

# DICOM Grid, Inc. DBA Ambra health Software As A SERVICE Agreement

This Software as a Service (“SaaS”) Agreement and all Exhibits annexed hereto (the “**Agreement**”) is made and entered into on \_\_\_\_\_ (“**Contract Start Date**”), by and between DICOM Grid, Inc. dba Ambra Health (“**Company**”), and \_\_\_\_\_ (“**Subscriber**”). In consideration of the mutual promises contained herein, the parties hereby agree to the following:

1. **Background.** Company has developed certain Software (defined below), which it provides as part of its Services (defined below). Subscriber wishes to utilize the Services, and Company desires to make the Services available to Subscriber, subject to the following terms and conditions.
2. **Definitions.** Capitalized terms shall have the meanings set forth in this section, or in the section where they are first used.
  - “**Access Protocols**” means the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Subscriber or any of Subscriber’s Authorized Users to access the Services.
  - “**Application**” means a specific service offered by Company as part of the Services.
  - “**Authorized Facility**” means a specific facility owned, operated or used by Subscriber or a partner of Subscriber from which Subscriber is authorized by Company to allow Authorized Users to access the Services.
  - “**Authorized User**” means any individual whom is authorized by Company and/or Subscriber to access the Services.
  - “**Documentation**” means the technical materials provided by Company to Subscriber in hard copy or electronic form describing the use and operation of the Software.
  - “**Error**” means a reproducible failure of the Software to substantially conform to the Documentation.
  - “**Error Corrections**” means bug fixes or Workarounds intended to correct Errors in the Software.
  - “**Intellectual Property Rights**” means any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.
  - “**Order Form**” means the portion of the Agreement, which identifies the Service(s) to be made available by Company to Subscriber, and the fees, term and billing terms and conditions of the Service(s).
  - “**Professional Services**” means the ongoing support included with the Software license and the professional support services described in this Agreement, including but not limited to the professional support services set forth in Exhibits A, B, C and D.
  - “**Services**” means the Software and the Professional Services ordered by Subscriber as set forth on the Order Form and described in this Agreement and Exhibits A, B, C and D.
  - “**Study**” means a collection of medical images grouped together under the same study instance UID. A billing event is defined as a Study being uploaded to a namespace.
  - “**Subscriber Content**” means any content developed by Subscriber and used with the Software which includes, without limitation, all images, notes, records and other data generated by either (a) Subscriber or an Authorized User of Subscriber, or (b) end users of a Subscriber (the content described in clauses (a) and (b) is collectively referred to as the “**Subscriber Data**”).
  - “**Software**” means the (i) the Ambra Suite software license, also referred to as DG PACS software which is the name as registered with the FDA, (ii) other software programs or licenses

as set forth on the Order Form and as described in Exhibit A (Software Services), (iii) ongoing support, as is further described in Exhibit C (Statement of Work), and (iv) any associated user interfaces, related technology or Applications that Company makes available pursuant to this Agreement.

### 3. **Provision of Services**

- Subject to Subscriber's payment of the fees set forth in the Order Form, Company will provide the Services via an online user interface specified in Exhibit A (Software Services). On or as soon as reasonably practicable after the Contract Start Date, Company shall provide to Subscriber the necessary passwords, security protocols and policies and network links or connections and Access Protocols to allow Subscriber and its Authorized Users to access the Services in accordance with the Access Protocols.
- **Responsibility for Software and Content Hosting.** Company shall, at its own expense, provide for the hosting of the Software which is accessible as part of the Services, provided that nothing herein shall be construed to require Company to provide for, or bear any responsibility with respect to any telecommunications or computer network hardware, required by Subscriber or any Authorized User to provide access from the Internet to the Services.
- **HIPAA Compliance.** Company represents to Subscriber that the Services have been designed to be in compliance with the Health Insurance Portability and Accountability Act of 1996 as amended ("**HIPAA**") as of the Contract Start Date. If new requirements are promulgated under HIPAA that are applicable to the Services, then Company shall update the Services accordingly.

**3.4 Consent to Use of Data.** Subscriber agrees that Company may, consistent with applicable law, collect, aggregate, de-identify and otherwise use technical data and related information that is gathered periodically or transmitted using the Software and Services to facilitate the provision of Software updates, product support, and other Services to Subscriber (if any) related to the Software and to improve its products. Subscriber acknowledges that the de-identification of data is an integral part of the Services and Company would not otherwise be able to provide its Software or Services to Subscriber. In consideration of the provision of Services, Subscriber hereby transfers and assigns to Company all right, title and interest in and to all de-identified information. Subscriber agrees that Company may use, disclose, market, license and sell such de-identified information, and that Subscriber shall have no interest in such information, or in the commercialization thereof. Subscriber acknowledges that the rights conferred by this Section 3.4 are a principal consideration for the provision of the Services, without which Company would not enter into this Agreement.

**3.5 FDA Registration and Indications for Use.** Company has registered with the FDA a Class II Medical Device under the name DG PACS and 510(k) Number of K152977. DG PACS software is intended for use as a primary diagnostic and analysis tool for diagnostic images for hospitals, imaging centers, radiologists, reading practices and any user who requires and is granted access to patient image, demographic and report information. Ambra Viewer, a component of DG PACS, displays and manages diagnostic quality DICOM images. Lossy compressed mammographic images and digitized film screen images must not be reviewed for primary image interpretations. Mammographic images may only be interpreted using cleared monitors intended for mammography display. Not intended for diagnostic use on mobile devices. Prescription Use (Part 21 CFR 801 Subpart D).

