

Avail Medsystems, Inc.
End User License Agreement and Terms of Service

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Thank you for your interest in this application for your mobile device (the “**Remote App**”) provided to you by Avail Medsystems, Inc. (“**Avail**”). The Remote App enables you to access the Avail Streaming Service (as defined in Section 2 below) from your mobile device. This End User License Agreement and Terms of Service (“**EULA**”) is a legally binding contract between you and Avail regarding your use of the Remote App and the Streaming Service.

PLEASE READ THE FOLLOWING TERMS CAREFULLY.

BY DOWNLOADING, INSTALLING, OR OTHERWISE ACCESSING OR USING THE REMOTE APP OR THE STREAMING SERVICE, YOU AGREE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THIS EULA. IF YOU DO NOT AGREE, YOU MAY NOT USE THE REMOTE APP OR THE STREAMING SERVICE.

1. Licenses

- 1.1 **License Agreement.** Please note that, in some cases, the terms of this EULA may not apply to a particular user’s use of the Streaming Service. Avail enters into contracts with some entities (each a “**Licensee**”) pursuant to which the entity purchases the right for its employees and contractors to access and use the Remote App and Streaming Service (each “**License Agreement**”). If you are an employee or contractor of such a Licensee then your use of the Streaming Service is governed by the terms of the License Agreement signed by the Licensee and not by the terms of this EULA. This is the case even though you are required to click “I agree” to the terms of the EULA when you download the Remote App. If you are not an employee or contractor of a Licensee, your use of the Streaming Service is governed by the terms of this EULA.
- 1.2 **License Only.** The Remote App is licensed, not sold, to you and you may use the Remote App and Streaming Service only as set forth in this EULA.
- 1.3 **Limited License.** Subject to your complete and ongoing compliance with this EULA, Avail grants you a limited, non-exclusive, non-transferable, non-sublicensable, and revocable license to: (a) download, install, and use one object code copy of the Remote App made available to you by Avail on a mobile device that you own or control; and (b) access and use the Streaming Service through the use of the Remote App, through an Internet location where you can access and use the Streaming Service using a supported browser (“**Avail Portal**”), or through such other mechanism that

Avail may make available in its discretion. This license is solely for your individual, non-commercial use.

1.4 **License Restrictions.** Except and solely to the extent such a restriction is impermissible under applicable law, you may not: (a) record, store, reproduce, or otherwise save any audio-video live feed of a medical procedure that is transmitted by the Console Software from the Console (“**Streams**”) or any other content made available on the Streaming Service in or on any medium (“**Content**”), whether permanently or temporarily; (b) charge anyone a fee or other consideration for viewing or otherwise accessing Content; (c) resell, gift, give, or otherwise transfer access to Streaming Service to any other party; (d) enable or permit any other person to use the User’s Log-In Credentials (as defined in Section 4) or User Account (as defined in Section 4); (e) reverse engineer, decompile, or otherwise attempt to discover any source code or underlying ideas or algorithms of any portion of the Streaming Service except to the extent permitted by applicable law; (f) provide, lease, lend, use for timesharing, or otherwise use or allow others to use any portion of the Streaming Service for the benefit of any third party; (g) remove any proprietary notices or labels from the Streaming Service; (h) use the Streaming Service for any illegal purpose or in violation any local, state, national, or international law, including applicable export control laws or regulations administered by the U.S. Commerce Department, OFAC, or any other government agency; (i) interfere with security-related features of the Streaming Service including by disabling or circumventing features that prevent or limit use or copying of any Content; (j) upload or otherwise disseminate any virus, adware, spyware, worm, or other malicious code through the Streaming Service; (k) interfere with or disrupt any network, equipment, or server connected to or used to provide the Streaming Service; (l) allow Users to access and use the Streaming Service from outside of the United States; (m) interfere with any user’s enjoyment of the Streaming Service; (n) perform any fraudulent activity including impersonating any person or entity, claiming a false affiliation, or accessing any other Streaming Service account without permission; or (o) permit anyone else to do any of the foregoing. All the limitations and restrictions in this Section 1.4 also apply to your use of any related documentation. Use of the Streaming Service is also subject to any constraints inherent to the service or otherwise set forth in any related documentation.

