

Third-Party Terms

1. "Company" means, eMDs, Inc., and/or its affiliates or subsidiaries identified in an Order Form.

2. Third-party Items. Customer's Software or Services received from Company may incorporate Third-party Items. Use of Third-party Items by Customer and each User is subject to the terms and conditions of the Agreement, including this Attachment, as well as each license granted to Customer for Third-party Items delivered herewith (each of which is incorporated herein by reference). Any breach of any such license by Customer or a User (as defined in the General Terms and Conditions Applicable to All Software and Services unless otherwise indicated) shall be deemed a material breach of this Agreement. Company and its employees and representatives are each hereby authorized to execute such licenses for Third-party Items on behalf of Customer. Such licenses may terminate in the event of termination of the contractual relationship between the supplier of such Third-party Items and Company. Customer may not: (a) alter or otherwise defeat or violate the licensing scheme for any Third-party Items in order to allow more than the licensed number of workstations or more than the licensed number of Providers or authorized users to utilize or access the Third-party Items; (b) utilize any Third-party Items other than in conjunction with the intended and allowed use of the Software or Services; (c) transfer, rent, lease, lend, copy, modify, translate, sublicense, time-share or electronically transmit or receive any portion of the Third-party Items or Documentation relating to Third-party Items; or (d) allow access by the public to the any Third-party Items via the World Wide Web, or other public access medium. Customer agrees that it will use Third-party Items in accordance with and all applicable statutes and regulations of the State(s) or jurisdiction(s) in which the Customer operates, as well as all applicable Federal statutes, regulations, standards and policy requirements ("Applicable Law") and this Third-Party Terms Agreement.

3. Third-party Items License Fees. In order to provide licenses for Third-party Items, additional Fees may apply or in the future may be required, as indicated on the Order Form. Third-party Items may need to be upgraded or be revised from time to time, and additional charges shall apply.

4. Warranty Disclaimer. Except as may be provided for in any agreement furnished by the provider of any Third-party Items, all Third-party Items are provided "as is" and "as available" without any warranties of any kind. All warranties, express, implied or statutory, are hereby disclaimed with respect to such Third-party Items. Any liability of Company or the provider of any Third-party Items for any damages, whether direct, indirect, incidental or consequential, as a result of or related to the installation, use, availability, functionality, errors or content of any Third-party Items is hereby disclaimed. The limitations of liability provided to Company in this Section shall be deemed to extend to and include Company and each provider of Third-party Items, and their respective officers, directors, managers, partners, employees, attorneys, representatives, agents and contractors.

5. First Databank Third-party Items.

a. The Software and Services include Third-party Items proprietary to First Databank, Inc. ("FDB Software"). Customer may use FDB Software only on its own behalf and not on a service bureau basis or otherwise. Customer shall use FDB Software solely as a source of drug product information in connection with Customer's use of the Software and Services. Customer represents and warrants that it is not a direct competitor of First Databank, Inc. and that the FDB Software will not be utilized or disclosed to any such competitor. Only currently authorized prescribing medical practitioners may utilize the FDB Software. Upon the written request of Company, Customer shall deliver to Company an end user survey including a count of the number of actual users that had access to the FDB Software. Customer understands that if the number of users with access to the FDB Software exceeds the number designated in the Order Form, additional cumulative and retroactive charges may apply.

b. The professional duty to the patient in providing healthcare services lies solely with the healthcare professional providing patient care services. No liability is assumed for actions of the healthcare professional which may result in any liability or damages due to malpractice, failure to warn, negligence or any other basis.

c. The following note applies to all patient education materials and is deemed to have been provided with the Patient Education Knowledge Databases:

NOTE: This is a summary and does not contain all possible information about this product. For complete information about this product or your specific health needs, ask your healthcare professional. Always seek the advice of your healthcare professional if you have any questions about this product or your medical condition. This information is not intended as individual medical advice and does not substitute for the knowledge and judgment of your healthcare professional. This information does not contain any assurances that this product is safe, effective or appropriate for you.

d. "Prescriber End User" as to this Section 5 means an individual, located in the United States or a United States territory, that: (1) is employed by, an active member of the medical staff of, or otherwise performing healthcare services as a legally authorized representative of a Customer; and (2) if required by Applicable Law to be licensed, registered, or otherwise authorized by a governmental authority, is properly and duly licensed, registered, or otherwise authorized with the appropriate governmental authority to perform the applicable healthcare services. Prescriber End Users must obtain (and certify that they have obtained) any and all necessary patient consents and authorizations required by Applicable Law to provide or access any of the Services hereunder.

CONDITIONS OF USE: The information in this database is intended to supplement, not substitute for, the expertise and judgment of your healthcare professional. The information is not intended to cover all possible uses, directions, precautions, drug interactions or adverse effects, nor should it be construed to indicate that use of a particular drug is safe, appropriate or effective for you. You should consult your healthcare professional before taking any drug, changing your diet or commencing or discontinuing any course of treatment.

e. Prescriber End Users shall access the FDB Software subject to the following terms.

- i. Medical Disclaimers: This site is designed to offer you general health information for educational purposes only. The health information furnished on this site and the interactive responses are not intended to be professional advice and are not intended to replace personal consultation with a qualified physician, pharmacist or other healthcare professional. You must always seek the advice of a professional for questions related to your disease, disease symptoms, and appropriate therapeutic treatments. If you have or suspect that you have a medical problem or condition, please contact a qualified healthcare provider immediately. You should never disregard medical advice or delay in seeking it because of something you have read on this site.
- ii. There is no warranty that the content on this site satisfies government regulations requiring disclosure of information on prescription drug products. The content was developed for use in the United States, and neither we nor our content providers make any representation concerning the content when used in any other country. While information on this site has been obtained from sources believed to be reliable, neither we nor our content providers warrant the accuracy of codes, prices or other data contained on this site.
- iii. First DataBank does not give medical advice, nor does it provide medical or diagnostic services. Medical information changes rapidly. Neither we nor our content providers guarantee that the content covers all possible uses, directions, precautions, drug interactions, or adverse effects that may be associated with any therapeutic treatments.
- iv. Your reliance upon information and content obtained by you at or through this site is solely at your own risk. Neither we nor our content providers assume any liability or responsibility for damage or injury (including death) to you, other persons or property arising from any use of any product, information, idea or instruction contained in the content or services provided to you.
- v. Liability Disclaimers: Our content providers have utilized reasonable care in collecting and reporting the information contained in the Products on this website and have obtained such information from

sources believed to be reliable. However, the content providers do not warrant the accuracy of the information in the website, nor of codes, prices or other data available on this site. Information reflecting prices is not a quotation or offer to sell or purchase. The clinical information contained in the information is intended as a supplement to, and not a substitute for, the knowledge, expertise, skill, and judgment of physicians, pharmacists, or other healthcare professionals in patient care. The absence of a warning for a given drug or drug combination should not be construed to indicate that the drug or drug combination is safe, appropriate or effective in any given patient.

- vi. THE CONTENT PROVIDERS MAKE NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE ACCURACY OF THE DATA FROM WHICH THE INFORMATION IS COMPILED OR THE ACCURACY OF THE INFORMATION ITSELF, NOR THE COMPATIBILITY OF THE INFORMATION WITH ANY HARDWARE AND SYSTEMS, AND SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- vii. YOU USE THIS SITE AND THE MATERIAL AND INFORMATION ON THE SITE AT YOUR OWN RISK. OUR INFORMATION PROVIDERS SHALL NOT BE LIABLE FOR ANY DAMAGES ALLEGEDLY SUSTAINED ARISING OUT OF USE OF THE SITE, AND INCLUDING ANY CONSEQUENTIAL, SPECIAL, OR SIMILAR DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- viii. IF, NOTWITHSTANDING THE OTHER TERMS OF THIS AGREEMENT (OR ANY OTHER AGREEMENT BETWEEN YOU AND US), WE (OR OUR CONTENT PROVIDERS OR SPONSOR/ADVERTISERS) SHOULD HAVE ANY LIABILITY FOR ANY LOSS, HARM OR DAMAGE, YOU AND WE (ON BEHALF OF OURSELVES AND OUR CONTENT PROVIDERS AND SPONSOR/ADVERTISERS) AGREE THAT SUCH LIABILITY SHALL UNDER NO CIRCUMSTANCES EXCEED \$1,000. YOU AND WE (ON BEHALF OF OURSELVES AND OUR CONTENT PROVIDERS AND SPONSOR/ADVERTISERS) AGREE THAT THE FOREGOING LIMITATION OF LIABILITY IS AN AGREED ALLOCATION OF RISK BETWEEN YOU AND US (AND OUR CONTENT PROVIDERS AND SPONSOR/ADVERTISERS) AND REFLECTS THE FEES, IF ANY, WE CHARGE YOU TO USE THIS SITE, THE SERVICES AND THE CONTENT. YOU ACKNOWLEDGE THAT ABSENT YOUR AGREEMENT TO THIS LIMITATION OF LIABILITY, WE WOULD NOT PROVIDE THE SITE, THE SERVICES OR THE CONTENT TO YOU.
- ix. Restrictions: No material from this website may be copied, reproduced, republished, uploaded, posted, transmitted, commercialized or distributed in any way, except that you may download one copy of the materials on any single computer for your personal, non-commercial home use only, provided you keep intact all copyright and other proprietary notices. Modification of the materials or use of the materials for any other purpose is a violation of our content provider's copyright and other proprietary rights. The use of any such material on any other website or networked computer environment is prohibited. All rights, title and interest in and to the materials on this site (including but not limited to all copyrights, trademarks, service marks, trade names and all derivative works) are owned or controlled by and shall remain at all time vested in the site operator and its content providers.

6. Microsoft Third-party Items. The Software or Services may include Third-party Items proprietary to Microsoft Licensing or its affiliates ("Microsoft Software"). Use of Microsoft Software is subject to the terms and conditions of each applicable Microsoft end user license agreement for each component thereof.

