Subscription Agreement

This Subscription Agreement (“Agreement”) is by and between Discharge IQ, Inc. a Delaware corporation (“Discharge IQ”) and the party signifying through written or electronic signature acceptance of the terms and conditions defined herein (“Customer”) and shall be effective on the acceptance of the Agreement by Discharge IQ (“Effective Date”)

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE CLICKING THE "I AGREE" BUTTON BELOW. BY CLICKING "I AGREE", YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. CLICKING THE AGREE BUTTON IS A LEGALLY VALID WAY TO CREATE A BINDING CONTRACT AND CONSTITUTES YOUR ELECTRONIC SIGNATURE TO THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PRESS "I DO NOT AGREE", IN WHICH CASE YOU MAY NOT ACCESS OR OTHERWISE USE THE SOFTWARE AND DOCUMENTATION DEFINED BELOW. YOU REPRESENT AND WARRANT THAT YOU HAVE FULL POWER AND AUTHORITY TO ENTER INTO, DELIVER AND CARRY OUT THE TERMS OF THIS AGREEMENT.

GENERAL TERMS AND CONDITIONS

In consideration of the premises and the mutual covenants and conditions contained in this Agreement, the parties agree as follows:

Section 1. Definitions
As used in this Agreement, the following definitions shall apply:

“Authorized Active Patient” means a Customer patient who is registered in the Software and is enabled by the Customer to receive and/or respond to patient inquiries and who shall, individually or through a personal representative or Authorized User, provide data to be maintained in the Software during the term of this Agreement.

“Authorized Provider” means a physician or mid-level practitioner who is authorized by Customer to maintain Charts on the Software.

“Authorized User” means an individual employee or contractor of Customer who is authorized by Customer to utilize the Licensed Materials for Health Care Use and includes Authorized Providers.

“Chart” means the responses supplied by or on behalf of an Authorized Active Patient stored in the Software for access and Use by an Authorized Provider and Authorized User.

“Confidential Information” means information that is disclosed to one party by the other party or by a person having an obligation of confidence to such party and is designated in such writing or tangible form as confidential or proprietary or is of a nature that the recipient knew or reasonably should have known, under the circumstances, would be regarded by the owner of the information as confidential).

“Documentation” means all written end user documentation (whether printed or in an electronic retrieval format) supplied to Customer by Discharge IQ for use with or in support of the Software or its implementation, including any and all revisions, modifications, and updates thereof as may be supplied by Discharge IQ to Customer during the term of this Agreement.

“Health Care Use” Means the Authorized Provider’s Use of the Software to track the Authorized Active Patient data provided by the Authorized Active Patient or Authorized User for the purposes of
developing, modifying or rendering professional medical services in the sole and independent judgment of the Authorized Provider.

“Enrollment Fee” means the fee(s) provided in consideration for enrolling a Patient and as further described in the Business Terms, incorporated herein by reference.

“Licensed Materials” means, collectively and individually, the Software and the Documentation created and owned by Discharge IQ.

“Material Malfunction” means a material failure of the Software to perform substantially in accordance with the Documentation.

“Patient” means a patient of Customer that is receiving medical services from Customer.

“Patient Access” means Use by an Authorized Active Patient (or by an authorized agent or personal representative of an Authorized Active Patient) for the purpose of providing responses to customer’s questions, listening to or viewing of recorded or stored instructions, or copying the portion of the Patient’s Chart as Customer publishes for such purpose through the Software.

“Customer Data” means any and all information of any kind or type provided to Discharge IQ in connection with this Agreement, including through entry or submission of information electronically into the Software or solution provided by Discharge IQ.

“Customer Environment” means the computer and network equipment, third-party software and the telecommunications equipment and access (including without limitation continuous Internet access) required for Use of the Software as specified from time to time by Discharge IQ.

“Problem Report” means a written report delivered to Discharge IQ by Customer describing a suspected Material Malfunction and identifying in reasonable detail the basis for such suspicion.

“Software” means the current version of the software system known as “Discharge IQ,” in object/executable (and/or encrypted source code) form only, its published applications or ‘apps’, and any associated database structures, and the like, together with applicable revisions, modifications, and updates thereof as may be supplied by Discharge IQ to Customer during the term of this Agreement.

“Subscription Fee” means the fees remitted by Customer in exchange for the Use of the Licensed Materials described as such in the Business Terms, incorporated herein by reference.

“Subscription Term” means the period identified in the Business Terms, incorporated herein by reference.

“Support Liaison” means one Authorized User (or more than one, if approved by Discharge IQ, which approval shall not be unreasonably withheld) designated by Customer from time to time to be its representative(s) for purposes of contact with Discharge IQ for support or maintenance services, provided that each such person has been appropriately trained in the operation of the Software by Discharge IQ or by another Support Liaison.

“Use” means Authorized User or Authorized Active Patient’s access and use of the Software in accordance with the Documentation by means of a browser-based device connected to the server via a network and operating the Software through such device in accordance with the Documentation.

Section 2. License; Capacity; Term of Agreement
A. **Grant of License.** Subject to the terms of this Agreement, Discharge IQ hereby grants to Customer a non-exclusive, non-transferable (except as otherwise provided herein) and non-sublicensable license to access the Software for Use solely in accordance with the Documentation for (i) Health Care Use during any Subscription Term, (ii), and (iii) granting Patient Access to Authorized Active Patients during a Subscription Term.

B. **License Capacity.** Customer may establish and maintain Charts only for the number of Authorized Active Patients set forth in the Business Terms, as adjusted from time to time as provided therein.

C. **Term of Agreement.** The term of this Agreement shall commence on the Effective Date and continue for three (3) years unless otherwise terminated as provided herein.

### Section 3. Fees; Effects of Non-Payment

A. **Payments and Due Dates.** Customer shall pay the Enrollment Fee and Subscription Fees as provided in the Business Terms and shall pay all other amounts owed to Discharge IQ hereunder when due.

B. **Late Payments.** Payments not received within thirty days after the due date shall accrue interest from such due date at the rate of one and one-half percent (1.5%) per month or, if less, at the highest rate permitted by applicable law.

