

BEFORE USING THIS SOFTWARE PRODUCT ("MRSAUDITQ") CAREFULLY READ ALL THE TERMS AND CONDITIONS OF (1) THE SOFTWARE LICENSE AGREEMENT AND (2) THE HIPAA BUSINESS ASSOCIATE AGREEMENT. BY COMPLETING THE PURCHASE, YOU AGREE TO BE LEGALLY BOUND BY THE TERMS AND CONDITIONS OF THE SOFTWARE LICENSE AGREEMENT AND THE HIPAA BUSINESS ASSOCIATE AGREEMENT, WHETHER OR NOT YOU HAVE READ THEM. IF YOU DO NOT AGREE TO THESE TERMS, REMOVE THE PRODUCT FROM THE CART AND DO NOT USE THE MRSAUDITQ SOFTWARE.

## **SOFTWARE LICENSE AND SERVICE AGREEMENT**

WHEREAS, Medical Management and Reimbursement Specialists, LLC (MRS) (hereafter referred to as "Seller" or "MRS") is engaged in the business of designing and developing computer-related software and related products and has created and developed a software package called MRSAuditQ (the "Software"); and

WHEREAS, you (hereafter referred to as "Customer) desires to utilize such Software as part of the operation of its business;

WHEREAS, both parties believe it is in their mutual interest and desire to enter into an agreement whereby Customer would use Sellers' Software pursuant to the terms and conditions hereinafter provided.

NOW, THEREFORE, in consideration of the premises and the mutual covenants of this Agreement, the parties hereto agree as follows:

### Parties.

1. This Software License Agreement ("this Agreement") is between you ("Customer") and Medical Management & Reimbursement Specialists, LLC (MRS) of PO Box 486 Bristol, NH 03222 (Herein referred to as the "Seller" or "MRS").

### Effective

2. This Agreement is effective as of the date the Customer has affirmatively indicated its intent to be bound by the terms hereof (the "Effective Date"), by completing the purchase of MRSAuditQ, or otherwise submitting an online order for services from Seller.

### Products Provided

3. The Seller hereby agrees, for the term of this Agreement, a nonexclusive, non-assignable, and non-transferable, right to use the Software in connection with the operation of its business. This product use is expressly limited to a single customer instance agreed to in the License Fee schedule Exhibit A.

### Services Provided

4. The Seller hereby agrees to engage the Customer to provide the Customer with services (the "Services") consisting of:

- Creation of one customer instance and authorized user(s) on the MRSAuditQ Basic version.

#### Term of Agreement

5. The term of this Agreement (the "Term") shall be effective on the date of this Agreement and will remain in full force and effect for one year ("Initial Term"), during which time, the agreement shall include use of product inclusive of updates and any necessary changes or reconfigurations to MRSAuditQ.

THIS AGREEMENT SHALL BE AUTOMATICALLY RENEWED EACH YEAR UNLESS CUSTOMER PROVIDES THE SELLER IN WRITING OF ITS INTENTION NOT TO RENEW THE AGREEMENT, SAID NOTICE TO BE PROVIDED IN WRITING (ELECTRONIC EMAIL IS PERMISSIBLE) AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE THEN IN-EFFECT TERM.

#### Performance

6. The Parties agree to do everything necessary and lawful to fully comply with the terms of this Agreement including the HIPAA Business Associate Agreement which is provided herewith.

#### Currency

7. Except as otherwise provided in this Agreement, all monetary amounts referred to in this Agreement are in US Dollars.

#### Compensation

8. In consideration for the use of product and services granted hereunder, Customer agrees to pay to Seller the License Fee recited in Exhibit A.

In addition to the License fee, the Customer will also be required to pay sales tax, or other applicable duties as may be required by law according to the state the Customer is located.