7. Third-party Items from the American Medical Association ("AMA").

a. *Current Procedural Terminology ("CPT") is copyrighted by the AMA and CPT is a registered trademark of the AMA.* Fee schedules, relative value units, conversion factors and/or related components are not assigned by the AMA, are not part of CPT, and the AMA is not recommending their use. The AMA does not directly or indirectly practice medicine or dispense medical services. The AMA assumes no liability for data contained or not contained herein.

b. *Applicable FARS/DFARS Restrictions Apply to Government Use.* 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, 515 North State Street, Chicago, Illinois, 60654. U.S. government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or computer software and/or computer software documentation are subject to the limited rights restrictions of DFARS 252.227- 7015(b)(2) (November 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable, for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (December 2007) and/or subject to the restricted rights provisions of FAR 52.227-14 (December 2007) and FAR 52.227-19 (December 2007), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.

c. *Copyright Grant.* Subject to the license and other terms and conditions herein, Company grants to Users (defined in Section 7.f below) a royalty-bearing nonexclusive license to use the AMA Editorial Content in Software and/or electronic products including use via the internet and eBooks (collectively, “the Licensed Products”) for their own internal use. This license specifically excludes (a) distribution of Software and Services by any third-party, including without limitation distribution by resellers; (b) use of CPT guidelines, notes and instructions in Software and Services in PDF format other than those from the Evaluation and Management section of the CPT Book; (c) any right to distribute CPT Editorial Content alone; and (d) any right to translate or modify CPT in any way. Any rights not specifically granted in this Section are excluded.

d. *Trademark Grant.* Subject to the terms and conditions herein, Company grants to Users a royalty-bearing nonexclusive license to use the trademark “CPT” in the Software and Services to properly designate CPT Editorial Content, but only to the extent such use is for their own internal use.

e. *AMA Warranty and Indemnification.* **THE AMA WARRANTS THAT IT HAS THE AUTHORITY TO GRANT THE RIGHTS HEREIN. EDITORIAL CONTENT IS LICENSED “AS IS” WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE AMA DISCLAIMS RESPONSIBILITY FOR ANY ERRORS IN THE EDITORIAL CONTENT AND FOR ANY CONSEQUENCES ATTRIBUTABLE TO OR RELATED TO ANY USES, NONUSE, OR INTERPRETATION OF INFORMATION CONTAINED IN OR NOT CONTAINED IN THE EDITORIAL CONTENT. THE AMA WILL NOT BE DEEMED TO BE ENGAGED IN THE PRACTICE OF MEDICINE OR DISPENSING MEDICAL SERVICES. THE AMA DOES NOT WARRANT THAT THE DATA CONTAINED IN THE EDITORIAL CONTENT WILL MEET CUSTOMER’S REQUIREMENTS OR THAT THE OPERATION OF THE EDITORIAL CONTENT WILL BE UNINTERRUPTED OR WITHOUT ERROR. IN NO EVENT WILL THE AMA BE LIABLE TO CUSTOMER FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS, LOST SAVINGS OR OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR THE USE OR INABILITY TO USE THE EDITORIAL CONTENT EVEN IF THE AMA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF THE MEDIUM ON WHICH EDITORIAL CONTENT IS CONTAINED IS DEFECTIVE OR THE INFORMATION IS NOT INTACT, AMA AGREES TO PROVIDE A REPLACEMENT. THIS IS AMA’S SOLE AND ENTIRE LIABILITY.**

f. Customer confirms that: (1) the number of “Users” (defined below) being reported by Customer related to the AMA CPT® Code content is accurate, along with the current number of such Users confirmed by Customer on the Customer’s most recent annual renewal agreement (or initial Order if the first annual renewal date has not yet occurred); (2) Customer has only accessed and will only use and access the AMA CPT Code content designated as being in the same calendar and subsequent years of consecutive annual renewals (as may be applicable to Customer) year that Customer first obtained the Services from Company; and (3) Customer understands and agrees that will be obligated to pay additional charges if Customer or its Users uses or accesses the AMA CPT Code content designated for any calendar years prior to the calendar year in which Customer initially became an authorized user of Company Services and customer of Company or for any year during which Customer may have not consecutively renewed the Customer’s account with Company. Currently, the AMA provides the following written guidance related to how you as the Customer must comply with and confirm related to the AMA CPT Code content embedded in the Company Services. According to the terms of the AMA CPT Code licensing Agreement, as to this Section 7, “User” means an individual who:

i. accesses, uses, or manipulates CPT Editorial Content contained in the Licensed Products; or

ii. accesses, uses, or manipulates the Licensed Product to produce or enable an output (data, reports, or the like) that could not have been created without the CPT embedded in the Licensed Products even though CPT Editorial Content may not be visible or directly accessible; or

iii. makes use of an output of the Licensed Products that relies on or could not have been created without the CPT Editorial Content embedded in the Licensed Products even though CPT Editorial Content may not be visible or directly accessible.”

For any new “Users” added during the course of Customer’s contractual relationship with Company, Customer will ensure that such new Users only access the CPT Editorial Content from the same calendar year during which such new User became an authorized user of the Services and the AMA CPT Code content. The end User must ensure that anyone with authorized access to the Licensed Products will comply with the provisions of the AMA’s Third-party Items as specified herein.

g. The User may only make copies of the Licensed Products for back up or archival purposes. All notices of proprietary rights, including trademark and copyright notices, must appear on all permitted back up or archival copies made.

h. The CPT Editorial Content licensed from the AMA is a nontransferable, nonexclusive license, for the sole purpose of internal use by the authorized end User within the allowed Territory. The allowed Territory is Argentina, Australia, Bahamas, Belgium, Bermuda, Brazil, Canada, Cayman Islands, Chile, China, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, India, Ireland, Israel, Italy, Jamaica, Japan, Mexico, New Zealand, Norway, Panama, Philippines, Portugal, Singapore, South Africa, Spain, Sweden, Thailand, Turkey, United Arab Emirates, United Kingdom, United States and its territories, and Venezuela. The end User is prohibited from publishing, distributing via the Internet or other public computer-based information system, creating derivative works (including translating), transferring, selling, leasing, licensing or otherwise making available to any unauthorized party the Licensed Products, or a copy or portion of Licensed Products.

i. The provision of updated Editorial Content in the Licensed Products is dependent on continuing contractual relationship between Company and the AMA.

8. Electronic (Online) Prescribing Services and Record Locator and Exchange Services by Surescripts, Inc. (“Surescripts”) (related to Customer’s electronic prescribing with the Services) and Surescripts Terms of Use.

Company has an agreement with Surescripts, Inc. to allow Customers using the Company Services to use services provided by Surescripts. As a condition of Customer’s use and access of Surescripts’ services, Surescripts requires that both Customer (“Customer”, includes Customer and all of Customer’s Prescriber End Users) agree to be bound by these additional terms (“Surescripts Terms”). “Prescriber End User” in this Section 8 means an individual, located in the United States or a United States territory, that: (1) is employed by, an active member of the medical staff of, or otherwise performing healthcare services as a legally authorized representative of an Aggregator Customer; and (2) if required by Applicable Law to be licensed, registered, or otherwise authorized by a Governmental authority, is properly and duly licensed, registered, or otherwise authorized with the appropriate Governmental authority to perform the applicable healthcare services. These Surescripts Terms are cumulative with, and do not in any way limit, Customer’s obligations under the Agreement with Company. By accessing Surescripts’ services, Customer agrees to these Surescripts Terms:

a. *Online Prescribing Services Access and Uses.* Surescripts facilitates the transmission of electronic pharmaceutical prescribing information between participants in the Surescripts electronic network system, through which prescription benefit and history information, including eligibility, insurance coverage, and formulary information, is transmitted electronically between participants in the Surescripts network from a Data Source (as defined below) to a prescriber at the point-of-prescribing, and through which prescription messages are routed electronically from a prescriber to the pharmacy of a patient’s choice. Customer hereby agrees and understands that in accessing the electronic prescription services via Company’ Services, Customer will be using the services of Surescripts to facilitate such transmissions. Customer agrees to access and utilize the Surescripts network only in accordance with these Surescripts Terms. “Data Source” shall mean (a) a pharmacy benefit manager (“PBM”), health benefit payor or administrator, or other similar entity that has entered into a written agreement with Surescripts to

allow access through the Surescripts network to information in its possession; and (b) a pharmacy, pharmacy chain, an entity that has contracted with Surescripts to become either a pharmacy or prescriber aggregator and is designated as such by Surescripts, or other similar entity that has entered into a written agreement with Surescripts to allow access through the Surescripts network to information in its possession. Each Data Source has the right to require Surescripts to suspend transactions to that Data Source from Company or other vendor, and that Surescripts must comply with such requests. Customer shall only access and utilize the Surescripts network only in accordance with the terms and conditions of Company' agreement with Surescripts.

b. *Record Locator and Exchange Services Access and Uses*, Customer may use a Record Locator and Exchange ("RLE") Service to query the Surescripts network. As part of using the service, Customer shall make its patients, subject to opt-out options as described below, discoverable to other participants of RLE. Prescriber End Users may not use Patient Records obtained through RLE to create or produce a record of another participant from data of another participant in order to furnish copies of a record in response to subpoena or otherwise. Customer shall ensure information obtained through RLE is used only for "Treatment" purposes as defined by HIPAA, and shall not use RLE or the Surescripts' network for commercial or competitive purposes, including aggregating or comparing data with that of other users. Customer shall use reasonable and appropriate measures to ensure that the patient records are current, accurate and (subject to any restrictions imposed by applicable law or these terms final and complete, or if tentative or incomplete that the record contains an appropriate indication to that effect. Customers shall promptly communicate to Surescripts, in the form and manner set forth in the RLE Policies and Procedures, all patient requests to opt out of RLE. Prescriber End User shall: (1) not disclose any patient records through RLE that are subject to any restriction on use or disclosure; (2) not disclose patient records through RLE in violation of applicable law in response to any query through RLE; and (3) obtain written patient consent or authorization as may be required by applicable law prior to any query of record locations or retrieval of patient records through RLE. Additionally, Prescriber End Users are solely responsible to: (1) provide patients with all legally required notices of their use of RLE to obtain and disclose patient records, including, as applicable, notices consistent with 42 CFR 2.22, (2) facilitate patient requests to opt out of RLE or patient requests to revoke consent consistent with the requirements set for in 42 CFR 2.31; (3) obtain any necessary patient consents or authorizations, including as applicable, obtaining consent consistent with the requirements set forth in 42 CFR 2.14. Customer, through its Prescriber End Users, shall be solely responsible for all patient care decisions or treatment provided resulting from or involving the use of RLE. Neither Customer nor Prescriber End Users, may bring any claim or cause of action against Surescripts and/or Company arising from patient care rendered or withheld based on the use of RLE. Company participates in Carequality as a Carequality Connection. In order to use RLE, Customer agrees to be bound by and in compliance with the Carequality Connection Terms, as aresubject to change and may be found at <https://carequality.org/resources/>. Customer shall indemnify Surescripts for and hold Surescripts harmless of any liability, cause of action, or claim related to Customer's transmission of or failure to transmit any information through the Surescripts network. In the event that Surescripts wishes to discontinue offering RLE broadly in the marketplace, Surescripts and/or Company may terminate the RLE services hereunder with no effect upon other services offered by Surescripts under this Agreement upon thirty (30) days prior written notice from Company.

