

## END USER LICENSE AGREEMENT

**NOTICE: BEFORE PROCEEDING, PLEASE READ THE FOLLOWING LEGAL AGREEMENT WHICH CONTAINS RIGHTS AND RESTRICTIONS ASSOCIATED WITH YOUR USE OF THE LICENSOR'S SOFTWARE AND ANY DOCUMENTATION PROVIDED IN CONNECTION WITH SUCH SOFTWARE. THIS END USER LICENSE AGREEMENT CONTAINS A CLASS ACTION WAIVER AND LIMITATION ON LIABILITY. IF YOU DO NOT AGREE TO THIS AGREEMENT, DO NOT INSTALL, ACCESS OR USE THE LICENSOR'S SOFTWARE IN ANY MANNER WHATSOEVER.**

This End-User License Agreement ("EULA") is a binding legal agreement between you ("You") and eMDs, Inc., Aprima Medical Software, Inc. or Aria, Inc., on behalf of itself and its affiliates ("Licensor" or "Company") for the Licensor's software sublicensed to You by an Authorized Reseller (the "Software"). You are entering into this EULA as an individual on your own behalf or on behalf of an entity that has purchased the Software (the "VAR Customer"). If You are entering into this Agreement on behalf of VAR Customer, You represent and warrant that You have the authority to bind VAR Customer to the terms set forth herein and all terms that apply to You shall also apply to VAR Customer whether or not VAR Customer is specifically referenced. If You are entering into this EULA on your own behalf, You acknowledge that You are a Permitted User who has obtained rights to access and use the Software by virtue of your employment or engagement by the VAR Customer that has purchased the Software. By installing, copying, accessing or otherwise using the Software, You agree to be bound by the terms of this EULA. If You do not agree to the terms of this EULA, You may not install, access or use the Software.

AS FURTHER DESCRIBED BELOW, USE OF THE SOFTWARE ALSO OPERATES AS YOUR CONSENT TO THE TRANSMISSION, FROM TIME TO TIME, OF CERTAIN COMPUTER AND SOFTWARE USAGE INFORMATION TO LICENSOR.

If You (i) did not obtain the Software directly from an Authorized Reseller, or (ii) have not paid an Authorized Reseller all amounts due for the Software, then You are not authorized to install, access or use this Software. The term of this EULA ("Term") commences on the earliest of the date that You first install, access or use the Software and continues until terminated as set forth herein.

By installing, accessing or using the Software, You certify that You are authorized to do so and that You are following this End User License Agreement, as amended from time to time.

### 1. DEFINITIONS

- a. "Authorized Reseller" means an entity that has entered into a Reseller Agreement with Licensor that authorizes the entity to market and resell the Software.
- b. "Clinical Content" means medical or clinical information such as terminology, vocabularies, decision support rules, alerts, drug interaction knowledge, care pathway knowledge, standard ranges of normal or expected result values, and any other clinical content or rules provided for use with the Software, together with any related Documentation. Clinical Content may be either (1) owned by Licensor or (2) owned by a third party and sublicensed to You under this EULA.
- c. "Confidential Information" means any information or material, other than Trade Secrets, that is disclosed by Licensor to You. Confidential Information shall not include information that You can show is: (1) known by You at the time of receipt from Licensor and not subject to any other nondisclosure agreement between the parties; (2) now, or which hereafter becomes, generally known to the public through no fault of You; (3) otherwise lawfully and independently developed by You without reference to Confidential Information; or (4) lawfully acquired by You from a third party without any obligation of confidentiality.
- d. "VAR Customer Content" means the clinical, financial, administrative, and demographic patient information that VAR Customer or its Permitted Users access, store or manage using the Software.
- e. "Documentation" means printed or electronic information relating to the Software and generally made available to users of the Software, which may be revised from time to time by Licensor posting

information regarding an updated version of the Documentation on Licensor's website or such other location or in such other manner as may be designated by Licensor from time to time.