C. **Effects of Non or Late Payments.** IN THE EVENT A PAYMENT DUE UNDER THIS AGREEMENT IS NOT RECEIVED BY DISCHARGE IQ UPON THE DUE DATE THEREOF, DISCHARGE IQ MAY, WITHOUT PREJUDICE TO ANY OTHER REMEDIES AVAILABLE TO IT AND WITHOUT PRIOR NOTICE TO CUSTOMER, AT ANY TIME THEREAFTER UNTIL SUCH PAYMENT IS RECEIVED, (I) CAUSE USE OF THE SOFTWARE TO BE LIMITED TO PRINT-ONLY OR VIEW ONLY USE AND (II) SUSPEND AND WITHHOLD THE PROVISION OF ANY OR ALL SUPPORT AND MAINTENANCE SERVICES DESCRIBED HEREIN AND (III) SUSPEND ALL PATIENT QUERY/RESPONSE FUNCTIONALITY. DISCHARGE IQ’S FAILURE TO EXERCISE SUCH RIGHTS SHALL NOT OPERATE AS OR BE DEEMED A WAIVER TO EXERCISE SUCH RIGHTS THEREAFTER OR ON A LATER OCCASION.

### Section 4. Support and Maintenance

A. **Support and Maintenance Services.** If Customer has paid in full as set forth herein all Subscription Fees then due (if any) and is not otherwise in default under this Agreement, Discharge IQ during the term of this Agreement shall provide to Customer the following support and maintenance services upon the terms and conditions set forth herein:

   1. **Telephone/E-mail Support.** During Discharge IQ’s normal business hours (presently 8:00 a.m. to 6:00 p.m. prevailing Eastern time weekdays except common business holidays observed by Discharge IQ), Discharge IQ shall provide to the Support Liaison(s) operational support services consisting of telephone or e-mail consultation and assistance with respect to operation of the Software for its normal intended uses as described in the Documentation. Such services will be provided as promptly as is reasonably practicable on a first-in, first-out basis in response to Customer’s requests for services by telephone or electronic mail at such numbers and addresses as Discharge IQ shall provide to Customer from time to time. To the extent that support services requested by Customer relate to hardware, network, or other technical issues not specifically arising from the Software, or to matters of general business issues, or problems not substantially related to operation of the Software, Discharge IQ reserves the right, upon so advising Customer’s personnel, to consider such request as a request for general consultation services to be paid for by Customer at Discharge IQ’s then-current rates.

   2. **Error Correction.** In response to Problem Report, Discharge IQ shall use reasonable efforts to attempt to correct a reported Material Malfunction or shall use reasonable efforts to attempt to
provide a reasonable workaround sufficient to alleviate any material adverse effect of the problem on the utility of the Software, provided (i) Customer makes available all information, documentation, access to personnel, and testing reasonably requested by Discharge IQ from time to time to assist Discharge IQ in identifying and correcting the problem and (ii) Discharge IQ after reasonable efforts is able to duplicate such problem on its computer system and verify that the problem is in fact in the Software and not elsewhere. Customer acknowledges that the Software is complex and probably is not error-free and that all deficiencies, if any, may not be correctable or avoidable.

iii. Maintenance and Enhancement Releases. From time to time, Discharge IQ in its sole discretion may provide to Customer releases of the Software that contain changes and/or repairs to functionality and/or enhancements to functionality and/or additional functionality.

B. Other Products. From time to time, Discharge IQ may offer enhanced versions of the Software or other software products containing functionality similar to or different from that of the Software. Discharge IQ in its sole discretion will determine whether to offer any such functionality as part of the Software or as a separate product for which Discharge IQ may charge an additional license fee. Customer may, at its sole discretion, choose to accept or reject separate products for which Discharge IQ may charge an additional license fee. However, customer may not choose to accept or reject regular updates and or upgrades to the standard Discharge IQ SaaS platform.

Section 5. Patient Access
Recognizing the importance of Authorized Active Patients being involved in their care and having online access to their discharge instructions if provided by Customer, subject to the Authorized Active Patient’s agreement to the applicable terms and conditions, Discharge IQ will

i. Web App. Provide a common web portal through which Authorized Active Patients may connect to the Software.

ii. Smart Phone(s) App. Facilitate Patient Access by providing an “APP” or smart phone application published and maintained at both the Apple iTunes App Store and Google Play. No financial information of an Authorized Active Patient will be accessible to or requested by Discharge IQ in the course of facilitating such Patient Access. Customer may provide Authorized Active Patient with terms and conditions of use and/or require Authorized Active Patient’s assent to contractual terms as Customer deems appropriate in its sole discretion from time to time.

Section 6. Protected Status of Patient Data
A. Legal Compliance. Customer and Discharge IQ understand and agree the Customer Data includes Protected Health Information (“PHI”) and/or Non-public Protected Financial Information (“NPFI”), as those terms are defined by the Health Insurance Portability and Accountability Act of 1996 and implementing regulations (45 C.F.R. Parts 160, 162 and 164) and the Health Information Technology for Economic and Clinical Health Act of 2009 and implementing regulations (collectively, “HIPAA”) and the Gramm-Leach Bliley Act of 1999 (15 U.S.C.§6801, et seq.) and implementing regulations (16 C.F.R. Part 313) (“GLBA”) and are subject to protections under other state and federal laws. Protected health information (as defined in HIPAA and regulations adopted thereunder) will be subject to the business associate agreement made available via your Discharge IQ account unless a separate hard copy business associate agreement was executed by Customer and Discharge IQ.

B. License to Customer Data. Customer hereby grants to Discharge IQ a worldwide, perpetual, royalty-free and non-exclusive license to use and aggregate de-identified data with other data and to use, transmit, distribute, reproduce, modify, edit, adapt, translate and reformat such de-identified data in accordance with federal privacy rules and regulations and the Authorized Active Patient’s informed consent form. Additionally, Customer hereby grants to Discharge IQ a worldwide, perpetual, royalty-free and non-exclusive license to utilize the Customer Data for all other purposes in accordance with federal privacy rules and regulations and the Authorized Active Patient’s informed consent form, but only if (i) Discharge IQ first removes all references and attribution to Customer, (ii) Discharge IQ first
removes all personally identifiable information in accordance with 45 C.F.R. §164.514, including without limitation information that a third party could utilize to identify a specific individual. To the extent that Customer Data includes any information owned by third parties, Customer shall be solely responsible for ensuring that Customer has all necessary rights to grant these rights prior to transferring such information or allowing such information to be transferred via the Discharge IQ Solution.

Section 7. Customer Obligations

A. Customer Environment. Customer shall provide the Customer Environment and may be required to update its software and/or hardware to new versions of the same or similar products from time to time at Customer’s expense. Customer is responsible for verifying with Discharge IQ any compatibility issues prior to changing software or hardware configurations.

