

Subscription and Services Agreement

IMPORTANT – READ CAREFULLY: This Subscription and Services Agreement (the “**Agreement**”) is entered into and effective by and between Renesan Software, a California corporation, and Visonex LLC, a Delaware corporation, both d/b/a Renvio (collectively, “**Company**,” “**we**” or “**us**”), and you. If you are agreeing to this Agreement not as an individual but on behalf of your company, then “**Customer**” or “**you**” means your company, and you are binding your company to this Agreement. By signing the Order Form, the Customer indicates its agreement to be bound by this Agreement. This Agreement governs the Customer’s initial purchase of services and hardware from the Company, as specifically indicated in the Order Form, as well as any future purchases made by you that reference this Agreement. This Agreement includes any Orders, and any other policies and attachments referenced in this Agreement.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company and the Customer agree as follows:

1. **Definitions.**
 - 1.1 “**Approved Site(s)**” means any single, physical and functional location where patients are served by the Licensed Programs set forth in an Order Form or SOW, and provided to the Company by the Customer, or by the Customer making a written request to the Company to add a location, which is then approved by the Company.
 - 1.2 “**Customer Data**” means all data or information submitted by or on behalf of Customer to the Licensed Program(s), as described in Section 2.4.
 - 1.3 “**Delivery Date**” means the day on which all Licensed Program(s) in an Order Form may be accessed and Used by the Customer via a Customer’s general-purpose computer, which is located at an Approved Site where that Licensed Program is intended for Use.
 - 1.4 “**Effective Date**” means the first date on which both the Company and Customer have signed the Order Form, which expressly incorporates the Agreement.
 - 1.5 “**EULA**” means, with respect to a Licensed Program, the current released version of the End-User License Agreement applicable to such Licensed Program as the same may be updated from time to time and can be found at: www.gorenvio.com/end-user-li.
 - 1.6 “**Installation**” means: (a) set up of any server necessary for the Licensed Program(s); (b) installation and configuration of the Licensed Program(s) & database on the server; and (c) configuration of the firewall, security, and backup of the Licensed Program(s) and database. The Installation Service is performed on a remote-access basis whenever reasonably feasible.
 - 1.7 “**Intellectual Property Right**” means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.
 - 1.8 “**Licensed Program(s)**” means one or more software licenses included in the Order Form for Use at an Approved Site, which are granted subject to the terms and conditions of this Agreement as well as the EULA.
 - 1.9 “**Maintenance**” means the support services provided by Company in accordance with Company’s then-current support policy and as further set forth in the support policy referenced in Section 10.
 - 1.10 “**Order Form**” means an ordering document executed by the parties that specifies the Licensed Program(s), hardware, or services purchased by Customer under this Agreement. Each Order Form shall incorporate this Agreement by reference.
 - 1.11 “**Statement of Work**” or “**SOW**” means a document executed by the parties that describes revisions to the Order Form, including additional Licensed Program Subscriptions, hardware, or services purchased by Customer under this Agreement. Each Statement of Work shall incorporate this Agreement by reference.
 - 1.12 “**Subscriber**” means an individual (i) who is authorized by Customer to use or access the Licensed Program(s) and who has been supplied an identification and password by Customer or at Customer’s direction or (ii) whose login credentials are stored on the Licensed Program(s). Customer shall purchase a subscription to the Licensed Program(s) for each Subscriber (a “**Subscription**”). An individual Subscriber is not a party to this Agreement. A Subscriber may include Customer’s employees, consultants, representatives, and agents.

