

# UpSkill, LLC.

## SUBSCRIPTION AGREEMENT

Version Date: 2024

THIS SUBSCRIPTION AGREEMENT GOVERNS CUSTOMER'S ACQUISITION AND USE OF SERVICES FROM UPSKILL, LLC. ("HEALTH SCHOLARS"). BY ACCEPTING THE TERMS OF THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING ACCEPTANCE, OR EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THE TERMS OF THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THE TERMS AND CONDITIONS SET FORTH HEREIN, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

The Services may not be accessed for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes. Health Scholars' direct competitors are prohibited from accessing the Services, except with Health Scholars' prior written consent.

### 1. DEFINITIONS

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity; for purposes of this definition, "control" means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Agreement" means this Subscription Agreement, and any Order Form or other documents expressly incorporated into or adopting the terms of this Subscription Agreement.

"Content" means Course Content and any other information obtained by Health Scholars from publicly available sources or its third-party content providers and made available to Customer through the Services or pursuant to an Order Form, as may be further described in the Documentation.

"Course Content" means any eLearning, classroom, instructor materials, augmented reality, virtual reality or any other form of training and educational material provided by Health Scholars to be used for education or other purposes by Customer. "Customer" means in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement, and Affiliates of that company or entity (for so long as they remain Affiliates) which have entered into Order Forms.

"Customer Data" means electronic data and information submitted by or for Customer to the Services such as, user information, learner statistics and client-specific information, but excludes Content and Non-Health Scholars Applications.

"Documentation" means Health Scholars' on-line help files, usage guides and policies, as updated from time to time, applicable Service.

"Health Scholars" means UpSkill, LLC., a Delaware corporation.

"Licensed User" an individual authorized to utilize the Services through Customer per the terms of this Agreement.

"Malicious Code" means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

“Non-Health Scholars Application” means a Web-based, mobile, offline or other software application functionality that interoperates with a Service but is not a direct product offering of Health Scholars. Non-Health Scholars Applications, other than those obtained or provided by Customer, will be identifiable as such.

“Order Form” means an ordering document or online order specifying the Services to be provided hereunder that is entered into between Customer and Health Scholars or any of their respective Affiliates, including any addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

“Services” means any product or services that Health Scholars provides or makes available to Customer, including any Content, expressly excluding, however, Non-Health Scholars Applications.

## **2. USE OF SERVICES AND CONTENT**

2.1. Provision of Services. Pursuant and subject to the terms of this Agreement, Health Scholars will (a) make the Services available to Customer on a subscription basis, (b) provide applicable support for the Services to Customer, and (c) use commercially reasonable efforts to make online Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which Health Scholars shall give advance electronic notice), and (ii) any unavailability caused by circumstances beyond Health Scholars’ reasonable control, including by way of example and not limitation, an act of God, act of government, epidemic or pandemic, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem, Internet service provider failure or delay, Non-Health Scholars Application, or denial of service attack. In registering for the Services, Customer agrees to (A) provide true, current, and complete registration data, and (B) maintain and promptly update the registration data to keep it true, current, and complete.

2.2. Licensed Users. Customer shall purchase a specified number of Licensed User license authorizations, each to be used by only one individual and not shared with others. Each Licensed User authorization will be available for assignment through the term of the Services subscription until assigned to an individual. A Licensed User authorization is deemed assigned once the Services are started by an individual and thereafter unavailable for use by any other individual for the applicable annual Services subscription period; all Licensed User license authorization shall reset and again be available for (re)assignment upon each annual subscription renewal. Customer is responsible for identifying and validating all Licensed Users and for approving access by such users to the Services.

2.3. Customer Responsibilities. Customer will (a) be responsible for Licensed Users’ compliance with this Agreement, (b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer-acquired Customer Data, Customer’s use of Customer Data with the Services, and the interoperation of any Non-Health Scholars Applications with which Customer uses Services, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content, and notify Health Scholars promptly of any such unauthorized access or use, (d) use Services and Content only in accordance with this Agreement, and applicable laws and government regulations, and (e) comply with terms of service of any Non-Health Scholars Applications with which Customer uses any Services. Any use of the Services in breach of the foregoing by Customer or Licensed Users that in Health Scholars’ judgment threatens the security, integrity or availability of Health Scholars’ services, may result in Health Scholars’ immediate suspension of Customer’s ability to access the Services.

