

**1. Definitions.**

1.1. “**Account**” refers to the Medicom site account for the Services selected by Customer through Medicom’s customer portal at the time of enrollment and accepted by Medicom, as recorded by Medicom through such portal or a mutually agreed-upon written amendment to the Agreement, which site account has its own audit trail, history, billing settings, users and connections to other customers of one or more Services.

1.2. “**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

1.3. “**Aggregate Data**” means Customer Data with the following removed: personally identifiable information and the names and addresses of Customer and any of its End Users, patients or customers.

1.4. “**AUP**” means the acceptable use policy referenced in the “Documentation” section of the Initial Order Form, as such policy may be updated by Medicom from time to time.

1.5. “**Customer Data**” means electronic data and information submitted by or for Customer to the Services.

1.6. “**Deliverables**” means any software or other deliverable created pursuant to Professional Services.

1.7. “**Documentation**” means Medicom’s standard manual related to use of the applicable Services and/or Software, which as of the Effective Date is available by clicking the [Medicom User Manual](#) and upon written request to Medicom, as well as any Documentation set forth in an applicable Order Form.

1.8. “**End User**” refers to any individual that directly or indirectly: (i) accesses or uses Customer Data; or (ii) otherwise accesses or uses the Services and/or Software under Customer’s Accounts. The term “End User” does not include individuals or entities

when they are accessing or using the Services under their own Medicom account, rather than a Customer Account.

1.9. “**Intellectual Property Rights**” means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.

1.10. “**Materials**” refers to written, audio, visual and graphical content, information, software, products and services provided by or through the Services, including, without limitation, text, photographs, illustrations, and designs, whether provided by Medicom, another customer of the Services with whom Customer has agreed via the Services that a peer-to-peer connection may be established, or any other third party.

1.11. “**Order Form**” or “means the Order Form attached to the Agreement (the “**Initial Order Form**”), quote, or any other ordering document, whether executed offline in writing or online or in any electronic format, specifying the Service to be provided hereunder that is entered into between Customer and Medicom or any of Medicom’s Affiliates, including any addenda or supplements thereto.

1.12. “**Policies**” means the AUP, the Privacy Policy, and any other policy or terms referenced in or incorporated into the Agreement.

1.13. “**Privacy Policy**” means the privacy policy referenced in the “Documentation” section of the Initial Order Form, as such policy may be updated by Medicom from time to time.

1.14. “**Software**” means software, documentation or data that Medicom distributes or provides to Customer for use on Customer’s premises, devices or systems environment and/or databases in connection with the Services.

1.15. “**Term**” means the Term for a Service, as set forth in each applicable Order Form.

1.16. **“Professional Services”** means professional services (such as implementation, customization, training, consulting, *etc.*) that Medicom performs for Customer in connection with the Services, as set forth in one or more Statements of Work.

1.17. **“Services”** means the products and services that Customer orders from Medicom under a Trial Use or an Order Form and made available online through Medicom’s website or another designated website, IP address or Medicom customer portal, including associated offline components.

1.18. **“Trial Use”** means Customer’s use of the Services during a free trial period (as selected by Customer in Medicom’s web portal for the applicable Account), as further described on the Medicom’s customer portal.

## **2. Services.**

2.1. *Provision of Services.* Pursuant to the Agreement Medicom will (a) make the applicable Services available to Customer on a subscription basis during the Term set forth in the applicable Order Form; (b) provide or cause to be provided to Customer applicable Medicom standard support for the Services, as set forth in the Service Level Agreement referenced in the Documentation section of the applicable Order Form, and/or upgraded support if purchased by Customer, in each case as set forth in an Order Form or Service Agreement; (c) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which Medicom shall give advance electronic notice) and (ii) any unavailability caused by events beyond Medicom’s reasonable control, including, for example, Force Majeure events as defined in Section 11.5; and (d) provide the Services in accordance with laws and government regulations applicable to Medicom’s provision of its services to customers generally, and subject to Customer’s use of the Services in accordance with the Agreement, the Documentation and the applicable Order Form.

2.2. *Account Access; Customer Responsibilities.*

2.3. Customer may use and access the Services solely through Medicom’s designated customer portal or through Medicom’s application. Customer’s rights to use the Services are non-exclusive, non-transferable (except as set forth in Section 11.6 of the Agreement)), and non-sublicensable. Customer may use the Services only for its own benefit, and not for the

benefit of any other third party. To access the Services, Customer must create an Account associated with a valid email address. Customer may only create one End User account per email address. Customer is responsible for all activity occurring under Customer’s Accounts, regardless of whether the activities are undertaken by Customer, its End Users, employees or a third party (including Customer’s contractors or agents), and, except to the extent caused by Medicom’s breach of the Agreement, Medicom and its affiliates are not responsible for unauthorized access to Customer’s Accounts. Customer shall comply with all applicable laws and regulations in connection with Customer’s use of the Services, including but not limited to privacy laws and export control laws and regulations. Customer shall: (i) notify Medicom immediately upon becoming aware of any unauthorized use of any password or Account or any other known or suspected breach of security with respect to the Services, or if Customer’s Account information is lost or stolen; (ii) report to Medicom immediately, and use reasonable efforts to stop immediately, any copying or distribution or misuse or unauthorized use of Materials or the Services that becomes known or suspected by Customer or Customer’s users; and (iii) not impersonate another Medicom user or customer or provide false identity information to gain access to or use the Services. Any use of the Services in breach of any of the foregoing by Customer or End Users that in Medicom’s judgment (1) poses a security risk to the Services or any third party, (2) may adversely impact the Services or the systems or Content of any other Medicom customer, (3) may subject Medicom, its affiliates, or any third party to liability, or (4) may be fraudulent may result in Medicom’s immediate suspension of the Services, however Medicom will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to suspension.