- 1.13 **“Subscription Term”** means the period of time identified in the Order Form during which Customer’s Subscribers have purchased a Subscription to a Licensed Program and are authorized to Use or access a Licensed Program pursuant to the terms set forth in this Agreement, unless earlier terminated as set forth in Section 8. It comprises the entire time period during a Subscription, including when a Licensed Program is renewed.
- 1.14 **“TBD Active Patients”** means the total number of patients who receive a treatment that utilize a Licensed Program from a Customer during a billing calendar month. Such patients may receive more than one treatment, but they are only counted once each month for each Licensed Program utilized in their treatment visits during a single billing month (**“Active Patients”**). For avoidance of doubt, this term will be used in the Quantity (QTY) and Total columns of an Order Form or SOW to denote that rather than charges being based on a fixed number of Subscriptions or total patient visits during a monthly period, the Customer will instead be charged monthly Subscription fees for each Active Patient utilizing a Licensed Program during a billing month (regardless of how many times a patient receives a treatment that utilizes a Licensed Program during that month). While the Customer will only incur one Subscription fee for a patient’s treatment that utilizes a Licensed Program, if that treatment utilizes multiple Licensed Programs during a month, then the Customer will be charged for each Licensed Program utilized in the patient’s treatment. For avoidance of doubt, the annual rate increases in Section 3.1 or included on the Order Form are applicable to these fees.
- 1.15 **“TBD Total Treatments”** means the total number of treatments received by all patients that utilize a Licensed Program from a Customer during a billing calendar month. Multiple treatments received by the same patient during a calendar month will each be counted and billed once for each Licensed Program utilized in that treatment visit, such that the Customer will be billed each time for multiple treatments that utilize a Licensed Program by a single patient. For avoidance of doubt, this term will be used in the Quantity (QTY) and Total columns of an Order Form or SOW to denote that rather than charges being based on a fixed number of Subscriptions during a monthly period, the Customer will instead be charged monthly Subscription fees for each treatment that utilizes a Licensed Program during a billing month. The Customer will thus incur a Subscription fee for each treatment received by a patient that utilizes a Licensed Program, even if that patient receives a treatment multiple times during a month using the same Licensed Program. For avoidance of doubt, the annual rate increases in Section 3.1 or included on the Order Form are applicable to these fees.
- 1.16 **“Training”** means an introduction to and review of the Licensed Program(s) and its features. Customer shall complete any training for each Licensed Program ordered hereunder within thirty (30) days of Installation of the Licensed Program or else be deemed to have completed such course within such time period. Customer may also order additional Training services for an additional charge.
- 1.17 **“Use”** means the Customer’s permitted utilization of a Licensed Program under the EULA.
- 1.18 **“% of Collected Revenue”** means that the Customer agrees to pay Company a specific percentage of total revenue collected using a specific Licensed Program for its use of that Licensed Program, rather than some other type of fee. The numeric percentage will be set forth in the Order Form’s Quantity (QTY), Unit Price, and Total columns, along with the phrase, “% of Collected Revenue”. As a result, if “5% of Collected Revenue” is included in the Order Form for a Licensed Program, then the Customer’s fees for the use of that Licensed Program shall be 5% of the total amount of revenue collected for the Customer using a specific Licensed Program during each month. The annual rate increases in Section 3.1 or included on the Order Form is not applicable to these fees. These fees are fixed based on the percentage included.

2. **Services and Proprietary Rights.**

- 2.1 **Licensed Use.** Customers Use of a Licensed Program under the EULA is the non-exclusive, non-transferable and non-assignable (except as expressly provided in the EULA) license granted hereby to Customer to use the Licensed Program in machine readable form (i.e., object form) only for recording, storing, managing, monitoring and reviewing data pertaining to medical patients and only for the purpose of serving such patients at an Approved Site of Customer under the terms and conditions of the EULA and this Agreement (with no right to sub-license the Licensed Program and with no right to permit access to the Licensed Program by anyone who would use the Licensed Program for any other purpose), provided that Customer complies with all terms and conditions of this Agreement and the EULA. Customer may also provide access to the Licensed Programs for its billing providers for billing purposes only. Customer shall not, nor permit any third party to, alter or remove, any proprietary trademark or copyright markings incorporated in, marked on or affixed to any Company materials.

At all times during the Subscription Term and until Customer provides such certification of cessation and removal under Section 8.5, Customer shall, at its expense: (a) provide and maintain a VPN connection and associated dial-up telephone line or other connectivity means approved or recommended by Company and a means to enable Company to remotely connect with the Licensed Program(s) and Customer’s software database for the Licensed Program(s) for purposes of installation, maintenance service and otherwise; and (b) permit Company to monitor and audit (electronically and/or manually) Customer’s use of the Licensed Program(s). Company’s use of such remote access will be subject to all applicable regulations regarding patient data confidentiality and security.

