eVisit Agreement

THIS AGREEMENT IS A LEGAL CONTRACT BETWEEN YOU ("**YOU**" OR "**CUSTOMER,**" EITHER AN INDIVIDUAL OR THE ENTITY ON WHOSE BEHALF YOU ARE EXECUTING THIS AGREEMENT) AND **EVISIT, INC.** ("**WE**", "**US**", "**EVISIT**") WHICH GOVERNS YOUR PURCHASE AND USE OF EVISIT'S TELEMEDICINE AND RELATED SERVICES ("**THE SERVICE**"). BY SIGNING BELOW, YOU AGREE THAT YOU HAVE READ THIS AGREEMENT AND THAT YOU ACCEPT THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THIS AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THIS AGREEMENT, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICE.

SUBSCRIPTION SERVICES AGREEMENT

This Subscription Services Agreement ("**SSA**") governs your purchase and use of the subscription Service provided by **eVisit, Inc.** ("**eVisit**").

1.   DEFINITIONS.

1.1   "**Aggregated Data**" means eVisit's combination of Protected Health Information received, gathered and/or aggregated from or on behalf of multiple Covered Entities, including Customer, to permit data analyses that relate to the health care operations of the respective Covered Entities and/or for any other lawful purpose by eVisit, its affiliates, licensors, partners and designated agents (on a non-attributed basis), including to monitor and improve eVisit's products and services for benchmarking purposes or to provide customized services or technologies to Covered Entities and others.

1.2   "**Authorized End User**" means any individual authorized, by virtue of such individual's relationship to, or permissions from, Customer, to access the Service pursuant to Customer's rights under this Agreement. An Authorized End User can be employees, contractors or agents of Customer.

1.3   "**Business Associate**" is a person or entity that performs certain functions or activities that involve the Use or Disclosure of Protected Health Information on behalf of, or provides services to, a Covered Entity. A member of the Covered Entity's workforce is not a Business Associate.

1.4   "**Covered Entity**" means (a) a health plan; (b) a health care clearinghouse; or (c) a health care provider – a provider of services (as defined in section 1861(u) of the Social Security Act, 42 U.S.C. 1395x(u)), a provider of medical or health services (as defined in section 1861(s) of the Social Security Act, 42 U.S.C. 1395x(s)), and any other person or organization who furnishes, bills, or is paid for health care in the normal course

of business who electronically transmits any health information in connection with transactions for which the U.S. Department of Health and Human Services ("**HHS**") has adopted standards.

1.5 "**Customer**" means either you as an individual, or a corporate entity or other business organizations to whom eVisit provides the Service for use by itself or by Authorized End Users. The term Customer is deemed to include Authorized End Users.

1.6 "**Customer Data**" means all the data, content and/or information provided, uploaded, recorded and/or posted by Authorized End Users, Customer and/or Patient(s) of Customer during and in connection with its authorized use of the Service, including all video, recordings, information, text, graphics, pictures, photos, profiles, reviews, messages, notes, prescriptions and/or any other uploaded content, published or displayed on or through the Service, or transmitted to or shared with other users. Further, any data supplied by Customer to eVisit through other means.

1.7 "**Disclosure**" means the release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information.

1.8 "**eVisit Platform**" or "**Platform**" refers collectively to eVisit's two-way video proprietary software solution which features are offered to and accessed by Customers in a software-as-a-service format as contracted under this Agreement. The eVisit Platform may include installable applications for mobile devices (collectively, "**Mobile App**") and On-Site Software.

1.9 "**Individually-Identifiable Health Information**" is information that is a subset of health information (including demographic information collection from an individual) and:

1. Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

2. Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual [e.g., claim]; and

   a. That identified the individual; or

   b. With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

1.10 "**On-Site Software**" refers to the installable software client application for desktops through which Customer may access the Platform, the Service and/or transmit data to the Service in accordance with the terms of this Agreement.

1.11 "**SOW**" means the form, document, or online acceptance through which Customer orders and purchases eVisit services under this Agreement. SOWs hereunder

must reference this Agreement and are incorporated by reference upon execution (i.e. signature or acceptance). Access to Service shall be made only against written SOW expressly accepted by eVisit. At minimum, each SOW shall specify: (i) a description of the Services covered by the SOW, including Pre-Packaged Services, start date of the Service, term of the subscription, user quantities or type of subscription, etc.; (ii) prices, including any applicable discounts, and any other charges and costs; and details such as billing and/or invoice address, and payment information; and/or (iii) any additional information relevant to the Services contracted. In the event of any conflict between the terms and conditions of this Agreement and those of any SOW, the terms and conditions of the SOW shall control. No pre-printed or boilerplate terms of any purchase order issued by Customer to eVisit shall have any binding effect against eVisit. eVisit may refuse to accept any SOW, in its sole discretion.

1.12 "**Patient(s)**" means the person(s) receiving or registered to receive medical treatment from Customer and which will access the Service to contact Customer.

1.13 **"Patient Data"** means all Protected Health Information and all other information maintained on the eVisit Platform pertaining to the Patient (collectively, such Patient Data constitutes the Patient's Designated Record Set under HIPAA (pursuant to 45 C.F.R. § 164.501) and medical record(s) for purposes of applicable state law).

1.14 "**Pre-packaged Services**" means collectively the standard and pre-packaged configuration, implementation, training and email services that eVisit may provide upon agreement with Customer, as may be set forth in the SOW.

1.15 "**Professional Services**" means any additional and separate service(s) not included in this Agreement, and that are geared towards special requirements of clients, such as development of customized features or functionalities to the Service, and the like. Professional Services are provided by eVisit on a time and materials basis under the terms of a separate Professional Services Agreement.

1.16 "**Protected Health Information**" means individually identifiable health information that is:

      1.   Transmitted by electronic media,

      2.   Maintained in electronic media, or

      3.   Transmitted or maintained in any other form or medium.

1.17 "**Service**" means the subscription services provided by eVisit to Customer on a software-as-a-service basis by means of accessing and using the features and functions of the eVisit Platform, as contemplated in this Agreement.

1.18 "**Subscription Term**" means the subscription period for Customer's use of the Service as set forth in an SOW.

1.19   "**Use**" means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

2.   ORDERING AND PURCHASES.

Access to services and products provided by eVisit shall be made only against SOWs submitted by Customer and accepted by eVisit. This Agreement contemplates the execution by the parties of one or more SOWs. With respect to an SOW, the terms "eVisit" and "Customer" as used in this Agreement will be deemed to refer to the entities that execute that SOW, the SOW will be considered a two party agreement between such entities, and eVisit will invoice the Customer named in the SOW for the associated subscription fees.