c. *Use of Data*. Customer shall not retain a copy of, store in any medium, perform analytics on, aggregate in any manner, or otherwise perform any action with relation to any data or information sent through the Surescripts network other than as specifically permitted under this Agreement. Customer shall not retain a copy of, store in any medium, perform analytics on, aggregate in any manner, or otherwise perform any action with relation to any data or information sent through the Surescripts network other than as specifically permitted by Surescripts; and (2) Customer shall act solely as a passive conduit of information sent through the Surescripts network, unless otherwise permitted by Surescripts. Customer shall engage in no act or omission which would interfere with, modify, or delay the transmission of any data or information provided by the Data Sources which is communicated through Company software. Surescripts may share Company and Prescriber End User data with other Data Sources to the extent necessary to fulfill the terms and conditions of Surescripts Agreements. Nothing in this Agreement is intended to restrict use of data or information provided by Data Sources and obtained or sent through the Surescripts network once such data or information has become a part of a patient's permanent record.

d. *Confidentiality*. Customer agrees to keep confidential any and all of Surescripts' confidential

information, as well as the confidential information of all entities that have contracted with Surescripts to become either a pharmacy or prescriber aggregator and is designated as such by Surescripts (“certified aggregators”), entities that have been designated by Surescripts as a value-added reseller of the Surescripts services, and connectivity to other entities that aggregate prescribers or pharmacies (“certified VARs”), Data Sources, prescribers, health care providers, or facilities, technology vendors, and other entities or individuals that have entered into a written agreement with Surescripts, either directly or indirectly, in order to access, provide, or communicate through the Surescripts network, whether explicitly marked confidential or reasonably believed to be confidential.

e. *Compliance with Applicable Law.* Prescriber End Users shall keep confidential any Surescripts or Participant proprietary and/or confidential information. Aggregator shall ensure that Prescriber End Users obtain (and certify that they have obtained) any and all necessary patient consents and authorizations required by Applicable Law to provide or access any of the Services hereunder, including but not limited to, written consent to RLE Services, if applicable. Prescriber End User shall obtain the consent of the patient prior to requesting Medication History or RLE query for such patient. Prescriber End Users shall comply with any privacy and patient consent policies of Surescripts related to the delivery of Private Information and/or PHI as may be published by Surescripts from time to time, which policies shall be considered part of the Surescripts Materials. Customer acknowledges that Data Sources may impose additional privacy and patient consent policies on the delivery of Private Information and/or PHI through the Surescripts network. Customer certifies and confirms that Customer has obtained, will maintain, or will obtain any and all necessary patient consents and authorizations required by applicable law, including all federal, state, local, common law, rules, regulations, directives, and guidelines prior to using any of Surescripts services, including its electronic prescription service and written consent to RLE service, if applicable. Customer represents and warrants that all messages transmitted via the Surescripts network will originate from legally authorized locations. Customer agrees and understands that Surescripts and Company, each individually, reserves the right to terminate Customer’s use of the Surescripts network at any time, for any or no reason, with or without notice. If Surescripts makes any addition or modification to the Surescripts network in order to comply with Applicable Law or in order to comply with changes required by Surescripts, if applicable, Customer shall complete, any and all corresponding additions or modifications required to be made as a result of the change to the Surescripts network within the earlier of: (i) six (6) months or a mutually agreed upon time period after the date of Company sending of written notice of such change to Customer; or (ii) such time period required by Applicable Law.

f. *Availability of Data Sources.* Customer acknowledges that Surescripts makes no representation or warranty regarding the availability through the Surescripts network of any particular Data Source or other Participant in the Surescripts network. At any time, Data Sources or other Participants in the Surescripts network may be added to or deleted from the Surescripts network or may limit Aggregator access to their data, such changes may occur without prior notice to Aggregator. Any Data Source, in its sole discretion, may elect not to receive prescriptions and other messages.

G. *DISCLAIMER AND LIMITATIONS OF THE SURESCRIPTS NETWORK.* SURESCRIPTS USES AVAILABLE TECHNOLOGY TO MATCH PATIENT IDENTITIES IN ORDER TO PROVIDE THE SURESCRIPTS SERVICES IN ACCORDANCE WITH THIS AGREEMENT AND ATTACHED EXHIBITS. BECAUSE PATIENT INFORMATION IS MAINTAINED IN MULTIPLE PLACES, NOT ALL OF WHICH ARE ACCESSIBLE TO SURESCRIPTS, AND BECAUSE NOT ALL PATIENT INFORMATION IS KEPT IN A STANDARD FASHION OR IS REGULARLY UPDATED, IT IS POSSIBLE THAT FALSE MATCHES MAY OCCUR OR THAT THERE MAY BE ERRORS OR OMISSIONS IN THE PRESCRIPTION BENEFIT AND/OR MEDICATION HISTORY INFORMATION PROVIDED PURSUANT TO THE SERVICES. THEREFORE, IT IS THE RESPONSIBILITY OF ANY CUSTOMER TREATING PHYSICIAN OR OTHER HEALTH CARE PROVIDER OR FACILITY (NOT THE RESPONSIBILITY OF SURESCRIPTS) TO VERIFY PRESCRIPTION BENEFIT OR MEDICATION HISTORY INFORMATION THROUGH OTHER MEANS WITH EACH PATIENT AND/OR THE PATIENT’S REPRESENTATIVES BEFORE SUCH INFORMATION IS RELIED UPON OR UTILIZED IN DIAGNOSING OR TREATING THE PATIENT. SURESCRIPTS IS NOT A HEALTH PLAN, HEALTH CARE PROVIDER OR PRESCRIBER. SURESCRIPTS DOES NOT AND CANNOT INDEPENDENTLY VERIFY OR REVIEW THE INFORMATION TRANSMITTED THROUGH THE SURESCRIPTS NETWORK FOR ACCURACY OR COMPLETENESS. PURSUANT TO THE FOREGOING, CUSTOMER AND PRESCRIBER END USERS ACKNOWLEDGE THAT THE PRESCRIPTION BENEFIT AND MEDICATION HISTORY INFORMATION PROVIDED HEREUNDER IS NOT COMPLETE OR ACCURATE, AND THAT NEITHER SURESCRIPTS NOR ANY DATA SOURCE PROVIDES ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE

ACCURACY OR COMPLETENESS OF THE PRESCRIPTION BENEFIT OR MEDICATION HISTORY INFORMATION, AND CUSTOMER AND PRESCRIBER END USER RELEASES AND HOLDS HARMLESS, SURESCRIPTS AND ANY PERSON OR ENTITY PROVIDING PRESCRIPTION BENEFIT OR MEDICATION HISTORY INFORMATION FROM ANY LIABILITY, CAUSE OF ACTION, OR CLAIM RELATED TO THE COMPLETENESS OR LACK THEREOF OF THE PRESCRIPTION BENEFIT OR MEDICATION HISTORY INFORMATION. CUSTOMER AND PRESCRIBER END USER CONFIRM THE ACCURACY OF THE PRESCRIPTION BENEFIT AND MEDICATION HISTORY INFORMATION WITH HIS/HER/ITS PATIENT PRIOR TO PROVIDING ANY MEDICAL SERVICES BASED THEREON, AND THAT THE CUSTOMER AND PRESCRIBER END USER SHALL USE HIS/HER/IT PROFESSIONAL JUDGMENT IN THE PROVISION OF CARE. THE SURESCRIPTS NETWORK IS NOT INTENDED TO SERVE AS A REPLACEMENT FOR: (I) A WRITTEN PRESCRIPTION WHERE NOT APPROVED AS SUCH BY THE APPROPRIATE GOVERNMENTAL AUTHORITIES OR WHERE SUCH WRITTEN PRESCRIPTION IS REQUIRED FOR RECORD KEEPING PURPOSES; OR (II) APPLICABLE PRESCRIPTION DOCUMENTATION. USE OF THE SURESCRIPTS NETWORK IS NOT A SUBSTITUTE FOR A HEALTH CARE PROVIDER'S STANDARD PRACTICE OR PROFESSIONAL JUDGMENT. ANY DECISION WITH REGARD TO THE APPROPRIATENESS OF TREATMENT, OR THE VALIDITY OR RELIABILITY OF INFORMATION, IS THE SOLE RESPONSIBILITY OF A PATIENT'S HEALTH CARE PROVIDER.

h. *Identity Proofing.* Customer shall conduct identity proofing and authentication sufficient to meet regulatory and Surescripts requirements to confirm that all messages transmitted via the Surescripts network originate from Prescriber End Users (defined below) who are licensed to use the application for the service(s) for which Surescripts has certified the application, and who are registered with Aggregator and/or Aggregator Customer in accordance with the terms and conditions of this Agreement.

