

# TERMS OF USE V.1.00

THESE TERMS OF USE, INCLUDING ANY ORDER FORM THAT REFERENCES THESE TERMS OF USE (AN “ORDER FORM”), WHICH IS INCORPORATED HEREIN BY THIS REFERENCE (COLLECTIVELY, THE “TERMS”), ARE A BINDING LEGAL CONTRACT BETWEEN PRECISION BIOMONITORING, INC., ITS AFFILIATES, LICENSORS, AND SUBSIDIARIES (COLLECTIVELY, “PBI”), AND THE INDIVIDUAL OR LEGAL ENTITY WHO (“YOU” OR “YOUR”) SUBSCRIBES TO OR PURCHASES THE PBI TEST CONSUMABLES AND REAGENTS, EQUIPMENT, SOFTWARE AND DOCUMENTATION (COLLECTIVELY, THE “SYSTEM”). ADDITIONAL INFORMATION REGARDING THE SYSTEM MAY BE FOUND AT [precisionbiomonitoring.com](http://precisionbiomonitoring.com). BY CLICKING THE “I AGREE” BUTTON, BY EXECUTING AN ORDER FORM OR BY ACCESSING OR USING THE SYSTEM, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THESE TERMS. IF YOU DO SO ON BEHALF OF A LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ACCEPT THESE TERMS ON BEHALF OF THAT LEGAL ENTITY.

THESE TERMS GOVERN YOUR USE OF THE SYSTEM AND ANY RELATED UPDATES. YOUR CONTINUED USE OF THE SYSTEM FOLLOWING ANY MODIFICATION TO THE SYSTEM OR THESE TERMS CONSTITUTES YOUR AGREEMENT TO BE BOUND BY THE APPLICATION OF THE TERMS TO SUCH MODIFIED SYSTEM OR TERMS. TO STAY INFORMED OF ANY CHANGES, PLEASE REVIEW THE MOST CURRENT VERSION OF THESE TERMS AT [precisionbiomonitoring.com](http://precisionbiomonitoring.com). IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, YOU MAY NOT USE THE SYSTEM.

## 1. License to Use the System.

### 1.1 License.

Upon your acceptance of these Terms by using the System, PBI hereby grants you a non-exclusive, non-transferable license to use the System during the Term (as defined in Section 3 below) in accordance with these Terms.

### 1.2 Ownership of the System.

(i) Subject to the limited rights expressly granted to you hereunder, PBI reserves all rights, title and interest in and to the System, including any and all modifications, enhancements and updates thereto and any and all related intellectual property rights. No rights are granted to you hereunder other than as expressly set forth herein.

(ii) You agree to use the System only for the purposes described herein. Nothing in these Terms shall be deemed by implication or otherwise to grant you any right or license under any patent, patent application, copyright, invention, trade secrets, or other intellectual property right, except as expressly set forth in Section 1.1 above. The System contains material that is protected by United States and foreign patent, trademark and copyright laws and trade secret laws, and by international treaty provisions. You shall not, nor allow any third person (including individual or business entity), to reverse engineer, copy or otherwise appropriate the technology, design features or characteristics of the System and you shall not sublicense, rent, lease, loan, modify, assign, or otherwise transfer the licenses granted to you hereunder or the System or any component thereof.

### 1.3 Restrictions.

You shall not (i) permit any third party to access the System except as permitted herein or in an Order Form, (ii) create derivative works based on the System except as authorized herein, (iii) reverse

engineer the System, or (iv) access the System in order to build a competitive product or service, or copy any features, functions or graphics of the System.

#### 1.4 Feedback.

It is expressly agreed that all rights, title and interest, including all copyrights and related intellectual property rights, to all suggestions, enhancement requests, recommendations or other feedback provided by you relating to the System (“Feedback”) is owned by PBI. You hereby assign and convey to us any rights and interests in any such Feedback. To the extent that such assignment is held to be invalid or unenforceable, PBI shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate any Feedback into the System.

