

TouchMD Software User Terms of Use

1. Acceptance of the Terms of Use.

This Terms of Use (the “**Agreement**”) is entered into by and between you, being a visitor or user of the Software, (hereinafter referred to as “**you**” or “**your**”) and Avezen, LLC d/b/a TouchMD (hereinafter referred to as “**Company**”, “**we**” or “**us**”). The following terms and conditions, together with any documents they expressly incorporate by reference govern your access to and use of the TouchMD software, including any content, applications, products, functionality and services offered on or through Company (the “**Software**”).

Please read these Terms of Use carefully before you use the Software. **By using the Software or by clicking to accept or agree to the Terms of Use when this option is made available to you, you accept and agree to be bound and abide by these Terms of Use.** If you do not want to agree to these Terms of Use, you must not access or use the Software. If the person accepting this Agreement does so on behalf of an entity or another person, such person represents that they have the legal authority to bind that entity or person to this Agreement, in which case the term **you** will also refer to the accepting person and the person or entity and its affiliates that are represented thereby. If the accepting person does not have such legal authority, or if the accepting person does not agree with the terms of this Agreement, the accepting person agrees to not use or allow another person to use the Software.

By using the Software, you represent and warrant that you meet all of the foregoing eligibility requirements. If you do not meet all of these requirements, you must not access or use the Software.

2. Accessing the Software and Account Security.

2.1 Software Access. Providers or licensors of Company’s Software are authorized to give you a limited, non-exclusive, non-transferable right to use the Software which is conditional upon your actions or non-actions, including complying with the provisions contained in this Agreement.

2.2 Account Setup. To access the Software or some of the resources it offers, you may be asked to provide certain registration details or other information to setup an account and user profile. For the Software to function correctly, it is a condition of your use of the Software that all the information you provide on the Software is correct, current and complete. You agree that all information you provide to register with this Software or otherwise, including but not limited to through the use of any interactive features on the Software, is governed by our/your Privacy Policy.

2.3 Your Information Security. If you choose, or are provided with, a user name, password or any other piece of information as part of our registration procedures, you must treat such information as confidential, and you must not disclose it to any other person or entity. You also acknowledge that your account is personal to you and agree not to provide any other person with access to this Software or portions of it using your user name, password or other security information. You agree to notify us immediately of any unauthorized access to or use of your user name or password or any other breach of security. You also agree to ensure that you exit from your account at the end of each session. You should use particular caution when accessing your account from a public or shared computers, browsers, servers and mobile devices so that others are not able to view or record your password or other personal information.

2.4 Computer Device and Operating Systems. To effectively utilize the Software you may be required to obtain and use certain computer devices, including mobile devices and mobile phones, and obtain certain operating systems on your devices. You agree that you will be responsible to obtain the devices and operating systems required to effectively use the Software as directed by Company or its providers and licensors.

3. Prohibited Uses.

3.1 Prohibited Uses. You may use the Software only for lawful purposes and in accordance with this Agreement. You agree not to use the Software:

- a. In any way that violates any applicable federal, state, local or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the US or other countries).
- b. For the purpose of exploiting, harming or attempting to exploit or harm minors in any way by exposing them to inappropriate content, asking for personally identifiable information or otherwise.
- c. To transmit, or procure the sending of, any advertising or promotional material, including any "junk mail", "chain letter" or "spam" or any other similar solicitation.
- d. To impersonate or attempt to impersonate the Company, a Company employee, provider or licensor, another user or any other person or entity (including, without limitation, by using e-mail addresses associated with any of the foregoing).
- e. To engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the Software, or which, as determined by us, may harm the Company or users of the Software or expose them to liability. Additionally, you agree not to:
 - f. Use the Software in any manner that could disable, overburden, damage or impair the Software or interfere with any other party's use of the Software, including their ability to engage in real time activities through the Software.
 - g. Use any robot, spider or other automatic device, process or means to access the Software for any purpose, including monitoring or copying any of the material on the Software.
 - h. Use any manual process to monitor or copy any material on the Software or for any other unauthorized purpose without our prior written consent.
 - i. Use any device, software or routine that interferes with the proper working of the Software.
 - j. Introduce any viruses, trojan horses, worms, logic bombs or other material which is malicious or technologically harmful.
 - k. Attempt to gain unauthorized access to, interfere with, damage or disrupt any parts of the Software, the server on which the Software is stored, or any server, computer or database connected to the Software.
 - l. Attack the Software via a denial-of-service attack or a distributed denial-of-service attack.
 - m. Otherwise attempt to interfere with the proper working of the Software.
 - n. Infringe any patent, trademark, trade secret, copyright or other intellectual property or other rights of any other person.
 - o. Violate the legal rights (including the rights of publicity and privacy) of others or contain any materials that could give rise to any civil or criminal liability under applicable laws or regulations or that otherwise may be in conflict with these Terms of Use and our Privacy Policy.
 - p. Be likely to deceive any person.
 - q. Promote any illegal activity, or advocate, promote or assist any unlawful act.
 - r. Cause annoyance, inconvenience or needless anxiety or be likely to upset, embarrass, alarm or annoy any other person.