2.4. *Usage Restrictions.* Except as expressly provided in the Agreement, Customer shall not (i) license, sublicense, sell, resell, transfer, distribute, rent, lease or assign (except as set forth in Section 14.6), distribute or otherwise commercially exploit or make available to any third party the Services, Software or the Materials in any way; (ii) modify, copy or make derivative works based upon the Services, Software or the Materials or any part, feature, function or user interface thereof; (iii) reverse engineer the Services, Software or Materials; (iv) use or make available the Services for service bureau or time-sharing purposes or in any other way allow third parties to exploit the Services, except End Users as specifically authorized by the Agreement; (v) provide Services passwords or other log-in information to any third party,

except End Users as specifically authorized by the Agreement; (vi) share non-public Services features or content with any third party; or (vii) access the Services, Software or Materials in order to build a competitive product or service. Additionally, Customer shall not use the Services or Software to: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Services or the data contained therein; or (v) attempt to gain unauthorized access to the Services or their respective related systems or networks.

2.5. *Free Trial Use and Proof of Concept.* If Customer has acquired Trial Use or Proof of Concept use of the Services as set forth in an Order Form (“**Trial Use**”), the following terms shall apply in connection with Customer’s Trial Use, notwithstanding anything to the contrary herein:

2.5.1. Notwithstanding anything in the Agreement to the contrary, including but not limited to Section 5 (*Representations, Warranties, Exclusive Remedies and Disclaimers*), the Trial Use is provided “AS-IS” AND “AS-AVAILABLE”, without warranty of any kind, express or implied.

2.5.2. Except as otherwise specified in an Order Form, unless Customer has notified Medicom that Customer wishes to convert the Trial Use to a full subscription prior to the end of the Trial Use period, Customer’s Accounts will automatically terminate at the end of the Trial Use period.

2.5.3. **ANY DATA CUSTOMER ENTERS INTO THE SERVICES OR SOFTWARE AND ANY CUSTOMIZATIONS MADE TO THE SERVICES OR THE SOFTWARE BY OR FOR CUSTOMER DURING THE TRIAL USE PERIOD WILL BE PERMANENTLY DELETED AND LOST UNLESS CUSTOMER PURCHASES A SUBSCRIPTION TO THE SAME SERVICE AS THAT COVERED BY THE TRIAL USE, PURCHASES UPGRADED SERVICE, OR EXPORT SUCH DATA, BEFORE THE END OF THE TRIAL USE PERIOD. CUSTOMER CANNOT TRANSFER DATA ENTERED OR CUSTOMIZATIONS MADE DURING THE TRIAL USE PERIOD TO A SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY**

**THE TRIAL USE; THEREFORE, IF CUSTOMER PURCHASES A SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL USE, CUSTOMER MUST EXPORT ITS DATA BEFORE THE END OF THE TRIAL PERIOD OR CUSTOMER DATA WILL BE PERMANENTLY LOST.**

### 3. **Fees and Payment.**

3.1. *Fees.* Customer will pay all fees and expenses specified in Order Forms and Statements of Works for the Services and Professional Services (collectively, “**Fees**”).

3.2. *Invoicing and Payment.* Unless otherwise set forth in an applicable Order Form or Statement of Work, applicable Fees will be invoiced to Customer on a monthly basis and payment must be received by Medicom within thirty (30) days after the mailing date of the invoice. Customer is responsible for providing complete and accurate billing and contact information to Medicom and notifying Medicom of any changes to such information. If Customer provides credit card information to Medicom, Customer authorizes Medicom to charge such credit card for all Services and Professional Services purchased by Customer under an Order Form or Statement of Work for the initial term and any renewal term applicable to such Services or Professional Services. All payments under the Agreement are non-refundable (unless terminated by Medicom without cause, in which case applicable prepaid and unused Fees will be refunded to Customer) and, unless otherwise agreed in writing, shall be made in United States dollars.

3.3. *Overdue Charges.* Past-due payments will be subject to late payment charges of the lesser of: (a) 1.5% per month, or (b) the maximum rate allowed by law. Medicom reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the then-current term of the applicable Order Form, upon thirty (30) days’ prior notice to Customer (which may be sent by email).

3.4. *Suspension of Service and Acceleration.* If any charge owing by Customer under the Agreement or any other agreement for services is 30 days or more overdue (or 10 days overdue if Customer has authorized Medicom to charge to Customer’s credit card), Medicom may, without limiting its other rights and remedies, accelerate Customer’s unpaid fee obligations under such credit agreements so that all such obligations become immediately due and payable, and suspend Services until such amounts are paid in full, provided that, other than for Customers paying by credit

card or direct debit whose payment has been declined, Medicom will give Customer at least 10 days' prior notice that its account is overdue, before suspending Services to Customer.

3.5. *Payment Disputes.* If Customer believes that Medicom has billed Customer incorrectly, Customer must contact Medicom no later than 60 days after the invoice date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. If Customer timely disputes the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute, Medicom will not exercise its rights under the "Overdue Charges" and "Suspension of Service and Acceleration" Sections above.