#### Confidentiality

9. Confidential information (the "Confidential Information") refers to any data or information relating to the business of either party which would reasonably be considered to be proprietary to the parties including, but not limited to, accounting records, business processes, records and information that is not generally known in the industry of the Customer or Seller and where the release of that Confidential Information could reasonably be expected to cause harm to the Seller. Confidentiality notwithstanding neither the Seller or the Customer is exempt from the mandatory reporting of illegal or unlawful activity by either party as compelled by Federal, State and Local laws or guidelines. Customer recognizes that

the Software is the proprietary and confidential property of the Seller. Accordingly, Customer shall not, without the prior express written consent of Seller, during the term of this Agreement and for all years thereafter, disclose or reveal to any third party or utilize for its own benefit other than pursuant to this Agreement, any Software provided by Seller concerning Products, provided that such information was not previously known to Customer or to the general public. Customer further agrees to take all reasonable precautions to preserve the confidentiality of Sellers Software and shall assume responsibility that its employees and assignees will similarly preserve this information against third parties. The provisions of this clause shall survive termination of this Agreement.

10. The Customer agrees that it will not disclose, divulge, reveal, report or use, for any purpose, any Confidential Information which the Customer has obtained, except as authorized by the Seller. This obligation will survive the expiration or termination of this Agreement and will continue indefinitely.
11. The Seller agrees that it will not disclose, divulge, reveal, report or use, for any purpose, any Confidential Information which the Seller has obtained, except as authorized by the Customer. This obligation will survive the expiration or termination of this Agreement and will continue indefinitely.
12. All written and oral information and materials disclosed or provided by the Seller to the Customer under this Agreement are Confidential Information regardless of whether it was provided before or after the date of this Agreement or of how it was provided to the Customer.

#### Warranties

13. Seller further represents and warrants that it has no actual knowledge that the Software infringes any valid rights of any third party.

#### Improvements

14. Any improvements or modifications made to the standard product by the Seller to the Software shall be, when deemed appropriate by the Seller, provided to Customer and shall be automatically included in this Agreement.

#### Non-Competition

15. Other than with the express written consent of the Seller, which will not be unreasonably withheld, the Customer will not be directly or indirectly involved with any business, initiative, or software development which is in direct competition with the particular business line of the Seller which for the

purpose of this agreement is MRSAuditQ. Without the express written consent of the Seller, the Customer will not divert or attempt to divert from the Seller any business the Seller has enjoyed, solicited, or attempted to solicit, from other individuals or corporations, prior to the expiration or termination of this Agreement. This obligation will survive the expiration or termination of this Agreement and will continue for five (5) years from the date of such expiration or termination.

#### Non-Solicitation

16. The Customer and Seller understand and agree that any attempt on the part of either party to induce other employees, partners or clients to sever ties, or any effort by either party to interfere with the other party's relationship with its employees, partners, clients, or other service providers would be harmful and damaging to the Customer or Seller and to this service agreement.
17. During the term of this Agreement and for a period of five (5) years after the expiration or termination of this Agreement, the Customer and Seller agree not to in any way directly or indirectly:
  - a. induce or attempt to induce any employee or other service provider of either party to quit employment or retainer;
  - b. otherwise interfere with or disrupt either party's relationship with its employees, clients, or other service providers;
  - c. discuss employment opportunities or provide information about competitive employment to any of either party's employees, clients or other service providers; or
  - d. solicit, entice, or hire away any employee, client or other service provider or product purchaser of either party.

#### Ownership of Materials and Intellectual Property

18. All intellectual property and related materials (the "Intellectual Property") including any related work in progress that is developed or produced under this Agreement, will be the sole property of the Seller. The use of the Intellectual Property by the Seller will not be restricted in any manner.
  - a. The Customer may not use the Intellectual Property for any purpose other than the purpose it is contracted for in this Agreement except with the written consent of the Seller. The Customer will

be responsible for any and all damages resulting from the unauthorized use of the Intellectual Property.

- b. No right or license is being conveyed to Customer to use the Software at any other location. Customer is prohibited from making any copies, archival or of the Software. Customer is further prohibited from using the Software in any manner other than as described above.
- c. Customer may not decompile, disassemble or otherwise reverse engineer the software.
- d. Customer may not rent or lease it to others nor permit others use of the software not directly employed by Customer and authorized to use the software.
- e. Customer retains no ownership or stake in MRSAuditQ and is entitled to access and use only in accordance with the schedule described herein.

