

ChartLogic Terms & Conditions

ChartLogic, a Division of CareCloud Holdings, Inc d/b/a
Medsphere

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Introduction

ChartLogic, a Division of CareCloud Holdings, Inc d/b/a Medsphere, a Delaware corporation (“**CLI**”) and the other party hereto (the “**Client**”) have executed or agreed to the terms and conditions of a purchase order, sales order, order form, estimate form, click wrap, browse wrap, or other binding arrangement (the “**Sales Order**”) for CLI to provide its Platform and Services to the Client. The “**Effective Date**” of the Agreement is the last date that the Sales Order is executed or confirmed by the parties. A Sales Order not signed or confirmed by both parties within three weeks following the date it is executed by the other party is deemed terminated and no longer represents an offer to purchase or sell any product or service.

These “**Terms and Conditions**” describe how the CLI Platform and Services are to be provided and defines the relationship between the parties. As set forth in the Sales Order, the Platform will be provided through either (a) a software as a service (“**SaaS**”) model with the Platform and Hosted Software hosted on the CLI Systems and accessible by Client remotely, or (b) as On-Premise Services, with the Installed Software installed at the Client’s Site on the Client’s Systems. These terms are further defined and explained herein.

The Sales Order, together with any current and future amendments, modifications or additions thereto, whether in the form of additional sales orders, estimates, order forms or other sales instruments, as well as any current and future statements of work, schedules, exhibits and/or attachments agreed to by the parties (any such current and future amendments, etc., and any current and future statements of work, etc., collectively referred to herein as “**Schedules**”), and these “**Terms and Conditions,**” and any End User License Agreements applicable to Third-Party software and services (all of the foregoing, collectively, the “**Agreement**”) comprise the entire agreement of the parties with respect to the Platform and the Services and the relationship between the parties. In the event of any conflict between the documents, unless expressly stated otherwise, the Schedules shall control the original Sales Order, and the Sales Order shall control these Terms and Conditions.

This Agreement contains an Arbitration Clause, set forth at Section 11.9 below.

DEFINITIONS. Capitalized terms used but not otherwise defined in this Agreement have the following meanings:

“Acceptance Plan” means procedures, methodology and criteria for implementation, testing, and acceptance of the Platform following activation and/or setup to confirm that the relevant Software substantially meets required functionality and performance specifications.

“Access Credentials” means any username, identification number, password, license, key, token, PIN, code, method, technology or device used, alone or in combination, to verify an Authorized User’s identity and authorization to access and use the Platform. Access Credentials can define security levels and the degree of access a corresponding Authorized User or Provider may have to the Platform.

“Authorized User” means a person designated by Client as an end-user of the Platform and that has current Access Credentials.

“Business Day” shall mean Monday through Friday, excluding weekends and holidays and any day in which banks in Utah are required or permitted to be closed.

“CLI Systems” means the information technology infrastructure owned, maintained, and/or used by or on behalf of CLI in providing the Platform, including CLI’s computers, equipment, software, hardware, databases, and networks.

“Client” means the party accessing the Platform and receiving Services from CLI pursuant to the Agreement.

“Client Data” means all Client records, documents, and other information, including but not limited to, all of Client’s Provider information, patient information, billing information, and any Client’s patient’s Personally Identifiable Information and/or Protected Health Information.

“Client Systems” means the information technology infrastructure owned, maintained, and/or used by or on behalf of Client in accessing the Platform, including Client’s computers, equipment, software, hardware, databases, and networks. Client Systems include any computer equipment, network equipment, monitors, cables and other physical assets that a Client purchasing On-Premises Services must obtain for the installation, use, and maintenance of the Installed Software at the Site.

“Confidential Information” has the meaning set forth in **Section 6**.

“Critical Error(s)” means a failure of the Platform that Severely Impacts Client’s ability to use the Platform in substantial conformity with applicable Specifications or Documentation and that cannot be temporarily eliminated through the use of a “bypass” or “work around.” “Bypass” or “work around” means a procedure by which a Client can avoid or substantially mitigate a problem with the Platform.

“Deliverable(s)” means any tangible or intangible item(s) delivered or to be delivered by CLI to Client in connection with the Platform and the Services under this Agreement (including any Schedule) including but not limited to any Documentation, work product, works of authorship, Software code or other material or property.

“Documentation” means any manuals, instructions, user guides, installation materials, and other documents and materials that CLI provides or makes available to Client in any form and medium and which describe the Specifications, functionality, components, features or requirements of the Platform, including any one or more of the installation, configuration, integration, operation, use, support or maintenance thereof.

“End User License Agreement(s)” shall mean all other terms and conditions (in addition to those set forth herein) to which Client agrees respecting the use of Third Party software and services made available to Client for its use, as part of the Platform, Software, Services or Deliverables, which **End User License Agreement(s)** may include Third Party license terms set forth hereinbelow and also terms to which Client agrees by means of click-wrap, browse wrap, or other binding arrangement presented to and agreed to by Client in connection with Client’s and its Authorized Users’ use of the Platform, Services or Deliverables.

“Enhancement(s)” shall mean any improvement to or change in the Platform or any Software that alters the original functional characteristics, whether initiated by CLI or by Client.

“Error(s)” shall mean a failure of all or any part of the Platform to function substantially in accordance with the Documentation or Specifications.

“Fix(es)” shall mean a correction of an Error(s).

“Force Majeure Events” shall include, without limitation, strikes or other labor problems; fire, flood, earthquake, weather conditions, or other similar event; civil unrest, acts of terror, governmental acts or orders or restrictions; failure of suppliers; acts of God; changes in law, regulation or government policy; Internet disruption; riots, acts of a public enemy, or war; epidemics, acts or omissions of vendors or suppliers; equipment failures; transportation difficulties; malicious or criminal acts of third parties; or any other reason where failure to perform is beyond the reasonable control of the non-performing party.

“Hosted Software” means one or more Software applications included in the Platform provided in Object Code only by CLI to Client over the Internet through a Software as a Service (“**SaaS**”) model.

“Installed Software” means one or more Software applications included in the Platform that are installed at the Site on the Client Systems as part of any On-Premises Services.

“Intellectual Property Rights” means any and all rights arising in any (i) patents, patent disclosures and inventions (whether patentable or not), (ii) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (iii) copyrights and copyrightable works in works of authorship and computer programs, including Software, and rights in data and databases, (iv) trade secrets, know-how, technology, and other confidential information, (v) any of CLI’s technology; (vi) any suggestions, ideas, Enhancement requests, feedback, recommendations or other information provided by Client or any other party relating to the foregoing and (vii) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world therein.

“License(s)” shall mean the personal, nonexclusive, nontransferable, non-assignable license(s) granted hereunder by CLI to Client to use the Software (in Object Code form) and the Platform.

“Maintenance Release” means any update, upgrade, release or other adaptation or modification of the Platform or the Software, including any updated Documentation, that CLI may provide to Client during the Term, which may contain, among other things, Error Fixes, Enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Platform, but does not include any New Version.

“Maintenance Services” shall mean the Services to be provided by CLI under any valid and paid for maintenance agreement, or set forth on any Sales Order, which services will support the uptime and running of the Platform and to provide Fixes and Enhancements to the Platform.

“New Version” means any new version of the Platform that CLI may from time to time introduce and market generally as a distinct licensed product (as may be indicated by CLI’s designation of a new version number), and which CLI may make available to Client either at no cost or at an additional cost hereunder or under a separate written agreement, depending on the terms of the applicable Sales Order and whether there is a current Maintenance Services agreement with the Client.

“Object Code” shall mean the binary machine readable version of Software.

“On-Premise Services” means those aspects of the Platform that the Client has chosen to install, maintain, and operate at its Site locally through Installed Software on the Client Systems.

“Personally Identifiable Information” means any individually identifiable information from or about a natural person who can be identified from that information, or information, when associated with other information, including, but not limited to (i) first and last name; (ii) a home address or other physical address, including street name and name of city or town; (iii) an email address or other online contact information (e.g., instant messaging user identifier); (iv) a telephone number; (v) a social security number or other government-issued personal identifier such as a tax identification number; (vi) an Internet Protocol address; (vii) Protected Health Information; and (viii) any other information that is combined with any of the above.

“Platform” means the Software and backend infrastructure developed and provided by CLI, as the same may be maintained and further developed by CLI, together with any and all Documentation, Specifications, Intellectual Property Rights, software (including third party software applications), processes, algorithms, user interfaces, techniques, designs, and other tangible or intangible technical material or information used or provided by CLI in connection with providing the Platform.

“Protected Health Information” shall have the meaning ascribed to it under the US Health Insurance Portability and Accountability Act (“HIPAA”).

“Provider” means a physician, nurse practitioner, physician’s assistant, or other healthcare professional, regardless of the full-time or part-time status of such Provider.

“Severely Impacts” shall mean having a material negative impact on the Client’s ability to provide services to patients or having a material negative impact on Client’s ability to manage or process information which is critical to the well-being of the Client’s operations.

“Services” means the consultation, development, implementation, deployment, hosting, maintenance, management, support, data storage, troubleshooting and/or repair services to be provided by CLI to Client pursuant to this Agreement, including any such Services described on any Sales Order or Schedule accepted by CLI and made a part of this Agreement.

“Site” shall mean a Client’s operating location listed on the Sales Order, including any site or sites where the Client Systems and Installed Software will be located for On-Premises Services.

“Software” means software included in the Platform, including any third party software (**“Third Party Software”**) linked or embedded in the Software, together with all subsequent CLI-authorized updates, replacements, modifications, New Releases or Enhancements; provided, however, future enhancements obtained from third party application providers are included only to the extent and subject to the terms that such enhancements are available to Client through the agreement or arrangement between CLI.

“Source Code” shall mean those statements in a computer language, which when processed by a compiler, assembler or interpreter become executable by a computer.

“Specifications” means any written standards of performance set forth in any part of the Agreement, including any Schedules, as provided and agreed to by CLI.

“Term” has the meaning specified in **Section 5**.

SECTION 1: ORDER FORM SPECIFIC TERMS

Term. The "Effective Date" of this Order shall be defined as the last date of signature. The initial term of this Sales Order (the "Initial Term") shall be computed as follows, as designated in the applicable Sales Order:

(a) One or Multi-Year contracts: the Initial Term shall end twenty-four (24) months after the last item on this Order achieves its Activation Date; or

(b) Month-to-Month contracts: the Initial Term shall end one (1) month after the last item on this Order achieves its Activation Date; or

(c) the Term's end date shall be as specified in the applicable Sales Order, which specified end date shall serve as the new or continuing Initial Term end date for both this Sales Order and any underlying Contract.

