

**MODERNIZING MEDICINE PODIATRY SYSTEMS, INC.  
STANDARD TERMS AND CONDITIONS**

These Standard Terms and Conditions (these “**Terms and Conditions**”) form a part of the Modernizing Medicine Podiatry Systems, Inc. Order Form (the “**Order Form**” and together with these Terms and Conditions, this “**Agreement**”) between Modernizing Medicine Podiatry Systems, Inc., a Delaware corporation with offices located at 4850 T-Rex Avenue, Suite 200, Boca Raton, Florida 33431 (“**Company**” or “**MMP**”), and the customer set forth on the Order Form (“**Client**”). Company and Client may be referred to herein each individually as a “**Party**” and together as the “**Parties**”. These Terms and Conditions were last updated on April 1, 2021.

**1. Definitions.** As used in this Agreement:

**1.1** “**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person now or in the future for so long as such control exists. For purposes of this definition, “control,” when used with respect to any specified Person, means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through ownership of voting securities or by contract or otherwise, and the terms “controlling” and “controlled by” have correlative meanings to the foregoing.

**1.2** “**API TOU**” means the API Terms of Use set forth at [modmed.com/api-terms-of-use/](http://modmed.com/api-terms-of-use/).

**1.3** “**Authorized Providers**” means MDs, DPMs and Mid-Levels that are Authorized Users of the applicable Product.

**1.4** “**Authorized User**” means Client’s employees, representatives, consultants, contractors or agents who are authorized in accordance with the terms of this Agreement to use the applicable Products.

**1.5** “**Client Data**” means any electronic data, information or material that Company receives from or on behalf of Client, Client’s Patients and/or Client’s Authorized Users (or at any of their direction) through the Products or otherwise in connection with this Agreement or the other Transaction Documents, including, without limitation, (i) any electronic data, information or material entered into the Products by Client and its Authorized Users (or at any of their direction), (ii) any electronic data, information or material imported into the Products relating to Client or any of its Patients, (iii) Patient Data and (iv) any electronic data, information or material provided or submitted by a third party through the Products relating to the Client or any of its Patients.

**1.6** “**Contract Date**” means such date specified on the Order Form as being the Contract Date.

**1.7** “**Contract End Date**” means such date specified on the Order Form as being the Contract End Date.

**1.8** “**Device Software**” means any applications or other software supplied by Company to Client for installation on computers, other computing devices or computing resources owned or controlled by Client or its Authorized Users used to access the Hosted Software.

**1.9** “**DPM**” means a doctor of podiatric medicine.

**1.10** “**Electronic Health Information**” or “**EHI**” means electronic protected health information as defined under HIPAA to the extent that it would be included in a designated record set as defined under HIPAA, regardless of whether the group of records are used or maintained by or for a Covered Entity (as

defined under HIPAA), but excluding: (i) psychotherapy notes (as defined under HIPAA); and (ii) information compiled in reasonable anticipation of, or for use in, a civil, criminal or administrative proceeding, except that until October 6, 2022 (or any later date established by ONC), EHI is limited to the electronic health information identified by the data elements represented in the USCDI standard adopted at 45 C.F.R. § 170.213.

**1.11 “HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act and their implementing regulations, as each may be amended from time to time.

**1.12 “Hosted Software”** means Company’s proprietary software that Company hosts and is listed in the Order Form.

**1.13 “Licensed Software”** means any applications or other software supplied by Company to Client for local installation on Client’s servers or other computing hardware.

**1.14 “MD”** means a doctor of medicine.

**1.15 “Mid-Level”** means a provider other than an MD or DPM that generates an invoice for his or her services, including, without limitation, registered nurses and licensed practical nurses.

**1.16 “ONC”** means the U.S. Department of Health and Human Services, Office of the National Coordinator for Health IT.

**1.17 “Patient(s)”** means any person who was a previous or is a prospective or current patient of Client.

**1.18 “Patient Data”** means any electronic data, information or material about a Patient entered into the Products.

**1.19 “Person”** means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization.

**1.20 “Products”** means the Licensed Software or the Subscription Services (including any Device Software provided by Company for use in conjunction with such Subscription Services), in each case as listed on an Order Form, and any additional software or services listed on an Order Form to be provided to Client by Company.

**1.21 “Representative”** means Company’s Affiliates and Company’s and its Affiliates’ respective employees, directors, officers, advisors, agents, vendors, any Person that provides any products or services that relate to the Products or any other products or services offered by Company or any of its Affiliates (including, without limitation, laboratories and other diagnostic, clinical and pathology testing providers), service providers, consultants and contractors.

**1.22 “Subscription Services”** means access to the Hosted Software, including through the Device Software.

**1.23 “Territory”** means the United States of America.

**1.24 “Transaction Documents”** means this Agreement (including the Order Form, these Terms and Conditions and the Business Associate Addendum), the exhibits hereto, any addendums to this Agreement

entered into in accordance with these Terms and Conditions, any Statement of Work, the TOS and the Electronic Payment Authorization Form.

**1.25 “Written Documentation”** means the written documentation provided to Client in paper or electronic format describing procedures, guidelines, plans, and requirements for the implementation, training, standard configuration, use, and maintenance of the Products. This includes, but is not limited to, user guides, system administrator guides and training curricula.

## **2. Licensed Software; Subscription Services.**

**2.1 Licensed Software.** If the Products specified on the Order Form include Licensed Software, then commencing on the Contract Date, Company hereby grants to Client a non-exclusive, nontransferable and limited (as provided in this Agreement) license, without the right to sublicense, to download, install, and use such Licensed Software in connection with such Products on Client’s servers or on Authorized Users’ computers, as applicable, in the Territory, only for the Term and only for Client’s internal business purposes (the “**License**”). Client’s employees, representatives, consultants, contractors, or agents will become Authorized Users of the Licensed Software using the login information provided by Company or, with the consent of Company, by the Client’s administrator. Without limiting any terms of this Agreement, Company may make the issuance of any additional logins subject to such conditions as Company may determine, including, without limitation, the payment of activation and other fees by Client with respect to such new Authorized Providers. Client acknowledges that the Licensed Software may contain features or functionality that are not licensed unless such features or functionality are specified on the Order Form and unless activation keys are provided to Client for such features or functionality, and agrees not to use such unlicensed features or functionality.

**2.2 Subscription Services.** If the Products specified on the Order Form include Subscription Services, then commencing on the Contract Date, Company will use commercially reasonable efforts to provide the Subscription Services to Client in the Territory during the Term. Client’s employees, representatives, consultants, contractors, or agents become Authorized Users of the Subscription Services by logging into the Products using the login information provided by Company or, with the consent of Company, by the Client’s administrator. Without limiting any terms of this Agreement, Company may make the issuance of any additional logins subject to such conditions as Company may determine, including, without limitation, the payment of activation and other fees by Client with respect to such new Authorized Providers.

**2.3 Device Software.** If Company provides Client with Device Software for use under this Agreement, then, as of such time, Company hereby grants to Client a non-exclusive, nontransferable and limited (as provided in this Agreement) license, without the right to sublicense, to download, install, and use the Device Software on computers, other computing devices or computing resources owned or controlled by Client or its Authorized Users, but only (i) in the Territory, (ii) for the Term of the Subscription Services with which such Device Software was provided by Company to be used in conjunction with (as determined by Company), and (iii) for Client’s internal business purposes. Client acknowledges and agrees that the Device Software may include functionality for products not purchased by Client, and that such functionality is not licensed for use by Client (unless and until Client purchases the corresponding product(s), including agreeing to any additional terms and conditions). Such functionality may not be activated for Client but, regardless, may not be used by Client unless and until Client purchases the corresponding product(s).

**2.4 Support and Maintenance.** Company will use commercially reasonable efforts to provide telephone help desk and online support services between (i) 9:00 am and 5:00 pm Eastern Time, from Monday to Thursday and (ii) 9:00 am and 12:00pm Eastern Time and from 1:00 pm to 5:00 pm Eastern Time on Friday, except for holidays observed by Company.

**2.5** *It is understood that the Products are designed solely as a reference for practicing healthcare professionals, and that as such, they may integrate clinical and financial information with other information of multiple origins. Company is not responsible for the accuracy of any information obtained from the Products or for any damages resulting from Client's use or misuse of such information. Company shall not be deemed to be engaged, either directly or indirectly, in the practice of medicine or the dispensing of medical services or advice. It is incumbent upon Client to verify the proper use and interpretation of information obtained from the use of the Products. Accordingly, Client acknowledges and agrees that (i) Company is not a health care provider, (ii) the Products provide only sample forms and templates, (iii) the treatments, procedures, information, medications, products and other matters referenced by the Products are not intended as a recommendation or endorsement of any course of treatment, procedure, information, product or medication and (iv) any and all responsibility for diagnosing, treating and/or providing any other medical care to any Patient, as well as drafting or completing all written materials related to such Patient and for ensuring compliance with any applicable federal, state, American Podiatric Medical Association, state medical association, or local laws, rules and regulations, and professional ethical guidelines which may apply to Client, Authorized Users, such materials and/or the practice of medicine, rests exclusively with Client and the physicians and the other professionals treating such Patient.*

**2.6 Third Party Registries.** The Products may contain functionality to collect and transmit certain data for certain components of the Merit-based Incentive Payment System (“MIPS”), or for other clinical data reporting programs of the Centers for Medicare & Medicaid Services (“CMS”) or other government agencies or programs, to certain third party registries (the “**Registry Functionality**”). If the Order Form indicates that Client has elected to implement a registry reporting option then Client, Client, on behalf of itself and each of its Authorized Users, hereby authorizes Company (i) to provide any measures, information, data or material entered into the Products and/or generated by the Products, including, without limitation, MIPS measure calculations (“**Registry Information**”), to a third party registry and (ii) to use and disclose the Registry Information for any purpose and in any manner not prohibited by law (the “**Registry Services**”). Client acknowledges and agrees that (i) Company may deactivate the ability to transmit Registry Information to any third party from time to time in Company’s sole discretion and (ii) the Registry Functionality and the Registry Services may not be available for use by Client or its Authorized Users from time to time in the sole discretion of Company. Without limiting the foregoing, Client further acknowledges and agrees that no Authorized Users shall use the Registry Functionality in the Products or the Registry Services if Client is not then current in all payments owed to Company. Each Authorized User shall follow all guidelines, protocols and procedures specified by Company with respect to the use of the Registry Functionality and Registry Services. Notwithstanding anything in the Transaction Documents to the contrary, Company may, in its sole discretion, modify, update, revise, enhance or change any aspect of the Registry Services.