- 2.2 **Reservation of Rights.** Except for the limited rights expressly granted to Customer in Section 2.1, Company reserves all rights, title, and interest in and to the Licensed Program(s), the underlying software, Company Technology (as defined in Section 2.5), and the Company's materials, including all related Intellectual Property Rights inherent therein. No rights are granted to Customer hereunder other than as expressly set forth in Section 2.1.
- 2.3 **Restrictions.** Customer and its Subscribers shall not (i) modify, copy, display, republish, or create derivative works based on the Licensed Program(s) or the underlying software; (ii) modify, copy, or create derivative works of the Company's materials; (iii) frame, scrape, link to, or mirror any content forming part of the Licensed Program(s), other than framing on Customer's own intranets or otherwise for its own internal business purposes; (iv) disassemble, reverse engineer, or decompile the Licensed Program(s) or the underlying software; (v) access the Licensed Program(s) in order to build a competitive product or service, or copy any ideas, features, functions, or graphics of the Licensed Program(s); (vi) license, sublicense, sell, resell, rent, lease, transfer, assign (except as permitted in Section 9.6), distribute, time share, or otherwise commercially exploit or make the Licensed Program(s) available to any third party or include any Licensed Program(s) or Company materials in a service bureau or outsourcing offering, other than to Subscribers or as otherwise contemplated by this Agreement; (vii) use the Licensed Program(s) to send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (viii) use the Licensed Program(s) to send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third-party privacy rights; (ix) upload to the Licensed Program(s) or use the Licensed Program(s) to send or store viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents, or programs; (x) interfere with or disrupt the integrity or performance of the Licensed Program(s) or the data contained therein; (xi) conduct any platform monitoring, penetration testing or vulnerability scanning of the Licensed Program(s); (xii) attempt to gain unauthorized access to the Licensed Program(s) or its related systems or networks; or (xiii) utilize the Licensed Program(s) in a way that circumvents a contractual usage limit. Company may monitor Customer's use of the Licensed Program(s) to confirm Customer's compliance with the terms and conditions in this Agreement.
- 2.4 **Customer Data.** As between Company and Customer, Customer retains ownership of all rights, title, and interest in and to all Customer Data. Customer Data is deemed the Confidential Information of Customer under this Agreement. Customer grants Company a nonexclusive, worldwide, royalty-free, license to copy, modify, retain, distribute and disclose, display, and otherwise use Customer Data to provide the Licensed Program(s), subject to Section 8.5 (Return/Deletion of Customer Data), and to De-identify Customer Data. "De-identified" means that the data cannot reasonably identify, relate to, describe, be capable of being associated with, or be linked, directly or indirectly, to a particular company, or individual person, including by removing, without limitation and as applicable, the following identifiers: company names and the names of individuals, addresses, phone numbers, e-mail address(es), and any other information which could reasonably identify, when taken in the aggregate, a specific company, organization, or individual. Customer Data that has been De-identified shall not be deemed confidential information or Customer Data, i.e., Company may copy, modify, retain, distribute and disclose, display, and otherwise use and commercialize such De-identified data for any purpose permitted under applicable law.
- 2.5 **Intellectual Property Rights Ownership, Use.** Company alone, its affiliates (and their third party providers, where applicable) shall own all right, title, and interest, including all related Intellectual Property Rights, in and to all of Company's Proprietary Technology, as defined in Section 4.1 below, including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs, and other tangible or intangible technical material or information ("**Company Technology**") made available to Customer by Company in providing the Licensed Program(s), or the Company Technology, and Customer hereby assigns to Company any suggestions, ideas, enhancement requests, feedback, recommendations, or other information, in all cases excluding Customer Data and Customer Confidential Information, provided by Customer or its Subscribers relating to the Licensed Program(s), or the Company Technology (the "**Feedback**"). To the extent an assignment of such rights is not possible under applicable law, the foregoing shall be deemed the grant of a comprehensive royalty free, exclusive, worldwide, unlimited, transferable, sublicenseable, irrevocable, perpetual license to exploit, modify, create derivative works of, and otherwise use in any way or incorporate Feedback into the Licensed Program(s). Customer agrees to take such further reasonable actions, at Company's cost, as Company may request to give effect to this Section. Company may use such Feedback as it deems appropriate in its sole discretion. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Licensed Program(s), the Company Technology, or the Intellectual Property Rights owned by Company, its affiliates, and their third-party providers. The Company name, the Company logo, and the Company product names associated with the Licensed Program(s) are trademarks of Company, its affiliates, and their third party providers, and unless expressly granted herein, no right or license is granted to use them. Customer will not accrue any residual rights to the Company Technology or the Licensed Program(s), including any rights to the Intellectual Property Rights in connection therewith.
- 2.6 **Changes in Subscribers.** From time to time, Customer may replace any Subscriber who no longer uses or needs access to the Licensed Program(s) with a new Subscriber. Customer, however, may not allow more than one individual Subscriber to use or otherwise share a single Subscription. Unless otherwise specified in the applicable Order Form, Renvio shall charge Customer a pro-rated Subscription fee if Customer purchases additional Subscriptions during a Subscription Term (such additional Subscriptions, "**Add-ons**") during the billing month. The rate for Add-ons shall be the same as the per-Subscriber rate applicable to Customer's

