

Master Subscription Agreement

THIS MASTER SUBSCRIPTION AGREEMENT (THIS “**AGREEMENT**”) GOVERNS YOUR (THE “**CUSTOMER’S**”) ACQUISITION AND USE OF THE TOUCHMD SERVICES PROVIDED BY AVEZEN, LLC (THE “**PROVIDER**”).

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING AN ICON OR BUTTON INDICATING CUSTOMER’S ACCEPTANCE, BY EXECUTING THE ORDER FORM TITLED TOUCHMD SOFTWARE PURCHASE AGREEMENT THAT REFERENCES THIS AGREEMENT OR BY USING PROVIDER’S SERVICES AND SERVICE SOFTWARE, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF THE PERSON ACCEPTING THIS AGREEMENT DOES SO ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH PERSON REPRESENTS THAT THEY HAVE THE LEGAL AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM “CUSTOMER” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF SUCH PERSON DOES NOT HAVE AUTHORITY, OR IF CUSTOMER DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, CUSTOMER MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

This Agreement is effective between Customer and Provider as of the date Customer accepts this Agreement. By accepting this Agreement, Customer agrees to have this Agreement provided in electronic format.

1. New User COVID-19 60-Day Free Trial.

1.1 Customer during COVID-19 Application. **If you acquired Provider’s Service Software prior to or after the COVID-19 pandemic, this Section 1 does not apply to you.** If you acquired Provider’s Service Software during or around the COVID-19 pandemic with a calendar date of around March 16, 2020-June 30, 2020, this Section 1 applies to you in addition to all other terms in this Agreement.

1.2 TouchMD Software Purchase Agreement. You may have executed an Order Form titled TouchMD Software Purchase Agreement. If so, the terms on the Order Form are incorporated herein by this reference.

1.3 60-Day Free Trial. Determined by the calendar day that your Software Service is activated as the starting date, you may use the Service Software without cost from Provider for 60-days, unless this Agreement is terminated earlier by Provider or Customer as stated herein. Customer agrees to use the Service Software in compliance with this Agreement and/or the Order Form during this 60-day free trial period. Customer agrees that Customer has a limited license to use the Service Software that will be terminated upon the 60-day free trial ending.

1.4 Termination of 60-Day Free Trial. At the end of the 60-day trial period, Customer agrees that Provider reserves the right to terminate all rights and all access Customer may have relating to Provider, Provider’s Service Software or any service offered by Provider; however, Customer may purchase the services provided by Provider to continue using services offered by Provider. Provider agrees to use email, text or phone call to notify Customer that their 60-day trial is ending. Customer will need to notify Provider via email, text or phone call of Customer’s intent to continue to use Provider’s Service Software.

1.5 Limited Rights During 60-Day Free Trial Period. Customer acknowledges that Customer has a limited, nontransferable right to use Provider’s services as stated herein. Customer acknowledges that Customer may not have access to all Provider services during the 60-day trial period due to uncovered expenses caused to Provider. For a detailed

list of unavailable services please contact a Provider representative. Upon purchase, the complete Service Software and Provider Systems and all services offered by Provider will be available to Customer.

2. Definitions.

“**Access Credentials**” means any user name, password, license or security key, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the Hosted Services.

“**Authorized User**” means the legal entity and or individuals identified in the Order Form and authorized to use the Services pursuant to **Section 4.1** and the other terms and conditions of this Agreement.

“**Customer Data**” means, other than Resultant Data, information, data and other content, in any form or medium, that is collected, downloaded or otherwise received, directly or indirectly from Customer or an Authorized User by or through the Services.

“**Customer Systems**” means the Customer’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services.

“**Documentation**” means any manuals, instructions or other documents or materials that the Provider provides or makes available to Customer in any form or medium and which describe the functionality, components, features or requirements of the Services or Provider Materials, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

“**Harmful Code**” means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data Processed thereby, or (b) prevent Customer or any Authorized User from accessing or using the Services or Provider Systems as intended by this Agreement.

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, treaty, common law, judgment, decree or other requirement of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

“**Losses**” means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“**Order Form**” means any order form, software purchase agreement, subscription agreement or other agreement relating to the Services which references this Agreement.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.

“**Process**” means to take any action or perform any operation or set of operations that the Service Software is capable of taking or performing on any data, information or other content. “**Processing**” and “**Processed**” have correlative meanings.

