

DS smart™ Application Terms of Use

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Direct Supply Manufacturing, Inc. is pleased to present its DS smart™ mobile application (“Application”) for the user’s (“your”) use in connection with your company’s (“Customer”) subscription to the DS smart™ platform (the “DS smart™ Platform”).

1. **Application of Terms of Use.** Access to and use of the Application is subject to your acceptance and compliance with these DS smart™ Application Terms of Use (“Terms of Use”). By downloading and/or using this Application, you agree to be bound by these Terms of Use. You acknowledge and agree that by accepting these Terms of Use, a binding agreement is concluded solely between you and Direct Supply Manufacturing, Inc. not with any third party and that Direct Supply Manufacturing, Inc., and no other third party, is solely responsible for the Application and the content thereof. We may change, modify or terminate these Terms of Use at any time. Any changes to these Terms of Use shall become effective upon notice of such changes including your acceptance of any new versions of the Application. By continuing to use the Application after such notice is sent, you are indicating your acceptance to such changes to these Terms of Use.
2. **Agreement with Customer.** Use of the Application is also subject to Customer’s agreement to and compliance with the terms of Customer’s Products & Services Agreement or other similar agreement with Direct Supply, Inc. for the DS smart™ Platform (“DS smart™ Platform Agreement”). Use of the Application requires Customer to have subscribed and paid for the DS smart™ Platform. The DS smart™ Platform and this Application are intended for business and not personal use.
3. **Services; Service Restrictions.** Subject to the terms of these Terms of Use and the DS smart™ Platform Agreement, we will allow you to (a) download and install the Application onto an authorized device which is owned or controlled by you or the Customer and authorized by Customer as suitable for purposes of use of the Application and (b) use the Application in order to access and use the DS smart™ Platform.
4. **No Support by Any Third Party.** You acknowledge that only we, and not PointClickCare or any other electronic health record system, has an obligation to furnish any maintenance and support services with respect to the Application. PointClickCare or any other electronic health record system is not responsible for providing the Application, content contained within the Application, any related support or maintenance to Customer for the Application, or any changes the Application makes to the Customer’s database.
5. **Audit Requests.** We, not PointClickCare or any other electronic health record system, are solely responsible for complying with Customer’s audit requests relating to the Application and DS smart™ Platform, including with respect to logging, reporting of statistics, and third-party security assessments.
6. **No Warranty; Limitation of Liability.** The Application may contain errors and defects or may suffer intermittent downtime and is provided “as-is,” without warranty of any kind. WE DO NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS CAUSED BY THESE THIRD PARTIES OR ACTS OF GOD CAN PRODUCE SITUATIONS IN WHICH OUR OR CUSTOMER’S CONNECTIONS TO THE INTERNET (OR PORTIONS OF IT) MAY BE IMPAIRED OR DISRUPTED. WE DISCLAIM ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS. FURTHERMORE, WE DISCLAIM ALL WARRANTIES WITH RESPECT TO THE APPLICATION, INCLUDING BUT NOT LIMITED TO INCLUDING ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS OTHERWISE PROHIBITED BY LAW, NEITHER DIRECT SUPPLY MANUFACTURING, INC. NOR DIRECT SUPPLY, INC. SHALL BE LIABLE TO YOU FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR SPECIAL DAMAGES INCLUDING WITHOUT LIMITATION LOST PROFITS OR REVENUES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON, SO THESE LIMITATIONS MAY NOT APPLY TO YOU. IN NO EVENT WILL DIRECT SUPPLY MANUFACTURING, INC. OR DIRECT SUPPLY, INC. BE LIABLE FOR ANY DAMAGES IN EXCESS OF \$100.00, EVEN IF EITHER PARTY SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY.
7. **Data Accuracy.** You are solely responsible for ensuring the data you enter into the EMR is accurate. You will be given the opportunity to review the data before sending it to the EMR. To calculate a resident’s weight, both the “combined weight” and “tare weight” (each a “weight reading” and collectively, “weight readings”) are required. The DS smart technology permits you to temporarily save either weight reading so that it can later be paired with the corresponding weight reading to calculate the resident’s weight. You must ensure that you are correctly pairing the weight readings for the same resident