3.   THE SERVICE, LICENSES AND RESPONSIBILITIES.

3.1   **Service and Access Credentials**. Customer will provide reasonable cooperation, assistance, information and access to eVisit as may be necessary to initiate and maintain Customer's use of the Service. Subject to all terms and conditions of this Agreement, eVisit will provide Customer with reasonable access to the Service. As part of the implementation process, Customer may identify an administrative user name and password that will be used to set up Customer's account. Customer shall be responsible for the acts or omissions of any person who accesses the Service using passwords or access procedures provided to or created by Customer. eVisit reserves the right to refuse registration of, or to cancel, login IDs that violate the terms and conditions set forth in this Agreement, as otherwise appropriate to protect the privacy, security, integrity and accessibility of Protected Health Information, and/or to comply with applicable law.

3.2   **Access Rights**. Subject to all terms and conditions of this Agreement, eVisit grants Customer a nonexclusive, nontransferable (except as set forth herein) right and license (without right to sublicense) to (a) access the eVisit Platform and use the Service (including the eVisit Technology (as defined in Section 6 below) necessary to use the Service), up to the amount of users set forth in the SOW and solely for Customer's internal business purposes, and (b) install and use the On-Site Software and/or the Mobile App that may be provided to you by eVisit solely in connection with Customer's authorized use of the Service. The Service is made available to Customer solely as hosted by or on behalf of eVisit, and nothing in this Agreement shall be construed to grant Customer any right to receive any copy of the Service or any software (other than the On-Site Software or the downloadable Mobile App). Notwithstanding the foregoing, Customer agrees and understands that the On-Site Software and the Mobile App may have additional licensing terms that will be made available to Customer for acceptance upon download. Customer's access and use of the Service shall comply with all other conditions set forth in all documentation, such as the user guide, help information, and other document regarding the Service, in each case that is provided or made available by eVisit to Customer in electronic or other form (**"Documentation"**). For avoidance of confusion, this includes, for example, any requirements regarding data formats, number of permitted users or prohibited uses. Customer acknowledges and agrees that any act or

omission of its Authorized End Users in connection with use of, or access to the Service, which act or omission would constitute a breach of this Agreement if undertaken by Customer, shall be considered a material breach by Customer hereunder.

4.   RESPONSIBILITIES.

4.1   **eVisit Responsibilities.**

(a)   **Services**. eVisit will provide the Service in a professional manner consistent with general and reasonable industry standards.

(b)   **Hosting**. Customer hereby agrees and consents that in providing the Service, eVisit may enter into arrangements with and utilize the services of third party cloud services provider(s) for hosting of the eVisit Platform ("**Cloud Providers**"). eVisit shall require that any such Cloud Provider be contractually bound to provide substantially the same level of protection with respect to Customer's Data as provided by the terms of this Agreement and if required by law.   If applicable, eVisit will reasonably make the Cloud Provider service levels, acceptable use policies and information security policies available to Customer.

(c)   **Customer Data**. Customer, as a health care provider, retains ownership of the Patient Data, and owns all rights, title and interest in and to their Patient Data. Patients may request that eVisit deliver the Patient Data to them, or to other designated parties, at which time the patient assumes direct ownership of his own respective Patient Data (except to the extent that applicable law requires continued ownership by Customer, or in the circumstance where ownership transfers to the designated party receiving the Patient Data (e.g., a subsequent health care provider)). All Patient Data originating through Customer's use of eVisit, combined with any data Customer may supply to eVisit, shall be referred to herein as Customer Data. As between eVisit and Customer regarding any further data shared by Customer with eVisit, Customer hereby grants to eVisit a royalty-free, nonexclusive, worldwide, right and license (with the right to sublicense through multiple tiers) to use, copy, store, process, transmit and display data as necessary to provide the Service hereunder and as permitted by the terms of this Agreement. Customer agrees that (i) the Service depends on the availability of the Customer Data and any other data Customer may supply to eVisit; and (ii) eVisit does not assume any responsibility for, or undertake to verify, the accuracy or completeness of Customer Data or any other data Customer may supply to eVisit. Customer acknowledges and consents that the Service stores all Customer Data in the United States of America, which may be different from the country where the Customer Data originated.

(d)   **Security and HIPAA Compliance**. eVisit shall endeavor to maintain and handle all Customer Data in accordance with industry standard privacy and security practices and measures adequate to preserve its confidentiality and security as required by applicable privacy laws and regulations, including but not limited to the federal Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), as amended by the Health Information Technology for Economic and Clinical Health Act ("**HITECH**"), and their regulations (collectively to be referred to as "**HIPAA**"). As between eVisit and Customer for purposes of disclosure of Customer Data, to the extent

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it may contain Protected Health Information, eVisit may be considered a "**Business Associate**" if and when Customer may be considered a **"Covered Entity"**. If eVisit is a Business Associate, the parties agree to enter into the Business Associate and Confidentiality Agreement (the "**BAA**") provided below. **BY EXECUTING AN SOW HEREUNDER, CUSTOMER AGREES THAT IT HAS READ, UNDERSTANDS AND AGREES TO BE BOUND BY THE BAA, WHICH IS HEREBY INCORPORATED BY REFERENCE.**

(e) **Aggregated Data**. Customer acknowledges and agrees that eVisit may compile Aggregated Data. To the extent necessary, Customer hereby grants eVisit a royalty-free, nonexclusive, irrevocable, right and license (with the right to sublicense through multiple tiers) to develop Aggregated Data from Customer's use of the Service.

(f) **Pre-Packaged Services**. eVisit may make available, and Customer may purchase, certain pre-packaged standardized services in the nature of installation, configuration, implementation, training or email campaigns with respect to the standard eVisit Service, as may be more fully described in an SOW. Such Pre- Packaged Services (i) shall be provided in a professional and workmanlike manner; (ii) are usually charged under a fixed fee structure; and (iii) shall be subject to the limitations, dependencies, and disclaimers set forth in this Agreement and any applicable referenced documentation for such Pre-Packaged Services. If necessary, Pre-Packaged Services may be further detailed in separate statements of work which shall be incorporated by reference to this Agreement.

(g) **Support and Service Levels**. eVisit will use commercially reasonable efforts to provide Customer with technical support and updates for the Service in accordance with its regular business practices. Customer agrees that eVisit may charge in accordance with its then current policies for any support service resulting from problems, errors or inquiries related to the Customer Data or Customer systems. eVisit will provide the Service in accordance with its Service Level Agreement, provided below.

(h) **Professional Services**. Customer may purchase additional Professional Services pursuant to a separate Professional Services Agreement that has been mutually negotiated, agreed and separately executed by the Parties. Customer agrees and understands that absent such separate Professional Services Agreement, eVisit has no obligation to perform any such services.