1.5 **Updates and Upgrades.** This EULA will govern any software upgrades or updates, modifications, or bug fixes to the Streaming Service that Avail provides free of additional charge to its customers using the service (collectively “**Updates**”) and any additions, enhancements, new modules, and other upgrades that include new features and substantial increases in functionality to the Streaming Service which Avail provides for an additional fee (“**Upgrade**”), unless such Update or Upgrade is accompanied by a

separate license or agreement (in which case you agree that the terms of that license or agreement will govern such Update or Upgrade).

- 1.6 **Ownership; Proprietary Rights.** As between you and Avail and subject to your limited rights under this EULA, Avail owns all right, title and interest in and to: (a) any and all of the following and any tangible embodiments thereof: (i) works of authorship, including computer programs, whether in source code or in executable code form, architecture, and documentation; (ii) inventions (whether or not patentable), discoveries, and improvements; (iii) proprietary and confidential information, trade secrets and know-how; (iv) databases, data compilations and collections, and technical data; (v) methods and processes; (vi) devices, prototypes, designs, and schematics; and (vii) any other forms of technology used by Avail to provide the Streaming Service and any parts or components thereof ("**Avail Technology**"); (b) all Updates; (c) all Upgrades; and (d) all intellectual property rights in and to (a) – (c). Subject to the limited rights expressly granted under this EULA, Avail, its licensors, and its suppliers reserve all of their right, title, and interest in and to the Streaming Service, including all of their related intellectual property rights. No rights are granted to you hereunder other than as expressly set forth herein. If you provide any feedback to Avail concerning the functionality or performance of the Streaming Service (including identifying potential errors and improvements), you hereby assign to Avail all right, title, and interest in and to such feedback, and Avail is free to use such feedback without payment or restriction. As between you and Avail, the Avail Technology and all intellectual property rights therein and related thereto are owned by Avail and its licensors and are protected by intellectual property and other laws. Except as expressly authorized by Avail, you may not make use of the Avail Technology. Avail reserves all rights not granted expressly in this EULA.

2. **Streaming Service Overview.**

The Streaming Service enables individuals not actually present in the room where medical procedures are taking place (e.g., those in a hospital operating room) ("**Procedure(s)**") to remotely view such Procedures and to communicate with those present in the room in real-time using the Remote App from their mobile devices, thereby enabling such individuals to provide procedural support, engage in real-time observation, and offer clinical education irrespective of their location. The Streaming Service is comprised of the Remote App, Avail's proprietary software ("**Console Software**"), a hardware device on which the Console Software is installed and operates ("**Console**"), and the Avail Portal (collectively, the "**Streaming Service**"). The Console and Console Software are located in the room where the Procedure is taking place. The Console includes HD cameras which provide a real-time, two-way audio/visual display of the Procedure and can be repositioned during the Procedure allowing the Streaming Service to simultaneously display two views of the Procedure at once. Users of the Streaming Service who are invited to attend Procedures can log into the Streaming Service via the

Remote App or Avail Portal and access the live Streams being transmitted from the Console through a secure digital connection with the procedure room.

3. **Eligibility.**

You must be at least 18 years old to use the Streaming Service. By agreeing to this EULA, you represent and warrant that: (a) you are at least 18 years old; (b) you have not previously been suspended or removed from the Streaming Service; and (c) your registration and your use of the Streaming Service is in compliance with any and all applicable laws and regulations.

