



Terms of Service

About Founda

Founda Health empowers providers, payers, healthcare solutions, and IT teams via a scalable API infrastructure for healthcare. The solution improves organizational efficiency, thereby driving growth and financial profitability. Built on modern healthcare standards, such as FHIR, the platform takes a cloud-native and zero-trust approach to move data efficiently across non-standardised interfaces without persisting any of it. Powered by a translation engine that can transform data into standardized format compliant as per healthcare norms, we ensure the system works in real time, seamlessly and interoperable.

Founda Platform provides an infrastructure that enables a new, innovative way for hospitals and external applications to connect and exchange clinical data. When connected to the Founda platform, you get access to modular building blocks that support functional services – such as clinical document exchanges. You can pick and choose from capabilities to build an integration solution that fits your use case. On top of that, we offer support and guidance to ensure that the integration works properly.

Terms of Service

1. These terms of service (**ToS**) are adopted either as a part of a broader legal framework explicitly (when You sign an individual contract with Founda Health or its partner, where ToS is part of) or automatically (when You use Founda Health service). Keep in mind that any use of Founda Health service and/or its data exchange software (**Founda Platform**) unequivocally means Your acceptance of ToS.
2. Parties to the agreement. ToS, along with its schedules, constitutes an agreement (**Agreement**) between the parties (collectively referred to as **Parties** and each one individually a **Party**):
 - 2.1. Founda Health BV, with the seat in Amsterdam, Netherlands (Chamber of Commerce registration no. 76708829) (**Founda Health**),
 - 2.2. You (**User**) - an individual or a (duly represented) legal entity operating within the healthcare sector, using Founda Health service for its own operational and business purposes as well as any other healthcare individual or entity, on whose behalf You (duly authorized) accept these ToS and enter into the Agreement.

FOUNDA SERVICE

3. **Founda Health services.** Founda Platform is a software, which, through adequate transformation of data, allows interoperability of different IT systems.
 - 3.1. Within the service provided by Founda Health (**Founda Service**) You are granted:
 - 3.1.1. Licenced access to (limited authorization to use) the Founda Platform functionalities currently available at the time of use, including:
 - 3.1.1.1. Access to Founda Platform in a sandbox environment (**Sandbox**),
 - 3.1.1.2. ability to safely send and/or receive data, including Protected Health Information (**Health Data**) by making API calls or by other available methods,
 - 3.1.1.3. software, including interface (**Console**) for data exchange management by the User (in particular data access and (audit) records of data exchange (logs)),
 - 3.1.2. Licenced access to materials issued by Founda Health concerning Founda Platform and certain scope of its operations (**Founda Materials**).
 - 3.2. Within additional scope of service, if such an additional service is explicitly agreed by the Parties (**Founda Supplemental Service**), and based on the terms specified within respective schedules, Founda Health may provide you with:
 - 3.2.1. integration of an IT system with Founda Platform,

3.2.2. support services (**Support**).

4. **Additional guidance.** Founda Health may additionally provide you with guidance, tutorial or training concerning certain functionalities of Founda Platform if it reasonably considers them necessary or useful for proper use of Founda Platform and/or Console, based on additionally, separately agreed upon terms.
5. **Security first.** Founda Platform is designed to process highly confidential Health Data. Therefore “security first” is our pledge toward You, Other Users (term defined in point 7 below), health data subjects as well as the whole health service community. Our security policy goes beyond compliance with the legal requirements. Founda Health is certified for (most recent editions of) information security standards (ISO/IEC 27001, 27017, 27018 and NEN 7510) and has a SOC 2 type II report available upon request. At the same time we oblige You to adhere to the highest data security standards, as a minimum to the applicable legal rules.
6. **Subscription and consumption.** Licenced use of Founda Service (excluding Sandbox use stipulated in points 3.1.1.1. above, which is free) is payable based on a mixed model of User’s annual, automatically renewable subscription for Founda Service (**Subscription**) and consumption of API bundles or Connections (as defined below in relevant schedule) or other, agreed upon consumption measurement, in accordance with the detailed terms stipulated in schedule hereto covering Subscription terms and based on individually agreed terms between User and a Founda Health’s appointed partner in case, where Founda Service is acquired through an official resale process.