existing Subscription in effect at the time Customer purchases the Add-ons. If Customer permits additional Subscribers in excess of the quantity listed on the Order Form to use a Licensed Program without paying the applicable Subscriber fees in compliance with this Agreement, Order Form, or SOW, Company may invoice Customer, and Customer shall pay for the additional Subscribers at the rate per Subscriber set forth on Customer's then-current Order Form.

In addition, Customer may also be offered Licensed Program(s) where the Customer only pays for the number of monthly Active Patients, who utilize a particular Licensed Program during a billing month. In that event, the Order Form shall reflect a quantity of TBD Active Patients, and the Customer will be charged monthly for the number of Active Patients for each Licensed Program.

2.7 **Training and other Services.** Company shall make the Licensed Program(s), Training, and other services ordered by Customer available to Customer pursuant to this Agreement and all Order Forms during the Subscription Term. Customer agrees that its purchase of the Licensed Program(s), Training, or other services is neither contingent upon the delivery of any future functionality or features, nor dependent upon any oral or written public comments made by Company with respect to future functionality or features.

3. **Fees and Payment.**

3.1 **Fees.** Customer shall pay all fees specified in all Order Forms and Statements of Work executed by the parties hereunder. Customer shall also pay the Company's travel and accommodation expenses related to all Order Forms and Statements of Work, provided that the Customer provides prior approval for these travel expenses. Except as otherwise specified in any Order Form or Statement of Work, all fees are quoted and payable in United States dollars, payment obligations are non-cancelable, and except as expressly permitted in this Agreement, fees paid are non-refundable. Fees for the Licensed Program(s) are based on Subscriptions purchased during the Subscription Term (or Renewal Term) and not actual usage, unless the Order Form indicates that fees for a Licensed Program are based on TBD Active Patients or % of Collected Revenue. The number of Subscriptions purchased cannot be decreased during a Subscription Term. Except as otherwise provided in the Order Form or herein, Company shall annually increase rates by three percent (3.0%) for all of Customer's Licensed Program subscription fees in this Agreement on the anniversary of the Delivery Date for each Licensed Program, unless the Order Form indicates that fees for a Licensed Program are based on % of Collected Revenue (in which case, that percentage does not change). For avoidance of doubt, except as otherwise provided in the Order Form or herein, this provision means that the Customer's Subscription fees for each Licensed Program shall increase annually regardless of the length of the Subscription Term, unless the Order Form indicates that fees for a Licensed Program are based on % of Collected Revenue.

3.2 **Invoicing and Payment.** Except as otherwise specified in any Order Form or Statement of Work, all fees, expenses, and charges under this Agreement will be invoiced monthly and are due net thirty, or (30) days from an invoice date. For Licensed Programs with a quantity of TBD Active Patients, a Customer will be invoiced for the number of TBD Active Patients after a month ends and the total of monthly Active Patients can be ascertained. Invoices will be emailed on the day of the date of invoice. In the event that the email date is later, such later date will apply for the purpose of calculating when a payment is due for that invoice, i.e., 30 days from the date the invoice is sent. Customer agrees to accept invoices via email at the billing contact email address specified in the applicable Order Form, as may be updated by Customer upon prior written notice. Customer shall provide its complete and accurate billing address and contact information to Company.