4. **Accounts and Registration.**

Once you have downloaded and installed the Remote App, in order for you to use the Streaming Service, you must become a registered user on the Streaming Service. To register you will be required to provide Avail with some information including your name and email address ("**User Data**"). Avail will use the User Data to set up your user account ("**User Account**"). Once Avail establishes your User Account, it will email you at the email address you provided and request that you set a password for the account. Your email address and password constitute your log-in credentials ("**Log-in Credentials**"). You agree to provide the required User Data to Licensee (if applicable) and to ensure that the User Data you provide is accurate and that you will keep it accurate and up-to-date at all times. You are responsible for maintaining the confidentiality of your Log-in Credentials and you accept responsibility for all activities that occur under your User Account. If you believe that your User Account is no longer secure, then you must immediately notify us at support@avail.io. You agree and consent to Avail storing and using the User Data that you provide in connection with your User Account in order to provide you with the Streaming Service and for such other purposes as are described in the Avail Privacy Policy ("**Privacy Policy**", which is incorporated into this EULA by reference and can be found at <https://www.avail.io/privacy/>).

5. **Evaluation Services.**

Avail may permit users to access and use the Remote App and Streaming Service on an evaluation basis ("**Evaluation Services**"). If you are accessing and using the Streaming Service for evaluation purposes, such use will be governed by this EULA, as modified by this Section 5. Notwithstanding any other terms to the contrary, you may only use the Evaluation Services for your internal demonstration, testing, or evaluation purposes and not for any production purposes. Any use of the Streaming Service on an evaluation basis will be limited to use in connection with the specific event(s) for which Avail issues you access credentials(s) for a period of 30 days, beginning on the date Avail sets up a User Account and authorizes your use thereof. Evaluation Services may have a limited term, and Avail may "time-out" and disable the Evaluation Services, or otherwise discontinue your access and use of the Evaluation Services, at any time without prior notice. You will not attempt to defeat or circumvent any duration mechanism for Evaluation Services and will not use any Evaluation Services beyond the prescribed term. NOTWITHSTANDING ANY TERMS TO THE CONTRARY IN THIS EULA, AVAIL DISCLAIMS ALL

WARRANTIES, EXPRESS OR IMPLIED, FOR EVALUATION SERVICES. THE EVALUATION SERVICES ARE PROVIDED ON AN “AS IS” BASIS AND AT YOUR OWN RISK AND YOU HEREBY RELEASE AVAIL FROM ANY AND ALL LIABILITY ASSOCIATED WITH THE EVALUATION SERVICES.

6. **Third Party Software; Open Source**

All Open Source Software (also referred to as OSS) may be included in, embedded in, used by, provided or distributed with a Service. Any such OSS is licensed to you by the copyright holder of the OSS under the license terms applicable to that OSS and is not licensed to you by Avail under the terms of this EULA. To the extent Avail is required (a) make certain disclosures regarding such Open Source Software; (b) make available to you any source code or modifications to the Open Source Software Customer may request such information; and/or (c) to make available to you any source code or modifications to the Open Source Software, you may obtain this information by sending a written request, with Customer's name and address to: Avail Medsystems, Inc., Attention: Legal Department, Open Source Files Request, (“Avail Address”). Third party owned software or services used in the Streaming Service are subject to the terms and conditions of this EULA except where specifically indicated in which case additional terms and conditions may also apply to the third party software or services in which case such terms will be set forth herein. For the purpose of this EULA, “**Open Source Software**” or “**OSS**” means software components licensed and distributed under a license approved by the Open Source Initiative or similar open source or freeware license that may be included in, embedded in, used by, or provided or distributed with a Service.

7. **Display of Medical Procedures Not Treatment**

You acknowledge that the Streaming Service is intended to passively display information and stream audio and video of medical Procedures for remote sharing and viewing in order to facilitate use of certain medical equipment. The Streaming Service is neither intended to provide medical advice, diagnosis, treatment, cure, or prevention of any disease nor intended to be used as a tool to accomplish any of the foregoing. You acknowledge and agree that the Streaming Service is merely a conduit (a) of information related to Procedures, and (b) for the use of medical devices in connection with performing Procedures on patients and the provision of healthcare to patients by independent third party healthcare providers (collectively, “**Healthcare Provider(s)**”). The Healthcare Providers are solely responsible for and will have complete authority, responsibility, supervision, and control over (i) the Procedures displayed via the Streaming Service, and (ii) the provision of all medical services, advice, instructions, treatment decisions, and other professional health care services performed. All diagnoses, treatments, procedures, and other professional health care services will be provided and performed exclusively by or under the supervision of Healthcare Providers as they, in their sole discretion, deem appropriate. You further acknowledge and agree that Avail does not provide or endorse any medical advice on or through the Streaming