“**Provider Materials**” means the Service Software, Order Forms, Documentation and Provider Systems and any and all other information, data, documents, materials, works and other content, devices, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Provider or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Provider Systems. For the avoidance of doubt, Provider Materials include Resultant Data and any information, data or other content derived from Provider’s monitoring of Customer’s access to or use of the Services, but do not include Customer Data.

“**Provider Personnel**” means all individuals involved in the performance of Services as employees, agents or independent contractors of Provider or any Subcontractor.

“**Provider Systems**” means the information technology infrastructure used by or on behalf of Provider in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Provider or through the use of third-party services.

“**Resultant Data**” means information, data and other content that is derived by or through the Services from Processing Customer Data and is sufficiently different from such Customer Data that such Customer Data cannot be reverse engineered or otherwise identified from the inspection, analysis or further Processing of such information, data or content. Resultant Data shall also include any Customer Data, aggregated anonymously by Provider, to provide its own value-added consolidated data values, benchmarks, other data ‘measures’ etc. that in no way identifies, or reflects in any way upon, Customer, or discloses Customer’s patients’ protected health information

“**Service Software**” means the Provider software application or applications and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Provider provides remote access to and use of as part of the Services.

“**Third Party Materials**” means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to Provider.

3. Services.

3.1 Services. Subject to and conditioned on Customer’s and its Authorized Users’ compliance with the terms and conditions of this Agreement, during the Term, Provider shall use commercially reasonable efforts to provide to Customer and its Authorized Users the product and services described in the applicable Order Form or in this Agreement (collectively, the “**Services**”) in accordance with the specifications and terms and conditions hereof, including to host, manage, operate and maintain the Service Software for remote electronic access and use by Customer and its Authorized Users (“**Hosted Services**”) 24 hours per day, seven days per week every day of the year, except: (i) scheduled system back-up or other on-going maintenance as required and scheduled in advance by Provider, or (ii) for any unforeseen cause beyond Provider’s reasonable control, including but not limited to internet service provider or communications network failures, denial of service attacks or similar attacks, or any Force Majeure Events set forth in this Agreement. Provider will monitor performance indicators on the systems and network infrastructure (its own and that of third party suppliers) in order to gauge the overall performance of its hosting services, and will take reasonable steps to address systems and network infrastructure as required to maintain satisfactory performance of the Software. Provider further reserves the right to monitor and reasonably restrict Customer’s ability to use the Services if Customer is using excessive computing resources and such use is impacting the performance of the Services for other subscribers. Provider agrees to notify Customer in cases where it restricts such use and use good faith efforts to determine an appropriate alternative or work-around solution.

3.2 Service and System Control. Except as otherwise expressly provided in this Agreement, as between the parties:

(a) Provider has and will retain sole control over the operation, provision, maintenance and management of the Services and Provider Materials; and

(b) Customer has and will retain sole control over the operation, maintenance and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Services and Provider Materials by any Person by or through the Customer Systems or any other means controlled by Customer or any Authorized User.

3.3 Subcontractors. Provider may from time to time in its discretion engage third parties to perform Services (each, a “**Subcontractor**”).

3.4 Suspension or Termination of Services. Provider may, directly or indirectly by any lawful means, suspend, terminate or otherwise deny Customer’s, any Authorized User’s or any other Person’s access to or use of all or any part of the Services or Provider Materials, without incurring any resulting obligation or liability, if: (a) Provider receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Provider to do so; or (b) Provider believes, in its good faith and sole discretion, that: (i) Customer or any Authorized User has failed to comply with, any term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of the specifications; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities; or (iii) this Agreement expires or is terminated. This **Section 3.4** does not limit any of Provider’s other rights or remedies, whether at law, in equity or under this Agreement.

4. Authorization and Customer Restrictions.

4.1 Authorization. Subject to and conditioned on Customer’s payment of the Fees and compliance and performance in accordance with all other terms and conditions of this Agreement and/or Order Form, Provider hereby authorizes Customer with the right to access and use, during the Term, the Services and such Provider Materials as Provider may supply or make available to Customer solely for the permitted use by and through Authorized Users in accordance with the conditions and limitations set forth in this Agreement. This authorization is non-exclusive and other than as may be expressly set forth in this Agreement non-transferable.