B. Data Security. Customer shall be solely responsible for and shall maintain, in connection with the operation of the Software, adequate administrative, technical, physical, and procedural access controls, safeguards and system security requirements and devices to ensure that access to the Software is limited to duly authorized persons and to ensure Customer Data privacy, confidentiality, integrity, authorization, authentication, non-repudiation, virus detection and eradication, and other Customer Data and network security complies with the applicable HIPAA Security Rule requirements. The Software will include functionality for assignment of user identification codes and password protected access, but Customer shall be solely responsible for evaluating the adequacy of such functionality with regard to Customer Data security and privacy, and Discharge IQ makes no representations or warranties regarding Customer's internal network and devices (and expressly disclaims any such representations and warranties, including without limitation any representation or warranty regarding compliance with, or conformity to standards of, any applicable laws, regulations, or requirements of any governing or accrediting body and any warranty that the Software or any equipment, system, or network on or through which the Software is Used will be free of vulnerability to intrusion or attack).

C. Responsibility for Use. Customer shall ensure that any Authorized Provider and Authorized User understands and acknowledges in writing that
   (i) the Software is an administrative support tool only and expressly is not to be relied upon by Authorized Providers or any other persons for medical advice or the provision of medical services,
   (ii) Patient Access is enabled solely at the discretion and to the extent determined by the Customer and is provided expressly as a convenience for Patients and expressly not for reliance by any health care provider in rendering medical advice or providing medical service to Patients,
   (iii) Customer is responsible under this Agreement for providing all Customer Data utilized in the Software; and
   (iv) the Charts reflect information entered by or on behalf of an Authorized Active Patient and does not represent certified medical record entries by a licensed professional;
   (v) the Software and the data contained in the Software does not constitute a medical record and any and all original source data should be obtained prior to rendering care to the Patient.

D. Restrictions. Customer shall not permit any person or entity to engage in any of the following:
   (i) use the Software for any purpose or in any manner not specifically authorized by this Agreement and the Documentation;
   (ii) make any copies or prints, or otherwise reproduce or print, any portion of the Licensed Materials, whether in printed or electronic retrieval format, except as expressly provided in this Agreement;
   (iii) distribute, republish, download, display, post, or transmit any portion of the Licensed Materials except as explicitly authorized by this Agreement (by way of clarification, the production of reports generated by the Software shall not be deemed a violation of this clause);
(iv) create or recreate the source code for any or all of the Software, or re-engineer, reverse engineer, decompile, disassemble, modify, or alter any or all of the Software;
(v) modify, adapt, translate, or create derivative works based upon any part of the Software, or combine or merge any part of the Software with or into any other software, content, content or documentation except as may be explicitly authorized by this Agreement, provided however that Customer may create interfaces for importing Customer Data in HL-7 format from sources approved in writing by Discharge IQ (but such approval shall not constitute endorsement or warranty as to the quality of such data, the import process, or the results achieved thereby);
(vi) refer to or otherwise use any part of the Software as part of any effort to develop a program having any functional attributes, visual expressions, or other features similar to those of Software except as may be explicitly authorized by this Agreement;
(vii) remove, erase, or tamper with any copyright, logo, name badging, or other proprietary or trademark notice printed or stamped on, affixed to, or encoded or recorded in the Software, or fail to preserve all copyright and other proprietary notices in any copy of any portion of the Software made by Customer;
(viii) except as otherwise may be expressly provided by this Agreement, operate sell, market, license, sublicense, distribute, rent, loan, or otherwise grant to any third party, including without limitation any hosting vendor, any right to use any portion of the Software without the express prior written consent of Discharge IQ (which may be withheld by Discharge IQ for any reason or conditioned upon execution by such party of a confidentiality and non-use agreement and/or other such other covenants and warranties as Discharge IQ in its sole discretion deems desirable); or
(ix) attempt to do or assist any party in attempting to do any of the foregoing.

E. Cooperation. Customer shall cooperate with and assist Discharge IQ in performing the services described in this Agreement, including without limitation providing to Discharge IQ timely access to office accommodations, facilities, and equipment during regular business hours, arranged in advance with Customer at mutually acceptable times; complete and accurate information technology-related and data from its officers, agents, and employees; and suitably configured computer and communications products.

F. Documentation. Customer acknowledges that Discharge IQ is only a Software technology company and is not a licensed healthcare provider. Customer hereby agrees that it shall accurately and correctly document all procedures, services and supplies provided by it (including services and supplies “incident to” such services and supplies) in all patient charts and in all insurance and third-party payor claim forms to be submitted by Customer (“Coding”). Customer hereby agrees that all Coding for all such services and supplies provided by Customer or its agents shall be in compliance with applicable statutes, regulations, and federal, state, or private payor health care program requirements. Customer is solely responsible for documentation of medical services rendered and compliance with maintaining adequate documentation to support the codes submitted for reimbursement to any and all payers.

G. Medical Services. Customer acknowledges that Discharge IQ is not a healthcare provider. Any and all patient protocols, patient inquiries and alerts created within the Software shall be provided solely and exclusively by the Practice. Any and all patient protocols, questions, inquiries and alerts shall be established in the sole and independent medical judgment of the Customer and Authorized Providers. Discharge IQ shall not be responsible for any and all medical decisions or the practice of medicine rendered by Customer and its agents and representatives. Customer is solely responsible for ensuring compliance with any and all incident to supervision and billing requirements.
H. **Indemnification.** Customer shall indemnify, defend, and hold harmless Discharge IQ, its directors, officers, and employees from and against any loss, cost, or liability (including without limitation reasonable attorney fees and expenses) resulting from or relating to a claim of a third party with respect to medical care provided by Customer but specifically excluding claims arising solely from the gross negligence or intentional misconduct of Discharge IQ. Customer’s obligations specified in this paragraph will be conditioned on Discharge IQ’s notifying Customer promptly in writing of such claim or threat thereof (whether or not litigation or other proceeding has been filed or served) and giving Customer full and exclusive authority for, and information for and assistance with, the defense and settlement of such claim and any subsequent appeal.

**Section 9. Disclaimer of Warranties**

DISCHARGE IQ DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE LICENSED MATERIALS OR ANY PART THEREOF OR ANY SERVICES PROVIDED BY DISCHARGE IQ, INCLUDING WITHOUT LIMITATION ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT DISCHARGE IQ KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR OTHERWISE IS IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING, OR OTHERWISE. DISCHARGE IQ FURTHER EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN CUSTOMER WITH RESPECT TO THE LICENSED MATERIALS OR ANY PART THEREOF.