3.3 **Payment Disputes.** If Customer has a good faith belief that a particular invoice is incorrect, Customer must contact Company in writing within fifteen (15) days of such invoice date detailing the basis of the dispute. Customer may only withhold payment on the timely disputed amount in accordance with this Section. Any payment not received by Company by the due date and not subject to a good faith dispute accrues administrative service charges of one and one-half percent (1.5%) of any unpaid amount per month (or fraction thereof), or at the maximum rate permitted by law, from the date such payment was due until the date paid. Company's other contractual and/or statutory rights, claims, and remedies remain unaffected.

3.4 **Suspension of Service.** Except as provided in Section 3.3 above, if Customer's account is thirty (30) days or more overdue, then, following five (5) business days' written or emailed notice and an opportunity to cure, in addition to any of its other rights, claims, or remedies, Company may suspend Customer's access to the Licensed Program(s) until such amounts are paid in full. Provided Company provides emailed notice to Customer, Company may immediately suspend Customer's access to the Licensed Program(s) if Customer is in material breach of Section 2.3(vii)-2.3(xiii) above, provided that such suspension will be narrowly tailored to address the cause of suspension for only the duration needed for Customer to cure such breach.

3.5 **Taxes.** Unless otherwise stated, Company's fees do not include any direct or indirect local, state, federal, or foreign taxes, levies, duties, or similar governmental assessments of any nature, including value-added, use or withholding taxes (collectively, "**Taxes**"). All payments under this Agreement shall be made free and clear and without deduction of Taxes by Customer. Customer is responsible for paying all Taxes associated with its purchases hereunder, excluding taxes based on Company's net income or property. If Customer withholds any Taxes, Customer will gross up the payment to Company for the amount specified in the Order

Form. If Company has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Company with a valid tax exemption certificate authorized by the appropriate taxing authority.

4. **Confidentiality.**

4.1 **Definition of Confidential Information.** As used herein, “**Confidential Information**” means all confidential and proprietary information of a party (“**Disclosing Party**”) disclosed to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information or the circumstances of disclosure, including (a) the terms and conditions of this Agreement (including pricing and other terms reflected in all Order Forms and SOWs hereunder), (b) the Customer Data, (c) a party’s proprietary technology or computer software in all versions and forms of expression and the Licensed Program(s), whether or not the same has been patented or the copyright thereto registered, is the subject of a pending patent or registration application, or forms the basis for a patentable invention (collectively the “**Proprietary Technology**”), (d) the Company Materials, Company’s security information, audits, or reports, and (e) each party’s respective business and marketing plans, technology and technical information, product designs, and business processes. The obligations in this Section 4 shall not apply to any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party and without an obligation of confidentiality; (iii) was independently developed by the Receiving Party without the use of or reference to the Confidential Information of the Disclosing Party; or (iv) is lawfully received from a third party without breach of any obligation owed to the Disclosing Party and without an obligation of confidentiality.

4.2 **Confidentiality.** The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party’s prior written permission. Either party may disclose Confidential Information to its personnel, auditors, accountants, attorneys, or advisors and those of its affiliates who are subject to confidentiality obligations at least as protective as those herein, which are in no event less than a reasonable standard of care.

4.3 **Protection.** Receiving Party will use at least the same level of care to prevent unauthorized use of the Confidential Information as it uses for its own confidential and proprietary information of like kind, but in no event less than a reasonable standard of care. The confidentiality obligations contained herein supersede and replace any prior non-disclosure agreement between the parties regarding the subject matter covered by this Agreement.

4.4 **Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prompt prior notice of such compelled disclosure, to the extent legally permitted, and reasonable assistance, at Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure.

4.5 **Remedies.** If the Receiving Party discloses or utilized (or threatens to disclose or utilize) any Confidential Information of the Disclosing Party in breach of the confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

5. **Warranties and Disclaimers.**

5.1 **Warranties.** Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Company warrants that: (i) it will provide the Licensed Program(s) in a manner consistent with general industry standards reasonably applicable to the provision thereof; (ii) Company will not materially decrease the overall functionality of the Licensed Program(s); (iii) it will perform all services in a professional and workmanlike manner; (iv) it owns or otherwise has sufficient rights in the Licensed Program(s) to grant to Customer the rights to use the Licensed Program(s) granted herein and the Licensed Program(s) will not infringe a third-party’s registered Intellectual Property Rights; and (v) it will employ then-current, industry-standard measures to test the Licensed Program(s) to detect and remediate viruses, worms, time bombs, Trojan horses, and other malicious code, files, scripts, agents, or programs designed to negatively impact the operation of the Licensed Program(s). Customer warrants that: (a) it owns or otherwise has sufficient rights in the Customer Data to grant to Company the rights to use the Customer Data granted herein; and (b) its Subscribers will not provide any false information to gain access to the Licensed Program(s).