3.6. *Taxes.* Customer shall be responsible for, and Medicom's Fees do not include, all applicable taxes, levies, duties or similar governmental assessments of any nature, however designated, incurred in connection with the Agreement, including but not limited to state and local privilege, excise, sales, VAT, and use taxes and any taxes or amounts in lieu thereof paid or payable by Medicom (collectively, "**Taxes**"), but excluding taxes based upon the net income of Medicom. If Medicom has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, Medicom will invoice Customer and Customer will pay that amount unless Customer provides Medicom with a valid tax exemption certificate authorized by the appropriate taxing authority.

#### **4. Materials, Software and Intellectual Property.**

4.1. *Materials.* Customer recognizes and agrees that: (i) the Materials are the property of Medicom or its licensors and are protected by copyright, trademark, and other intellectual property laws; and (ii) Customer does not acquire any right, title, or interest in or to the Materials except the limited and temporary right to use them as necessary for Customer's use of the Services.

4.2. *Intellectual Property in General.* All rights not expressly granted by Medicom to Customer under the Agreement are reserved by Medicom and its licensors. Medicom alone (and its licensors, where applicable) retains all right, title, and interest, including all related Intellectual Property Rights, in and to the Services and Software, including without limitation all software used to provide the Services and Software and all logos and trademarks reproduced through the Services, and including without limitation any and all enhancements, enhancement request suggestions, modifications, extensions, and/or derivative works

thereof. Except for the limited rights and license expressly granted hereunder, no other license is granted and no other use is permitted. The Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Services, the Software, any Deliverable or the Intellectual Property Rights owned by Medicom. The Medicom trademark, logo and the product names associated with the Services are trademarks of Medicom or third parties, and no right or license is granted to use them.

4.3. *Customer Data.* As between Medicom and Customer, Customer or its licensors own all right, title, and interest in and to Customer Data. Except as provided in this Section 4, Medicom obtains no rights under the Agreement from Customer or its licensors to Customer Data, including any related intellectual property rights. Customer consents to Medicom's use of Customer Data to provide the Services to Customer and any End Users. Medicom may disclose Customer Data to provide the Services to Customer or any End Users or to comply with any request of a governmental or regulatory body (including subpoenas or court orders).

4.3.1. Customer is solely responsible for the development, content, operation, maintenance, accuracy and use of Customer Data. For example, Customer is solely responsible for:

4.3.1.1. compliance of Customer Data with the AUP and the other Policies, and the law;

4.3.1.2. any claims relating to Customer Data; and

4.3.1.3. properly handling and processing notices sent to Customer (or any of Customer's affiliates) by any person claiming that Customer Data violate such person's rights, including notices pursuant to the Digital Millennium Copyright Act.

4.4. *Other Security and Backup.* Except as set forth in a Statement of Work, Customer is responsible for properly configuring and using the Services and taking its own steps to maintain appropriate security, protection and backup of Customer Data, which may include the use of encryption technology to protect Customer Data from unauthorized access and routine archiving Customer Data. Medicom log-in credentials and private keys generated by the Services or by Medicom for Customer's access to the Services are for Customer's internal use only and Customer may not sell, transfer or sublicense them to any other entity or person, except that Customer may disclose its private key to Customer's agents and subcontractors performing work on Customer's behalf.

4.5. *Suggestions.* If Customer provides any Suggestions to Medicom or its affiliates, Medicom will own all right, title, and interest in and to the Suggestions, even if Customer has designated the Suggestions as confidential. Medicom and its affiliates will be entitled to use the Suggestions without restriction. Customer hereby irrevocably assigns to Medicom all right, title, and interest in and to the Suggestions.

4.6. Notwithstanding anything to the contrary, Medicom shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Medicom will be free (during and after the term of the Agreement) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Medicom offerings, and (ii) disclose such data solely in aggregate and other de-identified form in connection with Medicom's business.

4.7. Customer grants Medicom the right to use Customer's name, mark and logo on Medicom's website, in Medicom marketing materials; provided, however, that any such use must be pre-approved, not to be unreasonably withheld, in writing by Customer. Without requiring prior Customer approval, Customer agrees that Medicom may state the fact that Customer is a Medicom customer without revealing specifics about the Agreement or the relationship.

## **5. Representations, Warranties, Exclusive Remedies and Disclaimers.**

5.1.1. *Representations.* Each party represents that it has validly entered into the Agreement and has the legal power to do so and to perform its obligations under the Agreement.

5.2. *Medicom Warranties.* Subject to the next sentence, Medicom further represents and warrants that: (a) under normal use and circumstances, the Services and Software will perform substantially in accordance with the relevant Documentation that is presented in the Agreement; and (b) it is the owner of the Services and of each and every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the rights granted in the Agreement without the further consent of any third party. Medicom's representations

and warranties in the preceding sentence do not apply to the extent that the infringement arises out of any of the conditions listed in Subsections 8.1(1) – (5). In the event of a breach of this warranty, Customer's sole remedy and Medicom's sole obligation will be for Medicom to (i) make reasonable commercial efforts at Medicom's sole cost and expense to secure for Customer the right to continue using the Services or Software, as applicable, (ii) correct the non-conformity or replace or modify the Services or Software, as applicable, to make them conforming and/or non-infringing, as applicable, or (iii) if Medicom is unable to correct the non-conformity or infringement within ninety (90) days after Customer's written notice, terminate the applicable Order Form (or the infringing features of the applicable Service) and refund to Customer, on a pro-rata basis in proportion to the portion of the Term left after such termination, of any prepaid unused Fees under such Order Form or with respect to such features of the Services, as applicable.