Customer acknowledges

(i) that the operation of the Software will not be error free in all circumstances,
(ii) that all defects in the Software may not be corrected,
(iii) that the operation of the Software may be interrupted for reasonable periods of time by reason of defect therein or by reason of fault on the part of Discharge IQ or an independent third-party carrier; and
(iv) that the data contained in the Software may be inaccurate and should not be relied upon for rendering medical care.

**Section 10. Ownership of Licensed Materials and Data**

A. **Licensed Materials.** Customer acknowledges and agrees that, as between Discharge IQ and Customer, Discharge IQ has and retains exclusive, valid, and non-contestable ownership of the Licensed Materials and ownership of the names and marks thereof and that the foregoing constitute valuable assets and trade secrets of Discharge IQ. Discharge IQ represents and warrants that it has all rights necessary to provide the Licensed Materials and to authorize Customer to use the Licensed Materials and will defend and hold Customer harmless from any loss, liability, fine, or expense resulting from breach of such warranty.

B. **Customer Data.** As between Customer and Discharge IQ, any Customer Data shall be the exclusive property of Customer. All Customer Data shall be deemed to be Confidential Information. Customer represents and warrants it has all rights necessary to provide the Customer Data and to authorize Discharge IQ to use the Customer Data in accordance with the terms of each Patient authorization and in compliance with HIPAA and other federal and state privacy laws and regulations. Customer will defend and hold Discharge IQ harmless from any loss, liability, fine or expense resulting from breach of such representation and obligation.
C. **Suggestions.** Customer may request or recommend changes or additions to the Licensed Materials or suggest ideas for new products which Discharge IQ, at its sole option, may incorporate in the Licensed Materials or in other products that may or may not be made available to Customer. Any changes or additions made by Discharge IQ or ideas utilized by Discharge IQ, whether or not pursuant to a contract with Customer (unless otherwise expressly provided in such contract), shall be and remain the sole property of Discharge IQ and may be sold, licensed, or otherwise provided by Discharge IQ to other licensees of the Licensed Materials and other third parties in Discharge IQ's sole discretion without notice, attribution, or any payment of royalties to Customer. Except as otherwise agreed in writing with respect to a specific such item, Customer hereby assigns to Discharge IQ any and all rights, title, and interest, including without limitation copyright and patent rights, in and to any such changes and additions to the Licensed Materials made by Discharge IQ and any such ideas utilized by Discharge IQ.

**Section 11. Confidentiality and Non-use**

A. **Information Deemed Confidential.** Without limiting the definition of “Confidential Information” and whether or not otherwise meeting the criteria described therein, the Licensed Materials shall be deemed conclusively to be Discharge IQ Confidential Information and as applicable Trade Secrets as such term is defined by State law, including without limitation

(i) any data, information, documents, flow charts, logic diagrams, design concepts, technical information, processes, standards, specifications, improvements, inventions, procedures, know-how, formulae, algorithms, source and executable codes, scripts, file layouts, test materials, or the like relating in any way to the Licensed Materials; and

(ii) any accounting, financial or statistical data or information, sales and marketing information, development plans, business plans, strategies, forecasts, customer lists, Customer Data or the like of, or possessed by, either party or any affiliate thereof and not generally known to the public.

B. **Information Not Confidential.** The following shall not be deemed to be Confidential Information subject to the confidentiality and non-use provisions of this Agreement:

(i) information that was in a party's possession or knowledge at the time of disclosure by the other party and that was not acquired directly or indirectly from such other party as shown by documentary evidence;

(ii) information described in a printed publication distributed otherwise than on an expressly confidential basis; information developed independently by or on behalf of the receiving party as shown by documentary evidence; and

(iii) information disclosed to the receiving party by a third party not having an obligation of confidence of the information to the other party as shown by documentary evidence. No combination of information will be deemed to be within any of the foregoing exceptions, regardless whether the component parts of the combination are within one or more exceptions, unless the combination itself and its economic value and principles of operation are themselves so excepted.

C. **Security of Confidential Information.** In addition to any other restrictions or obligations imposed at law or provided under this Agreement, each party possessing Confidential Information of the other party will maintain all such Confidential Information under secure conditions, using reasonable security measures and in any event not less than the same security procedures used by such party for the protection of its own Confidential Information of a similar kind.

D. **Non-Disclosure Obligation.** Except as otherwise may be permitted by this Agreement, neither party shall disclose any Confidential Information of the other party to any third party without the express prior written consent of the other party; provided, however, that either party may disclose appropriate portions of Confidential Information of the other party to those of its personnel who have a substantial
need to know the specific information in question in connection with such party's exercise of rights or performance of obligations under this Agreement so long as all such personnel have been instructed that such Confidential Information is subject to the obligation of confidence set forth by this Agreement.

E. Compelled Disclosure. If either party is ordered by a court, administrative agency, or other governmental body of competent jurisdiction to disclose Confidential Information, or if it is served with or otherwise becomes aware of a motion or similar request that such an order be issued, then such party will not be liable to the other party for disclosure of Confidential Information required by such order if the such party complies with the following requirements:

(i) if an already-issued order calls for immediate disclosure, then such party promptly shall move for or otherwise request a stay of such order to permit the other party to respond as set forth in this paragraph;
(ii) such party promptly shall notify the other party of the motion or order by the most expeditious possible means; and
(iii) such party shall join or agree to (and in any case shall not oppose) a motion or similar request by the other party for an order protecting the confidentiality of the Confidential Information, including joining or agreeing to (and in any case not opposing) a motion for leave to intervene by the other party.

Notwithstanding the foregoing, neither party is obligated to take any action prohibited under law or by a regulatory authority.

F. Non-Use Obligation. Except as expressly authorized in this Agreement, during the term of this Agreement and for so long as the information is deemed Confidential Information or a Trade Secret under State laws, neither party shall use any Confidential Information or Trade Secrets of the other party, without the express prior written consent of the other party and as expressly permitted by this Agreement.

G. Copying of Confidential Information. Except as otherwise may be permitted by this Agreement, neither party shall copy, duplicate, reverse engineer, reverse compile, disassemble, record, or otherwise reproduce any part of any Confidential Information of the other party, nor attempt to do any of the foregoing, without the prior written consent of the other party. Any tangible embodiments of Confidential Information of a party that may be generated by the other party, either pursuant to or in violation of this Agreement, will be deemed to be the sole property of the first party and shall be fully subject to the obligations of confidence set forth herein.

