

Provider Terms of Use

THESE PROVIDER TERMS OF USE (these "PTOU") are entered into and agreed to be effective as of the date of Provider's affirmative electronic assent (the "Effective Date"), by and between the Provider on behalf of itself and its subsidiaries and affiliates (collectively and individually, the "Provider", as applicable) and **FAIR MARKET HEALTH LLC**, a Kansas limited liability company ("FMH").

WHEREAS, FMH operates an online portal (<https://www.fairmarkethealth.com>) (the "FMH Digital Marketplace") for individuals to locate bundled healthcare services at a disclosed price; and

WHEREAS, all third-party individuals or entities that use or interact with the FMH Digital Marketplace (each, a "User" or "Consumer") are subject to and agree to comply with the FMH Terms of Use, as the same may be amended from time-to-time and made available at [patient terms of use.pdf](#) (the "Patient Terms of Use"). For purposes of clarity, the parties acknowledge and agree that the term "User" or "Consumer" does not apply to individuals who may use or interact with the FMH Digital Marketplace on behalf of Provider under these PTOU. To the extent the Patient Terms of Use differ from these PTOU, these PTOU shall control.

WHEREAS, Provider desires for certain services to be available on the FMH Digital Marketplace on the terms set forth in these PTOU;

WHEREAS, by entering into these PTOU, on behalf of itself and associated healthcare professionals who participate in the FMH Digital Marketplace (each, a "Practitioner"), Provider is requesting to participate in the FMH Digital Marketplace on the terms set forth in these PTOU;

NOW, THEREFORE, Provider and FMH hereby enter into these PTOU to memorialize the terms and conditions applicable to Provider's participation in the FMH Digital Marketplace.

1. Incorporation of Recitals. The recitals set forth above are incorporated into these PTOU as if fully set forth herein.
2. Ownership
 - a. Provider acknowledges and agrees that FMH retains all right, title and interest, including intellectual property rights, in and to the FMH Digital Marketplace and the functionality related thereto, and except as expressly set forth in these PTOU, these PTOU do not grant to Provider any right, title or interest in or to the FMH Digital Marketplace or intellectual property of FMH. All inventions, discoveries, improvements, enhancements, methods, processes, models, algorithms, software technology, technical

documentation and other methodologies owned or developed by FMH in the course of providing the FMH Digital Marketplace to Provider and Users will remain the property of FMH. Provider further acknowledges and agrees that the FMH Digital Marketplace embodies confidential, proprietary information and trade secrets of FMH and its licensors, and Provider will treat it as Proprietary Information.

- b. FMH hereby grants to Provider, and Provider hereby accepts, on the following terms and conditions, a royalty-free, non-exclusive, license to access and use, during the term of these PTOU, the FMH Digital Marketplace for the purposes set forth in these PTOU and subject to the limitations in these PTOU. The license granted herein to the FMH Digital Marketplace includes the right to access and use the FMH Digital Marketplace by Provider and its designated personnel. To the extent FMH incorporates third-party rights into the FMH Digital Marketplace, FMH represents and warrants that it has obtained the rights from those third parties necessary to vest in or grant to Provider the various license rights necessary under these PTOU.
3. Provider Representations and Warranties. In consideration of FMH allowing Provider to participate in the FMH Digital Marketplace, Provider represents and warrants to FMH as follows:
 - a. Provider has all necessary authority and capacity to enter into these PTOU on behalf of Provider and/or the Practitioners, and shall cause the Practitioners, including without limitation, owners, employees, contractors, and/or agents who participate in the FMH Digital Marketplace to abide by the terms of these PTOU;
 - b. Provider and Practitioners hold all required licenses and privileges necessary to perform the services, will maintain such licensure during the term of these PTOU, and possess the requisite competency and skill to perform the services. If the status of any Provider license pertinent to this Agreement should change, Provider shall immediately notify FMH.
4. FMH Digital Marketplace
 - a. FMH provides an online portal where Users can locate and purchase bundled healthcare services at pre-determined prices from healthcare providers and facilities that participate in the FMH Digital Marketplace. The individual Users select providers and facilities from which they wish to obtain services. Before completing their purchase, Users must acknowledge that they agree with the Patient Terms of Use. Their acknowledgment is a condition of their participation on the FMH Digital Marketplace and receiving healthcare services from Providers.

