

CONTOUR DIABETES App – End User License Agreement

Effective Date: October 2018

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The End User License Agreement (“EULA” or “License”) is a legal agreement between you, the “User”, and Ascensia governing your use of the App. “App” means the CONTOUR™DIABETES mobile application software, any content, tools, help documentation and all services under the control of Ascensia that are operated in connection with the App (collectively, the “Services”). Use of this App, which includes accessing, browsing, or registering to use this App, is subject to the following EULA (together with the documents referred to in it).

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This App can be used with iOS (Apple) and Android (Google) smartphones but may not be compatible with all operating system versions. Please check compatibility with your operating system and phone before download. This App is compatible with CONTOUR™NEXT ONE and CONTOUR™PLUS ONE Blood Glucose Monitoring Systems.

1. **License.** The App, including the application software and related help documentation provided by Ascensia, may be downloaded and installed on one or more mobile devices for use in connection with a range of CONTOUR™ONE blood glucose meters (each a “Meter”), including any tools, help documentation and updates. Subject to your ongoing compliance with this EULA, Ascensia grants you the limited, non-exclusive, royalty-free, non-transferable, non-sublicensable, revocable license to use one copy of the App and all related help documentation per a single mobile device you own or control for your personal, non-commercial use for lawful purposes during the Term of License. This App is licensed, not sold, by Ascensia for use only under the terms of this License, and Ascensia reserves all rights not expressly granted to you. Ascensia retains ownership of all rights, title and interest in and to this App. Except for the limited rights and licenses expressly granted under this EULA, nothing in this EULA grants, by implication, waiver, estoppel, or otherwise, to you or any third party any intellectual property rights or other right, title, or interest in or to the Ascensia intellectual property.

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3. **Term of License; Termination.** This EULA is effective until terminated by you or Ascensia. You may terminate your account at any time by using the "Delete Account" option in the App or contacting customer service by visiting <http://contact.ascensia.com>. If you fail to comply with any term of this EULA, your license and permission from us to use this App will immediately terminate automatically, and you agree that your failure to comply with this EULA will constitute immediate, irreparable harm to Ascensia and its licensors for which monetary damages would be an inadequate remedy and that, to the extent permitted under applicable law, Ascensia will be entitled to equitable relief, unless you can prove that no irreparable harm has occurred. In addition, Ascensia may, in its sole discretion, terminate your user account on the Service or suspend or terminate your access to this App at any time if you violate any provision of this EULA once you fail to mitigate your violation within 14 days. We may also terminate your user account if we no longer provide any part of this App with or without 30 days' notice. Upon the termination of your account for any reason, Ascensia may, at its option, delete any non-personal data you submitted through this App or provided via the Service. Upon the termination of your account for any reason, Ascensia shall delete any personal data you submitted through this App or provided via the Service except where Ascensia is otherwise required to retain it by law. Upon termination of this EULA, you shall, at your own responsibility and expense, immediately delete or destroy this App on your devices.

4. **Enhancements and Updates.** From time to time, Ascensia may, at its sole discretion, provide enhancements, updates or new versions of this App on its then standard terms and conditions thereof. This EULA shall also apply to such enhancements and updates.

5. **Access to this App.** We do not guarantee that this App, or any feature or content on it, will always be available or be uninterrupted, and your access to this App is permitted on a temporary basis. We may suspend, withdraw, discontinue or change all or any part of this App without notice. You are responsible for making all arrangements necessary for you to have access to this App and acknowledge that there are risks inherent in software, hardware and internet connectivity that may result in interruptions or errors in and to the data transmitted or displayed using this App, regardless of measures taken to mitigate or avoid such occurrences.

You are also responsible for ensuring that all persons who access this App through your internet connection are aware of this EULA and other applicable terms, and that they comply with them.

6. **Registration.** You must register and set up an account in order to use this App.. Once you set up an account, your data will be stored in the cloud. A cloud storage account will provide you with the benefit of storing the data collected via this App, including personal information, glucose data and Meter readings so you can later access that data. If you choose, or you are provided with, a user identification code, password or any other piece of information as part of our security procedures, you must treat such information as confidential. You must not disclose it to any third party.

Provision of the Service is subject to your agreement to and compliance with the terms of this EULA. You are only permitted to set up one Service account per user and Ascensia reserves the right to limit the number of devices associated with an account. You agree that meeting these requirements is your responsibility and that you will be responsible for obtaining and maintaining any internet connections (fees may apply), computing equipment and supplies necessary for you to receive, access and use the Service. You agree to only use the Service as expressly permitted herein. Ascensia and its affiliates and suppliers own all rights, titles and interests in and to Service.

Once registered, you agree that the data you transmit using this App is specific to you. You acknowledge and agree that this Service is designed and intended for personal use on an individual basis and you should not share your account and/or password details with any other person. If another person wishes to use this App, that person should download this App directly to his or her device and separately and individually agree to the EULA.