H. Proprietary Legends. Without the other party's prior written consent, neither party shall remove, obscure, or deface on or from any tangible embodiment of any Confidential Information any proprietary legend relating to the other party's rights.

I. Reports of Misappropriation. Each party promptly shall report to the other party any attempt by any person of which such party has knowledge or becomes aware

(i) to use, disclose or copy Confidential Information without authorization from the other party or
(ii) to copy, reverse assemble, reverse compile or otherwise reverse engineer any part of the Software.

J. Post-Termination Procedures. Promptly upon any termination of this Agreement or other termination of a party's right to possess and/or use Confidential Information, each party shall turn over to the other party (or destroy and certify the same in writing, if agreed in writing by the other party) any disks, tapes, documentation, drawings, notes, memoranda, specifications, devices, documents, or any other tangible embodiments of any Confidential Information of the other party, including without limitation all copies of the Licensed Materials remaining in the possession of Customer or any person acquiring such copy through Customer. Discharge IQ is not providing hosting services and within one year
following the termination of this Agreement, provided Customer has paid in full all Enrollment Fees and Subscription Fees, Customer shall submit a request to Discharge IQ to receive a copy of the data in the format maintained by Discharge IQ. Discharge IQ shall have no obligations to retain or store any data in the Software.

Section 12. Risk Allocation; Limitation of Liability

A. EXCLUSION OF INCIDENTAL AND CONSEQUENTIAL DAMAGES. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM THE OTHER PARTY’S RIGHTS) FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND REGARDLESS OF WHETHER THE PARTY LIABLE OR ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW, SHOULD HAVE ANTICIPATED, OR IN FACT KNEW OF THE POSSIBILITY THEREOF. IN NO EVENT SHALL DISCHARGE IQ BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS BY ANYONE. THE PROVISIONS OF THIS PARAGRAPH ARE INDEPENDENT OF, SEVERABLE FROM, AND TO BE ENFORCED INDEPENDENTLY OF ANY OTHER ENFORCEABLE OR UNENFORCEABLE PROVISION OF THIS AGREEMENT.

B. MAXIMUM AGGREGATE LIABILITY. IN NO EVENT SHALL DISCHARGE IQ’S AGGREGATE LIABILITY TO CUSTOMER (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY CUSTOMER), WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND ALL TIMES ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE FEES PAID HEREUNDER TO DISCHARGE IQ DURING THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. THE PROVISIONS OF THIS PARAGRAPH ARE INDEPENDENT OF, SEVERABLE FROM, AND TO BE ENFORCED INDEPENDENTLY OF ANY OTHER ENFORCEABLE OR UNENFORCEABLE PROVISION OF THIS AGREEMENT.

C. INFRINGEMENT. In the event of a third-party claim that any Licensed Materials infringe the intellectual property or proprietary rights of a third party, or in Discharge IQ’s opinion such a claim is likely to occur, Customer shall permit Discharge IQ, at its option and expense, either to:
(i) procure for Customer the right to continue using the Licensed Materials;
(ii) replace or modify the same so that it becomes non-infringing but remains equally functional for Customer’s purpose, or
(iii) immediately terminate both parties’ respective rights and obligations under this Agreement with regard to the Licensed Materials. In no event shall Discharge IQ be liable for, and Customer will indemnify Discharge IQ against, any claim arising from:
(i) alteration or modification of any Licensed Materials by Customer; or
(ii) Discharge IQ’s compliance with Customer’s designs, specifications, or instructions; or
(iii) Customer’s use of the Licensed Materials after Discharge IQ has informed Customer of modifications or changes in the Licensed Materials or the Customer Environment required to avoid such claims if such claim would have been avoided by implementation of Discharge IQ’s recommended modifications or changes.

D. INTENTIONAL RISK ALLOCATION. Each party acknowledges that the provisions of this Agreement were negotiated, as a material part of the agreement memorialized herein, to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with
the transactions involved with this Agreement. The warranty disclaimers and limitations in this Agreement are intended, and have as their essential purpose, to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended, and have as their essential purpose, to limit the forms of relief available to the parties.

**Section 13. Breach; Termination**

A. **Notice of Breach, Cure Period**:

   (i) In the event of a breach of any provision of this Agreement caused by Customer’s failure to remit payment in a timely manner, Discharge IQ may suspend Support and Maintenance Services in its sole and absolute discretion after providing ten (10) days prior written notice to Customer of the breach of payment. If nonpayment continues for more than thirty (30) days, Discharge IQ may terminate the Agreement in its sole and absolute discretion.

   (ii) In the event of a breach of any provision of this Agreement caused by a non-willful breach of an obligation of Customer relating to Discharge IQ's Confidential Information, or any other obligation of this Agreement other than payment, Customer shall have five business days to cure the breach after Discharge IQ submits written notice thereof.

   (iii) If the breach is a willful breach of an obligation of Customer relating to Discharge IQ's Confidential Information, then Discharge IQ, in its sole discretion, may specify in the notice of breach that no cure period will be permitted and the Agreement shall terminate immediately.

   (iv) If the breach is other than a breach of the kind described above in this paragraph, then the cure period will be ninety (90) days after the non-breaching party submits written notice to breaching party

B. **Termination**

   (i) If a breach of any provision of this Agreement has not been cured at the end of the applicable cure period, if any (or upon such breach if no cure period is permitted), then the non-breaching party thereupon may terminate this Agreement by notice to the other party.

   (ii) This Agreement and the license granted herein shall terminate automatically, to the extent permitted by applicable law in the jurisdiction or jurisdictions in question, if Customer is or becomes insolvent, makes an assignment for the benefit of its creditors, files a petition in bankruptcy, receivership, reorganization, or other like proceeding under any present or future debtor relief law (or is the subject of an involuntary such petition or filing that is not dismissed within sixty (60) days after the effective filing date thereof), or admits of a general inability to pay its debts as they become due. Upon receipt of Customer’s written request within thirty (30) days of any termination, Discharge IQ will make the Customer Data available to Customer in a commonly accepted data structure pursuant to Discharge IQ’s standard policies.