- s. Impersonate any person, or misrepresent your identity or affiliation with any person or organization.
- t. Involve commercial activities or sales, such as contests, sweepstakes, and other sales promotions, barter or advertising.
- u. Give the impression that they emanate from or are endorsed by us or any other person or entity, if this is not the case.

3. Changes to Software, this Agreement and Privacy Policy.

3.1. Changes and Updates to Software. You agree that Company and providers and licensors may alter or modify the Software without notice to you or approval from you, including content, materials, forms, appearance, applications, operating systems, and functionality of the Software from time to time, even if such modification does not please you. You agree that Company and providers and licensors will not be liable if for any reason all or any part of the Software is unavailable at any time or for any period. From time to time, Company may restrict access to some parts of the Software, or the entire Software. You agree that Company has the right to disable any user name, password or other identifier, whether chosen by you or provided by Company Software providers or licensors, at any time in our sole discretion for any or no reason, including if, in our opinion, you have violated any provision of this Agreement.

3.2. Changes to this Agreement. You agree that Company may revise and modify this Agreement from time to time in our sole discretion. All changes are effective immediately when we post them, and apply to all access to and use of the Software thereafter.

3.3. Changes to the Privacy Policy. You agree that Company may revise and modify the Privacy Policy from time to time in our sole discretion. All changes are effective immediately when we post them, and apply to all access to and use of your information thereafter.

3.4. Agreement to Changes. You agree that your continued use of the Software following the posting of a Software revision, changes to this Agreement, or changes to the Privacy Policy means that you accept and agree to the changes. You agree to check for modifications and updates, as shown by the update dates, notifications, and discovered changes, of the Software, this Agreement, and the Privacy Policy each time you access the Software so you are aware of any changes, as they are binding on you.

4. Reliance on Software Information.

4.1. Software Information. You acknowledge and agree that any information presented on or through the Software is made available solely for general information purposes. We do not warrant the accuracy, completeness or usefulness of this information. Any reliance you place on such information is strictly at your own risk. We disclaim all liability and responsibility arising from any reliance placed on such materials by you or any other visitor to the Software, or by anyone who may be informed of any of its contents.

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4.3. Links from the Software. If the Software contains links to other sites and resources provided by third parties, these links are provided for your convenience only. This includes links contained in advertisements, including banner advertisements and sponsored links. We have no control over the contents of those sites or resources, and

accept no responsibility for them or for any loss or damage that may arise from your use of them. If you decide to access any of the third party software linked to the Software, you do so entirely at your own risk and subject to the terms and conditions of use for such software.

4.4 Validating Information. You agree that if you are interested in obtaining more information relating to information presented on the Software you will directly contact the Software providers or licensors or third parties representing the information to validate the accuracy of the material on the Software.

5. Information About You and Your Visits to the Software.

5.1 Your Information. All information relating to you that we collect on this Software is subject to our Privacy Policy. By accepting this Agreement, the Privacy Policy, and by using the Software, you consent to all actions taken by us with respect to your information in compliance with the Privacy Policy.

6. Intellectual Property Rights.

6.1 Software Ownership. The Software and its entire contents, features and functionality (including but not limited to all information, software, text, displays, images, video and audio, and the design, selection and arrangement thereof), are owned by the Company, its licensors or other providers of such material and are protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws.

6.2 Personal Use of Software. This Agreement permits you to use the Software solely for the specific purpose of your personal use. You agree to not reproduce, distribute, modify, create derivative works of, publicly display, publicly perform, republish, download, store or transmit any of the material on our Software, except as follows:

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- c. You may share or link this Software or any content to any social media platform or other site for your personal use and enjoyment.

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- f. Delete or alter any copyright, trademark or other proprietary rights and / or their notices from copies of materials from this Software.

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8. Disclaimer of Warranties.

You understand that we cannot and do not guarantee or warrant that the Software, including its applications, will be free of viruses or other destructive code. You are responsible for implementing sufficient procedures and checkpoints to satisfy your particular requirements for anti-virus protection and accuracy of data input and output, and for maintaining a means external to our site for any reconstruction of any lost data. WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA OR OTHER PROPRIETARY MATERIAL DUE TO YOUR USE OF THE SOFTWARE OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE SOFTWARE OR TO YOUR DOWNLOADING OF ANY MATERIAL POSTED ON IT, OR ON ANY SOFTWARE LINKED TO IT.