Thereafter, at the end of the Initial Term or any Renewal Term, as applicable, this Agreement and any underlying Contract will automatically renew for successive renewal periods as designated in the applicable Sales Order, either: (i) two-year renewal periods, or (ii) one-month renewal periods (each such period, a "Renewal Term"), unless either party provides the other with written notice of non-renewal at least (A) ninety (90) days prior to expiration of the then-current term for two-year Renewal Terms, or (B) thirty (30) days prior to expiration of the then-current term for one-month Renewal Terms. The Initial Term and any Renewal Terms are collectively referred to as the "Term." Notwithstanding the foregoing, the Term may hereafter recommence or be extended as provided in any Sales Order or Schedule.

License(s). The total number of Provider-seat licenses purchased by The Client is set forth in this Order. The parties may, by mutual written agreement, amend the total number of Provider-seat licenses hereunder. Each additional Provider-seat license added after the date of this Order will be subject to a \$500.00 per Provider-seat setup fee.

SECTION 2: AVAILABILITY OF PLATFORM, SOFTWARE, AND SERVICES.

2.1 **General License.** During the Term, for the fees and on the terms and conditions set forth herein and otherwise in the Agreement, CLI will provide Services and will License and make available to Client access to the Platform, including the Software, solely for Client's internal business purposes, with the exact applications and Services to be provided to Client set forth in the Sales Order and any Schedules. CLI hereby grants Client a License to access the Platform, which will be provided to Client either as Hosted Software through a SaaS model, or, if the Client so elects, as Installed Software for On-Premises Services. The Hosted Software will be accessible through the Internet through CLI-approved web browsers and restricted by login access by Authorized Users using valid Access Credentials.

2.2 **Modification.** CLI reserves the right to modify the Platform and any Service from time to time; provided that Client may terminate a specific Service or application within the platform without penalty in the 30 days following notice from CLI of the implementation of any change to the Platform or a Service that has a material adverse effect on the functionality of that Service and the Platform to Client, if CLI fails to correct the adverse effect in the 30 days following Client's written notification to CLI. In such event, the pricing shall be adjusted to take into account the terminated Service or aspect of the Platform.

2.3 **On-Premise Services.** In the event and to the extent the Client has elected that some or all of the Platform shall be hosted on Client Systems at the Client's Site, the following additional terms apply:

2.3.1 **Required Hardware.** The applicable Installed Software identified in the Sales Order shall be installed by CLI at the identified Site. At the time the Installed Software and other Services is to

be delivered and installed, the Client shall have all things in readiness for installation or access, including, but not limited to, computer equipment, connections, Internet access, and other facilities for installation meeting or exceeding the minimum requirements detailed in the Sales Order or Documentation provided by CLI. If Client fails to have all things in readiness for installation on the scheduled installation date, the Client shall reimburse CLI for any and all additional expenses caused by Client's failure to have things in readiness, unless Client has notified CLI at least five (5) Business Days prior to the scheduled installation date.

2.3.2 Provider Access. During the Term, Client may add Providers and Authorized Users to its account in connection with the Platform. Client agrees to pay a onetime Provider setup fee and ongoing service fee for each Provider.

2.3.3 Acceptance Testing for Installed Software. The Installed Software shall function substantially in accordance with CLI provided Documentation or Specifications. CLI and Client shall work together to conduct activation, testing and acceptance of the Installed Software at the Site in accordance with a written Acceptance Plan developed and approved by the parties. If upon completion of the testing pursuant to the Acceptance Plan, the Client, in good faith, determines that the Software does not function substantially in accordance with the Specifications, Client shall so notify CLI in writing, specifying the area of noncompliance. Failure to notify CLI of any such deficiency in writing within five (5) Business Days following the date of completion of the Acceptance Plan will constitute acceptance of such Software. In the event that Client gives notice of deficiency and such notice to CLI identifies any Critical Errors or any Errors that Severely Impacts Client, CLI shall use its best efforts to address all such conditions within thirty (30) days from the date of receipt of Client's notification. If the Client reported conditions that prevent the Software from functioning substantially in accordance with CLI's specifications are not satisfied within this thirty (30) day period, the Client will notify CLI, in writing, within five (5) Business Days following the end of the thirty (30) day period, and state either Client's acceptance of the Software, Client's desire to extend the period for resolving the condition, or Client's intent to terminate the License and this Agreement without penalty or further financial obligation. Failure to notify CLI in writing within five (5) Business Days following the end of the thirty (30) day period or use of the Installed Software by the Client in its normal business operations following the end of the thirty (30) day period will constitute acceptance of the Software.

2.3.4 Security and Privacy. Client is solely responsible to ensure that the Client Systems and its operations meet the applicable requirements for HIPAA and other data security and privacy. Client shall take reasonable safeguards to ensure that access to the Installed Software is limited and that unauthorized personnel are not able to copy or remove any of the Installed Software.

2.4 Acceptance Testing for Hosted Software.

2.4.1 Initial Activation and Testing. Following execution of the Sales Order, CLI will work with Client to setup a virtual instance of the Platform as necessary for Client to receive the Services and access the Platform and Hosted Software. This will include any customization required, any import of Client Data, and establishment of appropriate Access Credentials for Client's Authorized Users. CLI and Client shall work together to conduct activation, testing and acceptance of the Hosted Software in accordance with a written Acceptance Plan developed and approved by the

parties. If upon completion of the Acceptance Plan Client determines that the Hosted Software does not function substantially in accordance with the applicable Specifications, Client shall so notify CLI in writing, specifying the area of noncompliance. Failure to notify CLI of any such deficiency in writing within five (5) Business Days following the date of completion of the Acceptance Plan will constitute acceptance of the Hosted Software and the Platform.

2.4.2 Fixing Errors. In the event that Client gives notice of deficiency with respect to a CLI Hosted Software application and such notice to CLI identifies any Critical Errors or any Errors that Severely Impacts Client, CLI shall use its commercially reasonable best efforts to address all such conditions within thirty (30) days from the date of receipt of Client's notification. If the Client reported conditions that prevent the CLI Hosted Software from functioning substantially in accordance with Specifications are not satisfied within this thirty (30) day period, the Client will notify CLI, in writing, within five (5) Business Days following the end of the thirty (30) day period, and state either Client's acceptance of the Hosted Software, Client's desire to extend the period for resolving the condition, or Client's intent to terminate the Agreement without penalty or further financial obligation. Failure to notify CLI in writing within five (5) Business Days following the end of the thirty (30) day period or use of the CLI Hosted Software by the Client in its normal business operations following the end of the thirty (30) day period will constitute acceptance of the CLI Hosted Software.

2.4.3 Third Party Software. In the event that Client gives notice of deficiency with respect to a third party Hosted Software application and such notice to CLI identifies any Critical Errors or any Errors that Severely Impacts Client, CLI shall use commercially reasonable best efforts to address all such conditions within thirty (30) days from the date of receipt of Client's notification, which in all cases will be deemed reasonable best efforts if CLI has pursued the options available for remedying a nonconformity specified in the agreements or arrangements between the CLI and the third party. This cure period for remedying such conditions in third-party Hosted Software application may be extended by CLI to up to ninety (90) days if the condition is one of general application affecting the third party's customers generally. If the Client reported conditions that prevent the third party Hosted Software application from functioning substantially in accordance with the third party provider's specifications are not satisfied within this thirty (30) day period (or up to ninety (90) day period, as applicable), the Client will notify CLI, in writing, within five (5) Business Days following the end of such period, and state either Client's acceptance of the Hosted Software application, Client's desire to extend the period for resolving the condition, or Client's intent to terminate the Hosted Software License without penalty or further financial obligation. Failure to notify CLI in writing within five (5) Business Days following the end of such period period, or use of the third party provider Hosted Software by the Client in its normal business operations following the end of such period, will constitute acceptance of the third party Hosted Software application.

2.5 Support and Maintenance Services Implementation. CLI shall be responsible for performing, and Client desires CLI to perform, the Maintenance Services described in **Sections 2.6** and **2.7** below, beginning on the date of activation of the Software and continuing for through the initial term thereafter. Thereafter, Client will not receive further Maintenance Services unless the Client enters into one or more successive agreements or Schedules (which will be incorporated into the Sales Order) with CLI for one-year renewals of Maintenance Services on the terms of renewal offered by CLI at the time of each renewal and Client pays all fees and charges

for each renewal of Maintenance Services. Client shall allow CLI to perform remote Maintenance Services on Installed Software on Client Systems using CLI approved, current secure remote software tools and programs. Client's refusal of the use of said remote service methods and tools will terminate the service attempt. Client at its discretion may request on-Site service and maintenance in lieu of remote service at client's expense per **Section 2.7.5** below.

2.6 Fixes and Enhancements. During any period when CLI has an obligation to provide Maintenance Services under this Agreement, the following terms and conditions apply.

2.6.1 Client will promptly notify CLI verbally of Errors, with phone notification to CLI by Client of Client's discovery of the Error(s). CLI shall provide Client with a toll-free telephone number, which is answered from 9:00 A.M. to 5:00 P.M., Salt Lake City, Utah Time (MT), Monday through Friday, except for CLI holidays. During this period when CLI has a Maintenance Services obligation to Client, Client shall have access via this telephone number to individuals who shall accept Error reports and are qualified to assist Client with the verification of suspected Errors and who may provide Fixes for said Errors.

2.6.2 CLI shall use its commercially reasonable best efforts to promptly address any Critical Error affecting Client's continued business use of the Software after CLI's notification of the Error. CLI will use its good faith efforts to address all other Errors within thirty (30) calendar days after CLI's receipt of notification of the Error(s). If in attempting to address a Critical Error or Error pertaining to a third party provider's Software application CLI has pursued the options available for remedying an Error specified in the agreements or arrangements between the CLI and the third party provider, then for all purposes of this Agreement the CLI will be deemed to have used reasonable best efforts or good faith efforts, as the case may be.

2.6.3 CLI and Client acknowledge the periodic need to change and/or provide Enhancements to Software or Hosted Software application software to meet the changing needs of CLI's Clients. During any period when CLI has an obligation to provide Maintenance Services under this Agreement, CLI may provide to Client at no additional charge or fee any Enhancements made available by CLI to its Clients that use Installed Software or Hosted Software.

2.7 Training and Support.

2.7.1 During the Term, Software training, operating, and support instructions will be provided at current pricing at the Site or remotely by a CLI representative during normal business hours following activation or setup.

