

## SOFTWARE LICENSE & MAINTENANCE AGREEMENT

This Agreement (this “*Agreement*”) is entered into as of the date indicated on the duly executed Quote which adopts this Agreement (“Effective Date”) by and between Customer, (including controlled affiliates who are designated on a Quote (each an “*Affiliate*”), “*Licensee*”), and ESO Solutions, Inc., a Texas corporation (including its controlled affiliates, the “*Company*”). This Agreement supersedes and replaces any other Registry agreement between the parties, or their respective predecessors in interest, concerning the same subject matter.

### BACKGROUND

Company has a background in developing and maintaining registry software products and modules for use connection with hospital and regulatory operations. The Company is willing to license products and provide services to the Licensee based on this background, and Licensee desires that the Company provide such products and services.

In consideration of the covenants, agreements and promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows.

### TERMS

#### 1. SERVICES/DELIVERABLES.

- a. Software Products. The Company agrees to deliver the software (or access thereto) and related materials in the quantities indicated (collectively, the “*Software Products*”) to the Licensee as set forth in the Quote(s) (as defined below). In connection with delivery of the Software Products, the Company shall provide Licensee with the license and/or subscription rights further described in Section 6 herein.
- b. Maintenance and Support Services. If and to the extent indicated on a Quote, the Company agrees to provide Licensee the maintenance and support services described on Appendix A (“*Maintenance Services*”).
- c. Hosting and Other Services. If and to the extent indicated on a Quote, the Company agrees to provide Licensee hosting or other services (“*Other Services*”) described in such Quote.

2. **FEES & COSTS**. The specific Software Products, Maintenance Services, and other products/ services to be provided by Company to Licensee, and the fees (and any specific terms) for the same, shall be set forth in one or more quotes or sales orders, signed by the parties and listing applicable Affiliate(s) (each a “*Quote*”). Each Quote is deemed to be incorporated fully by reference herein. Licensee agrees to pay the Company the fees and costs for the Software Products, Maintenance Services, and other items as set forth in each Quote (the “*Fees*”). The Fees are non-cancelable and non-refundable, except in the event of termination for cause by Licensee as set forth in Section 3.b herein. Company shall invoice Licensee on an annual basis,

and Licensee shall pay all invoices within 30 days of receipt of Company's invoice. Fees for Maintenance Services and other annually recurring items shall increase by 3% each year this Agreement is in effect. The Fees are exclusive of all taxes and credit card processing fees, if applicable. Unless and until Licensee provides the Company a tax exemption certificate, Licensee will be responsible for and will remit (or will promptly reimburse the Company for) all taxes of any kind, including sales, use, duty, customs, withholding, property, value-added, and other similar federal, state or local taxes (other than taxes based on the Company's income) related to this Agreement.

### 3. TERM/TERMINATION.

- a. Term. The term of this Agreement (the "**Term**") commences on the Effective Date and continues for a period of one year (or any longer period provided in an Addendum). Thereafter, the Term will renew for successive one-year periods (each, a "**Renewal Term**") unless written notice is provided at least 60 days prior to the anniversary of the Effective Date. Any such termination may be effective as to the entire Agreement, or as to any Affiliate or entire facility using Software Products under this Agreement.
- b. Termination for Cause. This Agreement may be terminated at any time upon the breach by the other party, if such breach continues for a period of 30 days after written notice to the breaching party or immediately if such breach is not subject to cure.
- c. Effect of Termination. Upon termination, the Company shall have no obligation to provide the Software Products or Maintenance Services or any other services under this Agreement to the Licensee, and Licensee shall have no obligation to pay for the same. If this Agreement is terminated for cause by: (a) Licensee, then Company shall refund to Licensee within 45 days any prepayment made by Licensee under this Agreement and the applicable Quote for licenses, services or products not yet provided by Company, or (b) Company, then Company may retain any amounts prepaid by Licensee through the effective date of the termination.

4. **RELATIONSHIP OF PARTIES**. It is understood by the parties that the Company is an independent contractor with respect to the Licensee, and not an employee of the Licensee. The Licensee will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of the Company.

5. **LICENSING; SUBSCRIPTIONS**. The Software Products are property of Company and/or its suppliers and licensors.