Service and no information obtained through the Streaming Service can be so construed or used. Avail will not have, nor will it have the ability to exercise, any control, authority, or supervision over the provision of any medical services, other professional health care services, or the Procedures themselves. When using the Streaming Service, information may be transmitted over a medium that may be beyond the control and jurisdiction of Avail, its licensors, and its suppliers. Accordingly, Avail assumes no liability for, or relating to, the delay, failure, interruption, or corruption of any data or other information transmitted in connection with the Streaming Service that is reasonably determined to be beyond Avail's control.

8. Usage Data; Monitoring.

Avail monitors and collects information that the Streaming Service generates, or records, regarding your usage of, and the performance of, the Streaming Service but explicitly excludes any information about a hospital, other medical facility, or any patients including, but not limited to, any information that would be considered protected health information (PHI) under the Health Insurance Portability and Accountability Act (HIPAA) ("**Usage Data**") in order to: (a) facilitate delivery of the Streaming Service; (b) track usage for billing purposes; (c) provide support for the Streaming Service; (d) monitor the performance, integrity, and stability of the Streaming Service infrastructure; (e) prevent or address technical issues with the Streaming Service; and (f) improve our products and services, and your experience. You hereby consent to our gathering of Usage Data and agree that you will not interfere with that collection and monitoring. As between you and Avail, Avail shall own all Usage Data, the know-how and analytical results generated in the processing of Usage Data, any and all Updates or Upgrades, or any other Avail products or services, in each case, that are created as a result of Avail's use of the Usage Data; provided that Avail shall not disclose to any third party: (i) any Usage Data, or (ii) that you are the source of any Usage Data or analytical results.

9. Communications.

- 9.1 **Push Notifications.** When you install the Remote App on your mobile device, you agree to receive push notifications, which are messages that the Streaming Service sends you on your mobile device when the Remote App is not on. Discontinuing push notifications typically requires you to change your settings on your mobile device. Each type of device operates differently, so you should check your user manual if you are having trouble.
- 9.2 **Email.** Avail may send you emails to the email address in your User Data. These emails may include operational messages about your use of the Streaming Service, such as to inform you that there is a Procedure scheduled on the Streaming Service to which you are invited to view via the Remote App or to apprise you of problems we are experiencing with the Streaming Service ("**Operational Emails**"). By using the Streaming Service, you consent to receiving certain electronic communications from us as further described in our Privacy Policy. Please read our Privacy Policy to learn more about our electronic communications practices. You agree

that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that those communications be in writing. You should maintain copies of electronic communications from us by printing a paper copy or saving an electronic copy.

10. General Payment Terms.

- 10.1 **General.** Certain features in the Streaming Service may require you to pay fees. Before you pay any fees, you will have an opportunity to review and accept the fees that you will be charged. All fees are in U.S. Dollars and, except as expressly set forth herein, are non-refundable.
- 10.2 **Price.** Avail reserves the right to determine pricing for the Streaming Service (including any parts thereof) and for any other features or functionality made available through the Streaming Service. Avail will use reasonable efforts to keep pricing information up to date. We may change the fees for the Streaming Service and for other features or functionalities made available through the Streaming Service. If any such changes include additional fees or charges, we will give you advance notice of such changes before they apply.
- 10.3 **Authorization.** By providing a credit card or other payment method that Avail accepts, you represent and warrant that (a) you are authorized to use the designated payment method and (b) you authorize Avail (or our third-party payment processor, Stripe) to charge you fees for any purchases you make in the Remote App or in connection with the Streaming Service to the payment method you provide. The protection, security, collection, maintenance, and processing of your information by third-party payment processors including Stripe is subject to the terms and conditions of each such company's privacy policies including Stripe's privacy policy (available at <http://stripe.com/privacy>). If you pay any fees with a credit card, Avail may seek pre-authorization of your credit card account prior to your purchase to verify that the credit card is valid and has the necessary funds or credit available to cover your purchase. Avail may cancel any purchase you make or may suspend or terminate access to the Streaming Service, including fee-based portions of the service, if you fail to timely pay any fees due to Avail. In addition to such fees, you may be charged additional fees or charges that are incidental to any chargeback or collection of any the unpaid amount due to Avail, including collection fees. You must resolve any payment method problems and pay any unpaid fees and charges before we fulfill your purchase or reinstate access to the Streaming Service. You acknowledge that the fees billed by Avail may vary due to promotional offers, preferences you select, or changes in applicable taxes, and you authorize us (or our third-party payment processor) to charge your payment method for the corresponding amount.