2.7.2 CLI shall provide Client with telephone support with respect to the use and operation of the Software from 9:00 A.M. to 5:00 P.M. (MT), Monday through Friday, except for CLI holidays, through a toll-free telephone number provided by CLI. This service is provided to Client only if it has a current agreement for Maintenance Services.

2.7.3 CLI may, at its discretion, offer to Client from time to time access to web-based virtual instruction resources. This service will be provided to Client only if it has a current agreement for Maintenance Services.

2.7.4 CLI may, at its discretion, offer to Client from time to time remote training sessions. This service will be provided to Client only if it has a current agreement for Maintenance Services.

2.7.5 Any other support or training services provided by CLI to Client at the Site or elsewhere that are in addition to the support and training provided for in the paragraphs above, will be provided from time to time by CLI upon the reasonable request of Client at such times mutually convenient to both Client and CLI, and Client shall pay to CLI fees at the current rates established by CLI from time to time for such services and shall reimburse CLI for all travel, lodging and other costs of the CLI’s representatives that provide the additional services.

2.8 **Data Storage.** CLI provides Client space on the cloud-hosted application server for storage of data created through use of the Software. Storage is made available in graduated amounts as follows:

Storage Tier	Space in Gigabytes
I	1-50
II	51-100
III	101-200
IV	201-500
V	500-1,000
VII	1,501-2,000
VIII	2,001-2,500
IX	2,501-3,000
X	3,001-3,500
XI	3,501-4,000

The amount of storage space needed by Client (i.e., the applicable storage tier) includes, but is not limited to, Client’s raw data as well as all document and image files, and is calculated by CLI each month through an audit of the application server. CLI provides Client the amount of storage space in Tier I without additional charge during the Term of the Agreement. If additional storage space is needed any time during the term of this Agreement (i.e., if the amount needed exceeds the amount in Tier I), Client shall be responsible to pay, at CLI’s then-prevailing rate, an additional monthly data storage fee in addition to all other fees set forth in the Sales Order and any Schedules. A schedule of monthly data storage fees, by tier, is published by CLI from time to time. Said schedule of data storage fees is also available at any time upon request.

2.9 Backup Services and Obligations

2.9.1 *Hosted Software.* CLI will perform a regular backup of data on its application servers. CLI will provide backup services of Client's data for any Hosted Software. CLI keeps and maintains these backups according to the following table:

EHR Databases – 14 days

Scanned Documents – 14 days

Patient Portal Database and Documents – 7 days

2.9.2 *On-Premise Services.* Client is responsible for backing up and maintaining backups of any data or information as related to On-Premise Services, as set forth in the following table:

EHR Database – Client Responsibility

Scanned Documents – Client Responsibility

Patient Portal Database – 7 days

(Patient Portal and all related documents are stored in CLI's datacenter)

Copies of all faxed documents – Client Responsibility

Notwithstanding the foregoing, CLI shall not be liable for any failure to have backups or backup information. CLI shall in no event be liable to Client or any third party for loss, destruction or corruption of Client's data. Client agrees and acknowledges that it is in a better position to foresee and evaluate any potential damage or loss it may suffer in connection with loss of its data, and to make and implement its own backups, and that the fees payable under this Agreement have been calculated on the basis that CLI shall exclude liability as provided in this Section.

2.10 **Additional Services.** During the Term CLI may agree to provide additional Services at the request of Client and in accordance with this Agreement as further specified in one or more Statements of Work that CLI and the Client may enter into from time to time. Any Enhancement specially requested by Client shall only be developed by CLI for Client under a separate Statement of Work signed by the parties setting forth the parameters of the work and the additional fees or charges payable by Client to CLI. In the event of any inconsistency between the terms of this Agreement and the Statement of Work, the terms of the Statement of Work shall control.

2.11 **Client Responsibilities.** Client acknowledges and agrees to the following.

2.11.1 **Cooperation.** Client acknowledges that CLI's delivery of the Platform and any Services is dependent, in part, on the establishment of mutually acceptable timeframes and the continued cooperation and timely delivery of materials and required process approvals by the Company, including through the Acceptance Plan. CLI is entitled to rely upon any and all information and data provided by Client in connection with CLI's performance of Services hereunder.

2.11.2 **Compliance with Laws.** Except as expressly set forth in the Agreement, all regulatory and administrative matters related in any way to the Client and its patient care and other business

operations, and the compliance with applicable law, are the sole responsibility of Client, and CLI has no responsibility or liability relating to such matters. .

2.11.3 General Obligations. During the Term, Client shall (a) provide CLI with all information and assistance which CLI may reasonably require to support the Platform and the Services and Client will make timely decisions and obtain required management approvals with respect to the Services to be provided under this Agreement; (b) be responsible for all activities that occur under any use of the Platform through the Client's or its Authorized User's or Provider's accounts or Access Credentials; (c) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Client Data; (d) use commercially reasonable efforts to prevent unauthorized control or tampering or any other unauthorized access to, or use of, the Platform and notify CLI immediately upon Client becoming aware of any unauthorized use or security breach; (e) comply with all applicable local, state, federal, and foreign laws (including laws regarding privacy and protection of personal, health, medical, or consumer information) in using the Platform; (f) obtain and maintain all computer hardware, software and communications equipment, including appropriate Internet connectivity and broadband, needed to host, store or access the Platform, as applicable; and (g) implement and maintain backup, security and business continuity measures to maintain the security and integrity of the Client Data, and other data and materials that are within the control of Client or that reside within the Client's systems.

2.11.4 Client Software. In the event Client implements or uses any of its own software in connection with the Platform, such software must be approved by CLI for use with the Platform.

2.11.5 Use of Platform. Client agrees to use the Platform only for the purposes expressly described herein and in Documentation. Client agrees not to access or attempt to access the Platform by means other than through the interfaces supported or provided by CLI and through web browsers that are approved by CLI. Client will be provided Access Credentials for all Authorized Users. All Authorized Users will be employees or consultants/independent contractors of Client. Client shall not knowingly engage in any activity that interferes with or disrupts the Platform (or the servers and networks connected to the Platform). Client shall not reproduce, duplicate, copy, sell, trade or resell any of the components or Services associated with the Platform. Client may not grant, sublicense, lease or otherwise assign usage rights to the Platform and may not modify, commercialize or create derivative works based, in whole or in part, on the software and/or its contents.

2.11.6 Access Credentials. Client must obtain from CLI appropriate Access Credentials for each Authorized User that will access the Platform. Client acknowledges and agrees that Client is responsible for maintaining the confidentiality of Access Credentials associated with Client's and its Authorized Users' access to the Platform. Client shall be solely responsible to CLI for all activities that occur under Client's account or related Access Credentials. Client will not: (i) transmit or share any Access Credentials to persons other than authorized Active Users (ii) permit the Access Credentials to be cached in proxy servers and accessed by individuals who are not authorized Active Users, or (iii) permit access to the Services through a single Access Credential being made available to multiple users on a network.

2.11.7 End User Activities. In using the Platform, Client will not, and will not permit any of its Authorized Users to: (a) send spam or otherwise duplicative or unsolicited messages in violation of

applicable laws; (b) 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; (c) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (d) interfere with or disrupt the integrity or performance of the Services or the data contained therein; or (e) attempt to gain unauthorized access to the Services or its related systems or networks.

2.11.8 Independent Contractors. In providing the Platform or the performance of any Services under the Agreement, CLI shall act solely as an independent contractor and the relationship between CLI and Client under this Agreement will be that of independent contractors. Neither party is the legal representative, agent, joint venturer, partner, employee, or employer of the other party under this Agreement for any purpose whatsoever. Neither party has any right, power, or authority under this Agreement to assume or create any obligation of any kind or to make any representation or warranty on behalf of the other party, whether express or implied, or to bind the other party in any respect. CLI will have at all times during the Term full control over the engagement, employment, direction, compensation and discharge of all personnel providing and assisting in providing, rendering, developing and accomplishing the Services and CLI's obligations under this Agreement. CLI is solely responsible for all matters relating to payment of such personnel, including wages, income tax withholding, fees, expenses, benefits, compliance with workers' compensation, unemployment and disability insurance, Social Security withholding, and all other federal, state and local laws, rules, codes and regulations governing such matters.

2.12 Subcontractors. Client acknowledges that CLI may utilize third party subcontractors to supplement CLI's resources to perform the Services under this Agreement, provided that CLI is responsible for any breaches of this Agreement by its subcontractors.

2.13 Client's Offices and Facilities. It is anticipated that CLI personnel may be required to visit or perform Services at any of Client's offices or facilities from time to time. In such event, Client will provide reasonable temporary accommodations for such personnel as needed to provide the Services. CLI shall ensure that such personnel comply with all applicable rules and policies of Client as communicated in writing by Client.

2.14 Force Majeure. Neither party shall be deemed to be in default of any provision of this Agreement or be liable for any delay or failure in performance, except for the obligation to make payments, due to a Force Majeure Event, provided, however, that if any such Force Majeure Event lasts more than 30 consecutive days, the Party affected by the other's delay or inability to perform may elect at its sole discretion to terminate this Agreement.

SECTION 3: PRICING AND PAYMENT.

3.1 General. In consideration of the Services to be provided by CLI and for the License and access to the Platform, the Client agrees to pay the fees specified in any applicable pricing schedule included in the Sales Order or any other applicable Schedule (collectively, the "**Pricing Schedule**"). Client shall timely pay all invoices and fees under this Agreement when due and may not set off against such invoices any amounts claimed by Client to be due from CLI.

3.2 **Deposit.** The Platform is licensed to Client through a combination of initial setup and implementation fees plus monthly service fees, along with other costs, charges and assessments, all as specified in the Sales Order and any Schedules. For On-Premise Services, an initial security deposit equal to 100% of the initial one-time fees is due at the time the Sales Order is signed by both Parties and invoices for all ongoing monthly fees, costs and charges will be issued promptly following the date of activation of the Platform and Software, and each such invoice is due and payable as set forth in these Terms.

3.3 **Monthly Fees; ACH Authorization.** Monthly fees will be paid by Client through ACH electronic bank direct transfer on the first Business Day of each calendar month for the upcoming month. Client will issue and keep in force all instructions and instruments required by CLI and Client's bank that will enable CLI to draw the monthly fee from Client's bank account.

3.4 **Invoicing.** Any fees, charges, or costs payable by Client to CLI under this Agreement shall be set forth in invoices sent by CLI to Client, which may be provided via e-mail or U.S. mail. Client agrees to pay any undisputed portion of any invoice within five (5) business days after receipt of such invoice (to the extent the same has not already been paid through ACH in accordance with Section 3.3). No product or service will be provided under an invoice requiring advance payment until the payment is received by CLI.