- a. License. If a Software Product is designated as "licensed" on the applicable Quote ("**Licensed Software Products**"), then Company grants to Licensee a perpetual but limited, non-exclusive, non-transferable, non-assignable, non-sublicensable, revocable, royalty-free license and right to use the Software Products, subject to Licensee's compliance with the Use Restrictions and other limitations contained in this Agreement.

- b. **Subscription.** If a Software Product or Other Service is designated as “subscription” or “recurring” or otherwise periodic on the applicable Quote, then Licensee may access and use such Software Products and Other Services, in accordance with the access and volume limitations set forth thereon, subject to Licensee’s compliance with the Use Restrictions and other limitations contained in this Agreement.
  - c. **Use Restrictions.** Licensee shall not make any reproductions, copies, or electronic transmittals of any portion of the Software Products, including but not limited to any program files, configuration files, system files, instruction manuals, screen captures, user’s manuals, on-line help files, or any other materials, without the prior written consent of the Company; except that for Licensed Software Products, Licensee may make network system backups of the installed system and a single backup copy of the installation media or file provided by the Company, in each case solely for its internal archival or backup purposes. Licensee shall install Licensed Software Products only on as many networks, workstations or computers as is indicated on applicable Quotes. Except as provided in this Agreement or as otherwise authorized by ESO, Licensee has no right to, and shall not: (a) decompile, reverse engineer, disassemble, print, copy or display the Software Products or otherwise reduce the Software Products to a human-perceivable form in whole or in part; (b) publish, release, rent, lease, loan, sell, distribute or transfer the Software Products to another person or entity; (c) reproduce the Software Products for the use or benefit of anyone other than Licensee; (d) alter, modify or create derivative works based upon the Software Products either in whole or in part; or (e) use or permit the use of the Software Products for commercial time-sharing arrangements or providing service bureau, data processing, rental, or other services to any third party (other than an applicable Affiliate). The provisions of this section shall survive the termination of this Agreement.
6. **WARRANTY.** During the Term of the Maintenance Services under this Agreement, the Company warrants to the Licensee that all Software Products and maintenance updates provided by the Company to the Licensee under this Agreement will perform substantially in accordance with their written materials and other documentation provided by the Company to the Licensee, in each case provided the Licensee has complied with the system resource and configuration requirements. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION 6, ESO DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, TITLE, NON-INFRINGEMENT, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6, CUSTOMER ACCEPTS THE SOFTWARE PRODUCTS AND SERVICES “AS-IS” AND “AS AVAILABLE”.
7. **INSURANCE.** ESO agrees to maintain commercial general liability, errors and omission and cyber-liability/data breach insurance in amounts determined by ESO, but in no event less than \$1,000,000 per claim/\$2,000,000 aggregate.
8. **INDEMNIFICATION.** Subject to the Limitation of Liability below, the Company shall defend and indemnify Licensee from any damages, costs, liabilities, expenses (including reasonable attorney’s fees) (“Damages”) actually incurred or finally adjudicated as to any third-party claim or

action alleging that the Software Products delivered pursuant to this Agreement (on a stand-alone basis, and not in combination with any other software, system, information or process) infringe or misappropriate any third party's patent, copyright, trade secret, or other intellectual property rights enforceable in the applicable jurisdiction (each, an "Indemnified Claim"). If Licensee makes an Indemnified Claim under this Section or if the Company determines that an Indemnified Claim may occur, the Company shall at its option: (a) obtain a right for Licensee to continue using such Software Product(s); (b) modify such Software Product(s) to make it a non-infringing equivalent or (c) replace such Software Product(s) with a non-infringing equivalent. If (a), (b), or (c) above are not reasonably practicable, either party may, at its option, terminate the relevant Quote. Notwithstanding the foregoing, the Company shall have no obligation hereunder for any claim resulting or arising from (x) Licensee's breach of this Agreement; (y) modifications made to the Software Product(s) that were not performed or provided by or on behalf of the Company or (z) the combination, operation or use by Licensee (and/or anyone acting on Licensee's behalf) of the Software Product(s) in connection with any other product or service (the combination or joint use of which causes the alleged infringement). This section states the Company's sole obligation and liability, and Licensee's sole remedy, for potential or actual intellectual property infringement by the Software Product(s).