2.4. Usage Restrictions. Customer will not (a) make any Service available to anyone other than Licensed Users, or use any Service for the benefit of anyone other than Customer or its Affiliates, unless expressly stated otherwise in an Order Form or the Documentation, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Service, (c) use a Service or Non-Health Scholars Application to store or transmit Malicious Code, (d) attempt to gain unauthorized access to any Service or its related systems or networks, (e) permit direct or indirect access to or use of any Services in a way that circumvents a contractual usage limit, or use any Services to access or use any of Health Scholars intellectual property except as permitted under this Agreement, (f) modify, copy, or create derivative works based on a Service or any part, feature, function or user interface thereof, (g) frame or mirror any part of any Service, other than framing on Customer’s own intranets or otherwise for its own internal business purposes, (h) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Service.

2.5. Services Limitations. The Services are not a substitute for the competent analysis and professional judgment of health care professionals. Health Scholars does not endorse any specific drugs, tests, physicians, products, procedures, opinions, “off-label” drug or device uses or other information that may be mentioned in the Course or Scenario Content, nor does it represent or guarantee the truthfulness, accuracy, efficacy or reliability of any Course or Scenario Content. **The information provided in the Services are for educational purposes only and are not a substitute for sound clinical judgment and adherence to evidence-based practice and accepted standards of clinical care.** The opinions expressed in the Services are those of its authors and editors and may or may not represent the official position of any medical societies cooperating with, endorsing or recommending the Services. Customer is solely responsible for determining whether the Services meet the needs of its organization; Customer’s continued use of the Software and Services shall be evidence that Customer has reviewed the Services and determined they meet the needs of its organization.

2.6. Use of Hardware. Health Scholars does not warrant the safety of any hardware devices needed to access the Services. Customer shall be solely responsible for following any and all manufacturer instructions for the use and maintenance of said hardware. Customer is solely responsible for using any hardware, including but not limited to virtual reality hardware, in a safe manner.

2.7. Software Updates. Health Scholars may from time-to-time provide software updates, which may include bug fixes, patches, security updates or modifications to Content to ensure the clinical accuracy of a Product. Customer agrees to promptly implement all such updates provided by Health Scholars and failure to do so may result in impaired functionality of the Services, security vulnerabilities, and other Service-impacting implications, for which Health Scholars shall have no liability.

2.8. Removal of Content. If Health Scholars is required by any third-party rights holder to remove Content, or receives information that Content provided to Customer may violate applicable law or third-party rights, Health Scholars may discontinue Customer’s access to said Content through the Services.

### 3. FEES AND PAYMENT

3.1. Fees. Customer will pay all fees specified in Order Forms, with all payments to be made in U.S. Dollars unless otherwise authorized in writing by Health Scholars. Except as otherwise specified herein or in an Order Form, (i) fees are based on Service subscriptions purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) if applicable, quantities purchased cannot be decreased during the relevant subscription term. Customer shall be responsible for payment of any taxes and similar governmental assessments of any nature in connection with this Agreement, other than taxes assessed on Health Scholars’ net income. If Health Scholars has the legal obligation to pay or collect taxes on Customer’s Services subscription hereunder, unless Customer provides Health Scholars with a valid tax exemption certificate authorized by the appropriate taxing authority Health Scholars will invoice Customer and Customer will pay that amount.

3.2. Invoicing and Payment. Unless otherwise specified in the applicable Order Form, Customer will pay all amounts due within 30 days of the date of the applicable invoice. Any amount not paid when due will be subject to finance charges equal to 1.5% of the unpaid balance full or partial calendar month, as well any costs of collection incurred by UpSkill, LLC including but not limited to attorneys fees. Health Scholars reserves the right to terminate or suspend Customer’s access to the Services in the event of an account delinquency.

### 4. TERM AND TERMINATION

4.1. Term of Agreement. This Agreement commences on the date Customer first accepts it and continues until all subscriptions hereunder have expired or have been terminated.