**2.7 Conversions and Document Loads.** If the Order Form or a Statement of Work contemplates a data conversion or document load then Company shall use commercially reasonable efforts to perform such data conversion or document load. Company and Client agree that in the event that Company determines, in its sole discretion, that it is unable, using commercially reasonable efforts, to perform the data conversion or document load for Client that was previously specified on the Order Form or a Statement of Work, then (i) if Company provides written notice of such determination to Client (the “**Conversion Notice**”) then Company shall have no further obligation to perform the data conversion or document load and (ii) Client’s sole and exclusive remedy shall be for Client to receive a refund of the unused portion of the fee paid by Client to Company with respect to the data conversion or document load as determined by Company. Client agrees that any fees charged by any other vendor that relate to, or arise out of, any data conversion or document load are the responsibility of Client. Client represents and warrants to Company that Client (i) has obtained all necessary third party permissions for Company (and its designees) to perform any data

conversion or document load contemplated by this Section 2.7 and (ii) has the right to permit Company (and its designees) to perform such data conversion or document load.

**2.8 Interfaces.** Client acknowledges and agrees that if the Order Form or a Statement of Work contemplates that Company shall establish an interface between any Product and another Product or a third party product or service (each, an “**Interface**”) that the cooperation and services of third parties may be necessary in order to establish such Interface and, as such, Company does not guarantee when, or if, any Interface will be established. Client acknowledges and agrees that the timing of the completion of any Interface will not impact the Client’s obligations under the Transaction Documents, including, without limitation, the obligation to pay all Fees. For the avoidance of doubt, to the limited extent that any provisions of this Agreement (inclusive of these Terms and Conditions) are contrary to Client’s rights, including those related to fees, with respect to certified API technology under the then-current API TOU, then the then-current API TOU shall control. Company and Client agree that in the event that Company determines, in its sole discretion, that it is unable, using commercially reasonable efforts, to establish an Interface for Client that was previously specified on the Order Form or a Statement of Work, then Company will provide written notice of such determination to Client (the “**Interface Notice**”), and Client’s sole and exclusive remedy shall be for Client to receive a refund of the unused portion of the fee paid by Client to Company with respect to the establishment of such Interface as determined by Company. For the avoidance of doubt, Company has no obligation to modify any Interface after its initial establishment or provide any new interfaces. Client agrees that any fees charged by any other vendor that relate to, or arise out of, an Interface are the responsibility of Client. Client agrees that Company may impose such limitations on the use of any Interface in conjunction with any Products as Company may deem appropriate.

**2.9 Analytics.** If Company or its Affiliates provide any measures, information, data or material of third parties (whether or not aggregated with any measures, information, data or material of Client) to Client or its Authorized Users through a dashboard or any other means then Client and each of its Authorized Users shall treat all such information as Company’s Confidential Information and shall only use such information for Client’s internal business purposes. Client and each Authorized User shall follow all guidelines, protocols and procedures specified by Company with respect to the use of analytics functionality.

**2.10 Biometric Data.** Client acknowledges that if any Authorized User uses the microphone recording feature in any of the Products to record the Authorized User’s voice, Company may collect and store the Authorized User’s voiceprint, which voiceprint constitutes biometric data under certain laws governing the collection, use, storage and disclosure of biometric data. Client acknowledges and agrees that Client has been advised of, and understands that Company and its agents and contractors may collect, use, store and disclose biometric data for the purposes described herein and Client shall advise its Authorized Users regarding the collection, use, storage and disclosure of biometric data as provided herein. Company may utilize the voiceprint in any recordings to transcribe text for a Patient’s medical record, to improve the microphone feature and for other product improvement and development purposes. The biometric data will be retained and destroyed in accordance with Company’s policies related to biometric recordings and applicable law.

### **3. Fees.**

**3.1 General.** In consideration for the rights granted and services offered to Client in this Agreement, Client agrees to pay Company all fees set forth on the Order Form or otherwise specified in the Transaction Documents (the “**Fees**”) in accordance with the terms of the Transaction Documents.

**3.2 Overdue Payments.** Any payment owed by Client to Company hereunder and not paid to Company when due (an “**Overdue Payment**”) may accrue, at Company’s discretion, late charges at the

rate of one and one-half percent (1.5%) of the outstanding balance per month, or at the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

**3.3 Payment.** Unless otherwise specified in the Order Form, any one-time fees specified on the Order Form are due and payable on the execution of the Order Form by Client. Unless otherwise specified in the Order Form, monthly Fees are due in advance on the first day of each calendar month to which such Fees apply. All amounts paid are non-refundable.

**3.4 Payment Method.** Client shall pay Company for any other amounts due under the Transaction Documents by electronic payment. Client shall execute, complete and deliver to Company the electronic payment authorization form (the “**Electronic Payment Authorization Form**”) provided to Client by Company or otherwise use such payment portal as directed by Company if an Electronic Payment Authorization Form is not already on file with Company. If the account or other information specified in the Electronic Payment Authorization Form or portal changes during the Term, Client shall provide Company with a revised Electronic Payment Authorization Form or otherwise update the portal in a timely manner so as to avoid incurring an Overdue Payment.

**3.5 Changes to Fees.** Without limiting any provisions of the Transaction Documents, Company may change the Fees and discounts set forth in any of the Transaction Documents by providing at least thirty (30) days prior written notice (the “**Notice Period**”) of such change to Client. Any such change shall take effect at the beginning of the next Renewal Term after the expiration of the Notice Period.

**3.6 Currency.** All amounts set forth in the Transaction Documents are denominated and shall be paid in U.S. dollars.

**3.7 Taxes.** All amounts payable by Client to Company pursuant to the Transaction Documents (including, without limitation, pursuant to any Statement of Work) are exclusive of all local, state, federal and foreign taxes, levies, or duties of any nature (“**Taxes**”), and all payments to Company are payable in full without reduction for Taxes. Client is responsible for payment of all Taxes, excluding taxes owed by Company based on Company’s net income. If Company has the legal obligation to pay or collect Taxes for which Client is responsible pursuant to this Section, the appropriate amount shall be invoiced to and paid by Client, unless Client provides Company with a valid tax exemption certificate authorized by the appropriate taxing authority.

#### **4. Client’s Responsibilities; Client’s Sole Responsibility for Medical Services & Client Data.**

**4.1 Hardware.** Unless otherwise explicitly agreed to in writing by the Parties, Client is solely responsible for acquiring, installing and maintaining computer hardware that is adequate to support Client’s use of the Products. Client may request from Company a document describing Company’s recommend hardware, software, and infrastructure to meet the requirements of the Products, provided that such recommendations may be updated from time to time as new functionality is added to the Products and in response to changes in technology. If a dedicated server is required to operate any Licensed Software, Client agrees to provide such server and a suitable area at Client’s site for installation of the server in keeping with commonly accepted practices and with adequate ventilation, connectivity, and power, no later than ten (10) days prior to the anticipated date of installation of the Licensed Software. Furthermore, Client understands and acknowledges that installation of software (other than the Licensed Software) not authorized in writing by Company on such server will entitle Company to terminate technical support or charge on a time and materials basis for any extra effort expended by Company as a result of such unauthorized software. Unless otherwise explicitly agreed to in writing by the Parties, Company will not provide maintenance for any of Client’s hardware. Client expressly acknowledges that Company is not responsible for the safeguard, loss,

or recovery of any data stored on Client's hardware. Client is solely responsible for acquiring and maintaining such internet connections as are necessary for Client to use the Products.

**4.2 Client Data.** Client is responsible for all activities that occur under logins assigned to Client's Authorized Users. Client shall have sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of Client Data.

**4.3 Service Guidelines.** Client and its Authorized Users shall use the Products and any other services provided by Company solely in the Territory for Client's internal business purposes only as contemplated by this Agreement and shall not use the Products or any other services provided by Company to: (i) send spam or any other form of duplicative or unsolicited communications; (ii) violate any law, rule or regulation; (iii) transmit through or post on the Products or Company's website(s) unlawful, immoral, libelous, tortious, infringing, defamatory, threatening, vulgar, or obscene material or material harmful to minors; (iv) transmit material containing software viruses or other harmful or deleterious computer code, files, scripts, agents, or programs; (v) interfere with or disrupt the integrity or performance of the Products or the data contained therein; (vi) attempt to gain unauthorized access to the Products, computer systems or networks used to host or provide access to the Products; or (vii) harass or interfere with another user's use and enjoyment of the Products or the other services provided by Company. Company may, without liability or notice to Client, remove or delete any material stored in the Products that Company determines, in its sole discretion, violates any of the guidelines set forth in this Agreement. In addition to any other remedies Company may have, Company reserves the right to terminate any of the Transaction Documents or terminate any or all of the logins provided to Client or any Authorized User immediately and without notice, if Company becomes aware or determines that Client or any Authorized User is violating any of the foregoing guidelines. Client shall be responsible for verifying the accuracy of results produced using the Products and for proper use of any forms provided by Company. Client shall be responsible for following proper backup procedures to protect against loss or error resulting from use of any or all of the Products. Client shall cause each of its Authorized Users to comply with the terms of this Agreement.

**4.4 Taxes on Customer Payments.** Client will be solely responsible for determining whether which of its charges are subject to taxation (e.g., sales tax) and, if so, the appropriate rate(s) applicable at each of its locations for the respective charges. Client is advised to consult with its accountants, advisors or attorneys in these regards.

**4.5 Third Party Content.** Client acknowledges that the Products may contain third party materials, and agrees to the terms set forth in **Exhibit B**.

**4.6 Future Functionality.** Client agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Company regarding future functionality or features.

