

Trademark/Service Mark License Agreement

Licensee Name: [SPECIMEN – NOT VALID]

Address: _____ **City:** _____ **State:** _____ **Zip:** _____

Contact Name: _____

Telephone: _____ **Email:** _____

License Effective from: _____

License Number: [SPECIMEN]

1. The United States Department of Veterans Affairs (“Licensor”), with offices at 810 Vermont Street NW, Washington, DC 20420, is entering into this Trademark/Service Mark License Agreement (“Agreement”) with “Licensee.” The Licensee seeks permission to display the Marks (defined below) of the Licensor as permitted under this Agreement.

2. **Definitions:**

a. The “Marks” whether used singly or in combination mean any of the four service mark applications identified below which have been filed by the Licensor at the U.S. Patent and Trademark Office (USPTO):

i. USPTO serial # 85207607 filed on December 29, 2010:

Blue Button®

ii. USPTO serial # 85207644, filed on December 29, 2010:

DOWNLOAD MY DATA®

iii. USPTO serial # 85208187 filed on December 30, 2010:



iv. USTPO serial # 85208230 filed on December 30, 2010:



**Blue Button
Download
My Data**®

b. “Download” means the electronic transfer of data or information from one computer system to another computer system or memory device.

- c. "Electronic Health Record" or "EHR" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care providers.
- d. "Individually Identifiable Information" means any information, including demographic information collected from an individual, that—(A) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (B) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, and—(i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.
- e. "Provider" means a professional provider of health care or related services such as a physician, psychologist or other independent practitioner or entity via which professional providers deliver care; an institutional provider of health care or related goods and services such as a hospital, nursing home, pharmacy, laboratory, imaging center, surgical center, or clinic; a health benefit plan or health insurer; a health care clearinghouse; a Personal Health Record Vendor; or a governmental agency that delivers, funds, or regulates health care or related services.
- f. "Personal Health Record," or "PHR" means an electronic record of Individually Identifiable Information on an individual that may be drawn from multiple sources and that is managed, shared, and controlled by or primarily for the individual.

3. Grant of License: Subject to all of the terms of this License, Licensor grants to Licensee a non-exclusive royalty-free right to use the Marks for the following purposes:

- a. To identify any software, systems or functions in connection with providing information in the field of medicine or health that perform, support or enable the Downloading of Individually Identifiable Information from a PHR or EHR to a computer or memory device owned, managed, shared, or controlled by the individual to whom the Individually Identifiable Information pertains.
- b. To identify software, systems or functions that, when authorized by an individual, perform, support or enable the Downloading of Individually Identifiable Information related to that individual from a PHR or EHR sponsored or maintained by a Provider, to a PHR or EHR sponsored or maintained by another Provider.

4. Conditions of License:

- a. The Marks will not be used to identify any software, systems or functions that do not perform, support or enable the Downloading of Individually Identifiable Information.
- b. The Licensee shall not charge any fee, cost or expense of any sort whatsoever for any Individually Identifiable Information Downloads via software, systems or functions identified by the Marks.

- c. Downloads and use of the Marks by Licensee shall, at a minimum, be in ASCII and .pdf formats, identical to and interoperable with the VA ASCII- based Blue Button text file and able to read and write to the VA format; the .pdf format will also be identical to the VA Blue Button .pdf format. Licensor shall provide these formats at <http://www.va.gov/bluebutton>.
 - d. Any and all software, systems and functions identified by the Marks shall comply in all respects with all laws and regulations pertaining to the use and disclosure of Individually Identifiable Information, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA) and the Health Identifiable Information Technology for Economic and Clinical Health Act (HITECH) as they may be amended, and, without limiting the generality of the foregoing, shall comply with the HIPAA Security Rule (45 CFR 164.312(a) (access control), 45 CFR 164.312(c)(1) (data integrity) and 45 CFR 164.312(e)(1) (transmission security)).
 - e. Any and all software, systems and functions sponsored, operated, managed, shared or controlled by Licensee and which perform, support or enable the Downloading of Individually Identifiable Information from a PHR or EHR to a computer or memory device owned, managed, shared, or controlled by the individual to whom the Individually Identifiable Information pertains, or which identify software, systems or functions that, when authorized by an individual, perform, support or enable the Downloading of Individually Identifiable Information related to that individual from a PHR or EHR sponsored or maintained by a Provider, to a PHR or EHR sponsored or maintained by another Provider, shall be identified by the Marks.
 - f. Licensee shall within ten calendar days of any change in information about itself, update that information on Licensor's online database which can be accessed at www.va.gov/bluebutton/apps/License or such other address as Licensor may from time to time designate by notice.
5. **Quality Control:** Licensor shall have the right, at all reasonable times, to inspect the Licensee's goods, services and/or promotional activities employing the Mark to ensure, in its sole discretion, that such use is of proper quality and otherwise consistent with this Agreement. The Licensee agrees that it will display the Mark only in a manner identical to Licensor's filing at the U.S. Patent and Trademark Office.
6. **Duration and Termination:** Either Licensor or Licensee may terminate this agreement by giving the other party three months notice. Upon termination of this Agreement, all rights of Licensee to use the Mark shall immediately terminate.
7. **Breach by Licensee:** In the event of a breach of any of the terms and conditions of this Agreement by the Licensee or a finding by the Licensor that the Licensee's goods, services, and/or promotional activities employing the Mark are not of proper quality, the Licensor shall give Licensee written notice of such breach or finding. In the event Licensee does not cure such breach or finding within thirty (30) days, Licensor may immediately terminate this License and shall notify Licensee in writing of such termination.

