

**DocSink****END USER LICENSE AGREEMENT**

This End User License Agreement (the **“Agreement”**), effective as of the date of your agreement with DAS Health (the **“Effective Date”**), is entered into by and between DocSink, LLC, a North Carolina limited liability company having its principal place of business at 232 Causeway Drive, Suite 1-D, Wrightsville Beach, NC 28480 (**“Licensor”**) and the end user (**“Licensee”**, together with Licensor, the **“Parties”**, and each, a **“Party”**).

WHEREAS, Licensor is the entire legal and beneficial owner of the Licensed Software (as defined below), and desires to license the Licensed Software to Licensee; and

WHEREAS, Licensee desires to obtain a license to use the Licensed Software for use in the ordinary course of business, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions Capitalized terms have the meanings set forth or referred to in this [Section 1](#):

**“Action”** has the meaning set forth in [Section 8.2\(d\)](#).

**“Affiliate”** of a Person (as defined below) means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term **“control”** (including the terms **“controlled by”** and **“under common control with”**) means the direct or indirect power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise/ownership of more than fifty percent (50 %) of the voting securities of a Person.

**“Business Day”** means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by Law to be closed for business.

**“Confidential Information”** has the meaning set forth in [Section 4.1](#).

**“Controlled Technology”** means any software, documentation, technology or other technical data, or any products that include or use any of the foregoing, the export, re-export or release of which to certain jurisdictions or countries is prohibited or requires an export license or other governmental approval, under

any Law, including the US Export Administration Act and its associated regulations.

**“Disclosing Party”** has the meaning set forth in [Section 4.1](#).

**“Documentation”** means any and all manuals, instructions and other documents and materials that Licensor provides or makes available to Licensee in any form or medium which describe the functionality, components, features or requirements of the Licensed Software, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

**“Effective Date”** has the meaning set forth in the preamble.

**“Force Majeure Event”** has the meaning set forth in [Section 14.1](#).

**“Indemnatee”** has the meaning set forth in [Section 11.3](#).

**“Indemnitor”** has the meaning set forth in [Section 11.3](#).

**“Intellectual Property Rights”** means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

**“Law”** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement or rule of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

**“Licensed Software”** means DocsInk Connect, together with any maintenance releases provided to Licensee pursuant to this Agreement.

**“Licensee”** has the meaning set forth in the preamble.

**“Licensee Indemnatee”** has the meaning set forth in [Section 11.1](#).

**“Licensor Indemnatee”** has the meaning set forth in [Section 11.2](#).

**“Loss”** means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

**“Parties”** has the meaning set forth in the preamble.

**“Party”** has the meaning set forth in the preamble.

**“Permitted Use”** means use of the Licensed Software by the Licensee in the ordinary course of its internal business operations.

**“Person”** means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.

**“Receiving Party”** has the meaning set forth in [Section 4.1](#).

**“Representatives”** means, with respect to a Party, that Party’s and its Affiliates,’ employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors and legal advisors.

**“Term”** shall be the period of this Agreement.

**“Territory”** means the United States.

**“Third-Party Materials”** means materials and information, in any form or medium, that are not proprietary to Licensor, including any third-party: (a) documents, data, content or specifications; (b) software, hardware or other products, facilities, equipment or devices; and (c) accessories, components, parts or features of any of the foregoing.

**“Warranty Period”** has the meaning set forth in [Section 10.2](#).

2. License Grant Subject to the terms and conditions of this Agreement and the Software License Agreement that enabled Licensee to be an Authorized User, and conditioned on Licensee’s compliance therewith, Licensor hereby grants to Licensee a non-exclusive, non-sublicensable and non-transferable, limited license to use the Licensed Software and Documentation solely for the Permitted Use in the Territory during the Term. This grant includes, and is subject to, the terms and conditions of Exhibit A, IMO End-User License, and Exhibit B, CPT Editorial Content Terms, which are both incorporated herein by reference. IMO and AMA may amend or modify the terms and conditions of these licenses at their discretion.

3. Use Restrictions Except as this Agreement expressly permits Licensee shall not, and shall not permit any other Person to:

- (a) copy the Licensed Software, in whole or in part;
- (b) modify, correct, adapt, translate, enhance or otherwise prepare derivative works or improvements of any Licensed Software;
- (c) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Licensed Software to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
- (d) reverse engineer, disassemble, decompile, decode or adapt the Licensed Software, or otherwise attempt to derive or gain access to the source code of the Licensed Software, in whole or in part;
- (e) bypass or breach any security device or protection used for or contained in the Licensed Software or Documentation;

(f) remove, delete, efface, alter, obscure, translate, combine, supplement or otherwise change any trademarks, terms of the Documentation, warranties, disclaimers, or Intellectual Property Rights, proprietary rights or other symbols, notices, marks or serial numbers on or relating to any copy of the Licensed Software or Documentation;

(g) use the Licensed Software in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any Person, or that violates any applicable Law;

(h) use the Licensed Software for purposes of: (i) benchmarking or competitive analysis of the Licensed Software; (ii) developing, using or providing a competing software product or service; or (iii) any other purpose that is to Licensor's detriment or commercial disadvantage;

(i) use the Licensed Software in or in connection with the design, construction, maintenance, operation or use of any hazardous environments, systems or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Licensed Software could lead to personal injury or severe physical or property damage; or

(j) use (i) the Licensed Software or Documentation other than for the Permitted Use or in any manner or for any purpose or application not expressly permitted by this Agreement or the Software License Agreement.

#### 4. Confidentiality

4.1 Confidential Information In connection with this Agreement each Party (as the **"Disclosing Party"**) may disclose or make available to the other Party (as the **"Receiving Party"**) Confidential Information. Subject to [Section 4.2](#), **"Confidential Information"** means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, whether or not marked, designated or otherwise identified as "confidential". Without limiting the foregoing: (a) the Licensed Software and Documentation are the Confidential Information of Licensor; and (b) the financial terms of this Agreement are the Confidential Information of Licensor/each of the Parties.