- f. "Limited Access" shall mean that all available functionality of the Software is disabled and cannot be used by VAR Customer except for those functions that provide VAR Customer with read-only access to, and the ability to extract existing, VAR Customer Content.
  - g. "Permitted User" means a person who accesses, uses, manipulates and/or makes use of an output from the Software, CPT Codes or descriptions, or any other third party content and (i) is an employee of VAR Customer or (ii) is an individual who is under VAR Customer's supervision and control, who VAR Customer has provided with access to the Software and (iii) who agrees to this End User License Agreement.
  - h. "Provider" means specially trained and licensed personnel (e.g., medical doctor, doctor of osteopathy, physician assistant, physical therapist, dietician, and advanced registered nurse practitioner) directly billing for patient care services either (i) under his or her name, (ii) the name of the practice, or (iii) under the name of a supervisory Provider.
  - i. "Trade Secret" means any Confidential Information of Licensor or that Licensor has acquired from a third party which is not commonly known by or available to the public, which (1) derives economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
2. **LICENSE GRANT.** Your use of the Software is subject to the license granted to You by the Authorized Reseller from which you purchased the Software (the "License Agreement"). Licensor shall be a third party beneficiary of such License Agreement provided, however, neither You nor VAR Customer shall have any direct cause of action against Licensor related to or arising from the License Agreement. Your use of the Software shall be subject to the License Agreement, this EULA, Licensor's Acceptable Use Policy (available in the Licensor Legal Documents Resource Center on Licensor Support Center) and the Documentation.
3. **SOFTWARE LICENSE RESTRICTIONS.** You understand and agree that the Software and Documentation are and shall at all times remain the property of Licensor or its licensors, and You shall have no rights or interests therein except for any license granted to You in the License Agreement. You shall not: 1) modify, adapt, alter, reverse engineer, decompile, reverse compile, or disassemble the Software or Documentation; 2) create a derivative work or compilation of the Software or Documentation, including without limitation any product or service derived or compiled from or based on, in whole or in part, any Company services or products; 3) remove or alter any trademark, logo, copyright, or other proprietary notices, legends, symbols or labels in or on the Software or Documentation; 4) copy, distribute, market, sell, lease, sublicense or otherwise transfer the Software or Documentation, or any component or portion thereof, to third parties; 5) use the Software as a source, intermediary, reply to address or destination address for any denial of service or other abusive activities; 6) overburden, disable, damage, or adversely impact the Software or any network, server, equipment or facilities on which the Software operates; 7) attempt to gain unauthorized access to any Software, other accounts, computer systems or networks connected to any Company server or to the Software, through any unauthorized means including, but not limited to, password or credential guessing, hacking, or any other inappropriate method; 8) harvest, collect, gather, assemble, extract or modify information of other users of Company software or in the Software using any tools not provided by Company including, but not limited to, those that enable scraping; 9) use the Software or Documentation in a way that violates the rights of a third party including, but not limited to, intellectual property rights; 10) use the Software or Documentation in any way that violates applicable law; 11) access or use the Software outside of the United States and its territories; or 11) permit the Software, Documentation or any part thereof to be used by any person or entity other than You. In the event that the foregoing restriction is unenforceable in any jurisdiction, You agree to contact Company ninety (90) days prior to reverse engineering the Software and to request from Company the information that it would seek to obtain from such reverse engineering. Any and all modifications of and software derivative to the Software or Documentation, and any libraries, interfacing software, templates, data or other materials intended to be utilized with the Software must be developed by Company and not by You. Any such modifications, derivatives,

interfacing software, templates, data or other materials intended to be utilized with the Software shall be and shall remain the property of Company, and You shall have no rights or interests therein regardless of whether or not You suggested, contributed to, participated in or paid for such development. You agree to take appropriate action so that any such ideas or contributions made by You shall be the property of Company.