You are solely responsible for maintaining the confidentiality and security of your App account and for all activities that occur on or through it. We have the right to disable any user identification code or password, whether chosen by you or allocated by us, at any time, if in our reasonable opinion you have failed to comply with any of the provisions of this EULA.

If you know or suspect that anyone other than you knows your user identification code or password, you must promptly notify us by contacting customer service by visiting <http://contact.ascensia.com>.

7. **Limitations on Use of the Service:** You agree to use the Service only for purposes permitted by this EULA, and only to the extent permitted by any applicable law, regulation, or generally accepted practice in the applicable jurisdiction. If your use of the Service or other behavior intentionally or unintentionally threatens our ability to provide the Service, we may take all reasonable steps to protect the Service, which may include suspension of your access to the Service. Nothing in this EULA shall be construed to convey to you any interest, title, or license in a Service account or similar resource used by you in connection with the Service. You agree that you will not reproduce, copy, duplicate, sell, resell, rent or trade the Service (or any part thereof) for any purpose.

8. **Data Usage:** You retain ownership of all personal data uploaded via this App and stored on the Service and are responsible for the content and accuracy of details you provide to Ascensia as well as for the non-violation of any third-party rights that may be included in such data. Where applicable under local law, by using the Service, you grant Ascensia a worldwide, royalty-free, non-exclusive license to use, distribute, reproduce, modify, adapt, publish, translate, create, access, and retain technical data and related information—including but not limited to technical information about your device, system and application software, and peripherals—that is gathered periodically to facilitate the provision of software updates, product support, and other services to you (if any) related to the App, and to track and report your activity when using the App, including for analytics purposes. Ascensia may use this information, as long as it is in a form that does not personally identify you, to improve its products or to provide services or technologies to you, as set out in our App Privacy Policy.

9. **Location Information:** During the App registration process we will ask you to enable certain features of your mobile device to grant Ascensia the ability to collect your precise or approximate geo-location which is derived from device or the Ascensia meters through IP address or GPS, mobile, Wi-Fi, or Bluetooth signals, as available. You may also enable our collection of location data through the device settings. If you consent to such collection, we will use this information to improve our products and services, including for our meter placement strategy. Please see our App Privacy Policy for more details regarding the information Ascensia collects and how it uses and discloses such information.

10. **iOS Users:** During the App registration process we will ask you to grant Ascensia access to your Apple Inc.'s ("Apple") Health app on your device, including access to Apple's Health app database, "HealthKit", within that app for the purposes of enhancing and/or verifying the data processed within our App. We set out in our App Privacy Policy details of the personal data our App accesses and how the App processes it. You can switch off the access, or adjust which data the Apple Health app and our App share, within your device's Health app permissions at any time.

11. **Prohibitions:** You agree that you will NOT use this App or your Service account to, directly or indirectly:

(a) upload, download, email, transmit, store or otherwise make available any data that is unlawful, harmful, tortious, invasive of another's privacy, or otherwise objectionable;

(b) perform any fraudulent activity, including by pretending to be someone you are not or misrepresenting who you are or your age, sending data from another person's Meter or to harm another, or otherwise misrepresenting your affiliation with any person, including a minor (Ascensia reserves the right to reject or block any device or email address which could be deemed to be an impersonation or misrepresentation of your identity, or a misappropriation of another person's name or identity);

(c) upload, download, email, transmit, store or otherwise make available any data or other information from any person under the legal age of majority;

(d) engage in any copyright infringement or other intellectual property infringement (including uploading any content to which you do not have the right to upload), or disclose any trade secret or confidential information in violation of a confidentiality, employment, or nondisclosure agreement;

(e) post, send, transmit or otherwise make available any unauthorized email messages, spam, or chain letters, including, without limitation, bulk commercial advertising and informational announcements;

(f) upload, post, email, transmit, store or otherwise make available any material that contains viruses or any other computer code, files or programs designed to harm, interfere or limit the normal operation of the App (or any part thereof), or any other computer software or hardware;

(g) interfere with or disrupt the App (including accessing the App through any automated means, like scripts or web crawlers), or any servers or networks connected to the App, or any policies, requirements or regulations of networks connected to the App (including any unauthorized access to, use or monitoring of data or traffic thereon);

(h) gather and store personal information on any other users of the App to be used in connection with any of the foregoing prohibited activities;

(i) violate any right of a third party, including by infringing or misappropriating any third party intellectual property right, or violating any third party privacy right;

(j) modify, translate, or create derivative works, adaptations or compilations of, or based on, this App or part thereof, or use, copy or reproduce this App or any part thereof other than as expressly permitted in this EULA;

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14. No Reliance on Information. Ascensia has compiled the detailed information provided on this App from internal and external sources to the best of its knowledge and belief, using professional diligence. We make reasonable efforts to expand and update this range of information on an on-going

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THIS EULA. THE LIMITATIONS IN THIS SECTION 19 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

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20. **Consumer Protection Notice.** Please note that, if you are a consumer, the limitations in this EULA are intended to be only as broad and inclusive as is permitted by the laws of your jurisdiction of residence.