4.2 Exclusions and Exceptions Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

4.3 Protection of Confidential Information As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

- (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;
- (b) except as may be permitted under the terms and conditions of [Section 4.4](#), not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this [Section 4](#); and (iii) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this [Section 4](#);
- (c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its most sensitive information and in no event less than a reasonable degree of care;
- (d) promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps to prevent further unauthorized use or disclosure; and
- (e) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this [Section 4](#).

Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this [Section 4](#) with respect to any Confidential Information that constitutes a trade secret under any applicable Law will

continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable Laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

4.4 Compelled Disclosures If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under [Section 4.3](#); and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this [Section 4.4](#), the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's outside legal counsel, the Receiving Party is legally required to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

5. Assumption of Risk THE LICENSEE ACKNOWLEDGES THAT THE SERVICE IS NOT A SUBSTITUTE FOR THE CARE PROVIDED BY LICENSED HEALTH CARE PRACTITIONERS. AS BETWEEN THE LICENSEE AND LICENSOR, THE LICENSEE HEREBY ASSUMES FULL RESPONSIBILITY FOR: (A) ITS USE OF THE LICENSED SOFTWARE; AND (B) INSURING THE APPROPRIATENESS OF USING AND RELYING UPON THE INFORMATION IN VIEW OF ALL ATTENDANT CIRCUMSTANCES, INDICATIONS, AND CONTRAINDICATIONS. LICENSOR SHALL NOT BE RESPONSIBLE AND HAS NO LIABILITY TO ANY PERSON FOR: (A) ANY ERRORS, MISSTATEMENTS, INACCURACIES OR OMISSIONS REGARDING CONTENT DELIVERED THROUGH THE LICENSED SOFTWARE; (B) ANY DELAYS IN OR INTERRUPTIONS OF SUCH DELIVERY; OR (C) ANY DATA OR INFORMATION INPUT INTO THE LICENSED SOFTWARE BY THE LICENSEE. ADDITIONALLY, LICENSOR UNDERTAKES NO OBLIGATION TO SUPPLEMENT OR UPDATE CONTENT OF THE LICENSED SOFTWARE.

THE LICENSED SOFTWARE DOES NOT ENDORSE DRUGS, DIAGNOSE PATIENTS, OR RECOMMEND THERAPY. THE LICENSED SOFTWARE IS AN INFORMATIONAL RESOURCE DESIGNED TO ASSIST LICENSED HEALTH CARE PRACTITIONERS IN DOCUMENTING THE CARE OF THEIR PATIENTS. THE INFORMATION CONTAINED WITHIN THE LICENSED SOFTWARE IS INTENDED FOR USE ONLY BY PHYSICIANS AND OTHER HEALTH CARE PROFESSIONALS

WHO SHOULD RELY ON THEIR CLINICAL DISCRETION AND JUDGMENT IN DIAGNOSIS AND TREATMENT.

THE LICENSED SOFTWARE HAS BEEN DESIGNED FOR USE IN THE UNITED STATES ONLY. LICENSOR DOES NOT PROVIDE INFORMATION FOR PRODUCTS NOT AVAILABLE FOR SALE IN THE UNITED STATES. CLINICAL PRACTICE PATTERNS OUTSIDE THE UNITED STATES MAY DIFFER SUBSTANTIALLY FROM INFORMATION SUPPLIED BY THE SERVICE. USES OF THE LICENSED SOFTWARE OUTSIDE THE UNITED STATES MAY NOT BE APPROPRIATE.

6. Security Measures The Licensed Software may contain technological measures designed to prevent unauthorized or illegal use of the Licensed Software. Licensee acknowledges and agrees that: (a) Licensor may use these and other lawful measures to verify Licensee's compliance with the terms of this Agreement and enforce Licensor's rights, including all Intellectual Property Rights, in and to the Licensed Software; (b) Licensor may deny any individual access to and/or use of the Licensed Software if Licensor, in its sole discretion, believes that person's use of the Licensed Software would violate any provision of this Agreement, regardless of whether Licensee designated that person as an Authorized User; and (c) Licensor and its Representatives may collect, maintain, process and use diagnostic, technical, usage and related information, including information about Licensee's computers, systems and software, that Licensor may gather periodically to improve the performance of the Licensed Software or develop maintenance releases. This information will be treated in accordance with Licensor's privacy policy, as amended from time to time.

7. Compliance If the Licensee or the organization Licensee represents is a HIPAA covered entity, the terms included in the Licensor's Business Associate Agreement are also applicable and are incorporated herein.

State and Federal laws, as well as ethical and licensure requirements of impose obligations with respect to patient confidentiality that may limit the ability of physicians, health care providers, and persons acting on their behalf, to make use of certain content or information made available through the Licensed Software. Licensee represents and warrants that Licensee will comply with all laws, regulations, industry standards, licensure requirements and ethical obligations that are directly or indirectly applicable to Licensee or those with whom or which Licensee is affiliated (the "**Requirements**"). Licensee agrees that Licensee is solely responsible for requiring Licensee's agents and those acting on Licensee's behalf to comply with the Requirements. Licensee is solely responsible for obtaining and maintaining all individual consents or authorizations, if applicable, and all other legally necessary consents or permissions required or advisable to disclose, process, retrieve, transmit, and view personal information and, in particular, individually identifiable health information. Licensee agrees

that Licensor, Licensor's licensors and licensees, and all other persons or entities involved in the operation of the Licensed Software, or the content and functionalities provided through the Licensed Software, have the right to monitor, store, review and use personal information inclusive of individually identifiable health information in connection with the operation or use of the Licensed Software.

LICENSOR CANNOT AND DOES NOT ASSUME ANY RESPONSIBILITY FOR LICENSEE'S USE OR MISUSE OF INDIVIDUALLY IDENTIFIABLE INFORMATION OR OTHER INFORMATION TRANSMITTED, MONITORED, STORED OR RECEIVED WHILE USING THE LICENSED SOFTWARE AND THE MATERIALS IN THE LICENSED SOFTWARE. LICENSOR RESERVES THE RIGHT TO AMEND OR DELETE ANY MATERIAL (ALONG WITH THE RIGHT TO REVOKE ANY MEMBERSHIP OR RESTRICT ACCESS TO THE LICENSED SOFTWARE) THAT IN LICENSOR'S SOLE DISCRETION VIOLATES THESE TERMS.