i. *Disclaimer.* NEITHER SURESCRIPTS NOR Company MAKES ANY REPRESENTATION OR WARRANTY REGARDING THE AVAILABILITY THROUGH THE SURESCRIPTS NETWORK OF ANY PARTICULAR DATA SOURCE OR OTHER PARTICIPANT IN THE SURESCRIPTS NETWORK. AT ANY TIME, DATA SOURCES AND OTHER PARTICIPANTS IN THE SURESCRIPTS NETWORK MAY BE ADDED OR DELETED WITHOUT PRIOR NOTICE. CUSTOMER UNDERSTANDS AND AGREES THAT, AT ANY TIME AND WITHOUT PRIOR NOTICE, A DATA SOURCE MAY ELECT NOT TO RECEIVE PRESCRIPTIONS OR OTHER MESSAGES. CUSTOMER AGREES AND UNDERSTANDS THAT, AS THE TREATING PHYSICIAN OR OTHER HEALTH CARE PROVIDER, CUSTOMER HAS VERIFIED PRESCRIPTION BENEFIT OR PRESCRIPTION HISTORY INFORMATION WITH EACH PATIENT OR THE PATIENT'S REPRESENTATIVES BEFORE SUCH INFORMATION IS RELIED UPON OR UTILIZED IN DIAGNOSING OR TREATING THE PATIENT. NEITHER SURESCRIPTS NOR Company INDEPENDENTLY VERIFIES OR REVIEWS THE INFORMATION TRANSMITTED THROUGH THE SURESCRIPTS NETWORK FOR ACCURACY AND COMPLETENESS. THE SURESCRIPTS NETWORK IS NOT INTENDED TO SERVE AS A REPLACEMENT FOR A WRITTEN PRESCRIPTION WHERE NOT APPROVED AS SUCH BY THE APPROPRIATE GOVERNMENTAL AUTHORITIES OR WHERE SUCH WRITTEN PRESCRIPTION IS REQUIRED FOR RECORD KEEPING PURPOSES, OR APPLICABLE PRESCRIPTION DOCUMENTATION. USE OF THE SURESCRIPTS NETWORK IS NOT A SUBSTITUTE FOR A HEALTH CARE PROVIDER'S STANDARD PRACTICE OR PROFESSIONAL JUDGMENT. ANY DECISION WITH REGARD TO THE APPROPRIATENESS OF TREATMENT, OR THE VALIDITY OR RELIABILITY OF INFORMATION, IS SOLELY CUSTOMER'S RESPONSIBILITY.

j. *No Warranty.* THE SURESCRIPTS NETWORK IS PROVIDED "AS IS" AND WITHOUT WARRANTIES. ALL OTHER WARRANTIES AND REPRESENTATIONS OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH REGARD TO THE SURESCRIPTS NETWORK ARE HEREBY DISCLAIMED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE. SURESCRIPTS DOES NOT WARRANT THAT ITS NETWORK WILL MEET ANY REQUIREMENTS OR THAT IT WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE. Neither Surescripts nor Company is responsible in any manner for errors or failures of proprietary systems and programs of third parties, nor shall Surescripts be liable for errors or failures of Company's software or operational systems not caused by the Surescripts network.

k. *Indemnification.* **Except to the extent arising solely from the gross negligence or willful misconduct of Surescripts, and subject to the limitations set forth below, Customer shall indemnify and hold harmless Surescripts and Company (and their respective affiliates, officers, directors employees or agents) from and against any and all loss, damage, or expense (or claims of damage or liability) asserted against Surescripts or Company (or their respective affiliates, officers, directors employees or agents) by third parties and arising directly out of any breach of these Surescripts Terms, any loss of connectivity to the Surescripts network due to acts or omissions**

inconsistent with the Surescripts Terms, or information provided to the Surescripts network by Customer, or arising out of the use of such information when furnished by Surescripts to Company, Customer, or to other third persons.

l. *Force Majeure.* Neither Surescripts nor Company shall be liable or deemed in default for failure to fulfill any obligation under these Surescripts Terms due to causes beyond their reasonable control, including acts of God or of the public enemy, acts of any governmental authority in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, shortages of labor or materials, freight embargoes, unusually severe weather, electrical power failures, telecommunication or internet backbone outages, failure of an internet access provider, and neither Surescripts nor Company shall be liable for losses, expenses or damages, direct, ordinary, special, consequential or punitive, resulting directly or indirectly from such causes.

m. *Audit.* Customer authorizes Surescripts and Company to access, inspect and audit Customer's records relating to the use of the Surescripts network, Surescripts data, and data or information provided by Customer.

n. *Survey.* By using Surescripts' services, Customer authorizes Surescripts to contact Customer for survey or statistical purposes. Customer also agrees that Surescripts will be entitled to disclose information received from Customer for the purpose of (and only to the extent necessary for) operating Surescripts' business and providing the Surescripts services, including, sharing Customer's information or data with other Data Sources to the extent necessary to fulfill the terms of these Surescripts Terms, but only in accordance with all applicable law, or pursuant to a valid order issued by a duly authorized court or Government authority.

o. *HIPAA Compliance / Privacy and Security.* Surescripts may utilize, transfer, or disclose aggregated information, including summary statistics, that has been de-identified in accordance with HIPAA at 45 CFR §164.514 such that it does not identify an individual and cannot be used to identify an individual for any purpose. Notwithstanding the foregoing, Surescripts' use of de-identified data shall be in accordance with its Notice of Privacy Policy at www.surescripts.com. The Parties acknowledge that messages transmitted via the Surescripts network for the Services may contain Private Information and/or PHI. Furthermore, some but not all Participants in the Surescripts network are either Covered Entities or Business Associates of Covered Entities, as those terms are defined in the HIPAA regulations. To support the privacy, confidentiality, and security of the messages transmitted via the Surescripts network, the Customer agrees to comply with Applicable Law, including all applicable HIPAA regulations, as well as the Business Associate Agreement. In the event of any conflict or inconsistency between this Agreement and the Business Associate Agreement regarding the use or disclosure of PHI, the terms of the Business Associate Agreement shall apply. Furthermore, Customer agrees as follows:

- i. Covered Entity. If Customer is a Covered Entity, Customer does, and at all times shall, comply with the HIPAA regulations to the extent applicable.
- ii. Business Associate. If Customer is a Business Associate of a Covered Entity, Customer does, and at all times shall, comply with the provisions of its relevant Business Associate Agreements and Applicable Law.

Customer shall maintain appropriate safeguards against the destruction, loss, or alteration of Surescripts Data or Participant data that are no less rigorous than those maintained by Company for its own information of a similar nature, but no less than reasonable safeguards. Customer shall have in place appropriate administrative, technical, and physical safeguards to protect the privacy and security of Private Information and PHI. Customer shall reasonably safeguard Private Information and PHI from any intentional or unintentional use or disclosure that is in violation of the Privacy Rule, and limit incidental uses or disclosures made pursuant to otherwise permitted or required disclosures.

p. *Satisfactory Background Checks.* Customer warrants and represents that it has obtained, at its own expense and in a manner compliant with all Applicable Law, a Satisfactory Background Screening, as defined below, for all of its employees and contractors whose job descriptions or functional duties require or contemplate access (other than incidental or infrequent access) to any Private Information and/or PHI ("Personnel"). As used herein, a "Satisfactory Background Screening" shall mean, collectively, the following: (1) national federal criminal database check; (2) seven (7)-year county of residence criminal conviction search (i.e., search of all counties in which individual has resided within the preceding seven (7) year period); and (3) in each of (1) and (2) above, containing no felony or

misdemeanor conviction that related to fraud or theft (including but not limited to, shoplifting, larceny, embezzlement, forgery, credit card fraud, or check fraud), the disposition of which is within seven (7) years, as allowed by law. Upon written notice to Customer, Surescripts may reasonably modify the foregoing guidelines, subject to Applicable Law, in conformance with the then-prevailing industry best practices. Customer agrees that it will consider updating such Satisfactory Background Screening upon reasonable request by Surescripts, it being agreed that any request based upon the occurrence of any Security Incident or other illegal activity involving Customer or its Personnel, or the reasonable suspicion of illegal activity involving any data provided hereunder, or any regulatory requirements requiring such updates, would be deemed reasonable hereunder. Customer agrees to impose a similar requirement for background checks as contemplated herein on any downstream entities. Customer agrees that in the event that any downstream entity refuses or fails to perform such background checks as contemplated herein, Customer shall not provide to such downstream entity any Private Information and/or PHI from Surescripts. Promptly upon written request, Customer shall verify in writing its compliance with the foregoing requirements by providing Surescripts with a written affidavit signed by an executive officer, certifying that Customer has obtained Satisfactory Background Checks with respect to all its Personnel with access to Private Information and/ or PHI in accordance with this Agreement.

9. Electronic (Online) Prescribing Services by DrFirst, Inc. ("DrFirst") (related to Customer's electronic prescribing with the Services) and DrFirst Terms of Use. Company has an agreement with DrFirst.com, Inc. ("DrFirst") to enable Customers and Providers to electronically prescribe controlled substances. As a condition of Customer's use and access of DrFirst's services, DrFirst requires that Customer ("Customer", includes Customer and all of Customer's end users) to agree to the DrFirst terms, which include the following:

- a. EPCS Gold™ Terms of Use;
- c. EPCS Registration Form or other registration documentation provided by Company and required by DrFirst; and
- d. Business Associate Agreement available at <https://drfirst.com/rcopiaepcs-gold-baa-sla-terms/>

10. dashboardMD, Inc. ("dashboardMD") Terms of Use. Company has an agreement with dashboard MD to allow Customers access to dashboardMD's analytical tools, including clinical and billing data reports, dashboards, and analytic services. As a condition of Customer's use and access of dashboardMD's services, dashboardMD requires that both Customer ("Customer," in this Section 10 includes Customer and all of Customer's end users) agree to be bound by these additional terms ("[dashboardMD's Terms](#)"). These dashboardMD Terms are cumulative with, and do not in any way limit, Customer's obligations under the Agreement with Company. By accessing dashboardMD services, Customer agrees to these dashboard Terms:

a. *Definitions applicable to this Section 10.*

i. **"Software"** means any versions of dashboardMD's dMDSync software in executable form, and any corrections, updates, and new versions of such software, along with any operating instructions for such software, as the same may be revised by dashboardMD from time to time.

ii. **"Service"** means the general dashboardMD service of processing Customer Data, gathered through dashboardMD's Software, to produce various reports and measurements available through the <http://www.dashboardmd.com> website.

iii. **"User Guide"** means the user guide for the Service, accessible via <http://www.dashboardmd.com>, or an alternate site, as the same may be revised by dashboardMD from time to time.

iv. **"Customer"** means a customer to whom Company has sold a subscription to access and use the Service. For the purposes of this Section 10, this specifically means customers using the following eMDs software systems: Solution Series, Practice Partner (also marketed under the brand names Medisoft

Clinical, Medisoft EHR, Lytec EHR, and Lytec MD), eMDs Plus, and excludes eMDs Aprima which is covered under a different agreement effective February 26, 2016.