SERVICE ACQUIRABLE & DELIVERABLE THROUGH FOUNDA PLATFORM FROM & BY OTHER USERS (OTHER USERS SERVICES)

7. **Other Users Services.** Through Founda Platform You may offer and provide to, or acquire services provided by, other healthcare sector entities (such as hospitals, ambulatory medical centers, GP offices, laboratories, mobile or desktop healthcare applications, resellers of Founda Service and others) using Founda Platform (**Other Users**), covering sending and/or receiving data (including Health Data) by making or responding to API calls or by other available methods.
8. **Agreements covering Other Users Services.** While using Founda Platform you shall ensure that adequate agreement(s) have been commenced with Other User, within the following scope:
 - 8.1. Data processing,
 - 8.2. Provision (or exchange) of services by, or to, or with, the Other Users i.e. Other Users Services; The terms and conditions (including cost & scope) of such a service, including data flow are subject to INDIVIDUALLY, SEPARATELY AGREED

DATA EXCHANGE AGREEMENT (Other Users Services Agreement).

9. **Disclaimer in reference to Other Users Services.** Any terms of Other Users Services Agreement and its execution (that is provision of Other Users Services through Founda Platform) lies outside of Founda Health governance. THEREFORE FOUNDA HEALTH DISCLAIMS TO THE FURTHEST POSSIBLE EXTENT ANY LIABILITY FOR THE AVAILABILITY, QUALITY, ACCURACY, COMPLETENESS AND FITNESS FOR PURPOSE OF THE DATA SHARED UNDER THE TERMS OF OTHER USERS SERVICES AGREEMENT. FOUNDA HEALTH DISCLAIMS ANY POSSIBLE LIABILITY FOR THE TERMS AND EXECUTION OF THE OTHER USERS SERVICE AGREEMENT, INCLUDING FOR THE SECURITY AND THE RESPONSE TIME, AS LONG AS THE AFOREMENTIONED LIES BEYOND FOUNDA HEALTH SERVICE, i.e. for the factors depending on Other Users - in reference to processes taking place within Founda Platform and for the entire processes that take place outside of Founda Platform.

FOUNDA PLATFORM USE(R) TERMS & OPERATION RULES

10. **User declaration.** You, as the User, declare that you are:
- 10.1. **Secure**, that is you have, in your organizational structures, adequate and properly functioning security measures ensuring safe processing of Health Data;
 - 10.2. **Compliant**, that is you operate in a compliant way and have in your organizational structures adequate and properly functioning procedures ensuring compliance of your operations with any applicable laws, Other Users Services Agreement as well as relevant contractual terms (terms of agreements concluded with third parties, relevant for operations executed via Founda Platform);
 - 10.3. **Eligible to process Health Data**, that is you have legal and factual grounds to process it and You process it only within the allowed scope;
 - 10.4. **Competent**, that is You have organizational capability, know-how and skills (also of Your staff) to duly execute the Agreement, to use Founda Platform in accordance with this ToS, any technical instructions you may receive from Founda Health and from the supplier of the IT system connected to Founda Platform (if you use any).
11. **Ground rules for Users.** When using Founda Platform, You as the User, are obliged to:
- 11.1. Adhere to all applicable laws, this ToS (including rules for processing data, confidentiality obligations and provisions referring to Founda Health intellectual property), Other Users Services Agreement and additional technical instructions Founda Health may provide;
 - 11.2. Use Founda Platform in accordance with (and solely for) its intended purpose, terms indicated in the provisions on Subscription terms (usually schedule hereto), following common sense software use rules (in particular: no copying