Customer agrees to the usage parameters set forth in this agreement. Unlawful or non-compliant use, Failure to comply, or a direct violation of these agreed upon parameters will effectively void the terms of this agreement.

#### Return of Property

19. Upon the expiration or termination of this Agreement, the Customer will return to the Seller any property, documentation, records, or Confidential Information which is the property of the Seller.

#### Capacity/Independent Customer

20. In providing the Services under this Agreement it is expressly agreed that the Customer is acting as an independent Customer and not as an employee. The Customer and the Seller acknowledge that this Agreement does not create a partnership or joint venture between them and is exclusively a contract for products and services.

#### Notice

21. All notices or other communications to the Seller will be given in writing and delivered to either:
  - a. Email: info@mrsnh.com
  - b. Medical Management & Reimbursement Specialists, LLC (MRS)  
PO Box 486 Bristol, NH 03222

#### Indemnification

22. Except to the extent paid in settlement from any applicable insurance policies, and to the extent permitted by applicable law, each Party agrees to indemnify and hold harmless the other Party, and its respective affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever, which result from or arise out of any act or omission of the indemnifying party, its respective affiliates, officers, agents, employees, and permitted successors and assigns that occurs in connection with this Agreement. This indemnification will survive the termination of this Agreement.

#### Limitation of Liability

23. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SELLER'S LIABILITY TO CUSTOMER FOR ALL MATTERS ARISING OUT OF THIS AGREEMENT OR RELATED ADDENDUM EXCEED THE TOTAL PAYMENTS ACTUALLY RECEIVED BY SELLER THEREUNDER.

#### Legal Expenses

24. In the event that legal action is brought to enforce or interpret any term of this Agreement, the prevailing Party will be entitled to recover, in addition to any other damages or award, all reasonable legal costs and fees associated with the action.

#### Modification of Agreement

25. Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party or an authorized representative of each Party.

#### Assignment

26. The Customer will not voluntarily, or by operation of law, assign or otherwise transfer its obligations under this Agreement without the prior written consent of the Seller.

#### Entire Agreement

27. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement.

### Succession

28. This Agreement will endure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators, successors and permitted assigns.

### Titles/Headings

29. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement.

### Gender

30. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

### Governing Law

31. It is the intention of the Parties to this Agreement that this Agreement and the performance under this Agreement, and all suits and special proceedings under this Agreement, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the state of New Hampshire, without regard to the jurisdiction in which any action or special proceeding may be instituted.

### Severability

32. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

### Waiver

33. The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.

### Integration

34. This Agreement constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents that may be in conflict therewith.

#### U.S. Government Rights

35. This product includes CPT, which is commercial technical data, which was developed exclusively at private expense by the American Medical Association, 330 North Wabash Avenue, Chicago, Illinois 60611. The American Medical Association does not agree to license CPT to the Federal Government based on the license in FAR 52.227-14 (Data Rights - General) and DFARS 252.227-7015 (Technical Data - Commercial Items) or any other license provision. The American Medical Association reserves all rights to approve any license with any Federal agency.

### **Exhibit A – License Fees MRSAuditQ Basic Version**

The Seller hereby agrees to provide to the Customer the MRSAuditQ Basic product consisting of access to use the product, inclusive of ongoing standard upgrades and updates as long as a purchase agreement is executed and in effect.

- Access to MRSAuditQ Basic
- 1-year minimum contract length with automatic yearly renewal
- Pricing:
  - 1500.00/year for each individual user subsequently.

Note: MRS reserves the right to adjust the pricing of the product. In event of a pricing change, the Customer will not be automatically renewed, but will be notified in writing of the pricing change with an opportunity to accept or decline the renewal.



## **HIPAA BUSINESS ASSOCIATE AGREEMENT**

WHEREAS, Medical Management and Reimbursement Specialists, LLC (or "Business Associate") may, pursuant to the agreement to which this HIPAA Business Associate Addendum is attached (the "Agreement"), perform certain services on behalf of or for Customer (or "Covered Entity") that require Business Associate to access, create and use health information that is subject to the Health Insurance Portability and Accountability Act of 1996, Subtitle D of the Health Information Technology for Economic and Clinical Health Act, and their implementing regulations, as amended (collectively, "HIPAA"); and

### **1. Definitions**

(a) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191. HIPAA also includes the amendments pursuant to the HITECH Act, the HIPAA Rules, and any guidance issued by the Secretary under HIPAA.