- 10.4 **Purchase of Streaming Minutes.** You can use the Streaming Service to view Streams of Procedures by purchasing Minutes. Minutes can be used to view no more than five (5) different Streams (provided that you may purchase a separate license under additional terms and conditions in order to view additional Streams). For purposes of this EULA, “**Minutes**” means any minute or part thereof in time during which you can access and view Streams through the Remote App or the Avail Portal.
- 10.5 **Minutes: True-Up and Refund.** If you exceed the number of Minutes you purchased, you will also pay to Avail the applicable excess usage fees at Avail’s then-current rate which will be due upon receipt of invoice. Upon the termination of your Account, Avail will refund to you any pre-paid fees for Minutes that remain unused at the time of such termination.

11. **Modification of this EULA.**

Avail reserves the right, in its sole discretion, to change, modify, add, or remove portions of this EULA at any time by making such modified EULA available to you through the Streaming Service. The EULA will be identified as of the most recent date of revision and will be effective immediately upon being made available through the Streaming Service, except as follows: (a) in the event any such modification materially alters your rights hereunder, we notify you in a message displayed in a pop-up window or other notification when you access or use the Streaming Service through the Remote App or the Avail Portal; (b) such materially modified EULA will be effective upon the earlier of your use of the Streaming Service with actual knowledge of the changes or thirty days after the changes are made available to you; and (c) no modifications to this EULA will apply to any dispute between you and Avail that arose prior to the date of such modification. Your use of the Streaming Service after modifications to the EULA become effective constitutes your binding acceptance of such changes. If you are dissatisfied with the terms of the EULA or any modifications thereof, then you agree that your sole and exclusive remedy is to discontinue any use of the Streaming Service.

12. **Term, Termination and Modification of the Streaming Service**

- 12.1 **Term.** This EULA is effective beginning when you accept this EULA or first download, install, access, or use the Remote App and Streaming Service, and ending when terminated as described in Section 12.2.
- 12.2 **Termination of the EULA.** If you violate any provision of this EULA, your authorization to use the Streaming Service, including the Remote App, terminates and this EULA automatically terminates. In addition, Avail may, at its sole discretion, terminate this EULA or your User Account, or suspend or terminate your access to the Streaming Service, at any time for any reason or no reason, with or without notice. You may terminate your User Account and this EULA at any time by contacting Avail at support@avail.io.