9. **LIMITATION ON LIABILITY.** NEITHER THE COMPANY NOR LICENSEE SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, INCLUDING CLAIMS FOR DAMAGES FOR LOST PROFITS, GOODWILL, USE OF MONEY, INTERRUPTED OR IMPAIRED USE OF THE SOFTWARE, AVAILABILITY OF DATA, STOPPAGE OF WORK OR IMPAIRMENT OF OTHER ASSETS RELATING TO THIS AGREEMENT. THE COMPANY'S MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS OF LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING ANY BUSINESS ASSOCIATE AGREEMENT RELATING HERETO, NOTWITHSTANDING ANY LIMITING OR CONTRARY PROVISION THEREIN), SHALL NOT EXCEED THE FEES PAID BY (OR ON BEHALF OF) LICENSEE WITHIN THE PRECEDING 12-MONTH PERIOD UNDER THE APPLICABLE SALES ORDER OR SERVICE GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS, EXCLUSIONS, DISCLAIMERS SHALL APPLY REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT OR OTHERWISE. INSOFAR AS APPLICABLE LAW PROHIBITS ANY LIMITATION HEREIN, THE PARTIES AGREE THAT SUCH LIMITATION SHALL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO MAKE THE LIMITATION PERMITTED TO THE FULLEST EXTENT POSSIBLE UNDER SUCH LAW. THE PARTIES AGREE THAT THE LIMITATIONS SET FORTH HEREIN ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR THE COMPANY'S SOFTWARE PRODUCTS AND SERVICES TO LICENSEE, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSES OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES. THIS SECTION SHALL SURVIVE EXPIRATION OR TERMINATION OF THE AGREEMENT.

10. **CONFIDENTIALITY.** "*Confidential Information*" refers to the following items: (a) any document marked "Confidential"; (b) any information orally designated as "Confidential" at the time of disclosure, provided the disclosing party confirms such designation in writing within five business days; (c) the Software Product(s) and documentation, whether or not designated confidential; (d) the Company's security controls, policies, procedures, audits, or other information concerning the Company's internal security posture; (e) any other nonpublic, sensitive information reasonably treated as trade secret or otherwise confidential; and (f) Data which does not comprise Protected Health Information ("*PHI*"), as defined in 45 C.F.R. §160.103. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is

in the other party's possession at the time of disclosure free of duty of non-disclosure; (ii) is independently developed without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of the receiving party's improper action or inaction; (iv) is approved for release in writing by the disclosing party; or (v) PHI (which is exclusively governed by the Business Associate Agreement attached hereto as Appendix C). Each party shall use Confidential Information of the other party solely to fulfill the terms of this Agreement (the "**Purpose**"). Each party shall (a) ensure that its employees or contractors are bound by confidentiality obligations no less restrictive than those contained herein, and (b) not disclose Confidential Information to any other third party without prior written consent from the disclosing party. Without limiting the generality of the foregoing, the receiving party shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. A receiving party shall promptly notify the disclosing party of any misuse or misappropriation of Confidential Information of which it is aware. With respect to each item of Confidential Information, the obligations of nondisclosure will terminate three years after the date of disclosure; provided that, such obligations related to Confidential Information constituting the Company's trade secrets shall continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement, a party shall return all copies of Confidential Information to the other or certify the destruction thereof. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Notwithstanding anything in this Section to the contrary, the parties expressly acknowledge that Confidential Information may be disclosed if such Confidential Information is required to be disclosed by law, a lawful public records request, or judicial order, provided that prior to such disclosure, written notice of such required disclosure shall be given promptly and without unreasonable delay by the receiving party in order to give the disclosing party the opportunity to object to the disclosure and/or to seek a protective order. The receiving party shall reasonably cooperate in this effort. In addition, Licensee may disclose the contents of this Agreement solely for the purpose of completing its review and approval processes under its local rules, if applicable.

11. **NOTICES.** Notices hereunder must be in writing and delivered by (a) a recognized delivery service with signature-receipt proof of delivery to a party's principal place of business designated on page 1 hereof or the applicable Quote, (b) hand delivered, or (c) e-mail to a person designated in writing by the receiving party. In the case of delivery by e-mail, the notice must be followed by a copy of the notice being delivered by a means provided in (a), (b) or (c).
12. **SEVERABILITY.** If any provisions of this Agreement shall be held to be invalid, or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
13. **FORCE MAJEURE.** If a Party is delayed in performance for any reason beyond its reasonable control, including but not limited to, riots, wars, terrorist acts, executive order, fires, accidents, explosions, natural disasters, or epidemics, then the time allowed for performance shall be extended on a day-for-day basis. The delayed Party promptly will provide written notice of any

such event causing a delay in performance, which notice will describe the basis for the delay, the estimated duration, and the steps being taken to mitigate the delay.