- or reverse engineering of solutions, no tampering with Founda Platform, no malware to be used or installed);
- 11.3. Follow secure logging rules (in particular: only competent and authorized staff members to get access to Founda Platform, access from secure networks and secure appliances with secure passwords, no password sharing).
12. **Onboarding.** The process of establishing connection between the software/IT system (and VPN, if any, or other network tools conditioning connectivity) used, managed and/or owned by the User and Founda Platform (**Integration**) shall be based on the respective Founda Materials, may require additional information to be exchanged between the parties as well as following additional instructions provided by Founda Health (if any).
- 12.1. You, as the User, have the sole responsibility to execute safe Integration (unless such an integration has been commissioned to Founda Health as a Founda Supplemental Service).
- 12.2. You, as the User, have the sole responsibility to maintain connectivity between the software/IT system used, managed and/or owned by You and Founda Platform.
13. **Further User responsibilities.** You, as the User, have the responsibility to:
- 13.1. Notify Founda Health support team at: support@founda.com of any lack of access to Founda Platform (**Downtime**) and/or any errors or malfunctions of Founda Service at the earliest possible moment;
- 13.2. Immediately notify Founda Health at: security@founda.com, when a security incident or data breach occurs or is likely to occur;
- 13.3. Appoint an administrator for maintenance of connection between the software/IT system managed or owned by the User and Founda Platform, managing use of Console and for making notifications stipulated in points 13.1. and 13.2. above (**Administrator**). For the role of the Administrator an individual (natural person) shall be appointed, who belongs to Your organizational structures, has knowledge, skills and other competences allowing to embrace the role and is bound with adequate security, privacy and confidentiality clauses. Contact details (phone number and email address) of the Administrator shall be submitted by You to Founda Health prior to the first access to Founda Platform. The personal data provided in the process will be handled in accordance with the Privacy note stipulated in point 25. Notwithstanding the aforementioned, User's obligation to appoint the Administrator is waived if, based on a separate legal framework where ToS is part of, such an administrative role has been vested in a partner of Founda Health or other, approved by Founda Health, professional legal entity;
- 13.4. Collaborate with Founda Health in the course of execution of the Agreement, in particular by: (i) providing any answers, details, proofs and other information reasonably requested by Founda Health in case of a Downtime, error or

malfunction report, (ii) appointing skilled and competent staff members for any guidance, tutorial or training that Founda Health reasonably considers necessary or useful for proper use of Founda Platform and/or Console.

14. **Founda Service quality.** Founda Service is offered and provided as is. Founda Health makes no legally binding promises of Founda Service quality improvement nor Founda Platform functionalities development. Such improvements and/or developments may however be elaborated at Founda Health's sole discretion. Founda Health reserves the right to modify the scope of Founda Service, add or remove features and functionalities in Founda Platform. Any Founda Service quality improvement and/or Founda Platform functionality development would be periodically announced in a generally accessible manner (e.g. through a website or a social media posting).
15. **Founda Platform operation rules.** Founda Platform operates ongoingly (no service breaks other than in the indicated below cases).
 - 15.1. Founda Platform is accessible over the internet and fully relies on the internet network connection's availability, quality and access through VPN (if any) or other network tools conditioning connectivity; These factors are entirely beyond Founda Health's control. Therefore any Downtime or Founda Service errors or malfunction resulting from User's device(s) connection errors shall neither be considered as Founda Health unfulfilled service nor shall yield any sort of Founda Health's liability.
 - 15.2. Founda Platform operation can be affected by (other than internet) external factors such as:
 - 15.2.1. Operation of the software/IT system used and/or managed and/or owned by You and integrated with Founda Platform (its errors, updates resulting in incompatibility with Founda Platform, affecting prior correctly executed Integration),
 - 15.2.2. Faulty and/or incompletely executed Integration,
 - 15.2.3. Your own activity (or lack thereof).Any Downtime or Founda Service errors or malfunction resulting from the above causes shall neither be considered as Founda Health unfulfilled service nor shall yield any sort of Founda Health's liability.
 - 15.3. Founda Health may conduct maintenance or other (development) works within Founda Platform that may require scheduling a Downtime. You shall be notified of such a Downtime at least 48 hours prior to it in a commonly used way (e.g. through a website post). The Downtime shall be limited to the least time necessary to conduct the works.
 - 15.4. In case of a Downtime or Founda Service errors or malfunctions caused by an emergency event an emergency maintenance works will take place. You shall be notified of such a Downtime with as much advance and details as possible in a commonly used way (e.g. through a website post).