- 12.3 **Effect of Termination.** Upon termination of this EULA: (a) your license rights to the Remote App and the Streaming Service will terminate and you must immediately cease all use of both; (b) you will no longer be authorized to access your User Account or the Streaming Service; and (c) Sections 1.6, 8, 12.3, 13, 14, 15, and 16 will survive any such termination.
- 12.4 **Modification of the Streaming Service.** Avail reserves the right to modify or discontinue the Streaming Service, including the Remote App, at any time (including by limiting or discontinuing certain features of the Remote App or Streaming Service), temporarily or permanently, without notice to you. Avail will have no liability for any change to the Streaming Service, including the Remote App, or any suspension or termination of your access to or use of the Remote App or Streaming Service.
13. **Indemnity.** To the fullest extent permitted by law, you are responsible for your use of the Streaming Service, including the Remote App, and you will defend and indemnify Avail and its officers, directors, employees, consultants, affiliates, subsidiaries and agents (together, the “**Avail Entities**”) from and against every claim brought by a third party, and any related liability, damage, loss, and expense, including reasonable attorneys’ fees and costs, arising out of or connected with: (a) your unauthorized use of, or misuse of, the Remote App and Streaming Service; (b) your violation of any portion of this EULA, any representation, warranty, or agreement referenced in this EULA, or any applicable law or regulation; (c) your violation of any third party right, including any intellectual property right or publicity, confidentiality, other property, or privacy right; or (d) any dispute or issue between you and any third party. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (without limiting your indemnification obligations with respect to that matter), and in that case, you agree to cooperate with our defense of those claims.
14. **Disclaimers; No Warranties**

THE REMOTE APP, STREAMING SERVICE, AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE REMOTE APP ARE PROVIDED “AS IS” AND ON AN “AS AVAILABLE” BASIS. AVAIL DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE REMOTE APP, STREAMING SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THEM, INCLUDING: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (B) ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. AVAIL DOES NOT WARRANT THAT THE REMOTE APP, THE STREAMING SERVICE OR ANY PORTION THEREOF, OR ANY MATERIALS OR CONTENT OFFERED THROUGH THE STREAMING SERVICE, WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND AVAIL DOES NOT WARRANT THAT ANY OF THOSE ISSUES WILL BE CORRECTED.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM AVAIL ENTITIES OR OUTSIDE OF THIS EULA WILL CREATE ANY WARRANTY REGARDING ANY OF THE AVAIL ENTITIES, THE REMOTE APP, OR STREAMING SERVICE THAT IS NOT EXPRESSLY STATED IN THIS EULA. WE ARE NOT RESPONSIBLE FOR ANY DAMAGE THAT MAY RESULT FROM THE REMOTE APP, STREAMING SERVICE, MATERIALS, CONTENT, OR YOUR DEALING WITH ANY OTHER STREAMING SERVICE USER. YOU UNDERSTAND AND AGREE THAT YOU USE ANY PORTION OF THE REMOTE APP OR STREAMING SERVICE AT YOUR OWN DISCRETION AND RISK, AND THAT WE ARE NOT RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM OR MOBILE DEVICE USED IN CONNECTION WITH THE REMOTE APP OR STREAMING SERVICE) OR ANY LOSS OF DATA.

THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS SECTION APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. Avail does not disclaim any warranty or other right that Avail is prohibited from disclaiming under applicable law.

15. Limitation of Liability.

TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE AVAIL ENTITIES BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, OR ANY OTHER INTANGIBLE LOSS) ARISING OUT OF OR RELATING TO YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE, THE REMOTE APP, STREAMING SERVICE OR ANY MATERIALS OR CONTENT ON THE STREAMING SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT ANY AVAIL ENTITY HAS BEEN INFORMED OF THE POSSIBILITY OF DAMAGE.

TO THE FULLEST EXTENT PERMITTED BY LAW, THE AGGREGATE LIABILITY OF THE AVAIL ENTITIES TO YOU FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE USE OF, OR ANY INABILITY TO USE, THE REMOTE APP OR ANY PORTION OF THE STREAMING SERVICE, OR OTHERWISE UNDER THIS EULA, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO THE GREATER OF: (A) THE AMOUNT YOU HAVE PAID TO AVAIL FOR ACCESS TO AND USE OF THE REMOTE APP IN THE 12 MONTHS PRIOR TO THE EVENT OR CIRCUMSTANCE GIVING RISE TO CLAIM; OR (B) \$100.