### 4. **Intellectual Property**

- **License Grant.** Subject to the terms and conditions of this Agreement, Company grants to Subscriber a non-exclusive, non-transferable license during the term, solely for Subscriber's internal business purposes and in accordance with the limitations set forth in Exhibit A (Software Services), (a) to access, use, perform, and digitally display the Software as required for use of the Services and in accordance with the Documentation; and (b) to use and reproduce a reasonable number of copies of the Documentation solely to support Subscriber's use of the Services.
- Subscriber agrees that it will not, and will not permit any Authorized User or other third party to: (a) permit any person to access the Software or Documentation or use the Services, other than

the Authorized Users authorized under this Agreement; (b) modify, adapt, alter or translate the Software or Documentation, except as expressly allowed herein; (c) sublicense, lease, rent, loan, distribute, or otherwise transfer the Software or Documentation to any third party; (d) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Software; (e) use or copy the Software or Documentation except as expressly allowed under this subsection; or (f) disclose or transmit any data contained in the Software to any individual other than an Authorized User, except as expressly allowed herein. Notwithstanding the foregoing, decompiling the Software is permitted to the extent the laws of Subscriber's jurisdiction require Company to give Subscriber the right to do so to obtain information necessary to render the Software interoperable with other software; provided, however, that Subscriber must first request such information from Company and Company may, in its discretion, either provide such information to Subscriber or impose reasonable conditions, including a reasonable fee, on such use of the source code for the Software to ensure that Company's and its suppliers' proprietary rights in the source code for the Software are protected.

- The Services, Software, Documentation, and all other materials provided by Company hereunder, including but not limited to all manuals, reports, records, programs, data, interfaces, product features, tools and other materials, and all Intellectual Property Rights in each of the foregoing, are the exclusive property of Company and its suppliers. For the avoidance of doubt, any and all Services, Software, Documentation, manuals, reports, records, programs, data, interfaces, product features, tools and other materials developed by Company in conjunction with this Agreement, including but not limited to any features as described in the Order Form, are the exclusive property of Company. All rights in and to the Services, Software, Documentation, manuals, reports, records, programs, data, interfaces, product features, tools and other materials not expressly granted to Subscriber in this Agreement are reserved by Company and its suppliers. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Subscriber regarding the Software, Documentation, and Services or any part thereof, including any right to obtain possession of any source code, data or other technical material related to the Software.
- **Open Source Software.** Certain items of software may be provided to Subscriber with the Software and are subject to "open source" or "free software" licenses ("**Open Source Software**"). Some of the Open Source Software is owned by third parties. The Open Source Software is not subject to the terms and conditions of the section titled *Indemnification* or the subsection titled *License Grant*. Instead, each item of Open Source Software is licensed under the terms of the end-user license that accompanies such Open Source Software. Nothing in this Agreement limits Subscriber's rights under, or grants Subscriber rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. If required by any license for particular Open Source Software, Company makes such Open Source Software, and Company's modifications to that Open Source Software, available by written request at the notice address specified below in Section 6.5.

## 5. Fees and Expenses; payments

- In consideration for the access rights granted to Subscriber and the Services performed by Company under this Agreement, Subscriber will pay to Company the fees under the terms and conditions set forth in the Order Form. In the event that Subscriber wishes to add Applications or to increase the number of Authorized Users or Authorized Facilities beyond the maximum number of Authorized Users or Authorized Facilities for which fees have been paid, Subscriber shall be required to pay additional fees associated with the increased number of Applications, Authorized Users or Authorized Facilities, prorated for the remainder of the term. Company shall be entitled to withhold performance and discontinue service until all amounts due are paid in full as specified in the Order Form.
- The fees are exclusive of all applicable sales, use, value-added and other taxes, and all applicable duties, tariffs, assessments, export and import fees, or other similar charges, and Subscriber will

be responsible for payment of all such taxes (other than taxes based on Company's income), fees, duties, and charges and any related penalties and interest, arising from the payment of the fees, the delivery of the Services, or the license of the Software to Subscriber. Subscriber shall indemnify and defend Company in connection with any proceedings brought by any taxing authorities in connection with this Agreement.

- Subscriber shall reimburse Company for all costs, pre-approved by Subscriber, including Company's reasonable out-of-pocket (including travel and living) expenses incurred in performing its obligations hereunder. All costs and expenses incurred by Subscriber in connection herewith are the sole responsibility of Subscriber.
- **Interest.** Any amounts not paid when due shall bear interest at the rate of one and one half percent (1.5%) per month, or the maximum legal rate if less. Subscriber will permit Company or its representatives to review Subscriber's relevant records and inspect Subscriber's facilities to ensure compliance with this Agreement.
- Company will give Subscriber at least ten (10) days advance notice of any such inspection and will conduct the same during normal business hours in a manner that does not unreasonably interfere with Subscriber's normal operations. If any such audit should disclose any underpayment of fees, Subscriber shall promptly pay Company such underpaid amount, together with interest thereon at the rate specified in this section. If the amount of such underpayment exceeds five percent (5%) of fees actually paid during the audited period, Subscriber shall also pay Company for Company's expenses associated with such audit.