- b. By entering into these PTOU and agreeing to participate in the FMH Digital Marketplace, Provider is making itself available to provide services it lists as available ("Available Services") at the prices Provider lists on the FMH Digital Marketplace, provided the Provider deems any requested services to be medically necessary for a given User. Provider acknowledges and agrees that FMH is publishing bundled pricing based upon the Available Services being available at the listed rates.
 - c. FMH provides participating Providers with a login to the FMH Digital Marketplace to allow Providers to post and maintain Provider information, including available services and pricing information. Provider acknowledges that it is the sole responsibility of Provider to post and maintain the accuracy of Provider information, including Available Services and pricing information, on the FMH Digital Marketplace.
 - d. Provider agrees to provide FMH with a limited, non-transferable, non-exclusive, royalty-free right to use and reproduce Provider's name, likeness, trademarks, depictions, slogans, and logos within the FMH Digital Platform and within FMH marketing materials for the purpose of promoting Available Services to potential Users ("FMH License"). FMH's License shall terminate with termination of these PTOU.
5. Payment. To facilitate payment for Provider's services, Users of the FMH Digital Marketplace remit payment to FMH for the purchase of a bundle of services from selected providers and facilities participating in the FMH Digital Marketplace. FMH shall hold the received funds as a contract beneficial holder on behalf of User. Once the purchased service is complete, Provider shall notify FMH via the FMH Digital Marketplace and FMH shall distribute to Provider the agreed-upon rate. Funds will be distributed to Provider within ten (10) days of Provider's notice to FMH. FMH shall distribute funds to Provider in strict accordance with the information provided by Provider to FMH. It is the sole responsibility of Provider to provide accurate, up to date payment information to FMH. Absent FMH's fraud, intentional misconduct, or gross negligence, FMH is not responsible and shall have no liability for loss of funds resulting from errors in the payment information provided by Provider. Any refund due to the User prior to disbursement of the funds to Provider shall be made by FMH to the User. Any refund due to the User after disbursement of the funds to Provider shall be handled between the Provider and User directly unless the need for refund is caused by the negligence of or the breach of these PTOU by FMH. Provider will be solely responsible for billing and collecting payment for any care provided by Provider or a healthcare practitioner to a User outside the scope of these PTOU, including, but not limited to, after the completion of the purchased services.
6. Additional Necessitated Services and Charges. Medical procedures can sometimes lead to the discovery of previously unforeseen medical needs and a resulting need for additional medical treatment or procedures. For any services

that are provided as additional necessitated services, it is ultimately the patient's, or their payor's responsibility to Provider to pay the cost of Additional Necessitated Charges. Users of the FMH Digital Marketplace are apprised of this obligation.

7. Relationship. FMH acts as a listing service for the Available Services and does not act as an employee, broker, agent, contractor, or any other service provider on behalf of Provider. FMH does not offer any services on behalf of Provider, but merely lists Available Services with bundles for viewing by Users of the FMH Digital Marketplace and holds funds to be distributed on behalf of the User.
8. No Referrals or Endorsements. FMH and Provider agree that no compensation or remuneration is paid to FMH by or on behalf of Provider or to Provider on behalf of FMH. Nothing in these PTOU shall be construed as an offer or payment by one party to the other party or any affiliate of the other party of any cash or other remuneration, whether directly or indirectly, overtly or covertly, specifically for patient referrals or for recommending, purchase, or order of any item or service. Referrals are not mandated or permitted by these PTOU. All decisions regarding the selection of healthcare services, providers, and facilities shall be made at the sole discretion of any User of the FMH Digital Marketplace. FMH does not recommend or endorse any provider or facility to a User of the FMH Digital Marketplace and nothing on the FMH Digital Marketplace is to be construed as an endorsement, recommendation, or referral of any specific provider, facility, or service.
9. Removal of Available Services. FMH may remove Provider's or a particular Practitioner's Available Services at any time at FMH's sole discretion.
10. Provider Changes or Removal of Available Services. Provider may utilize the FMH Digital Marketplace to change or remove its Available Services or alter its rates for such services at any time; provided, however, subject to the other terms and conditions of these PTOU, Provider shall honor any previously purchased services for Users who have scheduled a service with Provider prior to the rate change.
11. Termination/Breach. Either party may terminate the relationship set forth and governed by these PTOU for any reason, at any time upon thirty (30) days prior written notice to the other party. In the event of a material breach of any provision of these PTOU, the non-breaching party shall notify the breaching party in writing of the specific nature of the breach. If the breaching party does not cure within fifteen (15) days of receiving a notice of any material breach, the non-breaching party may immediately terminate these PTOU. Upon termination by either party, all outstanding services are void and FMH will refund the Users.
12. Medical Necessity. FMH is not a medical provider and does not engage in the practice of medicine or provide medical advice. FMH makes no representation or

determination with regard to the medical necessity of any services purchased by a User. Provider shall determine whether any services are medically appropriate and/or necessary. In the event that a User requests a service that Provider determines is not medically necessary, FMH shall refund the User the full amount paid by the User, less the amount to cover the consultation visit, which will be paid to the Provider and less the amount paid for transaction processing.