5.3. *Disclaimers.* EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION 6, THE SERVICES ARE PROVIDED "AS IS" AND AS AVAILABLE, AND MEDICOM MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, QUIET ENJOYMENT, NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING MEDICOM DOES NOT WARRANT THAT THE SERVICES WILL PERFORM WITHOUT ERROR OR INTERRUPTION OR BE FREE OF HARMFUL COMPONENTS, WILL MEET CUSTOMER'S REQUIREMENTS, OR BE TIMELY OR SECURE, OR THAT ANY CONTENT, INCLUDING CUSTOMER DATA OR ANY THIRD PARTY CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. CUSTOMER WILL NOT HAVE THE RIGHT TO MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF MEDICOM TO ANY THIRD PARTY. MEDICOM IS NOT RESPONSIBLE FOR ANY DECISION MADE OR ACTION TAKEN BY CUSTOMER, END USERS, OR ANY OTHER PERSON, IN RELIANCE UPON THE SERVICES OR MATERIALS.

5.4. *Internet Delays.* MEDICOM'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC

COMMUNICATIONS. MEDICOM IS NOT RESPONSIBLE FOR DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS NOT CAUSED BY MEDICOM.

## **6. Confidentiality.**

6.1. Each party (as a “**Disclosing Party**” hereunder) has disclosed or may disclose to the other party (as a “**Receiving Party**” hereunder) certain business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “**Confidential Information**” of the Disclosing Party).

6.2. Receiving Party agrees: (i) not to disclose or otherwise make available Confidential Information of the Disclosing Party to any third party without the prior written consent of the Disclosing Party, provided that the Receiving Party may disclose such Confidential Information to its, and its Affiliates, officers, employees, consultants and legal advisors who have a “need to know”, who have been apprised of this restriction and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this Section 8.2; (ii) use the Confidential Information of the Disclosing Party only for the purposes of performing its obligations under the Agreement; and (iii) notify the Disclosing Party promptly in the event it becomes aware of any loss or unauthorized disclosure of the Confidential Information of the Disclosing Party.

6.3. With respect to each item of Confidential Information, the obligations of nondisclosure above will terminate five years after the date of disclosure; provided that such obligations related to Confidential Information constituting Medicom’s trade secrets will continue so long as such information remains subject to trade secret protection pursuant to applicable law.

6.4. Confidential Information shall not include information which was: (i) generally available to the public at the time of disclosure, or later available to the public other than through fault of Receiving Party; (ii) already known to or independently developed by Receiving Party prior to disclosure pursuant to the Agreement, as evidenced by contemporaneously maintained written records; or (iii) obtained lawfully at any time from a third-party not bound by any obligation of confidentiality to Disclosing Party and under circumstances permitting its use or disclosure to others.

## **6.5. Compelled Disclosure.**

Notwithstanding the foregoing, Receiving Party may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Receiving Party will give Disclosing Party prompt notice of any such legal or governmental demand and reasonably cooperate with Disclosing Party in any effort to seek a protective order or otherwise to contest such required disclosure, at Disclosing Party’s expense, and shall disclose only that part of the Confidential Information that Receiving Party is required to disclose.

6.6. For the avoidance of doubt, Confidential Information with respect to Customer includes non-public Customer Data, and with respect to Medicom includes all the terms and conditions of this Agreement, each Order Form (including pricing), the Services and Software and Documentation.

6.7. Each party acknowledges and agrees that any violation of this Section 6 may cause the Disclosing Party irreparable injury for which the Disclosing Party would have no adequate remedy at law, and that the Disclosing Party shall be entitled to preliminary and other injunctive relief against the Receiving Party for any such violation. Such injunctive relief shall be in addition to, and not in limitation of, all other remedies or rights that Disclosing Party shall have at law or in equity.

6.8. Upon the termination or expiration of the Agreement, the Receiving Party will return to the Disclosing Party all Confidential Information delivered or disclosed to the Receiving Party, together with all copies in existence thereof at any time made by the Receiving Party.

7. **Business Associate Agreement.** Customer acknowledges and agrees that Medicom may be Customer’s Business Associate as defined by the Health Insurance Portability and Accountability Act and its implementing regulations, and as such may provide Medicom with confidential protected health information (“**PHI**”) including, but not limited to, patient identifying information, the parties will abide by the terms of the Business Associate Agreement (“**BAA**” or “**Business Associate Agreement**”) attached hereto as Exhibit A and made a part hereof by reference. The disclosure and use of any PHI will be governed by the BAA and applicable laws. Notwithstanding the foregoing, if the parties execute a separate and mutually agreed upon BAA, the terms of that mutually agreed upon BAA shall supersede the terms of Exhibit A below.