#### 1.5 Service Analyses.

PBI may (i) compile statistical and other information related to the performance, operation and use of the System, including pricing plans, and (ii) use data from the System in aggregated form for security and operations management, to create statistical analyses, and for research and development, marketing, and promotional purposes (clauses (i) and (ii) are collectively referred to as “Service Analyses”). Notwithstanding anything herein to the contrary, PBI may make Service Analyses publicly available; however, Service Analyses will not incorporate your Confidential Information (as defined below) in a form that could serve to identify you or any individual. PBI retains all intellectual property rights in Service Analyses. Further terms relating to the collection and use of your personal and other information are set forth in our Privacy Policy, which is incorporated herein by this reference. Please review the current version of our Privacy Policy at [precisionbiomonitoring.com](http://precisionbiomonitoring.com).

## 2. Your Responsibilities.

#### 2.1 General.

You shall (i) be responsible for each individual you authorize to access or use the System on your behalf (each, an “Authorized User”) and such Authorized User’s compliance with these Terms, (ii) be responsible for the accuracy, quality and legality of your data entered in or stored on the System; (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the System, and notify PBI promptly of any such unauthorized access or use, and (iv) use the System only in accordance with these Terms and all applicable laws and government regulations.

#### 2.2 Your Accounts and Authorized Users.

In connection with your use of the System hereunder, an “Account” will be established, represented in each case by a single set of access credentials from PBI. Credentials provided to an Authorized User to access an Account may not be shared or used by more than one person.

#### 2.3 Your Back-Ups.

You acknowledge that you are responsible for creating back-ups of your data and any other content provided or used by you within the System. PBI shall have no obligation to maintain any such content or to forward any content to you or any third party.

## 2.4 Your Keys.

In connection with your use of the System, you may elect to provide PBI access to keys, credentials, or passwords (“Keys”) to access your applications and/or technology infrastructure. By providing PBI any such Keys, you authorize PBI to use those Keys and to access your applications and infrastructure for the purpose of providing the System under these Terms.

## 2.5 General Restrictions.

You shall not (i) make the System available to anyone other than Authorized Users, (ii) sell, resell, rent or lease the System, (iii) use the System to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (iv) interfere with or disrupt the integrity or performance of the System or third-party data contained therein, or (v) attempt to gain unauthorized access to PBI’s websites or any related systems or networks.

# 3. Term and Termination.

## 3.1

These Terms are effective from the date you begin using the System and shall continue for an indefinite period of time, unless or until your use of the System is terminated either by you or by PBI (the “Term”) in accordance with these Terms.

## 3.2.

PBI may terminate your use of the System immediately if:

- i. You fail to comply with any of these Terms;
- ii. You fail to timely pay PBI any fees or other amounts owed to PBI as may be specified in an Order Form;
- iii. The System is discontinued;
- iv. If a specific time was specified for the length of the service for the System you purchased, and such time expires; or
- v. You have an overdue balance for any services or products purchased, leased or licensed from PBI, its representatives, agents or contractors.

You agree to reimburse PBI for any fees incurred by PBI in collecting your payments due and unpaid, including but not limited to credit card chargeback fees and attorney fees.

## 3.3

You may terminate your use of the System at any time by notifying PBI in writing to Precision Biomonitoring Inc., Orchard Park Suite 226, 5420 Highway 6 N. Guelph, ON, Canada, N1H 6J2 . Upon any termination and pending the return of the System components as required under Section 3.4 below, you shall receive a prorated refund of any amounts for service that you paid in advance; provided, however, that no refunds shall be provided for partial months.

## 4. Confidentiality.

By virtue of these Terms, the parties may have access to information that is confidential to one another, including but not limited to these Terms and all information clearly identified as confidential at the time of disclosure (“Confidential Information”); however, a party’s Confidential Information shall not include information that: (i) is or becomes a part of the public domain through no act or omission of the other party; (ii) was in the other party’s lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (iv) is independently developed by the other party. Each party agrees not to disclose the other’s Confidential Information to any third party except in connection with a legal proceeding arising from or in connection with these Terms or to a governmental entity as required by law.