#### 6. **Subscriber Content and Responsibilities**

- **License; Ownership.** Subscriber grants Company a non-exclusive, worldwide, royalty-free and fully paid license (a) to use the Subscriber Content as necessary for purposes of providing the Services and, if applicable, as outlined in the permitted uses and disclosures of the Business Associate Agreement entered into between Subscriber and Company, and (b) to use the Subscriber trademarks, service marks, and logos as required to provide the Services. The Subscriber Content hosted by Company as part of the Services, and all worldwide Intellectual Property Rights in it, is the property of Subscriber. All rights in and to the Subscriber Content not expressly granted to Company in this Agreement are reserved by Subscriber.
- **Authorized Users Access to Services.** Subscriber may permit any Authorized Users to access and use the features and functions of the Services as contemplated by this Agreement. User IDs cannot be shared or used by more than one Authorized User at a time.
- **Subscriber Warranty.** Subscriber represents and warrants that any Subscriber Content hosted by Company as part of the Services shall not (a) infringe any copyright, trademark, or patent; (b) misappropriate any trade secret; (c) be deceptive, defamatory, obscene, pornographic or unlawful; (d) contain any viruses, worms or other malicious computer programming codes intended to damage Company's system or data; (e) otherwise violate the rights of a third party, including, without limitation, any privacy rights; or (f) violate any applicable law, ordinance, or government regulation applicable to such Subscriber Content. Subscriber agrees that any use of the Services contrary to or in violation of the representations and warranties of Subscriber in this section constitutes unauthorized and improper use of the Services.
- **Subscriber Responsibility for Data and Security.** Subscriber and its Authorized Users shall have access to the Subscriber Content and shall be responsible for all changes to and/or deletions of Subscriber Content and the security of all passwords and other Access Protocols required in order to access the Services. Subscriber shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Subscriber Content.
- **Copyright Policy.** Company reserves the right to terminate its agreement with any Subscriber who infringes third party copyright rights upon prompt notification to Company by the copyright owner or the copyright owner's legal agent. Without limiting the foregoing, if Subscriber believes that a copyrighted work has been copied and posted via the Services in a way that constitutes copyright infringement, Subscriber shall provide Company with the following information: (a) an electronic or physical signature of the person authorized to act on behalf of

the owner of the copyrighted work; (b) an identification and location in connection with the Services of the copyrighted work that Subscriber claims has been infringed; (c) a written statement by Subscriber that Subscriber has a good faith belief that the disputed use is not authorized by the owner, its agent, or the law; (d) the name and contact information, such as telephone number or e-mail address, of Subscriber; and (e) a statement by Subscriber that the above information in Subscriber's notice is accurate and, under penalty of perjury, that Subscriber is the copyright owner or authorized to act on the copyright owner's behalf. Contact information for Company's Copyright Agent for notice of claims of copyright infringement is as follows:

DICOM Grid, Inc. dba Ambra Health  
Attn: Copyright Agent  
200 Broadway, 3<sup>rd</sup> Floor  
New York, NY 10038  
[support@ambrahealth.com](mailto:support@ambrahealth.com)

## 7. Warranties and Disclaimers

- **Limited Warranty.** Company warrants to Subscriber that the Software will operate free from Errors during the term of the Agreement. Provided that Subscriber notifies Company in writing of any breach of the foregoing warranty during the term hereof, Company shall, as Subscriber's sole and exclusive remedy, provide the support set forth in Exhibit A (Software Services) to this Agreement. This warranty gives Subscriber specific legal rights, and Subscriber may also have other rights which vary from jurisdiction to jurisdiction.
- TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE Software, Documentation, AND SERVICES ARE PROVIDED "AS IS," AND COMPANY MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, system integration, COURSE OF DEALING, TRADE USAGE OR PRACTICE, MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE Software, Documentation, OR SERVICES (IN WHOLE OR IN PART) OR ANY OTHER PRODUCTS OR SERVICES PROVIDED TO SUBSCRIBER BY COMPANY. COMPANY DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE software, AND SERVICES SHALL BE UNINTERRUPTED OR ERROR-FREE. THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. COMPANY IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. NEITHER COMPANY, NOR ITS THIRD-PARTY PROVIDERS, SHALL HAVE ANY LIABILITY FOR THE ACCURACY, COMPLETENESS, OR TIMELINESS OF THE CONTENT. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR CONDITIONS OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO SUBSCRIBER.

## 8. Limitation of Liability

- **Types of Damages.** TO THE EXTENT LEGALLY PERMITTED UNDER APPLICABLE LAW, COMPANY OR ITS SUPPLIERS SHALL NOT BE LIABLE TO SUBSCRIBER FOR ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, REVENUE, GOODWILL, PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE

GOODS OR SERVICES, OR PERSONAL OR PROPERTY DAMAGE ARISING OUT OF OR IN CONNECTION WITH COMPANY'S PERFORMANCE HEREUNDER OR THE USE, MISUSE, OR INABILITY TO USE THE Software, Documentation, SERVICES OR OTHER PRODUCTS OR SERVICES HEREUNDER, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF COMPANY HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES.

- **Amount of Damages.** THE MAXIMUM LIABILITY OF COMPANY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID BY SUBSCRIBER TO COMPANY DURING THE SIX (6) MONTHS PRECEDING THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. IN NO EVENT SHALL Company'S SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT. NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE COMPANY'S LIABILITY FOR INTENTIONAL MISCONDUCT OF COMPANY OR ITS EMPLOYEES OR AGENTS OR FOR DEATH OR PERSONAL INJURY caused by company. SOME STATES AND JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO SUBSCRIBER.
- **Basis of the Bargain.** The parties agree that the limitations of liability set forth in this section shall survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The parties acknowledge that the prices have been set and the Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the parties.