13. Not Responsible for Acts of Other Providers or Practitioners. Notwithstanding anything to the contrary in these PTOU, FMH acknowledges and agrees that Provider is not responsible for the acts or omissions of any other provider or practitioner, even if such other provider or practitioner's available services are bundled together with Provider's Available Services.
14. Federal Programs. The FMH Digital Marketplace is not for use by beneficiaries of Medicare, Medicaid, TRICARE, or other State or Federal healthcare programs (collectively, the " Programs ") for covered services. A request for services through the FMH Digital Marketplace shall not be honored by a Provider for covered services provided to beneficiaries of the Programs. FMH shall use its best efforts to ensure that the FMH Digital Marketplace is not used by Programs beneficiaries for covered services. If Provider becomes aware that a User of the FMH Digital Marketplace is or may be a Program beneficiary, Provider shall immediately inform FMH. If a Programs beneficiary wishes to use the FMH Digital Marketplace for services not covered by any Programs, it shall be the sole responsibility of Provider to deliver an advance beneficiary notice to the beneficiary prior to the provisions of such non-covered services.
15. Compliance with Third-Party Payor Requirements and Laws. Notwithstanding any unanticipated effect of any provision of these PTOU, neither party will knowingly or intentionally conduct itself in such a manner as to violate any applicable federal or state law, including prohibition against fraud and abuse in connection with the Medicare and Medicaid programs, as such provisions are amended from time to time. These PTOU must be construed consistently with compliance with such statutes and regulations.
16. Protected Health Information. FMH is not a covered entity, as defined in the Health Insurance Portability and Accountability Act of 1996, as amended from time-to-time (" HIPAA") and does not intend to perform any functions on behalf of Provider involving the use and disclosure of protected health information (as defined in HIPAA). Provider acknowledges and agrees that Provider is responsible for ensuring that its use of the FMH Digital Marketplace complies with HIPAA and other healthcare laws and regulations.
17. LIMITED WARRANTY; WAIVER OF OTHER WARRANTIES. FMH represents and warrants to Provider that (a) the FMH Digital Marketplace will operate and be updated in accordance with the terms and conditions set forth in these PTOU, and (b) the FMH Digital Marketplace will not infringe on any patent, copyright, or

trademark. EXCEPT FOR THE FOREGOING, PARTICIPATION IN THE FMH DIGITAL MARKETPLACE IS PROVIDED "AS IS." FMH DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SECURITY, OR TITLE, WITH RESPECT TO THE FMH DIGITAL MARKETPLACE OR THE SERVICES OFFERED THEREON.

18. Transmission Issues. FMH makes no representation that data transmitted through the FMH Digital Marketplace will not be lost, corrupted, or intercepted by third parties. Due to the nature of the internet and the multiple interacting computers and programs involved in the delivery of data to and from the FMH Digital Marketplace, so long as FMH has used confidentiality and security measures reasonable in the industry, FMH disclaims any warranty of availability or reliability of the FMH Digital Marketplace due to transmission issues.

19. Insurance

- a. Throughout the term of these PTOU, FMH shall maintain insurance for claims arising during the term of these PTOU and for not less than three (3) years after the termination of these PTOU as follows:
 - i. commercial general liability insurance with a minimum limit of liability of \$1 million per occurrence;
 - ii. liability (Technology Errors and Omissions) insurance covering the liability for financial loss due to error, omission, or negligence of FMH as described in the Agreement, with a minimum amount of \$1 million per claim;
 - iii. third party Privacy and Network Security ("cyber") insurance for loss arising out of or in connection with loss or disclosure of Proprietary Information or confidential medical information, with a minimum amount of \$1 million per claim.
- b. All required insurance of FMH shall be provided by reputable and financially responsible insurance carriers with an A.M. Best's Financial Strength Rating of "A" or better and a minimum Financial Size Category of IX or higher. If any of the required insurance is cancelled or non-renewed, notice shall be delivered in accordance with policy provisions, and FMH shall promptly deliver such notice to Provider. FMH shall immediately purchase a replacement policy containing substantially the same terms as such prior policy and including a "Prior Acts Coverage Endorsement" effective from the Effective Date of these PTOU.