3.5 **Nonpayment.** If CLI has not received payment of any invoice by the applicable due date, CLI may suspend or terminate access to the Platform until payment has been received. The Client shall remain responsible for all charges related to the Services in accordance with this Agreement. Any fee not paid when due will incur late payment charges at a rate of one and one-half percent (1.5%) per month, or the highest rate allowed by applicable law, whichever is lower. Client agrees to pay all collection costs incurred by CLI in enforcing its rights under this Agreement to collect amounts payable by Client (including, without limitation, reasonable attorneys' fees and costs of collections). The remedies provided by this Section are not exclusive. Notwithstanding any other provision contained in this Agreement, if Client fails to pay any amount when due hereunder, CLI may suspend Client's access to the Platform under this Agreement until all outstanding past due amounts are received by CLI. However, access to existing patient healthcare records will remain available for a limited time to prevent interruptions in patient care.

3.6 **Annual CPI Price Increase.** All monthly and other ongoing fees and charges set forth in the Sales Order and any Schedules between CLI and Client shall automatically increase on January 1st of each calendar year by an amount equal to the percentage change in the Consumer Price Index published on a non-seasonal basis by the U.S. Department of Labor's Bureau of Labor Statistics, All Cities Average, or if no longer published, such successor or substitute national price index as designated by CLI (the "CPI"). The first adjustment will be pro-rated by the number of months between the commencement of the agreement between CLI and Client and the next January 1st.

3.7 **Renewal Pricing Terms.** The prices for the Initial Term are as set forth in the Sales Order. Except as to annual CPI increases and potential Third-Party Software or services price increases, as set forth in Sections 3.6 and 3.8, for the first and all successive Renewal Periods the renewal fees, charges and other prices shall remain the same as in effect at the end of the Initial Term or most recent Renewal Term, as applicable, unless changed by CLI and stated in a notice

delivered by CLI to Client not less than one hundred (100) days prior to the end of the Initial Term or then-current Renewal Term.

3.8 Increase in Third Party Software or Services Costs. In the event that CLI's costs of making Third Party Software or services available through the Platform increase during the Initial Term or any Renewal Term, CLI may pass through such additional costs and therefore increase the fees set forth on the Sales Order or Schedule, as applicable. CLI will provide Client with notice of any such price increases at least thirty (30) days prior to implementation thereof.

3.9 Providing Information in Manner Requested. By entering into this Agreement including any Sales Order or Schedules, CLI and Client expressly acknowledge and intend that the terms contained in this Agreement related to the manner of a request for access, exchange, or use of electronic health information (as defined at 45 C.F.R. § 171.102), including any and all terms related to fees as set forth herein, reflect the parties' mutual agreement (in an arms' length transaction without coercion) and meet the "manner requested" condition of the Manner Exception at 45 C.F.R. §§ 171.301(a).

3.10 Invoice Disputes. Client must notify CLI in writing of any invoice dispute within ten (10) days of the date of the applicable invoice for such charges. Billing disputes shall be defined as disputes in good faith, with reference to specific provisions of this Agreement, and with supporting factual documentation. If Client does not notify CLI within that time period, Client is deemed to have waived any right to dispute such amounts, either directly or as a set-off, recoupment or defense in any action or efforts to collect amounts due to CLI.

3.11 Taxes. Unless expressly provided otherwise, the fees on any Sales Order, Schedule or other pricing schedule are exclusive of any sales, use, excise, value added, goods and services, and gross receipts taxes, and any and all similar taxes or legally imposed fees, duties or contributions ("**Taxes**") based upon such amounts and this Agreement, except CLI's franchise taxes, if any, or taxes based upon its net income. If applicable, Taxes and shipping costs will be added to the invoice which the Client is required to pay. If the Client is exempt from paying sales tax, then the sales tax amount will be credited to the Client's account upon receipt of the sales tax exemption certificate.

SECTION 4: REPRESENTATIONS AND WARRANTIES.

4.1 Representations, Warranties and Covenants of the Parties. Client and CLI each hereby represents and warrants to the other party as follows:

4.1.1 Due Organization and Authority. It is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization, and this Agreement has been duly authorized by all necessary corporate (or other entity) action.

4.1.2 Valid and Binding. This Agreement is the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms. The party is not bound by any other contract or agreement that conflicts with or would prevent full performance of this Agreement.

4.1.3 Compliance with Laws. It will comply with all laws, rules, regulations, ordinances, and codes that are applicable to its obligations under this Agreement, including, without limitation, any

laws and the regulations promulgated with respect thereto regarding the security, integrity and privacy of nonpublic personal information.

4.1.4 **Services.** CLI further represents to Client that (i) any Services will be performed in a professional and workmanlike manner, in accordance with generally accepted industry standards, and in compliance with applicable state and federal laws and regulations; and (ii) the Service, Deliverables, and Platform do not and will not knowingly violate or infringe upon any third party's rights.

4.2 **Ownership.** CLI warrants that it owns all rights, title, and interest in and to the Platform and the Software, except for any third party software and service applications; that it has the right to grant the licenses granted hereunder; and that all Software will function substantially in accordance with Specifications. This warranty coverage shall include all Maintenance Services performed and any Enhancements or Fixes to the Software by CLI. CLI does not warrant that Client's use of the Software will be uninterrupted or error free.

4.3 **Exceptions.** Any and all warranties shall be void as to Software or any part of the Platform damaged or rendered unserviceable by: (a) the acts or omissions of non-CLI personnel except when CLI instructs or requires Client to perform any modifications with respect thereto; (b) misuse by Client, its employees or agents, (c) theft, vandalism, fire, water, or other peril; or (d) moving, relocation, alterations, or additions not performed in accordance with this Agreement.

4.4 **The Internet and Cybersecurity.** The Client is responsible for obtaining its own broadband Internet connectivity to access the Software and certain of the Services. The Client acknowledges and agrees that CLI does not operate or control the Internet or activities on the Internet. CLI will provide the Services and the Platform in accordance with its obligations as set forth herein and in the Sales Order and any Schedules; and in addition, CLI will take commercially reasonable steps, consistent with industry best practices, and combined with recognized tools and methodologies, to protect the Platform and the Client Data thereon and to detect, prevent, and respond to cybersecurity threats. However, the Client further acknowledges that no systems-based security solution can guarantee complete protection against all vulnerabilities, exploits, or malicious activity, by external and internal actors, including placement of viruses, worms, Trojan Horses, or other undesirable data or software, or attempts by hackers or others to obtain access to the Client's or its patients' data, website(s), computers, or networks. Nor can CLI guarantee against social engineering, deception or other exploitation of Client or its employees, or failure by Client or its employees to engage in proper cybersecurity practices in the conduct of Client's healthcare practice or other business activities. Accordingly, in addition to the Disclaimers set forth below, CLI makes no warranties, express or implied, that security incidents will be entirely prevented or that all threats will be identified or remediated, nor that Client's Data will not be destroyed by such attacks or that the Services may be interrupted or compromised. The Client remains ultimately responsible for its own security policies, regulatory compliance obligations, and internal controls. CLI shall not be liable for any damages, losses, or liabilities arising from security incidents, except to the extent caused by CLI's gross negligence or willful misconduct.

4.5 **DISCLAIMERS.**

4.5.1 **General Disclaimer.** IN ADDITION TO THE FOREGOING CYBERSECURITY DISCLAIMER, CLI FURNISHES THE EXPRESS WARRANTIES SET FORTH HEREIN IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT, CLI MAKES NO REPRESENTATIONS, WARRANTIES OR AGREEMENTS WITH RESPECT TO THE SERVICES AND THE DELIVERABLES, AND CLI SPECIFICALLY DISCLAIMS AND EXCLUDES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

4.5.2 **Medical Practice.** CLI does not engage in the practice of medicine and is not a healthcare provider. To assist Client and its Authorized Users in making efficient use of the Platform, CLI may provide or make available to Client templates or forms. Client acknowledges that it is solely responsible for the use of such forms in rendering patient care, and waives any and all liability and claims against CLI or any third party in connection with the use, modification, and/or customization of such templates or forms, except for liability directly caused by the gross negligence or willful misconduct of CLI. ANY TREATMENT, THERAPY, PROCEDURE, INFORMATION, MEDICATION, PRODUCT OR OTHER INFORMATION REFERENCED BY OR THROUGH THE SERVICES ARE NOT INTENDED AS A RECOMMENDATION OR ENDORSEMENT OF ANY COURSE OF TREATMENT, THERAPY, PROCEDURE, INFORMATION, MEDICATION, PRODUCT OR OTHER INFORMATION. THE ULTIMATE RESPONSIBILITY FOR DIAGNOSING AND TREATING ANY PATIENT RESTS WITH THE PATIENT'S HEALTH CARE PROVIDER.

SECTION 5: TERM AND TERMINATION.

5.1 **Term.** The initial term of this Agreement shall be thirty-six (36) months after the Effective Date (the "**Initial Term**"). Thereafter this Agreement will automatically renew for consecutive two (2)-year renewal periods (each, a "**Renewal Term**") unless either party provides written notice of non-renewal at least ninety (90) days prior to expiration of the then-current term (the Initial Term and any Renewal Terms are collectively referred to as the "**Term**"). Notwithstanding the foregoing, the Term may recommence or be extended if provided in any Sales Order or Schedule.

5.2 **Termination.**

5.2.1 **For Insolvency.** In the event that either party (a) voluntarily or involuntarily becomes the subject of a petition in bankruptcy or of any proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors that is not dismissed or discharged within 60 days after being commenced, (b) admits in writing its inability to pay its debts generally as they become due (or takes any corporate action tantamount to such admission), (c) makes an assignment for the benefit of its creditors, or (d) ceases to do business as a going concern, then the other party will be entitled to terminate this Agreement immediately upon written notice thereof to the first party.

5.2.2 **For Breach.** In the event that either party shall be in material breach or default of any of the terms, representations, warranties, covenants, or obligations contained in this Agreement, and

such material breach or default shall continue for a period of sixty (60) calendar days after the giving of written notice to the party in default (other than a payment default for which no cure period is allowed), then in addition to all other rights and remedies of law or equity or otherwise, the non-breaching party shall have the right to terminate this Agreement immediately upon notice. Following a breach of this Agreement by Client, if CLI does not elect to terminate the Agreement, CLI may require the Client to deposit funds with CLI to secure payment of fees that may become due under this Agreement or may thereafter require that Client pay cash, cashier's check, or certified funds for the performance of Services. Any deposited funds shall not bear interest.