**4.7 TOS.** The use of certain Products may be subject to the acceptance of additional terms of service by the user of such Products (including the terms of use set forth on Company's website, the "TOS"). The TOS for a particular Product subscribed to by Client pursuant to the Order Form, if any, are available for review by Client following Client's written request. As a condition to Client's and its Authorized Users' use of the Products, Client shall (a) require its Authorized Users to review and accept the TOS; (b) cause each of its Authorized Users to comply with the terms of the Transaction Documents and the TOS; and (c) to the extent the consent of an Authorized User is needed to participate in whole or in part in a program, secure such consent before conveying it to Company. Notwithstanding any term of the Transaction Documents to the contrary, Client acknowledges and agrees that, from time to time, Company may (in accordance with the process specified in the TOS and without the prior written consent of Client) change, remove, add to (including without limitation by way of additional terms) or otherwise modify the TOS.

Except as otherwise stated in the Transaction Documents, in the event of a conflict between the TOS and the other Transaction Documents, the terms of the other Transaction Documents shall prevail.

**5. Product Updates; Modifications to Services.** During the Term, Company may, in its sole discretion, update the Products. Company is under no obligation to make any such updates. Company may offer customizations to the Products requested by Client or additional modules to the Products that may provide specific functionality or services at an additional cost to Client. Any such customizations or modules shall be separately negotiated and priced. For the avoidance of doubt, nothing in the Transaction Documents obligates Company to make any such customizations or modules available to Client or to require Company to make such modules available for free or at any set price. Company may require Client to agree to modified or additional terms in order to access any module, including, without limitation, through a “click-to-agree” addendum or other means acceptable to Company. Without limiting the foregoing, Company may determine, in its sole discretion, whether any specific functionality or services constitute customizations or modules that may be separately negotiated and priced. Notwithstanding anything in the Transaction Documents to the contrary, Company may, in its sole discretion, modify, update, revise, enhance or change any aspect of the Products. Notwithstanding anything in the Transaction Documents to the contrary, Client acknowledges and agrees that Company is under no obligation to provide Client with access to any third party software, website or service through the Products or otherwise and to the extent that the Products provide access to any third party software, website or service Company reserves the right, without prior notice, to suspend, limit or cancel such access for any reason.

## **6. SOW Services.**

**6.1 Statements of Work.** From time to time, the Parties may execute statements of work that describe the specific services to be performed by Company, including any work product to be delivered by Company (as executed by the Parties, a “**Statement of Work**”). Each Statement of Work will expressly refer to this Agreement, will form a part of this Agreement, and will be subject to the terms and conditions contained herein.

**6.2 Performance of Services.** Company will perform the services specified in each Statement of Work (the “**SOW Services**”) in accordance with the terms and conditions of this Agreement and of each applicable Statement of Work. For purposes of this Agreement, any training services, the establishment of any interfaces, or any data conversions or document loads specified in the Order Form shall be deemed SOW Services under this Agreement. Without limiting other rights of Company set forth in this Agreement, if Company attempts to deliver SOW Services to Client and, unless otherwise specified in the Statement of Work, if Company does not deliver such SOW Services within six (6) months after the date of the Statement of Work to Client and such failure to provide such SOW Services is not primarily due to a failure by Company to perform its obligations under this Agreement then Company shall have no further obligation to provide such SOW Services and all SOW Fees paid or payable by Client with respect to such SOW Services shall be deemed fully earned by Company.

**6.3 Changes to Statement of Work.** Client may submit to Company written requests to change the scope of SOW Services (each such request, a “**Change Order Request**”). Company may approve or reject such Change Order Requests in its sole discretion. If Company approves a Change Order Request, then Company will promptly notify Client if it believes that such Change Order Request requires an adjustment to the SOW Fees (as defined below) or to the schedule for the performance of the SOW Services. In such event, the Parties will negotiate in good faith a reasonable and equitable adjustment to the SOW Fees and/or schedule, as applicable. Company will continue to perform SOW Services pursuant to the existing Statement of Work and will have no obligation to perform any Change Order Request unless and until the Parties have agreed in writing to such an equitable adjustment to the SOW Fees and/or schedule, as applicable.

**6.4 Client Responsibilities.** In connection with the SOW Services, Client will (i) provide qualified personnel who are capable of performing Client’s duties and tasks with respect to applicable SOW Services; (ii) provide Company with access to Client’s sites and facilities during Client’s normal business hours and as otherwise reasonably required by Company to perform the SOW Services; and (iii) perform Client’s duties and tasks under this Agreement, including under any Statement of Work, and such other duties and tasks as may be reasonably required to permit Company to perform the SOW Services. Client will also make available to Company any data, information and any other materials required by Company to perform the SOW Services, including, but not limited to, any data, information or materials specifically identified in this Agreement (collectively, “**Client Materials**”). Client will be responsible for ensuring that all such Client Materials are accurate and complete.

**6.5 SOW Fees and Expenses.** For Company’s performance of the SOW Services, Client will pay Company the fees calculated in accordance with the terms set forth in this Agreement, including, any applicable Statement of Work (the “**SOW Fees**”). In addition, Client will reimburse Company for the following expenses incurred by Company or its personnel in connection with the performance of the SOW Services (the “**SOW Expenses**”): all out-of-pocket costs and all travel, lodging and other related expenses.

**6.6 SOW Payment Terms.** Unless otherwise specified in this Agreement or the applicable Statement of Work, Company shall send one or more invoices (each, a “**SOW Invoice**”) to Client for all applicable SOW Fees and SOW Expenses contemplated by the applicable Statement of Work. Unless otherwise specified in the applicable Statement of Work, all amounts specified in a SOW Invoice are due upon the issuance of such SOW Invoice by Company.

**6.7 Ownership.** Company will exclusively own all rights, title and interest in and to any software programs, software tools, utilities, technology, processes, inventions, devices, methodologies, specifications, documentation, training manuals, techniques and materials of any kind used or developed by Company or its personnel in connection with performing the SOW Services (collectively “**Company Materials**”), including all worldwide patent rights (including patent applications and disclosures), copyright rights, moral rights, trade secret rights, know-how and any other intellectual property rights therein. Client will have no rights in the Company Materials except as expressly agreed to in writing by the Parties in the Statement of Work.

**6.8 Other Services.** Nothing in this Agreement or any Statement of Work will be deemed to restrict or limit Company’s right to perform similar services for any other party or to assign any employees or subcontractors to perform similar services for any other party. Client acknowledges that Company may engage subcontractors to perform certain services.

**6.9 Non-Solicitation.** During the Term and for a period of twelve (12) months thereafter, Client will not recruit or otherwise solicit for employment any Company employees without Company’s express prior written approval.

## **7. Intellectual Property.**

**7.1 Client Intellectual Property.** Client represents and warrants that none of the content, materials, designs, text, names, data or other information, including, without limitation, Client Data, provided by Client, its Authorized Users and/or its Patients to Company or Company networks or systems with respect to the Products, the Transaction Documents or otherwise (collectively, “**Client Content**”), infringes or violates the intellectual property or other proprietary rights of Company or any third party, and Company shall have no liability for any claims arising out of Client Content, including those claims based on infringement. Further, Client and its Authorized Users grant to Company a nonexclusive license to use Client Content, as well as any trade names and/or trademarks of Client, to the extent necessary for Company

to provide the Products and any other products or services contemplated by the Transaction Documents (which includes, without limitation, the right to make copies, create illustrations, display personal and/or corporate name(s), and display other Client Content). Nothing in this Section 7.1 shall be deemed to limit Company's rights under Section 10.4 of these Terms and Conditions or under the Business Associate Addendum.

**7.2 Restrictions.** Client acknowledges that in providing the Products and the other products and services contemplated by the Transaction Documents, Company utilizes: (i) the Company name, the Company logo, the Company's domain names, the product names associated with the Products and other trademarks; (ii) certain information, documents, software and other works of authorship; and (iii) other technology, software, hardware, products, processes, algorithms, user interfaces, website content, visual interfaces, interactive features, graphics, compilations, computer code, website elements, Written Documentation, know-how and other trade secrets, techniques, designs, inventions and other tangible or intangible technical material or information (which together with the Products shall be collectively referred to as "**Company IP**") and that the Company IP is covered by intellectual property rights owned or licensed by Company ("**Company IP Rights**"). Except as otherwise expressly permitted herein, Client and its Authorized Users shall not, nor will they assist or encourage anyone else to: (x) sell, license, distribute, publicly perform or display, transmit, edit, adapt, modify, copy, translate or make derivative works based on the Company IP; (y) disassemble, reverse engineer, or decompile any of the Company IP; or (z) create Internet "links" to or from the Products, or "frame" or "mirror" any of Company's content which forms part of the Products (other than on Clients' own internal intranets). Additionally, Client and its Authorized Users are not entitled to and will not: (I) sell, grant a security interest in or make or transfer reproductions of the Products to other parties in any way, nor to lease or license the Products to others without the prior written consent of Company; (II) emulate or redirect the communication protocols used by the Products; (III) use or access the Products or any other products or services contemplated by the Transaction Documents in order to build a competitive product or service, (IV) copy any features, functions or graphics of the Products or any other products or services contemplated by the Transaction Documents or (V) exploit the Products or any of its parts for any commercial purpose without Company's express written consent. Nothing in the Transaction Documents shall be construed to give Client or its Authorized Users any right to inspect, possess, use, or copy the source code (or, with respect to the Subscription Services and other Hosted Software, the object code) used to create or constituting the Products. Neither Client nor its Authorized Users shall apply any process, technique, or procedure designed to ascertain or derive the source code of the Products, or attempt to do any of the foregoing. Client shall not make any copies of any Products. Client shall not alter, change or remove any proprietary notices or confidentiality legends placed on or contained within the Products.

**7.3 Ownership and Reservation of Rights.** Other than as expressly set forth in the Transaction Documents, no license or other rights in the Company IP Rights are granted to Client or its Authorized Users, and all such rights are hereby expressly reserved by Company. Additionally, and for avoidance of doubt, as between Company and Client, Company shall at all times retain sole and exclusive ownership of, or, as applicable, sole and exclusive rights as a licensee or sublicensee of, all of its copyrights, trademarks, trade names, trade dress, patents, software, source code, object code and other intellectual property rights with respect to the Company IP, including, without limitation, all of the proprietary material provided and/or displayed by Company at the Products, affiliated web sites, extranet, marketing materials or otherwise. Client acknowledges and agrees that the Company IP may contain certain licensed materials and Company's licensors may independently protect their rights in the event of any violation of the Transaction Documents.