## **8. Mutual Indemnification.**

**8.1. Indemnification by Medicom.** Medicom, at its expense, shall indemnify, defend and hold Customer and its officers, directors, managers, owners, employees, agents and affiliates harmless from and against any "Claims", meaning any claim, suit, demand or proceeding brought by a third party (X) arising out of, related to or alleging that the use of the Services, Software and Deliverables used in accordance with the Agreement infringes a US patent, or any copyright, or any trademark right of a third party ("**Infringement Indemnification**"), or (Y) arising out of or related to Medicom's breach of the Agreement. With respect to Medicom's Infringement Indemnification obligations, if Medicom receives information about an infringement or misappropriation claim related to a Service, Medicom may in its sole discretion and at its own cost and expense at Medicom's option: (i) obtain for Customer the right to continue using the Service(s), Software and/or Deliverable, as the case may be; (ii) modify the item(s) in question so that it is no longer infringing; or (iii) replace such item(s) with a non-infringing functional equivalent. If, after all commercially reasonable efforts, Medicom determines in good faith that options (i) - (iii) are not feasible, Medicom will remove the infringing items from the Service(s) and/or Software and refund to Customer on a pro-rata basis any prepaid unused prepaid Fees for such infringing element. Medicom shall have no obligation or liability for any claim pursuant to this Section to the extent arising from: (1) the combination, operation, or use of the Services and/or Software supplied under the Agreement with any product, device, or software not supplied or expressly authorized in writing by Medicom to the extent the combination creates the infringement; (2) the unauthorized alteration or modification by Customer of the Services or Software; (3) Customer's failure to incorporate Software updates or upgrades that would have avoided the alleged infringement, provided Medicom offered such updates or upgrades without charges not otherwise required pursuant to the Agreement; (4) any Deliverable, if the Statement of Work or a disclosure provided at or before delivery states that such Deliverable incorporates third party software or other assets unless Medicom has agreed in advance in writing to such third party software or assets; or (5) Medicom's compliance with Customer's designs, specifications, requests, or instructions pursuant to an engagement with Medicom's Professional Services organization relating to the Services and/or Software to the extent the claim of infringement is based on the foregoing.

**8.2. Indemnification by Customer.** Customer, at its expense, shall indemnify, defend and hold Medicom and its officers, directors, managers, owners, employees, agents and affiliates harmless from

and against any Claims arising out of related to (X) Customer's alleged or actual use of, misuse of, or failure to use, the Services, including without limitation: (i) claims by End Users or other users or by Customer's employees or contractors; (ii) claims related to unauthorized disclosure or exposure of personally identifiable information or other private information, including Customer Data; (c) claims that the use of the Services through Customer's Accounts, use of Customer Data in accordance with the Agreement, or any other written material, images, logos or other content uploaded to or transmitted through the Services through Customer's Accounts, infringes a US, Members of European Union, Canadian, or Australian patent, or any copyright, or any trademark right of a third party; or (Y) Customer's breach of the Agreement.

**8.3. Indemnification Procedures.** The indemnifying party's obligations under this Section 10 are contingent upon the indemnified party (a) promptly giving notice of the Claim to the indemnifying party once the claim is known; (b) giving the indemnifying party sole control of the defense and settlement of the Claim (provided that the indemnifying party may not settle such Claim unless such settlement unconditionally releases the indemnified party of all liability and does not adversely affect the indemnified party's business or service); (c) providing to the indemnifying party all available information and reasonable assistance; and (d) not compromising or settling such third-party Claim without the indemnifying party's approval (such approval not to be unreasonably withheld). THE FOREGOING IS THE INDEMNIFYING PARTY'S SOLE OBLIGATION AND THE INDEMNIFIED PARTY'S EXCLUSIVE REMEDY WITH RESPECT TO THIRD PARTY CLAIMS DESCRIBED IN THIS SECTION.

## **9. Limitation of Liability.**

**9.1. EXCLUSION OF DAMAGES.** EXCEPT AS OTHERWISE PROVIDED IN SECTION 9.3, IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF REVENUE, PROFITS, USE, DATA OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE AGREEMENT, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICES, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT

(INCLUDING NEGLIGENCE) OR OTHERWISE, AND REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND REGARDLESS OF WHETHER SUCH PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**9.2. LIABILITY CAP.** EXCEPT AS OTHERWISE PROVIDED IN SECTION 9.3, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING FROM OR RELATING TO THE AGREEMENT, WHETHER EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. IF APPLICABLE LAW LIMITS THE APPLICATION OF THE PROVISIONS OF THIS SECTION 7.2, EACH PARTY'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMISSIBLE.

**9.3. EXCEPTIONS.** The exclusions and limitations in Sections 9.1 and 9.2 shall not apply to: (i) damages or other liabilities arising out of or relating to a party's failure to comply with its confidentiality obligations as set forth in Section 7 (Confidentiality), (ii) a party's indemnification obligations under Section 8 (Mutual Indemnification), or (iii) sums due to Medicom under applicable Order Forms and Statements of Work.

## **10. Term & Termination**

**10.1. Agreement Term.** The term of the Agreement ("Term") will commence on the Effective Date and will remain in effect until all underlying Order Forms with Customer have expired or have been terminated in accordance with the terms of such Order Form, unless the Agreement is earlier terminated by Customer or Medicom in accordance with Section 10.2 or Section 10.3. The term of each subscription for a Service shall be as specified in the applicable Order Form. Except as otherwise set forth in an Order Form, subscriptions for Services will automatically renew for additional periods equal to the expiring subscription term for such Service or one year (whichever is shorter), unless either Party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. Pricing for Services during any renewal term will increase by up to 10% above the applicable pricing in the prior term, unless Medicom provides Customer notice of different pricing at least 60 days prior to the end of the applicable renewal term

**10.2. Termination for Convenience.** Customer may terminate the Agreement or an Order Form for any reason by: (i) providing Medicom written notice and (ii) closing Customer's Accounts for the Services. Medicom may terminate the Agreement for any reason by providing Customer 30 days' advance written notice.