4.2 Authorization Limitations and Restrictions. Customer shall not, and shall not permit any other Person to, access or use the Services, Provider Materials, or Third-Party Materials except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits: (a) copy, modify or create derivative works or improvements of the Services or Provider Materials; (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services or Provider Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service; (c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services, Provider Materials, or Third-Party Materials, in whole or in part; (d) bypass or breach any security device or protection used by the Services, Provider Materials, or Third-Party Materials or access or use the Services, Provider Materials, or Third-Party Materials other than by an Authorized User through the use of his or her own then valid Access Credentials; (e) input, upload, transmit or otherwise provide to or through the Services, Provider Systems, or Third-Party Materials, any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code; (f) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, Provider Systems, Third-Party Materials or Provider’s provision of services to any third party, in whole or in part; (g) remove, delete, alter or obscure any trademarks, specifications, Documentation, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services, Provider Materials, or Third-Party Materials, including any copy thereof; (h) access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes; or (i) access or use the Services beyond the scope of the authorization granted under **Section 4.1**.

5. Customer Obligations.

5.1 Customer Systems and Cooperation. Customer shall at all times during the Term: (a) set up, maintain and operate in good repair and in accordance with any system requirements all Customer Systems on or through which the Services are accessed or used; (b) provide Provider Personnel with such access to Customer's premises and Customer Systems as is necessary for Provider to perform the Services in accordance with the Agreement; and (c) provide all cooperation and assistance as Provider may reasonably request to enable Provider to exercise its rights and perform its obligations under and in connection with this Agreement.

5.2 Effect of Customer Failure or Delay. Provider is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "**Customer Failure**").

5.3 Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by **Section 4.2**, Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Provider Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Provider within 48 hours of any such actual or threatened activity.

6. Service Support. The Services include Provider's standard customer support services ("**Support Services**") in accordance with the Provider service support schedule then in effect.

7. Data Backup. The Services do not replace the need for Customer to maintain regular data backups or redundant data archives. PROVIDER HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF CUSTOMER DATA.

8. Security.

8.1 Provider Systems and Security Obligations. Provider will employ security measures in accordance with applicable industry practice.

8.2 Customer Control and Responsibility. Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (c) Customer Systems; (d) the security and use of Customer's and its Authorized Users' Access Credentials; and (e) all access to and use of the Services and Provider Materials directly or indirectly by or through the Customer Systems or its Authorized Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

8.3 Access and Security. Customer shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Hosted Services; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Hosted Services. Customer will not: (i) transmit or share Access Credentials to or with persons other than Authorized Users under the terms hereof, (ii) permit such Access Credentials to be cached in proxy servers and accessed by individuals who are not Authorized Users under the terms hereof, or (iii) permit access to the Services through a single identification or password code being made available to multiple users on any network. Customer shall be solely responsible for assigning and ensuring the security and confidentiality of all Access Credentials with respect to access to and use of the Services by its Authorized Users. Customer acknowledges that it will be fully responsible for all liabilities incurred through the use of any Access Credentials with respect to the Services assigned by Customer and that any transactions on the Services

under Access Credentials assigned by Customer will be deemed to have been performed by Customer. Customer shall notify Provider immediately of any unauthorized uses of any Access Credentials. Use of any Access Credentials assigned by Customer other than as provided in this Agreement shall constitute a breach of this Agreement by Customer.

8.4 HIPAA Compliance.

(a) Business Associate Agreement. Customer and Provider will enter into Provider's form of Business Associate Agreement attached hereto as Exhibit A.

(b) Compliance with Policies and Procedures. Provider and the Customer shall comply with the standards for the confidentiality, security, and use of patient health information, including without limitation PHI described in Health Insurance Portability and Accountability Act of 1996, as the same has been amended and modified ("**HIPAA**"). The Customer shall comply with such standards regardless of whether or not the Customer is a "Covered Entity" under HIPAA.

(c) Reporting of Serious Breaches. Customer shall report to Provider within 48 hours any serious use or disclosure of "protected health information," as that term is defined in HIPAA ("**PHI**"), not provided for by this Agreement of which Customer becomes aware, and any security incident concerning electronic PHI (in either event, a "**Serious Breach of Confidentiality or Security**"). A "Serious Breach of Confidentiality or Security" is one that adversely affects (a) the viability of the Services, (b) the trust among Customers or (c) Provider's or other Customers' legal liability.

(d) Compliance with Laws and Regulations. Customer covenants that it shall perform its roles and responsibilities hereunder in all respects in compliance with applicable federal, state, and local laws and regulations.

(e) Training. The Customer shall provide appropriate and adequate training to all of the Customer's personnel, including without limitation Authorized Users, in the use of the System and the Services, the requirements of this Agreement and the Policies and Procedures, the requirements of applicable laws and regulations governing the confidentiality, privacy, and security of PHI, including without limitation requirements imposed under HIPAA.