- c. Prior to or following the Effective Date of these PTOU and at or following each policy renewal date, FMH will, upon request, provide to Provider certificates of insurance evidencing the required insurance.
- d. Throughout the term of these PTOU Provider shall maintain insurance for claims arising during the term of these PTOU and for not less than three (3) years after the termination of these PTOU as follows:
 - i. commercial general liability insurance with a minimum limit of liability of \$1 million per occurrence;
 - ii. Applicable professional liability insurance covering the liability for financial loss due to error, omission, or negligence of Provider, in an amount equal to or greater than \$1 million per claim and in the aggregate.
- e. All required insurance of Provider shall be provided by reputable and financially responsible insurance carriers with an A.M. Best's Financial Strength Rating of "A" or better and a minimum Financial Size Category of IX or higher. If any of the required insurance is cancelled or non-renewed, notice shall be delivered in accordance with policy provisions, and Provider shall promptly deliver such notice to FMH. Provider shall immediately purchase a replacement policy containing substantially the same terms as such prior policy and including a "Prior Acts Coverage Endorsement" effective from the Effective Date of these PTOU.
- f. Prior to or following the Effective Date of these PTOU and at or following each policy renewal date, Provider will, upon request, provide to FMH certificates of insurance evidencing the required insurance.

20. LIMITATION OF LIABILITY AND DAMAGES. EXCEPT IN CIRCUMSTANCES WHERE COVERAGE IS PROVIDED UNDER SECTION 19 OF THESE PTOU, WHEREIN ALL LIABILITY WILL BE LIMITED TO THE APPLICABLE COVERAGE, THE TOTAL LIABILITY OF THE PARTIES FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION (WHETHER IN CONTRACT OR TORT, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE OR OTHERWISE) ARISING FROM THESE PTOU OR A PARTY'S USE OF THE SITE SHALL NOT EXCEED ONE HUNDRED THOUSAND DOLLARS (\$100,000). UNDER NO CIRCUMSTANCES OR LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), INCLUDING ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF GOODWILL, OR COMPUTER FAILURE OR MALFUNCTION. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS SET FORTH

ABOVE SHALL NOT LIMIT OR BE APPLICABLE TO ANY CLAIM UNDER ANY INSURANCE COVERAGE REQUIRED OF FMH UNDER THESE PTOU.

21. Indemnification. EACH PARTY HEREBY AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE OTHER PARTY and its affiliates, officers, directors, employees, agents, contractors, licensors, and any information providers, from and against any and all third-party demands, claims, actions, proceedings, damages, liabilities, losses, fees, costs or expenses (including without limitation reasonable attorneys' fees and the costs of any investigation) arising out of, in connection with, or resulting from any violation or alleged violation of a breach of or default under the terms or conditions of these PTOU, use or misuse of the FMH Digital Marketplace, performance of any professional or medical services (including claims of medical malpractice), or any negligence, gross negligence or willful misconduct by or on behalf of a party or party's employees, or agents.

22. Confidentiality

- a. Proprietary Information. Neither party shall disclose to any third party or use for such party's own, or a third party's benefit, any trade secret or confidential or proprietary information relating to the business, operations or plans of the other party or any User, patient, physician or customer list of the other party ("Proprietary Information") of which a party has or acquires knowledge by reason of such party's participation hereunder, unless such use or disclosure is required by law, or (b) consented to in writing by the other party. FMH shall ensure that other healthcare providers, competitors of Provider and entities offering the same or similar services as those contemplated herein do not have access to Provider's undisclosed, proprietary pricing information; provided, however, FMH shall not be responsible for Provider's disclosure of pricing information to Users or Consumers on the FMH Digital Marketplace. Upon termination of these PTOU for any reason, each party agrees to return promptly to the other party all papers, records, files, and any other material containing Proprietary Information. Notwithstanding anything to the contrary in these PTOU, Proprietary Information does not include any information that is or becomes a part of the public domain through no act or omission of a party and also excludes information which was known to the receiving party (the "Recipient") prior to receipt from the other party (the "Disclosing Party") (as evidenced by the written records of a Recipient); information which the Recipient develops independently without using the Disclosing Party's Proprietary Information or breaching any obligation to the Disclosing Party; information which subsequently became available to the public through no fault or omission on the part of a Recipient, including without limitation, the Recipient's officers, directors, trustees, employees, agents, contractors and other representatives; and information which is furnished to a Recipient by a third party that is not known to the Recipient to have a

confidentiality obligation to the Disclosing Party. Notwithstanding the foregoing, a Recipient will treat Proprietary Information in accordance with these PTOU upon notification of having possession or access to Proprietary Information.