## 5. Limitation of Liability, Limited Warranty and Technical Support.

### 5.1 Limitation of Liability.

EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS, PBI MAKES NO WARRANTIES OF ANY KIND WITH REGARD TO THE SYSTEM OR ANY COMPONENT THEREOF. THE SYSTEM IS PROVIDED “AS-IS”, MAY HAVE OR RESULT IN ERRORS AND MAY PRODUCE UNEXPECTED RESULTS. PBI SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SYSTEM, ITS USE, OPERATION AND SUPPORT.

YOU AGREE THAT ANY USE OF THE SYSTEM SHALL BE ENTIRELY AT YOUR OWN RISK. PBI IS UTILIZING COMMUNICATION NETWORKS OF OTHER CARRIERS OF WHICH IT HAS NO CONTROL AND YOU ARE AWARE THAT THE SYSTEM IS DEPENDENT ON THE AVAILABILITY AND FUNCTIONALITY OF THOSE CARRIER NETWORKS. YOU ARE AWARE THAT SYSTEMS CONTAIN ELECTRONIC PARTS THAT MAY CEASE TO WORK.

PBI SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, IN CONNECTION WITH OR ARISING OUT OF THESE TERMS, THE USE OF THE SYSTEM, OR ANY OBLIGATION RESULTING THEREFROM. IN NO EVENT SHALL PBI BE LIABLE FOR ANY DAMAGES, HOWEVER DESIGNATED, FOR FAILURE TO PERFORM UNDER THESE TERMS TO THE EXTENT SUCH FAILURE TO PERFORM WAS THE RESULT OF ANY ACT, BREACH OR OMISSION TO ACT BY YOU, YOUR EMPLOYEES, AGENTS OR REPRESENTATIVES. YOU MAY NOT ALLOW A THIRD PARTY TO USE THE SYSTEM, UNLESS EXPRESSLY AUTHORIZED IN THESE TERMS, AND AGREE TO INDEMNIFY AND HOLD PBI HARMLESS FROM ANY DAMAGES OR CLAIMS ARISING FROM SUCH USE BY ANY THIRD PARTY.

PBI PRODUCTS ARE FOR ENTERTAINMENT, EDUCATIONAL AND RESEARCH USE ONLY.

PEOPLE ARE STRONGLY ENCOURAGED TO DISCUSS WITH A DOCTOR OR OTHER HEALTH CARE PROFESSIONAL PRIOR TO MAKING ANY HEALTH-RELATED DECISIONS.

PBI IS NOT IN THE BUSINESS OF, AND DOES NOT PROVIDE, DIAGNOSTIC SERVICES, MONITORING SERVICES, MEDICAL CARE OR DIRECT MEDICAL CARE FOR PATIENTS. PBI DOES NOT PROVIDE MEDICAL ADVICE AND DOES NOT PRESCRIBE OR DISPENSE MEDICATIONS. ONLY PHYSICIANS, PHARMACISTS, OR OTHER LICENSED AND AUTHORIZED LEARNED INTERMEDIARIES MAY SET OR CHANGE THE PRESCRIPTION DRUG TAKING INSTRUCTIONS, AND INFORMATION DELIVERED TO PATIENTS AS DETERMINED BY LAW AND LICENSE PROTOCOLS. PBI SHALL

NOT BE LIABLE FOR ANY CLAIM OR DEMAND AGAINST PBI BY YOU AND/OR BY ANY THIRD PARTY, BASED ON THE PROVISION, OR LACK OF PROVISION OF, MEDICAL CARE TO YOU OR ANY OTHER PARTY.

PBI SHALL NOT BE RESPONSIBLE FOR ANY MISPLACEMENT OF MEDICINE, REMOVAL OF MEDICINE, WRONG DOSAGE, FAILURE TO REFILL OR TAKE MEDICINE, OR FOR DRUG INTERACTIONS. IT IS THE PATIENT'S RESPONSIBILITY TO TAKE HIS OR HER MEDICINE. PBI DOES NOT KNOW IF A PATIENT ACTUALLY TOOK HIS OR HER MEDICINE, OR IF A PATIENT FILLED THE CORRECT MEDICINE IN THE RELEVANT COMPARTMENTS AND IN THE RIGHT DOSAGE. PBI IS NOT A DECISION SUPPORT SYSTEM AND DOES NOT HAVE THE ABILITY TO CHECK FOR DRUG-TO-DRUG INTERACTIONS, DRUG-TO-FOOD INTERACTIONS, DRUG DOSAGES, DRUG FREQUENCIES OR ANY WAY TO DETERMINE IF THE DRUG(S) ARE SAFE, EFFECTIVE OR APPROPRIATE FOR ANY GIVEN PATIENT.