(f) Patient Consent; Notice of Privacy. The Customer warrants and represents that it shall utilize Notice of Privacy notifying the patient of the intended use and mode of disclosure of PHI, and patient consent forms which are compliant with applicable laws and regulations including without limitation, HIPAA and similar state and federal laws and appropriate for use in the Services, and that all patient consent forms shall have been executed by Customer's patients who consent to the transmission of their PHI via the Services. Customer hereby agrees to indemnify, hold harmless and defend Provider, its remote cloud host, and Provider's shareholders, officers, directors, employees, agents and representatives from any and all loss, damages and expenses, including reasonable attorneys' fees, arising out of any claim, action, proceeding, investigation or otherwise in connection with Customer's failure to obtain patient consent or other unauthorized disclosure of PHI via the Services. Customer will provide each patient with a copy of Customer's Notice of Privacy Practices.

(g) Customer Audit. Customer will be subject to audit by Provider (or a third party engaged by Provider for such purposes) to confirm compliance with this Agreement and proper use of the System and Services in accordance with this Agreement and the Policies and Procedures. Such audits will take place during business hours and upon reasonable notice to Customer. Such audits will be performed at the expense of Provider, and in a manner designed to reasonably minimize interference with Customer's day-to-day operations.

9. Fees; Payment Terms.

9.1 **Fees.** Customer shall pay Provider all fees set forth in any Order Form (“**Fees**”). All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for the payment of all taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Provider’s income. Fees paid by Customer to Provider are not refundable. Provider will provide any discounts provided for on the Order Form or pursuant to the Provider’s then current discount program.

9.2 **Payment.** Customer shall pay all Fees set forth in the Order Form on or prior to the due date set forth in the Order Form, or otherwise when payments are due. Customer shall make all payments hereunder in US dollars by Credit Card, Automated Clearing House (ACH) withdrawal, personal check, business check or cashier’s check.

9.3 **Late Payment.** If Customer fails to make any payment when due then, in addition to all other remedies that may be available, Provider may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law and Customer shall reimburse Provider for all costs incurred by Provider in collecting any late payments or interest, including attorneys’ fees, court costs and collection agency fees.

9.4 **Payment Method.** Customer shall provide Provider with a current, valid, accepted method of payment (as such may be updated from time to time, “**Payment Method**”) to use the Hosted Service. During the Term, Provider will bill any monthly fees to Customer’s Payment Method. Upon execution of the Order Form, Provider will bill the Payment Method for any fees due upon execution of the Order Form. Customer may edit the Payment Method information by contacting Provider’s customer care center at 1-435-867-0077. If any payment is not successfully settled, due to expiration, insufficient funds, or otherwise, and Customer does not edit Customer’s Payment Method information, Customer will remain responsible for any uncollected amounts (subject to the applicable late payment charges) and Customer authorizes Provider to continue billing the Payment Method, as it may be updated. For certain Payment Methods, the issuer of Customer’s Payment Method may charge Customer a foreign transaction fee or other charges, which Customer is solely responsible for. Customer is advised to check with their Payment Method service provider for details.

9.5 **Recurring Billing.** By executing an Order Form, Customer authorizes Provider to charge Customer any monthly fees at the rates set forth on the Order Form (the “**Monthly Fees**”), and any other charges Customer may incur in connection with Customer’s use of the Services to Customer’s Payment Method. Customer acknowledges that the amount billed each month may vary from month to month for reasons that may include late payment fees or access to the Services for additional Authorized Users, and Customer authorizes Provider to charge Customer’s Payment Method for such varying amounts, which may be billed monthly in one or more charges.

9.6 **Billing Cycle.** During the term, Monthly Fees will be billed on the cycle set forth on the Order Form. Provider will automatically bill Customer’s Payment Method each month on the applicable day of the billing cycle. Monthly fees are fully earned by Provider upon payment. Provider may authorize Customer’s Payment Method in anticipation of service-related charges. As used in this Agreement, “billing” shall indicate a charge, debit or other payment clearance, as applicable, against Customer’s Payment Method. Unless otherwise stated differently, month or monthly refers to Customer’s billing cycle.