- b. Survival of Obligations. Each party's obligations under this section shall survive the termination of these PTOU indefinitely.
 - c. Remedies. Provider and FMH acknowledge that any violation of the covenants of this section may subject the party to liability for damages and to judicial enforcement of the specific terms of the covenants. The parties further acknowledge that it may be difficult to ascertain the exact amount of damages caused by a violation of one or more of the covenants contained in this section, but that damages would be continuing in nature and that the other party would suffer immediate, irreparable harm and injury by reason of any such violation. Consequently, Provider and FMH agree that an injunction, enforcement of the specific terms of this section or other equitable relief shall be available without requiring the other party to post bond to obtain such relief.
 - d. Enforcement. If at any time a court of competent jurisdiction holds that any of the restrictions contained in this section are unreasonable, and therefore unenforceable under circumstances then existing, the parties agree that the maximum period and scope reasonable under the circumstances shall be substituted for period and/or scope stated in this section.
23. Entire Agreement. These PTOU and any exhibits incorporated herein by reference constitute the sole and entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous prior discussions, understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.
24. Amendments. No amendments or additions to these PTOU shall be binding unless in writing and signed by the parties.
25. Headings. The paragraph headings used in these PTOU are included solely for convenience and shall not affect, or be used in conjunction with, the interpretation of these PTOU.
26. Waiver. Election of either party to forego any right under these PTOU or to not enforce a particular provision of these PTOU does not impact or affect that party's rights regarding any other provision of these PTOU. Any waiver of a breach of any provision(s) of these PTOU shall not (i) be deemed effective unless in writing and signed by the party against whom enforcement of the

waiver is sought, or (ii) operate as, or be construed to be, a waiver of any subsequent breach of the same or other provisions hereof.

27. Invalidity of Provisions. If any provision of these PTOU is or becomes invalid, illegal, or unenforceable in any respect, and if the rights and obligations of the parties to these PTOU will not be materially and adversely affected thereby (a) such provision will be fully severable; (b) these PTOU will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; (c) the remaining provisions of these PTOU will remain in full force and effect and not be affected by the illegal, invalid, or unenforceable provision or by its severance here from; and (d) in lieu of such illegal, invalid, or unenforceable provision there shall be added automatically as a part of these PTOU a legal, valid, and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provisions as is possible.
28. Notices. Any notices under these PTOU must be given in writing and shall be transmitted by electronic mail transmission to the last known valid electronic mail address of such party. Any such notice shall be deemed to have been received upon the business day transmitted if transmitted before 5 pm CST. If after 5 pm CST or sent on a non-business day (weekend or US holiday), the notice shall be deemed received on the next occurring business day. A party may, for purposes of these PTOU, change the email address for notice by giving notice of such change to the other party pursuant to this Section.
29. Assignment. These PTOU are personal to each of the parties hereto, and neither party may assign nor delegate any of its obligations hereunder without first obtaining the written consent of the other party, and any attempt to so assign or delegate without such consent is null and void; provided, however, that either party may assign these PTOU, its rights, or obligations hereunder to any entity controlling, controlled by, or under common control with the party.
30. Jurisdiction and Venue. These PTOU shall be construed in accordance with and governed by the laws of the State of Kansas, without regard to its principles of conflict of laws. Any legal action brought to enforce or construe these PTOU shall be brought solely and exclusively in the state or federal courts located in Sedgwick County, Kansas, and the parties hereby agree to the jurisdiction of such courts and agree that they will not invoke the doctrine of *forum non conveniens* or other similar defenses.
31. Signatures. Any electronic signature or indication of assent, including any electronic symbol or process attached to, or associated with, execution and acceptance of these PTOU by Provider shall have the same legal validity and enforceability as a manually executed signature or use of a paper based record keeping system to the fullest extent permitted by applicable Federal and state law, including but not limited to the Federal Electronic Signatures in Global and

National Commerce Act and the parties hereby waive any objection to the contrary.

End of Agreement