1, 2022

**BY DOWNLOADING, INSTALLING, OR USING THE SOFTWARE YOU: (i) REPRESENT THAT YOU ARE DULY AUTHORIZED BY LICENSOR TO ACCESS AND USE THE SOFTWARE; AND (ii) ACCEPT THESE AUTHORIZED USER TERMS AND AGREE THAT YOU ARE LEGALLY BOUND BY THEM. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT DOWNLOAD, INSTALL, OR USE THE SOFTWARE AND YOU WILL HAVE NO LICENSE TO, AND MUST NOT ACCESS OR USE, THE SOFTWARE.**

This End User License Agreement (EULA) and its terms (the **"Terms"**) govern your usage of the software and services (collectively, the **"Software"**) provided to you by and through Fusion Capital Management, LLC and/or its subsidiary Kalos, Inc (collectively **"Licensor"**), provided to you (the **"Licensee"**) for use pursuant to and subject to the terms and conditions herein.

### **DEFINITIONS.**

For purposes of these Terms, the following terms have the following meanings:

**"Authorized Users"** – means individual persons identified to use the Software pursuant to the license granted under these Terms, the quantity and type of user will be set forth on the Invoice, or Licensor equivalent Documentation.

**"Documentation"** – means user manuals, technical materials, and any other materials provided by Licensor, in printed, electronic, or other form, that describe the installation, operation, use, or technical specifications of the Software. All Documentation is subject to change from time to time, with or without notice.

**"Go-Live"** – means the activation of Software by Licensor for production use by Licensee at designated Installation Site.

**"Intellectual Property Rights"** – means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

**"Installation Site"** – means the designated and defined location(s) where the Software will be installed by Licensor as set forth in separate documentation, and as may be mutually updated from time to time by Licensor and Licensee.

**"Invoice"** – means the invoice sent to Licensee documenting the Software, License and Support Fees, of which these Terms are incorporated herein by reference.

**"License and Support Fees"** – means the fees, including all taxes thereon, paid or required to be paid by Licensee for the license and ongoing support as provided for under these Terms.

**"Person"** – means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

**"Software"** – means the software programs for which Licensee is purchasing a subscription or license, as expressly set forth on the Invoice.

**"Third-Party"** – means any Person other than Licensor or Licensee.

### **LICENSE GRANT.**

Subject to your strict compliance with these Terms, Licensor hereby grants you a non-exclusive, non-transferable, non-sublicensable, limited license to use the Software solely in accordance with the Documentation, as installed on the equipment provided by Licensee and for Licensee's internal business purposes. The foregoing license will terminate immediately on the earlier of:

- a. the expiration or earlier termination of the related software license agreement between Licensor and Licensee, if any; or
- b. your ceasing to be authorized by Licensor to use the Software.

### **THIRD-PARTY MATERIALS.**

The Software may include software, content, data, or other materials, including related documentation, that are owned by Persons other than Licensor and that are provided to Licensee on third-party terms and conditions that are in addition to and/or different from those contained herein ("**Third-Party Terms**"). Licensee is bound and shall comply with all Third-Party Terms and agrees to any pass-through terms as set by Third-Party Terms. Any breach by Licensee or any of its Authorized Users of any Third-Party Terms is also a breach of these Terms.

### **RESPONSIBILITY FOR USE OF SOFTWARE.**

Licensee is responsible and liable for all uses of the Software and Documentation through access thereto provided by Licensee, directly or indirectly to its Authorized Users at designated Installation Sites. Specifically, and without limiting the generality of the foregoing, Licensee is responsible and liable for all actions and failures to take required actions with respect to the Software and Documentation by its Authorized Users or by any other Person to whom Licensee or an Authorized User may provide access to or use of the Software and/or Documentation, whether such access or use is permitted by or in violation of these Terms.

### **USE RESTRICTIONS.**

You shall not, directly, or indirectly:

- a. copy the Software or Documentation, in whole or in part;
- b. modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Software or any part thereof;
- c. combine the Software or any part thereof with, or incorporate the Software or any part thereof in, any other programs;
- d. reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;
- e. remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices included on or in the Software or Documentation, including any copy thereof;
- f. rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise provide any access to or use of the Software or any features or functionality of the Software, for any reason, to any other person or entity, including any subcontractor, independent contractor, affiliate, or service provider of Licensee, whether or not over a network and whether or not on a hosted basis, including in connection with the internet, web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud, or other technology or service;
- g. use the Software or Documentation in, or in association with, the design, construction, maintenance, or operation of any hazardous environments or systems, including but not limited to safety-critical applications such as medical or life-support systems, vehicle operation applications, or any police, fire, or other safety response systems;
- h. use the Software or Documentation in violation of any law, regulation, or rule; or
- i. use the Software or Documentation for purposes of competitive analysis of the Software, the development of a competing software product or service, or any other purpose that is to Licensor's commercial disadvantage.