### **10.3. Termination for Cause.**

**10.3.1. By Either Party.** Either party may terminate the Agreement (or any Order Forms or Statement of Work then in effect) for cause (i) upon 30 days advance notice to the other party if there is any material default or breach of the Agreement by the other party, unless the defaulting party has cured the material default or breach within the 30 day notice period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**10.3.2. By Medicom.** Medicom may also terminate the Agreement (or any Order Form or Statement of Work) immediately upon notice to Customer (A) for cause, if any act or omission by Customer or any End User results in a suspension described in Section 12, (B) if Medicom's relationship with a third party partner who provides software or other technology Medicom uses to provide the Service expires, terminates or requires Medicom to change the way Medicom provides the software or other technology as part of the Services, (c) if Medicom believes providing the Service could create a substantial economic or technical burden or material security risk for Medicom, (d) in order to comply with the law or requests of governmental entities, or (e) if Medicom determines use of the Service by Customer or any End User or Medicom's provision of the Service to Customer or any End Users has become impractical or unfeasible for any legal or regulatory reason.

**10.4. Effect of Termination.** Upon any termination of the Agreement or any Order Form or Statement of Work:

**10.4.1.** all of Customer's rights under the Agreement or such Order Form or Statement of Work, as applicable, immediately terminate, and Customer shall cease all use of (A) the Services, Deliverables and Software in the case of termination of the Agreement or (B) all Services, Deliverables and Software under the applicable Order Form(s) in the case of termination of one or more Order Forms;

**10.4.2.** Customer remains responsible for all fees and charges Customer has incurred for Services provided and Deliverables



delivered through the effective date of termination; provided, however, that if Medicom terminates the Agreement pursuant to Section 10.3.1 because Customer has breached the Agreement and failed to cure such breach within the applicable time period, if any, set forth in such Section 10.3.1 (a “**For Cause Termination**”) or if Customer terminates the Agreement for convenience pursuant to Section 10.2, Customer remains responsible for all unpaid fees and charges due through the expiration of the then-current Term for the Services set forth in the applicable Order Form(s) and all applicable Statements of Work;

10.4.3. Customer will immediately return or, if instructed by Medicom, delete or destroy (i) all Medicom Materials, Deliverables and Software in Customer’s possession or control in the case of termination of the Agreement or (ii) all Medicom Materials, Deliverables and Software in Customer’s possession or control with respect to the applicable Service(s) under the applicable Order Form(s) in the case of termination of one or more Order Forms; and

10.4.4. The following provisions will survive termination or expiration of the Agreement: (i) Sections 4 (*Materials, Software and Intellectual Property*), 5 (*Each Party’s Warranties*), 6 (*Confidentiality*), 7 (*Business Associate Agreement*), 8 (*Indemnification*), 9 (*Indemnification*), 10 (*Term and Termination*) and 11 (*General Provisions*) of the Agreement; and (ii) any other provision of the Agreement that must survive termination to fulfill its essential purpose.

## **11. General Provisions.**

11.1. *Notices.* Except as otherwise expressly set forth in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c) except for notices of termination or an indemnifiable claim (“**Legal Notices**”), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer. All other notices to Customer will be addressed to the relevant Services contact designated by Customer.

11.2. *Amendment.* The Agreement may not be amended except through a written agreement by authorized representatives of each party. Notwithstanding the foregoing provisions of this Section 14.2, Medicom may revise the Privacy Policy and AUP at any time by posting a new version of either at Medicom’s website, and such new version will become effective on the date it is posted.

11.3. *Independent Contractors.* The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other and neither may bind the other in any way. The parties agree that no Medicom employee or contractor is or will be considered to be an employee of Customer.

11.4. *No Waiver.* Neither party will be deemed to have waived any of its rights under the Agreement by lapse of time or by any statement or representation other than (i) by an authorized representative and (ii) in an explicit written waiver. No waiver of a breach of the Agreement will constitute a waiver of any prior or subsequent breach of the Agreement.

11.5. *Force Majeure.* No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of the Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party’s reasonable control.

11.6. *Assignment & Successors.* Neither party may assign the Agreement or any of its rights or obligations hereunder without the other party’s express written consent; provided, however, that upon prior written notice to the other party, either party may assign the Agreement to an affiliate of such party or to a successor of all or substantially all of the assets of such party through merger, reorganization, consolidation or acquisition. Any purported assignment, transfer or other conveyance in violation of this Section shall be void. Except to the extent forbidden in this Section, the Agreement will be binding upon and inure to the benefit of the respective successors and assigns of the parties.

11.7. *Choice of Law & Jurisdiction.* The Agreement will be governed solely by the internal laws of the State of North Carolina, without reference to any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties’ rights or duties. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of Wake County, North Carolina. The 1980 United Nations Convention on Contracts for the International Sale of Goods does not apply to the Agreement. This Section 15(g) governs all claims arising out of or related to the Agreement, including without limitation tort claims.