**8. Remedies for Breach of Client's Obligations.** If Client or any of its Authorized Users materially breaches any of its or their obligations under this Agreement (including, without limitation, failing to pay any Fees when due), any other Transaction Document or any other agreement between Company and

Client, Company shall be permitted, at its sole discretion, to do any or all of the following (it being understood that such remedies are not exclusive of one another or any other remedies Company may have under any of the Transaction Documents or at equity or law): (i) terminate any of the Transaction Documents and any license or other right granted to Client with respect to the Products upon notice if such breach is not cured within thirty (30) days after notice of such breach is sent to Client, in which case all Fees, SOW Fees and SOW Expenses incurred prior to the date of termination shall remain due and owing to Company; (ii) for unpaid Fees, SOW Fees and SOW Expenses, assess late fees as provided in Section 3.2; and/or (iii) collect from Client reimbursement for all costs incurred by Company in collecting any Fees, SOW Fees, SOW Expenses or other monies owed to it by Client, or otherwise enforcing its rights under the Transaction Documents. Client further acknowledges and agrees that Company shall not be liable to Client, Client's Authorized Users or any third party for any exercise of Company's rights under the Transaction Documents.

**9. Business Associate Addendum.** The Parties acknowledge and agree that Client is a Covered Entity and Company is a Business Associate under HIPAA and each Party shall comply with the Party's respective obligations under HIPAA. Without limiting the foregoing, each Party shall comply with the Business Associate Addendum attached to these Terms and Conditions as **Exhibit A** (the "**Business Associate Addendum**"). The Business Associate Addendum is hereby incorporated into this Agreement.

## **10. Confidentiality.**

**10.1 Definition of Confidential Information.** Subject to the terms and conditions of this Agreement, "**Confidential Information**" shall mean all information about the disclosing Party furnished by the disclosing Party to the receiving Party, that is designated as "Confidential" or "Proprietary" (x) by stamp or legend if communicated in writing or other tangible form or (y) otherwise orally at the time of disclosure with a written confirmation within twenty (20) days describing the Confidential Information communicated orally. Company's Confidential Information also includes the technology, software, hardware, products, processes, algorithms, user interfaces, website content, visual interfaces, interactive features, graphics, compilations, website elements, Written Documentation, know-how and other trade secrets, techniques, designs, inventions and other tangible or intangible technical material or information made available by Company to Client or any of its Authorized Users. "**Confidential Information**" excludes the information explicitly excluded under Section 10.3 as well as PHI as that term is defined in the Business Associate Addendum attached hereto.

**10.2 Confidential Information Terms.** Except as expressly permitted in the Transaction Documents, each Party agrees to hold the other Party's Confidential Information in strict confidence; provided that Company may disclose Confidential Information of Client to Company's Representatives. Notwithstanding the above, either Party may disclose the other Party's Confidential Information upon the order of any competent court or government agency; provided that prior to disclosure, to the extent possible, the receiving Party shall inform the other Party of such order and shall reasonably cooperate with the efforts of the disclosing Party, at the disclosing Party's expense, to obtain a protective order or other action to protect the confidentiality of the Confidential Information. It is understood and agreed that in the event of a breach of this provision damages may not be an adequate remedy and each Party shall be entitled to injunctive relief to restrain any such breach, threatened or actual without the necessity of posting a bond or other security.

Client agrees that the terms and conditions, but not the existence, of the Transaction Documents shall be treated as Company's Confidential Information and that no reference to the terms and conditions of the Transaction Documents or to activities pertaining thereto can be made in any manner without the prior written consent of Company; provided, however, that Client may disclose the terms and conditions of the Transaction Documents: (i) as required by any court or other governmental body; (ii) as otherwise required

by law; (iii) to Client's legal counsel; (iv) in confidence, to accountants, banks, and financing sources and their advisors; (v) in confidence, in connection with the enforcement of this Agreement or rights under this Agreement; or (vi) in confidence, in connection with a merger or acquisition or proposed merger or acquisition, or the like.

**10.3 Non-Confidential Information.** The term “**Confidential Information**” shall not include any information which: (i) is in the public domain at the time of disclosure or enters the public domain following disclosure through no fault of the receiving Party, (ii) the receiving Party, through competent evidence, can demonstrate knowledge prior to disclosure, (iii) is disclosed to the receiving Party by a third party legally entitled to make such disclosure without violation of any obligation of confidentiality or (iv) is independently developed by the receiving Party without reference to the disclosing Party's Confidential Information as evidenced by the written records of the receiving Party.

**10.4 De-Identified Information.** Notwithstanding anything to the contrary in the Transaction Documents, Client acknowledges and agrees that Company (i) may use Client Data to create de-identified data in accordance with the HIPAA de-identification requirements; (ii) may use, create, sell, provide to third parties, and otherwise commercialize Client Data provided same has first been de-identified in accordance with HIPAA and (iii) owns all right, title and interest in such de-identified Client Data and any data, information and material created by Company with such de-identified Client Data.

**10.5 Feedback.** If Client or any Authorized Users inform Company of any errors, difficulties or other problems with the Products, or provide any feedback or make any suggestions as to changes or modifications to the Products, including beta or other in-development versions of the Products (collectively, “**Feedback**”), then Company shall own all right, title and interest in that Feedback. Client hereby irrevocably assigns and agrees to assign all of its right, title and interest in and to the Feedback to Company. To the extent Client is unable to assign any of its rights in the Feedback to Company, Client hereby grants to Company a perpetual, irrevocable, worldwide, fully-paid up license to sell, offer to sell, make, have made, import, use, disclose, copy, distribute, publicly perform, publicly display, modify, create derivative works of and otherwise fully exploit the Feedback for any purpose. The Feedback shall be treated as Company's Confidential Information and Company shall have the unrestricted right to disclose the Feedback for any purpose.

#### **10.6 Communications.**

**10.6.1** Notwithstanding anything to the contrary in this Agreement, Client may make a communication about (i) the usability of the Hosted Software or other MMP health information technology (“health IT”) (as defined at 45 C.F.R. § 170.102), (ii) the interoperability of the Hosted Software or other MMP health IT, (iii) the security of the Hosted Software or other MMP health IT, (iv) relevant information regarding users' experience with the Hosted Software or other MMP health IT, (v) MMP's business practices related to exchanging electronic health information (as defined at 45 C.F.R. § 171.102), or (vi) the manner in which a user of the Hosted Software or other MMP health IT has used the technology for any of the following purposes: (vii) making a disclosure required by law; (viii) communicating information about adverse events, hazards, and other unsafe conditions to government agencies, health care accreditation organizations, and patient safety organizations; (ix) communicating information about cybersecurity threats and incidents to government agencies; (x) communicating information about information blocking and other unlawful practices to government agencies; or (xi) communicating information about MMP's failure to comply with a Condition of Certification requirement or other requirement of 45 C.F.R. Part 170 to ONC or an ONC-Authorized Certification Body.

**10.6.2** Client shall not disclose Confidential Information about non-user facing aspects of the Hosted Software or other MMP health IT.

**10.6.3** Client shall not disclose MMP's or a third party's intellectual property existing in the Hosted Software or other MMP health IT, except that Customer may publicly display a portion of the Hosted Software or other MMP health IT that is subject to copyright protection where such display would reasonably constitute "fair use" of the Hosted Software or other MMP health IT as provided by 45 C.F.R. § 170.403(a)(2)(ii)(C) and the display concerns one or more of the six subject areas in Section 11.6.1(i)-(vi).

**10.6.4** If Client discloses a screenshot or video of the Hosted Software or other MMP health IT which contains Confidential Information, Client shall (i) not alter the screenshots or video, except to annotate the screenshots or video or resize the screenshots or video; (ii) limit the sharing of screenshots to the relevant number of screenshots needed to communicate about the Hosted Software or other MMP health IT regarding one or more of the six subject areas in Section 11.6.1(i)-(vi); and (iii) limit the sharing of video to (1) the relevant amount of video needed to communicate about the Hosted Software or other MMP health IT regarding one or more of the six subject areas in Section 11.6.1(i)-(vi) and (2) only videos that address temporal matters that cannot be communicated through screenshots or other forms of communication.

**10.6.5** For the avoidance of doubt, nothing in this Agreement shall be construed to prohibit or restrict any communication in a manner that violates the Condition of Certification at 45 C.F.R. § 170.403(a). Further, Client shall not impose any prohibition or restriction on any third party that prohibits or restricts any communication in a manner that violates that Condition of Certification.

## **11. Warranties & Disclaimers.**

### **11.1 Warranties.**

**11.1.1** Client represents and warrants that it is in good standing and duly licensed, and has procured all necessary licenses, registrations, approvals, consents, and any other communications in each jurisdiction as required to enable Client to conduct its business and to perform its obligations under the Transaction Documents to which it is a party. Client further represents and warrants that it has the legal power and requisite authority to enter into the Transaction Documents to which it is a party.

**11.1.2** Client represents, warrants and covenants that it has complied and will comply with all applicable federal, state and local laws and regulations relating to the Products or the Transaction Documents.

**11.1.3** Client represents and warrants that all claims for its services or products will only be submitted in accordance with all applicable laws, rules and regulations (including the False Claims Act and similar state laws).

**11.1.4** CLIENT HEREBY AGREES AND ACKNOWLEDGES THAT COMPANY IS IN NO WAY ACTING AS A MEDICAL PROVIDER WITH RESPECT TO ANY PATIENT OR ANY OF CLIENT'S RELATED PARTIES AND PROVIDERS. CLIENT FURTHER ACKNOWLEDGES AND AGREES THAT THE TREATMENTS, PROCEDURES, INFORMATION, MEDICATIONS, PRODUCTS AND OTHER MATTERS REFERENCED BY THE PRODUCTS OR ANY OTHER PRODUCTS OR SERVICES CONTEMPLATED BY THE TRANSACTION DOCUMENTS ARE NOT INTENDED AS A RECOMMENDATION OR ENDORSEMENT OF ANY COURSE OF TREATMENT, PROCEDURE, INFORMATION, PRODUCT OR MEDICATION AND THAT ANY AND ALL RESPONSIBILITY FOR DIAGNOSING, TREATING OR PROVIDING ANY OTHER MEDICAL CARE TO ANY PATIENT RESTS WITH THE PHYSICIANS AND OTHER HEALTHCARE PROFESSIONALS TREATING SUCH PATIENT.