- **Legal notice for New Jersey residents.** No provision in this EULA shall apply to any consumer in New Jersey if the provision limits redress for/under: (i) Ascensia's tortious actions (e.g., negligence, failure to exercise a basic standard of care, failure to avoid creating an unreasonable risk of harm); (ii) the New Jersey Products Liability Act, N.J.S.A. 2A:58C-1, et seq. (i.e., the statutorily imposed duty to refrain from manufacturing and selling dangerous products, with the possibility of punitive damages for violations thereof); (iii) the New Jersey Punitive Damages Act, N.J.S.A. 2A:15-5.9, et seq. (i.e., the statutory right to pursue punitive damages in the event of harm caused by actual malice, wanton and willful disregard, reckless indifference); (iv) the New Jersey Uniform Commercial Code (i.e., a comprehensive statutory regime governing the rights and duties of buyers and sellers with respect to contracts for the sale of goods, with the possibility of damages for economic and property harm); and (v) Ascensia's failure to reasonably protect against harm arising from certain criminal acts of third parties (e.g., computer hacking and identity theft, as regulated by the Federal Trade Commission and the Federal Communications Commission, and as governed by the New Jersey Identity Theft Protection Act, N.J.S.A.56:8-161, et seq., and the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-3, et seq.). With respect to this EULA, the provisions concerning the exclusion or limitation of certain damages is not applicable in New Jersey with respect to statutory damages, punitive damages, loss of data, and loss of or damage to property.
- **Legal notice for 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 this App or to receive further information regarding use of this App.

21. **Site with login: access rights.** Please note that you are obliged to protect your access rights from unauthorized third-party use and that you must ensure that they cannot be used by others without your authorization. You must notify Ascensia immediately if you learn that security has been violated in respect of any details available on this App or if unauthorized persons have obtained your access rights or if you have found indications that such access might become possible.

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29. **Assignment.** Ascensia may assign, transfer, novate or subcontract any or all of its rights or delegate any or all of its obligations under this EULA without any prior written consent if such assignment and/or delegation is to an affiliate within the Ascensia group of companies or to any successor of Ascensia Diabetes Care Holdings AG by purchase of all or substantially all of its assets.

30. **Governing Law and Venue.** This EULA, its subject matter and its formation, are governed by and shall be construed in accordance with the laws of Switzerland without giving effect to any conflict of law principles. Mandatory consumer protecting provisions arising from the jurisdiction of the user's habitual residence apply and are not excluded by this choice of law. This EULA shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. Except for Russian users as provided below, the court of the city of Basel, Switzerland shall have exclusive jurisdiction over any dispute arising out of or in connection with this EULA.

For Russian users the following applies: Any dispute arising out of or in connection with this EULA shall be resolved either by the court at Ascensia's location or at your place of residence depending on the respective claimant's choice.

31. **Feedback.** If you choose to provide input or suggestions regarding your experience with this App ("Feedback"), then you hereby grant Ascensia an unrestricted, perpetual, irrevocable, non-exclusive, fully-paid, royalty-free right to exploit such Feedback in any manner and for any purpose, including to improve this App and create other products and services.

32. **Force Majeure.** To the fullest extent permitted under applicable law, Ascensia will be excused from performance under this EULA for any period that it is prevented from or delayed in performing any obligations pursuant to this EULA, in whole or in part, as a result of a force majeure event or series of such events caused by or resulting from: (a) weather conditions or other elements of nature or acts of God; (b) acts of war, acts of terrorism, insurrection, riots, civil disorders or rebellion; (c) quarantines or embargoes, (d) telecommunications, network, computer, server or Internet disruption or downtime; or (e) other causes beyond the reasonable control of Ascensia.

33. **Notice Regarding Apple.** This Section 33 only applies to the extent you are using this App on an iOS device. You acknowledge that this EULA is between you and Ascensia only, not with Apple, and Apple is not responsible for this App and the content thereof. Apple has no obligation whatsoever to furnish any maintenance and support services with respect to this App. In the event of any failure of this App to conform to any applicable warranty, you may notify Apple and Apple will refund any applicable purchase price for this App to you; and, to the maximum extent permitted by applicable law, Apple has no other warranty obligation whatsoever with respect to this App. Apple is not responsible for addressing any claims by you or any third party relating to this App or your possession and/or use of this App, including: (a) product liability claims; (b) any claim that this App fails to conform to any applicable legal or regulatory requirement; and (c) claims arising under consumer protection, privacy, or similar legislation. Apple is not responsible for the investigation, defense, settlement and discharge of any third party claim that this App and/or your possession and use of this App infringe third party's intellectual property rights. You agree to comply with any applicable third party terms when using this App. 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 (x) 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 (y) you are not listed on any U.S. Government list of prohibited or restricted parties.

34. **Contact Us.** If you have questions, comments, complaints and/or claims in respect of this EULA, they should be addressed to Ascensia Diabetes Care Holdings AG, Peter Merian-Strasse 90, P.O. Box, 4052 Basel, Switzerland.