14. **WAIVER, AMENDMENT, ASSIGNMENT.** No amendment, assignment or waiver of this Agreement or its term and conditions is valid unless it is in writing, specifically refers to this Agreement, and is signed by authorized representatives of both parties. Any amendment or waiver will be limited to the specific situation for which it is given. No other action or failure to act (including inspection, failure to inspect, acceptance of late deliveries, or acceptance of or payment for any Products) will constitute a waiver of any rights. This Section shall survive any termination or expiration of this Agreement and will continue to bind the parties and their successors and assigns.
15. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties as subject to matter herein and may not be amended, waived, or modified in any way, except if the amendment is made in writing and is signed by both parties.
16. **COMPLIANCE WITH LAWS.** Company and Licensee shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its operations and the performance of this Agreement, including those of federal, state, and local agencies having jurisdiction and/or authority. Company represents and warrants that (a) it has not been convicted of a criminal offense related to healthcare, (b) it is not currently under sanction, exclusion, or investigation (civil or criminal by a federal or state enforcement, regulatory, administrative, or licensing agency or otherwise ineligible for federal or state program participation), and (c) it is not currently listed on the General Service Administration List of Parties Excluded from the Federal Procurement and Non-Procurement Programs.
17. **GOVERNING LAW.** This Agreement, any claim dispute or controversy hereunder (a *"Dispute"*) will be governed by (i) the laws of the State of Texas, or (ii) if Customer is a city, county, municipality or other governmental entity, the law of state where Customer is located, in each case foregoing without regard to its conflicts of law. The UN Convention for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply. In any Dispute, each party will bear its own attorneys' fees and costs and expressly waives any statutory right to attorneys' fees. The parties agree to waive, to the maximum extent permitted by law, any right to a jury trial with respect to any Dispute.
18. **ORDER OF PRECEDENCE.** In the event of any conflict between this Agreement, Quotes, Addenda or other attachments incorporated herein, the following order of precedence will govern: (1) terms above; (2) the applicable Addendum, with most recent Addendum taking precedence over earlier ones; (3) a Quote, and (4) any ESO policy posted online, including without limitation its privacy policy. No amendments incorporated into this Agreement after execution hereof will amend such General Terms and Conditions unless it specifically states its intent to do so and cites the section or sections amended.
19. **SIGNATURES.** This Agreement may be executed in one or more counterparts. Each counterpart will be an original, and all such counterparts will constitute a single instrument. Electronic

signatures on this Agreement or on any Addendum (or copies of signatures sent via electronic means) are the equivalent of handwritten signatures.





## **Definitions**

“Enhancement” means a modification, addition or new release of the Software that when added to the Software, materially changes its utility, efficiency, functional capability or application.

“E-mail Support” means ability to make requests for technical support assistance by e-mail at any time concerning the use of the then-current release of Software.

“Error” means an error in the Software, which significantly degrades performance of such Software as compared to ESO’s then-published Documentation.

“Error Correction” means the use of reasonable commercial efforts to correct Errors.

“Fix” means the repair or replacement of object code for the Software or Documentation to remedy an Error.

“Initial Response” means the first contact by a Support Representative after the incident is logged and a ticket generated. This may include an automated e-mail response depending on when the incident is first communicated.

“Management Escalation” means the notification of ESO management following the incomplete resolution of an Error to which an initial Workaround or Fix has been applied,

“Severity 1 Error” means an Error which renders the Software completely inoperative (e.g., a User cannot access the Software due to unscheduled downtime or an Outage).

“Severity 2 Error” means an Error in which Software is still operable; however, one or more significant features or functionality are unavailable (e.g., a User cannot access a core component of the Software).

“Severity 3 Error” means any other error that does not prevent a User from accessing a significant feature of the Software (e.g., User is experiencing latency in reports).

“Severity 4 Error” means any error related to Documentation or a Customer Enhancement request.

“Status Update” means if the initial Workaround or Fix cannot resolve the Error, notification of the Customer regarding the progress of the Workaround or Fix.

“Online Support” means information available through ESO’s website (www.eso.com), including frequently asked questions and bug reporting via Live Chat.

“Support Representative” shall be ESO employee(s) or agent(s) designated to receive Error notifications from Customer.