(b) "HIPAA Rules" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services, including but not limited to, 45 C.F.R. Parts 160 and 164 (the "Privacy Rule"), 45 C.F.R. Part 162 (the "Transaction Rule"), 45 C.F.R. Part 160 and Subpart C of Part 164 (the "Security Rule"), the Breach Notification for Unsecured Protected Health Information Rule, 45 C.F.R. Part 160 and Subpart D of Part 164 (the "Breach Notification Rule") and the HIPAA Administrative Simplification: Enforcement Rule, 45 C.F.R. Part 160. HIPAA Rules also include the amendments pursuant to the HITECH Act and any guidance issued by the Secretary under HIPAA.

(c) "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act as set forth in Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009.

(d) "Protected Health Information" or "PHI" means individually identifiable health information held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper or oral communication. For the avoidance of doubt, all references to PHI herein shall be construed to include Electronic Protected Health Information ("ePHI").

(e) "Sub-Business Associate" means any agent or subcontractor with whom Business Associate enters into agreement in order for Sub-Business Associate to provide services for or on behalf of Business Associate that require that Sub-Business Associate creates, receives, maintains, transmits or receives PHI that is the subject of this Agreement.

(f) Any capitalized terms used but not otherwise defined in this Agreement shall have the same meaning as those terms have under HIPAA and the HIPAA Rules.

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

(a) Use or Disclosure of Information. Business Associate agrees not to use or further disclose PHI created by or received from Covered Entity, other than as expressly permitted or required by this Agreement, the Underlying Agreement, or as required by law.

(b) Administrative Safeguards and Data Security. Business Associate agrees to implement and maintain appropriate safeguards to prevent any use or disclosure of PHI other than uses and disclosures expressly provided for by this Agreement. With respect to ePHI, Business Associate acknowledges and agrees that the Security Rule shall apply to Business Associate in the same manner that it applies to Covered Entity. Accordingly, subject to any more stringent requirements contained in the Underlying Agreement, Business Associate will follow reasonable system security principles consistent with industry standards and will comply with the relevant requirements of the HIPAA Rules applicable to business associates pertaining to the security of ePHI including (1) implementing written policies and procedures that address the HIPAA Security Rule's administrative, technical, and physical safeguard standards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of any ePHI that it creates, receives, maintains, or transmits in an electronic format on behalf of Covered Entity and shall ensure that its Sub-Business Associates to whom it provides the information implement and adhere to equivalent safeguards; (2) implementing a security awareness and training

program for workforce members; (3) designating a security officer; (4) conducting an accurate and thorough security risk analysis; and (5) implementing a security management process. Business Associate shall use commercially reasonable efforts to secure all ePHI by technological means that renders such information unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in any guidance issued from time to time.

(c) Mitigation. Business Associate agrees to mitigate, to the extent reasonably practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its Sub-Business Associates in violation of the requirements of this Agreement or the HIPAA Rules. Business Associate shall (i) take prompt corrective action to cure any deficiencies; (ii) assist Covered Entity in mitigating any harm caused by such unauthorized use, disclosure, or access; and (iii) take any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

(d) Reporting.

(i) Business Associate agrees to report within five (5) days of discovery to Covered Entity (i) any use or disclosure of PHI in violation of the applicable HIPAA Rules or this Agreement of which Business Associate becomes aware (including, without limitation, any Security Incident), (ii) any failure of the administrative, physical or technical safeguards adopted under Section 2(b) of this Agreement, or (iii) the commencement of any action against Business Associate by a state attorney general under Section 13410(e) of the HITECH Act relating to a purported violation of HIPAA or the HIPAA Rules.

(ii) Notwithstanding the foregoing, if Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses any Unsecured Protected Health Information (“Unsecured PHI”), Business Associate shall notify Covered Entity of a Breach involving such information without unreasonable delay, but no later than two (2) days following discovery of the Breach.