## 9. Confidentiality

- **Confidential Information.** During the term of this Agreement, each party (the "**Disclosing Party**") may provide the other party (the "**Receiving Party**") with certain information regarding the Disclosing Party's business, technology, products, or services or other confidential or proprietary information (collectively, "**Confidential Information**"). The Disclosing Party will mark all Confidential Information in tangible form as "confidential" or "proprietary" or with a similar legend, and identify all Confidential Information disclosed orally as confidential at the time of disclosure and provide a written summary of such Confidential Information within thirty (30) days after such oral disclosure. Regardless of whether so marked or identified, the Software, Documentation, and all enhancements and improvements thereto will be considered Confidential Information of Company.
- **Protection of Confidential Information.** The Receiving Party agrees that it will not use or disclose to any third party any Confidential Information of the Disclosing Party, except as expressly permitted under this Agreement. The Receiving Party will limit access to the Confidential Information to Authorized Users (with respect to Subscriber) or to those employees who have a need to know, who have confidentiality obligations no less restrictive than those set forth herein, and who have been informed of the confidential nature of such information (with respect to Company). In addition, the Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At the Disclosing Party's request or upon termination of this Agreement, the Receiving Party will return to the Disclosing Party or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that the Receiving Party does not have a continuing right to use under this Agreement, and the Receiving Party shall provide to the Disclosing Party a written affidavit certifying compliance with this sentence. In the event that the Receiving Party determines that returning or destroying the Confidential Information is infeasible, the Receiving Party shall provide to the Disclosing Party written notification of the conditions that make return or destruction infeasible. In such event, the Receiving Party shall extend the protections of this Agreement to such Confidential Information and limit further uses

and disclosures of such Confidential Information to those purposes that make the return or destruction infeasible, for so long as the Receiving Party maintains such Confidential Information.

- **Exceptions.** The confidentiality obligations set forth in this section will not apply to any information that (a) becomes generally available to the public through no fault of the Receiving Party; (b) is lawfully provided to the Receiving Party by a third party free of any confidentiality duties or obligations; (c) was already known to the Receiving Party at the time of disclosure; or (d) the Receiving Party can prove, by clear and convincing evidence, was independently developed by employees and contractors of the Receiving Party who had no access to the Confidential Information. In addition, the Receiving Party may disclose Confidential Information to the extent that such disclosure is necessary for the Receiving Party to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that the Receiving Party promptly notifies the Disclosing Party in writing of such required disclosure and cooperates with the Disclosing Party if the Disclosing Party seeks an appropriate protective order.

**9.4 Advertising & PR.** The parties grant to each other the right to use their respective names in advertising or in any other appropriate public message.

## 10. Indemnification

- **By Company.** Company will defend at its expense any suit brought against Subscriber, and will pay any settlement Company makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim by any third party alleging that the Software or the Services misappropriates any trade secret recognized under the Uniform Trade Secrets Act or infringes any copyright or United States patent issued as of the Contract Start Date. If any portion of the Software or the Services becomes, or in Company's opinion is likely to become, the subject of a claim of infringement, Company may, at Company's option: (a) procure for Subscriber the right to continue using the Software or the Services; (b) replace the Software or the Services with non-infringing software or services which do not materially impair the functionality of the Software or the Services; (c) modify the Software or the Services so that it becomes non-infringing; or (d) terminate this Agreement and refund any fees actually paid by Subscriber to Company for the remainder of the term then in effect, and upon such termination, Subscriber will immediately cease all use of the Software, Documentation, and Services. Notwithstanding the foregoing, Company shall have no obligation under this section or otherwise with respect to any infringement claim based upon (w) any use of the Software or the Services not in accordance with this Agreement or as specified in the Documentation; (x) any use of the Software or the Services in combination with other products, equipment, software or data not supplied by Company; or (y) any modification of the Software or the Services by any person other than Company or its authorized agents. This subsection states the sole and exclusive remedy of Subscriber and the entire liability of Company, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for infringement claims and actions.
- **By Subscriber.** Subscriber will defend at its expense any suit brought against Company, and will pay any settlement Subscriber makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim arising out of or relating to Subscriber's breach or alleged breach of the subsections titled *Subscriber Warranty* and *Copyright Policy*. This subsection states the sole and exclusive remedy of Company and the entire liability of Subscriber, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for the claims and actions described herein.
- The indemnifying party's obligations as set forth above are expressly conditioned upon each of the foregoing: (a) the indemnified party shall promptly notify the indemnifying party in writing of any threatened or actual claim or suit; (b) the indemnifying party shall have sole control of the

defense or settlement of any claim or suit; and (c) the indemnified party shall cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit.

## 11. Term And Termination

- Subject to earlier termination as provided below, this Agreement is for twelve (12) months beginning on the Contract Start Date, and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the “Term”), unless either party requests termination at least thirty (30) days prior to the end of the then-current term.
- Either party may terminate this Agreement immediately upon notice to the other party if the other party materially breaches this Agreement, and such breach remains uncured more than thirty (30) days after receipt of written notice of such breach.
- **Effect of Termination.** Upon termination or expiration of this Agreement for any reason: (a) all rights and obligations of both parties, including all licenses granted hereunder, shall immediately terminate; (b) within ten (10) days after the effective date of termination, each party shall comply with the obligations to return all Confidential Information of the other party, as set forth in the section titled *Confidentiality*; and (c) within ten (10) days after the effective date of termination, Company shall discontinue all use of Subscriber Content and destroy all copies of Subscriber Content in its possession, unless (i) Subscriber expressly requests in writing that Company help with retrieving its Subscriber Content, including but not limited to its DICOM data, or (ii) Subscriber requests Company continue to archive Subscriber Content, in which case Subscriber will pay to Company the fees under the terms and conditions set forth in a separate Order Form. Any payment obligation of Subscriber, and the sections and subsections titled *Definitions, Limitations, Warranties and Disclaimers, Limitation of Liability, Confidentiality, Indemnification, Effect of Termination, and Miscellaneous* will survive expiration or termination of this Agreement for any reason. Upon termination of this Agreement, other than permitted under section 11.1, Subscriber shall immediately pay all amounts due under agreement. If Subscriber expressly requests in writing that Company assist with retrieving its Subscriber Content, including but not limited to its DICOM data, as part of the termination of this Agreement, the process and schedule as outlined in Exhibit E will be followed.