v. **“Customer Data”** means all electronic data or information submitted by a Customer to dashboardMD through the Service.

vi. **“Level 1 Technical Support”** shall mean the service provided in response to the initial inquiry placed by a Customer regarding product operation generally or which identifies and documents an error or bug in the Software.

vii. **“Level 2 Technical Support”** shall mean the service provided to analyze or reproduce an error or bug in the Software or to determine that the error or bug is not reproducible.

viii. **“Level 3 Technical Support”** shall mean the service provided that isolates an operational error or bug to a component level of the Software (provided such error or bug is reproducible by dashboardMD and/or eMDs and is not due to a malfunction in any other software or hardware) and, in such case, the use of commercially reasonable efforts to provide an error or bug correction or a circumvention.

b. *Subscriptions.*

i. **Subscriptions to the Service.** Subject to the terms, conditions, and restrictions set forth in this Section 10, dashboardMD hereby grants to Customer, for the term of the agreement between Company and dashboardMD, under any and all IP Rights owned or otherwise assertable by dashboardMD, a non-exclusive, non-transferable, limited right to sell to Customers subscriptions to access and use the Service. The terms, conditions, and restrictions associated with Customer’s sales of subscriptions under shall not be inconsistent with the terms, conditions, and restrictions imposed on Company.

ii. **No Implied License.** Customer acknowledges and agrees that this Section 10 shall in no way be construed to provide to Customer any express or implied license to access or use the Service. All rights not expressly granted under this Section 10 are reserved to dashboardMD.

iii. **Right to Use Trademarks.** dashboardMD hereby grants to Customer a non-exclusive right and license to use those trademarks, service marks, trade names, and other proprietary marks held or used by dashboardMD and associated with the Software and Service (the **“Marks”**), but such use shall only be in connection with Customer’s exercise of rights under this Section 10, or as otherwise agreed in writing. dashboardMD may, at Customer’s request and dashboardMD’s option, private label the Service for Customer, provided, however, the Service shall at all times feature a legend stating, “Powered by dashboardMD” or words of similar import. Use of any of dashboardMD’s Marks by Customer will be allowed only in accordance with dashboardMD’s trademark policies, as the same may be promulgated and revised by dashboardMD from time to time. Customer agrees not to affix such Marks to, or use such Marks in connection with, any products or services other than the Service. Customer has not paid consideration for the use of the Marks, and nothing contained in this Section 10 shall give Customer any interest in the Marks. Upon termination of the Agreement with Company for any reason, Customer shall retain no right to use or display the Marks in any manner whatsoever.

c. **Training and Certification.** dashboardMD will provide training for Customers with respect to the Service. Such training will be provided either online or at dashboardMD’s facilities, as agreed to in writing by dashboardMD and Customer. All costs incurred in Customer personnel’s attendance at such training, including, but not limited to, internet connectivity, long distance fees, travel, lodging, and meals shall be at Customer’s cost and expense.

d. *Support and Services.* Customers will require installation, training, and support for their use of the Service, and may require other professional services in connection with their use of the Service. dashboardMD may agree to provide additional services such as consulting or software development for Customers on mutually agreeable terms and conditions. At Company's discretion, Company may provide Level I Technical Support to its Customers. dashboardMD shall be responsible for providing Levels I, II and III Technical Support to Customers.

e. *Disclaimers.* The representations and warranties made by dashboardMD in this Section 10 are made solely to Company and Customers. Except as otherwise provided in this Section 10, dashboardMD provides the Service in "AS-IS" CONDITION AND "WITH ALL FAULTS"; and

DASHBOARDMD DISCLAIMS ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (STATUTORY, EXPRESS, OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE SERVICE, OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, ACCURACY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT DASHBOARDMD KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING.

DASHBOARDMD DOES NOT WARRANT THAT THE SERVICE, ANY THIRD PARTY SOFTWARE OR HARDWARE RECOMMENDED TO BE USED IN CONJUNCTION WITH THE SERVICE, OR ANY OTHER PRODUCTS OR SERVICES FURNISHED BY DASHBOARDMD UNDER THIS AGREEMENT WILL MEET CUSTOMERS' REQUIREMENTS, THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL FAILURES OF THE SERVICE TO CONFORM TO DASHBOARDMD'S PUBLISHED USER GUIDE CAN OR WILL BE CORRECTED.

DASHBOARDMD EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN COMPANY AND ITS CUSTOMERS WITH RESPECT TO THE SERVICE.

SOME STATES OR COUNTRIES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO CERTAIN OF THE ABOVE EXCLUSIONS MAY NOT APPLY.

f. *Effect of Expiration or Termination.* Upon termination for cause of the agreement between Company and dashboardMD by dashboardMD, dashboardMD may work or contract directly with Customers to provide Services and avoid any disruption of Services, otherwise, Customers' right to access and use the Service shall terminate, and dashboardMD or Company will disable all identifications, shared logins, and passwords provided pursuant to this Section 10.

g. *Return of Customer Data.* Upon request by Company made within thirty (30) days of the effective date of expiration or earlier termination of the agreement, dashboardMD will make available to Customers, files of such Customers' Data. This file will be made available at a reasonable cost to Customer, which shall include professional services at prevailing rates which shall be invoiced after the Customer's Data is made available to Customer. After such thirty (30) day period, dashboardMD shall have no obligation to maintain or provide any Customer Data and may thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control.

11. Intelligent Medical Objects, Inc. ("IMO") Terms of Use. Company has an agreement with IMO to allow Customers access to clinical diagnosis and vocabulary lists, which permits mapping between common code sets. As a condition of Customer's use and access of IMO's services, IMO requires that both Customer ("Customer" in this Section 11 includes Customer and all of Customer's end users) agree to be bound by these additional terms ("IMO Terms"). These IMO Terms are cumulative with, and do not in any way limit, Customer's obligations under the

Agreement with Company. The following terms and conditions shall govern Customer's access to and use of the Licensed Solutions as defined below.

a. *Definitions applicable to this Section 11.*

i. "Data" means data that is collected, stored, processed or generated through Customer's use of the Licensed Solutions.

ii. "Documentation" means the printed and on-line materials, user guides, product specifications, training manuals and other similar information provided by IMP, as updated from time to time.

iii. "Licensed Solutions" means the terminology products and/or software programs developed by IMO and accessed by Customers pursuant to the agreement between Customers and Company.

iv. "Term" means the term of the agreement between IMO and Company that provides for Customers' use of the Licensed Solutions.

v. "Third Party Components" means all third party software and content included in the Licensed Solutions as identified in the Documentation.

b. *Licensed Solutions.* "IMO grants to Customer a non-exclusive, personal, non-transferable, limited license to use the Licensed Solutions during the term of the agreement between Customer and Company, subject to the terms of this EULA. Customer shall not (a) cause or permit the Licensed Solutions, in whole or in part, to be available to any other person, entity or business; (b) copy (except for backup or disaster recovery operations), reverse engineer, create a cache of, decompile or disassemble the Licensed Solutions, in whole or in part; (d) modify, combine, integrate, render interoperable, the Licensed Solutions with any other software or services not contemplated by this EULA; (e) share, sell, rent, lease, or otherwise distribute access to the Licensed Solutions, or use the Licensed Solutions to operate any timesharing, Licensed Solutions bureau, or similar business; (f) alter, destroy or otherwise remove any proprietary notices within the Licensed Solutions; or (g) disclose the results of any benchmark tests to any third parties without IMO's prior written consent. IMO and IMO's licensors retain and own all right, title, and interest in all intellectual property rights in the Licensed Solutions, and all enhancements, revisions or improvements to, or derivative works the foregoing. If Customer provides IMO with any suggested improvements, or requests additions or changes to the Licensed Solutions, Client grants IMO a nonexclusive, perpetual, irrevocable, royalty free, worldwide license, with rights to transfer, sublicense, sell, use, reproduce, display, and make derivative works of such suggested improvements, additions or changes. Third Party Components will be provided under the applicable terms of the third-party supplier. IMO and Company make no representations or warranties regarding the Third-Party Components.

c. *Warranty Disclaimer.* THE LICENSED SOLUTIONS ARE PROVIDED ON AN AS-IS AND AS-AVAILABLE BASIS. IMO DISCLAIMS ALL WARRANTIES, BOTH EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE AND ANY IMPLIED WARRANTY OF NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. IMO DOES NOT WARRANT THAT THE LICENSED SOLUTIONS WILL BE ERROR-FREE OR UNINTERRUPTED, THAT ALL DEFECTS WILL BE CORRECTED, OR WILL MEET CUSTOMER'S REQUIREMENTS.

d. *Professional Responsibility.* Customer acknowledges and agrees that the Licensed Solutions are information management tools that require the involvement of professional medical personnel and the information provided is not intended to be a substitute for the advice and professional judgment of a physician or other professional medical personnel. Customer further acknowledges and agrees that the Licensed Solutions are not intended to diagnose disease, prescribe treatment, or perform any

other tasks that constitute or may constitute the practice of medicine or of other professional or academic disciplines. Customer will be solely responsible for the professional and technical services provided by Customer. IMO makes no representations concerning the completeness, accuracy or utility of any information in the Licensed Solutions. IMO has no liability for the consequences to Customer or Customer's patients of Customer's use of the Licensed Solutions.