#### **COMPLIANCE MEASURES.**

The Software may contain technological copy protection or other security features designed to prevent unauthorized use of the Software, including features to protect against use of the Software outside the acceptable use of these Terms. You shall not, and shall not attempt to, remove, disable, circumvent, or otherwise create or implement any workaround to, any such copy protection or security features.

#### **MAINTENANCE AND SUPPORT.**

Maintenance and Support is a required service component for production access to Software (the "**Maintenance and Support**"). Licensor shall provide Licensee with support services for Software purchased, provided that Licensee purchases and keeps current support payments for any and all purchased Software. Licensor will make available to Licensee, a scope of support document (the "**Scope of Support**") which shall detail what is covered and not covered under support; which is incorporated herein by reference, which may be amended by Licensor from time to time.

### **COLLECTION AND USE OF INFORMATION.**

- a. Licensor may, directly or indirectly through the services of others, collect and store information regarding use of the Software and about equipment on which the Software is installed or through which it otherwise is accessed and used, by means of (i) providing maintenance and support services and (ii) security measures included in the Software as described in Section 3.
- b. You agree that Licensor may use such information for any purpose related to any use of the Software by you, including but not limited to: (i) improving the performance of the Software or developing updates; and verifying compliance with the Terms and enforcing Licensor's rights, including all intellectual property rights in and to the Software.

### **PAYMENT.**

All License and Support Fees are payable in advance in the manner set forth on the Invoice and are non-refundable, except as may be expressly set forth herein. Any renewals hereunder shall not be effective until the fees for such renewal have been paid in full. Maintenance and Support fees are due and payable upon Go-Live of the Software at the applicable Installation Site of Licensee.

### **TERM AND TERMINATION.**

- a. The term of these Terms as applied to you shall be as follows: If you purchased a subscription to the Software, the term of these Terms shall commence upon access to the Software and continue for twelve (12) months thereafter and shall automatically renew, unless a multi-year, or other, agreement is otherwise agreed upon in an Invoice or corresponding Purchase Order. If you purchased a license to the Software, the term of these Terms shall commence upon delivery of the Software and remain in effect until Software is no longer in use by Licensee or until terminated as defined herein (collectively, the "Term").
- b. Maintenance and Support services for Software shall start upon Go-Live of the Software and shall continue for the one-year period following delivery. Thereafter, it shall automatically renew, at the then-current and then-applicable annual maintenance fee, for subsequent one-year periods.
- c. Licensor may terminate these Terms, effective upon written notice to Licensee, if Licensee breaches these Terms and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured for thirty (30) days after Licensor provides written notice thereof.
- d. Upon expiration or earlier termination of these Terms, the license granted hereunder shall also terminate, and Licensee shall cease using and destroy all copies of the Software and Documentation. No expiration or termination shall affect Licensee's obligation to pay all License and Support Fees that may have become due before such expiration or termination, or entitle Licensee to any refund, in each case, except as may be otherwise set forth herein.

## INTELLECTUAL PROPERTY RIGHTS.

You acknowledge that the Software is provided under license, and not sold, to you. You do not acquire any ownership interest in the Software under these Terms, or any other rights to the Software other than to use the Software in accordance with the license granted under these Terms, subject to all terms, conditions, and restrictions. Licensor and its licensors and service providers reserve(s) and shall retain its/their entire right, title, and interest in and to the Software and all intellectual property rights arising out of or relating to the Software, subject to the license expressly granted to the Licensee under these Terms. You shall use commercially reasonable efforts to safeguard all Software (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access.

## LIMITED WARRANTIES, EXCLUSIVE REMEDY, AND DISCLAIMER/WARRANTY DISCLAIMER.

- a. Solely with respect to Software for which Licensor receives payment in full, Licensor warrants that, for a period of thirty (30) days following the Go-Live date of Software, the Software when properly installed and operated in accordance with the Documentation, will materially conform in accordance therewith (the "**Limited Warranty**").
- b. The warranties set forth herein will not apply and will become null and void if Licensee breaches any material provision of these Terms, including but not limited to, those terms under "Use Restrictions".
- c. EXCEPT FOR THE LIMITED WARRANTY SET FORTH HEREIN, THE SOFTWARE AND DOCUMENTATION ARE PROVIDED TO LICENSEE "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, LICENSOR, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDORS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, LICENSOR PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANYKIND THAT THE LICENSED SOFTWARE WILL MEET THE LICENSEE'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED. THE FOREGOING WARRANTIES DO NOT APPLY, AND LICENSOR STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY MATERIALS.
- d. If the Software, or any part of the Software, is, or in Licensor's opinion is likely to be, claimed to infringe, misappropriate, approaching end of life, or otherwise violate any third-party intellectual property right, or if Licensee's use of the Software is enjoined or threatened to be enjoined, Licensor may, at its sole option, modify or replace the Software,