5.2.3 For Failure of Acceptance. In the event the Software is not accepted by Client pursuant to the Acceptance Plan, Client has the right to terminate the Agreement under Section 2 with no further cost or obligation, provided that Client may not terminate the Agreement in the event the non-acceptance of the Software is due to action or inaction of the Client or using the Software in a way that is not authorized by the Documentation.

5.2.4 Termination for Convenience. Either party may terminate the Agreement upon sixty (60) days' written notice. If Client terminates the Agreement, the Client shall pay in addition to any charges for Services used, liquidated damages equaling all monthly fees and other charges applicable at termination of the Agreement multiplied by the number of months remaining under the Term, plus actual expenses incurred by CLI to terminate the Services and provide any transition services hereunder. The parties intend that the liquidated damages amount shall constitute compensation and not a penalty. The parties acknowledge and agree that the harm to CLI caused by Client's early termination of this Agreement would be difficult to estimate and that the amount of the liquidated damages are a reasonable estimate of the actual or anticipated harm.

5.2.5 Contract Addendum Request. Client may request an amendment to this agreement to cancel services or licenses prior to the end of the contract term by submitting a Contract Addendum Request, which is available online at <http://go.chartlogic.com/contract-addendum-request>. CLI is not required to approve any Contract Addendum Request. CLI may, at its discretion, propose a Contract Addendum based on the Contract Addendum Request. If a Contract Addendum is proposed by CLI and accepted by Client, this Agreement will be amended as provided therein. Client acknowledges that cancelling services or licenses results in a loss to CLI that is difficult to assess, and that a Contract Addendum will provide for payment of the fee for the cancelled services or licenses through the end of the remaining Term, as liquidated damages, and not a penalty.

5.3 Remedies upon Termination. In the event of any termination pursuant to **Section 5.2.1** and **5.2.2**, the terminating party will be entitled to all other rights and remedies which such party may have under this Agreement and under applicable law.

5.4 Transition upon Termination. Upon the expiration or earlier termination of this Agreement, except as otherwise provided in this Agreement, each party shall promptly return to the other party all data, materials and other properties of the other party held by it, without regard for whether or not such property is "Confidential Information." Upon the expiration or earlier termination of this Agreement, CLI will be entitled (in addition to all other remedies it may have against Client for Client's breach, termination for convenience, or otherwise, as applicable) to compensation with respect to any amounts due and payable for any period up to the effective date

of termination. Further, for a period of up to 30 days following the expiration or earlier termination of this Agreement (the “**Transition Period**”), CLI shall cooperate with Client and permit Client to retrieve (via download, in an industry standard format if reasonably possible) any Client Data then in CLI’s possession. Upon termination of this Agreement as a result of a default by CLI, CLI agrees to convert Client Data into a machine readable, non-proprietary format within a reasonable time period at no cost to Client upon Client’s request. Upon the expiration of the Term or upon termination of this Agreement as a result of a default by Client or by Client for convenience, CLI shall convert the Client Data as described above, and Client shall reimburse CLI for all time and expense involved. Except solely as may otherwise be expressly provided by applicable law, CLI shall not be obligated to provide the Client Data to Client until all amounts due under the Agreement have been paid. This Agreement will continue to govern all Services during the Transition Period, except that in no event will Client have any continuing right to use any Software or the Platform after the effective date of termination of this Agreement.

SECTION 6: CONFIDENTIAL INFORMATION; DATA OWNERSHIP AND USE.

6.1 **Definitions; Exclusions.** As used in this Agreement, the term “**Confidential Information**” means any and all proprietary non-public information, knowledge, data, and all other content and materials belonging to either party hereto and disclosed or provided to the other party either directly or indirectly in any manner whatsoever (including, without limitation, in writing, orally, electronically, in all types of hard drives, disks, diskettes, computer memory or storage, or other media, or by drawings or inspection of physical items, and whether or not modified or merged into other materials), in connection with either party’s business or this Agreement, including, without limitation, any non-public information related to any of the following: (a) technical, business, financial and marketing information, including, without limitation, trade secrets, patents, patent applications, copyrights, know-how, processes, ideas, inventions (whether patentable or not), formulas, computer programs, software, firmware, databases, technical drawings, designs, algorithms, technology, circuits, layouts, interfaces, materials, schematics, names and expertise of employees and consultants, any other technical, business, financial, customer and product development plans, supplier information, forecasts, strategies and other confidential information; (b) third party confidential information to the extent it is identified as “Confidential Information”; (c) the Services, the Deliverables and the Platform; (d) the terms and conditions of this Agreement; (e) all Personally Identifiable Information related to any employees, consultants, subcontractors, customers or other individuals, including, but not limited to, names, addresses, e-mail addresses, social security numbers, etc.; (f) all reports, analyses, compilations, studies, or other documents prepared by either party or its Representatives which contain or otherwise reflect any Confidential Information of the other party; and (g) in accordance with the requirements of HIPAA, all Protected Health Information relating to Client’s patients and their healthcare-related services provided by Client and its providers. For purposes of this Section, the term “**Representatives**” of a party means any and all officers, directors, employees, consultants, contractors, agents, attorneys, accountants, financial advisors, and other representatives of such party. Confidential Information does not include information that the receiving party can document: (i) is or becomes (through no improper action or inaction by the receiving party or any affiliate, agent, consultant or employee) generally available to the public; (ii) was in its possession or properly known by it, without restriction, prior to receipt from the disclosing party; (iii) was rightfully disclosed to it by a third party

without restriction; or (iv) is independently developed by the receiving party subsequent to such disclosure, by employees without access to, or use of, the disclosing party's Confidential Information.

6.2 **Restrictions on Use of Confidential Information.** Except to the extent necessary in order to perform its obligations under this Agreement and subject to the terms of this Agreement, each party agrees that it shall during the Term and thereafter: (a) hold in strict confidence all Confidential Information belonging to the other party; (b) use the Confidential Information solely to perform the Services or to exercise its rights under this Agreement; and (c) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any person or entity other than to its Representatives who need to know such Confidential Information and who are under confidentiality obligations at least as restrictive as the terms in this Agreement. The receiving party is solely responsible for the handling and treatment of the Confidential Information of the disclosing party by the Representatives of the receiving party. Each party shall use the same degree of care to protect the disclosing party's Confidential Information as it uses to protect its own Confidential Information of like nature, but under no circumstances less than reasonable care. Without limiting the generality of the foregoing, to the extent that this Agreement permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions.

6.3 **Compelled Disclosures.** Notwithstanding the foregoing, the receiving party may disclose Confidential Information of the other party in response to a valid court order, subpoena, law, rule, regulation (including, without limitation, any federal or state securities laws or any securities exchange regulation), or other governmental action, provided that: (a) to the extent permitted by applicable law or regulation, the receiving party notifies the disclosing party prior to disclosure of the information; (b) the receiving party reasonably cooperates with the disclosing party, at the disclosing party's expense, in any attempt by the disclosing party to limit or prevent the disclosure of the Confidential Information; and (c) in the absence of a protective order, the receiving party discloses only that portion of the Confidential Information it is advised by its counsel that it is legally required or compelled to disclose, and the receiving party uses its best efforts to ensure that confidential treatment will be accorded the Confidential Information so disclosed.

6.4 **Remedies upon Breach.** Each party agrees that the other party may have no adequate remedy at law if there is a breach or threatened breach of this **Section 6** and, accordingly, that either party is entitled to seek injunctive or other equitable relief to prevent or remedy such breach or threatened breach in addition to any other legal or equitable remedies available to such party without posting any performance bond.

6.5 **Return or Destruction.** Upon the termination or expiration of this Agreement or upon the written request of the disclosing party, and except for record-retention requirements imposed by law, the receiving party shall (a) at its own expense, (i) promptly return to the disclosing party all Confidential Information that is in tangible form (and all copies thereof) that is the property of the disclosing party or that contains any Confidential Information of the disclosing party (collectively, the "**Material Information**"), or (ii) upon the written request of the disclosing party, destroy the

Material Information and provide the disclosing party with written confirmation of such destruction; and (iii) cease all further use of any Material Information, whether in tangible or intangible form.

6.6 **Client Data and Client Specifications.** To the extent that Client provides CLI with Client Data (including any Personally Identifiable Information contained therein), CLI agrees as follows: (a) it shall only provide such Client Data with Personally Identifiable Information to its personnel with a need to access such information as part of their performance of duties directly related to this Agreement; (b) it shall use generally accepted industry standard to secure and store such Client Data; (c) it shall only access or use such Client Data to perform its obligations under the Agreement; and (d) it shall promptly notify Client of any unauthorized access to or breaches of Client Data as soon as CLI becomes aware of such incident.

6.7 **HIPAA Compliance.** For purposes of complying with the requirements of the Health Insurance Portability and Accountability Act commonly referred to as "HIPAA," CLI and Client agree to be bound by each of the terms and provisions of the Business Associate Agreement set forth at Appendix A hereto, which is incorporated herein by this reference with respect to the treatment of Protected Health Information as defined in the Business Associate Agreement, and if any provision hereof is potentially or actually in conflict with the provisions of the Business Associate Agreement with respect to the treatment of Protected Health Information, the terms of the Business Associate Agreement shall prevail.

SECTION 7: INTELLECTUAL PROPERTY RIGHTS.

7.1 **Ownership.** Subject to this **Section 7.1** and the License granted to Client pursuant to this Agreement, Client acknowledges and agrees that all right, title and interest, including, without limitation, any and all Intellectual Property Rights, in and to: (i) the Platform or any Services, including any Enhancements, New Versions, modifications and derivative works thereof, (ii) any Deliverables, and (iii) any Documentation, creations, ideas and works related to the Platform, Services, or Deliverables are the sole and exclusive property of CLI (or Third Party licensors) and except for the License, which shall terminate when this Agreement terminates, Client acquires no right or interest in such property. All rights not specifically granted in this Agreement are reserved by CLI.