4. **PERMITTED USERS.** You are responsible for your acts or omissions in relation to the Software. Notwithstanding the foregoing, VAR Customer is responsible for all activity of its Permitted Users and others accessing or using the Software through or on behalf of VAR Customer. VAR Customer must ensure that each Permitted User is (i) an employee of VAR Customer or (ii) an individual who is under VAR Customer's supervision and control and, if a Permitted User is a Provider, that such Permitted User is and continues to be duly credentialed, licensed, registered, or authorized to provide health care services under all applicable laws and governmental regulations. VAR Customer agrees to follow best practices to ensure compliance with this provision. Only legally authorized Providers as determined by applicable law may use the Software to create, transmit, approve, approve with changes or deny an electronic prescription of a controlled substance ("EPCS"). Non-providers may perform the following functions on behalf of a Provider: (a) create and transmit a new electronic prescription of a non-controlled substance; or (b) approve, approve with changes or deny an electronic prescription of a non-controlled substance refill or change request initiated by a pharmacy of a non-controlled substance.
5. **SOFTWARE USAGE INFORMATION.** During registration or activation of the Software, and then on a regular basis, the Software will send to Licensor information about the Software and Your use of the Software ("Usage Information"). This Usage Information helps prevent the unlicensed or prohibited use of the Software and also assists Licensor in offering You other features and services. Usage Information transmitted shall not include any individually identifiable information or any "Protected Health Information" as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).
6. **AUDIT.** Upon reasonable advance notice and no more than twice per calendar year, Licensor may conduct an audit of VAR Customer's books and records to ensure that VAR Customer is in compliance with this EULA. Such audit will be conducted during regular business hours, and VAR Customer will provide Licensor with reasonable access to all relevant equipment, software, books and records. If an audit reveals that Your use of any Software during the period being audited failed to comply with this EULA, Licensor may avail itself of all available remedies.
7. **THIRD PARTY SOFTWARE.**
  - 7.1. Any software that is owned by a third party and provided to You with the Software is subject to the license and terms and conditions accompanying such Third Party Software. You agree to the applicable Third Party Terms, if any, which are available through the Licensor Legal Documents Resource Center on Licensor Support Center. Licensor may substitute different software for any Third Party Software. Licensor makes no warranties of any kind with respect to Third Party Software.
  - 7.2. Current Procedural Terminology (CPT)<sup>®</sup>. The Software may include the Current Procedural Terminology (CPT) code set, maintained by the American Medical Association through the CPT Editorial Panel, describing medical, surgical, and diagnostic services and designed to communicate uniform information about medical services and procedures among physicians, coders, patients, accreditation organizations, and payers for administrative, financial, and analytical purposes (the "CPT"). CPT, CPT<sup>®</sup> Assistant, CPT<sup>®</sup> Changes, CPT<sup>®</sup> Consumer Friendly Data, CPT<sup>®</sup> Knowledge Base and SNOMED CT<sup>®</sup> Maps are copyrighted by the AMA. You may only use the CPT code set and CPT related products consistent with the terms and conditions available through the Licensor Legal Documents Resource Center on Licensor Support Center.
  - 7.3. Any links or references in the Software to third party sites or third party information are provided for your convenience and the inclusion or reference by Licensor to any such third party items does not imply any endorsement of such item by Licensor. SUCH LINKED OR ACCESSED THIRD PARTY ITEMS ARE NOT UNDER THE CONTROL OF LICENSOR AND LICENSOR IS NOT RESPONSIBLE FOR THE CONTENTS OR SERVICES OR RESOURCES THAT MAY BE PROVIDED THROUGH OR BY ANY SUCH THIRD PARTY OR ANY CHANGES TO SUCH THIRD PARTY ITEMS.

8. **VAR CUSTOMER CONTENT.** VAR Customer agrees that Licensor may access, view and use the VAR Customer Content as necessary to respond to VAR Customer's specific support requests or inquiries; for the business operations of Licensor; as may be required by applicable law, court order or governmental authority; and as otherwise permitted by VAR Customer. VAR Customer further agrees that Licensor may extract VAR Customer Content from any existing database and de-identify the VAR Customer Content in accordance with HIPAA to create a de-identified data set. VAR Customer grants to Licensor a nonexclusive, worldwide, paid-up, royalty-free, perpetual and irrevocable right and license to create derivative works of the de-identified data set and to use, copy, process, analyze, execute, reproduce, display, perform, transfer, distribute, and sublicense the data set and such derivative works in any technology now existing or later developed. Licensor shall own all such de-identified data sets, and all products, solutions and services that it creates using the data sets, and all of the intellectual property rights embodied in and related to the data sets and such products, solutions and services.