**11.1.5** CLIENT UNDERSTANDS AND AGREES THAT ITS USE, ACCESS, DOWNLOAD, OR OTHERWISE OBTAINING INFORMATION, MATERIALS, OR DATA THROUGH THE PRODUCTS (INCLUDING RSS FEEDS) FROM A SOURCE OTHER THAN COMPANY IS AT ITS OWN DISCRETION AND RISK AND THAT IT WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO ITS OR ITS USERS' PROPERTY OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OR USE OF SUCH MATERIAL OR DATA.

**11.1.6** Client represents and warrants that, to the extent required by applicable law, Client and each Authorized User is duly licensed by the appropriate professional board or agency in the state where Client or such Authorized User is located and/or performs services. Client shall provide evidence of such licensing to Company upon reasonable request. At any time that Client or its Authorized Users cease to be duly licensed or authorized to the extent required by applicable law, Client shall immediately so inform Company, and such unlicensed party shall immediately cease accessing and using the Products.

**11.2 Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED HEREIN OR IN THE TRANSACTION DOCUMENTS, COMPANY MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. COMPANY HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE PRODUCTS, ANY SOFTWARE OR FEATURES IN CONNECTION WITH THE PRODUCTS AND ANY OTHER PRODUCTS OR SERVICES CONTEMPLATED BY THE TRANSACTION DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ANY TREATMENTS, PROCEDURES, INFORMATION, DATA, PRODUCTS, MEDICATIONS AND OTHER MATTERS REFERENCED BY THE PRODUCTS, REMAINS WITH THE CLIENT. COMPANY EXPRESSLY DISCLAIMS ANY WARRANTY FOR THE PRODUCTS AND ANY SOFTWARE, GOOD(S), INFORMATION, DATA OR MATERIALS PROVIDED BY COMPANY AS PART OF THE PRODUCTS OR SERVICES CONTEMPLATED BY THE TRANSACTION DOCUMENTS. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE PRODUCTS, THE COMPANY IP, AND ANY OTHER PRODUCTS OR SERVICES CONTEMPLATED BY THE TRANSACTION DOCUMENTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. IN ADDITION, EXCEPT AS EXPRESSLY PROVIDED HEREIN, ANY THIRD-PARTY MEDIA, CONTENT, PRODUCTS, SERVICES OR APPLICATIONS MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE", "WITH ALL FAULTS" BASIS AND WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED.

COMPANY DOES NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING (A) THE USE OR THE RESULTS OF THE USE OF ITS PRODUCTS, WEBSITES OR ANY THIRD PARTY WEBSITES IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE, OR (B) THE ACCURACY OF CODES, IMAGES, INFORMATION OR OTHER DATA PROVIDED BY ANY PRODUCTS OR SERVICES. ANY CLINICAL INFORMATION PROVIDED BY ANY PRODUCTS OR SERVICES IS INTENDED AS A SUPPLEMENT TO, AND NOT A SUBSTITUTE FOR, THE KNOWLEDGE, SKILL AND JUDGMENT OF AUTHORIZED USERS OR OTHER HEALTHCARE PROFESSIONALS IN PATIENT CARE. THE ABSENCE OF A WARNING FOR A GIVEN DRUG OR DRUG COMBINATION OR OTHER TREATMENT SHOULD NOT BE CONSTRUED TO INDICATE THAT THE DRUG OR DRUG COMBINATION OR OTHER TREATMENT IS SAFE, APPROPRIATE

OR EFFECTIVE IN ANY GIVEN PATIENT. COMPANY IS NOT A HEALTH PLAN, HEALTH CARE PROVIDER OR PRESCRIBER.

NOTHING WILL BE CONSTRUED AS A GUARANTEE OR WARRANTY BY COMPANY THAT ANY OR ALL FEES BILLED BY CLIENT OR ON CLIENT'S BEHALF (INCLUDING CO-PAYMENTS, DEDUCTIBLES AND COINSURANCE) WILL BE COLLECTED OR COLLECTIBLE, IN WHOLE OR IN PART. CLIENT ACKNOWLEDGES AND AGREES THAT COMPANY IS NOT RESPONSIBLE FOR PAYMENT OR COLLECTION OF ANY CLAIMS SUBMITTED BY CLIENT OR ON CLIENT'S BEHALF UNDER ANY CIRCUMSTANCES.

COMPANY DOES NOT GUARANTEE CONTINUOUS, ERROR-FREE, VIRUS-FREE OR SECURE OPERATION OF OR ACCESS TO THE PRODUCTS, ITS WEBSITES AND THE CONTENTS THEREOF, SERVICE ELEMENTS OR RELATED PRODUCTS. CLIENT ASSUMES THE ENTIRE RISK WITH RESPECT TO THE PERFORMANCE AND RESULTS IN CONNECTION WITH ANY SERVICES PROVIDED HEREUNDER AND CLIENT'S USE OF THE PRODUCTS IN CONNECTION WITH CLIENT'S HARDWARE. COMPANY SHALL NOT BE LIABLE FOR ANY DAMAGE CAUSED BY THE INTERACTION OF THE PRODUCTS WITH ANY DEVICE OR ANY INFORMATION TECHNOLOGY INFRASTRUCTURE OF CLIENT.

NEITHER COMPANY NOR ITS AFFILIATES SHALL BE LIABLE IN ANY WAY FOR LOSS OR DAMAGE OF ANY KIND RESULTING FROM THE USE OR INABILITY TO USE THE PRODUCTS OR ANY FEATURES OR PRODUCTS IN CONNECTION WITH THE PRODUCTS INCLUDING, BUT NOT LIMITED TO, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES.

COMPANY MAKES NO GUARANTIES, REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE COMPLETENESS OR ACCURACY OF THE REGISTRY INFORMATION PROVIDED PURSUANT TO THE REGISTRY FUNCTIONALITY IN THE PRODUCTS. CLIENT AND THE AUTHORIZED USERS ARE SOLELY RESPONSIBLE FOR ENSURING THAT THE APPLICABLE REGISTRY RECEIVES THE AUTHORIZED USERS' REGISTRY INFORMATION. COMPANY MAKES NO GUARANTY OF ANY KIND THAT CLIENT OR ANY OF ITS AUTHORIZED USERS WILL RECEIVE ANY INCENTIVE PAYMENTS OR ANY OTHER GOVERNMENT FUNDS OR AVOID ANY GOVERNMENT IMPOSED PENALTIES AS A RESULT OF THE USE OF THE REGISTRY FUNCTIONALITY IN THE PRODUCTS. THE REGISTRY INFORMATION PROVIDED BY THE REGISTRY FUNCTIONALITY IN THE PRODUCTS IS NOT INTENDED AS LEGAL ADVICE AND ALL LEGAL INQUIRIES ABOUT TOPICS ADDRESSED BY THE REGISTRY FUNCTIONALITY IN THE PRODUCTS OR THE REGISTRY SERVICES SHOULD BE DIRECTED TO CLIENT'S LEGAL COUNSEL. COMPANY DISCLAIMS LIABILITY FOR ANY DAMAGES OF ANY NATURE WHATSOEVER, DIRECTLY OR INDIRECTLY, RESULTING FROM CLIENT'S USE OF OR RELIANCE ON ANY INFORMATION PROVIDED BY THE REGISTRY FUNCTIONALITY IN THE PRODUCTS OR OTHERWISE RELATING TO SUCH SUBJECT MATTER.

IF COMPANY PROVIDES ANY HARDWARE TO CLIENT THEN (I) SUCH HARDWARE IS PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, FREEDOM FROM DEFECTS OR NONINFRINGEMENT, (II) THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF SUCH HARDWARE REMAINS WITH THE CLIENT, (III) COMPANY EXPRESSLY DISCLAIMS ANY WARRANTY FOR SUCH HARDWARE, (IV) COMPANY HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES WITH RESPECT TO SUCH HARDWARE, INCLUDING

ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, FREEDOM FROM DEFECTS OR NONINFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND (V) COMPANY FURTHER DISCLAIMS ANY LIABILITY FOR CLIENT DATA STORED ON ANY HARDWARE.

CLIENT ACKNOWLEDGES THAT THE PRODUCTS ARE NOT CURRENTLY CERTIFIED BY THE OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY OR ANY OTHER STATE OR FEDERAL GOVERNMENTAL AGENCY AS CERTIFIED ELECTRONIC HEALTH RECORD TECHNOLOGY UNDER THE HEALTH IT CERTIFICATION PROGRAM OR ANY SIMILAR OR SUCCESSOR PROGRAM AND THAT THE PRODUCTS MAY NOT BE USED FOR ANY PURPOSE IN CONNECTION WITH WHICH SUCH CERTIFICATION IS REQUIRED. COMPANY MAKES NO REPRESENTATION REGARDING WHEN THE PRODUCTS WILL BE CERTIFIED BY ANY SUCH GOVERNMENTAL AGENCY AS CERTIFIED ELECTRONIC HEALTH RECORD TECHNOLOGY UNDER THE HEALTH IT CERTIFICATION PROGRAM OR ANY SIMILAR OR SUCCESSOR PROGRAM OR THAT THE PRODUCTS WILL ULTIMATELY BE CERTIFIED BY ANY SUCH GOVERNMENTAL AGENCY AS CERTIFIED ELECTRONIC HEALTH RECORD TECHNOLOGY UNDER THE HEALTH IT CERTIFICATION PROGRAM OR ANY SIMILAR OR SUCCESSOR PROGRAM.