10. **Intellectual Property Rights.**

10.1 **Services and Provider Materials.** Subject to the limited rights granted hereunder, all right, title and interest in and to the Services and Provider Materials, including all Intellectual Property Rights therein, are and will remain with Provider and the respective rights holders in the Third-Party Materials. In addition to the foregoing, Customer acknowledges that Provider shall have the right to utilize data capture and analysis tools, and other similar tools, to

extract, compile and analyze any Resultant Data. To the extent that any Resultant Data is collected by Provider, such Resultant Data shall be solely owned by Provider and may be used by Provider for any lawful business purpose without a duty of accounting to Customer, provided that the Resultant Data is used only in an aggregated form, without specifically identifying the source of the Resultant Data. Without assuming any obligations or liabilities of Customer, Provider agrees to use commercially reasonable efforts to comply with the applicable U.S. laws and regulations respecting the dissemination and use of such Resultant Data.

10.2 Customer Data. As between Customer and Provider, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in **Section** 10.3. Customer shall have sole responsibility for the accuracy integrity and reliability of Customer Data and Provider will not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. Customer acknowledges that Provider exercises no control whatsoever over any Customer Data managed by Authorized Users while accessing the Service and that Customer is solely responsible for the Customer Content. Customer covenants that at no time shall Customer Content contain (i) any defamatory, (ii) or otherwise unlawful information, data or material, provision of the Service or (iii) any information whose use in connection with the Services infringes the Intellectual Property rights of any third parties. In the event that Customer requests Provider (and Provider agrees) to enter and/or process information on Customer's behalf, Customer shall be responsible for verifying all such information promptly after Provider's processing and Customer acknowledges that Provider shall not be responsible for the accuracy (or inaccuracy) of any such information or any issues that may arise out of its processing of such information. In the event that inaccurate data is processed by Provider, Provider's sole liability, and Customer's exclusive remedy, shall be for Provider to make a good faith effort to correct the affected data or remove the inaccurate information from its database. Provider is under no obligation to review the Customer Content for accuracy, potential liability or for any other reason.

10.3 Consent to Use Customer Data. Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data: (a) to Provider, its Subcontractors and the Provider Personnel as are necessary or useful to perform the Services; and (b) to Provider as are necessary or useful to enforce this Agreement and exercise its rights and perform hereunder.

11. Confidentiality.

11.1 Definition of Confidential Information. "Confidential Information" means all information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's Confidential Information includes Customer's Data; Our Confidential Information includes the Services and Content; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

11.2 Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its affiliates' employees and contractors who need that access for purposes consistent with this

Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its affiliate, legal counsel or accountants will remain responsible for such affiliate's, legal counsel's or accountant's compliance with this **Section 10.2**.

11.3 **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

12. Term and Termination.

12.1 **Term of Agreement.** This Agreement commences on the date Customer first accepts it and continues until all subscriptions hereunder have expired or have been terminated.

12.2 **Term of Purchased Subscriptions.** The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term, unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per-unit pricing during any automatic renewal term will be the same as that during the immediately prior term unless Provider have given Customer written notice of a pricing increase at least 60 days before the end of that prior term, in which case the pricing increase will be effective upon renewal and thereafter.

12.3 **Termination.** In addition to any other express termination right set forth elsewhere in this Agreement:

(a) Provider may terminate this Agreement, effective on written notice to Customer, if Customer: (i) fails to pay any amount due, and such failure continues more than 15 days after Provider's delivery of notice thereof, (ii) violates any Law; or (ii) breaches any of its obligations under **Section 4.2** (Use Limitations and Restrictions) or **Section 11** (Confidentiality).

(b) Either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach; and

(c) Either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(d) Customer may terminate this Agreement at any time and for any reason, after giving Provider (10) ten days written notice.

12.4 **Effect of Expiration or Termination.** Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

(a) All rights, licenses, consents and authorizations granted by either party to the other hereunder will immediately terminate;

(b) Customer shall immediately cease all use of any Services or Provider Materials and (i) within 15 days return to Provider, or at Provider's written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on any Provider Materials or Provider's Confidential Information;

(c) Provider may disable all Customer and Authorized User access to the Hosted Services and Provider Materials;

(d) If Customer terminates this Agreement pursuant to **Section 12.3(b)**, Customer will be relieved of any obligation to pay any Fees attributable to the period after the effective date of such termination;

(e) If Provider terminates this Agreement pursuant to **Section 12.3(a)** or **Section 12.3(b)**, all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Customer shall pay such Fees, together with all previously-accrued but not yet paid Fees and Reimbursable Expenses, on receipt of Provider's invoice therefore.