PBI SHALL NOT BE LIABLE TO ANY CUSTOMER AND/OR ANY THIRD PARTY, BASED ON ANY SYSTEM INFORMATION, AND/OR ANY OTHER INFORMATION COLLECTED BY THE SYSTEM, RECEIVED BY PBI, AND/OR USED BY PBI AFTER COLLECTION.

PBI SHALL NOT BE LIABLE FOR FAILURES DUE TO CAUSES BEYOND ITS CONTROL, INCLUDING, BUT NOT LIMITED TO, ACTS OF GOD, ACTS OF GOVERNMENT, FIRE, FLOOD, STRIKES, TERRORISM, WAR, OR ACTS OR OMISSIONS OF CARRIERS.

EXCEPT AS SPECIFICALLY PROVIDED IN THESE TERMS, THERE ARE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED.

## 5.2 Limited Warranty.

(i) UPON DELIVERY OF THE SYSTEM TO YOU, ALL RISK OF LOSS AND DAMAGE TO THE SYSTEM SHALL PASS TO YOU, PROVIDED, HOWEVER, THAT IF YOU RECEIVED A DEFECTIVE SYSTEM FROM PBI, YOU SHALL PROMPTLY NOTIFY PBI, AND PBI WILL EITHER REPAIR OR REPLACE THE SYSTEM, WHICH SHALL BE THE SOLE REMEDY AGAINST PBI FOR SUCH OCCURRENCE. As the sole remedy under the Warranty, PBI shall make appropriate adjustments, repairs, and replacement of the parts of the System device and equipment that, in its sole discretion, are deemed necessary to keep the System in good working order. The Warranty shall not cover adjustments, repairs, and replacements that are due to: accident, impact, theft, neglect, or misuse, exposure to temperature, humidity, electrical, magnetic and/or other extremes; exposure to water, sand, and/or other contaminants; alteration and/or modification of the System, including but not limited to, any deviation from the circuit or structural machine designs of the System, and/or deviations from software programming in the System, but excluding alterations, modifications, and/or deviations approved by PBI and/or performed by PBI; installation, removal, and/or modification of any features, capabilities, and/or parts from the System, maintenance performed by anyone other than authorized by PBI; use of supplies, batteries, or materials which do not meet PBI's specification for use with the System; and/or use of the System for purposes and uses other than for which they were designed, and/or intended by PBI.

(ii) You shall be responsible for notifying PBI immediately if the System does not appear to be functioning properly for whatever reason. PBI and you shall cooperate to determine if any System components need to be returned and replaced. Any System component to be returned shall be returned in its original packaging (or, if not available, in comparable protective packaging) and shall be returned to PBI only after you have obtained authorization from PBI to do so, which shall be provided on a timely basis and not unreasonably withheld by PBI. You agree to comply with PBI instructions with respect to the return of any System components, pursuant to which PBI shall pay reasonable shipping costs.

(iii) PBI reserves the right to void all warranties provided herein in the event that you do not use PBI consumables provided by PBI with the PBI System(s). PBI, shall provide written notice in the event that your warranties are voided.

### 5.3 Technical Support.

For questions related to technical support you may call +1 (888) 444-7702 between 9 AM and 5 PM, EST, Monday through Friday or email us at [info@precisionbiomonitoring.com](mailto:info@precisionbiomonitoring.com).

### 5.4 Indemnity.

You will defend, indemnify, and hold harmless PBI from and against any and all claims, losses, liabilities, damages, costs, and expenses (including attorneys' fees, expert witness fees, and court costs) based upon, resulting from or related to: (i) any improper, illegal, or unauthorized use of the System or any element thereof by you; or (ii) any breach of your representations, warranties or covenants under these Terms.