**11.3 Limitations by Applicable Law.** THE LIMITATIONS OR EXCLUSIONS OF WARRANTIES, REMEDIES, OR LIABILITY CONTAINED IN THE TRANSACTION DOCUMENTS APPLY TO CLIENT TO THE FULLEST EXTENT SUCH LIMITATIONS OR EXCLUSIONS ARE PERMITTED UNDER THE LAWS OF THE JURISDICTION IN WHICH CLIENT AND ITS USERS ARE LOCATED.

**11.4 Basis of the Bargain.** CLIENT ACKNOWLEDGES AND AGREES THAT COMPANY HAS OFFERED ITS PRODUCTS AND SERVICES AND ENTERED INTO THE TRANSACTION DOCUMENTS TO WHICH IT IS A PARTY IN RELIANCE UPON THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN, THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN CLIENT AND COMPANY, AND THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN CLIENT AND COMPANY. CLIENT ACKNOWLEDGES AND AGREES THAT COMPANY WOULD NOT BE ABLE TO PROVIDE THE PRODUCTS OR SERVICES CONTEMPLATED BY THE TRANSACTION DOCUMENTS TO CLIENT ON AN ECONOMICALLY REASONABLE BASIS WITHOUT THESE LIMITATIONS.

## **12. Limitation of Liability; Indemnification.**

**12.1 Limitation of Liability.** IN NO EVENT SHALL COMPANY'S AND ITS PRESENT AND FORMER SUBSIDIARIES', AFFILIATES', DIRECTORS', OFFICERS', EMPLOYEES', AND AGENTS' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO ANY OF THE PRODUCTS SPECIFIED IN THE ORDER FORM, ANY OTHER PRODUCTS OR SERVICES AND/OR ANY OF THE TRANSACTION DOCUMENTS, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE FEES ACTUALLY PAID BY THE CLIENT TO COMPANY UNDER THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE MOST RECENT CAUSE OF ACTION AROSE.

**12.2 Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL COMPANY OR ITS PRESENT AND FORMER SUBSIDIARIES, AFFILIATES, DIRECTORS, OFFICERS,

EMPLOYEES OR AGENTS HAVE ANY LIABILITY TO CLIENT, ITS AUTHORIZED USERS OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOSS OF DATA, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, PAYER RECOUPMENTS OF REIMBURSEMENTS, REFUNDS TO PAYERS, OR OTHER LOST REIMBURSEMENTS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

**12.3 Limitation of Action.** No action (regardless of form) arising out of the Transaction Documents may be commenced by Client against Company more than two (2) years after the cause of action arose.

**12.4 Indemnification.** Client shall indemnify and hold harmless Company and Company's Affiliates and each of their respective officers, directors, employees and agents, from and against any and all damages, liabilities, penalties, interest, fines, losses, costs and expenses (including reasonable attorneys' fees and expenses), arising, directly or indirectly, out of or relating to any claim or allegation based on (i) the use or operation of the Products by Patients, Client, and/or the Authorized Users, including, without limitation, any non-authorized use of Client's user logins, (ii) a breach of any of the Transaction Documents by Client or any of its Authorized Users, (iii) the accuracy, quality, integrity, legality, reliability or appropriateness of Client Data or any other content or data introduced to the Products by Client or any Authorized User, including use or transmission of Client Data extracted or converted out of the Products on behalf of Client, (iv) any alleged violation of any applicable law, rule or regulation by Client or any of the Authorized Users, (v) the diagnosis and/or treatment of any patients of Client and/or (vi) the negligent acts or willful misconduct of Client or any of its personnel.

**12.5 Sole Responsibility.** *Client agrees that the sole and exclusive responsibility for any medical decisions or actions with respect to a Patient's medical care and for determining the accuracy, completeness or appropriateness of any billing, clinical, coding, diagnostic, medical or other information provided by the Products or any other products or services provided by Company or any of its Affiliates resides solely with the Authorized Users or other professionals treating such Patient. Company does not assume any responsibility for how such information is used. Client acknowledges and agrees that neither the Products nor any other products or services provided by Company or any of its Affiliates "recommend," "suggest," or "advise" proper prescribing or other treatment decisions and that the responsibility for the medical treatment, and any associated decisions regarding billing for medical services, rests with the Authorized Users or other professionals treating such Patient and revolves around such health care provider's judgment and such health care provider's analysis of the Patient's condition.*

### **13. Term and Termination.**

**13.1 Agreement Term.** Unless terminated earlier as set forth herein, the initial term (the "**Initial Term**") of this Agreement shall commence on the Contract Date specified on the Order Form and end on the Contract End Date specified in the Order Form. Subject to the terms and conditions of this Agreement, after the Contract End Date and each Renewal Term, this Agreement shall automatically renew for additional terms of one (1) month ending on the next monthly anniversary of the Contract End Date (each such additional term, a "**Renewal Term**" and, collectively, with the Initial Term, the "**Term**"), unless either Party provides at least ten (10) days' written notice to the other Party of its intent not to renew the Agreement. For the avoidance of doubt, if no Contract End Date is specified then Company may elect to terminate this Agreement at anytime by providing written notice of such termination to Client. Notwithstanding anything herein to the contrary, Company may, upon written notice to Client, terminate offering any Product or any portion thereof to Client, without offering replacement Products, or support and maintenance for any Product. In the event of a termination by Company pursuant to the immediately

prior sentence and Client has prepaid fees for such terminated Product beyond the effective termination date then Client will be entitled to a prorated refund of such prepaid fees.

**13.2 Termination.** Client may terminate this Agreement: (i) in the event of a material breach of this Agreement by Company, provided, that, Client provides written notice of such material breach to Company and such breach remains uncured thirty (30) days after Company's receipt of such notice; or (ii) in accordance with the terms of the Business Associate Addendum. Company may terminate each of the Transaction Documents: (a) as set forth in Sections 4.3 and 8 of these Terms and Conditions; (b) in accordance with the terms of the Business Associate Addendum, (c) immediately if Client becomes insolvent or unable to pay its debts as they become due, or the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors or (d) at any time upon thirty (30) days prior written notice to Client.

**13.3 Outstanding Fees.** Termination shall not relieve Client of the obligation to pay any fees or expenses accrued or payable to Company prior to the effective date of termination.

**13.4 Effect of Termination.** Upon termination or expiration of this Agreement for any reason, all rights to use the Products shall terminate and Client shall not use or access, directly or indirectly, the Products or any other Company IP. If Client has any copies of any Company IP, Client shall either destroy or return to Company all such copies along with a certificate signed by Client that all such copies have been either destroyed or returned, respectively, and that no copy or any part of any Company IP has been retained by Client in any form. Termination of this Agreement for any reason shall not affect Company's right to recover damages for events occurring before termination. In the event either Party provides written notice of termination of any of the Transaction Documents to the other Party in accordance with the applicable Transaction Document, Company shall have the right to automatically charge Client's bank, credit card or other account designated under Section 3.4, an amount equal to the sum of any outstanding Fees, SOW Fees, SOW Expenses or other amounts owed to Company.

**13.5 Return of Medical Records.** Company might store various forms of information for the Client that meet the definition of a medical record in many states (the "**Medical Records**"). To ensure the proper transfer of the Medical Records, the following policies shall apply: (i) Prior to the termination of this Agreement, the Client may obtain a copy of the Medical Records stored in the Hosted Software by providing Company with a written request for such records; (ii) In the event of the termination of this Agreement then the Client may obtain a copy of the Medical Records stored in the Hosted Software by providing Company with a written request for such records within fifteen (15) days of the effective date of such termination; (iii) If the Client is a multi-physician group and one of the physicians in such group has terminated its relationship with such group, and the Client requests in writing that Medical Records stored in the Hosted Software be transferred to such physician and provides a written list of Patients of such physician to Company (the "**Applicable Patients**"), then Company will provide a copy of the records of the Applicable Patients (the "**Applicable Patient Records**") to the Client or the departing physician as directed in writing by the Client. The Client shall have the burden of determining whether the departing physician is entitled to a copy of the Applicable Patient Records. Subject to the terms and conditions of this Section, Company shall not be required to transfer any Applicable Patient Records to a departing physician until the Client directs Company to transfer such Applicable Patient Records and Company determines that the transfer complies with applicable law. Company shall not be responsible for transfers of Applicable Patient Records to Persons that Company determines in good faith to be entitled to receive the Applicable Patient Records regardless of the accuracy of such determination; (iv) If the Client (including an authorized representative of the Client) is unavailable for any reason to give Company written direction as to how to process a Medical Records transfer request, after a reasonable attempt to contact the Client, Company shall be permitted to transfer the Medical Records to any third party requesting the Medical Records in writing if such third party provides Company reasonable written evidence that it has the legal right to request and obtain such Medical

Records under applicable law; and (v) In the event of a merger or sale of the Client, Company will transfer a copy of the Client's Medical Records stored in the Hosted Software to the Client's successor or acquirer if requested in writing by the Client. In no event shall Company be responsible for transfers of Medical Records to Persons that Company determines in good faith to be entitled to receive the Medical Records regardless of the accuracy of such determinations. Subject to the requirements of this Section 13.5, Company shall transfer the applicable records in such format as is determined reasonable by Company. The transferee of any records under this Section 13.5 shall be responsible for the cost of any disk drives or other media used by Company for the transfer of such records as well as shipping and handling for the transfer of such disk drives or other media to such transferee. Notwithstanding the foregoing, after the thirty (30) day period commencing on the effective date of termination or expiration of this Agreement, Company shall have no obligation to maintain any copies of or provide any copies of the Medical Records (including any Applicable Patient Records), except as otherwise required by applicable law.

**13.6 Survival.** Sections 1, 3.2, 3.3, 3.4, 3.6, 3.7, 4.2, 4.4, 6.5, 6.6, 6.7, 6.8, 6.9, 7, 8, 10, 11, 12, 13, and 14 shall survive the expiration or termination of this Agreement for any reason.

#### **14. General Provisions.**

**14.1 Relationship of the Parties.** None of the Transaction Documents create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties and the status of the Parties shall be independent parties to a contractual arrangement. Neither Party shall have the authority to bind the other Party by contract or otherwise.