## 12. Miscellaneous

- **Governing Law and Venue.** This Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of New York, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. Subscriber hereby expressly consents to the personal jurisdiction and venue in the state and federal courts for the county in which Company’s principal place of business is located for any lawsuit filed there against Subscriber by Company arising from or related to this Agreement. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. The laws of the jurisdiction where Subscriber is located may be different from New York State law. Subscriber shall always comply with all international and domestic laws, ordinances, regulations, and statutes that are applicable to its purchase and use of the Software, Documentation, or Services hereunder.
- Subscriber agrees not to export, re-export, or transfer, directly or indirectly, any U.S. technical data acquired from Company, or any products utilizing such data, in violation of the United States export laws or regulations.
- If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Without limiting the generality of the foregoing, Subscriber agrees that the section titled *Limitation of Liability* will remain in effect notwithstanding the unenforceability of any provision in the subsection titled *Limited Warranty*.
- **Waiver.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.



- Except as provided in the sections titled *Limited Warranty* and *Indemnification*, the parties' rights and remedies under this Agreement are cumulative. Subscriber acknowledges that the Services, Software, and Documentation contain valuable trade secrets and proprietary information of Company, that any actual or threatened breach of the sections titled *Intellectual Property* or *Confidentiality* or any other breach by Subscriber of its obligations with respect to Intellectual Property Rights of Company will constitute immediate, irreparable harm to Company for which monetary damages would be an inadequate remedy. In such case, Company will be entitled to immediate injunctive relief without the requirement of posting bond, including an order that any Software, Documentation, or any portions thereof, that Subscriber attempts to import into any country or territory be seized, impounded and destroyed by customs officials. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.
- **No Assignment.** Neither party shall assign, subcontract, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of the other party, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void; provided, however, that either party may assign this Agreement in connection with a merger, acquisition, reorganization or sale of all or substantially all of its assets, or other operation of law, without any consent of the other party. The terms of this Agreement shall be binding upon the parties and their respective successors and permitted assigns.
- **Force Majeure.** Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible.
- **Independent Contractors.** Subscriber's relationship to Company is that of an independent contractor, and neither party is an agent, employee, or partner of the other. Subscriber will not have, and will not represent to any third party that it has, any authority to act on behalf of Company.
- **Notices.** Each party must deliver all notices or other communications required or permitted under this Agreement in writing to the other party by electronic mail, by courier, by certified or registered mail (postage prepaid and return receipt requested), or by a nationally-recognized express mail service. Notice will be effective upon receipt or refusal of delivery. If delivered by certified or registered mail, any such notice will be considered to have been given five (5) business days after it was mailed, as evidenced by the postmark. If delivered by courier or express mail service, any such notice shall be considered to have been given on the delivery date reflected by the courier or express mail service receipt. Each party may change its address for receipt of notice by giving express notice of such change to the other party.
- This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.
- **Entire Agreement.** This Agreement, along with any Business Associate Agreement entered into by and between the parties, is the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the parties with respect to such subject matters. No modification of or amendment to this Agreement, or any waiver of any rights under this Agreement, will be effective unless in writing and signed by an authorized signatory of Subscriber and the Company.

## Exhibit A: Software Services

Subject to the terms and conditions of the Agreement, Company will provide to Subscriber the following Software and Services:

1. Company will provide access to and use of the Software listed in the Order Form and associated Applications in accordance with the terms and conditions of the Agreement.
2. **Access.** The Services and Documentation will be made available to Subscriber within three (3) days after the Contract Start Date.
  1. The number of Authorized Users or Authorized Facilities, and Applications and other terms for which Subscriber has paid the required fees is set forth in the Order Form. Company and/or its suppliers may audit applicable records in order to verify Subscriber's compliance with the Authorized User parameters.
3. **Support.** During the Term of this Agreement, support provided to Subscriber shall comprise the following:
  1. **Error Corrections.** Company will use commercially reasonable efforts to correct all Errors in the Software reported by Subscriber in writing to Company. Company will utilize remote diagnostic procedures whenever possible for Error diagnosis and Error Correction. Company may not issue Error Corrections for all Errors.
  2. During the Term, Company may, in its sole discretion, provide Subscriber with updates, upgrades, enhancements, and any other improvements that Company then generally offers to other Subscribers to the Service.
  3. **Additional Support.** Company will provide support as set forth in Exhibit D (Subscriber Support Services Guide).
4. **Exclusions.** Company shall have no responsibility or liability of any kind, whether for breach of warranty or otherwise, arising or resulting from: (a) Subscriber's or Authorized Users' use of any version of the Software or the Services other than the then-current, unmodified version provided to Subscriber; (b) any problems which are not Errors; (c) problems caused by failed Internet connections or other hardware, software or equipment which is not owned, controlled or operated by Company; (d) nonconformities resulting from misuse, abuse, negligence, or improper or unauthorized use of all or any part of the Services, Software, or Documentation; (e) problems or Errors caused by Subscriber's, Authorized Users', or other third party's products, services or equipment; or (f) modification, amendment, revision, or change to the Software or the Services by any party other than Company or Company-authorized representatives. Any use of or reliance on data or data output contained in the Software or the Services is Subscriber's or Authorized User's sole responsibility.
5. **Subscriber Responsibilities.** It shall be Subscriber's sole responsibility to perform those specific services that are necessary to establish Subscriber's or Authorized Users' use of the Software, Documentation, and Services. This includes, but is not limited to: (a) providing employee lists to setup Authorized User accounts and (b) designating Authorized Users to participate in training.