5.2 **Remedies.** Customer’s exclusive remedy and Company’s entire liability for a breach of the warranties set forth in Section 5.1 above shall be as follows: (i) for a breach of the warranties set forth in Sections 5.1(i), 5.1(ii) and 5.1(v), and provided that the decrease in functionality is not caused by the combination of the Licensed Program(s) with any services, hardware, connection, interface, data, or business processes not provided by Company, Company shall correct any material reproducible impairments to the features and functionality in the Licensed Program(s) so that it materially conforms to this warranty, and if Company is unable to provide such Licensed Program(s) as warranted within a commercially reasonable time following receipt of written notice of breach, Customer shall be entitled to terminate the applicable subscription and receive a refund of any prepaid fees

applicable to the remaining portion of the Subscription Term following the effective date of termination; (ii) for a breach of the warranty set forth in Section 5.1(iii), Customer shall provide written notice of breach and Company shall re-perform the applicable services; if Company determines that it is unable to reperform such services as warranted within a commercially reasonable time, Customer shall be entitled to terminate the applicable Order Form or SOW and recover the portion of the fees paid for such non-conforming services, provided that Customer discontinues all use of any Company materials delivered under the applicable Order Form or SOW and upon request certifies that it has done such and has destroyed all copies in Customer's control; and (iii) for a breach of the warranty set forth in Section 5.1(iv), Company will provide the indemnification described in Section 6.1 below. Company's exclusive remedy for a breach of Customer's warranty in Section 5.1(a), is that Customer will provide the indemnification described in Section 6.2 below.

- 5.3 **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, OR AS LIMITED BY APPLICABLE LAW CUSTOMER UNDERSTANDS AND AGREES THAT THE LICENSED PROGRAM(S) AND THE COMPANY MATERIALS ARE PROVIDED "AS IS" AND COMPANY, ITS AFFILIATES, THIRD PARTY PROVIDERS, RESELLERS, AND ITS LICENSORS MAKE NO WARRANTIES OF ANY KIND WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT: (A) THE LICENSED PROGRAM(S) DO(ES) NOT CONSTITUTE THE PROVISION OF LEGAL ADVICE IN ANY MANNER; (B) THE LICENSED PROGRAM(S) DO(ES) NOT ENSURE CUSTOMER'S COMPLIANCE WITH APPLICABLE LABOR OR EMPLOYMENT LAWS; AND (C) CUSTOMER IS SOLELY RESPONSIBLE FOR ITS COMPLIANCE WITH ALL APPLICABLE LAWS.

6. **Indemnification.**

- 6.1 **Indemnification by Company.** Company shall defend Customer, at Company's expense, against any claims, demands, suits, or proceedings ("Claim[s]") made or brought against Customer by a third party alleging that the utilization of the Licensed Program(s) as contemplated hereunder directly infringes any registered U.S. Intellectual Property Right of a third party and Company shall indemnify and hold Customer harmless against all reasonable costs (including attorneys' fees) finally awarded against Customer by a court of competent jurisdiction or an arbitrator, or agreed to in a written settlement agreement signed by Company, as a result of such Claims, provided that Customer shall (a) promptly upon receiving notice of a Claim, give Company written notice of the Claim; (b) give Company sole control of the defense and settlement of the Claim (except that Company may not settle or defend any Claim unless it unconditionally releases Customer of all liability); and (c) provide to Company, at Company's expense, all reasonable assistance in the defense or settlement of such Claim. Company's indemnification obligation shall be offset to the extent its ability to defend or settle a claim is jeopardized by Customer's failure to comply with the preceding sentence. Company shall have no indemnification obligation for Claims arising from (x) the combination of the Licensed Program(s) or any part thereof with any services, hardware, connection, interface, data, or business processes not provided by Company, to the extent such modification contributed to the infringement; (y) use of the Licensed Program(s) by Customer other than in accordance with this Agreement, and/or the applicable Order Form and/or the SOW; or (z) Customer Data.