**14.2 Benefit to Others.** The representations, warranties, covenants and agreements contained in the Transaction Documents are for the sole benefit of the Parties and their respective successors and permitted assigns, and they are not to be construed as conferring any rights on any other Persons, including, but not limited to, third party rights for Client's Patients.

**14.3 Notices.** Any notice required by this Agreement or given in connection with therewith, shall be in writing and shall be given (i) if to Company, to Modernizing Medicine Podiatry Systems, Inc., 4850 T-Rex Avenue, Suite 200, Boca Raton, Florida 33431, Attention: Chief Financial Officer with a copy sent to Modernizing Medicine Podiatry Systems, Inc., 4850 T-Rex Avenue, Suite 200, Boca Raton, Florida 33431, Attention: General Counsel by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services with proof of delivery and (ii) if to Client, to the Client's address (or email address) set forth in this Agreement or such other address (or email address) as may be provided in writing from time to time by email or by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services with proof of delivery.

**14.4 Waiver and Cumulative Remedies.** MMP shall have the right to waive (or elect not to exercise a right) if MMP determines that the waiver (or election) is necessary to comply with applicable law. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

**14.5 Force Majeure.** MMP shall not be liable for failure or delay in performing its obligations hereunder if such failure or delay is due to a force majeure event or other circumstances beyond its reasonable control, including, without limitation, acts of any governmental body (e.g., military, civil, or regulatory authority), public safety incident, war, cyber war or attack, terrorism, insurrection, sabotage, embargo, natural or human-made disaster (e.g., fire, flood, severe weather, earthquake, tornado, or hurricane), public health emergency, disease, pandemic, labor disturbance, interruption of or delay in transportation, telecommunication or internet service interruption, unavailability of third party products or

services, failure of third party products or services, or inability to obtain raw materials, supplies or power used in or equipment needed for provision of the Products or any other products or services contemplated by any of the Transaction Documents (each, a “**Force Majeure Event**”).

**14.6 Severability.** If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be unenforceable, such provision shall be changed by the court or by the arbitrator and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect, unless the modification or severance of any provision has a material adverse effect on a Party, in which case such Party may terminate this Agreement by notice to the other Party.

**14.7 Assignment.** Neither Party may assign any of its rights or obligations hereunder or under any other Transaction Document, whether by operation of law or otherwise, without the prior express written consent of the other Party. Notwithstanding the foregoing, Company shall be permitted to assign each of the Transaction Documents: (i) to an Affiliate, parent company or subsidiary or (ii) in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Any attempt by a Party to assign its rights or obligations under any of the Transaction Documents in breach of this Section 14.7 shall be void and of no effect. Subject to the foregoing, each of the Transaction Documents shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

**14.8 Governing Law.** Except as otherwise provided herein, each of the Transaction Documents shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to its conflict of laws provisions.

**14.9 Venue.** The federal courts of the United States in and for the Southern District of Florida and the state courts of the State of Florida located in Palm Beach County, Florida shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to any of the Transaction Documents. Each Party hereby consents to the jurisdiction of such courts and waives any right it may otherwise have to challenge the appropriateness of such forums, whether on the basis of the doctrine of forum non conveniens or otherwise.

**14.10 Enforcement Costs.** If any legal action or other proceeding is brought for the enforcement or interpretation of any of the Transaction Documents, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of the Transaction Documents, the prevailing Party shall be entitled to recover reasonable attorneys’ fees, court costs and all expenses incurred in that action or proceeding and at all levels of trial and appeal, in addition to any other relief to which such Party may be entitled.

**14.11 Third Party Arrangements.** Client acknowledges and agrees that it shall be solely responsible for performance of all of its duties, obligations, and covenants arising under the Transaction Documents. In the event that Client enters into an arrangement with any other individual or entity to fulfill all or any part of its payment obligations pursuant to the Transaction Documents (“**third party arrangement**”), Client represents and warrants that any such third party arrangement shall not affect the obligations of Client to Company pursuant to the Transaction Documents. Client further represents and warrants that any such third party arrangement shall be in compliance at all times with all applicable federal, state, and local laws, regulations and ordinances including, without limitation, the Medicare and Medicaid Anti-Fraud and Abuse Amendments to the Social Security Act and the Stark Law. Client acknowledges and agrees that Company is under no obligation to accept any payment from any third party, which is unsatisfactory to Company in its good faith business judgment. The Client agrees that it shall be responsible for promptly reimbursing Company for all fees required by the American Medical Association or other similar organization to be paid by Company to such organization relating to the Client and its Patients, employees, representatives, consultants, contractors or agents use of the Products.

**14.12 Entire Agreement and Construction.** The Transaction Documents constitute the entire agreement between the Parties as to the Products, and supersede all previous and contemporaneous agreements, proposals or representations, written or oral, concerning such Products. For the avoidance of doubt, any obligations of Client that accrued prior to the Contract Date remain in full force and effect. Except for Company's right in this Section 14.12, no modification, amendment, or waiver of any provision of the Transaction Documents shall be effective unless in writing and signed by the Party against whom the modification, amendment, or waiver is to be asserted. Further, by entering into this Agreement, each Party expressly acknowledges and intends that the terms contained herein related to the content and manner of a request for access, exchange, or use of EHI, including any and all terms related to fees, reflect the Parties' mutual agreement (in an arm's-length transaction without coercion) and meet the "content" and "manner requested" conditions of the Content and Manner Exception at 45 C.F.R. §§ 171.301(a) and (b)(1), respectively. Under no circumstances shall the terms of any purchase order submitted by Client to Company be deemed binding upon Company. In the event of a conflict between the Transaction Documents and any previous agreements entered into by Client with respect to the Products set forth in the Order Form, the terms of the Transaction Documents shall prevail.

**14.13 Counterparts.** Each of the Transaction Documents requiring execution by a Party hereto may be executed in one or more counterparts, which may be delivered by fax or other electronic transmission, including email, each of which shall be deemed an original and which taken together shall form one legal instrument.

**14.14 Headings.** Headings used in each of the Transaction Documents are provided for convenience only and shall not be used to provide meaning or intent.

**14.15 Due Execution.** Client acknowledges that Company shall not be deemed bound by this Agreement, any Addendum thereto, any Statement of Work thereunder or any other Transaction Documents requiring execution unless and until the same shall have been duly executed by an authorized representative of Company and Client.

**14.16 Termination of Referral Programs.** Client hereby acknowledges and agrees that any referral program contemplated by any agreement between Client and ICS Software Ltd. has been terminated and that Company has no further obligations to Client or any third party with respect to any such program, including, no obligation to provide any compensation under any such program.

[Remainder of page left intentionally blank]

**EXHIBIT A**  
**Business Associate Addendum**

**I. GENERAL PROVISIONS**

**Section 1.1. Applicability.** This Business Associate Addendum (this “**Addendum**”) relates to Protected Health Information received by Company from or on behalf of the Client (“**PHI**”). This Addendum shall replace and supersede any previous Business Associate Agreement entered into between Client and Company (as assignee of ICS Software Ltd.) and the terms and conditions of this Addendum shall override and control any conflicting terms or conditions relating to Company’s use or disclosure PHI in any other arrangement existing between the Client and Company (as assignee of ICS Software Ltd.).

**Section 1.2. HIPAA Amendments.** The Parties acknowledge and agree that the Health Information Technology for Economic and Clinical Health Act and its implementing regulations impose requirements with respect to privacy, security and breach notification applicable to Business Associates (collectively, the “**HITECH BA Provisions**”). The HITECH BA Provisions and any other future amendments to HIPAA affecting Business Associate Agreements are hereby incorporated by reference into this Addendum as if set forth in this Addendum in their entirety, effective on the later of the effective date of this Addendum or such subsequent date as may be specified by HIPAA.

**Section 1.3. Regulatory References.** A reference in this Addendum to a section in HIPAA means the section as it may be amended from time-to-time. Capitalized terms used in this Addendum without definition shall have the meanings given to them by HIPAA or by this Agreement, as applicable.

**II. OBLIGATIONS OF COMPANY**

**Section 2.1. Use and Disclosure of PHI.** Company may use and disclose PHI as permitted or required under this Agreement (including this Addendum) or as Required by Law, but shall not otherwise use or disclose PHI. Company shall not use or disclose PHI received from the Client in any manner that would constitute a violation of HIPAA if so used or disclosed by the Client (except as set forth in Sections 2.1(a), (b) and (c) of this Addendum). To the extent Company carries out any of the Client’s obligations under the HIPAA Privacy Rule, Company shall comply with the requirements of the HIPAA Privacy Rule that apply to the Client in the performance of such obligations. Without limiting the generality of the foregoing, Company is permitted to use or disclose PHI as set forth below:

(a) Company may use PHI internally for Company’s proper management and administrative services or to carry out its legal responsibilities;

(b) Company may disclose PHI to a third party for Company’s proper management and administration, provided that the disclosure is Required by Law or Company obtains reasonable assurances from the third party to whom the PHI is to be disclosed that the third party will (1) protect the confidentiality of the PHI, (2) only use or further disclose the PHI as Required by Law or for the purpose for which the PHI was disclosed to the third party and (3) notify Company of any instances of which the person is aware in which the confidentiality of the PHI has been breached;

(c) Company may use PHI to provide Data Aggregation services as defined by HIPAA;

(d) Company may use PHI to create de-identified health information in accordance with the HIPAA de-identification requirements. Without limiting any other rights of Company under this Agreement, Company may use, create, sell, disclose to third parties and otherwise commercialize de-identified health information for any purposes not prohibited by law. Company owns all right, title and interest in such de-identified health information and any data, information and material created by Company with such de-identified health information. For the avoidance of doubt, the second and third sentences of this Section 2.1(d) shall survive the expiration or earlier termination of this Agreement;

(e) Company may use and disclose PHI to develop, create, improve, update or otherwise change currently contracted for or new products and services for Client and other customers of Company;

(f) Company may use and disclose PHI for purposes of obtaining an authorization to use and disclose PHI or any other permission from an individual and

(g) Company may use and disclose PHI for Research purposes as permitted by applicable law.