Any attempt to obtain unauthorized access or to exceed authorized access to the Licensed Software shall be considered a trespass and/or computer fraud and abuse, punishable under state and federal laws. Licensor hereby notifies you that any or all communications on, with or to the Licensed Software can and will be monitored, captured, recorded, and transmitted, including to law enforcement authorities, as deemed necessary by Licensor in its sole discretion and without further notice.

## 8. Intellectual Property Rights

### 8.1 Intellectual Property Ownership Licensee acknowledges and agrees that:

- (a) the Licensed Software and Documentation are licensed, not sold, to Licensee by Licensor and Licensee does not and will not have or acquire under or in connection with this Agreement any ownership interest in the Licensed Software or Documentation, or in any related Intellectual Property Rights;
- (b) Licensor is and will remain the sole and exclusive owner of all right, title and interest in and to the Licensed Software and Documentation, including all Intellectual Property Rights relating thereto, subject only to the limited license granted to Licensee under this Agreement; and
- (c) Licensee hereby unconditionally and irrevocably assigns to Licensor, its entire right, title and interest in and to any Intellectual Property Rights that Licensee may now or hereafter have in or relating to the Licensed Software or Documentation (including any rights in derivative works or patent improvements relating to either of them), whether held or acquired by operation of law, contract, assignment or otherwise.



(d) Any ideas or requests for modifications, changes, or improvements to the Licensed Software submitted by Licensee to Licensor shall be considered part of a derivative work of the Licensed Software and shall be owned by Licensor with all rights assigned by Licensee to Licensor.

8.2 Licensee Cooperation and Notice of Infringement Licensee shall, during the Term:

- (a) take all commercially reasonable measures to safeguard the Licensed Software and Documentation (including all copies thereof) from infringement, misappropriation, theft, misuse or unauthorized access;
- (b) at Licensor's expense, take all such steps as Licensor may reasonably require to assist Licensor in maintaining the validity, enforceability and Licensor's ownership of the Intellectual Property Rights in the Licensed Software and Documentation;
- (c) promptly notify Licensor in writing if Licensee becomes aware of:
  - (i) any actual or suspected infringement, misappropriation or other violation of Licensor's Intellectual Property Rights in or relating to the Licensed Software or Documentation; or
  - (ii) any claim that the Licensed Software or Documentation, including any production, use, marketing, sale or other disposition of the Licensed Software or Documentation, in whole or in part, infringes, misappropriates or otherwise violates the Intellectual Property Rights or other rights of any Person; and
- (d) fully cooperate with and assist Licensor in all reasonable ways in the conduct of any claim, suit, action or proceeding (each, an **"Action"**) by Licensor to prevent or abate any actual or threatened infringement, misappropriation or violation of Licensor's rights in, and to attempt to resolve any claims relating to, the Licensed Software or Documentation, including having Licensee's employees testify when requested and making available for discovery or trial relevant records, papers, information, samples, specimens and the like.

8.3 No Implied Rights Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel or otherwise, to Licensee or any third party any Intellectual Property Rights or other right, title, or interest in or to any of the Licensed Software or Documentation.

9. Term and Termination

9.1 Termination This Agreement may be terminated at any time by Licensor.

9.2 Effect of Termination or Expiration On the expiration or earlier termination of this Agreement:

(a) all rights, licenses and authorizations granted to Licensee hereunder will immediately terminate and Licensee shall:

(i) immediately cease all use of and other activities with respect to the Licensed Software and Documentation; and

(ii) within fifteen (15) days deliver to Licensor, or at Licensor's written request destroy, and permanently erase from all devices and systems Licensee directly or indirectly controls, the Licensed Software, the Documentation and the Licensor's Confidential Information, including all documents, files and tangible materials (and any partial and complete copies) containing, reflecting, incorporating or based on any of the foregoing, whether or not modified or merged into other materials;

(b) all amounts payable by Licensee to Licensor of any kind under this Agreement are immediately payable and due no later than fifteen (15) days after the effective date of the expiration or fifteen (15) days after termination of this Agreement.

9.3 Surviving Terms The provisions set forth in the following sections, and any other right, obligation or provision under this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: this [Section 9.3](#), [Section 1](#) (Definitions), [Section 4](#) (Confidentiality), [Section 8](#) (Intellectual Property Rights), [Section 10](#) (Representations and Warranties), for clarity, including [Section 10.7](#) (Disclaimer), [Section 11](#) (Indemnification), [Section 12](#) (Limitations of Liability) and [Section 15](#) (Miscellaneous).

## 10. Representations and Warranties

10.1 Mutual Representations and Warranties Each Party represents, warrants and covenants to the other Party that:

(a) it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses and authorizations it grants and is required to grant under this Agreement;

(b) the execution of this Agreement by its representative has been duly authorized by all necessary corporate or organizational action of such Party; and

(c) when executed and delivered by both Parties, this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

**10.2 Limited Warranty** Subject to the limitations and conditions set forth in [Section 10.3](#) and [Section 10.4](#), Licensor warrants to Licensee that during the Term and after the date of installation of the Licensed Software (the “**Warranty Period**”):

- (a) the Licensed Software will substantially conform in all material respects to the specifications set forth in the Documentation, when installed, operated and used as recommended in the Documentation and in accordance with this Agreement; and
- (b) any media on which Licensor supplies the Licensed Software to Licensee will be free of material damage and defects in materials and workmanship under normal use.

**10.3 Licensee Requirements** The limited warranties set forth in [Section 10.2](#) apply only if Licensee: (a) notifies Licensor in writing of the warranty breach before the expiration of the Warranty Period; (b) has promptly installed all maintenance releases to the Licensed Software that Licensor previously made available to Licensee; and (c) as of the date of notification, is in compliance with all terms and conditions of this Agreement (including the payment of all license fees then due and owing).