7.2 **License to Use Deliverables and Platform.** All Software in whatever form, including, without limitation, Source Code, Object Code, microcode and mask works, including any computer programs and any Documentation such as, but not limited to, logic manuals and flow charts provided by CLI, including instructions for use of the Software or the Platform, are furnished to Client only under a personal, non-exclusive, non-transferable, non-assignable license solely for Client's own use. All of the Software and all computer program Specifications, Documentation, procedure manuals, disks, and tapes utilized, processed, provided, or developed by CLI in connection with this Agreement, the Platform or the Services rendered to Client hereunder shall be and remain the exclusive and confidential property of CLI or third parties from whom CLI has secured the right to use the same. This Agreement is not a sale and does not convey to Client any rights of ownership in or related to the Intellectual Property Rights of CLI in the Platform, Deliverables, and Services. Subject to the terms and conditions of this Agreement, and further subject to all additional End-User License Agreement terms applicable to Third Party software and services provided to Client and its Authorized Users as part of the Platform, Software, Services and

Deliverables, during the Term CLI grants to Client the License to use the Platform and the Software for its internal purposes in accordance with the Documentation, either as Installed Software or Hosted Software, depending on the nature of the Services purchased by Client, as indicated on the Sales Order and any Schedules. Client shall not: (i) rent, loan, sublicense or otherwise transfer or assign, in whole or in part, its right to use the Platform as a service bureau or in a time-sharing environment to process information or data of any third party; (ii) create Internet “links” to the Platform or Services or “frame” or “mirror” any of CLI’s content on any other server; or (iii) reverse engineer, de-compile, attempt to derive source code (or underlying ideas, algorithms, structure or organization), modify in any way, or create derivative works from the Software, any Deliverables or the Platform, or any portions thereof in order to (X) build a competitive product or service, (Y) build a product using similar ideas, features, functions or graphics of the Platform or Software; or (Z) copy any ideas, features, functions or graphics of the Platform. It is intended that access and use to the Platform will be continuous on a 24 hour basis, except for interruptions by reason of maintenance or downtime, including downtime caused by Force Majeure Events or by scheduled or unscheduled maintenance.

7.3 Client Data; Limited License to Client Data. During the Term, Client grants to CLI a non-exclusive, non-transferable, non-assignable, royalty-free license to CLI to use the Client Data for the purpose of fulfilling CLI’s obligations under this Agreement. CLI shall have, and Client hereby grants CLI, the right to use and commercialize the Client Data for statistical purposes in an aggregated and de-identified manner consistent with HIPAA and other privacy regulations. Notwithstanding any other provision, CLI agrees that it shall have access to, use and maintain any data referred to in this Section only in accordance with HIPAA and applicable Law and regulations.

7.4 Reproduction of Manuals, Documentation. Client shall have the right to reproduce solely for its own use during the Term of the Agreement, all Documentation, including user documentation and all training manuals, furnished by CLI pursuant to this Agreement, regardless of whether such manual or Documentation is copyrighted or otherwise restricted as proprietary information. All copies of Documentation made by Client shall include any proprietary notice or stamp that has been affixed by CLI or any third party provider.

7.5 Identifying Information. Any logo, program names, trademarks, service marks, programs, manuals, Documentation, and other support materials that are covered under this Agreement or otherwise provided by one party to the other are either copyrighted, trademarked, or are held as proprietary by the providing party. The receiving party agrees not to remove any such notices and product identification and additionally agrees to take all action necessary to protect the providing party’s rights thereto.

7.6 Suggestions. Client may, from time to time, make known to CLI suggestions, enhancement requests, techniques, know-how, comments, feedback or other input to CLI with respect to the Platform and the Services (collectively, “**Suggestions**”). Unless otherwise agreed to in writing by the parties with respect to any Suggestion, CLI shall have a royalty-free, worldwide, irrevocable, non-exclusive, perpetual license to use, disclose, reproduce, license, distribute and exploit any Suggestion without restriction or obligation of any kind, on account of Confidential Information, Intellectual Property Rights or otherwise, and may incorporate into its products and

services (including the Platform, Services and Deliverables) any service, product, technology, enhancement, documentation or other development (“**Improvement**”) incorporating or derived from any Suggestion with no obligation to pay, compensate or obtain a license from Client, or to make available the Improvement to Client or any other person or entity.

7.7 **Potential Infringement.** In the event an injunction or order shall be obtained against Client’s use of any item in the Platform by reason of any infringement allegation or if, in CLI’s sole opinion, the item is likely to become the subject of a claim of infringement or violation of copyright, trademark, trade secret, or other proprietary right of a third party, CLI may, at its sole discretion either: (a) procure for Client the right to continue using the item; (b) replace or modify the item so that it becomes non-infringing, but only if the modification or replacement does not, in CLI’s reasonable opinion, adversely affect the functional performance or specifications for the item or its use by Client; or (c) if neither (a) nor (b) above is financially reasonable, remove the item from the Platform and adjust the monthly fees accordingly for any material loss of functionality.

7.8 **Further Assurances.** Client agrees to execute and deliver to CLI any and all documents and instruments and do and perform any such other acts as may be reasonably requested by CLI or as may be necessary to carry out the intent and purpose of this Section 7. To that end, Client shall execute and deliver to CLI any and all documents and instruments for use in applying for and obtaining patents, copyrights, trade secrets and other rights and protections with respect to the Services, the Deliverables and the Platform as CLI may request, together with any assignments of the Services, the Deliverables and the Platform to CLI or persons designated by it.

SECTION 8: PRE-DISPUTE RESOLUTION EFFORTS.

8.1 **Process.** Except solely for claims by CLI of non-payment against Client, which claims are not subject to this provision; and in addition to any right-to-cure which either party has pursuant to this Agreement based upon a claim of material breach by the party; the parties hereto agree that prior to submitting any and all other claims to litigation, arbitration or any other form of binding dispute resolution, the parties will each designate a senior official to engage, for thirty (30) calendar days, with the other party in a good faith effort to resolve any such dispute.

8.2 **Enforcement Costs.** If legal action including arbitration is commenced by either party to enforce or defend its rights under this Agreement, the prevailing party shall be entitled to reasonable attorneys’ fees and costs incurred in enforcing its rights under this Agreement in addition to any other relief.

SECTION 9: INDEMNIFICATION.

9.1 **By CLI.** Except to the extent Client is responsible for indemnifying CLI under **Section 9.3** below, and further subject to the limitations set forth in **Sections 9.2 and 10**, below, CLI shall defend, indemnify and hold harmless Client and its officers, directors, managers, and agents (collectively, the “**Client Indemnified Parties**”) against any third party claims, suits or actions which arise out of or relate to allegations that: (a) the Services, the Platforms or the Deliverables provided by CLI infringe any United States patent, copyright, trademark, trade secret, or other Intellectual Property Right of a third party; or (b) by any third party for physical personal injuries, including death to persons, resulting from CLI’s negligent or willful acts or omissions under this

Agreement provided that Client: (i) promptly informs and furnishes CLI with a copy of such claim, suit or action (but the delay or failure to notify shall not affect CLI's obligation to provide indemnification unless CLI is unduly prejudiced by such failure or delay); (ii) gives CLI all relevant evidence in Client's possession or custody or under its control; and (iii) gives CLI reasonable assistance in such claim, suit or action and, for a claim for monetary damages only, the sole control of the defense thereof and all negotiations for its compromise or settlement. Notwithstanding the foregoing, CLI shall not enter into any settlement that affects Client's rights or interest without Client's prior written consent, which consent will not be unreasonably withheld. Client has the right to participate in the defense at Client's own expense.

9.2 **Exclusions.** Notwithstanding anything to the contrary set forth in **Sections 9.1** above, CLI will have no liability for any losses, costs or damages directly resulting from Client's negligence or willful misconduct or any settlement or compromise incurred or made by Client without the prior written consent of CLI. Further, CLI has no obligation to defend any third party claims asserted against Client or any Client Indemnified Party and no liability for any losses, costs or damages suffered or incurred by Client or any Client Indemnified Party arising out of or relating to any of the following: (i) an infringement allegation to the extent it is based on: (A) Client's use of the Platform in any manner other than that for which it was expressly authorized pursuant to this Agreement; (B) Client's modifications of any of the Platform, the Services or Deliverables, or (C) CLI's compliance with Client Specifications or instructions in the design and/or delivery of the Deliverables, to the extent such claim could not be asserted but for such compliance with Client Specifications; (ii) any claim that any part of the Client Data or the Client Specifications was wrongfully provided to CLI or contained any Errors that affected the Services; and (iii) any claim that any other materials or resources furnished by Client for use by CLI in providing the Services infringes any patent, copyright, trademark, trade secret, or other Intellectual Property Right of a third party (but this exclusion shall only apply to the extent of such claim).

9.3 **By Client.** Client shall defend, indemnify and hold harmless CLI and its officers, directors, employees and agents against any third party claims, suits or actions arising from or related, directly or indirectly, to Client's or its Authorized Users' acts, omissions or other use of the Platform, Services or Deliverables, including without limitation: (a) any conduct in violation of this Agreement, (b) any conduct which is negligent or willfully harmful, or (c) any conduct which is in violation of any applicable local, state, federal and (if applicable) international laws, regulations and directives, provided that CLI: (i) promptly informs and furnishes Client with a copy of such claim, suit or action (but the delay or failure to notify shall not affect Client's obligation to provide indemnification unless Client is unduly prejudiced by such failure or delay); (ii) gives Client all relevant evidence in CLI's possession or custody or under its control; and (iii) gives Client reasonable assistance in such claim, suit or action, and, for a claim for monetary damages only, the sole control of the defense thereof and all negotiations for its compromise or settlement. Notwithstanding the foregoing, Client shall not enter into any settlement that affects CLI's rights or interest without CLI's prior written consent. CLI has the right to participate in the defense at CLI's own expense.

SECTION 10: LIMITATION OF LIABILITY.

10.1 NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, LOSSES, COSTS OR EXPENSES OF ANY KIND, HOWEVER CAUSED AND WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY AND INCLUDING DAMAGES FOR PROCUREMENT OF SUBSTITUTE GOODS, LOST PROFITS, OR THE LIKE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES, COSTS OR EXPENSES. THE CUMULATIVE, AGGREGATE LIABILITY OF CLI FOR ALL DIRECT DAMAGES CLAIMS RELATED TO THIS AGREEMENT AND THE PROVISION OF THE PLATFORM, SERVICES AND DELIVERABLES HEREUNDER (INCLUDING, WITHOUT LIMITATION, ALL WARRANTY OBLIGATIONS) WILL NOT IN ANY EVENT EXCEED THE AMOUNT PAID IN FEES BY CLIENT UNDER THE AGREEMENT DURING THE LAST 12 MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY CLAIM.

THE FOREGOING LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES WILL APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE BEEN DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE INVALID, VOID OR UNENFORCEABLE. IF APPLICABLE LAW RESTRICTS THE EXCLUSION OR LIMITATION OF CERTAIN TYPES OF DAMAGES, THEN THE FOREGOING PROVISIONS SHALL BE DEEMED TO EXCLUDE AND LIMIT SUCH PARTY'S LIABILITY FOR ANY SUCH DAMAGES TO THE MAXIMUM EXTENT PERMITTED BY LAW. THE LIMITED WARRANTY, LIMITED REMEDIES, WARRANTY DISCLAIMER AND LIMITED LIABILITY ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES AND THEY WOULD NOT OTHERWISE ENTER INTO THIS AGREEMENT WITHOUT SUCH LIMITATIONS AND EXCLUSIONS.