### 5.5 Changes to these Terms.

From time to time, we will change these or impose new conditions on the use of the System, in which case we will post the revised Terms on our website and promptly notify you of such changes in accordance with Section 6.6 below. A revised form of these Terms will be effective immediately upon its posting on PBI's website at [precisionbiomonitoring.com](http://precisionbiomonitoring.com). You are responsible for reviewing the most current version of these Terms before using the System to ensure that you agree to any revisions. If at any time you do not agree to the revisions we make to these Terms, you should immediately stop accessing or using the System in any manner whatsoever and return any equipment, hardware and documentation included in your system in accordance with the provisions of Section 3. By continuing to use the System after we post any such changes, you accept these Terms, as modified. You further agree that these methods of providing notice and acceptance of changes or amendments to these Terms are reasonable.

## 6. Miscellaneous.

### 6.1 Entire Agreement.

These Terms constitute the entire understanding of the parties and supersede all prior and contemporaneous written and oral agreements with respect to the subject matter hereof. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of these Terms. If one or more of the provisions herein shall be held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforcement of the remaining provisions shall not be affected or impaired.

### 6.2. Assignment.

PBI may freely assign or delegate all rights and obligations under these Terms, fully or partially, with or without notice to you. PBI may also substitute, by way of novation, any third party that assumes our rights and obligations under these Terms.

### 6.3 Governing Law, Dispute Resolution, Waiver of Jury Trial.

(i) These Terms shall be governed by the laws of Canada, excluding its conflicts of laws principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms. You agree that any claim or dispute you may have against PBI must be resolved by a federal or provincial court in Ontario, Canada and you hereby consent to the jurisdiction of such courts. The prevailing party in any dispute hereunder shall be entitled to recover from the other party its costs, expenses, and reasonable attorneys' fees (including any fees for expert witnesses, paralegals, in-house counsel, or other legal services providers).

(ii) THE PARTIES HERETO IRREVOCABLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM. THE PARTIES AGREE AND UNDERSTAND THAT THE EFFECT OF THIS AGREEMENT IS THAT THEY ARE GIVING UP THE RIGHT TO TRIAL BY JURY TO THE EXTENT PERMITTED BY LAW.

### 6.4 Severability.

In the event that any provision of these Terms shall be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of these Terms should remain in full force and effect and be interpreted as if such invalid or unenforceable provision had not been a part hereof; provided, however, that if any particular portion of these Terms shall be adjudicated invalid for any reason, these Terms shall be deemed amended to diminish such unenforceable provision such that the remaining provisions shall be the broadest permitted under applicable law.

### 6.5 Export Control.

The System and other technology made available by PBI and derivatives thereof may be subject to export and import laws and regulations of Canada and other jurisdictions. You hereby represent that you are not named on any U.S. government denied-party list. You shall not permit any Authorized Users to access or use the System in a country sanctioned by Canada (refer to the Government of Canada sanction list for current list of countries) or in violation of any export or import law or regulation of any jurisdiction.

### 6.6 Notices.

All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt, (ii) three days after being sent by registered or certified mail, return receipt requested, postage prepaid, and (iii) with respect to notice given by PBI only, PBI may send a notice by electronic email to the email address used to open an account for you and such notice shall be deemed delivered when sent. Each party shall be responsible to update its own contact information in the manner provided herein. PBI may amend its contact information by amending its contact information on its web page.

### 6.7 Survival.

The provisions of these Terms intending by their terms to survive the expiration or termination hereof shall so survive, including, without limitation, provisions regarding intellectual property rights, limitation of liabilities, exclusions and disclaimers, confidential information and the general provisions of this Section 6.7.

**REVISION HISTORY OF TERMS OF USE:**

Revision	Effective Date	Author	Change Request #	Change Summary
1.00	February 4, 2021	Stephanie Gallone	N/A	First Release

**REVIEWED AND APPROVED BY:**

Name	Title	Role	Signature	Date
Stephanie Gallone	Director of Quality, Regulatory, and Clinical Affairs	Quality, Clinical Research and Regulatory Affairs		February 4, 2021
Bruce MacKay	Chief Operating Officer	Manufacturing	 <small>Bruce MacKay (Feb 5, 2021 08:08 EST)</small>	February 4, 2021