**10.4 Exceptions** Notwithstanding any provisions to the contrary in this Agreement, the limited warranty set forth in [Section 10.2](#) does not apply to problems arising out of or relating to:

- (a) Licensed Software, or the media on which it is provided, that is modified or damaged by Licensee or its Representatives;
- (b) any operation or use of, or other activity relating to, the Licensed Software other than as specified in the Documentation, including any incorporation in the Licensed Software of, or combination, operation or use of the Licensed Software in or with, any technology (including any software, hardware, firmware, system or network) or service not specified for Licensee’s use in the Documentation;
- (c) Licensee’s or any third party’s negligence, abuse, misapplication or misuse of the Licensed Software, including any use of the Licensed Software other than as specified in the Documentation;
- (d) Licensee’s failure to promptly install all maintenance releases that Licensor has previously made available to Licensee;
- (e) the operation of, or access to, Licensee’s or a third party’s system or network;
- (f) any beta software, software that Licensor makes available for testing or demonstration purposes,

temporary software modules or software for which Licensor does not receive a license fee;

(g) Licensee's breach of any provision of this Agreement; or

(h) any other circumstances or causes outside of the reasonable control of Licensor (including abnormal physical or electrical stress).

10.5 Remedial Efforts If Licensor breaches, or is alleged to have breached, any of the warranties set forth in [Section 10.2](#), Licensor may, at its sole option and expense, take any of the following steps to remedy such breach:

(a) replace any damaged or defective media on which Licensor supplied the Licensed Software;

(b) amend, supplement or replace any incomplete or inaccurate Documentation;

(c) repair the Licensed Software;

(d) replace the Licensed Software with functionally equivalent software (which software will, on its replacement of the Licensed Software, constitute Licensed Software hereunder); and/or

(e) terminate this Agreement and promptly refund to Licensee, on a *pro rata* basis, the share of any license fees prepaid by Licensee for the future portion of the Term that would have remained but for such termination.

10.6 Sole Remedy If Licensor does not cure a warranty breach or terminate this Agreement as provided in [Section 10.5](#) within sixty (60) days after Licensor's receipt of written notice of such breach, Licensee shall have the right to terminate this Agreement. Licensor shall promptly refund to Licensee, on a *pro rata* basis, the share of any license fees prepaid by Licensee for the future portion of the Term that would have remained but for such termination. THIS [SECTION 10.6](#) SETS FORTH THE LICENSEE'S SOLE REMEDY AND THE LICENSOR'S ENTIRE OBLIGATION AND LIABILITY FOR ANY BREACH OF ANY LICENSOR WARRANTY OF THE LICENSED SOFTWARE OR DOCUMENTATION SET FORTH IN THIS AGREEMENT.

10.7 DISCLAIMER OF WARRANTIES EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH IN [SECTION 10.2](#), ALL LICENSED SOFTWARE, DOCUMENTATION AND OTHER PRODUCTS, INFORMATION, MATERIALS AND SERVICES PROVIDED BY LICENSOR ARE PROVIDED "AS IS." LICENSOR HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER (INCLUDING ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE), AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, LICENSOR MAKES NO WARRANTY OF ANY KIND THAT THE LICENSED SOFTWARE OR

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10.8 Licensee Representations and Warranties Licensee warrants and represents that personal and other information supplied to or obtained from the Licensed Software was collected, transmitted and disclosed to Licensor and otherwise processed only in strict compliance with applicable law, including privacy and data protection requirements and restrictions. Licensee warrants and represents that any personal or confidential business information you access, manage or maintain on behalf of Licensor or in connection with your use of the Licensed Software is subject to reasonable and appropriate security measures that comply with all applicable laws and include, at minimum, administrative, physical and technical safeguards that protect against the loss, misuse, or unauthorized access, acquisition, alteration or destruction of information. Licensee warrants and represents that all information Licensee submits, posts, transmits, stores or otherwise provides on or through the Licensed Software is accurate, complete and up-to-date. As a user of the Licensed Software, Licensee is liable for the accuracy, completeness and timeliness of the information Licensee provides, posts, submits, transmits or stores using the Licensed Software, or that is provided, posted, submitted, transmitted or stored on Licensee's behalf or by persons or legal entities affiliated with Licensee. Licensee agrees that Licensee will not disclose information about other people or users of the Licensed Software unless such disclosure would fully comply with applicable law and this Agreement and the Software License Agreement.

## 11. Indemnification

11.1 Licensor Indemnification Licensor shall indemnify, defend and hold harmless Licensee and Licensee's officers, directors, employees, agents, permitted successors and permitted assigns (each, including Licensee, a "**Licensee Indemnatee**") from and against any and all Losses incurred by the Licensee Indemnatee arising out of or relating to any Action by a third party (other than an Affiliate of a Licensee Indemnatee) to the extent that

such Losses arise from any allegation in such Action that the Licensed Software, or any use of the Licensed Software, in the Territory in accordance with this Agreement (including the Documentation) infringes any U.S. Intellectual Property Right in the Territory. The foregoing obligation does not apply to the extent that such Action or Losses arise from any allegation of or relating to any:

- (a) Third-Party Materials;
- (b) patent issued on a patent application published in the Territory after the Effective Date;
- (c) incorporation by the Licensed Software of, or combination, operation or use of the Licensed Software in or with, any technology (including any software, hardware, firmware, system or network) or service not provided by Licensor or specified for Licensee's use in the Documentation;
- (d) modification of the Licensed Software other than: (i) by Licensor or its contractor in connection with this Agreement; or (ii) with Licensor's express written authorization and in strict accordance with Licensor's written directions and specifications;
- (e) failure to timely implement any maintenance release, modification, update or replacement of the Licensed Software made available to Licensee by Licensor;
- (f) use of the Licensed Software after Licensor's notice to Licensee of such activity's alleged or actual infringement, misappropriation or other violation of a third party's rights;
- (g) negligence, abuse, misapplication or misuse of the Licensed Software or Documentation by or on behalf of Licensee, Licensee's Representatives or a third party;
  
- (h) use of the Licensed Software or Documentation by or on behalf of Licensee that is outside the purpose, scope or manner of use authorized by this Agreement or in any manner contrary to Licensor's instructions;
- (i) events or circumstances outside of Licensor's commercially reasonable control (including any third-party hardware, software or system bugs, defects or malfunctions); or
- (j) Action or Losses for which Licensee is obligated to indemnify Licensor pursuant to [Section 11.2](#).