11.8. *Attorneys’ Fees.* In the event that any action, suit or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to the

Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

11.9. *Severability.* To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of the Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of the Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of the Agreement will continue in full force and effect.

11.10. *Conflicts.* In the event of any conflict among the attachments to the Agreement and this main body, the following order of precedence will govern, with lower numbers governing over higher ones: (1) this main body of the Agreement; (2) any Statement of Work, with more recent Statement of Works taking precedence over later ones; and (3) any Medicom policy posted online, including without limitation the AUP or Privacy Policy. No Statement of Work or other attachment incorporated into the Agreement after execution of this main body will be construed to amend this main body or any earlier attachment unless it specifically states its intent to do so and cites the section or sections amended..

11.11. *Entire Agreement.* The Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to the subject matter hereof. Neither party has relied upon any such prior or contemporaneous communications.

11.12. *Import and Export Compliance.* In connection with the Agreement, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, Customer is solely responsible for compliance related to the manner in which Customer chooses to use the Services, including Customer's transfer and processing of Customer Data and the provision of Customer Data to End Users. Customer shall not permit (a) any third party to access or use the Services or Software in violation of any U.S. law or regulation, or (b) export any software provided by Medicom or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Customer shall not permit any third party to access or use the Services in, or export such software to, a country subject to a United States embargo.

11.13. *Counterparts.* The Agreement may be executed in any number of counterparts and each will be considered an original. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., [www.docusign.com](http://www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes. Slight variations in the form of signature page counterpart executed by any party hereto (including different footnotes or document numbers) shall be considered immaterial and shall not invalidate any such counterpart signature.

## **EXHIBIT A**

### **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (the “**Agreement**”) Medicom Technologies, Inc., a Delaware corporation (“**Business Associate**”) and Customer (“**Covered Entity**”) is entered into with respect to Business Associate’s provision, and Covered Entity’s use, of Business Associates Services as set forth in the terms of service above (the “**Services Agreement(s)**”). In connection with the Services, Covered Entity and Business Associate mutually desire to outline their individual responsibilities with respect to the Use and/or Disclosure of Protected Health Information (“**PHI**”) as mandated by the Privacy Standards (45 C.F.R. Parts 160 and 164), Electronic Transactions Standards (45 C.F.R. Parts 160 and 162), and Security Standards (45 C.F.R. Parts 160, 162 and 164) promulgated under the Administrative Simplifications subtitle of the Health Insurance Portability and Accountability Act of 1996, as well as the data breach notification requirements as promulgated under the American Recovery and Reinvestment Act of 2009 (“**ARRA**”); and

#### **I. Definitions**

Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Health Insurance Portability and Accountability Act of 1996, its implementing rules and regulations, the Health Information Technology for Economic and Clinical Health Act, and any amendments thereof (collectively, “**HIPAA**”) or in the Services Agreement(s).

- (a) “**Individual**” shall have the same meaning as the term "individual" in 45 C.F.R. §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).
- (b) “**Required By Law**” shall have the same meaning as the term "required by law" in 45 C.F.R. §164.512.
- (c) “**Secretary**” shall mean the Secretary of the Department of Health and Human Services or the designee of the Secretary.

#### **II. Obligations and Activities of Business Associate**

- (a) Business Associate agrees not to request, use or disclose PHI other than as permitted or required by the Services Agreement(s), this Agreement or as Required By Law.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement.
- (c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- (d) Business Associate shall, following the discovery of a breach of Unsecured PHI, notify Covered Entity of the Breach in accordance with 45 C.F.R. §164.410 without unreasonable delay and in no case later than sixty (60) calendar days after discovery of the Breach.
- (e) Business Associate shall enter into and maintain an agreement with each agent or subcontractor that has or will have access to PHI received from, or created or received by Business Associate on behalf of, Covered Entity, pursuant to which such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to Business Associate under this Agreement with respect to such PHI.
- (f) Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity or the Secretary, in a time and manner reasonably

designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with HIPAA.

- (g) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528.
- (h) Within fifteen (15) business days of notice by Covered Entity to Business Associate that it has received a request for an accounting of disclosures of PHI (other than disclosures to which an exception to the accounting requirement applies), Business Associate shall provide Covered Entity with such information for Covered Entity to make the accounting required by 45 C.F.R. §164.528. If Business Associate receives a request directly from an Individual pursuant to 45 C.F.R. §164.528, it shall, within ten (10) business days, forward such accounting request to Covered Entity.
- (i) Within fifteen (15) business days of a request by Covered Entity for access to PHI about an Individual contained in any Designated Record Set of Covered Entity and maintained by Business Associate, Business Associate shall make available to Covered Entity such PHI. If Business Associate receives a request for access to PHI directly from an Individual, Business Associate shall forward such request to Covered Entity within ten (10) business days. Covered Entity shall be solely responsible for making determinations with respect to the provision of access to the Individual of such PHI and/or denial of the same (including the creation and/or maintenance of any notifications and/or documents in connection therewith).
- (j) Within fifteen (15) business days of receipt of a request from Covered Entity for the amendment of an Individual's PHI contained in any Designated Record Set of Covered Entity and maintained by Business Associate, Business Associate shall provide such information to Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. §164.526. If the Covered Entity denies an Individual's request to amend such PHI, Business Associate shall incorporate into the PHI any of the statements and/or documents that the Covered Entity has created or received with respect to such denial. If Business Associate receives a request for amendment to PHI directly from an Individual, Business Associate shall forward such request to Covered Entity within ten (10) business days. Covered Entity shall be solely responsible for making determinations with respect to the amendment of such PHI pursuant to an Individual's request and/or the denial of such request (including the creation and/or maintenance of any notification and/or creation of documents in connection therewith).
- (k) For purposes of this Agreement, "**Electronic PHI**" shall have the same meaning as "Electronic Protected Health Information" as that term is defined by HIPAA within 45 C.F.R. § 160.103. Specifically, Electronic PHI shall include PHI that is transmitted by Electronic Media (as defined by HIPAA within 45 C.F.R. § 160.103), or that is maintained in Electronic Media. In addition, for purposes of this Agreement, "**Security Incident**" shall have the same meaning as that term is defined by HIPAA within 45 C.F.R. § 164.304. (*i.e.*, "the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the system operations in an information system"). Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity as required by HIPAA. Business Associate shall report to Covered Entity any Security Incident of which it becomes aware in the following time and manner: (i) any actual, successful Security Incident will be reported to Covered Entity in writing, no later than sixty (60) days following the date on which Business Associate first becomes aware of such Security Incident, and (ii) any attempted, but unsuccessful Security Incident of which Business Associate becomes aware will be reported to Covered Entity in writing upon reasonable request provided that such requests shall be on no more than a quarterly basis.