(i) **Representations and Warranties**. eVisit represents and warrants that, at all times during the Term of this Agreement, eVisit shall use commercially reasonable efforts to comply with all U.S. federal and state laws, rules, and regulations (including without limitation HIPAA) that are applicable to the provision of the Services.

(j) **Patient Notifications.** In order to maintain security, usability, availability and transparency, and in accordance with the uses and disclosures of Protected Health Information permitted by HIPAA for eVisit's proper management and administration of the Services, eVisit shall notify Customer's patients in a timely manner

when the status of their eVisit accounts materially change (e.g. creation, suspension, termination), or at eVisit's discretion, when such a change is impending.

4.2 **Customer Responsibilities**.

(a) **Restrictions**. Customer shall comply with all applicable laws in using the Service. Customer and its Authorized End Users shall not directly or indirectly (i) modify, copy or create derivative works based on the Service, eVisit Technology (as defined below) or use any of eVisit's Confidential Information (as defined below) to create any service, software or documentation that performs substantially the same functionality as the Service; (ii) create Internet "links" to or reproduce any content forming part of the Service, other than for its own internal business purposes; (iii) disassemble, reverse engineer, decompile or use any other means to attempt to gain unauthorized access to, or attempt to discover any source code, algorithms or trade secrets underlying the Service or eVisit Technology or any part thereof, or access it in order to copy any ideas, features, content, functions or graphics of the Service or eVisit Technology (except and only to the extent these restrictions are expressly prohibited by applicable statutory law); (iv) interfere with or disrupt the integrity or performance of the Service; (vi) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material via the Service; (vii) send or store viruses or malicious code via the Service; (viii) use any components provided with the Service separately from the Service; (x) encumber, sublicense, transfer, distribute, rent, lease, time-share or use the Service or eVisit Technology in any service bureau arrangement or otherwise for the benefit of any third party; or (xi) use or allow the transmission, transfer, export, re-export or other transfer of any product, technology or information it obtains or learns in connection with Customer's use of the Service in violation of any export control or other laws and regulations of the United States of America or any other relevant jurisdiction.

(b) **Customer Data**. Customer agrees that itself, its Authorized End Users, and Patients are solely responsible for the accuracy and completeness of Customer Data transmitted through the Service, and it shall (i) require Authorized End Users not to modify, post, transmit, or share Customer Data on the Service absent express permission; (ii) notify Patients of Customer's Notice of Privacy Practices in accordance with HIPAA requirements; and (iii) obtain all necessary authorizations and consents from Patients in connection with use of the Service, including authorization to send any marketing communications sent by eVisit on behalf of Customer.

(c) **Customer Systems**. Customer is responsible for providing (a) all subscriptions and credentials necessary for eVisit to receive the Customer Data, and (b) in the case of Customer's use of the On-Site Software, all equipment, servers, devices, storage, other software, databases, network and communications equipment and ancillary services needed to send data to eVisit (collectively, **"Customer Systems"**). Customer shall ensure that Customer Systems are compatible with the Service and comply with all configurations and specifications described in the Documentation. Customer represents and covenants that Customer Systems are in compliance with HIPAA and other federal and state data privacy and security laws.

(d) **Terms & Conditions, Privacy Policy and other requirements**. Customer acknowledges and agrees that, in addition to the terms herein, use of the Service shall be subject to the versions of eVisit's Terms & Conditions (available at http://evisit.com/terms-and-conditions/) and Privacy Policy (available at http://evisit.com/privacy-policy/) current as of the signing of this Agreement, to the extent that such documents do not contradict the terms of this Agreement. In addition, Customer agrees and understands that it must provide all legally required notifications to, and obtain all legally required consents and authorizations from, Patients prior to supplying Patient Data to eVisit and proceeding to manage Patient Data and interact with Patients through eVisit.

(e) **Representations and Warranties**. Customer represents and warrants (i) that, to the best of its knowledge, it has the right to disclose and provide to eVisit any data it provides through use and access of the Service, and that, to the best of its knowledge, no materials of any kind submitted by Customer as Customer Data or otherwise posted, transmitted, or shared on or through the Service will violate or infringe upon the rights of any third party, including copyright, trademark, privacy, publicity or other personal or proprietary rights; or contain libelous, defamatory or otherwise unlawful material; and (ii) that, to the best of Customer's knowledge, Customer shall use commercially reasonably efforts to ensure that the Customer's (and that of its Authorized End Users') use of and access to the Service complies with all applicable laws, rules and regulations. Specifically, Customer represents and warrants that, to the best of its knowledge, all necessary licenses, certifications, and other permissions, which may be required to use this Service in professional practice, are in effect and will be maintained.

5.   PRICING AND PAYMENTS.

5.1   **Fees**. Customer shall pay certain fees for the right to use the Service (the **"Service Fees"**) at its then-current rates or as otherwise set forth in the SOW completed by Customer, as well as certain fees for the Pre-Packaged Services. Customer shall pay the Service Fee annually in the advance in accordance with the SOW completed by Customer. Unless otherwise agreed in an SOW, Pre-Packages Services are usually charged on a fixed-one-time basis.

5.2   **Credit Card and Debit Card Payments**. If Customer provides credit card and/or debit card information to eVisit, Customer authorizes eVisit to charge such credit card and/or debit card for all fees listed in the SOW for the initial Subscription Term and any renewal Subscription Term(s) as set forth in this Agreement. Such charges shall be made in advance annually or in accordance with any different billing frequency stated in the applicable SOW.

5.3   **Auto-renewal**. Customer understands and agrees that eVisit will automatically renew Customer's Subscription Term when it expires (the "**Automatic Renewal**") for a further term equal in duration, unless either party notifies the other of non-renewal at least sixty (60) days prior to the expiration of the then-current Subscription Term. As authorized by Customer in the SOW, eVisit will charge Customer's credit or debit card with the applicable yearly Service Fee and any sales or similar taxes

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that may be imposed on Customer's subscription fee payment (unless Customer cancels prior to the anniversary date).

Unless otherwise agreed in a new SOW, each subscription's Automatic Renewal will be for the same period of time as Customer's initial Subscription Term. Customer may terminate this Agreement at any time in accordance with Section 10.2(b) below, provided that any Services Fees charged prior to the effective date of termination will not be refunded, in whole or in part. Customer will not be eligible for a pro-rated refund of any portion of the Services Fees paid for any unused days of the then-current Subscription Term. If Customer cancels Customer's subscription, Customer will continue to enjoy Customer's subscription benefits until the expiration of the then-current Subscription Term for which Customer has paid, and Customer's subscription benefits will expire at the end of the then-current Subscription Term.