12.5 Return of Customer Data. Upon request by Customer made within 30 days after the effective date of termination of the Term, Provider will make available to Customer for download a file of Customer Data in a reasonable format at the price then charged by Provider for such services. After such 30-day period, Provider shall have no obligation to maintain or provide any of Customer Data and shall thereafter, unless legally prohibited, delete all of Customer Data in its systems or otherwise in its possession or under its control. Provider shall not be responsible for, or obligated to Customer for, extraction and delivery of data in any other format, or any other data handling service and such requests by Customer will be considered by Provider without obligation on a fee-paid basis.

12.6 Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: **Section 4.2, Section 9, Section 11, Section 12.4, Section 11.5 Section 11.6, Section 11.7, Section 11.8, Section 13, Section 15 and Section 18.**

13. Customers Representations, Warranties and Covenants.

13.1 Customer Representations, Warranties and Covenants. Customer represents, warrants and covenants to Provider that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Provider and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law.

14. Indemnification.

14.1 Provider Indemnification. Provider shall indemnify, defend and hold harmless Customer from and against any and all Losses incurred by Customer arising out of or relating to any claim, suit, action or proceeding (each, an "**Action**") by a third party (other than an affiliate of Customer that Customer's or an Authorized User's use of the Services (excluding Customer Data and Third Party Materials) in compliance with this Agreement (including the specifications) infringes a U.S. Intellectual Property Right.

14.2 Customer Indemnification. Customer shall indemnify, defend and hold harmless Provider and its Subcontractors and affiliates, and each of its and their respective officers, directors, employees, agents, successors and assigns (each, a "**Provider Indemnitee**") from and against any and all Losses incurred by such Provider Indemnitee in connection with any Action by a third party related to any: (a) Customer Data, including any Processing of Customer Data by or on behalf of Provider in accordance with this Agreement; (b) allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants or obligations under this Agreement; or (b) gross negligence or more culpable act or omission by Customer, any Authorized User, or any third party on behalf of Customer or any Authorized User, in connection with this Agreement.

14.3 Indemnification Procedure. Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified pursuant to **Section 14.1** or **Section 14.2**, as the case may be. The party seeking indemnification (the “**Indemnitee**”) shall cooperate with the other party (the “**Indemnitor**”) at the Indemnitor’s sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Action and shall employ counsel to handle and defend the same, at the Indemnitor’s sole cost and expense. The Indemnitee’s failure to perform any obligations under this **Section 14.3** will not relieve the Indemnitor of its obligations under this **Section 13** except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. Customer shall not enter into any settlement without the consent of Provider unless such settlement specifically and unconditionally releases Provider of all liability.

THIS SECTION 13 SETS FORTH CUSTOMER’S SOLE REMEDIES AND PROVIDER’S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND PROVIDER MATERIALS) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.

15. Limitations of Liability.

15.1 Limitation of Liability. NEITHER PARTY’S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL EITHER PARTY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT CUSTOMER’S PAYMENT OBLIGATIONS UNDER SECTION 8 (FEES AND PAYMENT FOR THE SERVICES).

15.2 Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

15.3 Waiver of Certain Risk. CUSTOMER REPRESENTS AND WARRANTS THAT CUSTOMER KNOWS AND AGREES THAT NO ON-LINE SERVICE IS COMPLETELY SECURE AGAINST UNAUTHORIZED ACCESS, AND THAT, WHEN USING THE SERVICES, IT WILL BE TRANSMITTING DATA OVER PUBLIC NETWORKS THAT ARE INHERENTLY INSECURE. ALTHOUGH PROVIDER WILL TAKE COMMERCIALY AND TECHNICALLY REASONABLE PRECAUTIONS TO PREVENT UNAUTHORIZED ACCESS, CUSTOMER ASSUMES ALL RISK ASSOCIATED WITH UNAUTHORIZED INTERCEPTION, USE AND ACCESS TO DATA SENT BY AND TO CUSTOMER WHEN USING THE SERVICES. PROVIDER IS NOT AND WILL NOT BE RESPONSIBLE FOR DISRUPTION OF SERVICES OR LOSS OF DATA, OR ANY OTHER DAMAGE, LOSS OR LIABILITY RESULTING FROM THE SERVICES.