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THE COMPANY HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR PARTICULAR PURPOSE.

THE FOREGOING DOES NOT AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

9. Limitation on Liability.

IN NO EVENT WILL THE COMPANY, ITS AFFILIATES, LICENSORS, SOFTWARE PROVIDERS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS OR DIRECTORS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR AGREEMENT TO THIS AGREEMENT OR THE PRIVACY POLICY, USE OR INABILITY TO USE THE SOFTWARE, ANY INACCURATE OR MISLEADING INFORMATION FOUND ON OR CONNECTED TO THE SOFTWARE, ANY SOFTWARES LINKED TO IT, ANY CONTENT ON THE SOFTWARE OR SUCH OTHER SOFTWARES OR ANY SERVICES OR ITEMS OBTAINED OR NOTH OBTAINED THROUGH THE SOFTWARE OR SUCH OTHER SOFTWARES, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT OR OTHERWISE, EVEN IF FORESEEABLE.

THE FOREGOING DOES NOT AFFECT ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

10. Indemnification.

10.1 Indemnification. You agree to defend, indemnify and hold harmless the Company, its affiliates, licensors, service providers and /or software providers, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors and assigns from and against any claims, disputes, liabilities, damages, judgments, awards, losses, costs, expenses or fees (including reasonable attorneys' fees) arising out of or relating to the Software, your use of the Software, material on the Software, your violation of this Agreement, including, but not limited to, any reliance on the Software's content, services and products other than as expressly authorized in these Agreement or your or Company's use of any information obtained from the Software.

11. Termination.

11.1 Right to Termination. If you print, copy, modify, download or otherwise use or provide any other person with access to any part of the Software in breach of this Agreement, your right to use the Software will cease immediately and you must, at our option, return or destroy any copies of the materials you have made. No right, title or interest in or to the Software or any content on the Software is transferred to you, and all rights not expressly granted are reserved by the Company. Any use of the Software not expressly permitted by this Agreement is a breach of this Agreement and may violate copyright, trademark and other laws. You agree that Company reserves the right to withdraw or terminate your access and use of the Software for any reason and at any time.

11. Governing Law; Submission to Jurisdiction; Waiver of Jury Trial; Waiver of Consolidation.

This Agreement, included as part of the Entire Agreement, shall be governed exclusively by the laws of the State of Utah, without regard to its conflicts of laws principles. Any legal action under or concerning this Agreement shall be brought exclusively in the District Court of Iron County, Utah or, in the event of a federal action, the appropriate federal court located in the State of Utah. The parties irrevocably agree and consent that said forum is convenient and has exclusive jurisdiction to hear and decide any such action. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby. Company and you agree to only pursue legal actions on an individual basis and will not pursue legal actions on a class, consolidated, or representative basis, regardless of the application of procedural rule. Company and you also agree to waive the ability to proceed in a class action, consolidated action, or representative actions, either as a representative or member of a class. You agree that before you can initiate any legal action, you must notify Company, and any provider providing Company's Software, in writing of a legal dispute and the parties will then work in good faith for the following (30) day period to work out such legal dispute. If the parties cannot resolve such dispute, the parties will proceed with any legal actions and defenses under this **Section 15**.

12. Limitation on Time to File Claims.

ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SOFTWARE MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

13. Waiver and Severability.

13.1 Waiver. No waiver of by the Company of any term or condition set forth in these Terms of Use shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of the Company to assert a right or provision under these Terms of Use shall not constitute a waiver of such right or provision.

13.2 Severability. If any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be invalid, illegal or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of this Agreement will continue in full force and effect.

14. Entire Agreement.

This Agreement and our Privacy Policy constitute the sole and entire agreement (“**Entire Agreement**”) between you and Company with respect to the Software and supersede all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to the Software.

15. Feedback.

You have no obligation to – but may provide – suggestions, comments, or other feedback to Company with respect to its products or services (“Feedback”). You agree that all Feedback is given voluntarily and it is not and will not be treated as confidential even if you designate it as confidential. Company will be free to use, disclose, reproduce, license, or otherwise distribute and exploit the Feedback provided to Company through any manner or means, in Company’s discretion, entirely without obligation to you or restriction of any kind on account of intellectual property rights or otherwise. Please contact us Company via email at hello@touchmd.com or by physical address at 99 North Main Street, Ste 7, Cedar City, Utah 84720.