Subscriber or the applicable Subscriber Facility will, at Subscriber's sole cost and expense, purchase, install, maintain, provide and pay for all other equipment and services required to utilize the Service, including radiology equipment, computers, and telecommunications equipment and services. Subscriber warrants and represents that Subscriber and Subscriber Facilities will comply with HIPAA and all of the Subscriber's federal, state and local laws applicable to Subscriber in the manner in which Subscriber and Subscriber Facilities utilize the Service.

Subscriber and Subscriber Facilities will follow the written instructions provided by Company related to the operation of the Service, including but not limited to instructions on methods of data capture and transmission necessary for secure transmission of images and instructions on limiting access to the Service, consistent with applicable laws, regulations and policies of Subscriber.

6. **Other Services.** Company’s services outside the scope of this Agreement, if any, shall be provided pursuant to Company’s then-current applicable services policies and procedures, including, at a minimum, execution of Company’s then-current consulting/professional services agreement and payment of Company’s then-current fees for such services, plus Company’s reasonable costs and expenses incurred in providing such services.
7. Subscriber is consenting to Company making available Subscriber’s HIPAA Protected Health Information to Authorized Users of Subscriber.

## **Exhibit B: Service Level Agreement**

1. **Definitions.** Capitalized terms not otherwise defined in the Agreement will have the following meanings:
  1. **“Business Day”:** Monday through Friday, including Subscriber’s holidays.
  2. **“Conditioned Power”:** power that is clean and regulated such that it produces constant current.
  3. **“Ambra Gateway”:** the software provided by Company to harvest imaging studies and send studies to DICOM destinations.
  4. **“Ambra Suite”:** the software license and Applications provided by Company, also referred to as DG PACS software which is the name as registered with the FDA.
  5. **“Protected Health Information (PHI)”:** information that is protected by state and federal laws.
  6. **“Respond” or “Response”:** Company’s acknowledgement of Subscriber’s service request and initiation of restoration procedures by appropriate Company personnel.
  7. **“Restore” or “Resolve”:** in all forms, to return to expected functionality.
  8. **“Site”:** any location at which the Subscriber wants an access node or browsing node installed.
  9. **“Workaround”:** a temporary error correction or alternate process that does not impose additional cost of burden on Subscriber or any Authorized User, and does not impair any functionality of the Services.
2. **Basic Service Levels.** The following features will be monitored, reported and specific service levels will be established as follows:
  1. **Overall:** All imaging studies that are transported and archived will be accurate as guaranteed via a binary hash associated with each study that is checked at each point the study is moved.
  2. **Service Level (System Level Uptime):** determined as a percentage of time in a month that the system is available and functioning properly as defined below. Company will provide uptimes listed in the chart below. Recurring maintenance windows, scheduled downtime, and emergency updates are excluded from the system level uptime percentage calculation. Additionally, any downtime caused by the Subscriber environment is not considered downtime for any component of the Company application. (i.e. Subscriber internet connection is down, power outage at Subscriber site, etc.)

System Component/Function	Service Level (System Uptime)
Ambra Suite	99.9%
Ambra Gateway	99.9%

3. **Ambra Gateway:** Ambra Gateway will begin the process of moving the imaging data to Ambra Suite within five (5) minutes after receiving study from PACS or modality based on bandwidth availability and existing storage queue.
4. **Recurring Maintenance Windows:** Company infrastructure will be taken offline the third Sunday of every month from midnight to 4 AM MST as needed for regular maintenance and upgrades. Ambra Suite may not be available during this time.