“Update” means an update or revision to Software, typically for Error Correction.

“Upgrade” means a new version or release of Software or a particular component of Software, which improves the functionality, or which adds functional capabilities to the Software and is not included in an Update. Upgrades may include Enhancements.

“Workaround” means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impairing Customer’s use of the Software.

## **Software Subscription Services**

As part of ESO’s Software Subscription Services, clients are provided with:

- Software Enhancements.
  - Semi-annual capability or feature upgrades to the hospital and Central-Site software.

- Support of all non-fee based national trauma initiatives and annual coding updates (as required).
- Upgrades, as required, for maintaining compatibility with Microsoft applications (Windows, web and server related software) and compatibility with applicable database software.
- Custom software maintenance services for existing software (if applicable). This does not include change or feature requests for customer elements.

Software enhancements/upgrades are provided with installation instructions such that clients can perform and manage the installations in accordance with their own needs and priorities.

Notes/exceptions:

- *Data migration services, if required, are handled separately and not covered by software subscription services.*
- *States-specific modifications or requirements are not covered by Software Subscription unless ESO is the State software supplier.*

**Technical and Registry Application Support**

ESO support personnel will provide first-line technical and Registry application support to our user base. Support services for these users will include:

1. Support via telephone or e-mail.
2. Technical and application support staff assists with application trouble shooting, guidance related to the software application, and answering questions related to program capabilities.
3. Initial installation is fully supported in accordance with the license quote. Installation of enhancements/upgrades to previously/currently-installed software is performed by the client, but ESO will provided support to the extent the installation instructions require explanation or adaptation.
4. Semi-annual capability updates.
5. Maintenance of documentation as well as training and support materials as prepared by ESO resulting from system modifications covered by maintenance services.
6. Bug fixes of ESO-developed application code, and integration of minor software patches.

**Technical and Report Writer Application Support**

Report Writer support services additionally include:

1. Updates to the Report Writer for the inclusion of newly defined industry-specific data points.
2. Complimentary Report Writing Services during ACS Site Visits for trauma clients.
3. Free Report Writer training classes (Module 1 & 2) that are available several times each year.

**Documentation:**

ESO's software comes with application and technical documentation. Technical documentation also includes appendices describing data formats, screen layouts, menu choices, field names, widths, export formats, and

other technical capabilities. In addition, ESO has additional documentation to assist with the installation and configuration of the system.

### **Software Support Services:**

ESO provides a full range of software support services. Our direct software support services entail a high level of service and are sufficient for ensuring the ongoing operations of a central site; however, ESO is also able to help in a number of value-added projects. ESO's experience in custom systems makes us efficient in such projects because we can share our experiences and insights gained from working on dozens of other successful registry systems. In addition, ESO also can provide direct one-on-one services and customized application development maintenance on an individual basis and has done so for hundreds of hospitals throughout the country. *ESO will, when unavoidable or expedient for it, provide support services via remote access of client systems; ESO conducts remote access solely through GoToAssist attended sessions.*

### **Support Services not covered by Standard Support:**

1. Training – the ESO help desk is not to be used as a replacement for training for the trauma registry application or for any of its features and functions.
2. 3<sup>rd</sup> Party Product Support – ESO is not responsible for trouble shooting Microsoft products or any other product not provided directed by ESO; ESO will provide client with compatibility requirements and necessary system settings.
3. Remote access, Wide Area Network or CITRIX support – the software license provided and supported is based on local area network use.
4. Data loss or corruption as a result of client error (inadvertently deleting files) or as a result of hospital IT system deficiency (like insufficient anti-virus protection).
5. Application Server Migrations – ESO is not responsible to move existing installed software to new servers unless the move was requested/required by ESO.
6. NTDB data mapping, validation, data analysis and data processing. Note: ESO offers enhanced services to cover these aforementioned items as an additional and upgraded service offering.
7. Report Development – ESO is not responsible for writing and/or developing ad hoc reports (queries, gathers or coded variables) for users.
8. Client's infrastructure or Network Issue – ESO is a software vendor and therefore, we don't have the obligation as a software vendor to troubleshoot and evaluate client networks. We provide the specifications needed for proper hardware and software installation and continued configuration, but don't provide "free" network analysis and troubleshooting as part of standard maintenance.
9. State Specific customization and data submission requirements – Unless ESO is the State's Central Site Registry Vendor, ESO has no way of accurately estimating the effort to make annual software updates for State requirements and therefore, ESO cannot provide a "fixed fee" estimate related to any potential changes designed or mandated by the State.
10. Security and technology assessments – ESO will complete a reasonably security / technology questionnaire or assessment in connection with the implementation of a new product, but any subsequent assessments or questionnaires that require more than one hour to complete will incur charges at ESO's then-current consulting services rate.