4.2. Term of Subscriptions. The term of each subscription shall be as specified in the applicable Order Form, without regard to when Customer elects to actually access and utilize the Services. Except as otherwise expressly specified in an Order Form, any Service subscription(s) added to an order already in place shall be coterminous with the term of the initial Service subscription period, with fees to pro-rated for the applicable duration. All then-outstanding Service subscription shall contemporaneously and automatically renew for additional periods equal to

the expiring subscription term or one year (whichever is shorter), unless either party gives the other written notice (email acceptable) at least 30 days before the end of the subscription term. Except as expressly provided in the applicable Order Form, renewal of subscriptions will be at Health Scholars' applicable list price in effect at the time of the applicable renewal.

## 5. CUSTOMER DATA

5.1. Customer Data License. Customer hereby grants to Health Scholars a non-exclusive license to copy, reproduce, store, distribute, publish, export, adapt, edit and translate Customer Data to the extent reasonably required for the performance of Health Scholars' obligations and the exercise of Health Scholars' rights under this Agreement, together with the right to sub-license these rights to its hosting, connectivity, security and telecommunications service providers to the extent reasonably required for the performance of the Health Scholars' obligations and the exercise of the Health Scholars' rights under this Agreement.

5.2. License to Collected Information. Customer hereby grants Health Scholars an unrestricted, irrevocable, royalty-free license to store, copy, transcript and otherwise use, on a de-identified and/or aggregated and anonymized basis, all data entered into or otherwise collected by the Services, including without limitation, user speech recordings and user statistics, for product quality and enhancement purposes, and for deriving user benchmarks and best practices. All such aggregated data shall be the sole and exclusive property of Health Scholars.

5.3. Ownership of Customer Data. Except as described below, Customer owns and retains all right, title and interest in and to Customer Data and Health Scholars agrees not to use Customer Data other than in connection with providing and/or improving its service offerings, or disclose, sell, assign, lease or otherwise provide Customer Data to third parties.

## 6. PROPRIETARY RIGHTS AND LICENSES

6.1. Reservation of Rights. Subject to the limited rights expressly granted hereunder, Health Scholars, its Affiliates, its licensors and Content providers reserve all of their right, title and interest in and to the Services and Content, including all of their related intellectual property rights, and any related process or methodology provided or used by Health Scholars, and any modification, improvement or enhancement thereto, however developed or provided. Nothing contained in this Agreement shall be construed to convey to Customer ownership of any intellectual property rights in or to the Services or related methodologies or processes. No rights are granted to Customer hereunder other than as expressly set forth herein.

6.2. Access to and Use of Content. Customer has the right to access and use applicable Content subject to the terms of applicable Order Forms, this Agreement and the Documentation.

6.3. License by Customer to Use Feedback. Customer grants to Health Scholars and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Licensed Users relating to the operation of Health Scholars' or its Affiliates' services.

**7. DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT IS PROVIDED "AS IS," AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER.**

## 8. INDEMNIFICATION

8.1. Indemnification by Health Scholars.

(a) Health Scholars shall only defend, indemnify, and hold harmless Customer, its affiliates, and their respective officers, directors, employees and agents from and against all liabilities, damages, losses, costs or expenses (including, without limitation, reasonable attorney's fees and expenses) arising out of or in connection with: (i) Health Scholars' non-compliance or violation of this Agreement; and/or (ii) any actual claim, suit, action or proceeding alleging that any of the Services or other products or services provided hereunder, or Customer's use and/or receipt thereof in accordance with this Agreement, infringe upon any third-party intellectual property right, provided, that Customer must promptly notify Health Scholars in writing of any claim alleging such infringement. In the event that some or all of the Services or other services provided hereunder is held by a court of competent jurisdiction to be infringing or if at any time Health Scholars reasonably believes that such Services or other services provided hereunder may be held to be infringing, then Health Scholars shall, at its expense: (A) modify the Services or other services provided hereunder to be non-infringing in a manner that the Services' or other services' provided hereunder functions are not materially modified; (B) obtain for Customer a license to continue using the Services or other services provided hereunder; or (C) terminate Customer's access to the Services or other services provided hereunder and provide a prorated refund of any fees paid for such Services or other services provided hereunder. This section sets forth Customer's sole and exclusive remedies for any third-party claim of infringement related to the Services or other services provided hereunder.