(iii) For purposes of this Agreement, an impermissible or improper use, disclosure, Breach, or action as described above, shall be deemed “discovered” by Business Associate as of the first day on which such reportable event is actually known to any person, other than the individual committing the reportable event, that is an employee, officer, or other agent of Business Associate, or if such reportable event should reasonably have been known to Business Associate to have occurred, including but not limited to notification provided to Business Associate by a Sub-Business Associate of a reportable event. Upon the occurrence of a reportable event, Business Associate shall provide a written report to Covered Entity describing the surrounding circumstances and, in the case of any Breach, such report shall include the names of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed as a result of such Breach and such other available information needed by Covered Entity to enable it to comply with its notification obligations under the Breach Notification Rule and any applicable state laws.

(e) Sub-Business Associates and Agents. Business Associate acknowledges that its Sub-Business Associates are also subject to HIPAA. Business Associate shall ensure that any Sub-Business Associate to whom it provides PHI agrees in writing to substantially the same or similar restrictions and conditions that apply to the Business Associate under this Agreement with respect to such information in its possession. Additionally, Business Associate will require such Sub-Business Associates to notify Business Associate promptly of any instances of which they are aware in which the accessibility, confidentiality, or integrity of the Covered Entity’s PHI has been compromised. In the event that Business Associate knows of a pattern of activity or practice of a Sub-Business Associate or Agent that constitutes a material breach or violation of the Sub-Business Associate’s obligation under the subcontractor agreement or other arrangements, Business Associate shall take reasonable steps to cure such breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the subcontractor agreement or other arrangements, if feasible.

(f) Access. Business Associate agrees to provide access, when requested by Covered Entity, to PHI in such Designated Record Set to Covered Entity in order to comply with the requirements under 45 C.F.R. § 164.524 and all other applicable laws and regulations. Such access shall be provided by Business Associate in the time and manner reasonably designated by Covered Entity.

(g) Amendment. When requested by Covered Entity, Business Associate agrees to make any amendment(s) to PHI in such Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 and all other laws and regulations applicable to Covered Entity. Such amendments shall be made by Business Associate in the time and manner

reasonably designated by Covered Entity. In the event Business Associate receives an amendment request directly from an Individual, Business Associate shall forward the request to Covered Entity within five (5) days of receipt. Business Associate shall, as directed by Covered Entity, incorporate any amendments or corrections or deletions to PHI into copies of such PHI maintained by Business Associate within fifteen (15) days of receipt of such request from Covered Entity.

(h) Audit and Inspection. Business Associate agrees to make its internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI, available to Covered Entity and/or the Secretary or his or her designee for the limited purposes of the Secretary determining Covered Entity's compliance with HIPAA and the HIPAA Rules. In an instance of such a request by the Secretary, such information shall be made available in a time and manner reasonably designated by Covered Entity in order to comply with the request by the Secretary. Unless prohibited by applicable law, Business Associate shall provide Covered Entity access to review any Protected Health Information or other information that Business Associate makes available to the Secretary.

(i) Documentation of Disclosures. Business Associate agrees to document such disclosures of PHI and any 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 by Business Associate in accordance with 45 C.F.R. § 164.528 and all other laws and regulations applicable to the Covered Entity.

(j) Accounting. Upon request from Covered Entity, Business Associate agrees to provide information collected in accordance with this Section 2(j) to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI by Business Associate in accordance with 45 C.F.R. § 164.528 and all other laws and regulations applicable to the Covered Entity. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or Sub-Business Associates for at least six (6) years prior to the request (except for disclosures occurring prior to the Effective Date). The accounting shall include, at a minimum: (i) the date of the disclosure, (ii) the name and address of the entity or person who received the PHI, (iii) a brief description of PHI disclosed, and (iv) a brief statement of the basis for the disclosure or, in lieu of such a statement, a copy of a written request for the disclosure from the Secretary pursuant to 45 C.F.R. § 164.502(1)(a)(ii) or from an authorized official for public policy disclosures pursuant to 45 C.F.R. § 164.512. Such information shall be provided in the time and manner reasonably designated by Covered Entity, but in no event shall such submission occur later than at a time and date which shall reasonably allow Covered Entity to respond within the time limit set forth in the applicable regulations; provided that Covered Entity shall promptly notify Business Associate upon receipt of any such request.