8. **Confidentiality & Use of Data.** We will use and protect any data gathered in connection with the DS smart™ Application and the DS smart™ Platform in connection with our Privacy Policy and the Business Associate Agreement, if any, between Customer and Direct Supply, Inc. Additionally, please note that we, or a trusted third-party under the obligation of confidentiality, may use various analytic tools and technologies to review your use of the DS smart™ Application and the DS smart™ Application Platform. We will use these tools and technologies to help better understand how the DS smart™ Application and the DS smart™ Application Platform are being used and to enhance the quality of the DS smart™ Application and the DS smart™ Application Platform. These tools may allow us to store data regarding your DS smart™ Application and the DS smart™ Application Platform session.
9. **Termination.** You may terminate these Terms of Use at any time by notifying us in writing or removing the Application from your device and ceasing further use of the Application. We may terminate these Terms of Use at any time by either providing notice to Customer of its intent to terminate the DS smart™ Platform Agreement as set forth in the DS smart™ Platform Agreement or by notifying you in writing or electronically of our intent to terminate these Terms of Use. Upon termination of these Terms of Use or the DS smart™ Platform Agreement, you will cease use of and delete the Application. Notwithstanding the foregoing, the following sections will survive termination of these Terms of Use: Application of DS smart™ Platform Agreement with Customer, No Warranty; Limitation of Liability, Confidentiality & Use of Data, Intellectual Property Rights, Questions, Claims & Notices, Indemnity, and Miscellaneous.
10. **Intellectual Property Rights.** We and/or our affiliates retain sole and complete ownership of, in and to the Application, the DS smart™ Platform System, as well as all enhancements and improvements made to them (collectively the “DS smart™ IP”). No right in or to the DS smart™ IP is provided to you or any third party.
11. **Legal Compliance:** By accepting these Terms of Use you represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.
12. **Questions, Claims & Notices.** If you have any questions regarding these Terms of Use or if you have any questions, complaints or claims with respect to the Application, please contact Direct Supply Manufacturing, Inc. by email at dssmartsupport@directsupply.com or by mail at Direct Supply Manufacturing, Inc., 6635 N. Industrial Road, Milwaukee, WI 53223, Attn: Legal.
13. **Third Party Terms of Agreement.** You agree to comply with applicable third party terms of agreement when using the Application. Additionally, you agree to comply with Customer’s policies and rules regarding appropriate use of the Application.
14. **Indemnity.** You agree to indemnify, defend and hold Direct Supply Manufacturing, Inc. and Direct Supply, Inc. harmless from any suits, claims or damages arising out of (1) your breach of these Terms of Use or (2) your inappropriate use of the Application and/or the DS smart™ Platform.
15. **Miscellaneous.** These Terms of Use, along with the DS smart™ Platform Agreement, constitutes the entire agreement of the parties with respect to its subject matter. These Terms of Use may not be modified or amended by you except in a writing signed by our authorized representative. If any term of these Terms of Use is held to be invalid, void, or unenforceable, the remainder shall continue in full force and effect. Headings used herein are for convenience only. Each party is acting only as an independent contractor and no partnership, joint venture, agency or similar relationship is formed by this these Terms of Use. For purposes of clarification, these Terms of Use is made and entered into in Milwaukee, Wisconsin. These Terms of Use shall be construed pursuant to the laws of Wisconsin and the federal U.S. laws applicable therein, excluding its conflict of laws provisions, and without regard to the United Nations Convention on the International Sale of Goods. Any action relating to the Application must be brought in the state or federal courts located in Milwaukee County, Wisconsin. The English version of these Terms of Use shall govern in the event of any conflict or substantive translation changes into a non-English language.