- e. *Disclaimer of Liability.* EXCEPT FOR IMO'S INDEMNIFICATION OBLIGATIONS IN THE FOLLOWING SECTION, IN NO EVENT SHALL IMO BE LIABLE TO ANY PERSON INCLUDING, BUT NOT LIMITED TO CUSTOMER OR CUSTOMER'S PATIENTS FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS EULA OR THE LICENSED SOLUTIONS. IMO'S TOTAL LIABILITIES ARISING OUT OF OR RELATED TO THIS EULA ARE LIMITED TO THE FEES RECEIVED BY IMO FOR CUSTOMER'S USE OF THE LICENSED SOLUTIONS IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM.
- f. *IMO's Indemnification.* Subject to the provisions set forth herein, IMO will defend or, at its option, settle any claim or action brought against Customer by an unaffiliated third party to the extent it is based on a claim that the Licensed Solutions directly infringe such third party's United States patent, trademark or copyright (each, a "Claim"), and IMO will pay any final judgment of the Claim awarded against Customer by a court of competent jurisdiction, or settlement of the Claim agreed to by IMO. IMO will have the foregoing obligation under this Section 11.f only if Customer provides IMO with (a) prompt written notice of the Claim, (b) sole control and authority over the defense and any settlement of the Claim, and (c) all available information, assistance, and authority reasonably necessary to settle and/or defend any such Claim. IMO shall have no indemnification obligation or liability for any Claim or infringement resulting from (i) Customer's continued use of the infringing Licensed Solution after receipt of notice of a claim; (ii) modifications to the Licensed Solutions by any party other than IMO; (iii) any development of, or modifications made to, the Licensed Solutions pursuant to Customer's designs, specifications or instructions; (iv) the combination or use of the Licensed Solutions with other products, processes or materials if the Licensed Solution itself does not infringe; or (v) Customer's use of the Licensed Solutions other than in accordance with the Documentation or the terms of this EULA.
- g. *Client's Indemnification.* Customer will defend, indemnify and hold IMO and its officers, directors, and agents harmless against third party claims, liabilities, judgments, settlements, penalties, and causes of action ("Third Party Claims") and associated costs and expenses (including reasonable attorneys' fees) arising out of the use of the Licensed Solutions by Customer; provided however, that the foregoing indemnity will not apply to the extent Customer has used the Licensed Solutions in accordance with the Documentation and applicable standards of good clinical practice and the proximate and direct cause of the Third Party Claim is IMO's negligence or willful misconduct in providing the Licensed Solutions.
- h. *Data.* Customer retains all rights with regard to Customer's Data and IMO may only use Data as expressly permitted by this EULA. IMO may use, disclose, and retain Data to perform, support, and improve the Licensed Solutions and for purposes permitted by Applicable Laws.
- i. *General.* Customer agrees that IMO shall be, and is hereby, named as an express third-party beneficiary of this EULA for the purpose of enforcing at law and at equity all terms set forth in this EULA. Customer will ensure that anyone with authorized access to the Licensed Solutions will comply with the provisions of this EULA. If any provision of this EULA is determined to be unenforceable, the rest of this EULA will remain in full force. The delay or failure to assert a right herein or to insist upon compliance with any term or condition of this EULA shall not constitute a waiver of that right or excuse a subsequent failure to perform any term or condition. Customer may not assign any of the rights herein without prior written approval from IMO. This EULA will be governed by the State of Illinois without regard to choice-

of-law principles. The courts of the State of Illinois and/or the United States District Court for the Northern District of Illinois shall have exclusive jurisdiction over any action arising under or related to the subject matter of this EULA and the parties agree to submit to the jurisdiction of the courts of the State of Illinois and the United States District Court for the Northern District of Illinois. This EULA is the entire agreement between Customer and IMO as to the subject matter. This EULA may be terminated by IMO or Company at any time if: (i) Customer violates any provision of this EULA; or (ii) Company's relationship with IMO terminates. If this EULA is terminated for any reason, Customer agrees to immediately return or destroy all copies of the Licensed Solutions and all accompanying items and certify the return or destruction thereof. Client acknowledges that the Licensed Solutions includes SNOMED Clinical Terms (SNOMED CT®) which is used by permission SNOMED International. All rights reserved. SNOMED CT®, was originally created by The College of American Pathologists. "SNOMED" and "SNOMED CT" are registered trademarks of the SNOMED International. Additionally, Client acknowledges and agrees to the terms and conditions set forth at <https://www.imohealth.com/wp-content/uploads/2019/08/CPT-Terms-End-Users.pdf> and <https://loinc.org/license/>, which may be updated from time to time.

12. Compliancy Group LLC ("CG") Terms of Use. Company has an agreement with CG to act as a reseller for Company's customers to purchase CG products, which are a HIPAA compliance solution that simplifies compliance efforts with its intelligent web-based risk analysis and compliance management process ("CG Products"). If Customer's order form with Company includes any CG Products (the "Order Form"), the following terms and conditions shall govern Customer's access to and use of the CG Products as identified in the agreement between CG and Company.

SECTION 12.1: LICENSE

A. The services provided (hereinafter referred to as the "Guard" or "Application Services" in this Section 12) are CG's proprietary Internet-based suite of software made available as a service. Subject to the acceptance of the Order Form by Company and payment of any associated license fees under the Order Form, CG grants to Customer a limited, nonexclusive, non-transferable right to access and use (and to permit Customer's Authorized Users (as defined below) to access and use) the Application Services for Customer's own internal business purposes and the internal business purposes of its Affiliates (as defined herein), each in accordance with the terms and conditions of this Agreement and any user documentation provided online. For the purposes of this Section 12, an "Affiliate" of an entity, is any entity controlled by, controlling or under common control with such entity.

B. "Authorized Users" are those employees and contractors of Customer and its Affiliates who are authorized to use the Application Services and have been assigned an individual user ID by Company. Customer shall require any contractors that are designated as Authorized Users to be bound by confidentiality and license provisions that are substantially as protective of CG's confidential information and Application Services as those provisions set forth in this Agreement. CG agree to provide Authorized Users with access to the Application Services via the URL <https://www.compliancy-group.com> and any successor site thereto or such other web sites as may be designated by CG's ("Web Site"). Customer is responsible for providing Internet access, web browsers, and appropriate hardware and software to all Authorized Users as necessary for access to the Application Services.

C. Customer acknowledges and agrees that it is possible to link to third party applications and services ("Third Party Services"). Such Third Party Services are not part of the Application Services, and CG disclaims all responsibility, warranties and liability pertaining to same. Any such Third Party Service shall be provided to Customer pursuant to the terms and conditions offered (and if applicable, for the fees charged) by such Third-Party Services provider and CG is not a party to any such agreement.

SECTION 12.2: USER ID AND PASSWORD PROTECTION POLICIES

Authorized Users shall maintain as personal and confidential the assigned unique USER IDs and activating passwords for the Application Services. Authorized Users are prohibited from transferring or sharing the Customer assigned

unique USER IDs and from revealing the activating passwords to any other person. Any violation of the foregoing may result in an immediate termination of Customer's access rights to the Application Services. Customer is responsible for all use or misuse of the Application Services by the Authorized Users of any third party using the USER ID and password of an Authorized User. Customer and each Authorized User are responsible for maintaining the security and confidentiality of the USER IDs and passwords assigned to them for accessing the Application Services. Customer shall be responsible for assigned account USER IDs, active passwords, and or granting permissions, and authorizing vendor/client account associations in the Application Services.

SECTION 12.3: CG RESERVATION OF RIGHTS; RESTRICTIONS

Customer acknowledges that the Application Services are the valuable and proprietary property of CG. CG reserves all rights not expressly granted to Customer and the Authorized Users hereunder. Neither Customer nor any Authorized User may: (a) modify, translate, reverse engineer, decompile, disassemble, creative derivative works of, or otherwise attempt to derive any source code of the Application Services; (b) alter or copy, or permit a third party to alter or copy, any part of the Application Services; (c) use the Application Services to provide services to third parties; (d) incorporate the Application Services into other software; (e) use the Application Services except as described herein; (f) sublicense, distribute, sell, assign, transfer, lease, loan, pledge or rent the Application Services to any third party.

SECTION 12.4: DATA RETENTION AND OWNERSHIP OF CUSTOMER INFORMATION

CG shall maintain all transaction and customer data throughout the lifetime of a Customer's subscription. CG does not own any data, information or material that Authorized Users submit to the Application Services ("Customer Data"). The Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. Customer hereby grants to CG a limited, non-exclusive, non-transferable, license to access, host, copy, format, display, distribute, store and use (and to permit CG subcontractors to do the same) Customer Data for the sole and exclusive purpose of providing the Application Services (and if applicable, the consulting services ("Consulting Services")) for the benefit of Customer in accordance with this Section 12. Customer grants CG access to business associate and or vendor contact information. Upon the termination or expiration of the agreement between Customer and Company, or the agreement between Company and CG, or at the request of Customer, CG will within (90) days and at no additional charge provide Customer with all Customer Data in CG possession in the native format of such data within the Application Services. If Customer requires such Customer Data to be provided in a different format (including, a request for a subset of Customer Data as opposed to all Customer Data), such work shall be performed for additional charges at CG's then-current fee for such services. In such event, the Customer Data shall be provided to Customer within sixty (60) days after request and payment of the additional fees for such services.

SECTION 12.5: CONFIDENTIALITY; SECURITY

A. Definition. "Confidential Information" in this Section 12 shall mean information, whether provided or retained in writing, verbally, by electronic or other data transmission or in any other form or media whatsoever or obtained through on-site visits and whether furnished or made available before or after the date of Customer's agreement with Company, that is confidential, proprietary or otherwise not generally available to the public including, without limitation, trade secrets, marketing and sales information, product information, technical information and technology, personally identifiable information, and supplier information, information about trade techniques and other processes and procedures, financial information and business information, compliance information, plans and prospects.

B. Protection of Confidential Information. Neither CG nor Customer shall disclose to any third party during the term of Company's agreement with Customer or after the termination or expiration of same and each party shall keep confidential all Confidential Information of the other, protecting the confidentiality thereof with the same level of efforts that it employs to protect the confidentiality of its own proprietary and confidential information of like importance to it and in any event, by reasonable means. Each party may, however disclose the Confidential

Information of the other to those of such party's personnel engaged in a use permitted by this Section 12 and with a need to know, provided that such personnel (i) are directed to treat such Confidential Information confidentially and not to use it other than as permitted by hereby and (ii) are subject to a legal duty to maintain the confidentiality thereof. Neither party shall use the Confidential Information of the other party except as necessary in and during the performance of this Section 12, or as expressly permitted hereunder. Each party shall be responsible for any improper use or disclosure of any Confidential Information of the other by such party's officers, partners, principals, employees, agents or independent contractors (including individuals who hereafter become former partners, principals, employee agents or independent contractors). Customer acknowledges that elements of the Confidential Information of CG, including, without limitation, the Application Services, and the terms, conditions and fees under this Section 12, are trade secrets of CG.