(k) Compliance with Transaction Standards. If applicable to Business Associate and the services provided to or on behalf of Covered Entity, in performing services for Covered Entity pursuant to the Underlying Agreement and this Agreement, Business Associate hereby agrees to comply, and will cause its Sub-Business Associates and agents to comply, with each applicable requirement of the Transaction Rule and any similar or related regulations promulgated under HIPAA (including, without limitation, security standards), as such may be amended, extended or replaced from time to time. For avoidance of doubt, the foregoing obligation requires Business Associate and its Sub-Business Associates to refrain from all actions and omissions that may result (due to Business Associate's relationship with Covered Entity) in a violation of the Transaction Rule by Covered Entity.

(l) Compliance with Laws. Business Associate shall comply with the Privacy Rule and any and all applicable federal, state and local privacy and data security laws, any federal, state or local data breach notification requirements and any other requirements to reasonably safeguard personal information, in effect now or at any time in the future.

### **3. Permitted Uses and Disclosures by Business Associate**

(a) Services. Subject to the provisions of Section 4 below, and except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement if such use or disclosure of PHI would not violate HIPAA or the HIPAA Rules or all other laws and regulations applicable to the Covered Entity, if done by Business Associate.

(i) Business Associate will limit the use, disclosure, or request of PHI, to the extent practicable, to a Limited Data Set or, if needed by Business Associate, to the minimum necessary to accomplish the intended purpose of such use, disclosure, or request, except to the extent a broader use, disclosure, or request of PHI is allowed by the HIPAA Privacy Rule, including any guidance issued by the Secretary. Further, Business Associate will use reasonable efforts to restrict access

to PHI to those employees or agents of Business Associate who are actively and directly participating in providing or supporting products and/or services under the Underlying Agreement and who need to know such information in order to fulfill such responsibilities.

(ii) Except as otherwise authorized by the Privacy Rule, Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual unless Covered Entity has received a valid authorization from such Individual that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving PHI of that Individual in accordance with the HIPAA Rules.

(b) Business Activities. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to meet its legal responsibilities.

#### **4. Obligations of Covered Entity**

(a) Restrictions. To the extent that such limitations may affect Business Associate's use or disclosure of PHI, and upon request, Covered Entity shall notify Business Associate of (i) any limitations in Covered Entity's Notice of Privacy Practices that Covered Entity produces in accordance with 45 C.F.R. 164.520, as well as any changes to that notice, (ii) any changes in, or revocation of, permission by Individual to use or disclose PHI, and (iii) any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522.

(b) Requests. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA or the HIPAA Rules applicable to Covered Entity, if done by Covered Entity or Business Associate.

#### **5. Indemnification**

(a) Business Associate shall defend, indemnify, and hold harmless Covered Entity, its respective officers, agents and employees from and against any and all claims, liabilities, demands, damages, losses, costs and expenses, (including, without limitation, costs and reasonable attorneys' fees) or claims for injury or damages arising out of or related to a breach of this Agreement by Business Associate, its agents or Sub-Business Associates, including but not limited to (i) any unauthorized use, disclosure, access, or Breach of PHI; (ii) failure to take prompt, reasonable steps to mitigate any harm caused by such unauthorized use, disclosure, access or Breach; and (iii) any negligence or wrongful acts or omissions by Business Associate, its agents or Sub-Business Associates, including but not limited to, failure to perform Business Associate's obligations under this BAA, HIPAA, or the HIPAA Rules.

(b) Business Associate may participate in the defense and/or settlement of any claim arising under Section 5(a) with counsel of its own choice at its own expense. Business Associate shall not have any right, without Covered Entity's prior written consent, to settle any such claim if such settlement arises from or is part of any criminal action, suit or proceeding or contains a stipulation to or admission or acknowledgement of, any liability or wrongdoing (whether in contract, tort or otherwise) on the part of the Covered Entity.