9. **DISCLAIMER AND LIMITATION OF LIABILITY.**

9.1. You acknowledge that the liability limitations and warranty disclaimers in this EULA are independent of any remedies hereunder and shall apply regardless of whether any remedy fails of its essential purpose. THE SOFTWARE IS PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS; YOU AGREE THAT USE OF THE SOFTWARE IS AT YOUR SOLE RISK; AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, LICENSOR EXPRESSLY DISCLAIMS ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE SOFTWARE INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR WARRANTIES ALLEGED TO ARISE AS A RESULT OF CUSTOM AND USAGE. LICENSOR DOES NOT WARRANT THAT DEFECTS IN THE LICENSOR SOFTWARE WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY LICENSOR OR ANY LICENSOR REPRESENTATIVE OR RESELLER SHALL CREATE A WARRANTY. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE WILL YIELD ANY PARTICULAR BUSINESS OR FINANCIAL RESULT OR MEET A PARTICULAR NEED. TO THE EXTENT THAT UPDATED VERSIONS OF THE SOFTWARE ARE DEVELOPED AND RELEASED BY LICENSOR, YOU ASSUME ALL RISKS ASSOCIATED WITH USING OLDER VERSIONS OF THE SOFTWARE, INCLUDING BUT NOT LIMITED TO THE RISK OF USING OUTDATED CLINICAL CONTENT. LICENSOR IS NOT AN INSURER AND IS IN NO WAY RESPONSIBLE FOR ANY DAMAGES RESULTING FROM THE LOSS, IN WHOLE OR IN PART, OF ANY DATA OR OTHER ITEMS MAKING UP VAR CUSTOMER CONTENT, REGARDLESS OF THE REASON FOR SUCH LOSS.

9.2. CERTAIN SOFTWARE PROVIDED BY LICENSOR UTILIZES THE INTERNET. LICENSOR DOES NOT WARRANT THAT SUCH SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. LICENSOR DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM LICENSOR'S OR YOUR NETWORK AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT YOUR CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ACCORDINGLY, LICENSOR DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

9.3. INFORMATION PROVIDED BY THE AMERICAN MEDICAL ASSOCIATION (AMA) IS FOR MEDICAL CODING PURPOSE ONLY, AND DOES NOT CONSTITUTE CLINICAL ADVICE, DOES NOT DICTATE PAYER REIMBURSEMENT POLICY, AND DOES NOT SUBSTITUTE FOR THE PROFESSIONAL JUDGEMENT OF THE PRACTITIONER PERFORMING A PROCEDURE, WHO REMAINS RESPONSIBLE FOR CORRECT CODING. INFORMATION OBTAINED FROM CPT® KNOWLEDGE BASE DOES NOT REPLACE THE AMA'S CURRENT PROCEDURAL TERMINOLOGY AND OTHER APPROPRIATE CODING AUTHORITY. THE INFORMATION CONTAINED IN THE CPT® KNOWLEDGE BASE SHOULD ONLY BE USED AS A GUIDE FOR YOUR OWN USE AND SHOULD NOT BE DISSEMINATED IN ANY WAY. IN NO EVENT IS LICENSOR OR THE AMA LIABLE TO YOU FOR ANY LOSS OR DAMAGE.

9.4. **IN NO EVENT SHALL LICENSOR OR ANY PROVIDER OF THIRD PARTY ITEMS BE LIABLE TO VAR CUSTOMER, YOU OR ANY THIRD PARTY FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, EXEMPLARY OR OTHER INDIRECT DAMAGES OF ANY KIND OR NATURE INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF DATA, LOSS OF BUSINESS, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR**

**ANY OTHER THEORIES OF LIABILITY, EVEN IF LICENSOR HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN NO EVENT SHALL LICENSOR'S OR ITS LICENSORS' TOTAL LIABILITY ARISING FROM OR RELATING TO YOUR OR VAR CUSTOMER'S USE OF THE SOFTWARE EXCEED AN AMOUNT EQUAL TO \$500.00, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF LICENSOR HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING.**

**9.5. ANY ACTION RELATING TO THIS EULA, MUST BE COMMENCED WITHIN TWO YEARS AFTER THE DATE UPON WHICH THE CAUSE OF ACTION ACCRUED OTHERWISE SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.**

**9.6. YOU AGREE THAT ANY CLAIM YOU MAY HAVE AGAINST LICENSOR, INCLUDING LICENSOR'S PAST OR PRESENT EMPLOYEES OR AGENTS, SHALL BE BROUGHT INDIVIDUALLY AND YOU SHALL NOT JOIN SUCH CLAIM WITH CLAIMS OF ANY OTHER PERSON OR ENTITY OR BRING, JOIN OR PARTICIPATE IN A CLASS ACTION AGAINST LICENSOR.**