5.4   **Taxes**. Payments shall be made in US dollars in full. All payments required by this Agreement are exclusive of federal, state, local and foreign taxes, duties, tariffs, levies, withholdings and similar assessments (including without limitation, sales taxes, use taxes and value added taxes), and Customer agrees to bear and be responsible for the payment of all such charges, excluding taxes based upon eVisit's net income. All amounts payable by Customer hereunder, including all Service Fees, shall be grossed-up for any withholding taxes imposed by any foreign government on Customer's payment of such amounts to eVisit.

6.   **CONFIDENTIALITY**

6.1   **Definition**.   "**Confidential Information**" means all information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's Confidential Information includes Customer Data. eVisit Confidential Information includes the Service, eVisit Technology and Aggregated Data. The Confidential Information of each party includes the terms and conditions of this Agreement and all SOWs (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

6.2   **Protection of Confidential Information**. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this

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Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any SOW to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this Section 5.2.

6.3   **Compelled Disclosure**. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

7.   PROPRIETARY RIGHTS.

As between eVisit and Customer, eVisit, its affiliates and/or licensors retain all right, title and interest to the Service, the Aggregated Data, the eVisit Platform, the Mobile App, the On-Site Software, the Documentation, eVisit trademarks and service marks, and all other related software, applications, programming, documentation, templates, questionnaires, methodologies, models, charts, specifications, reports, ideas, concepts, inventions, systems, interfaces, tools, utilities, forms, report formats, techniques, methods, processes, algorithms, know-how, trade secrets and other technologies and information that are used by eVisit in providing the Service and/or when providing other services and any other intellectual property or items used to deliver the Service or provide other services or made available to Customer as a result of all services (collectively, the "**eVisit Technology**"). The Service and related eVisit Technology are protected by applicable intellectual property laws and rights, including rights deriving from copyright, trade secret, patents, trademarks and related industrial property. Customer's access and use of the Service, eVisit Technology and any related materials shall be governed by the terms of this Agreement and any documents incorporated by reference. There are no licenses granted by implication in this Agreement and eVisit reserves and retains any rights not expressly granted to Customer. In the event Customer (or its Authorized End Users) provides eVisit with any suggestions, enhancement requests, recommendations or other feedback relating to the Service or Technology ("**Feedback**"), Customer hereby grants eVisit a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate such Feedback into any eVisit products or services, provided it does not include any of Customer's Confidential Information.

8.   WARRANTIES AND DISCLAIMERS.

8.1   **Customer Data**. Customer represents and warrants that it owns all right, title and interest, or possesses sufficient license rights, in and to the Customer Data as

may be necessary to permit the uses and/or disclosures contemplated under this Agreement. Customer bears all responsibility and liability for the accuracy and completeness of the Customer Data and eVisit's access, possession, uses and/or disclosures as permitted herein. In addition, Customer represents and warrants that it has and will obtain all necessary authorizations and consents from Patients prior to using the Service and that it has and will maintain a Notice of Privacy Practices (NOPP) in accordance with HIPAA requirements that fully and accurately discloses to its users and Patients that information is collected, disclosed to and processed by third party providers like eVisit in the manner contemplated by the Service, including, without limitation, disclosure of the use of technology to track users' online activity and otherwise collect Aggregated Data from and about users and Patients.

8.2 **Injunctions of the Service**. If the Service becomes or, in eVisit's opinion, is likely to become the subject of any injunction preventing its use as contemplated herein, eVisit may, at its option (1) obtain for Customer the right to continue using the Service or (2) replace or modify the Service so that it becomes non-infringing without substantially compromising its principal functions. If (1) and (2) are not reasonably available to eVisit, then it may terminate this Agreement immediately upon written notice to Customer and refund to Customer any prepaid Service fees, pro-rated for the remainder of the prepaid period.

8.3 **Disclaimers**. ALL SERVICES PROVIDED HEREUNDER AND THE eVISIT TECHNOLOGY ARE PROVIDED WITHOUT ANY OTHER WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, eVISIT (FOR ITSELF AND ITS SUPPLIERS) MAKES NO WARRANTY (I) THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR BE UNINTERRUPTED, ERROR-FREE OR BUG-FREE, (II) REGARDING THE SECURITY, RELIABILITY, TIMELINESS, OR PERFORMANCE OF THE SERVICES, OR (III) THAT ANY ERRORS IN THE SERVICES CAN OR WILL BE CORRECTED. eVISIT HEREBY DISCLAIMS (FOR ITSELF AND ITS SUPPLIERS) ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF NON-INFRINGEMENT, DATA ACCURACY, SYSTEM INTEGRATION, NONINTERFERENCE, QUALITY, VALUE, OPERABILITY, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. CUSTOMER ACKNOWLEDGES THAT eVISIT OBLIGATIONS UNDER THIS AGREEMENT ARE FOR THE BENEFIT OF CUSTOMER ONLY.

8.4 **Limitations**. eVisit will not be liable for any failures in any Services provided hereunder (including the Service) or any other problems which are related to (a) the Customer Data or Customer Systems or (b) any satellite, telecommunications, network or other equipment or service outside of eVisit' facilities or control. eVisit makes no guarantees that Patients will register or use the Service, or that the Service is legally appropriate for use between Customer and Patients in a particular jurisdiction.

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9.   INDEMNIFICATION

9.1   **Indemnity by eVisit**. eVisit agrees to indemnify and hold harmless Customer against any third party claims and all resulting losses, liabilities, costs and expenses attributable to or arising from (a) any actual breach of obligations to Customer under HIPAA; (b) any claim that the Service or any other materials provided hereunder by eVisit infringes the rights of any third party (including intellectual property rights or any rights of privacy or publicity); and (c) any breach by eVisit of its obligations hereunder related to Customer Data.

9.2   **Indemnity by Customer**. Customer agrees to indemnify and hold harmless eVisit against any third party claims and all resulting losses, liabilities, costs and expenses attributable to or arising from (a) Customer's unauthorized use of the Service or the eVisit Technology; (b) any actual or alleged violation by Customer or the rights of any third party (including intellectual property rights or any rights of privacy or publicity); (c) any breach by Customer of its obligations hereunder related to Customer Data; (d) any failure by Customer to provide any necessary notices to, or obtain necessary consents from, and Patients or other users as called for in Sections 3.4(b), 3.4(d) or 7; and (e) any actual or alleged unauthorized practice of medicine or other profession by Customer or any alleged malpractice by Customer.

9.3   **Proceedings**. The indemnified party shall (i) promptly notify the indemnifying party in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying party's obligation except to the extent it is prejudiced thereby, and (ii) allow the indemnifying party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement. The indemnified party shall also provide the indemnifying party with reasonable cooperation and assistance in defending such claim (at the indemnifying party's cost). The indemnifying party shall not enter into any settlement that imposes liability or obligations on the indemnified party without obtaining the indemnified party's prior written consent of the settlement.