8. **Assignments and Sub-Licenses:** License is not assignable, and any attempt by the Licensee to assign any portion of the License or to grant a sub-license, except as provided for in this Agreement, shall be deemed a breach of this Agreement and shall be cause for termination.
9. **Validity and Ownership of Mark:** The Licensee is prohibited from challenging or contesting in any way the Licensor's ownership of the Mark with the U.S. Patent & Trademark Office, or with any other trademark office, or Licensor's exclusive worldwide ownership of the Mark in any other forum.

10. **Licensee Acknowledgement and Warranties:**

- a. Licensee acknowledges that it has a heightened obligation to maintain and protect the confidentiality of any individually identifiable information that it may receive as a consequence of this Agreement and warrants for itself and any successor-in-interest that it shall maintain the confidentiality of such information for as long as such information is maintained by it.
- b. Licensee warrants that it has accurately and completely identified itself in this Agreement (regardless of medium in which it is submitted) and that the persons completing it have full authority to do so on Licensee's behalf and to agree to each of the terms of this Agreement. Licensee warrants that the contact information provided (including contact email address) is accurate and complete and agrees to update that contact information as needed so that Licensor at all times has accurate and complete information on how and where to send notices to Licensee.

11. **Use and Display of the Mark:**

- a. The Mark shall not be used by Licensee in a way that implies or gives any appearance that Licensee is affiliated with VA or the U.S. Government, or that VA or the U.S. Government endorses or otherwise approves any of Licensee's products, services or functions.
- b. Licensee shall not advertise or use the Mark in any publication or communication medium that would damage the goodwill of the Mark or the Licensor in any way. Specifically, the Mark shall not be placed or displayed in any illegal, vulgar, obscene, immoral, unsavory, offensive or potentially controversial publication or other controversial media or setting whatsoever.
- c. Licensee shall use and display Blue Button Marks only to the extent permitted under this Agreement.
- d. Each use of the Mark will be designated with the superscript "®" and be accompanied by a conspicuous statement: "'Blue Button,' the Blue Button logo, and the slogan 'Download My Data' are registered Service Marks of the U.S. Department of Veterans Affairs (VA), an agency of the United States Government and are used by permission of VA."

12. **Infringement:** Licensee shall notify Licensor of any potential infringement of the Mark of which the Licensee becomes aware, or reasonably should be aware. Licensor retains the right to determine what constitutes infringement and the course of action to be taken to address it. Licensee shall

notify Licensor of any claims of which the Licensee becomes aware that the Mark is infringing the name, logo or trademark of another.

13. **Governing Law:** This Agreement shall be interpreted and implemented in accordance with Federal law as interpreted by the U.S. District Court for the District of Columbia.
14. **Foreign Trademarks and Service Marks:** Licensee agrees to provide all lawful assistance, as reasonable and at Licensor's request and expense, to Licensor should Licensor decide to register the Mark in foreign countries. Licensee shall comply with all applicable legal requirements governing trademark and service mark use, including but not limited to, registered user requirements.
15. **Indemnification:** Licensee agrees to indemnify and hold Licensor harmless from any and all claims, damages and attorneys' fees arising from the use of the Mark by Licensee and its operations under the Agreement, except to the extent that any such claims, damages or attorneys' fees are due to any negligence of Licensor. Although the Licensor is precluded from indemnifying the Licensee pursuant to the Anti-Deficiency Act, Licensor warrants that it is the owner of the Mark that is the subject of this Agreement, and that it knows of no other entity with superior rights therein. Further, Licensor agrees to cooperate with and assist Licensee in the unlikely event that Licensee's use of the Mark is challenged.
16. **Amendments.** This Agreement may be modified in writing by mutual written consent of the Licensor and the Licensee. Licensor may also amend the terms of this License by giving notice thereof to Licensee; all such amendments shall take effect as specified in the notice but not earlier than 30 days following the giving of notice. If, within 15 days after receipt of notice of amendment of terms, Licensee gives notice to Licensor that it rejects such changes, this License will continue under its original terms, but in such event Licensor may terminate this License by giving 30 days notice of termination.
17. **Notices:** All notices and statements to Licensee shall be in writing sent to Licensee's current email address as maintained in Licensor's records; *provided that* Licensor may, but shall not be required to provide statements and notices to Licensee via regular mail at Licensee's current street address as maintained in Licensor's records; it being recognized that under the terms of this License, Licensee has an obligation to update any changes in the Licensee's street or email address using Licensor's online database system. Any statements or notices to Licensor shall be in writing and shall be made at the address set forth below unless notification of the change of address is given in writing. Any notice shall be deemed to have been given at the time it is sent.

To the Licensor:

Director, Technology Transfer
Department of Veterans Affairs (12TT)
810 Vermont Avenue, N.W.
Washington, DC 20420

or

via email to: vabluebutton@va.gov

18. Prior Agreements: This Agreement sets forth and contains the entirety of representations, understandings and agreements of the parties and supersedes all prior representations, understandings and agreements.

For the United States Department of Veterans Affairs:

SPECIMEN – NOT VALID

Will A. Gunn
General Counsel

Date:

SPECIMEN