**10. INFORMATION MANAGEMENT TOOL.** The Software is not intended to diagnose disease, prescribe treatment, or perform any other tasks that constitute or may constitute the practice of medicine or of other professional or academic disciplines. The Software is an information management tool only, which contemplates and requires the involvement of professional medical personnel and professional billers and coders. Information provided is not intended to be a substitute for the advice and professional judgment of a physician or other professional medical personnel or professional biller or coder, as applicable. You shall use your best clinical/professional judgment when acting upon information provided through the Software. You are solely responsible for ensuring that all records of medical care created or maintained in, or transacted through, the Software are accurate and complete, and that all billing information delivered by You to any insurance companies, governmental agency, or other payer is accurate and complete. Neither Licensor nor its subcontractors or licensors shall have any responsibility as a result of this Agreement for decisions made or actions taken or not taken in rendering medical care or for information provided to insurance companies, governmental agencies, or other payers.

## **11. CONFIDENTIAL INFORMATION.**

**11.1.** Neither You nor VAR Customer shall use (except as permitted in connection with Your performance hereunder), disclose or permit any person access to any Trade Secrets while such information retains its status as a Trade Secret. During the Term and for a period of five (5) years thereafter, except as otherwise mandated by law, neither You nor VAR Customer shall use, disclose, or permit any person access to any Confidential Information, except as permitted in connection with your performance hereunder. You acknowledge that if You violate this Section, Licensor may have no adequate remedy at law available to it, may suffer irreparable harm, and will be entitled to seek equitable relief. You agree to protect such Confidential Information and Trade Secrets with no less diligence than You protect your own confidential or proprietary information. If disclosure of Confidential Information is required under provisions of any law or court order, You will notify Licensor within three (3) business days so Licensor will have a reasonable opportunity to object.

**11.2. HIPAA Compliance.** VAR Customer shall enter into a Business Associate Agreement with Authorized Reseller when Authorized Reseller is considered VAR Customer's "Business Associate," as that term is defined by HIPAA. Licensor is Authorized Reseller's Business Associate and has entered into a Business Associate Addendum documenting Licensor's responsibilities and obligations as such. Neither You nor VAR Customer shall have any direct cause of action against Licensor related to or arising from the Business Associate Addendum between Licensor and Authorized Reseller.

## **12. SUSPENSION AND TERMINATION.**

**12.1. Suspension and Termination of Your Right to Use or Access the Software.** You acknowledge that Licensor may suspend or terminate Your use of or access to the Software (i) for noncompliance with this EULA; (ii)

if, in Licensor sole determination, You pose a threat to the performance, security or integrity of the Software or information available therein; or (iii) upon notice of Your suspension or termination by VAR Customer.

**12.2. Suspension of VAR Customer's Right to Use or Access the Software.** Licensor reserves the right to investigate suspected violations of the EULA. Licensor may suspend VAR Customer's ability to fully utilize the Software if (a) VAR Customer's use of the Software breaches the EULA or poses a threat to the performance, integrity or security of Licensor's Software or network; (b) Authorized Reseller requests such suspension; or (c) Authorized Reseller fails to pay when due all fees for VAR Customer's continued use of the Software. Licensor's right to suspend VAR Customer's Full Access to the Software is in addition to any other rights and remedies (including termination rights) Licensor may have. During any period of suspension, Licensor shall provide VAR Customer with Limited Access to the Software unless doing so poses a threat to the performance, integrity or security of Licensor's Software, Services or network. Company shall have no liability for any losses, expenses, costs or liabilities incurred by VAR Customer during or as a result of any suspension pursuant to this Section.

**12.3. Termination of VAR Customer's Right to Use or Access the Software.** Licensor may terminate the EULA immediately upon notice to VAR Customer if VAR Customer: (a) materially breaches the License Agreement or EULA and fails to remedy such breach within 60 days after receiving notice of the breach from Licensor, (b) infringes Licensor's intellectual property rights and fails to remedy such breach within ten (10) days after receiving notice of the breach from Licensor, (c) materially breaches the EULA in a manner that cannot be remedied, or (d) commences dissolution proceedings or ceases to operate in the ordinary course of business.