EACH PROVISION OF THIS EULA THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THIS EULA. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS

OF THIS EULA. THE LIMITATIONS IN THIS SECTION 15 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

16. Miscellaneous

- 16.1 **General Terms.** Except as set forth in Section 1.1, this EULA, together with the Privacy Policy and any other agreements expressly incorporated by reference into this EULA, are the entire and exclusive understanding and agreement between you and Avail regarding your use of the Remote App and Streaming Service. You may not assign or transfer this EULA or your rights under this EULA, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign this EULA at any time without notice or consent. The failure to require performance of any provision will not affect our right to require performance at any other time after that, nor will a waiver by us of any breach or default of this EULA, or any provision of this EULA, be a waiver of any subsequent breach or default or a waiver of the provision itself. Use of section headers in this EULA is for convenience only and will not have any impact on the interpretation of any provision. Throughout this EULA the use of the word “including” means “including but not limited to”. If any part of this EULA is held to be invalid or unenforceable, the unenforceable part will be given effect to the greatest extent possible, and the remaining parts will remain in full force and effect.
- 16.2 **Governing Law.** This EULA is governed by the laws of the State of California without regard to conflict of law principles. You and Avail submit to the personal and exclusive jurisdiction of the state courts and federal courts located within Santa Clara County, California for resolution of any lawsuit or court proceeding permitted under this EULA. We operate the Streaming Service from the United States and we make no representation that Materials included in the Remote App and Streaming Service are appropriate or available for use in other locations.
- 16.3 **Privacy Policy.** Please read the Avail Privacy Policy (available at <https://www.avail.io/privacy/>) carefully for information relating to our collection, use, storage, disclosure of your personal information.
- 16.4 **Additional Terms.** Your use of the Streaming Service is subject to all additional terms, policies, rules, or guidelines applicable to the Streaming Service or certain features of the Streaming Service that we may post on or link to from our websites and the Streaming Service (the “**Additional Terms**”). All Additional Terms are incorporated by this reference into, and made a part of, this EULA.
- 16.5 **Contact Information.** The Streaming Service is offered by Avail Medsystems, Inc. located at 2953 Bunker Hill Lane, Suite 101, Santa Clara, CA, 95054. You may contact us by sending correspondence to that address or by emailing us at support@avail.io.

- 16.6 **Notice to California Residents.** If you are a California resident, under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at (800) 952-5210 in order to resolve a complaint regarding the Remote App or to receive further information regarding use of the Remote App.
- 16.7 **No Support.** Under this EULA, we are under no obligation to provide support for the Streaming Service. In instances where we may offer support, the support will be subject to published policies.
- 16.8 **International Use.** Users may only access and use the Streaming Service from locations in the United States. Avail makes no representation that the Streaming Service is appropriate or available for use outside of the United States. Access to the Streaming Service from countries or territories or by individuals where such access is illegal is prohibited.
- 16.9 **Notice Regarding Apple.** This Section 16.9 only applies to the extent you are using our Remote App on an iOS device. You acknowledge that this EULA is between you and Avail only, not with Apple Inc. (“**Apple**”), and that Apple is not responsible for the Remote App, the Streaming Service or the content thereof. Apple has no obligation to furnish any maintenance and support services with respect to the Remote App or Streaming Service. If the Remote App fails to conform to any applicable warranty, you may notify Apple and Apple will refund any applicable purchase price for the Remote App to you; and, to the maximum extent permitted by applicable law, Apple has no other warranty obligation with respect to the Remote App. Apple is not responsible for addressing any claims by you or any third party relating to the Remote App or the Streaming Service or your use of the Remote App or the Streaming Service, including: (a) product liability claims; (b) any claim that the Remote App or the Streaming Service fails to conform to any applicable legal or regulatory requirement; or (c) claims arising under consumer protection or similar legislation. Apple is not responsible for the investigation, defense, settlement and discharge of any third party claim that the Remote App or the Streaming Service and/or your use of the Remote App or the Streaming Service infringe a third party’s intellectual property rights. You agree to comply with any applicable third party terms when using the Remote App and Streaming Service. Apple and Apple’s subsidiaries are third party beneficiaries of this EULA, and upon your acceptance of this EULA, Apple will have the right (and will be deemed to have accepted the right) to enforce this EULA against you as a third party beneficiary of this EULA. You hereby 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.