   (iii) In the event that any part of this Agreement is reasonably determined to violate federal, state or local laws, rules or regulations or if applicable jeopardize Customer’s tax exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or comparable provisions of state law, or any of its bond indebtedness, the parties agree to negotiate, in good faith, revisions to the provision or provisions that are in violation. In the event the parties are unable to agree to new or modified terms as required to bring the entire Agreement into compliance, either party may terminate this Agreement or the provision or provisions that would violate federal, state or local laws, rules or regulations on thirty (30) days written notice to the other party.
Section 14. Taxes
Customer shall pay when due all taxes or levies based on or in any way measured by this Agreement or Customer's use of the Licensed Materials or any portion thereof, or any services related thereto, excluding taxes based on the Discharge IQ's net income, but including without limitation sales and use taxes and personal property taxes, if any, for any such tax or levy against Customer in accordance with applicable law. If Customer challenges the applicability of any such tax or levy Customer shall pay such tax or levy to the appropriate taxing authority not later than the date such tax or levy would become delinquent; Customer thereafter may challenge such tax and seek refund thereof from the taxing authority.

Section 15. Escalation and Dispute Resolution Procedure
Except with respect to a claim that Customer has violated its covenants in this Agreement relating to Discharge IQ's Confidential Information, for which Discharge IQ may seek injunctive relief as provided herein, any controversy, dispute, or disagreement arising out of or relating to this Agreement or the breach thereof shall be resolved in accordance with the procedure set forth in this paragraph. Discharge IQ and Customer shall attempt in good faith to resolve any such matter promptly by negotiation between executives who have authority to settle the same. All reasonable requests for information made by one party to the other will be honored. All negotiations pursuant to this paragraph will be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the matter has not been resolved by these persons within ninety (90) days of the disputing party's notice, the matter shall be submitted to a single arbitrator for arbitration in Atlanta, Georgia, pursuant to the then-current rules and procedures of the American Health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration. The award of the arbitrator shall be binding and conclusive upon the parties, and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The arbitrator is not empowered to award damages in excess of compensatory damages subject to the limitations provided herein, and Discharge IQ and Customer each hereby irrevocably waives any right to recover such damages with respect to any dispute resolved in accordance with this paragraph. Each party to the arbitration shall bear its own costs; the cost of the arbitrator shall be split by the parties.

Section 16. Other Provisions
A. Survival. The covenants herein concerning indemnification shall survive indefinitely following any termination or expiration of this Agreement, and the Confidential Information obligations herein shall survive for so long as the information is deemed Confidential Information or a Trade Secret under State law.

B. Assignment. Customer may transfer or assign some or all of its rights and/or delegate some or all of its obligations under this Agreement only with the express prior written consent of Discharge IQ, which may be granted or withheld in Discharge IQ's sole discretion; provided, however, Customer may assign all of its rights hereunder indissolubly to any wholly-owned subsidiary of Customer or to Customer's parent entity or to any wholly-owned subsidiary of such parent entity, or to a purchaser of substantially all of Customer's assets, so long as such assignee agrees in writing to comply with Customer's obligations under, and to be bound by, this Agreement and the assignee has sufficient assets and financial resources to remit payment for the Enrollment Fees and Subscription Fees (this clause does not in itself authorize Customer to delegate its duties under this Agreement). Any expansion of Use under this Agreement will remain subject to Discharge IQ’s applicable fees. Any purported transfer or assignment by Customer of any right under this Agreement otherwise than in accordance with the provisions of this paragraph shall be null and void and a breach of this Agreement. This Agreement shall be fully assignable by Discharge IQ.

C. Entire Agreement. Except as may be expressly provided otherwise herein, this Agreement and any order form and Remote Patient Monitoring (RPM) Subscription Agreement between Discharge IQ and Customer constitute the entire agreement between the parties concerning the subject matter thereof. No
prior or contemporaneous representations, inducements, promises, or agreements, oral or otherwise, between the parties with reference thereto will be of any force or effect. Each party represents and warrants that, in entering into and performing its obligations under this Agreement, it does not and will not rely on any promise, inducement, or representation allegedly made by or on behalf of the other party with respect to the subject matter hereof, nor on any course of dealing or custom and usage in the trade, except as such promise, inducement, or representation may be expressly set forth herein. Each of Customer and Discharge IQ are independent contractors in connection with this Agreement and no agency, joint venture or franchise relationship is created. Discharge IQ and Customer are the sole parties to this Agreement. There are no third party beneficiaries to this Agreement (except Indemnitees under the Indemnification section).

D. Amendment and Waiver. This Agreement may be modified in writing and duly executed by the party or parties to be bound thereby or through consent to modified electronic terms and conditions made available through the Customer’s account. Continued use of the Subscription Services after posting modified terms and conditions shall be deemed consent to such modified terms and conditions. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect the right of such party to require performance of that provision. Any waiver by either party of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself or a waiver of any right under this Agreement.

E. Severability. If any one or more of the provisions of this Agreement should be ruled wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, then

(i) the validity and enforceability of all provisions of this Agreement not ruled to be invalid or unenforceable will be unaffected;

(ii) the effect of the ruling will be limited to the jurisdiction of the court or other government body making the ruling;

(iii) the provision(s) held wholly or partly invalid or unenforceable would be deemed amended, and the court or other government body is authorized to reform the provision(s), to the minimum extent necessary to render them valid and enforceable in conformity with the parties’ intent as manifested herein; and

(iv) if the ruling, and/or the controlling principle of law or equity leading to the ruling, subsequently is overruled, modified, or amended by legislative, judicial or administrative action, then the provision(s) in question as originally set forth in this Agreement will be deemed valid and enforceable to the maximum extent permitted by the new controlling principle of law or equity.

F. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the state of Georgia (other than its conflicts of law provisions).

G. Headings. The headings of the sections used in this Agreement are included for convenience only and are not to be used in construing or interpreting this Agreement.

H. Notice. Except as otherwise expressly provided herein, required notices under this Agreement shall be deemed delivered (i) when personally delivered, (ii) on the second business day after deposit when sent by certified or registered mail, or (iv) on the next business day when sent with next-business-day instruction by recognized overnight document delivery service. Such notices shall be sent to Discharge IQ at ATTN: CEO & President, 5810 Plantation Drive, Roswell, Georgia 30075, and to Customer at the address set forth in the Business Terms. Either party may change its address for purposes of notice by written notice thereof to the other party.

I. Force Majeure. Except with respect to any payment obligations, neither party shall be liable for any failure to perform its obligations under this Agreement if such failure arises, directly or indirectly, out
of causes reasonably beyond the direct control of such party, including without limitation acts of God, acts of terrorists or criminals, acts of domestic or foreign governments, change in any law or regulation, fires, floods, explosions, epidemics, disruptions in communications, power, or other utilities, strikes or other labor problems, riots, or unavailability of supplies.