**12.4. Obligations upon Termination or Expiration.** Upon the termination or expiration of VAR Customer's EULA, VAR Customer will promptly (a) cease using all Software, (b) permanently delete, as defined by HIPAA, all Software from all computer systems (including servers and personal computers), (c) return to Authorized Reseller or destroy all copies (including partial copies) of the Software, and (d) deliver to Authorized Reseller written certification of VAR Customer's "Security Official," as defined by HIPAA, that VAR Customer has complied with its obligations in this Section. VAR Customer is responsible to take appropriate steps prior to any such termination or expiration date to manage and perform any transition processes and business operations that VAR Customer may need prior to any such termination or expiration date including, but not limited to, ensuring that it has a copy of all of its VAR Customer Content and any other data maintained in the Software prior to termination of the EULA. VAR Customer may extract such VAR Customer Content and other data using instructions provided by Authorized Reseller or Licensor. If VAR Customer requires professional services with respect to such extraction, Licensor may provide such services on a time and materials basis.

**13. INDEMNIFICATION.** VAR Customer assumes the risk of liability for, and agrees, at its sole expense, to defend, indemnify and hold Company, its affiliates, licensors, officers, directors, employees and agents harmless from and against any and all liabilities, losses, damages, claims and expenses (including legal expenses of any kind and nature) arising out of or relating to directly or indirectly: (a) VAR Customer's or VAR Customer Permitted Users' negligent use or intentional misuse of the Software, (b) claims of any kind, whether alleged under any contract or agreement, in tort, as strict liability, or under any other theory, made by any third party against Company related to or arising from VAR Customer's or its Permitted Users' use of the Software or Documentation, or (c) arising out of or resulting from any failure of, or any allegation of failure of, VAR Customer or any VAR Customer Permitted User to comply with the EULA.

**14. EXPORT LAW ASSURANCES.** You may not use or otherwise export or re-export the Software except as authorized by United States law and the laws of the jurisdiction in which the Software was obtained. In particular, the Software may not be exported, transshipped or re-exported (1) into (or to a national or resident of) those countries subject to a comprehensive economic sanctions program administered by the U.S. Department of the Treasury, Office of Foreign Assets Control ("OFAC") (Countries subject to OFAC embargo or sanctions can change at any time and can be reviewed by consulting materials available at <http://www.treas.gov/ofac/index.html> and <http://www.bis.doc.gov>); or (2) to anyone on the U.S. Treasury

Department list of Specially Designated Nationals or the U.S. Department of Commerce Denied Persons List or Entity List, each as they may be amended from time to time and which may be found at <http://www.treas.gov/ofac/index.html> and <http://www.bis.doc.gov>.