C. Confidentiality Exceptions. The obligations of this Section 12 shall not apply (i) to any Confidential Information for a period longer than it is legally permissible to restrict disclosure of that item of Confidential Information or (ii) to any Confidential Information that a party can demonstrate was: (a) at the time of disclosure to such party, in the public domain or commonly known in either party's industry; (b) after disclosure to such party, published or otherwise entered the public domain through no fault of such party; (c) in the possession of such party at the time of disclosure to it, if such party was not then under an obligation of confidentiality with respect thereto; (d) received after disclosure to such party from a third-party who had a lawful right to disclose such Confidential Information to it; (e) independently developed by such party without reference to Confidential Information of the other party; or (f) disclosed with the prior written approval of the other party.

D. Required Disclosure. Either CG or Customer may disclose Confidential Information (including, as applicable, Customer Data) to the extent required by law or by order of a court or governmental agency; provided, however, that the recipient of such Confidential Information shall give the owner of such Confidential Information prompt notice, and shall provide reasonable cooperation to the owner of such Confidential Information if the owner wishes to obtain a protective order or otherwise protect the confidentiality of such Confidential Information. The owner of such Confidential Information reserves the right to obtain, and shall be solely responsible for obtaining, a protective order, order to quash or other similar form of protection for the confidentiality of such Confidential Information.

E. Notification; Survival. In the event of any unauthorized disclosure or loss of Confidential Information, the receiving party shall immediately notify the disclosing party. Notwithstanding anything in this Section 12 to the contrary, the obligations of the parties set forth in Section 12.5(A)-(E) with respect to Confidential Information will remain in effect during the term of this Section 12 and (i) with respect to Confidential Information that does not qualify as a trade secret under applicable law, for a period of three (3) years following the expiration or termination of this Section 12, and (ii) with respect to trade secrets, for so long as such Confidential Information remains a trade secret.

F. Security. CG will use all commercially reasonable (i.e., standard in the industry) efforts to implement and maintain website security features and standards to protect the confidentiality and integrity of Customer's Confidential Information. In addition, CG will implement the following policies and practices.

(1) All physical access to the Web Site and Application Services where nonpublic personal and Customer information is maintained is controlled and monitored by security systems.

(2) The computer systems will offer a high degree of resistance to tampering and circumvention. These systems will limit data access to CG's staff and contract staff on a "need-to-know" basis for maintaining The Guard system, and control individual Authorized User's ability to access and alter records within the Web Site and Application Services.

(3) All Authorized Users of the Application Services and Web Site will be given unique USER IDs with encrypted personal identifiers. CG will record interactions by individual users with the Application Services and Web Site. Said identifiers will be deleted by CG sixty (60) days after the end of the applicable term or auto renewal term.

SECTION 12.6: CHARGES AND TAXES

A. License Fees. The annual subscription fees provided in the Order Form ("ASL") entitles the Customer's Authorized Users to the following for a period specified in the Order Form; the use of the Application Services; technical support via email and support tickets; periodic Application Services updates; and access to the user documentation.

B. Consulting Services. The ASL does not cover fees for consulting services. The consulting services are determined on an individual case basis, based upon the unique requirements involved and are charged on a separate basis in accordance with a service order form ("Service Order"). For avoidance of doubt, Customer shall only be charged for said consulting services if the said services and costs/expenses are pre-approved and clearly set forth in the Service Order.

C. Additional Fees. Customer shall be responsible for any charges for Application Services incurred or authorized through use of any USER ID assigned to Authorized Users even if beyond the terms set forth in a Order Form and/or a signed Service Order.

D. Taxes. In addition, Customer shall be solely liable for any state or local sales, use, excise, value-added or other taxes or a similar nature, if any, that may be due on account of a Service Order.

E. Invoicing. All payments hereunder shall be made in U.S. dollars. Unless otherwise stated in the Service Order, all amounts invoiced hereunder shall be due and payable thirty (30) days after the date of the invoice. Not more than once every twelve months during the term of the agreement between Company and Customer, CG reserves the right to change the fees charged under a Service Order, to institute new or additional fees, and to change its policies, methods, or procedures with respect to pricing and billing, upon not less than sixty (60) days' notice to Customer.

F. Expenses. Customer shall reimburse CB for all reasonable expenses incurred by CB in connection with a Service Order, when applicable, including but not limited to, travel and lodging expenses, communications charges and the cost of supplies.

SECTION 12.7: TERM, AUTOMATIC RENEWAL & TERMINATION

A. Term. This Section 12 is effective for so long as the Order Form between CG and Company provides.

B. Termination by CG. CG may terminate the Application Services provided hereunder (either individually or collectively) in the event that Customer fails to cure a material breach of this Section 12 within fifteen (15) days after written notice thereof.

D. Effect of Termination. Upon termination of the Application Services, Customer shall no longer be permitted access to the Application Services and each Authorized User ID shall be deactivated. Termination for any reason shall not affect CG's entitlement to any sums due for Consulting Services under a Service Order performed prior to such termination.

E. Transition Assistance. Prior to and for a period not to exceed sixty (60) days following any termination or expiration of this Section 12, CG agrees to cooperate in good faith with Customer at Customer's request in connection with transition matters, including the transfer to Customer or an entity designated by Customer of all Customer Data that may be stored, housed or hosted by CG or on the Application Services. During the applicable transition period, CG will cooperate and work in consultation with Customer to provide for the orderly transfer of the operations to an in-house representative of Customer as defined in Section

SECTION 12.8: WARRANTIES AND INDEMNITIES BY CG

A. CG represents and warrants that it has the legal right to enter into this Section 12 and perform its obligations hereunder.

B. CG will not be held responsible in any way for limitations, if any, in Customer's hardware or software. CG is not responsible for loss of data in transmission, improper transmission by Customer or failure by Customer or any third party to act on any communication transmission to or by Customer through Application Services.

C. CG also warrants that the hardware, software and the latest federal standards are utilized by CG in providing the Application Services are adequate to allow CG to provide the Application Services in accordance with this Section 12.

D. Indemnification.

(1) CG shall defend, indemnify and hold Customer harmless from and against any and all damages, losses, fines, penalties, costs, and other amounts (including reasonable attorney's fees and expenses) (collectively, "Losses") arising from or in connection with third party claims based on or arising from any allegations that the Application Services as delivered by CG hereunder and used by Customer in accordance with the terms and conditions of this Section 12, infringes upon or misappropriates the United States patent, copyright, trademark, trade secret or other intellectual property rights of such third party.

(2) CG shall not indemnify or defend Customer and the other indemnities hereunder or be liable for any claim or Losses under this Section if the finding of infringement is based on (i) the use of a superseded or altered release of the Application Services if the infringement would have been avoided by the use of a current unaltered release of the Application Services which CG made available to Customer; (ii) the modification of the Application Services by Customer or any third party not authorized in writing by CG to do so; (iii) the use of the Application Services other than in accordance with its documentation and this Section 12 or in combination with any intellectual property, hardware, software, data or technology not supplied by CG or approved by CG in writing; or (iv) any intellectual property supplied by Customer (including, the Customer Data).

(3) If Customer is enjoined or otherwise prohibited, or is reasonably likely in the opinion of CG to be enjoined or prohibited, from using the Application Services or any part thereof, due to a claim covered by CG's indemnification obligations under this Section, then CG shall, at its sole expense and option: (i) attempt to procure for Customer the right to continue using the infringing portion of the Application Services; (ii) modify the infringing portion of the Application Services so as to render it non-infringing while maintaining substantially similar functionality; or (iii) replace the infringing portion of the Application Services with a functionally substantially similar non-infringing item. If CG is unable to procure any of the foregoing after using commercially reasonable efforts to do so, CG shall grant Customer a refund of all prepaid but unused sums paid CG or such infringing item and Customer shall cease using such infringing portion of the Application Services. This Section D states CG's entire liability and Customer's sole exclusive remedy for any claim of infringement.

SECTION 12.9: INDEMNITY BY CUSTOMER

Except as provided in the foregoing Section 12.8D, Customer shall to the fullest extent allowed by law, defend, indemnify and hold harmless CG, any Third-Party provider and any third-party contributor to the Application Services, from and against any and all claims and Losses arising from Customer's use of the Application Services or Consulting Services, except that this indemnity shall not apply where such third party claim or Losses would not have occurred but for the gross negligence or the willful misconduct of CG, any third-party service provider, or any third-party contributor to the Application Services or Consulting Services

SECTION 12.10: INDEMNIFICATION PROCEDURES

With respect to any claims to which the indemnification provisions of this Section 12 apply, the Parties shall comply with the following procedures. Promptly after receipt of notice by any entity entitled to indemnification under this Section 12 of the commencement or threatened commencement of any claim in respect of which a party entitled to be indemnified hereunder (each an "Indemnified Party") will seek indemnification under this Section 12, the Indemnified Party shall notify the party obligated to indemnify the Indemnified Party (the "Indemnifying Party") of

such claim in writing. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Section 12 except to the extent that it can demonstrate that its rights have been prejudiced as a result of such failure. Provided that the Indemnifying Party promptly and appropriately performs its indemnification obligations hereunder, the Indemnifying Party shall be entitled to have sole control over the defense and settlement of such claim. The Indemnified Party shall provide reasonable cooperation (at the Indemnifying Party's expense) and full authority to defend or settle the Claim. The Indemnifying Party shall keep the Indemnified Party fully informed concerning the status of any litigation, negotiations or settlements of any such Claim. The Indemnified Party shall be entitled, at its own expense, to participate in any such litigation, negotiations and settlements with counsel of its own choosing. The Indemnifying Party shall not have the right to settle any Claim if such settlement arises from or is part of any criminal action or proceeding, or contains a stipulation to, or an admission or acknowledgement of, any wrongdoing (whether in tort or otherwise) on the part of the Indemnified Party without prior written consent of such Indemnified Party.

Section 12.11: OWNERSHIP

The Application Services are valuable, confidential, copyrighted, and trade secret property of CG or third parties that have contributed to the Application Services. As between the parties, CG owns all right, title and interest in and to the Application Services, including without limitation, all ancillary and interface software, all current and future enhancements, modifications, revisions, new releases and updates thereof and any derivative works based thereon and all documentation thereto, all copyrights, trade secrets, and patents therein. Nothing in this provision shall preclude CG from implementing features, ideas, processes or technology suggested by a customer, and promoting the implements to the marketplace. Moreover, CG shall own any rights, intellectual property, and title to the code associated with said implementation. Except as expressly permitted hereby, copying of any portion of the content and intellectual property included in the Application Services is prohibited. Customer shall not remove any trademark notices from the Application Services or any provided documentation. Any documentation provided by CG for use by Customer on its website, documenting successful completion of The Guard, shall be used only during the term of this Section 12, and only for the period of time CG states in writing (for avoidance of doubt use of the Guard and CG's marks after the term of this Section 12 and without documentation of successful completion and annual re-assessment is a material breach of this Section 12).