If the applicable Licensed Program or any part thereof is held or likely to be held infringing, in addition to its obligations in this Section 6.1, Company may in its sole discretion, and at no cost to Customer (i) modify the applicable Licensed Program so that it is no longer infringing; (ii) obtain a license for Customer to continue using that Licensed Program in accordance with the Agreement; (iii) replace the Licensed Program with a functionally equivalent service; or (iv) terminate Customer's subscriptions to the applicable Licensed Program and refund Customer any prepaid, unused fees applicable to the remaining portion of the Subscription Term of the applicable Licensed Program following the effective date of such termination.

This Section 6.1 states Company's entire liability and Customer's exclusive remedy for any Claim of intellectual property infringement.

- 6.2 **Indemnification by Customer.** Customer shall defend Company, at Customer's expense, against any Claims made or brought against Company by a third party alleging that the Customer Data, or Customer's utilization of the Licensed Program(s) in violation of this Agreement, infringes, or otherwise violates a third party's property, privacy, or directly infringes any registered U.S. Intellectual Property Right of a third party and Customer shall indemnify and hold Company harmless against all reasonable costs (including reasonable attorneys' fees) finally awarded against Company by a court of competent jurisdiction or an arbitrator, or agreed to in a written settlement agreement signed by Customer, as a result of such Claims, provided that Company shall (a) promptly upon receiving notice of a Claim, give Customer written notice of the Claim; (b) give Customer sole control of the defense and settlement of the Claim (except that Customer may not settle or defend any Claim unless it unconditionally releases Company of all liability); and (c) provide to Customer, at Customer's expense, all reasonable assistance in the defense or settlement of such Claim. Customer's indemnification obligation shall be offset to the extent its ability to defend or settle a claim is jeopardized by Company's failure to comply with the preceding sentence.

This Section 6.2 states Customer's entire liability and Company's exclusive remedy for any Claim of intellectual property infringement.

7. **Limitation of Liability.**

7.1 **Limitation of Liability.** SUBJECT TO SECTION 7.2,

(a) EXCEPT AS SET FORTH IN SECTIONS 7.1(b) AND 7.1(c), IN NO EVENT SHALL EITHER PARTY'S OR ITS LICENSORS' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT ACTUALLY PAID OR PAYABLE BY CUSTOMER UNDER THE APPLICABLE ORDER FORM OR SOW FOR THE LICENSED PROGRAMS, HARDWARE, OR SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO THE LIABILITY.

(b) CUSTOMER'S BREACH OF SECTION 3 (FEES AND PAYMENTS) OR SECTION 2.3 (RESTRICTIONS), OR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS IN SECTIONS 6.1 (INDEMNIFICATION BY COMPANY) AND 6.2 (INDEMNIFICATION BY CUSTOMER) ARE NOT SUBJECT TO THE LIMITATION OF LIABILITY IN SECTION 7.1(a) ABOVE OR SECTION 7.1(c) BELOW.

(c) WITH RESPECT TO EITHER PARTY'S BREACH OF SECTION 4 (CONFIDENTIALITY), IN NO EVENT SHALL EITHER PARTY'S OR ITS LICENSORS' AGGREGATE LIABILITY EXCEED TWICE THE AMOUNTS ACTUALLY PAID OR PAYABLE BY CUSTOMER UNDER THE APPLICABLE ORDER FORM OR SOW IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY.

7.2 **Exclusion of Consequential and Related Damages.** WITH THE EXCEPTION OF EITHER PARTY'S GROSS NEGLIGENCE, WILLFUL DEFAULT OR FRAUD AS DETERMINED BY A COURT OF COMPETENT JURISDICTION, IN NO EVENT SHALL EITHER PARTY TO THIS AGREEMENT HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT TO THE OTHER PARTY OR ITS LICENSORS FOR ANY LOST PROFITS OR FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OR INACCURACY OF DATA, LOSS OF PROFITS OR REVENUE, BUSINESS INTERRUPTION, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER ARISING AND, WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. **Term and Termination.**

8.1 **Term of Agreement.** This Agreement commences on the Effective Date and continues until all Order Forms or SOWs under this Agreement have expired or been terminated.