15. **MISCELLANEOUS.** This EULA is governed by and will be construed in accordance with the laws of the State of Texas, exclusive of its rules governing choice of law and conflict of laws and any version of the Uniform Commercial Code. Failure to exercise or enforce any right under this EULA is not a waiver of such right. Licensor is not liable for failing to fulfill its obligations due to acts of God or other causes beyond its reasonable control. All notices relating to the parties' legal rights and remedies under this EULA must be provided in writing and delivered by: (a) postage prepaid registered or certified U.S. Post mail; or (b) commercial courier. All notices to Licensor will be sent to the following address with a copy to Licensor's General Counsel: 10901 Stonelake Blvd, Austin, TX 78759, and to Authorized Reseller at DAS HEALTH VENTURES, INC., attention CONTRACT ADMINISTRATION, 1000 N. Ashley Dr, Suite 300, Tampa, FL 33602. Authorized Reseller shall be a third party beneficiary of this End User License Agreement and shall be availed of all rights and remedies afforded to Licensor, provided, however, neither You nor VAR Customer shall have any direct cause of action against Authorized Reseller related to or arising from this End User License Agreement. Otherwise, there are no third party beneficiaries to this Agreement. All terms which by their nature survive termination shall survive termination or expiration of the EULA including, but not limited to, Sections 6 (Audit), 7.3 (Third Party Software), 8 (VAR Customer Content), 9 (Disclaimer and Limitation of Liability), 11 (Confidential Information), 12.4 (Obligations Upon Termination or Expiration), 13 (Indemnification), 14 (Export Law Assurances), 15 (Miscellaneous) and 16 (Dispute Resolution).
16. **DISPUTE RESOLUTION.** If a dispute arises, the parties agree to negotiate in good faith to resolve such dispute. If the dispute is not resolved through negotiations between the parties within ninety (90) days of the initial notice of the dispute, or within a time frame mutually agreed upon by the Parties, the dispute must then be submitted for binding arbitration by notifying the other Party in writing of the submission of such dispute to arbitration (the "Arbitration Notice"). The Party delivering the Arbitration Notice shall specify therein, to the fullest extent then possible, its version of the facts surrounding the dispute and the amount of any damages and/or the nature of any injunctive or other relief such Party claims. The Party receiving such Arbitration Notice shall respond within sixty (60) days after receipt thereof in writing (the "Arbitration Response"), stating its version of the facts to the fullest extent then possible and, if applicable, its position as to damages or other relief sought by the Party initiating arbitration. The Parties shall then endeavor, in good faith, to resolve the dispute outlined in the Arbitration Notice and Arbitration Response. In the event the Parties are unable to resolve such Dispute within sixty (60) days after receipt of the Arbitration Response, the Parties shall submit the dispute to binding arbitration in accordance with the American Health Lawyers Association arbitration program (the "Service"). If the Parties are unable to agree on an arbitrator from a list provided by the Service within sixty (60) days after receipt of the Arbitration Response, each of the Parties shall, within sixty (60) days after receipt of the Arbitration Response, choose an arbitrator selector ("Selector"). The two (2) Selectors shall then have thirty (30) days to select an arbitrator from the Service's list who shall serve as the final arbitrator for the dispute. (The arbitrator chosen by the Parties hereto or by the Selectors, as the case may be, shall hereinafter be referred to as the "Arbitrator"). The Arbitrator shall not be an Affiliate of any of the Parties hereto. Each Party shall pay for its own fees associated with the arbitration provided, however, the Arbitrator shall have the ability to award legal fees to the prevailing Party. The arbitration shall be held in Travis County, Texas and shall proceed in accordance with procedures set forth by the Service in all other manners. The award of the Arbitrator shall be binding on the Parties and may be entered as a final judgment in a court of competent jurisdiction. To discourage any dispute over the confirmation of the resulting arbitration award, the Parties agree that the court hearing any challenge to the award may award fees incurred in post-arbitration proceedings to the Party who prevailed in the arbitration if and when the award is confirmed.
17. **GOVERNMENT VAR CUSTOMER RIGHTS.** If this Software is provided under a federal government contract, then Licensor intends that any Software provided under this EULA constitute "commercial item(s)" as defined in Federal Acquisition Regulation ("FAR") 2.101, including any Software, Clinical Content, Documentation or technical data. Additionally, all Software, Clinical Content, Documentation, or technical data provided by Licensor to Government VAR Customer under this EULA will be considered related to such "commercial

item(s)". If Government VAR Customer seeks rights in Software, Clinical Content, Documentation, or technical data provided by Licensor under this EULA, then Licensor grants only those rights established under any FAR or FAR Supplement clauses which are flowed down to Licensor under this EULA consistent with the delivery of "commercial item(s)." If Government VAR Customer contends that any Software, Clinical Content, Documentation, or technical data provided under this EULA does not constitute "commercial item(s)" as defined in FAR 2.101, then Government VAR Customer promptly will notify Licensor of the same, and identify what rights Government VAR Customer contends exist in such Software, Clinical Content, Documentation, or technical data. No rights in any such Software, Clinical Content, Documentation, or technical data will attach other than rights related to "commercial item(s)" unless Government VAR Customer provides such notice to Licensor, and Licensor expressly agrees in writing that such rights are granted under this EULA.

Notwithstanding the foregoing, the Software includes CPT, CPT<sup>®</sup> Assistant, CPT<sup>®</sup> Changes, CPT<sup>®</sup> Consumer Friendly Data, CPT<sup>®</sup> Knowledge Base, *SNOMED CT<sup>®</sup> Maps* which is commercial technical data, which was developed exclusively at private expense by the American Medical Association (AMA), 330 North Wabash Avenue, Chicago, Illinois 60611. The AMA does not agree to license CPT to the Federal Government based on the license in FAR 52.227-14 (Data Rights – General) and DFARS 252.227-7015 (Technical Data – Commercial Items) or any other license provision. The AMA reserves all rights to approve any license with any Federal agency.