10.2. The Third Party Software and services are provided by unrelated third parties not controlled by CLI. The availability, and accuracy of such Third Party Software and services is not within CLI's control. Client hereby waives any and all liability and claims which Client may have against CLI in connection with the Third Party Software and services, except as specifically set forth in Section 9.1, and for liability directly caused by the gross negligence or willful misconduct of CLI.

SECTION 11: GENERAL PROVISIONS.

11.1 **Entire Agreement.** This Agreement (consisting of these Terms and Conditions, any Sales Order, any Schedules, any End User License Agreements, and any other document incorporated herein) constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written or oral agreements, communications, and understandings between the parties with respect to the subject matter hereof.

11.2 **Amendment.** CLI reserves the right to modify these General Terms and Conditions and its policies relating to the Services at any time, effective upon written notice, which may be by email, or any other means; any continued use of the Services after any such changes and notification shall constitute the Client's consent to such changes. The Sales Order and any Schedule can only be amended by the agreement of the parties in writing.

11.3 **Waiver.** No waiver of any provision of this Agreement is effective unless in a writing and signed by the party against whom such waiver is sought to be enforced. No failure or delay by either party in exercising any right, power, or remedy under this Agreement operates as a waiver of any such right, power, or remedy. The express waiver of any right or default hereunder is effective only in the instance given and does not operate as or imply a waiver of any similar right or default on any subsequent occasion.

11.4 **Severability.** If any provision in this Agreement is held invalid, illegal or unenforceable under applicable law, that provision will be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its invalidity, illegality or unenforceability, and the other provisions of this Agreement will remain in full force and effect.

11.5 **Assignment; Successors and Assigns.** Client may not assign or transfer its interests, rights, or obligations under this Agreement by written agreement, merger, consolidation, operation of law, or otherwise, without the prior written consent of CLI, which consent may not be unreasonably withheld. All assignments in contravention of this Section 11.5 shall be null and void. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

11.6 **Non-Solicitation.** Each party agrees that during the Term of this Agreement and for a period of 12 months thereafter, it shall not, directly or indirectly, solicit, recruit or attempt to hire any employees or individual contractors (serving as supplemental labor) of the other party that have in any way been associated with the performance of this Agreement; provided, however, that nothing in this Section prevents either party from engaging in general recruiting techniques directed to the public at large that do not target the personnel of the other party and from employing or engaging an individual who responds in good faith and independently to such general solicitation.

11.7 **Notices.** With the exception of invoices, insurance papers, shipping papers, reports and correspondence in the normal course of business, any notice, demand, request, or other communication required or permitted to be given under this Agreement must be made in writing, addressed to the party to receive notice at its address set forth on the Sales Order or at such other address as a Party may designate by written notice to the other Party in the manner provided herein, and will be deemed given and received: (i) upon receipt if delivered personally; (ii) on the next business day after delivery to a nationally-recognized overnight courier service; (iii) on the third business day after deposit with the U.S. Postal Service if sent by certified or registered mail, return receipt requested; or (iv) to the extent applicable, on the date and by such other method as may be expressly permitted in this Agreement for certain communications.

11.8 **Survivability.** The terms and conditions of this Agreement regarding confidentiality, indemnification, limitation of liability, accrued payment obligations and all others that by their sense and context are intended to survive the execution, delivery, performance, termination or expiration of this Agreement survive and continue in effect.

11.9 **Governing Law; Jurisdiction and Venue; Arbitration.** The validity, construction, interpretation, and performance of this Agreement (and the rights and obligations of the parties with respect to their relationship hereunder) are governed by and must be construed and enforced in accordance with the laws of the State of Utah. Subject to the arbitration requirement set forth

below, any disputes arising under this Agreement (and which are not required to be arbitrated) must be brought exclusively in the state and federal courts located in Salt Lake County, Utah; and each party hereby submits to the personal jurisdiction of such state and federal courts. Client further agrees that if its staff or employees are necessary witnesses to any legal proceeding hereunder, Client will be responsible for ensuring that such persons are present and available for any legal proceeding in Salt Lake City for a reasonable time to the extent it is within Client's control. Client further agrees that it will bear all costs and expenses of ensuring such witnesses are present and available in Salt Lake City, and agrees that it will not object to the choice of venue as result of those costs and expenses. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act are expressly excluded from this Agreement. The parties agree that any and all disputes arising from or related to this Agreement, or the obligations contained herein, shall be resolved through binding arbitration, such arbitration to be conducted in Salt Lake City, Utah before a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association then in effect; except that, if the Arbitration involves total claims of less than \$25,000, such arbitration shall be conducted in the County of Client's principal place of business. Any judicial proceedings between the parties, including any requests for provisions relief, or for entry of judgment pursuant to any arbitration award, shall be brought exclusively in the courts in Salt Lake County, Utah.

11.10 **Export.** Client shall not knowingly, directly or indirectly, export or transmit any of the Deliverables or other information received from CLI to any country to which such transmission is restricted by applicable statutes or regulations without the prior written consent, if required, of the Office of Export Administration of the U.S. Department of Commerce, Washington, D.C. 20230.

11.11 **Publicity.** Subject to written revocation by Client at any time, CLI has the right to use the name, logo and other identifying marks and descriptions of Client in CLI's general marketing activities, including in any press releases, customer lists, websites, presentations, and other media and methods.

11.12 **Third Party Beneficiaries.** This Agreement is entered into solely between Client and CLI and, except for the parties' indemnification obligations hereunder, does not, and will not be deemed to, create any rights in any third parties or to create any obligations of either Client or CLI to third parties.

11.13 **Counterparts.** This Agreement, including the Sales Order, may be executed in any number of counterparts, each of which is deemed an original, and all of which together constitute one instrument. The parties agree that a signed counterpart sent by facsimile, pdf or other means of electronic transmission is as effective and has the same force and effect as the original thereof.

11.14 **Headings and Interpretation.** The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.

SECTION 12: AMA EDITORIAL CONTENT END USER LICENSE AGREEMENT

12.1. DEFINITIONS.

12.1.1. **Editorial Content** means content from the print publication Current Procedural Terminology, Fourth Edition ("CPT Book") and the data file(s) of Current Procedural Terminology

("CPT®") including CPT® Standard and CPT® Link (formerly known as Developer's Toolkit), all as available from the American Medical Association ("AMA") (individually and collectively called "CPT Data File") published by the AMA in the English language as used in the United States (collectively, "CPT" or "CPT Editorial Content"), a coding work of nomenclature and codes for reporting of healthcare services, together with (a) content from the print publication CPT® Assistant, a newsletter published by the AMA in the English language as used in the United States; (b) content from the print publication CPT® Changes, a book published by the AMA in the English language as used in the United States; (c) content from the data file published by the AMA of the International Classification of Diseases 10th Revision Clinical Modification and Procedure Coding System ("AMA's Version of ICD-10-CM/PCS"); (d) content from the data file published by the AMA of the Healthcare Common Procedure Coding System Level II ("AMA's Version of HCPCS"); and (e) CPT® to SNOMED CT® and SNOMED CT® to CPT® Maps ("SNOMED CT® Maps") as contained in CPT® Link. Schedule 1.0 details allowable uses of Editorial Content in print products ("**Print Licensed Products**") and electronic products including use via the internet and eBooks ("**Electronic Licensed Products**").

12.1.2. End User means Medsphere Customer sublicensed by Medsphere for AMA Editorial Content.

12.1.3. Users of CPT Editorial Content, AMA's version of ICD-10-CM/PCS, AMA's version of HCPCS, CPT® Assistant Editorial Content and/or CPT® Changes Editorial Content are defined as an individual who:

12.1.3.1. Accesses, uses, or manipulates CPT Editorial Content and/or AMA's version of ICD-10-CM/PCS and/or AMA's version of HCPCS, as applicable, contained in the Electronic Licensed Product; or

12.1.3.2. Accesses or has access to CPT® Assistant Editorial Content and/or CPT® Changes Editorial Content, as applicable, contained in the Electronic Licensed Product; or

12.1.3.3. Accesses, uses, or manipulates the Electronic Licensed Product to produce or enable an output (data, reports, or the like) that could not have been created without the CPT Editorial Content and/or AMA's version of ICD-10-CM/PCS and/or AMA's version of HCPCS, as applicable, embedded in the Electronic Licensed Product(s) even though CPT Editorial Content and/or AMA's version of ICD-10-CM/PCS and/or AMA's version of HCPCS, as applicable, may not be visible or directly accessible; or

12.1.3.4. Makes use of an output of the Electronic Licensed Product that relies on or could not have been created without the CPT Editorial Content and/or AMA's version of ICD-10-CM/PCS and/or AMA's version of HCPCS, as applicable embedded in the Electronic Licensed Product even though CPT Editorial Content and/or AMA's version of ICD-10-CM/PCS and/or AMA's version of HCPCS, as applicable, may not be visible or directly accessible.

12.2. GRANT OF RIGHTS, RESTRICTIONS, AND OBLIGATIONS.

12.2.1. The license to the Editorial Content granted herein is a nontransferable, nonexclusive license, for the sole purpose of internal use by End User within the Territory.

12.2.2. The End User is prohibited from publishing, distributing via the Internet or other public computer based information system, creating derivative works (including translating), transferring, selling, leasing, licensing or otherwise making available to any unauthorized party the Electronic Licensed Product(s), or a copy or portion of Electronic Licensed Product(s).

12.2.3. Provision of updated Editorial Content in the Electronic Licensed Product(s) is dependent on continuing contractual relationship between Medsphere and the AMA.

12.2.4. The End User must ensure that anyone with authorized access to the Electronic Licensed Product(s) will comply with the provisions of the Agreement.

12.2.5. The End User is limited to printing or downloading CPT® Assistant and CPT® Changes Editorial Content from the Electronic Licensed Products solely for their own internal use, without any modification to the content, and in such a way that the appropriate citation is included.

12.2.6. The End User shall accurately calculate Users as defined above for CPT Editorial Content and/or AMA's version of ICD-10-CM/PCS and/or AMA's version of HCPCS, as contained in each Electronic Licensed Product, as applicable, in accordance with the methods for the User Proxy Model Product Categories of Electronic Licensed Product(s) as detailed in the User Proxy Model Calculator in Exhibit A to the Agreement. End User shall report to Medsphere the accurately calculated number of Users of CPT Editorial Content and/or AMA's version of ICD-10-CM/PCS and/or AMA's version of HCPCS, as contained in each Electronic Licensed Product, as applicable, using this methodology (in order that Medsphere may accurately report and pay royalties to the AMA).