- 15.5. There may be an occurrence of a Downtime or Founda Service errors or malfunctions caused by force majeure events (including major power outage, cyber terrorism attack, war, natural disaster). You shall be notified of such a Downtime (and its nature - as far as they're known) with as much advance and details as possible in a commonly used way (e.g. through a website post). To the liability for a Downtime caused by force majeure events force majeure provisions apply.
16. **Potential security breach.** In case of suspicion of an unauthorized access to Founda Platform and/or access and/or use of Health Data Founda Health may:
 - 16.1. request User to prove its compliance and/or
 - 16.2. audit User's premises, and/or
 - 16.3. immediately suspend Founda Service provision (in particular) access to Founda Platform for the duration of investigation procedures, without incurring any liability (Parties will reasonably assist each other with such an investigation and each Party will bear its own costs in connection herewith), and/or;
 - 16.4. seek immediate injunctive relief to enforce your security obligations under this Agreement. You acknowledge that an unauthorized use of Founda Platform could cause irreparable harm and significant injury to Founda Health, Other Users and subjects of the Health Data that may be difficult to ascertain and accordingly, you agree for Founda Health to have the right to seek such an injunctive relief in addition to any other rights and remedies.
17. **No warranty.** Founda Service is provided as is and Founda Health does not warrant that Founda Platform and/or the Console will operate at all times, defect-free, be compatible with any software, meet any specific User's requirements, be complete, accurate. Founda Health doesn't guarantee that Founda Platform is apt for any intended commercial outcome. Founda Health does not guarantee that the security standards it follows (even highly recognized within the industry) and security measures it applies will be effective under any and all circumstances.

USE OF PARTIES' TRADEMARKS AND OTHER IP PROVISIONS

18. **Proprietary Software.** Founda Platform and Console are proprietary technology of Founda Health and/or its affiliates, developed within Founda Health's own organizational structure as well as, to a limited extent, with use of open-source code documentation, in accordance with their license terms. All rights are reserved. Any license notices, attribution and reference referring to the use of open-source code may be found within Console.
19. **License to Founda Platform.** Founda Health grants You, as the User, a world-wide, revocable, non-transferable, non-sublicensable, non-exclusive, subject to payment of

all applicable fees, **license to the use of the Founda Platform** limited to the scope of Founda Service usage in accordance with the Agreement's terms.

20. **License to Console.** Founda Health grants You, as the User, and each of your staff members authorized by You to access Founda Platform and, at the same time, use the Console, a world-wide, revocable, non-transferable, non-sublicensable, non-exclusive, subject to payment of all applicable fees **license to the use of the Console** limited to the scope of Founda Service usage in accordance with the Agreement's terms. No rights to the Console's interface are granted.
21. **License to Founda Materials.** Founda Health has already issued and published and may elaborate, issue and publish in the future materials on certain technical aspects of Founda Platform or Console, such as integration instructions or documentation on APIs, i.e. Founda Materials. Founda Health grants You, as the User, a world-wide, revocable, non-transferable, sublicensable within scope necessary for Agreement execution, non-exclusive, subject to payment of all applicable fees **license to the use of the Founda Materials** (including those elaborated in the future) limited to the scope of Founda Service usage in accordance with the Agreement's terms.
22. **Approval for public releases.** Neither Party shall issue or release any announcement, statement, press release, or other publicity relating to their cooperation under the Agreement or, save for the point 22 below, otherwise use the other Party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, association, or sponsorship, in each case, without the prior written consent of the other Party.
23. **Mutual authorization to use trademarks.** Founda Health authorizes You to use Founda Health trade name as well as graphic and word trademark, world-wide, in a good faith, solely in reference to the use of Founda Service, in accordance with any brand guidelines, additional marketing instructions, subject to revocation thereof at any time at Founda Health's sole discretion. You grant Founda Health a world-wide, non-payable, royalty-free, non-exclusive right to use Your trade name as well as graphic and word trademark(s), under which You conduct your professional activity, in a good faith, solely in reference to the use of Founda Service, in accordance with any brand guidelines, additional marketing instructions and subject to revocation thereof at any time at Your sole discretion.

PRIVACY

24. **Data processed through Founda Platform.** All the personal data processed through the Founda Platform, including Health Data, is being processed by Founda Health solely in the role of the (sub)processor. Processing takes place, based on the specific User's ("data controller" or "data processor", whichever applicable) instructions and

further provisions of the DPA, in case of conflict prevailing over the ToS provisions. Founda Health does not store Health Data shared by You through Founda Platform, nor will it use that Health Data in any way other than in provision of Founda Service commissioned by You. All the processing of Health Data through Founda Platform shall take place on the EU located servers (no Health Data border crossing).