5. **Imaging Study Retention Period and Purge Rule:** Imaging studies will be retained by Company so long as the service is active and account is in good standing. No study is ever deleted from Ambra Suite without expressed written consent of Subscriber so long as the account is in good standing. Additionally, study deletion is available to Authorized Users via Ambra Suite.
6. **Reporting:** Ambra Suite provides for self-service reporting. Subscriber can run reports in the Analysis section of Ambra Suite on demand. Available metrics include: studies created, studies viewed, studies shared, and studies' source for a wide range of date parameters.
7. **Ad hoc Reporting:** In the event of an emergency or critical event requiring downtime to resolve, Company will use best efforts to notify Subscriber before taking the system down, and will provide a full downtime report the next business day. In the event of an unscheduled downtime, Company will notify Subscriber within one hour that the system is down. Company will then notify Subscriber within one hour once the system is returned to normal operating condition.
8. **New Product Releases:** Company has roughly six to eight annual releases, scheduled solely in Company's discretion, which will take place Wednesday at 9 PM MST when they occur. During the release the system will be taken offline for up to one hour.
9. **Service Level Effective Date:** Company will be required to meet the service levels upon the latter of the Contract Start Date or date of signature of this Agreement as stated in the Order Form.
10. **Data Accuracy:** Data successfully stored in Ambra Suite is guaranteed to accurately represent the data that was uploaded. A binary hash will be used to ensure data accuracy each time the study is distributed. Company is not liable for the PACS data integrity, and is only liable to properly manage the data that is sent to the Ambra Gateway or web uploaded into Ambra Suite.
11. **Company Disaster:** In the event of a disaster in which Company's call center is not available to provide support, Company agrees to notify Subscriber within two hours. Company also agrees to keep Subscriber advised every twenty-four (24) hours, of its progress in restoring normal operations.
12. **Obligation to Produce Subscriber Data:** If Subscriber is notified of its obligation to produce stored image data pursuant to court or administrative requirements or orders, Subscriber will notify Company within five (5) days of receiving such order. Company agrees to cooperate by following procedures and instructions provided by Subscriber within ten (10) days of receipt of such instructions.
13. **Insolvency of Transfer or Ownership:** Company agrees to notify Subscriber within five (5) business days if it becomes insolvent or there is a transfer of ownership. If Subscriber learns of or is notified of Company insolvency, Subscriber can pursue remedies under the agreement to cure unpaid invoices to vendors who are storing/processing Subscriber data or otherwise involved in providing services under the agreement. Company will become liable for reimbursement for any amounts paid. Company agrees to provide Subscriber with information and cooperate so that Subscriber can invoke its right to negotiate directly with vendors of data centers who are storing, processing, or otherwise involved in providing services to Subscriber.

## **Exhibit C: Statement of Work (“SOW”)**

**Work Deliverables and Estimates:** This statement of work defines the scope of work involved in deploying Company solution at the Subscriber.

### *Analyze Phase*

- Requirements gathering session. A requirements-gathering session will be held with Subscriber to ensure that all requirements are understood.
- Requirements document. A document that describes in detail all of the requirements associated with the workflow. Subscriber representative will be required to sign off on the requirements document before proceeding to the following steps.

### *Build Phase*

- Application configuration.
- Ambra Study Uploader. The Ambra Study Uploader will be installed on on-site computers as needed. Please note that the Subscriber will provide the hardware on which the Ambra Study Uploader will be installed.
- Web Upload Tool. The Ambra Web Uploader will be integrated into the Subscriber's website for ad hoc uploading as needed.
- Ambra Gateway installation. The Ambra Gateway will be installed on site as needed. Please note that Subscriber will provide the hardware on which the Gateway will be installed.
- Alpha review. Initial review with Subscriber in <http://access.ambrahealth.com> to familiarize Subscriber's representatives with the Ambra Applications and workflow in preparation for user acceptance testing.
- Training material for end users. Ambra will provide training materials in the form of standard Ambra Documentation and up to one hour of edits as requested by Subscriber.

### *Certify Phase*

- User acceptance testing. Subscriber is responsible for all elements of user acceptance testing including test case writing and test case execution. Company will answer any questions as needed.

### *Deploy Phase*

- Administrator training – train the trainer approach. Training is captured by participation in the Analyze, Build and Certify phases. No additional administrator training is part of the scope of this SOW.
- End user training. Company will provide two one hour training sessions to Subscriber's end users. The training will be conducted via Go-To-Meeting or in person as needed.
- Go live.

### *End Phase*

- Company Professional Services personnel will support Subscriber in the four weeks after go live. After this four-week period, Subscriber will be in steady state and will be transitioned to Company Support.

**Delivery Approach:** The work described in this SOW will be delivered in person or remotely using phone calls and web conferencing technology.

**Pricing and Billing:** This is a fixed fee project, as outlined in the Order Form. Company will invoice upon signing of this Agreement.

**Expenses:** If Subscriber requires Company to travel on site for any of the work described in this SOW, Company will bill Subscriber for these expenses at the incurred cost of the expenses.

**Expiration:** This SOW expires forty-five (45) days after the Contract Start Date of this agreement. Subscriber must plan on being live within forty-five (45) days of the Contract Start Date.

**Change Orders:** If Subscriber requires additional work that is outside of the scope of this SOW from Company Professional Services personnel, a change order will be issued. The additional work will be performed on a time and materials basis at Company's standard rate of \$200 per hour.

# Exhibit D: Subscriber Support Services Guide

Company's approach to support is to do whatever it takes to make our Subscriber happy. The details of how we support you as our Subscriber are important and are described below. The thrust of our approach is to get medical images to the right physician as quickly as possible so that patients can receive the best care possible. When problems occur in achieving that goal, we are here to support you 24x7x365.

## First Level Support

- Verifying entitlement to receive support.
- Taking the initial call or email from the Subscriber or Authorized User.
- Checking the list of known problems and Workarounds.
- Implementing resolution to known problems or assisting the customer with a Workaround where feasible.
- Isolating, identifying, and reproducing unknown problems reported by the customer.
- Researching a Workaround or other solution to an unknown problem.
- Escalating the issue to Second Level Support if unresolved at this level.
- Advising Subscriber or Authorized User of status changes related to reported problems.

## Second Level Support

- Confirming the severity level of the problem.
- Investigating and analyzing the problem.
- Providing a resolution of problems with known corrections or Workarounds.
- Escalating an unknown problem to Engineering.
- Researching a Workaround or other solution to an unknown problem.
- Providing assistance with more complex configuration problems.
- Advising Subscriber or Authorized User of status changes related to their reported problem.