**11.2 Licensee Indemnification** Licensee shall indemnify, defend and hold harmless Licensor and its officers, directors, employees, agents, subcontractors, successors and assigns (each, including Licensor, a "**Licensor Indemnitee**") from and against any and all Losses incurred by the Licensor Indemnitee in connection with any Action by a third party (other than an Affiliate of a Licensor Indemnitee) to the extent that such Losses arise out of or relate to any allegation:

- (a) that any Intellectual Property Right or other right of any Person, or any Law, is or will be infringed,

misappropriated or otherwise violated by any:

- (i) use or combination of the Licensed Software by or on behalf of Licensee or any of its Representatives with any hardware, software, system, network, service or other matter whatsoever that is neither provided by Licensor nor authorized by Licensor in this Agreement and the Documentation; and
- (ii) information, materials or technology or other matter whatsoever directly or indirectly provided by Licensee or directed by Licensee to be installed, combined, integrated or used with, as part of, or in connection with the Licensed Software or Documentation;
- (b) of or relating to facts that, if true, would constitute a breach by Licensee of any representation, warranty, covenant or obligation under this Agreement;
- (c) of or relating to negligence, abuse, misapplication, misuse or more culpable act or omission (including recklessness or willful misconduct) by or on behalf of Licensee or any of its Representatives with respect to the Licensed Software or Documentation or otherwise in connection with this Agreement; or
- (d) of or relating to use of the Licensed Software or Documentation by or on behalf of Licensee or any of its Representatives that is outside the purpose, scope or manner of use authorized by this Agreement or the Documentation, or in any manner contrary to Licensor's instructions.

**11.3 Indemnification Procedure** Each Party shall promptly notify the other Party in writing of any Action for which such Party believes it is entitled to be indemnified pursuant to [Section 11.1](#) or [Section 11.2](#). The Party seeking indemnification (the “**Indemnitee**”) shall cooperate with the other Party (the “**Indemnitor**”) at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this [Section 11.3](#) will not relieve the Indemnitor of its obligations under this [Section 11](#) except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

**11.4 Mitigation** If the Licensed Software, or any part of the Licensed Software, is, or in Licensor's opinion is likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if Licensee's use of the Licensed Software is enjoined or threatened to be enjoined, Licensor may, at its option and sole cost and expense:

- (a) obtain the right for Licensee to continue to use the Licensed Software materially as contemplated by this Agreement;

- (b) modify or replace the Licensed Software, in whole or in part, to seek to make the Licensed Software non-infringing, while providing materially equivalent features and functionality, and such modified or replacement software will constitute Licensed Software under this Agreement; or
- (c) if, after Licensor's exercise of commercially reasonable efforts, none of the remedies set forth in the above [Section 11.4\(a\)](#) or [Section 11.4\(b\)](#) is reasonably available to Licensor, terminate this Agreement, in its entirety or with respect to the affected part or feature of the Licensed Software, effective immediately on written notice to Licensee, in which event:
  - (i) Licensee shall cease all use of the Licensed Software and Documentation immediately on receipt of Licensee's notice; and
  - (ii) Licensor shall promptly refund to Licensee, on a *pro rata* basis, the share of any license fees prepaid by Licensee for the future portion of the Term that would have remained but for such termination.

11.5 Sole Remedy THIS SECTION 11 SETS FORTH LICENSEE'S SOLE REMEDIES AND LICENSOR'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE LICENSED SOFTWARE AND DOCUMENTATION) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

## 12. Limitations of Liability

12.1 EXCLUSION OF DAMAGES EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN SECTION 12.3, IN NO EVENT WILL LICENSOR, OR ANY OF ITS SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY (a) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES OR PROFITS, (b) LOSS OF GOODWILL OR REPUTATION, (c) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY LICENSED SOFTWARE OR OPEN-SOURCE COMPONENTS OR OTHER THIRD-PARTY MATERIALS, (d) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, (e) COST OF REPLACEMENT GOODS OR SERVICES, OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, IN EACH CASE REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.



12.2 CAP ON MONETARY LIABILITY IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF LICENSOR AND ITS SUPPLIERS AND SERVICE PROVIDERS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL OF THE AMOUNTS PAID TO LICENSOR UNDER THIS AGREEMENT IN THE SIX (6) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

12.3 Exceptions to Limitations of Liability The exclusions and limitations of in [Section 12.1](#) do not apply to Licensor's obligations under [Section 11](#) (Indemnification) or liability for Licensor's gross negligence or willful misconduct.

13. Export Regulation Licensee shall not itself, or permit any other Person to, export, re-export or release, directly or indirectly any Controlled Technology to any country, jurisdiction or Person to which the export, re-export or release of Controlled Technology (a) is prohibited by applicable Law or (b) without first completing all required undertakings (including obtaining any necessary export license or other governmental approval).

#### 14. Force Majeure

14.1 No Breach or Default In no event will either Party be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, (except for any payment obligation), when and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Either Party may terminate this Agreement if a Force Majeure Event affecting the other Party continues substantially uninterrupted for a period of thirty (30) days or more.

14.2 Affected Party Obligations In the event of any failure or delay caused by a Force Majeure Event, the

affected Party shall give prompt written notice to the other Party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

## 15. Miscellaneous

15.1 Further Assurances On a Party's reasonable request, the other Party shall, at the requesting Party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, as may be necessary to give full effect to this Agreement.

15.2 Relationship of the Parties The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

15.3 Public Announcements Neither Party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement or, unless expressly permitted under this Agreement, otherwise use the other Party's trademarks, service marks, trade names, logos, domain names or other indicia of source, association or sponsorship, in each case, without the prior written consent of the other Party, which shall not be unreasonably delayed or withheld, provided, however, that Licensor may, without Licensee's consent, include Licensee's name and/or other indicia in its lists of Licensor's current customers of Licensor in promotional and marketing materials.