9.4   **Exclusive Remedy**. This section contains each party's exclusive remedies and the indemnifying party's sole liability for infringement claims.

10.   LIMITATION OF LIABILITY.

IN NO EVENT SHALL EVISIT BE LIABLE CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), FOR ANY (A) LOSS OR INACCURACY OF DATA, LOSS OR INTERRUPTION OF USE, OR COST OF PROCURING SUBSTITUTE TECHNOLOGY, GOODS OR SERVICES, (B) INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, REVENUES, PROFITS AND GOODWILL, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EVISIT BE LIABLE CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE,

STRICT LIABILITY OR OTHERWISE), FOR ANY DAMAGES, IN THE AGGREGATE, IN EXCESS OF THE AMOUNTS PAID OR OWED TO EVISIT HEREUNDER DURING THE PRECEDING TWELVE (12) MONTH PERIOD. THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS AGREEMENT AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY PROVIDED HEREIN.

11.   TERM AND TERMINATION.

11.1   **Term**. This Agreement shall commence on the date Customer (or an authorized representative on its behalf) accepts the terms to this Agreement in completion of his or her purchase of eVisit's services (the "**Effective Date**") and shall continue until terminated. Unless otherwise specified in the applicable SOW, each term set forth in a Subscription Term will (i) begin on the start date set forth on the applicable SOW, (ii) remain in effect for a minimum period of twelve (12) months, and (iii) after the initial Subscription Term, automatically renew as set forth in Section 4 above. While Customer has no right to use the Services after the end of the Term, if Customer does so, Customer will remain bound by the terms and conditions of this Agreement and shall be obligated to pay for such Services at eVisit's then-current rates for so long as the Services are used by Customer. eVisit shall provide Services (including the Records Administration Service as set forth in Section 11.2(e)) to Customer after the end of the Term at eVisit's sole discretion and eVisit shall be entitled to terminate provision of the Services at will, such termination to be effective immediately upon notice to Customer.

11.2   **Termination**.

(a)   **For Cause**. This Agreement may be earlier terminated by either party (i) if the other party breaches a provision of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of such breach from the non-breaching party; or (ii) immediately if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

(b)   **Post-termination Records Administration Service.** For the convenience of the Customer and the Customer's Patients and in order to ensure uninterrupted access to the Patient Data relating to all Patients of a terminating Customer as required of the Customer by HIPAA and applicable state law, eVisit shall, absent the Customer's written direction to the contrary, provide a Records Administration Service following termination of this Agreement. In the event that eVisit provides the Records Administration Service, eVisit shall retain all Patient Data relating to the Patients of a terminating Customer for a contemplated period of six years following termination of this Agreement. For the duration of eVisit's six-year retention period pursuant to the Records Administration Service, Customer's Patients may authorize the use and/or disclosure of, or request access to, any or all Patient Data retained by eVisit on behalf of the Customer (including any Patient Data which eVisit possesses as of the date of termination of this Agreement, as well as any other Patient Data maintained post-termination at the direction of the Customer) and, pursuant to any such Patient's authorization for eVisit to use and/or disclose, or request to provide access to, such Patient Data, eVisit shall deliver

such Patient Data to any such Patient in electronic form (i.e., on the eVisit Platform), unless the Patient specifically requests an alternate medium in accordance with such Patient's authorization to use and/or disclose, or request for access to, the Patient Data. In accordance with any Patient's written authorization to use and/or disclose his or her Patient Data, eVisit may disclose such Patient Data to a designated third-party. eVisit shall provide a Customer's Patient with access to his or her Patient Data in accordance with HIPAA's right to access requirement under 45 C.F.R. § 164.525. In the event that eVisit or Customer terminates the Records Administration Service prior to six years following termination of this Agreement, it shall inform Customer in writing of Customer's ability to retrieve Customer records in a generally-recognized standard format.

11.3 **Effects of Termination**. Upon any expiration or termination of this Agreement:

(a) all rights, obligations and licenses of the parties shall cease, except that all obligations that accrued prior to the effective date of termination (including without limitation, all payment obligations) and all remedies for breach of this Agreement shall survive;

(b) Customer will make no further use of the Service, provided that no termination will relieve the Customer of the obligation to pay any fees accrued or payable to eVisit;

(c) Customer's Patient Data shall transition from active and live to a "frozen" state in keeping with eVisit's Records Administration Service as provided in Section 11.2(e) of this Agreement until such time as a Patient authorizes eVisit's use or disclosure of, or requests access to his or her Patient Data, six years from termination of this Agreement, or eVisit or Customer elects to terminate the Records Administration Service.

(d) Upon termination, each Party shall delete any of the other Party's Confidential Information still in their possession (with the exception of Customer Data as set forth in the preceding paragraph) from computer storage or any other media including, but not limited to, online and off-line libraries; and each Party shall return to the other Party or, at the other Party's option, destroy, all physical copies of any the other Party's Confidential Information.

11.4 **Survival**. The provisions titled Confidentiality, Proprietary Rights, Warranties and Disclaimers, Indemnification, Limitation of Liability, Post-termination Records Administration Service, and Effects of Termination and General Provisions shall survive termination of this Agreement.

12. GENERAL PROVISIONS.

12.1 **Entire Agreement**. This Agreement (which includes any SOW completed by Customer, as well as those terms and documents incorporated by reference) constitute the entire agreement, and supersedes all prior negotiations, understandings or

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agreements (oral or written), between the parties about the subject matter of this Agreement. No oral statements or prior written material not specifically incorporated herein will be of any force and effect, and no changes in or additions to this Agreement will be recognized unless incorporated herein by amendment as provided herein and signed by duly authorized representatives of both parties. The application of Customer's general terms and conditions in any general vendor acknowledgement or Customer's other general purchasing conditions (including pre-printed boilerplate terms) are hereby expressly excluded, rejected, and objected to by eVisit. This Agreement shall apply and supersede the pre-printed terms and conditions of any form submitted by either party, unless such form is expressly included herein.

12.2 **Waivers, Consents and Modifications**. No waiver, consent or modification of this Agreement shall bind eVisit or Customer unless in writing and signed by the party against which enforcement is sought. This Agreement may be modified solely upon the written agreement of both Customer and eVisit. The failure of either party to enforce its rights under this Agreement at any time for any period will not be construed as a waiver of such rights.