## Hours of Operation

Service Description	Service Levels
Technical Support Hours	24x7 On Call Support
Holiday Coverage	Yes
Average Speed to Answer	180 seconds

Subscriber or its Authorized User(s) may contact Company by (i) sending an email to support@ambrahealth.com, (ii) calling the support line at 888-315-0790 or 321-339-5348, or (iii) submitting a ticket at support.ambrahealth.com. Contact to any other address or phone number does NOT constitute notice.

Incoming Subscriber requests are prioritized and resolved according to the severity levels and response times as defined below. Company will acknowledge all requests for support within two (2) hours of receipt. This acknowledgement will include a ticket number and assigned severity level as described below:

## Severity Level 1 (High)

Either (i) Ambra Gateway is not harvesting or distributing images, (ii) Subscriber is unable to access images in Ambra Suite, or (iii) Ambra Suite is down.

## Target Response/Resolution Time

Company will use its best efforts to return Ambra Gateway or Ambra Suite to production status within an hour of notification.

### **Severity Level 2 (Normal)**

Ambra Gateway or Ambra Suite issues are minor and do not affect ability to use Ambra Suite effectively.

### **Target Response/Resolution Time**

Company will use its best efforts to resolve the problem within thirty (30) days of receipt of notification of the problem.

### **Subscriber Requirements and Exclusions**

#### **Requirements**

Ambra Gateway and Ambra Suite require Internet access to work.

Conditioned power is required for all machines on which Ambra Gateway is installed.

#### **Exclusions**

The following are outside the scope of and may limit Company's ability to provide adequate Support Services:

1. All software or other computer system problems caused by:
  1. Operator error
  2. Subscriber and/or Subscriber End User equipment
  3. Any failure to follow the procedures outlined in documentation provided by Company
2. Modifications made to the software by any person or entity other than Company or made without Company's approval or direction.
3. Modifications made to the hardware or operating system outside of the scope of the recommended configuration outlined in the Documentation as provided by Company.
4. Problems caused by failure to implement corrections recommended by Company.
5. Problems occurring due to third party software, including non-validated versions of anti-virus software or policy control utilities.

## **Exhibit E: Subscriber Data Migration Process and Procedures in the Event of Termination**

- If Subscriber expressly requests in writing that Company assist with retrieving its Subscriber Content, including but not limited to its DICOM data, as part of the termination of this Agreement, the process and schedule as outlined below will be followed:
- Subscriber will notify Company of Subscriber's requirement to retrieve its Subscriber Content within ten (10) business days of Subscriber's termination request. Subscriber's notification of its intent to

retrieve Subscriber Content must be via electronic mail to either the Company VP Services or Company CFO. If Subscriber does not provide notification of its intent to retrieve Subscriber's data within ten (10) business days of Subscriber's termination request, Company is authorized to begin the account decommissioning process, including but not limited to the suspension of Services and deletion of Subscriber Content.

- Subscriber will (i) provide an adequate and Subscriber-owned data migration server to Company within thirty (30) calendar days of Subscriber's notification of intent to retrieve Subscriber Content, or (ii) lease a migration server from Company, for which the Company may charge Subscriber a fee. Subscriber is responsible for shipping costs associated with shipping the data migration server to Company. If Company does not receive an adequate and Subscriber-owned data migration server within thirty (30) calendar days of Subscriber's notification of intent to retrieve Subscriber Content, or does not notify Company in writing of its intent to lease a migration server from Company, Company is authorized to begin the account decommissioning process, including but not limited to the suspension of Services and deletion of Subscriber Content.
- Company will install the data migration server in Company's data center so that the Subscriber Content can be migrated to the migration server. Company will provide temporary access to a Company-provided Gateway server for the duration of the data migration only. The Gateway server will facilitate the migration of data from Company's storage nodes to migration server. Company will (i) install the migration server, (ii) provide space in its data center, (iii) provide temporary access to its Gateway server, and (iv) provide access to its leased Internet service free of charge.
- Once the migration server has been installed in Company's data center and connected with Company's Gateway server, the data migration can begin. Company will provide Subscriber with a report that includes (i) the study instance UIDs, (ii) the number of images per study instance UID, and (iii) total data size. Once Subscriber has this report, Subscriber can choose to either (a) manage the remaining data migration activities on its own, or (b) hire Company to manage the remaining data migration activities, subject to the terms as described in this paragraph. Data migration activities include but are not limited to using the Ambra Suite API to push data from Ambra Suite to Subscriber's data migration server and confirming all images have successfully arrived on Subscriber's data migration server. If Subscriber chooses to (a) manage the data migration on its own, Subscriber is expected to migrate the data from Ambra Suite to Subscriber's data migration server at a minimum of 1 TB per calendar week (i.e. 7 days). If data migration time to completion takes Subscriber longer than the reasonably expected number of calendar week(s) as calculated by the total data size divided by the expected migration rate of 1 TB per calendar week, Company may charge Subscriber for holding non-migrated Subscriber data. For the avoidance of doubt, any partial calendar week shall be deemed a full calendar week for purposes of calculating any fees owed to Company by Subscriber. If Subscriber chooses to (b) hire Company to perform the data migration activities, Company may charge Subscriber a fee for providing these services.
- Once the Subscriber Content has been migrated to the migration server and Subscriber requests Company to send the migration server to Subscriber, Company will ship the migration server to Subscriber. Subscriber is responsible for all shipping costs.
- Ninety (90) days from Subscriber's successful receipt of migration server, Company is authorized to begin the account decommissioning process, including but not limited to the suspension of Services and deletion of Subscriber Content.