**HIPAA BUSINESS ASSOCIATE ADDENDUM**

Licensee and ESO Solutions, Inc. ("Business Associate") agree that this HIPAA Business Associate Addendum is entered into for the benefit of Licensee, which is a covered entity under the Privacy Standards ("Covered Entity").

Pursuant to the Master Subscription and License Agreement (the "Agreement") into which this HIPAA Business Associate Addendum (this "Addendum") has been incorporated, Business Associate may perform functions or activities involving the use and/or disclosure of PHI on behalf of the Covered Entity, and therefore, Business Associate may function as a business associate. Business Associate, therefore, agrees to the following terms and conditions.

1. **Scope.** This Addendum applies to and is hereby automatically incorporated into all present and future agreements and relationships, whether written, oral or implied, between Covered Entity and Business Associate, pursuant to which PHI is created, maintained, received or transmitted by Business Associate from or on behalf of Covered Entity in any form or medium whatsoever.
2. **Definitions.** For purposes of this Addendum, the terms used herein, unless otherwise defined, shall have the same meanings as used in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), or the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and any amendments or implementing regulations, (collectively "HIPAA Rules").
3. **Compliance with Applicable Law.** The parties acknowledge and agree that, beginning with the relevant effective date, Business Associate shall comply with its obligations under this Addendum and with all obligations of a business associate under HIPAA, HITECH, the HIPAA Rules, and other applicable laws and regulations, as they exist at the time this Addendum is executed and as they are amended, for so long as this Addendum is in place.
4. **Permissible Use and Disclosure of PHI.** Business Associate may use and disclose PHI as necessary to carry out its duties to a Covered Entity pursuant to the terms of the Agreement and as required by law. Business Associate may also use and disclose PHI (i) for its own proper management and administration, and (ii) to carry out its legal responsibilities. If Business Associate discloses Protected Health Information to a third party for either above reason, prior to making any such disclosure, Business Associate must obtain: (i) reasonable assurances from the receiving party that such PHI will be held confidential and be disclosed only as required by law or for the purposes for which it was disclosed to such receiving party; and (ii) an agreement from such receiving party to immediately notify Business Associate of any known breaches of the confidentiality of the PHI.
5. **Limitations on Use and Disclosure of PHI.** Business Associate shall not, and shall ensure that its directors, officers, employees, subcontractors, and agents do not, use or disclose PHI in any manner that is not permitted by the Agreement or that would violate Subpart E of 45 C.F.R. 164 ("Privacy Rule") if done by a Covered Entity. All uses and disclosures of, and requests by, Business Associate for PHI are subject to the minimum necessary rule of the Privacy Rule.
6. **Required Safeguards to Protect PHI.** Business Associate shall use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 ("Security Rule") with respect to electronic PHI, to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Addendum.
7. **Reporting to Covered Entity.** Business Associate shall report to the affected Covered Entity without unreasonable delay: (a) any use or disclosure of PHI not provided for by the Agreement of which it becomes aware; (b) any breach of unsecured PHI in accordance with 45 C.F.R. Subpart D of 45 C.F.R. 164 ("Breach Notification Rule"); and (c) any security incident of which it becomes aware. With regard to Security Incidents caused by or occurring to Business Associate, Business Associate shall cooperate with the Covered Entity's investigation, analysis, notification and mitigation activities, and except for Security

Incidents caused by Covered Entity, shall be responsible for reasonable costs incurred by the Covered Entity for those activities. Notwithstanding the foregoing, Covered Entity acknowledges and shall be deemed to have received advanced notice from Business Associate that there are routine occurrences of: (i) unsuccessful attempts to penetrate computer networks or services maintained by Business Associate; and (ii) immaterial incidents such as “pinging” or “denial of services” attacks.