12.3 **Severability**. If any provision of this Agreement is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

12.4 **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without regard to its conflicts of law provisions. Neither the United Nations Convention on Contracts for the International Sale of Goods nor any implementation of the Uniform Computer Information Transactions Act in any jurisdiction shall apply to this Agreement. Except that eVisit may seek equitable or similar relief from any court of competent jurisdiction to prevent or restrain any breach or threatened breach of this Agreement by Customer, exclusive jurisdiction and venue for actions related to this Agreement or Customer's use of the Service will be the state and federal courts located in the State of Arizona having jurisdiction over eVisit' offices, and both parties consent to the jurisdiction of such courts with respect to any such actions. In any action or proceeding to enforce or interpret this Agreement, the prevailing party will be entitled to recover from the other party its costs and expenses (including reasonable attorneys' fees) incurred in connection with such action or proceeding and enforcing any judgment or order obtained.

12.5 **Force Majeure**. If the performance required of the Agreement is delayed by an act of God, civil commotion, governmental or sovereign conduct (including but not limited to delays in the issuance of permits or approvals), strikes, war, terrorism, lock-outs, labor trouble, restrictive laws or regulations, the conduct of any person not a party hereto, or any other cause without fault to and beyond the control of the party ("**Force Majeure Event**"), then such party shall be excused from such performance for the period of time that is reasonably necessary to remedy the effects of the occurrence causing the delay (except payment obligations); provided, however, the Agreement may be terminated by either party if the Force Majeure Event continues for a period in excess of

sixty (60) days. Any party whose performance is delayed or prevented by any cause or condition within the purview of this Section shall promptly notify the other party thereof, the anticipated duration of the delay or prevention, and the action being taken to overcome and mitigate the delay or failure to perform.

12.6   **Notices**. Any notices, demands or communications required, permitted or desired to be given hereunder shall be in writing, provided in English, and shall be deemed given when either personally delivered, sent by electronic mail, confirmed facsimile, or certified mail, prepaid and return receipt requested, addressed to the other party, which, in the case of Customer, shall be the address provided to eVisit in the SOW upon signing up for the Service, and, in the case of eVisit, shall be eVisit Inc., **1201 S. Alma School Rd. #15500, Mesa, AZ 85210** or, if different, the address set forth in the contact section of eVisit' website, or at such other address for either party as is designated in a subsequent notice.

12.7   **Assignment**. This Agreement shall be binding upon and for the benefit of eVisit, Customer and their permitted successors and assigns. Either party may assign this Agreement to its Affiliates and as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets or business to which this Agreement relates. Except as expressly stated in this Agreement, neither party may otherwise assign its rights or obligations under this Agreement either in whole or in part without first providing written notice and obtaining the written consent of the other party, and any attempted assignment or delegation without such consent will be void.

12.8   **Independent Contractors**. The parties shall be independent contractors under this Agreement, and nothing herein will constitute either party as the employer, employee, agent or representative of the other party, or both parties as joint ventures or partners for any purpose.

SERVICE LEVEL AGREEMENT

This Service Level Agreement ("**SLA**") describes the service levels (the "**Service Levels**") applicable to the subscription services provided by **eVisit, Inc.** ("**eVisit**") for the Service provided pursuant to the Subscription Services Agreement ("**SSA**") between the parties.

1.   **DEFINITIONS**.

     1.1.   "**System Availability**" will mean, with respect to any particular calendar month, the ratio obtained by subtracting Unscheduled Downtime during such month from the Total Time during such month, and thereafter dividing the difference so obtained by the total time during such month.

     1.2.   "**System Uptime**" will mean the total amount of time during any calendar month, measured in minutes, during which Customer has the ability to access the features and functions of the Service as contemplated in this Subscription Services Agreement.

     1.3.   "**Scheduled Downtime**" will mean the total amount of time during any calendar month, measured in minutes, during which Customer is not able to access the Service due to planned system maintenance performed by eVisit or its subcontractors. eVisit will exercise reasonable efforts to perform scheduled system maintenance between the hours of 8:00 PM and 6:00 AM Mountain Standard Time, and to provide notice to Customer at least twenty-four (24) hours in advance of a planned system maintenance.

     1.4.   "**Unscheduled Downtime**" will mean the total amount of time during any calendar month, measured in minutes, during which the Customer is not able to access the features and functions of the Service as contemplated in the Subscription Services Agreement, other than Scheduled Downtime, as defined above.

     1.5.   "**Total Monthly Time**" is deemed to include all minutes in the relevant calendar month, to the extent such minutes are included within the term of the Subscription Services Agreement.

2.   **PERFORMANCE**.

     2.1.   **System Availability**.   eVisit will undertake commercially reasonable measures to ensure that System Availability equals or exceeds 99.5% during each calendar month (the "**Service Standard**"), provided that any Unscheduled Downtime occurring as a result of (i) Customer's breach of any provision of the Agreement; (ii) non-compliance by Customer with any provision of this SLA; (iii) incompatibility of Customer's equipment or software with the Service; (iv) performance of Customer's Systems; (v) force majeure, as defined in Section 11.5 of the Subscription Services Agreement, or (vi) issues with the internet backbone provider, Third Party Hosting Provider or general network

connectivity shall not be considered toward any reduction in System Availability measurements. eVisit will not be liable for any lost revenues during down time.

2.2. **Access to Support; Response Times**. Customer may report Unscheduled Downtime at any time by email at support@evisit.com and by telephoning eVisit during normal "**Business Hours**" (9:00 AM to 5:00 PM Mountain Standard Time, Monday through Friday, excluding eVisit holidays) at +1 844-693-8474.

eVisit will exercise commercially reasonable efforts to initiate remedial activity within two (2) hours of each report of Unscheduled Downtime during Business Hours for issues affecting connectivity and Server Availability. During non-Business Hours, eVisit will initiate remedial activity within one (1) day for issues affecting connectivity and Server Availability.

2.3. **System Monitoring and Measurement**. eVisit will provide for monitoring of System Availability on an ongoing basis. All measurements of System Availability will be calculated on a monthly basis for each calendar month during the term of the Subscription Services Agreement.

3. **CUSTOMER REQUIREMENTS**.

3.1. **Customer Obligations**. Customer is responsible for maintenance and management of its computer network(s), servers, software, and any equipment or services related to maintenance and management of the foregoing. Customer is responsible for correctly configuring its systems in accordance with any instructions provided by eVisit, as may be necessary for provision of access to the features and functions of the Service.

3.2. **Non-Performance by Customer.** The obligations of eVisit set forth in this SLA will be excused to the extent any failures to meet such obligations result in whole or in part from Customer's or its users failure(s) to meet the foregoing obligations.

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BUSINESS ASSOCIATE AND CONFIDENTIALITY AGREEMENT

In the event Customer is a "**Covered Entity**" and **eVisit** is a "**Business Associate**" (jointly, the "**Parties**"), the Parties hereby enter into this Business Associate And Confidentiality Agreement ("**BAA**").

Recitals

A.   Covered Entity has retained eVisit to provide certain products and services (the "**Service**"), as set forth in the Subscription Services Agreement and the Service Level Agreement in place between the Parties (collectively, the "**Services Agreement**").