15.4 DISCLAIMER OF WARRANTIES. ALL SERVICES AND PROVIDER MATERIALS ARE PROVIDED “AS IS” AND PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER. ALL THIRD-PARTY MATERIALS ARE PROVIDED “AS IS” AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

16. Reserved Rights.

16.1 Rights Preserved. Any rights not expressly given to Customer by Provider are preserved with Provider.

16.2 Marketing. Customer agrees that Provider may provide marketing and advertising collateral from Provider or third party companies on Provider Materials, Provider Systems, Service Software, and Customer's Systems that are using Provider's Systems, and Service Software in the form of text, images, videos, content packs, ads, links, wraps, banners or other means as decided by Provider to provide a monetary benefit for Customer and Provider.

16.3 Agreements with Customer's Users. Customer agrees that Provider may enter into and cause Customer's Users to agree to the current terms of use agreements with each of Customer's Users prior to Customer's Users using the Services to ensure that Customer's Users will accurately and legally use the Services and agree to the terms thereof ("**User Agreements**").

17. Force Majeure.

17.1 No Breach or Default. In no event shall Provider be liable or responsible to Customer, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by any circumstances beyond Provider's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation.

18. Miscellaneous.

18.1 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

18.2 Notices. Notice, demand, or other communication mandated to be given by this Agreement by either party to the other shall be sufficiently given or delivered if it is sent by e-mail, registered or certified mail, postage prepaid, return receipt requested or delivered personally. Unless Provider is otherwise notified in writing, the Customer's address for notice purposes shall be Customer's address provided as part of Customer's billing information.

18.3 Entire Agreement. This Agreement is the entire agreement between Customer and Provider regarding Customer's use of Services and Software Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) this Agreement, and (3) the Documentation.

18.4 Assignment. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Provider's prior written consent. Any purported assignment, delegation or transfer in violation of this **Section 18.4** is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

18.5 ~~No Third-party Beneficiaries.~~ This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

18.6 ~~Severability.~~ If any provision of this Agreement shall be held illegal, void, or unenforceable, the remaining portions shall remain in full force and effect.

18.7 ~~Governing Law; Submission to Jurisdiction; Waiver of Jury Trial; Waiver of Class Action.~~ This Agreement shall be governed exclusively by the laws of the State of Utah, without regard to its conflicts of laws principles. Any action under or concerning this Agreement shall be brought exclusively in the District Court of Iron County, Utah. The parties irrevocably agree and consent that said forum is convenient and has exclusive jurisdiction to hear and decide any such action. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby. Customer irrevocably and unconditionally waives any right it may have to join; participate in, either directly or indirectly; or be involved with any class action relating to Provider.

Exhibit A

Business Associate Agreement

HIPAA Privacy and Security Assurances

The terms in this Exhibit A (hereunder "Business Associate Agreement" or "this Agreement") are incorporated and integrated within the Master Subscription Agreement (MSA) between Provider, as identified in the Master Subscription Agreement ("MSA"), to which this is attached and hereby integrated, (hereunder "Business Associate") and Customer, as identified in the MSA (hereunder "Covered Entity") with the same Effective Date of the MSA to which this Exhibit is attached (the "Effective Date").

Business Associate will, from time to time, provide certain services for Covered Entity that involve the use and disclosure of Protected Health Information that is created or received by Business Associate from or on behalf of Covered Entity. The Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information, 45 CFR Part 160 and Part 164, Subparts A and E as amended from time to time (the "Privacy Rule"), and with the Security Standards, 45 CFR Part 160 and Part 164, Subparts A and C as amended from time to time (the "Security Rule"), under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act and its implementing regulations ("HITECH"). This Agreement sets forth the terms and conditions pursuant to which Protected Health Information, and, when applicable, Electronic Protected Health Information ("EPHI"), shall be handled.

1. Definitions:

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in HIPAA, the Privacy Rule, the Security Rule and HITECH.

Examples of specific definitions:

- a. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- b. Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- c. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.103
- d. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

2. Obligations of Business Associate

- a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted, required by this Agreement, or Required by Law.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- d. Business Associate agrees to report to Covered Entity (i) any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware and (ii) any Breach of unsecured Protected Health Information as specified by 45 CFR 164.410.