15.4 Interpretation For purposes of this Agreement: (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and *vice versa*; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments and appendices mean the sections of, and exhibits, schedules, attachments and appendices attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to

time and includes any successor legislation thereto and any regulations promulgated thereunder. The Parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

15.5 Headings The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

15.6 Entire Agreement This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

15.7 Assignment Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement without Licensor's prior written consent. Any purported assignment, delegation or transfer in violation of this [Section 15.7](#) is void. This Agreement is binding on and inures to the benefit of the Parties hereto and their respective permitted successors and assigns.

15.8 No Third-party Beneficiaries This Agreement is for the sole benefit of the Parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

15.9 Amendment and Modification; Waiver No amendment to or modification of or rescission, termination or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination or discharge of this Agreement and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

15.10 Severability If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. On such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

15.11 Governing Law; Submission to Jurisdiction This Agreement is governed by and construed in accordance with the internal laws of the State of North Carolina without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of North Carolina. Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of North Carolina in each case located in the city of Wilmington and County of New Hanover, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such Party's address set forth herein will be effective service of process for any suit, action or other proceeding brought in any such court.

15.12 Equitable Remedies Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under [Section 3](#) (Use Restrictions), [Section 4](#) (Confidentiality), [Section 8](#) (Intellectual Property Rights) or [Section 11](#) (Indemnification) of this Agreement would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including in a restraining order, an injunction, specific performance and any other relief that may be available from any court of competent jurisdiction, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

**Exhibit A**  
**IMO END-USER LICENSE**  
**("EULA")**

The Software (defined hereunder) contains the following products from Intelligent Medical Objects, Inc. ("IMO"): <sup>a</sup> Problem and Procedure terminologies (collectively the "Service"). The Service and the "DocSInk Connect" ("Software") are separate products provided by separate entities. Your (either an individual or single entity) ("END-USER") use of the Service in conjunction with the Software is subject to the terms and conditions of this End User License Agreement ("EULA").

In consideration of the rights and restrictions contained herein, END-USER agrees as follows:

**1. Grant of License**

The license granted herein is a non-exclusive, non-transferable license to use the Service solely in conjunction with the Software for internal use: (i) in a clinical setting; and (ii) in a non-production/non-clinical setting for backup, archival, support, testing, training and demonstration purposes; provided END-USER complies with the restrictions set forth in Section 2.

**2. Restrictions**

END-USER shall not cause or permit others to copy, duplicate, redistribute, loan, rent, retransmit, publish, license or sublicense or otherwise transfer, or commercially exploit, the Service, in whole or part. END-USER shall not prepare derivative works or incorporate the Service, in whole or part, in any other system or work; or reverse engineer, decompile, disassemble, decrypt, translate, alter, adapt or modify the Service, in whole or part.

**3. Ownership**

This EULA provides only a license of rights to use the Service, and does not provide for the sale or other transfer of title. Except for third party content included in the Service, IMO has and shall have exclusive title to and ownership of all of its products, including the Service and of all of its sub-parts and components, and of all updates, modifications, alterations, customizations, derivative works, revisions or enhancements thereof, and of all software, source code, and trade secrets, and proprietary research, equations, screens, techniques, methodology, analysis, programming or know-how thereof.

Any ideas or requests for terms submitted by END-USER to the Software vendor or IMO for inclusion in the Service shall be considered part of a derivative work of the Service and shall be owned by IMO with all rights assigned by END-USER to IMO. END-USER shall not be charged for such regular inclusion of added terms. END- USER will have a perpetual, non-exclusive license to use, display or modify these requested terms apart from the Service.

**4. Technical Warranty**

The Service, as provided by IMO, does not include any disabling devices such as devices that result in the electronic recapture of programming, undocumented functions, passwords, keys, security devices or trap doors, or any computer viruses.

**5. Disclaimer of Warranties**

EXCEPT FOR WARRANTIES THAT MAY NOT BE DISCLAIMED AS A MATTER OF LAW OR THAT ARE INCLUDED HEREIN, THE SERVICE IS PROVIDED ON AN "AS IS" BASIS AND IMO MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO REPRESENTATIONS OR WARRANTIES REGARDING THE ACCURACY OR NATURE OF THE SERVICE, NONINFRINGEMENT, COMPATIBILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ANY WARRANTIES EXPRESSLY PROVIDED HEREIN DO NOT APPLY IF: (I) THE END-USER ALTERS, MISHANDLES OR IMPROPERLY USES, STORES OR INSTALLS ALL, OR ANY PART, OF THE SERVICE; (II) THE END-USER USES, STORES OR INSTALLS THE SERVICE ON A COMPUTER SYSTEM WHICH FAILS TO MEET THE SPECIFICATIONS FOR THE SOFTWARE; OR (III) THE BREACH OF WARRANTY ARISES OUT OF OR IN CONNECTION WITH ACTS OR OMISSIONS OF PERSONS OR ENTITIES OTHER THAN IMO.

**6. Assumption of Risk**

THE END-USER ACKNOWLEDGES THAT THE SERVICE IS NOT A SUBSTITUTE FOR THE CARE PROVIDED BY LICENSED HEALTH CARE PRACTITIONERS. AS BETWEEN THE END-USER AND IMO, THE END-USER HEREBY ASSUMES FULL RESPONSIBILITY FOR: (A) ITS USE OF THE SERVICE; AND (B) INSURING THE APPROPRIATENESS OF USING AND RELYING UPON THE INFORMATION IN VIEW OF ALL ATTENDANT CIRCUMSTANCES, INDICATIONS, AND CONTRAINDICATIONS. IMO SHALL NOT BE RESPONSIBLE AND HAS NO LIABILITY TO ANY PERSON FOR: (A) ANY ERRORS, MISSTATEMENTS, INACCURACIES OR

OMISSIONS REGARDING CONTENT DELIVERED THROUGH THE SERVICE; (B) ANY DELAYS IN OR INTERRUPTIONS OF SUCH DELIVERY; OR (C) ANY DATA OR INFORMATION INPUT INTO THE SERVICE BY THE END-USER. ADDITIONALLY, IMO UNDERTAKES NO OBLIGATION TO SUPPLEMENT OR UPDATE CONTENT OF THE SERVICE.