B.   The Parties' performance under the Services Agreement may or will require Covered Entity to disclose and/or provide to Business Associate private and/or protected health and/or medical information as defined under, and governed by, applicable state law, and Individually Identifiable Health Information and/or Protected Health Information as defined in the Health Insurance Portability and Accountability Act ("**HIPAA**"), the Health Information Technology for Economic and Clinical Health Act ("**HITECH**"), and/or regulations promulgated under such laws (state law, HIPAA, and HITECH are hereafter referred to collectively as "**Privacy Laws**") and may or will require eVisit to receive, access, review, maintain, retain, modify, record, store, forward, produce, hold, use, create, disclose, and/or destroy such information (the "**PHI**").

C.   eVisit's performance of the Service may give rise to certain legal obligations under Privacy Laws and eVisit may be considered a "Business Associate" and Customer may be a "Covered Entity" as those terms are defined in 45 C.F.R. § 160.103.

Accordingly, the parties hereto ("**Parties**") agree to the terms and conditions set forth below:

Terms of Business Associate Agreement

1.   **PERFORMANCE AND COMPLIANCE WITH LAW**. The Parties will work together in good faith to determine applicability of Privacy Laws, and they agree to comply with applicable Privacy Laws and to amend this BAA as necessary for Covered Entity and Business Associate to comply with applicable Privacy Laws, as modified and/or supplemented from time to time.

2.   **INTERPRETATION**. Any ambiguity herein must be resolved in favor of a meaning that permits both Covered Entity and Business Associate to comply with applicable Privacy Laws, consistent with the Services Agreement. Capitalized terms not specifically defined in this BAA have the meanings assigned to them under 45 C.F.R. Parts 160, 162 and 164.

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3.   **PRIVILEGES AND PROTECTIONS**. This BAA does not constitute or evidence a waiver of, nor does it amend, the attorney-client privilege, the attorney work-product doctrine, and/or any other applicable privileges or protections.

4.   **BUSINESS ASSOCIATE'S OBLIGATIONS**.

4.1   **Handling of the PHI and Safeguards**.   Business Associate will endeavor to prevent access, use and/or disclosure of PHI other than as permitted or required by this BAA, the Services Agreement, and/or applicable Privacy Laws, and will implement and use, at all times, appropriate administrative, physical and technical safeguards designed to (i) prevent access, use or disclosure of PHI other than as permitted by this BAA and/or Privacy Laws; and (ii) reasonably and appropriately protect the confidentiality, integrity, security, and availability of PHI.

4.2   **Minimum Necessary Use and Disclosure**.   Business Associate will determine the amount of PHI necessary for performance of the Service and will make reasonable efforts to limit the receipt, use, and disclosure of PHI to the minimum necessary as required by Privacy Laws.

4.3   **Management and Administration**.   In using and/or disclosing PHI for management and administrative purposes, Business Associate will comply with all applicable Privacy Laws and with Covered Entity's obligations under subpart E of 45 CFR Part 164.

4.4   **Disclosures to Subcontractors and/or Third Parties**.   Prior to disclosing any PHI to any third persons and/or entities, Business Associate shall ensure that all representatives, subcontractors, persons and/or entities (other than entities that are merely conduits) to whom Business Associate discloses or provides the PHI execute a written Business Associate Agreement, as required by Privacy Laws, in which such third persons and/or entities expressly agree to the same restrictions and conditions that apply to Business Associate hereunder, to the extent required by Privacy Laws. If a Business Associate Agreement is not required by the Privacy Laws, Business Associate shall obtain reasonable assurances from all persons and entities who have access to or are recipients of the PHI that: (i) the PHI will be held confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the third party; and (ii) the third party will promptly notify Business Associate of any Compromise of PHI, and Business Associate will, in turn, notify Covered Entity.

(a)   Pursuant to applicable state law requirements to allow individuals to request the disclosure of their PHI to third parties, HIPAA's authorization requirements for the use and/or disclosure under 45 C.F.R. § 164.508, and the Records Administration Service provided in Section 11.2(e) of the Services Agreement, Business Associate will respond directly to any individual's authorization to disclose his or her PHI to a third party, including, but not limited to, the disclosure of such PHI to a third party.

4.5 **Access to, or Amendment of, PHI**. To the extent Business Associate maintains any PHI in a Designated Record Set, Business Associate agrees:

(a) to provide access to the PHI in a Designated Record Set to authorized individuals as required by Privacy Laws and in the time, manner, and format designated by such individuals to the extent required by Privacy Laws;

(b) to respond directly to any such authorized individual's request for access to his or her PHI in a Designated Record Set pursuant to the Records Administration Service provided in Section 11.2(e) of the Services Agreement and 45 C.F.R. § 164.525; and

(c) to make any amendment(s) to PHI in a Designated Record Set as requested by Covered Entity and/or authorized individuals pursuant to 45 C.F.R. § 164.526.

4.6 **Restrictions on PHI**. Business Associate will comply with any patient restrictions on the Use and Disclosure of PHI reasonably requested by Covered Entity under Section 6.2 below.

4.7 **Reporting Breaches and Security Incidents**. Within five(5) days of obtaining knowledge thereof, Business Associate will promptly report to Covered Entity any impermissible use or disclosure under Privacy Laws that compromises the security or privacy of the PHI ("**Breach**") and any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system that does not compromise the security or privacy of the PHI ("**Security Incidents**"). Notice is hereby deemed provided, and no further notice will be given, with respect to routine unsuccessful attempts at unauthorized access to ePHI such as pings and other broadcast attacks on firewalls, denial of service attacks, failed login attempts, and port scans. Business Associate will identify and respond internally to suspected or known Security Incidents, and will mitigate, to the extent practicable, their harmful effects, document their outcomes, and provide such documentation to Covered Entity upon request.

The Parties will meet and confer in good faith before notifying affected individuals and/or commencing any legal action regarding any suspected or actual Breach or Security Incident and/or breach of this BAA, so long as doing so will not constitute a violation of Privacy Laws, and shall comply with applicable Privacy Laws regarding the need for and nature of any notification.

If the Parties are unable to agree during their meet and confer, Business Associate will not be responsible for any notification obligations under Privacy Laws, and specifically, without limitation, obligations under section 13402 of HITECH.

4.8 **Accounting of PHI Disclosures**. At the request of Covered Entity, Business Associate will document and report to Covered Entity all disclosures of PHI that are required for Covered Entity to provide an accounting under 45 C.F.R. § 164.528

and/or Privacy Laws. If an individual contacts Business Associate directly for such an accounting, Business Associate will direct the individual to contact Covered Entity.