25. **Use of other data.** Founda Health may use solely the application log(s) for industry analysis, benchmarking, analytics, marketing and other business purposes (including to learn, draw conclusions and further improve Founda Platform operations and develop new Founda Platform features and functionalities).
26. **Privacy notice.** Personal data of User's employees, prospective employees, contractors, or other authorized persons including Administrator (**Authorized Persons**), are processed for the purposes and means determined by the User. Authorized Persons, who seek access to their personal information, or who seek to correct, amend, or delete inaccurate personal information should direct their requests to the data administrator established within User's organizational structure, who authorizes use of their personal data by Founda Health. User can direct Founda Health to take actions with respect to the personal information of Authorized Persons and, in some cases, User and Authorized Persons may be empowered to take such actions directly using the functionality of the Founda Service.

MISCELLANEOUS

27. **Payment terms and taxes.** Any fees due under the Agreement are payable in advance upon invoice receipt, unless other payment terms are explicitly stipulated or separately agreed by the Parties. Fees and expenses are exclusive of all taxes including any sales, use, goods and services, value-added, withholding or similar taxes or levies that apply to the Subscription, whether domestic or foreign taxes, other than Founda Health income tax.
28. **Confidentiality.** During the course of Founda Service provision either Party may disclose to the other Party information of a confidential nature that is any non-public information designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably shall be deemed confidential (**Confidential Information**). That includes information relating to disclosing Party's technology, business partners, customers, suppliers, business plans and strategies, finances and other business operations as well as content of the schedules to the ToS. Confidentiality of Health Data shared in the course of the Agreement execution is governed by the DPA (schedule hereto) which prevails over this clause. The receiving Party is **bound with an obligation to handle Confidential Information with equal care and protection as it handles its own confidential information of similar kind, no less than reasonable care**. The aforementioned confidentiality obligation lasts 5

years after the termination of the Agreement, while in reference to confidential information that also constitutes a trade secret - lasts perpetually. The Confidential Information may be shared by the receiving Party within its organizational structures (with employees, officers, subcontractors and advisors as well as its affiliates and their employees, officers, subcontractors and advisors) on a need-to-know basis, under confidentiality obligation no less strict than the one imposed by this clause. The confidentiality obligation does not apply to information that: (i) becomes public after the disclosure through no breach of respective confidentiality obligation, (ii) has been received from a third party without confidentiality obligation and through no breach of third party's confidentiality obligation, (iii) has been already known to the receiving Party at the moment of disclosure or has been independently developed after that moment without any reference to the disclosed Confidential Information. The confidentiality obligation does not apply either to the part of Confidential Information and solely within the scope requested for disclosure by and to a competent authority. The receiving Party must however notify the disclosing Party of such an event as much in advance as possible and inform the respective authority of the confidential nature of that information. Any Confidential Information shared under the Agreement in a tangible form shall be returned and/or destroyed at the request of the disclosing Party, with reservation toward materials that shall be kept as a proof of business operation under applicable laws.

- 29. Liability within organizational structures.** Each Party is liable for any acts and omissions of members of its organizational structures (affiliates, employees, officers, agents, contractors etc.) as for their own.
- 30. Indemnification.** Each Party agrees to indemnify the other Party to the furthest allowed by law extent against any losses, damages, expenses (including reasonable attorney's fees) raised in third parties' claims, referring to alleged intellectual property rights violation in relation to the Agreement execution, to which the indemnified Party did not contribute. The indemnified Party will be entitled, at its sole discretion, to participate in proceedings or litigations and to provide binding opinion for a settlement to be concluded. This clause sets forth the indemnified Party's sole remedy for any actual, threatened, or alleged claims related to an infringement of any intellectual property rights of any third party.
- 31. Limitation of Founda Health liability.**
- 31.1.** FOUNDA HEALTH, TO THE FURTHEST ALLOWED BY LAW EXTENT, SHALL NOT BE LIABLE TOWARD THE USER FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, UNAUTHORIZED ACCESS, WHETHER

CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT OR OTHERWISE, EVEN IF FORESEEABLE.