THE SERVICE DOES NOT ENDORSE DRUGS, DIAGNOSE PATIENTS, OR RECOMMEND THERAPY. THE SERVICE IS AN INFORMATIONAL RESOURCE DESIGNED TO ASSIST LICENSED HEALTH CARE PRACTITIONERS IN DOCUMENTING THE CARE OF THEIR PATIENTS. THE INFORMATION CONTAINED WITHIN THE SERVICE IS INTENDED FOR USE ONLY BY PHYSICIANS AND OTHER HEALTH CARE PROFESSIONALS WHO SHOULD RELY ON THEIR CLINICAL DISCRETION AND JUDGMENT IN DIAGNOSIS AND TREATMENT.

**7. Disclaimer of Liability**

EXCEPT FOR IMO'S OBLIGATIONS UNDER SECTION 8(B), IN NO EVENT SHALL IMO BE LIABLE TO ANY PERSON INCLUDING, BUT NOT LIMITED TO END-USER AND PERSONS TREATED BY OR ON BEHALF OF END-USER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS EULA OR THE SERVICE. IMO'S TOTAL LIABILITIES ARISING OUT OF OR RELATED TO THIS EULA ARE LIMITED TO THE FEES RECEIVED BY IMO FROM THE SOFTWARE'S LICENSOR FOR END-USER'S USE OF THE SERVICE.

**8. Indemnification**

- A.** By END-USER. END-USER agrees to indemnify, defend, and hold IMO harmless from any claims, costs, liabilities, judgments, attorneys' fees, settlements, penalties or other losses in all causes including, but not limited to losses for tort, personal injury, medical malpractice or product liability arising out of or relating to: (a) the END-USER's use of the Service; (b) any data or information input into the Service by END-USER; (c) END-USER's negligence or intentional misconduct; and (d) any breach of this EULA by END-USER. In the event that END-USER indemnifies IMO, then: (i) END-USER will retain qualified counsel with demonstrable experience defending claims of the type to be defended, who shall be preapproved by IMO; and (ii) END-USER agrees to let IMO participate in the defense of any action, at IMO's option and expense.
- B.** By IMO. IMO agrees to indemnify, defend, and hold END-USER harmless against third party claims, costs, liabilities, judgments, attorneys' fees, settlements, and penalties brought against END-USER

arising out of, related to, or alleging that the IMO Service infringes on a United States patent, trademark or copyright of a third party (collectively “Indemnified Claim”); provided END-USER promptly, but within thirty (30) days, notifies IMO in writing of such Indemnified Claim. IMO shall have sole control of the defense of any Indemnified Claim, including appeals, negotiations, and any settlement or compromise thereof; provided END-USER will have the right to approve the terms of any settlement or compromise that restricts its rights granted under this Agreement or subjects it to any ongoing obligations. IMO shall have no indemnification obligation to END-USER to the extent that an Indemnified Claim arises out of: (i) END-USER’S violation of this EULA; (ii) information incorporated into the Service by END-USER or Software vendor; (iii) a modification or addition to the Service made by END-USER or Software vendor; or (iv) the use of the Service in combination with any program or equipment or any part thereof not furnished or approved by IMO.

**9. Intellectual Property Disclaimers; Use of Trademarks**

END-USER will not alter, cover or remove any trademark, copyright or other proprietary rights notice placed by IMO or a third party in or on the Service. END-USER will not use or modify any IMO or third party trademarks, trade names, service marks, corporate names or logos or those of its affiliates (collectively “Marks”) or any advertising materials containing any of the foregoing unless it has obtained the prior written approval of IMO, which may be withheld for any reason. Goodwill associated with the Marks inures solely to IMO and the respective third party owners. END-USER acknowledges and agrees that it shall not, directly or indirectly, do anything inconsistent with the validity, ownership, distinctiveness or integrity of the Marks, or the goodwill attaching thereto, nor shall it assist any third party in doing so.

**10. END-USER Documentation**

END-USER is responsible for generating any user documentation related to the Service.

**11. Security**

END-USER shall establish the appropriate firewalls and security systems, such that the Service is accessed only by authorized employees or contractors of END-USER and is not used in a manner that would violate the terms of this EULA.



**12. Third Party Beneficiary**

END-USER agrees that IMO shall be, and is hereby, named as an express third-party beneficiary of this EULA for the purpose of enforcing at law and at equity all rights under this EULA against END-USER, the covenants of END-USER and the warranty disclaimers and limitations of liability set forth in this EULA, whether or not such provisions make specific reference to IMO or the Service.

**13. Term and Termination**

The term of this EULA begins upon installation of the Software and/or Service and continues for the term specified in END-USER's Software license agreement. This EULA may be terminated by IMO or Software vendor at any time if: (i) END-USER violates any provision of this EULA; or (ii) Software vendor's relationship with IMO terminates; If this EULA is terminated for any reason, END-USER agrees to immediately return or destroy all copies of the Service and all companying items and certify the return or destruction thereof.

**14. Third Party Content**

**CPT® Content.** END-USER acknowledges that use of IMO® Procedure IT terminology requires CPT Editorial Content licenses that are separate from the license granted herein. However, if END-USER purchases CPT Editorial Content licenses through the Software vendor, then the CPT Editorial Content terms and conditions set forth in Schedule A of this EULA apply to END-USERS' use of the Service.

**Other Content.** END-USER acknowledges that the Service includes third-party content. END-USER agrees to the terms and conditions set forth in Schedule B of this EULA.

**15. General**

END-USER will hold the terms of this EULA confidential. END-USER will ensure that anyone with authorized access to the Service will comply with the provisions of this EULA and Schedule A. If any provision of this EULA is determined to be unenforceable, the rest of this EULA will remain in full force. Headings in this EULA are for convenience only and are not part of this EULA. The delay or failure to assert a right herein or to insist upon compliance with any term or condition of this EULA shall not constitute a waiver of that right or excuse a subsequent failure to perform any term or condition. END-USER may not assign any of the rights herein without prior written approval from IMO. This EULA will be governed by the State of Illinois without regard to choice-of-law principles. The courts of the State of Illinois and/or the United States District Court for the Northern District of Illinois shall have exclusive jurisdiction over any action

arising under or related to the subject matter of this EULA and the parties agree to submit to the jurisdiction of the courts of the State of Illinois and the United States District Court for the Northern District of Illinois. This EULA is the entire agreement between END-USER and IMO as to the subject matter. Any amendment must be in writing signed by both END-USER and IMO.