8. Mitigation of Harmful Effects. Business Associate agrees to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of the Agreement, including, but not limited to, compliance with any state law or contractual data breach requirements.
9. Agreements by Third Parties. Business Associate shall enter into an agreement with any subcontractor of Business Associate that creates, receives, maintains or transmits PHI on behalf of Business Associate. Pursuant to such agreement, the subcontractor shall agree to be bound by the same or greater restrictions, conditions, and requirements that apply to Business Associate under this Addendum with respect to such PHI.
10. Access to PHI. Within five business days of a request by a Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to the Covered Entity such PHI for so long as such information is maintained by Business Associate in the Designated Record Set, as required by 45 C.F.R. 164.524. In the event any individual delivers directly to Business Associate a request for access to PHI, Business Associate shall within five (5) business days forward such request to the Covered Entity.
11. Amendment of PHI. Within five business days of receipt of a request from a Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall provide such information to the Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. 164.526. In the event any individual delivers directly to Business Associate a request for amendment to PHI, Business Associate shall within five business days forward such request to the Covered Entity.
12. Documentation of Disclosures. Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528 and HITECH.
13. Accounting of Disclosures. Within five business days of notice by a Covered Entity to Business Associate that it has received a request for an accounting of disclosures of PHI, Business Associate shall make available to a Covered Entity information to permit the Covered Entity to respond to the request for an accounting of disclosures of PHI, as required by 45 C.F.R. 164.528 and HITECH.
14. Other Obligations. To the extent that Business Associate is to carry out one or more of a Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with such requirements that apply to the Covered Entity in the performance of such obligations.
15. Judicial and Administrative Proceedings. In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, the affected Covered Entity shall have the right to control Business Associate's response to such request, provided that, such control does not have an adverse impact on Business Associate's compliance with existing laws. Business Associate shall notify the Covered Entity of the request as soon as reasonably practicable, but in any event within seven business days of receipt of such request.
16. Availability of Books and Records. Business Associate hereby agrees to make its internal practices, books, and records available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with the HIPAA Rules.

17. Breach of Contract by Business Associate. In addition to any other rights a party may have in the Agreement, this Addendum or by operation of law or in equity, either party may: i) immediately terminate the Agreement if the other party has violated a material term of this Addendum; or ii) at the non-breaching party's option, permit the breaching party to cure or end any such violation within the time specified by the non-breaching party. The non-breaching party's option to have cured a breach of this Addendum shall not be construed as a waiver of any other rights the non-breaching party has in the Agreement, this Addendum or by operation of law or in equity.
18. Effect of Termination of Agreement. Upon the termination of the Agreement or this Addendum for any reason, Business Associate shall return to a Covered Entity or, at the Covered Entity's direction, destroy all PHI received from the Covered Entity that Business Associate maintains in any form, recorded on any medium, or stored in any storage system. This provision shall apply to PHI that is in the possession of Business Associate, subcontractors, and agents of Business Associate. Business Associate shall retain no copies of the PHI. Business Associate shall remain bound by the provisions of this Addendum, even after termination of the Agreement or Addendum, until such time as all PHI has been returned or otherwise destroyed as provided in this Section. For the avoidance of doubt, de-identified Licensee Data shall not be subject to this provision.
19. Injunctive Relief. Business Associate stipulates that its unauthorized use or disclosure of PHI while performing services pursuant to this Addendum would cause irreparable harm to a Covered Entity, and in such event, the Covered Entity shall be entitled to institute proceedings in any court of competent jurisdiction to obtain damages and injunctive relief.
20. Owner of PHI. Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI created or received by Business Associate on behalf of a Covered Entity.
21. Safeguards and Appropriate Use of Protected Health Information. Covered Entity is responsible for implementing appropriate privacy and security safeguards to protect its PHI in compliance with HIPAA. Without limitation, it is Covered Entity's obligation to: (i) not include PHI in information Covered Entity submits to technical support personnel through a technical support request or to community support forums. In addition, Business Associate does not act as, or have the obligations of a Business Associate under the HIPAA Rules with respect to Licensee Data once it is sent to or from Covered Entity outside Business Associate's Software over the public Internet; and (ii) implement privacy and security safeguards in the systems, applications, and software Covered Entity controls, configures and connects to Business Associate's Software.
22. Third Party Rights. The terms of this Addendum do not grant any rights to any parties other than Business Associate and the Covered Entity.
23. Signatures. The signatures to the Agreement (or the document evidencing the parties' adoption thereof) indicate agreement hereto and shall be deemed signatures hereof, whether manual, electronic or facsimile.