J. **Attorneys’ Fees.** If litigation or other action is commenced between the parties concerning any dispute arising out of or relating to this Agreement, the prevailing party in any contested ancillary proceeding relating to the action (for example, motions to transfer, to compel discovery, etc.) and the prevailing party in the action itself will be entitled, in addition to any other award that may be made, to recover all court costs and other official costs and all reasonable expenses associated with the ancillary proceeding or the action, including without limitation reasonable attorneys’ fees and expenses.

K. **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the parties and their successors and assigns permitted by this Agreement.

L. **Injunctive Relief.** Recognizing the unusual nature of computer software and trade secrets, Customer acknowledges that any violation by Customer of its covenants in this Agreement relating to Discharge IQ's Confidential Information, including without limitation the Software, would result in irreparable harm and damage to Discharge IQ that is largely intangible but nonetheless real and that is incapable of complete remedy by an award of damages. Accordingly, any such violation shall give Discharge IQ the right to a court-ordered injunction or other appropriate order to enforce specifically those covenants. Customer agrees to pay Discharge IQ any expenses, including without limitation attorney fees and expenses, incurred in obtaining such specific enforcement (in addition to any other relief to which Discharge IQ may be entitled).

M. **Counterparts.** This Agreement may be executed in separate counterparts, each of which so executed and delivered by facsimile, electronic transmission, mail or courier service shall constitute an original, but all such counterparts shall together constitute one and the same instrument.

N. **Use of Name.** Neither party shall use the other party’s name without the other party’s prior written consent (which shall not be reasonably withheld) unless required by applicable law. Notwithstanding the foregoing, Customer shall be able to list the Study and the patient population / conditions assessed on its public internet website.

ATLANTA 5630389.1
Business Associate Agreement

This Business Associate Agreement (this “Agreement”) is entered into on the “Effective Date” of the ChronicCareIQ Subscription Agreement by and between DischargeIQ, Inc. dba ChronicCareIQ (“Business Associate”) and Practice. (“Covered Entity”). Business Associate and Covered Entity may be referred to herein as a “Party” or the “Parties”.

RECITALS:

Covered Entity provides services that pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) requires Covered Entity to restrict the uses and disclosures of Protected Health Information, as defined by HIPAA, in accordance with the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E as amended from time to time (the “Privacy Rule”), and Subparts A and C as amended from time to time (the “Security Rule”) under HIPAA, which was amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), as Title XIII Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub.L. 111-5). Pursuant to the services agreement between Covered Entity and Business Associate, Business Associate is receiving access to use or disclose Protected Health Information for the purposes of providing services on behalf of Covered Entity. Thus, pursuant to the state and federal regulations, Business Associate is required to comply with the state privacy and security laws that are not preempted by HIPAA, HIPAA Privacy and Security Rules, the HIPAA requirements as amended by the HITECH Act and the HITECH Act and its accompanying and implementing regulations.

NOW, THEREFORE, the parties, in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, do hereby agree as follows:

1. Definitions. Unless otherwise provided in this Agreement, capitalized terms shall have the same meanings as set forth in the Standards for Privacy or Security of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

   a. “Breach” shall have the same meaning as the term “breach” given in 45 C.F.R. § 164.402 and shall include the unauthorized acquisition, access, use or disclosure of Protected Health Information that compromises the security or privacy of such information.

   b. “Business Associate Agreement(s)” shall mean any agreement between Business Associate and a Covered Entity, which is intended to comply with 45 C.F.R. 164.502(e) and 45 C.F.R. 164.504(c), as amended.
c. “Designated Record Set” shall mean a group of records maintained by or for a covered entity that is (i) the medical records about Individuals maintained by or for covered entity, (ii) enrollment, and case or medical management record systems maintained by or for a Health Plan, and (iii) used, in whole or in part, by or for covered entity to make decisions about Individuals. For the purposes of this paragraph, the term “Record” means any items, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for covered entity.

d. “Electronic Protected Health Information” or “Electronic PHI” shall have the meaning in 45 C.F.R. 160.103.

e. “HHS” shall mean the United States Department of Health and Human Services.

f. “Individually Identifiable Health Information” shall mean information that is a subset of health information, including demographic information, that is collected from an Individual and (1) is created or received by a covered entity or an employer; (2) relates to the past, present or future physical or mental health or condition of an Individual, the provision of healthcare to an Individual; and (3) identifies the Individual or there is a reasonable basis to believe the information can be used to identify the Individual.

g. “Individual(s)” shall have the same meaning as the term “individual” in 45 C.F.R. 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

h. “Information System” means an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communications and people.

i. “Privacy Rules” shall mean the Standards for Privacy of Individually Identifiable Health Information found at 45 C.F.R. §§ 160 and 164, subparts A and E in effect or as amended, and with which compliance is required.

j. “Protected Health Information (“PHI”)” shall have the same meaning as the term “protected health information” in 45 C.F.R. 160.103.

k. “Required by Law” shall have the same meaning as the term “required by law” in 45 C.F.R. 164.103 and 45 C.F.R. 164.512(a).

l. “Secretary” shall mean the Secretary of HHS or his/her designee.

m. “Security Incident” shall have the meaning as the term “Security Incident” in 45 C.F.R. 164.304, which means the attempted or successful unauthorized access,
use, disclosure, modification or destruction of information or interference with system operations in an Information System.

n. “Security Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A, C and E, in effect or as amended, and with which compliance is required.

o. “Unsecured PHI” shall mean Protected Health Information that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in 45 C.F.R. 164.402.

2. Obligations and Activities of Business Associate.

a. Permitted Uses. Business Associate agrees to use or disclose PHI in accordance with the terms of this Agreement or as Required by Law.

b. Appropriate Safeguards. Business Associate agrees to implement appropriate and reasonable administrative, technical and physical safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.

c. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.


1) Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement, including any Security Incident of which it becomes aware. Upon discovery of a breach of the security of PHI or a Security Incident, Business Associate shall notify Covered Entity within ten (10) business days. Notice should include the identification of each individual whose PHI has been or is reasonably believed to have been breached, the PHI that was believed to be disclosed, the mitigation actions taken by the Business Associate to prevent future breaches and any other information necessary for the Covered Entity to comply with the notification requirements promulgated by HIPAA and HITECH.