**SCHEDULE A (of EULA)**  
**CPT Editorial Content Terms**

**1. Grant of Rights; Restrictions**

- A.** The Service contains CPT® codes and descriptors (“CPT Editorial Content”) licensed from the American Medical Association (“AMA”).
- B.** The license granted for CPT Editorial Content is a nontransferable, nonexclusive license for the sole purpose of internal use by END-USER within the United States.
- C.** END-USER is prohibited from publishing, distributing via the Internet or other public computer based information system, creating derivative works (including translating), transferring, selling, leasing, licensing or otherwise making available the Service, or a copy or portion of the Service, to any unauthorized party.
- D.** The provision of updated CPT within the Service is dependent on a continuing contractual relationship between IMO and the AMA.
- E.** END-USER must ensure that anyone with authorized access to the Service will comply with the provisions of this Schedule A.

**2. Notices END-USER acknowledges that:**

- A.** CPT Editorial Content is copyrighted by the AMA;
- B.** CPT is a registered trademark of the American Medical Association; and
- C.** The Service includes CPT Editorial Content which is commercial technical data and/or computer data bases and/or commercial computer software and/or commercial computer software documentation, as applicable, which was developed exclusively at private expense by the American Medical Association, AMA Plaza, 330 N. Wabash Ave., Suite 39300, Chicago, Illinois, 60611-5885. U.S. government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or computer software and/or computer software documentation are subject to the limited rights restrictions of DFARS 252.2277015(b)(2) (November 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable, for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (December 2007) and/or subject to the restricted rights provisions of FAR 52.227-14 (December 2007) and FAR 52.227-19 (December 2007), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.

3. **Back Up Rights** END-USER may only make copies of the Service for back up or archival purposes. All notices of proprietary rights, including trademark and copyright notices, must appear on all permitted back up or archival copies made.
  
4. **Miscellaneous** END-USER agrees to the extent possible under the applicable laws, the warranties and liability for CPT Editorial Content as contained in the Service is provided "AS IS" without any liability to the AMA, including without limitation, no liability for consequential or special damages, or lost profits for sequence, accuracy, or completeness of data, or that it will meet the END-USER's requirements, and that the AMA's sole responsibility is to make available to IMO replacement copies of CPT Editorial Content if the data is not intact; and that the AMA disclaims any liability for any consequences due to use, misuse, or interpretation of information contained or not contained in CPT Editorial Content.

## **SCHEDULE B (of EULA)**

### **Third Party Content Terms**

#### **LOINC® Codes**

The Service includes all or a portion of the LOINC® table, LOINC panels and forms file, LOINC document ontology file, and/or LOINC hierarchies file, or is derived from one or more of the foregoing, subject to a license from Regenstrief Institute, Inc. Your use of the LOINC table, LOINC codes, LOINC panels and forms file, LOINC document ontology file, and LOINC hierarchies file also is subject to this license, a copy of which is available at <http://loinc.org/terms-of-use>. The current complete LOINC table, LOINC Users' Guide, LOINC panels and forms file, LOINC document ontology file, and LOINC hierarchies file are available for download at <http://loinc.org>. The LOINC table and LOINC codes are copyright © 1995-2014, Regenstrief Institute, Inc. and the Logical Observation Identifiers Names and Codes (LOINC) Committee. The LOINC panels and forms file, LOINC document ontology file, and LOINC hierarchies file are copyright © 1995-2014, Regenstrief Institute, Inc. All rights reserved. THE LOINC TABLE (IN ALL FORMATS), LOINC PANELS AND FORMS FILE, LOINC DOCUMENT ONTOLOGY FILE, AND LOINC HIERARCHIES ARE PROVIDED "AS IS." ANY EXPRESS OR IMPLIED WARRANTIES ARE DISCLAIMED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LOINC® is a registered United States trademark of Regenstrief Institute, Inc.

#### **SNOMED CT® Codes**

The Service makes use of SNOMED Clinical Terms® (SNOMED CT®) which is used by permission of the International Health Terminology Standards Development Organisation (IHTSDO). All rights reserved. SNOMED CT®, was originally created by The College of American Pathologists. "SNOMED" and "SNOMED CT" are registered trademarks of the IHTSDO.

**Exhibit B**  
**CPT Editorial Content Terms**

**1. Grant of Rights; Restrictions**

- (i) The Service contains CPT® codes and descriptors (“CPT Editorial Content”) licensed from the American Medical Association (“AMA”).
- (ii) The license granted for CPT Editorial Content is a nontransferable, nonexclusive license for the sole purpose of internal use by END-USER within the United States.
- (iii) END-USER is prohibited from publishing, distributing via the Internet or other public computer based information system, creating derivative works (including translating), transferring, selling, leasing, licensing or otherwise making available the Service, or a copy or portion of the Service, to any unauthorized party.
- (iv) The provision of updated CPT within the Service is dependent on a continuing contractual relationship between IMO and the AMA.
- (v) END-USER must ensure that anyone with authorized access to the Service will comply with the provisions of this Schedule A.

**2. Notices END-USER acknowledges that:**

- (i) CPT Editorial Content is copyrighted by the AMA;
- (ii) CPT is a registered trademark of the American Medical Association; and
- (iii) The Service includes CPT Editorial Content which is commercial technical data and/or computer data bases and/or commercial computer software and/or commercial computer software documentation, as applicable, which was developed exclusively at private expense by the American Medical Association, AMA Plaza, 330 N. Wabash Ave., Suite 39300, Chicago, Illinois, 60611-5885. U.S. government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or computer software and/or computer software documentation are subject to the limited rights restrictions of DFARS 252.2277015(b)(2) (November 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable, for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (December 2007) and/or subject to the restricted rights provisions of FAR 52.227-14 (December 2007) and FAR 52.227-19 (December 2007), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.

### **3. Back Up Rights**

END-USER may only make copies of the Service for back up or archival purposes. All notices of proprietary rights, including trademark and copyright notices, must appear on all permitted back up or archival copies made.

### **4. Miscellaneous**

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