**Section 2.2. Safeguards.** Company shall use reasonable and appropriate safeguards to prevent the use or disclosure of PHI except as otherwise permitted or required by this Addendum. In addition, Company shall implement Administrative Safeguards, Physical Safeguards and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of PHI transmitted or maintained in Electronic Media (“**E PHI**”) that it creates, receives, maintains or transmits on behalf of the Client. Company shall comply with the HIPAA Security Rule with respect to E PHI.

**Section 2.3. Minimum Necessary Standard.** To the extent required by the “minimum necessary” requirements of HIPAA, Company shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure.

**Section 2.4. Mitigation.** Company shall take reasonable steps to mitigate, to the extent practicable, any harmful effect (that is known to Company) of a use or disclosure of PHI by Company in violation of this Addendum.

**Section 2.5. Subcontractors.** Company shall enter into a written agreement meeting the requirements of 45 C.F.R. §§ 164.504(e) and 164.314(a)(2) with each Subcontractor (including, without limitation, a Subcontractor that is an agent under applicable law) that creates, receives, maintains or transmits PHI on behalf of Company. Company shall ensure that the written agreement with each Subcontractor obligates the Subcontractor to comply with restrictions and conditions that are at least as restrictive as the restrictions and conditions that apply to Company under this Addendum.

**Section 2.6. Reporting Requirements.**

(a) If Company becomes aware of a use or disclosure of PHI in violation of this Agreement by Company or by a third party to which Company disclosed PHI, Company shall report any such use or disclosure to the Client without unreasonable delay.

(b) Company shall report any Security Incident involving EPHI that is not an Unsuccessful Security Incident (as defined below) of which Company becomes aware without unreasonable delay. Company hereby notifies Client of pings and other broadcast attacks on a firewall, denial of service attacks, port scans, unsuccessful login attempts, interception of encrypted information where the encryption key is not compromised, and other Unsuccessful Security Incidents. Company will provide additional information about Unsuccessful Security Incidents on a reasonable basis, orally or in writing, if requested by Client. If the HIPAA security regulations are amended to remove the requirement to report Unsuccessful Security Incidents, the requirement hereunder to report Unsuccessful Security Incidents will no longer apply as of the effective date of the amendment. “**Unsuccessful Security Incident**” means a Security Incident that does not involve unauthorized access, use, disclosure, modification or destruction of EPHI or interference with an Information System in a manner that poses a material threat to the Confidentiality, Integrity, or Availability of the EPHI.

(c) Company shall, following the discovery of a Breach of Unsecured PHI, notify the Client of the Breach in accordance with 45 C.F.R. § 164.410 without unreasonable delay and in no case later than sixty (60) days after discovery of the Breach.

**Section 2.7. Access to Information.** Company shall make available PHI to Client in accordance with this Agreement for so long as Company maintains the PHI in a Designated Record Set. If Company receives a request for access to PHI directly from an Individual, Company shall forward such request to Client within ten (10) business days. Client shall have the sole responsibility for determining whether to approve a request for access to PHI and to provide such access to the Individual.

**Section 2.8. Availability of PHI for Amendment.** Company shall provide PHI to Client for amendment, and incorporate any such amendments in the PHI (for so long as Company maintains such information in the Designated Record Set), in accordance with this Agreement and as required by 45 C.F.R. § 164.526. If Company receives a request for amendment to PHI directly from an Individual, Company shall forward such request to Client within ten (10) business days. Client shall have the sole responsibility for determining whether to approve an amendment to PHI and to make such amendment.

**Section 2.9. Accounting of Disclosures.** Within thirty (30) business days of written notice by Client to Company that it has received a request for an accounting of disclosures of PHI (other than disclosures to which an exception to the accounting requirement applies), Company shall make available to Client such information as is in Company’s possession and is required for Client to make the accounting required by 45 C.F.R. § 164.528. If Company receives a request for an accounting directly from an Individual, Company shall forward such request to Client within seven (7) business days. Client shall have the sole responsibility for providing an accounting to the Individual.

**Section 2.10. Availability of Books and Records.** Following reasonable advance written notice, Company shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Company on behalf of, Client available to the Secretary for purposes of determining Client’s compliance with HIPAA.

### III. OBLIGATIONS OF THE CLIENT

**Section 3.1. Permissible Requests.** The Client shall not request Company to use or disclose PHI in any manner that would not be permissible under HIPAA if done by Client.

**Section 3.2. Minimum Necessary Information.** When Client discloses PHI to Company, Client shall provide the minimum amount of PHI necessary for the accomplishment of Client's purpose.

**Section 3.3. Appropriate Disclosure of PHI to Company.** Client and its employees, representatives, consultants, contractors and agents shall not disclose or otherwise submit any Protected Health Information to Company outside of the Licensed Software or the Hosted Software, including, but not limited to, submissions to any online forum made available by Company to its customers or email transmissions.

**Section 3.4. Permissions; Restrictions.** Client warrants that it has obtained and will obtain any consent, authorization and/or other legal permission required under HIPAA and other applicable law for the disclosure of PHI to Company. Client shall notify Company of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Company's use or disclosure of PHI. Client shall not agree to any restriction on the use or disclosure of PHI under 45 CFR § 164.522 that restricts Company's use or disclosure of PHI under this Agreement (including under this Addendum) unless such restriction is Required By Law or Company grants its written consent.

**Section 3.5. Notice of Privacy Practices.** Except as Required By Law, with Company's consent or as set forth in this Agreement, Client shall not include any limitation in Client's notice of privacy practices that limits Company's use or disclosure of PHI under this Agreement (including this Addendum).

### IV. TERMINATION OF THIS AGREEMENT

**Section 4.1. Addendum Term.** Without limiting any other term of this Agreement (including this Addendum), this Addendum shall continue in full force and effect for so long as Company maintains any PHI.

**Section 4.2. Termination Upon Breach of this Addendum.** Any other provision of this Agreement notwithstanding, this Agreement may be terminated by either Party (the "**Non-Breaching Party**") upon ninety (90) days written notice to the other Party (the "**Breaching Party**") in the event that the Breaching Party materially breaches this Addendum in any material respect and such breach is not cured within such ninety (90) day period. Any determination of whether a material breach has been cured shall be made by Company in its sole discretion.

**Section 4.3. Return or Destruction of PHI upon Termination.** Upon termination of this Agreement, Company shall return or destroy all PHI received from Client or created or received by Company on behalf of Client and which Company still maintains as PHI. Notwithstanding the foregoing, to the extent that Company determines, in its sole discretion, that it is not feasible to return or destroy such PHI, this Addendum (including, without limitation, Section 2.1(d) of this Addendum) shall survive termination of this Agreement and such PHI shall be used or disclosed solely for such purpose or purposes which prevented the return or destruction of such PHI.

## EXHIBIT B

### American Medical Association

**The Products may contain certain “Editorial Content” provided under license from the American Medical Association (“AMA”). “Editorial Content” means content from the print publication *Current Procedural Terminology, Fourth Edition* (“CPT Book”) and the data file(s) of *Current Procedural Terminology* (“CPT<sup>®</sup>”) including CPT<sup>®</sup> Standard, CPT<sup>®</sup> Enhanced and Developer’s Toolkit, all as available from the AMA (individually and collectively called “CPT Data File”) published by the AMA in the English language as used in the United States (collectively, “CPT”), a coding work of nomenclature and codes for reporting of healthcare services, together with (a) content from the data file published by the AMA of the *International Classification of Diseases 9th Revision Clinical Modification Volume 1* (“AMA’s Version of ICD-9-CM”); (b) content from the data file published by the AMA of the *International Classification of Diseases 10th Revision Clinical Modification and Procedure Coding System* (“AMA’s Version of ICD-10-CM/PCS”); and (c) content from the data file published by the AMA of the *Healthcare Common Procedure Coding System Level II* (“AMA’s Version of HCPCS”).**

**Restrictions.** Client acknowledges that its right to use the Editorial Content will be non-exclusive, non-transferable, for the sole purpose of internal use by Client in connection with the Products, within the United States of America. The Client shall not publish, distribute via the Internet or other public computer based information system, create derivative works (including translations), transfer, sell, lease, license or otherwise make available to any unauthorized party the Editorial Content. Client shall ensure that anyone with authorized access to the Products will comply with the foregoing restrictions. The provision of updated Editorial Content in the Products is dependent on continuing contractual relationship between Company and the AMA, and neither Company nor the AMA make any representations that the Editorial Content will continue to be available. The Client may not make any copies of the Editorial Content. All notices of proprietary rights relating to the Editorial Content, including trademark and copyright notices, must appear on all permitted back up or archival copies of the Products. If any of the terms of this Exhibit B are determined to violate any law or to be unenforceable, the remainder of the terms will continue in full force and effect. If Client violates any terms of this Exhibit B, Client’s rights to use the Editorial Content will terminate automatically. Client acknowledges and agrees that only Authorized Users of the Products shall use the Editorial Content.

WITHOUT LIMITING THE TERMS OF SECTION 11 OF THIS AGREEMENT, THE EDITORIAL CONTENT IS PROVIDED “AS IS” WITHOUT WARRANTY BY THE AMA, AND AMA WILL HAVE NO LIABILITY IN CONNECTION WITH THE EDITORIAL CONTENT, INCLUDING WITHOUT LIMITATION, LIABILITY FOR CONSEQUENTIAL OR SPECIAL DAMAGES, OR LOST PROFITS FOR SEQUENCE, ACCURACY, OR COMPLETENESS OF DATA, OR THAT IT WILL MEET THE END USER’S REQUIREMENTS, OR ANY CONSEQUENCES DUE TO USE, MISUSE, OR INTERPRETATION OF INFORMATION CONTAINED OR NOT CONTAINED IN EDITORIAL CONTENT.

Client hereby acknowledges the following: CPT is copyrighted by the AMA and that CPT is a registered trademark of the AMA.

*Applicable FARS/DFARS Restrictions Apply to Government Use.*

#### U.S. Government Rights

*This product includes CPT which is commercial technical data and/or computer data bases and/or commercial computer software and/or commercial computer software documentation, as applicable, which was developed exclusively at private expense by the American Medical Association, AMA Plaza, 330 N.*

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This Exhibit B will survive any expiration or termination of this Agreement.