12.2.7. The End User shall accurately count Users as defined above for CPT Editorial Content and/or AMA's version of ICD-10-CM/PCS and/or AMA's version of HCPCS, as contained in each Electronic Licensed Product, as applicable, where Medsphere advises End User that Medsphere and End User are obligated to count Users in accordance with the license agreement between Medsphere and the AMA. End User shall report to Medsphere the accurately counted number of Users of CPT Editorial Content and/or AMA's version of ICD-10-CM/PCS and/or AMA's version of HCPCS, as contained in each Electronic Licensed Product, as applicable (in order that Medsphere may accurately report and pay royalties to the AMA).

12.2.8. The End User shall accurately count Users as defined above for CPT® Assistant and/or CPT® Changes, as contained in each Electronic Licensed Product, as applicable. End User shall report to Medsphere the accurately counted number of Users of CPT® Assistant and/or CPT® Changes, as contained in each Electronic Licensed Product as applicable, (in order that Medsphere may accurately report and pay royalties to the AMA).

12.3. NOTICES.

12.3.1. CPT®, CPT® Assistant, and CPT® Changes are copyrighted by the AMA and is a registered trademark of the AMA.

12.3.2. U.S. Government Rights

12.3.2.1. This product includes CPT which is commercial technical data, which was developed exclusively at private expense by the American Medical Association (AMA), 330 North

Wabash Avenue, Chicago, Illinois 60611. The AMA 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 AMA reserves all rights to approve any license with any Federal agency.

12.4. BACK UP RIGHTS.

12.4.1. The End User may only make copies of the Electronic Licensed Product(s) for back up or archival purposes.

12.4.2. All notices of proprietary rights, including trademark and copyright notices, must appear on all permitted back up or archival copies made.

12.5. MISCELLANEOUS.

12.5.1. The Agreement limits, to the extent possible under the applicable laws, the warranties and liability for Editorial Content as contained in the Electronic Licensed Products.

12.5.2. The Editorial Content as contained in the Electronic Licensed Products is provided “as is” without any liability to the AMA or Medsphere, including without limitation, no liability for consequential or special damages, or lost profits for sequence, accuracy, or completeness of data, or guarantee that it will meet the End User’s requirements.

12.5.3. The AMA’s sole responsibility is to make available to Medsphere replacement copies of the Editorial Content if the data is not intact.

12.5.4. The AMA and Medsphere disclaim any liability for any consequences due to use, misuse, or interpretation of information contained or not contained in Editorial Content.

12.5.5. The Agreement will terminate in the event of default.

12.5.6. The Agreement requires a current paid license and/or subscription for Medsphere product(s) which includes sublicensing of AMA Editorial Content.

12.5.7. In the event a provision is determined to violate any law or is unenforceable the remainder of the Agreement will remain in full force and effect.

12.5.8. AMA is hereby named as a third-party beneficiary of the Agreement.

12.5.9. The End User grants Medsphere permission to provide the AMA with End User’s name.

12.6. TERRITORY (“TERRITORY”).

12.6.1. Print Licensed Products. Worldwide.

12.6.2. Electronic Licensed Products: United States and its territories.

12.6.3. Countries may be added to the Territory upon written notice from the AMA. The AMA reserves the right to delete countries from the Territory where trade is prohibited by U.S. law or where the AMA, in its reasonable judgment, determines that it cannot protect its copyright.

Appendix A

BUSINESS ASSOCIATE AGREEMENT

Version: (6/2024)

Licensor
ChartLogic, a Division of Medsphere Systems Corporation

Licensor and the person(s) specified as the "Client" in the Sales Order that references these Terms and Conditions (the "Parties ") agree that the following terms and conditions are incorporated in and made a part of the Agreement between the Parties:

BUSINESS ASSOCIATE AGREEMENT

Concurrently with the date of execution of the Sales Order ("Effective Date") the Licensor (Business Associate) and Client (a Covered Entity) make and enter into this Business Associate Agreement:

WHEREAS the Parties seek to comply with the Health Insurance Portability and Accountability Act, Public Law 104-191 ("HIPAA");

WHEREAS Licensor is a covered entity under HIPAA and Client is a business associate;

WHEREAS Licensor and Client have entered into an agreement under which Licensor will provide software, services and support to Client ("Software Agreement"); and

WHEREAS Licensor will have access to Protected Health Information in order that Licensor can provide the agreed software, services and support to Client.

Now therefore, in consideration of the mutual covenants contained in this Agreement and intending to be legally bound, the parties agree as follows:

Section 1. Definitions

- (a) Business Associate. "Business Associate" shall mean Chartlogic, a Division of Medsphere Systems Corporation.
- (b) Covered Entity. "Covered Entity" shall mean Client.
- (c) HITECH Act. "HITECH Act" shall mean the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act, Pub. L. No. 111-5.
- (d) Privacy Regulations. "Privacy Regulations" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

- (e) Security Regulations. "Security Regulations" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and C.
- (f) Secretary. "Secretary" shall mean the Secretary of the federal Department of Health and Human Services.
- (g) Unsecured Protected Health Information. "Unsecured Protected Health Information" shall mean Protected Health Information in any form, including electronic, paper or verbal, that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary pursuant to the HITECH Act, as such guidance may be updated by the Secretary from time to time.
- (h) Effective Date. "Effective Date" shall mean the date upon which this Agreement is first made between the parties.

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§160.103, 164.304 and 164.501.

Section 2. Obligations and Activities of Business Associate

Business Associate agrees to:

- (a) not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law;
- (b) use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement;
- (c) mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement;
- (d) immediately report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware; with respect to breaches of Unsecured Protected Health Information, such report shall include at least the following information:
 - (1) the identity of each individual whose information was accessed, acquired or disclosed during the breach;
 - (2) a brief description of what happened;
 - (3) the date of discovery of the breach;
 - (4) the nature of the Unsecured Protected Health Information that was involved (e.g., social security numbers, date of birth, etc.);

- (5) any steps individuals should take to protect themselves from potential harm resulting from the breach; and
 - (6) a brief description of what the Business Associate is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches;
- (e) ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by, Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information;
 - (f) provide access to Protected Health Information in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. §164.524;
 - (g) make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. §164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity;
 - (h) make its internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of the Secretary determining Covered Entity's compliance with the Privacy Regulations;
 - (i) document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity or Business Associate to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. §164.528;
 - (j) provide to Covered Entity or an Individual information collected in accordance with Section 2(i) of this Agreement, to satisfy the requirements for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. §164.528 or Section 13405(c)(3) of the HITECH Act;
 - (k) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity, and, effective February 17, 2010, to comply with the provisions of the Security Rule identified in Section 3(a)(1)(B) of this Agreement;
 - (l) ensure that any agent, including a subcontractor, to whom it provides electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect it; and

- (m) report to Covered Entity any material attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

Section 3. Permitted Uses and Disclosures by Business Associate

(a) Statutory Duties

- (1) Business Associate acknowledges that it has a statutory duty under the HITECH Act to, among other duties:
 - (A) effective February 17, 2010, use and disclose Protected Health Information only in compliance with 45 C.F.R. § 164.504(e) (the provisions of which have been incorporated into this Agreement); and
 - (B) effective February 17, 2010, comply with 45 C.F.R. §§ 164.308 ("Security Standards: General Rules"), 164.310 ("Administrative Safeguards"), 164.312 ("Technical Safeguards"), and 164.316 ("Policies and Procedures and Documentation Requirements"). In complying with 45 C.F.R. § 164.312 ("Technical Safeguards"), Business Associate shall consider guidance issued by the Secretary pursuant to Section 13401(c) of the HITECH Act and, if a decision is made to not follow such guidance, document the rationale for that decision.
- (2) Business Associate acknowledges that its failure to comply with these or any other statutory duties could result in civil and/or criminal penalties under 42 U.S.C. §§ 1320d-5 and 1320d-6.

(b) General Use and Disclosure Provisions

- (1) Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity pursuant to the underlying service agreement between the parties, provided that such use or disclosure would not violate the Privacy Regulations if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
- (2) To the extent the Business Associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, the Business Associate will comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s)

(c) Specific Use and Disclosure Provisions

- (1) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and

administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

- (2) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information 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 be 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.
- (3) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 C.F.R. §164.504(e)(2)(i)(B).
- (4) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §164.502(j)(1).
- (5) As of the effective date of Section 13405(d) of the HITECH Act, Business Associate may not receive direct or indirect remuneration in exchange for Protected Health Information unless permitted by the Act or regulations issued by the Secretary.

Section 4. Obligations of Covered Entity

Covered Entity shall:

- (a) notify Business Associate of any limitation(s) in its Notice of Privacy Practices in accordance with 45 C.F.R. §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information;
- (b) notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information;
- (c) notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

Section 5. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Regulations if done by Covered Entity.

Section 6. Term and Termination

- (a) Term. The Term of this Agreement shall be effective upon the Effective Date and shall terminate when all of the Protected Health Information 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 not feasible to return or destroy the Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- (b) Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall:
- (1) provide an opportunity for Business Associate a reasonable opportunity to cure the breach or end the violation which opportunity to cure shall be at least ninety (90) days and then otherwise terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - (2) immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - (3) if neither termination nor cure is feasible, report the violation to the Secretary.
- (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 Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
 - (2) In the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of Protected Health Information is not feasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

Section 7. Miscellaneous

- (a) Regulatory References. A reference in this Agreement to a section in the Privacy Regulations or Security Regulations means the section in effect, or as amended.
- (b) Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Regulations, the Security Regulations, and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- (c) Survival. The respective rights and obligations of Business Associate and Client under Section 6(c) of this Agreement shall survive the termination of this Agreement.
- (d) Successors. This Agreement is binding upon the parties and their respective successors and assigns.
- (e) Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Regulations and Security Regulations.
- (f) Identity Theft Regulations. To the extent that Business Associate provides services in connection with an account maintained by the Covered Entity that permits patients to make multiple payments for services rendered by the Covered Entity (including, but not limited to, billing and collection services), Business Associate shall have and follow policies to detect and prevent identity theft in accordance with the identity theft regulations of the Federal Trade Commission, 16 C.F.R. § 681.2. In addition, Business Associate shall: (1) report to Covered Entity any pattern, practice, or specific activity that indicates the possible existence of identity theft ("Red Flags") involving anyone associated with Covered Entity, including its patients, employees, and contractors, and (2) take appropriate steps to prevent or mitigate identity theft when a Red Flag is detected.