2) Business Associate agrees to notify Covered Entity of any Breach of Unsecured Protected Health Information as required at 45 CFR 164.410, within ten (10) business days of the date Business Associate learns of the Breach. Business Associate shall provide such information to Covered Entity as required by the Breach Notification Standards set forth in the HITECH Act. Business Associate shall cooperate and assist Covered Entity in making the notification to third parties required by law in the event of a Breach due to Business Associate. In addition, Business Associate shall reimburse Covered
Entity for any reasonable expenses Covered Entity incurs in mitigating harm to those Individuals.

e. Agents and Subcontractors. Business Associate agrees to notify Subcontractors of the Business Associate, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity of the restrictions and conditions that apply through this Agreement to Business Associate with respect to such information, including the safeguards contained in this Agreement and to require Subcontractor to sign an agreement with the similar or same restrictions and obligations.

f. Access to Protected Health Information. Business Associate agrees to provide access to PHI maintained in a Designated Record Set, within twenty (20) days upon receipt of the request of Covered Entity, to ensure Covered Entity has reasonable time to comply with the requirements under 45 C.F.R. 164.524.

g. Amendment of Protected Health Information. Business Associate agrees to make any amendment(s) to PHI 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, in the time required by HIPAA Rules.

h. Governmental Access to Records. Business Associate agrees to make its internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received for Covered Entity, available to the Secretary, for the purposes of the Secretary determining Covered Entity’s compliance with the Privacy Rule.

i. Accounting of Disclosures. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity, to respond to an accounting of disclosures of PHI under 45 CFR §164.528. Business Associate agrees to provide Covered Entity, or an Individual, an accounting of the disclosures required by 45 C.F.R. §164.528, within twenty (20) days upon receipt of the request and in the manner directed by the accounting requirements established by HIPAA. Business Associate shall document the following information and maintain such documentation for a minimum of six (6) years for paper records and three (3) years for electronic health records: (1) the name and address of the entity to whom the Protected Health Information was disclosed; (2) the date of the disclosure; (3) a brief description of the Protected Health Information disclosed; (4) a brief description of the purpose for the disclosure; and (5) any other information related to such disclosures as required to enable Covered Entity to comply with 45 C.F.R. § 164.528.

j. Security Standards. Business Associate shall use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected
health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement.

k. Agent Protection of Electronic PHI. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), require that any Subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.

l. Minimum Necessary. Business Associate acknowledges that it shall limit the use, disclosure or request of PHI to perform or fulfill a specific function required or permitted hereunder to the Minimum Necessary, as defined by HIPAA Standards and relevant guidance, to accomplish the purpose of such use, disclosure or request.

m. Standard Transactions. If Business Associate conducts any Standard Transactions on behalf of Covered Entity, Business Associate shall comply with the applicable requirements of 45 C.F.R. Part 162.

n. Sale of PHI. Business Associate shall not receive remuneration in exchange for the disclosure of Protected Health Information without authorization unless the disclosure satisfies an exception to the HIPAA Rules as defined at 45 C.F.R. 164.502(a)(5)(ii).

o. Marketing. Business associate shall not engage in the use or disclosure of Protected Health Information for certain communications that fall within the definition of marketing under 45 C.F.R. §164.501 unless a valid Authorization is obtained;


3. Permitted Uses and Disclosures by Business Associate

a. Permitted Uses and Disclosures under this Agreement:

1) Business associate may use or disclose protected health information as required by law.

2) Business associate may only use or disclose protected health information as necessary to perform the services set forth in Subscription Agreement.

b. Management and Administration. Except as otherwise limited in this Agreement or through the agreement between Business Associate and Covered Entity, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate. In the event of disclosure to a third party for purposes described herein, Business Associate shall obtain satisfactory assurances from the receiving party that it shall maintain the privacy and security of the
information as required by law, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

c. Aggregation Services. Business associate may provide data aggregation services relating to the health care operations of the covered entity.

d. De-identification. Business Associate is authorized to use protected health information to de-identify the information in accordance with 45 CFR 164.514(a)-(c) and to use and disclose such de-identified information.

4. Obligations of Covered Entity

a. Revocation of Consent. Covered Entity shall notify Business Associate in writing of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate’s use or disclosure of PHI.

b. Restrictions on Use of Protected Health Information. Covered Entity shall notify Business Associate in writing of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate’s use or disclosure of PHI.

c. Notice of Privacy Rights. Covered Entity shall provide Business Associate with notice of any restrictions on the use or disclosure of PHI provided in the Covered Entity Notice of Privacy Rights.

5. Term and Termination

a. Term. The Term of this Agreement shall be effective on the effective date of the underlying agreement, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

b. Termination For Cause. Upon Covered Entity’s knowledge of a material breach by Business Associate, Covered Entity shall:

1) Provide an opportunity for Business Associate to cure the breach within thirty (30) days; or

2) Immediately terminate the Agreement if Business Associate has breached a material term of the Agreement and cure is not possible; or

3) If cure or immediate termination is not possible, Covered Entity shall notify Business Associate of its intent to report the material breach to the Secretary of HHS.

c. Effect of Termination. Except as provided below, upon termination or expiration of this Agreement, for any reason, Business Associate shall return or destroy, all PHI received from
Covered Entity, or created or received by Business Associate on behalf of Covered Entity. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

6. **Indemnification.** Business Associate shall defend and hold Covered Entity harmless from liability, penalties, fines, costs and expenses, including reasonable attorneys’ fees incurred by Covered Entity caused by the Business Associate’s negligence or willful misconduct resulting in a breach of HIPAA or this Agreement. Covered Entity shall defend and hold Covered Entity harmless from liability, penalties, fines, costs and expenses, including reasonable attorneys’ fees incurred by Business Associate caused by the Covered Entity’s negligence or willful misconduct resulting in a breach of HIPAA or this Agreement.

7. **Entire Agreement.** This Agreement supersedes any and all other agreements, whether oral or in writing, between the Parties with respect to PHI, and this Agreement contains all of the covenants and agreements between the Parties with respect to PHI in any manner whatsoever. Each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any Party, or anyone acting on behalf of any Party, that are not embodied in this Agreement, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.

8. **Modification.** No change or modification of this Agreement shall be valid or binding unless the same is in writing and signed by each of the Parties hereto.

9. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

10. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement or in the Service Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.

11. **Amendment.** This Agreement shall automatically be deemed amended and any conflicting terms shall be superseded by new regulations in order to support compliance with the HIPAA Privacy and Security Rule as amended through the regulatory process. Business Associate and Covered Entity agree to comply with the applicable laws and regulations. Any other amendments or modifications shall only be amended through a written amendment by both parties.

12. **Regulatory References.** A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

13. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.

“BUSINESS ASSOCIATE”

By: Matt Ethington Its: CEO

“COVERED ENTITY”

By: 
Its: 