31.2. IN NO EVENT WILL THE [COLLECTIVE] AGGREGATE LIABILITY OF FOUNDA HEALTH ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID [AND AMOUNTS ACCRUED BUT NOT YET PAID] TO FOUNDA HEALTH BY USER UNDER THE AGREEMENT IN THE 12 MONTHS PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM [OR EUR 100.000, WHICHEVER IS LESS]. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

32. Force Majeure. Neither Party shall be liable toward the other for any breach of the Agreement resulting solely from a force majeure event, that is an event laying beyond Partys' control (natural disaster, war, riots, major and ubiquitous power outage, governmental order restricting operations etc.). Party suffering a force majeure event shall, with no undue delay, notify the other Party of such circumstances. Should the force majeure event last longer than 30 days, either Party is entitled to terminate the Agreement with an immediate effect (pass the 30th day).

33. Good faith. Each Party enters into this Agreement in good faith and shall continue to act in good faith throughout the Term and after the termination of the Agreement.

34. No implied partnership. This Agreement creates no partnership of any sort between the Parties. No implied cooperation is derived from the Agreement other than explicitly formed. User is not allowed to offer or resale Founda Service or provide access to Founda Platform to Other Parties, unless such term is explicitly established through additional legal framework (e.g. in schedule covering specific terms of cooperation).

35. Term. The Agreement commences on the moment of signing by the later Party the schedule on Subscription terms (or the Reseller agreement) or on the moment of Your first use of Founda Service, whichever occurs earlier, and lasts (**Term**) until:

35.1. lapse of Subscription Period if a non-renewal notice has been submitted in accordance with non-renewal terms stipulated in schedule covering Subscription terms (or, in case of Founda Service acquired through a partner of Founda Health in the Reseller agreement along with relevant terms stipulated in the agreement between Founda Health's appointed partner and the User).

35.2. It is terminated by You, through notice to Founda Health, solely in case of:

35.2.1. Excessive Downtime or other major non-performance and/or misperformance of service, attributable to Founda Health's fault or gross negligence, lasting longer than 5 days and not repaired despite immediate breach notice, submitted by User to Founda Health no later

- than within 24 hours of the breach occurrence (unless the breach is unrepairable, then without the breach notice), OR
- 35.2.2.** a security incident occurrence attributable to Founda Health's fault or gross negligence and reported in accordance to point 13.2. with an immediate effect.
- 35.3.** It is terminated by Founda Health through notice issued to You in case of:
- 35.3.1.** an invoice payment overdue lasting longer than 15 days or other major breach of the Agreement, lasting longer than 5 days and not repaired despite immediate breach notice, submitted to You no later than within 24 hours of the breach occurrence (unless the breach is unrepairable, then without the notice).
- 35.3.2.** a security incident occurrence attributable to User, with an immediate effect.
- 35.4.** It is terminated by either Party due to a force majeure event as stipulated in point 30.
- 36. Survival.** The following clauses survive termination of the Agreement: 9, 17, 22, 25-30, 32, 35, 37, 39-44. Any fee and/or cost accrued during the Term remains payable regardless of the Agreement termination or reason thereof.
- 37. Entirety.** The Agreement (ToS and any amendments thereof, all its schedules and addenda) constitutes an entire agreement between the Parties in reference to provision of Founda Service and use of Founda Platform and supersedes any prior or further understandings, arrangements, representations and warranties, both written and oral, unless this clause is explicitly waived. If, by means of applicable legal provisions or Parties' explicit arrangement, an industry by-laws or other standard or regulatory provisions are to be applied, in case of conflict between such provisions and ToS, ToS shall prevail.
- 38. Order of precedence within the Agreement.** In case of conflict between provisions of this ToS and any of its schedules the following order of precedence shall apply (from the most to the least specific):
- 38.1.** DPA prevails over conflicting provisions in other schedules and these ToS,
- 38.2.** SOW schedule (if any) prevails over conflicting provisions in other schedules (except for DPA) and over these ToS,
- 38.3.** Reseller Agreement schedule (if any) prevails over conflicting provisions in schedule on Subscription terms, SLA schedule (if any) and over these ToS,
- 38.4.** SLA schedule (if any) prevails over schedule on Subscription terms and over these ToS,
- 38.5.** Any other schedule prevails over these ToS.
- In case these ToS constitute part of legal framework between parties other than the Parties (which Founda Health prior explicitly agreed to) ToS prevail over the provisions

of such legal framework, unless otherwise explicitly approved by Founda Health.