(c) Notwithstanding the foregoing, nothing in this Section shall limit any rights Covered Entity may have to additional remedies under the Underlying Agreement or under applicable law for any acts or omissions of Business Associate or its agents or Sub-Business Associates.

#### **6. Term and Termination**

(a) Term. This Agreement shall be effective as of the Effective Date and shall continue unless or until the Agreement is terminated in accordance with the provisions of Section 6(b), the Underlying Agreement between the parties terminates, or all of the PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity.

(b) Termination for Cause. Business Associate authorizes termination of this Agreement by Covered Entity upon knowledge of a material breach by Business Associate. In this event, Covered Entity shall either (i) in its discretion provide an opportunity for the Business Associate to cure the breach or end the violation and, if Business Associate does not cure the

breach or end the violation within the cure period specified in the Underlying Agreement or if none is specified, then within ten (10) days, terminate this Agreement and the Underlying Agreement, if feasible; (ii) immediately terminate this Agreement (and the Underlying Agreement), if feasible, if cure is not possible or offered.

(c) Effect of Termination.

(i) As of the effective date of termination of this Agreement, neither party shall have any further rights or obligations hereunder except: (a) as otherwise provided herein or in the Underlying Agreement between the parties; (b) for continuing rights and obligations accruing under the Privacy Rule; or (c) arising as a result of any breach of this Agreement, including, but not limited to, any rights and remedies available at law or equity. Upon termination of this Agreement or the Underlying Agreement for any reason, Business Associate shall return or destroy all PHI received from Covered Entity. This provision shall also apply to PHI that is in the possession of Sub-Business Associates. Business Associate shall retain no copies of the PHI in any form. Business Associate shall promptly provide written confirmation of such destruction to Covered Entity.

(ii) Notwithstanding the foregoing, 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. Upon Covered Entity's agreement in its good faith determination that return or destruction of PHI is infeasible, Business Associate 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.

**7. Miscellaneous**

(a) Audit Rights. Business Associate shall provide Covered Entity with information concerning such safeguards as Covered Entity may from time to time reasonably request, and shall, upon reasonable written request and execution of a confidentiality agreement reasonably acceptable to Business Associate, permit Covered Entity to have access for inspection to Business Associate's facilities used for the maintenance or processing of PHI, and to its practices, policies and procedures concerning the use and disclosure of PHI, to determine Business Associate's compliance with this Agreement.

(b) Survival. The respective rights and obligations of Business Associate under 5, 6(c) and 7(a) of this Agreement shall survive the termination of this Agreement.

(c) Amendments. No amendment to this Agreement shall be effective unless in writing and signed and dated by the parties hereto; provided, however, that this Agreement shall be automatically amended as required by law, including but not limited to any future amendments to HIPAA or the HIPAA Rules.

(d) Interpretation. Construction of this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with applicable law protecting the privacy, security and confidentiality of PHI, including but not limited to HIPAA and the HIPAA Rules. Any provision of this Agreement that differs from those required by HIPAA and the HIPAA Rules, but is nonetheless permitted by HIPAA and the HIPAA Rules, shall be adhered to as stated in this Agreement. To the extent that any provisions of this Agreement conflict with the provisions of any other agreement or understanding between the parties with respect to the subject matter hereof, this Agreement shall control.

(e) Waiver. No failure to exercise and no delay in exercising any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy or power hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy or power provided herein or by law or in equity.

(f) Injunctions. Covered Entity and Business Associate agree that any violation of the provisions of this Agreement may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to Covered Entity at law or in equity, Covered Entity shall be entitled to seek an injunction or other decree of specific performance with respect to any violation of this Agreement or explicit threat thereof, without the necessity of demonstrating actual damages.

(g) No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than Covered Entity, Business Associate, and their respective successors and assigns, as permitted pursuant to the Underlying Agreement, any rights, obligations, remedies or liabilities.

(h) Counterparts; Execution; Electronic Delivery. This Agreement may be executed in two or more counterparts, each and all of which shall be deemed an original and all of which together shall constitute one and the same instrument. A signature delivered by email or facsimile shall be deemed an original signature hereto and such delivery shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.