SECTION 12.12: ASSIGNMENT

The Section 12 may not be temporarily or permanently transferred or assigned by a party without the prior consent of the non-assigning party, provided however, a party may, upon written notice to other party, assign this Section 12 to a successor pursuant to a merger, consolidation, sale of all or substantially all of its assets, or all or a substantial portion of the business to which this Section 12 relates. Any assignee of Customer's rights to use the Application Services must first agree to be bound by the terms and conditions of this Section 12.

SECTION 12.13: CUSTOMER RESPONSIBILITY

THE CUSTOMER ASSUMES ALL RESPONSIBILITIES AND OBLIGATIONS WITH RESPECT TO THE SELECTION OF THE APPLICATION SERVICES TO ACHIEVE CUSTOMER'S INTENDED RESULTS.

SECTION 12.14: DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

EXCEPT AS EXPRESSLY PROVIDED ELSEWHERE IN THIS SECTION 12, THE APPLICATION SERVICES, AND CONSULTING SERVICES ARE PROVIDED 'AS IS' AND CG HEREBY DISCLAIMS ALL OTHER WARRANTIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (INCLUDING ANY GUARANTEES OF LEGAL COMPLIANCE), ANY WARRANTIES OF NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

CG IS NOT AN INSURER WITH RESPECT TO CUSTOMER'S USE OF THE APPLICATION SERVICES AND CONSULTING SERVICES AND, THEREFOR, EXCEPT AS PROVIDED ELSEWHERE IN THIS SECTION 12, CG SHALL NOT BE LIABLE TO

CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR INCIDENTAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, GOVERNMENTAL COMPLIANCE, SANCTIONS, LOSS OF DATA OR OTHER INFORMATION, AND THE LIKE) ARISING OUT OF, OR RELATED TO THIS SECTION 12, INCLUDING, WITHOUT LIMITATION, LIABILITY RELATED TO THE USE OF OR UNAVAILABILITY OF THE APPLICATION SERVICES, EVEN IF CG HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE LIMIT OF CG'S LIABILITY, INCLUDING ANY LIABILITY OF ANY CG CONTRACTOR OR AFFILIATE, TO CUSTOMER OR ANY THIRD PARTY CONCERNING THE PERFORMANCE OR NON-PERFORMANCE OF CG, OR IN ANY MANNER RELATED TO THIS SECTION 12, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, BY STATUTE, NEGLIGENCE, STRICT LIABILITY IN TORT, OR OTHERWISE, SHALL IN THE AGGREGATE BE LIMITED TO THE FEES PAID BY CUSTOMER TO CG HEREUNDER DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE MONTH IN WHICH THE EVENT GIVING RISE TO THE CLAIM OCCURRED.

SECTION 12.15: SERVICE LEVEL PROVISIONS

A. NOTIFICATION AND PROBLEM REPORTING

(1) CG shall notify Customer by electronic notification of any planned outages of the Application Services for maintenance purposes at least 24 hours prior to the planned outage.

(2) The designated Customer representative(s) will contact CG Technical Support for all problems related to the Application Services. CG will determine the nature of the problem, set the relative priority and open a trouble ticket to initiate the problem resolution process in accordance with Section (3) below. CG Technical Support is available via email and support tickets, 8:00 a.m. to 8:00 p.m. Eastern Time, Monday through Friday.

(3) **ESCALATION PROCEDURES:** In the event the availability or the functionality of the Application Services is affected due to a software problem or outage, the following escalation procedures apply: Severity of problems will be classified according to the following descriptions and administered by the Product Support Group (Level 1) as part of their problem management processes.

- **HIGH (TO BE RESOLVED WITHIN 24 HOURS):** Problems that cause critical impact to the business function(s) of Customer. Justifies immediate management attention and dedicated resources applying continuous efforts to resolve as soon as possible.
- **MEDIUM (TO BE RESOLVED WITHIN 48 HOURS):** Problems causing degradation of service resulting in impact to the business function(s) of Customer. Justifies priority attention and application of resources to resolve in a timely manner.
- **LOW (TO BE RESOLVED WITHIN 72 HOURS):** Problems causing low impact to the business function(s) of Customer. Requires timely resolution to minimize future impacts. Resources should be allocated in accordance with normal managerial planning prioritization.

Notification Levels are defined below:

- **LEVEL 1:** CG's Technical Support Group
- **LEVEL 2:** CG's Software Engineering Group. The Software Engineering liaison will then contact the Customer's account representative and communicate the problem resolution status, if any, and an anticipated date of resolution.

(4) **AVAILABILITY AND UPTIME:** CG shall make the Web Site available for use by the Customer 95% of normal business hours (M-F, 8AM to 11PM ET), and 90% of off-business hours (M-F, 11PM to 8AM ET) during the term of the Section 12 ("Service Levels").

(5) Specifically excluded from the definition of "Availability" are:

- Scheduled maintenance windows as defined in Section (3) above.
- Reasons of Force Majeure, as defined in Section 16 below.

- Issues associated with the Customer's personal computers, local area networks or the Internet.
- Customer's Internet Service Provider (ISP) connections.
- Issues arising from misuse of Application Services or Web Site by the Customer.
- Any period of unavailability lasting 15 minutes or less per day.
- Outages caused by third-party provided data and their supporting systems.

a) In order to determine Web Site availability, CG will utilize industry standard, third party external web auditing tools. These tools will provide regular monitoring of application availability from a point external to the CG infrastructure (i.e. as an Internet "user" of the system). The Web Site and Application Services will be deemed to be unavailable if this external auditing tool indicates its inability to access the Application Services. These tools will trigger alerts to CG Data Center Operations (DCO) staff that will then execute the defined notification and escalation procedures.

b) In addition, CG DCO performs internal best practice automated and manual monitoring for all key elements of the infrastructure. This monitoring includes the availability to set appropriate threshold levels for system capacity and trigger alerts to DCO staff when either thresholds are exceeded or elements of the Web Site or Application Services become unavailable.

c) In the event that the Web Site falls below 95% availability during normal business hours in any given calendar month, as measured by the third party auditing tools, CG agrees that upon written notice, Customer shall be entitled to a pro-rata refund of said fees during that calendar month, which shall constitute CG's sole obligation and Customer's sole and exclusive remedy.

B. PREDICTIVE CAPACITY PLANNING

The monitoring applications in place will supply information to allow CG to perform predictive capacity planning.

C. DATA RETENTION AND BUSINESS CONTINGENCY

CG will back up Customer Data on a daily basis after each available calendar day. In the event of a major system outage, CG will recover backed-up Customer Data via "point in time" recovery. CG will store copies of encrypted Customer Data backups at both an on-site and a secure third party contracted offsite location. Access to these backups will be limited to authorized personnel.

CG will limit restoration of backup data to instances relating to system outages. Any special requests by Customer for access to or restoration of backup Customer Data as business service is not considered part of this Section 12. Any special request by Customer for deletion of all records to be purged from all production and backup Customer Data as a business service is not considered part of this Section 12.

CG maintains contractual service level agreements with its systems providers that allow internal recovery of impacted systems within generally accepted industry standard timeframes.

If CG determines it cannot continue to operate the Application Services from the CG data center due to catastrophic events, it will exercise a standing agreement with a third party supplier of disaster recovery services located off premises. CG will reinstate Application Services availability at the off-premises location in accordance with CG's disaster recovery procedures.

D. CHANGES TO SERVICE LEVELS

Service Levels shall be reviewed periodically, and each party shall cooperate in good faith to adapt the Application Services provided as quantities increase or change in any way. Service Levels shall not be modified, nor shall any breach hereunder be waived, unless such modification and/or waiver are in writing. No course of dealings between the parties shall be construed as a waiver of any subsequent breach or modification hereof.

SECTION 12.16: FORCE MAJEURE

Other than with respect to Customer's failure to make payments under this Section 12, neither party shall be liable under this Section 12 for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused by, or due to any cause beyond its reasonable control, including, but not limited to acts of God, acts of any government, war or other hostilities, the elements, fire, explosion, power failure, telecommunications failure, industrial or labor dispute, inability to obtain supplies and the like, or breakdown of equipment or any other causes beyond its reasonable control.

SECTION 12.17: GENERAL

A. This Section 12 shall be governed by and construed in accordance with the laws of the United States and the State of New York without giving effect to principles of conflicts of law. Customer agrees to submit to the personal jurisdiction of the State & Federal courts located in New York County in the State of New York with respect to any legal proceedings, interpretation or disputes that may arise out of or in connection with this Section 12, the interpretation or breach of this Section 12. **CUSTOMER AND CG BOTH AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.**

B. If any part of this Section 12 is found void and unenforceable, it will not affect the validity of the balance of the Section 12, which shall remain valid and enforceable according to its terms.

C. CG may subcontract for the provision of custom programming services with other qualified subcontractors, but such subcontracting shall not relieve CG of its Service Level obligations hereunder. For avoidance of doubt, Customer shall only be charged for said custom programming services if the said services and costs/expenses are pre-approved by Customer.

D. If CG is subpoenaed, with respect to services provided to Customer, Customer will reimburse CG all reasonable and necessary cost associated with the subpoenaed actions.

E. CG is an independent contractor in the performance of services under this Section 12 and shall not be considered to be or permitted to be an agent, employee, joint venture, partner or subcontractor of Customer.

F. The headings of sections of this Section 12 are for convenience of reference only and will not affect the meaning or interpretation of this Section 12 in any way.

G. The provisions contained in this Section 12 that by their context are intended to survive termination or expiration will survive.

H. CG may use the Customer corporate name and logo for marketing purposes, such as website, articles and press releases only during the Term, and if applicable the Renew Term, of this Section 12.

I. This Section 12 constitutes the entire agreement between the parties with respect to the subject matter hereof, and superseded all other communications, including but not limited to all prior agreements, between the parties with respect to such subject matter.

CUSTOMER ACKNOWLEDGES THAT IT HAS READ THIS SECTION 12, UNDERSTAND AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS STATED HEREIN.