- (l) This Agreement applies to the extent Covered Entity is acting as a Covered Entity or a Business Associate to transfer, store, or create PHI via a Covered Function (as defined in HIPAA) of the Services and to the extent Business Associate, as a result, is deemed under HIPAA to be acting as a Business Associate or an agent or subcontractor of a Business Associate. Covered Entity acknowledges that this Agreement does not apply to, or govern, any other Business Associate product, service, or feature not part of a Covered Function.

### III. Permitted Uses and Disclosures by Business Associate

- (a) Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI on behalf of, or to provide services to, Covered Entity for the following purpose, if such use or disclosure of PHI would not violate HIPAA if done by Covered Entity, unless such use by a business associate is permitted under HIPAA: performing operational services as agreed upon between Business Associate and Covered Entity under a license, service or support agreement.
- (b) Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (c) Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (d) Business Associate may use or disclose PHI as Required By Law.
- (e) Business Associate may use PHI to report violation of law to authority under 45 C.F.R. §164.502(j)(1).
- (f) Except as otherwise limited in this Agreement or the Services Agreement(s), Business Associate may use PHI to provide Data Aggregation services as permitted by 45 CFR § 164.504(e)(2)(i)(B), including use of PHI for statistical compilations, reports, research and other purposes under applicable law. Business Associate may create de-identified PHI in accordance with the standards set forth in 45 CFR § 164.514(b) and may use or disclose such de-identified data for any purpose.

### IV. Obligations of Covered Entity

- (a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. §164.520 and shall make available to Business Associate any changes Covered Entity may make to its privacy policy.
- (b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522 that may affect Business Associate's permitted or required uses or disclosures of such PHI.

V. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if done by Covered Entity.

VI. Term and Termination

- (a) Term. The Term of this Agreement shall begin upon acceptance of the Services Agreement(s) by Covered Entity and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- (b) Termination for Breach. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide thirty (30) days for Business Associate to cure the breach or end the violation. If Business Associate fails to cure the breach within such thirty (30) day period, Covered Entity may terminate this Agreement immediately. If Business Associate provides written notice to Covered Entity of any pattern of activity or practice of Covered Entity that the Business Associate believes constitutes a material breach or violation of the Covered Entity's obligations under this Agreement or under applicable law, including HIPAA and HITECH, Covered Entity shall take reasonable steps to cure the breach or end the violation or Business Associate shall have the right to terminate this Agreement and any related service agreement and may report the problem to the Secretary of DHHS.
- (c) Effect of Termination.
  - (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, and which Business Associate still maintains in any form. This provision shall apply to PHI that is in the possession of agents or subcontractors of Business Associate. Business Associate shall retain no copies of the PHI unless Required by Law.
  - (2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible and shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

VII. Miscellaneous

- (a) Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for each of the Parties to comply with the requirements of HIPAA. Any amendment must be in writing signed by both parties and expressly state that it is amending this Agreement.
- (b) Survival. The respective rights and obligations of Business Associate under Section VI(c) of this Agreement shall survive the termination of this Agreement.
- (c) Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits each Party to comply with HIPAA. To the extent of any conflict or inconsistency between the terms of this Agreement and the Services Agreements, the terms of this Agreement will control. Except as expressly modified or amended under this Agreement, the terms of the Services Agreements remain in full force and effect.
- (d) Incorporation. This Agreement is an addendum of the Services Agreements.

- (e) No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.
- (f) Counterparts. This Agreement may be executed in any number of counterparts and each will be considered an original. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, [www.docusign.com](http://www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes. Slight variations in the form of signature page counterpart executed by any party hereto (including different footnotes or document numbers) shall be considered immaterial and shall not invalidate any such counterpart signature.

VIII. Limitation of Liability

To the extent permitted by law, Business Associate's liability under this Agreement shall be limited to the direct actual damages, including reasonable attorneys' fees and expenses, caused by Business Associate's breach of this Agreement. Business Associate shall in no way be liable for indirect or consequential, incidental or special damages, including any lost profits, even if Business Associate has been advised of the possibility of such damages.