(b) Notwithstanding the foregoing, Health Scholars shall have no indemnification obligation for any claim of infringement to the extent resulting from: (i) Customer's use of a superseded or altered release of some or all of the Health Scholars Software if infringement would have been avoided by the use of a subsequent unaltered release of the Health Scholars Software which release was provided to Customer; (ii) any software or other materials not furnished by Health Scholars; (iii) use of the Services in combination with any equipment or software not contemplated under this Agreement; (iv) Health Scholars' compliance with unique specifications of Customer; or (v) modification of the Health Scholars Software by parties other than Health Scholars or its subcontractors.

8.2. Indemnification by Customer. Customer shall defend, indemnify, and hold harmless Health Scholars, its affiliates, and their respective officers, directors, employees and agents from and against all liabilities, damages, losses, costs or expenses (including without limitation reasonable attorney's fees and expenses) arising out of or in connection with any actual or threatened claim, suit, action or proceeding brought by a third party due to Customer's non-compliance or violation of this Agreement; provided that Health Scholars provides Customer with prompt notice of such claims, gives Customer the sole right to control the defense of such claims, provided, however, that Health Scholars (i) may join in the defense and settlement of such claims and employ counsel at its own expense, and (ii) will reasonably cooperate with Customer in the defense and settlement of such claims.

## 9. **LIMITATION OF LIABILITY**

9.1. Limitation of Liability. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF HEALTH SCHOLARS ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE 12 MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.

9.2. Exclusion of Consequential and Related Damages. EXCLUDING INFRINGEMENT OF THE OTHER PARTY'S INTELLECTUAL PROPERTY, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

9.3. Claim Time Limit. Customer acknowledges and agrees that it shall bring any claim arising under or relating to this Agreement within 12 months from the date of the claim arising, or, if later, within 12 months from the date Customer first became aware of the matters leading to the claim, and failure to do so shall result in any such claim automatically and irrevocably expiring.

## 10. GENERAL PROVISIONS

10.1. Insurance. Health Scholars shall at all times during the term of this Agreement maintain commercially reasonable types and levels of insurance.

10.2. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. 10.3. Surviving Provisions. The sections titled "Fees and Payment," "Proprietary Rights and Licenses," "Disclaimers of Warranties," "Indemnification," "Limitation of Liability," "Surviving Provisions" and "General Provisions" will survive any termination or expiration of this Agreement.

10.4. Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c), except for notices of termination or an indemnifiable claim ("Legal Notices"), which shall clearly be identifiable as Legal Notices, upon confirmation of receipt by the intended recipient if sent by email. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer. All other notices to Customer will be addressed to the relevant Services system administrator designated by Customer.

10.5. Entire Agreement and Order of Precedence. This Agreement is the entire agreement between Health Scholars and Customer regarding Customer's use of Services and Content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties agree that any term or condition stated in a Customer purchase order or in any other Customer order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (i) the applicable Order Form, (ii) this Agreement, and (iii) the Documentation.

10.6. Export Compliance. The Services, Content, other Health Scholars technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Health Scholars and Customer each represents that it is not named on any U.S. government denied-party list. Customer will not permit any Licensed User to access or use any Service in a U.S.-embargoed country or region (currently Cuba, Iran, Peoples Republic of (North) Korea, Sudan, Syria or Crimea region of Russia) or in violation of any U.S. export law or regulation.

10.7. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.

10.8. Third-Party Beneficiaries. There are no third-party beneficiaries under this Agreement.

10.9. Waiver. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

10.10. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

10.11. Headings. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.

10.12. Governing Law and Venue. The laws of the State of Colorado shall govern this Agreement as though this Agreement was entered into, and was to be entirely performed within, the State of Colorado, without regard to its conflict of laws principles. The parties expressly disclaim the applicability of, and waive any rights based upon, the Uniform Computer Information Transactions Act, the United Nations Convention on Contracts for the International Sale of Goods and the Convention on the Use of Electronic Communications in International Contracts.

**[End of Health Scholars Subscription Agreement]**