in whole or in part, while providing equivalent features and functionality, and such modified or replacement software will constitute Software under these Terms; or if, none of those remedies is reasonably available to Licensor, terminate the Software, in its entirety or with respect to the affected part or feature of the Software, effective immediately on written notice to Licensee.

#### **DISCLAIMER OF LIABILITY.**

IN NO EVENT WILL LICENSOR OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO YOU FOR ANY USE, INTERRUPTION, DELAY, OR INABILITY TO USE THE SOFTWARE. YOU ARE PROVIDED THE SOFTWARE PURSUANT TO THESE TERMS, SOLELY FOR THE BENEFIT OF LICENSEE AND AT LICENSEE'S DISCRETION. YOU ACKNOWLEDGE THAT YOU HAVE NO RIGHTS UNDER THAT AGREEMENT INCLUDING ANY RIGHTS TO ENFORCE ANY OF ITS TERMS. ANY OBLIGATION OR LIABILITY OF LICENSOR OR ITS AFFILIATES, OR ANY OF ITS OR THEIR LICENSORS OR SERVICE PROVIDERS, MAY HAVE WITH RESPECT TO YOUR USE OR INABILITY TO USE THE SOFTWARE SHALL BE SOLELY TO LICENSEE PURSUANT TO THAT AGREEMENT AND SUBJECT TO ALL LIMITATIONS OF LIABILITY SET FORTH THEREIN.

#### **MISCELLANEOUS.**

- a. Software will be provided in accordance with a Statement of Work (SOW) for each designated Installation Site as mutually agreed upon in writing between the parties. Software is based upon information furnished to Licensor by Licensee. Licensee is responsible for modifications, if any, to the configuration due to inaccuracies or incompleteness of the information furnished to Licensor by Licensee, changes Licensee's needs or requirements, or for other reasons attributable to Licensee.
- b. Licensor will not be responsible or liable to Licensee, or deemed in default or breach hereunder by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, air conditioning, or Licensee's equipment, loss and destruction of property, or any other circumstances or causes beyond Licensor's reasonable control.
- c. Purchasing Agent acknowledges and agrees that Licensor has the right, in our sole discretion, to modify these Terms from time to time, and that modified terms become effective on posting. You will be notified of modifications through notifications or posts where applicable. You are responsible for reviewing and becoming familiar with any such modifications. Your continued use of the Software after the effective date of the modifications will be deemed acceptance of the modified terms.
- d. Licensee acknowledges and agrees that all clinical and medical treatment, diagnostic decisions and billing decisions are the responsibility of Authorized Users and its professional healthcare providers, including but not limited to general clinical staff, nurses, nurse practitioners, physicians (including psychiatrists). Software does not make clinical or other decisions (such as narrative conditions, coded diagnosis, submission of claims) and

is not a substitute for competent, properly trained and knowledgeable staff who bring professional judgment to the information presented by the Software. Although Licensor and its third-party vendors have used reasonable care in obtaining information from sources believed to be reliable, Licensee acknowledges that it is Licensee's obligation to be informed about any and all medical best practices, regulations, clinical information, and guidelines that may not be reflected in the Software. The absence of an alert or warning for without limitation, a given course of treatment, drug or drug combination should not be construed to indicate that the treatment, drug or drug combination is safe, appropriate or effective for any given patient.

- e. Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under these Terms, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Licensor's prior written consent, which consent Licensor may give or withhold in its sole discretion.
- f. Licensee grants Licensor the right to review and use de-identifiable prescription data processed through Software for purposes of research, development, analytics, third-party claims processing, and similar purposes, subject to terms and conditions of use where applicable.
- g. These Terms are for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on another Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.
- h. The relationship between the parties is that of independent contractors. Nothing contained in these Terms shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- i. These Terms are governed by and construed in accordance with the internal laws of the State of New Jersey without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of New Jersey. Any legal suit, action, or proceeding arising out of or related to these Terms or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of New Jersey, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.
- j. If any of the terms contained herein are invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.