- e. Business Associate agrees to provide access, at the request of Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual.
 - f. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual.
 - g. Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate available to the Covered Entity, or to the Secretary, or to a person designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule or Security Rule.
 - h. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
 - i. Business Associate agrees to provide to Covered Entity information to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
3. Additional Responsibilities of Business Associate with Respect to EPHI. In the event that Business Associate has access to EPHI, in addition to the other requirements set forth in this Agreement relating to Protected Health Information, Business Associate shall:
- a. implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 C.F.R. Part 164, Subpart C;
 - b. ensure that any subcontractor or agent to whom Business Associate provides any EPHI agrees in writing to implement reasonable and appropriate safeguards to protect such EPHI; and
 - c. report to the privacy officer of Covered Entity, in writing, any Security Incident involving EPHI of which Business Associate becomes aware within ten (10) business days of Business Associate's discovery of such Security Incident. For purposes of this Section, a Security Incident shall mean (consistent with the definition set forth at 45 C.F.R. § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system.
4. Permitted Uses and Disclosures by Business Associate
- a. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
5. Obligations of Covered Entity
- a. Covered Entity agrees to not use or disclose Protected Health Information other than as permitted, required by this Agreement, or Required by Law;
 - b. Covered Entity shall provide Business Associate a copy of Covered Entity's notice of privacy practices ("Notice") currently in use;
 - c. Covered Entity shall notify Business Associate of any limitation(s) in its Notice in accordance with 45 CFR § 164.520, to the extent that such limitations may affect Business Associate's use or disclosure of Protected Health Information.

- d. Covered Entity shall notify Business Associate of any changes to the Notice that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information;
- e. Covered Entity shall notify Business Associate of any changes in, or withdrawal of, the consent or authorization of an individual regarding the use or disclosure of Protected Health Information provided to Covered Entity pursuant to 45 C.F.R. § 164.506 or § 164.508, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information; and
- f. Covered Entity shall notify Business Associate in writing and in a timely manner, of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

6. Subsidiaries, Affiliates, Subcontractors.

- a. Subsidiaries and Affiliates. Business Associate has entered into this Agreement on behalf of itself, and its current and future subsidiaries and affiliates, each of which shall be bound hereunder as is Business Associate. Business Associate shall enter into and keep in force with each subsidiary and affiliate, a contract similar in form and format to this Business Associate Agreement so as to provide Covered Entity with the same agreements, assurances, rights and protections with respect to those subsidiaries and affiliates as Covered Entity has with respect to Business Associate.
- b. Subcontractors. Business Associate shall enter into and keep in force with each agent and subcontractor whose functions require access to Protected Health Information, a contract similar in form and format to this Business Associate Agreement so as to provide Covered Entity with the same agreements, assurances, rights and protections with respect to those agents and subcontractors as Covered Entity has with respect to Business Associate.
- c. Support for Covered Entity's Functions. The Privacy Rule permits the Business Associates of Covered Entity to provide Protected Health Information to the Covered Entity's other Business Associates, agents and subcontractors when and where necessary to support Covered Entity in its "Treatment, Payments and Operations" functions, as those are defined in the Privacy Rule, and to make other uses and disclosures in support of Covered Entity where such use or disclosure would be permitted to Covered Entity by the Privacy Rule. Business Associate agrees to limit the use and disclosure of Protected Health Information among its subsidiaries, affiliates and subcontractors to such permitted uses and disclosures.

7. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

8. Term and Termination

- a. Term. The Term of this Agreement shall be effective as of the acceptance date hereof, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is impractical to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
 - 1. Either Covered Entity or Business Associate may terminate this Agreement and any related agreements if the terminating Party determines in good faith that the terminated Party has breached a material term of this Agreement; provided, however, that no Party may terminate this Agreement if the breaching Party cures such breach to the reasonable satisfaction of the terminating Party within thirty (30) business days after the breaching Party's receipt of written notice of such breach.
 - 2. If neither termination nor cure are feasible, the terminating party shall report the violation to the Secretary.

3. Covered Entity may terminate this Agreement at any time and for any reason, after giving Business Associate (10) ten days written notice.

b. Effect of Termination.

1. Upon termination of this Agreement, Business Associate shall return, destroy, or continually protect and cease any use of all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate.
2. Upon termination of this Agreement, Covered Entity agrees to continually protect all Protected Health Information received by or created by Business Associate and follow all regulations Required By Law.

9. Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in HIPAA, HITECH, the Privacy Rule or the Security Rule means the section as in effect or as amended.
- b. Amendment. This Agreement may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of HIPAA or HITECH is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to the revised obligations. Further, no provision of this Agreement shall be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.
- c. Survival. The respective rights and obligations of Business Associate and Covered Entity under "Effect of Termination" and "Survival" above shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.
- e. LIMITATION OF LIABILITY. NO PARTY SHALL BE LIABLE TO ANY OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.