39. **Changes of the Agreement.** Founda Health may at its sole discretion amend these ToS. You shall be notified of such an amendment in a generally accepted manner (e.g. through a website posting and/or an email). To the extent that such changes affect Your rights and/or obligations their implementation shall be effective (solely) toward You starting from the next Subscription Period.
40. **No assignment.** Neither Party may assign its right or obligations under the Agreement without prior written permission from the other Party, except that Founda Health may assign any of its rights and obligations under the Agreement to its successors, its affiliate Founda Health Holding B.V. with a seat in Amsterdam (Chamber of commerce no: 74577778) and its affiliate's successor.
41. **Wording.** Titles of sections and clauses are used for reader's reference and don't affect the clauses content. Whenever following phrase is used:
 - 41.1. **"including"** - shall always mean **"including but not limited to"**,
 - 41.2. **"written"** or **"in writing"** - shall mean any written form including electronic form,
 - 41.3. singular form is used it shall also apply to plural and where plural form is used it shall also apply to singular case,
 - 41.4. masculine form is used it shall also apply to feminine use case and where feminine form is used it shall also apply to masculine use case.
42. **Severability.** If any provision of the Agreement is deemed invalid, illegal or unenforceable for any reason, by a court of other competent authority, such provision shall be limited to the minimum extent and/or replaced by other, acceptable under relevant laws provision reflecting Parties' will to the closest possible effect, while the remaining provisions of the Agreement will continue in full force and effect.
43. **No waiver.** No waiver by either Party of these ToS shall be deemed a further or continuing waiver of such a term or any other term. No failure to assert a right or provision under these ToS by either Party shall constitute a waiver of such right or provision.
44. **Notices.** Any notice under the Agreement shall be in writing and shall be directed to the respective email address:
 - 44.1. For Founda Health to:
 - 44.1.1. support@founda.com - for matters indicated in points 13.1. as well as any other notifications related to Console and/or Founda Platform functioning;

- 44.1.2. security@founda.com - for matters indicated in point 13.2. as well as any other notifications related to processing of personal data (including processing Health Data);
- 44.1.3. business@eu.founda.com - for any other matters including non-renewal notification as indicated in point 34.1. Notices affecting the Agreement and its execution must be duly undersigned (scanned hard copy or carrying an electronic signature placed with aid of electronic signatures tool) and may be alternatively delivered in original hard copy to the Founda Health address: Herengracht 444, 1017 BR, Amsterdam, Netherlands.
- 44.2. For User:
 - 44.2.1. All notifications of individual nature shall be directed to the Administrator (as appointed in accordance with point 13.3), unless Parties individually confirm otherwise;
 - 44.2.2. All notifications of non-individual character shall be made in a generally accustomed manner for the industry (e.g. through a website posting, a social media posting, through a newsletter).
- 45. **Jurisdiction.** The Agreement, and any relations and claims deriving from it, are governed by the law of the Kingdom of Netherlands. Any controversy, claim or other dispute arising out of this Agreement shall first be referred to the Parties' Chief Executive Officers, or their designee, for informal resolution. If the Parties are unable to informally resolve the dispute, the dispute shall be decided by arbitration, according to the commercial arbitration rules of the Netherlands Arbitration Institute unless otherwise agreed by the Parties. There shall be one arbitrator and the decision of the arbitrator shall be final and binding on the Parties and judgment may be entered thereon in any court having jurisdiction thereof. The arbitration shall be held in the Netherlands, unless otherwise agreed by the Parties. Parties explicitly waive their rights to try their disputes under the Agreement by the court of law. Any claim must be submitted to the arbitration within 24 months of the occurrence giving its raise or of the moment in which the claiming Party has, or under reasonable circumstances could easily have, acquired knowledge thereof.