4.9 **Audits and Inspections**. Business Associate will make its internal practices, books, and such records as are not protected by applicable legal privilege or work product protection relating to the use, disclosure, and/or compromise of PHI available to Covered Entity to determine compliance with applicable Privacy Laws and this BAA, and to the Secretary of the United States, Department of Health and Human Services, and/or other authorized lawful authority as required by law or authorized by Covered Entity in writing.

4.10 **Sale and Use of PHI for Fundraising and/or Marketing.** Business Associate may receive remuneration in exchange for using and/or disclosing de-identified data (e.g. the number of patients complaining of flu symptoms in a given period) for Fundraising and/or Marketing purposes.

5. **COVERED ENTITY'S OBLIGATIONS**.

5.1 **Authorizations**. Covered Entity will obtain all consents and authorizations necessary and/or required by law for both parties to perform under the Services Agreement, including Business Associate's communications with patients on Covered Entity's behalf if applicable, and for both parties to fulfill their obligations under applicable Privacy Laws and this BAA.

5.2 **Restrictions and Revocations**. Covered Entity will promptly notify Business Associate in writing of any patient-requested restrictions, changes to, or revocation of, consent and/or authorization to use and/or disclose PHI that may affect Business Associate's ability to perform its obligations under this BAA and/or the Services Agreement.

5.3 **Notice of Privacy Practices**. Covered Entity will promptly provide Business Associate a copy of its Notice of Privacy Practices ("**NOPP**") under Privacy Laws, including without limitation 45 C.F.R. § 164.520, and any changes to the NOPP that may affect Business Associate's use and/or disclosure of PHI, performance of this BAA, and/or the Services Agreement.

5.4 **Accounting of PHI Disclosures**. Covered Entity will include in individual accountings requested under the Privacy Laws, including without limitation, 45 C.F.R. § 164.528, any disclosures by Business Associate.

5.5 **Meet and Confer**. Upon any suspected or actual Breach, unauthorized use and/or disclosure of the PHI or breach of this BAA, Covered Entity will meet and confer in good faith with Business Associate before notifying affected individuals and/or commencing any legal action, so long as doing so will not constitute a violation of Privacy Laws.

6. **TERM AND TERMINATION**.

6.1   **Term**. The term of this BAA will commence upon receipt by Business Associate of any PHI or the date set forth below, whichever is earlier, and will terminate upon discharge of Business Associate's obligations under the Services Agreement and this BAA , including the obligations set forth in Section 7.2 below, and/or performance of the Service. Notwithstanding the foregoing, Business Associate's obligations under the Services Agreement and this BAA shall extend throughout the duration of the Records Administration Service as defined in Section 11.2(e) of the Services Agreement.

6.2   **Termination Upon Bankruptcy**. In the event of the filing of a petition in voluntary bankruptcy or an assignment for the benefit of creditors by a Party, or upon other action taken or suffered, voluntarily or involuntarily, under any federal or state law for the benefit of debtors by the Party, except for the filing of a petition in involuntary bankruptcy against the Party which is dismissed within thirty (30) days thereafter, the other Party may give notice of the immediate termination of this BAA.

6.3   **Termination Without Cause**. Either Party may terminate this BAA at any time without cause by providing the other Party with thirty (30) days prior written notice; termination of this BAA will result in automatic termination of the SSA and the Service provided thereunder, but will not free Covered Entity from the full financial obligations of the Services Agreement and accompanying SOW for its contracted term.

6.4   **Breach**. If either party hereto breaches its obligations under this BAA, the non-breaching party will provide the other with notice and a thirty (30) day period to cure the breach. If the breaching party fails to cure the breach or cure is not possible within thirty (30) days, the non-breaching party may terminate this BAA immediately upon written notice and without further legal action or declaration.

6.5   **Effect of Termination**. Upon termination of this BAA, which, as provided in Section 7.1 above, shall not precede termination of the Records Administration Services as provided in Section 11.2(e) of the Services Agreement, at the request of Covered Entity, Business Associate will return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity, provided, however, that in the event that Business Associate determines that returning or destroying the PHI is infeasible, and/or Privacy Laws require or recommend that Business Associate maintain records containing PHI, Business Associate will not return or destroy the PHI, but will extend the protections of this BAA to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible or contrary to the Privacy Laws, for so long as Business Associate maintains such PHI. Return or destruction of PHI generally will not be feasible, as applicable rules of professional conduct and/or professional responsibility and/or other state and federal laws require or recommend that Business Associate maintain records of the services provided and otherwise relating to legal representation of its clients.

7.   **MISCELLANEOUS**.

7.1   **Entire Agreement**. This BAA and its accompanying Subscription Services Agreement and SOW constitute the entire agreement between the Parties and supersede all prior negotiations, discussions, representations, or proposals, whether oral

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or written, unless expressly incorporated herein, related to the subject matter of this BAA. Unless otherwise expressly provided herein, this BAA may not be modified unless in writing signed by the duly authorized representatives of the Parties.

7.2   **Severability**. If any provision of this BAA or part thereof is found to be invalid, the remaining provisions will remain in full force and effect.

7.3   **Inconsistency.** In the event of any inconsistency between any terms(s) in the Services Agreement and this BAA, the term(s) of this BAA shall control.

7.4   **Waiver**. Any failure of a Party to insist upon strict compliance with any term, undertaking, or condition of this BAA will not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, signed and dated by the Parties to this BAA.

7.5   **No Third-Party Beneficiaries**. There are no third-party beneficiaries to this BAA. Business Associate's obligations are to Covered Entity only.

7.6   **Successors and Assigns**. This BAA will inure to the benefit of, and be binding upon, the successors and assigns of the Parties. However, this BAA is not assignable by any party without the prior written consent of the other Parties.

7.7   **Dispute Resolution**. If at any time during or after the term of this BAA either party hereto believes that a dispute exists between them, then the Parties agree that they shall promptly meet and confer in good faith to attempt to resolve such dispute before resorting to arbitration or court action. The Parties further agree that if they are unable to informally resolve any dispute between them or arising out of or relating to this BAA within thirty (30) days, then the dispute shall be submitted for resolution exclusively through confidential, binding arbitration, instead of through trial by court or jury, in accordance with the commercial, expedited dispute rules, then in effect, of either the Judicial Arbitration and Mediation Service ("**JAMS**") or the American Health Lawyers Association Alternative Dispute Resolution Service ("**AHLA**") as determined by Business Associate in its sole discretion. This BAA to arbitrate shall be specifically enforceable. Notwithstanding the foregoing each party shall bear its own attorney's fees and costs.

7.8   **Counterparts**. This BAA may be executed in counterparts, by manual, electronic, or facsimile signature, each of which will be deemed an original and all of which together will constitute one and the same instrument.

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