8.2 **Term of Subscriptions.** The Subscription Term is found on the Order Form or, if the Order Form is silent, the Subscription Term is for one year from the Delivery Date. The Subscription Term automatically renews for one additional year unless the Customer or Company provides notice of termination of the Agreement at least 90 days before the end of the Subscription Term. (Each term following the initial Subscription Term is known as a "**Renewal Term**", and the initial term is known as the "**Initial Term**".) Each Renewal Term lasts for one year unless the Customer or Company provides notice of termination of the Agreement at least 90 days before the end of a Renewal Term. Customer may Use the Licensed Program(s) only during the Subscription Term, including the Initial Term or Renewal Term in effect, subject to earlier termination by Company in the event Customer fails to comply with all terms and conditions of this Agreement or the EULA, or as otherwise provided in this Agreement. Except as otherwise provided in the Order Form or herein, Company shall increase rates by three percent (3.0%) for all of Customer's Subscription fees in the Order Form on the Commencement Date of each Renewal Term.

8.3 **Termination for Cause.** A party may only terminate this Agreement, an Order Form, or a Statement of Work, for cause: (i) if the other party is in material breach under this Agreement and fails to cure such breach within thirty (30) days of receipt of written notice of such material breach from the non-breaching party; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors and such proceeding is not favorably resolved within sixty (60) days. Upon any termination for cause by Customer, Company shall refund to Customer any prepaid, unused fees applicable to the remaining portion of the Subscription Term following the effective date of termination, and Customer shall immediately pay all fees due for any remaining portion of the Subscription Term for all Licensed Programs. Upon any termination for cause by Company, Customer's right to access or use Customer Data in the Licensed Program(s) immediately ceases.

8.4 **Outstanding Fees.** Termination shall not relieve Customer of its obligation to pay any fees accrued or payable to Company relating to the Licensed Programs or other services prior to the effective date of termination, and Customer shall pay to Company all such fees upon the effective date of termination in accordance with Section 3.

8.5 **Return/Deletion of Patient Charts.** Customer may access and download historical patient charts from the Licensed Program(s) at any time during the Subscription Term, subject to the terms of this Agreement. At the termination or expiration of the

Subscription Term, if Customer is unable to retrieve historical patient charts from the Licensed Program(s), Customer may request in writing that Company provide a file of patient charts (Read-Only format) within thirty (30) days after the effective date of termination or expiration. Customer has two options for accessing historical patient charts (Read-Only format) after termination of this Agreement or a Subscription to any Licensed Program: (1) Subscribe for a human readable format at \$150.00/per month, or 2) Company will provide a copy of a SQL database for a one-time fee of \$2,000.00. If no payment is received within 30 days of the termination of this Agreement, Customer agrees that Company has the option to permanently delete these historical patient charts and other another related data.

Company will make available to Customer such Customer Data at no charge during the 30-day period following termination or expiration. After such 30-day period, Company has no obligation to maintain or provide any Customer Data and shall thereafter delete all Customer Data in its production systems, unless legally prohibited; provided, however, Company may retain copies of Customer Data solely as part of a routine disaster recovery backup until such time as the disaster recovery backup is destroyed in accordance with Company's standard disaster recovery/business continuity processes. After such 30-day period, and subject to Company's ability to recover Customer Data and payment of applicable fees to Company at Company's then prevailing service rates, Company may provide Customer Data to Customer in a file format to be agreed by the parties. Notwithstanding the foregoing, Company shall have no obligation to offer or provide the Licensed Programs or any related service upon termination, suspension or expiration of the term of Customer's Subscription Term.

Following any termination or expiration of a Subscription Term for any Licensed Program(s), at Company's request, Customer shall promptly certify to Company in writing its cessation of use of such Licensed Program(s) and removal of the Licensed Program(s) from all systems under the direction or control of Customer.

Except to the extent expressly agreed otherwise in an applicable Order Form or SOW, Company may delete or otherwise destroy Customer Data that has been stored in the Licensed Program(s) for more than seven (7) years on a rolling basis unless that violates applicable law.

8.6 **Surviving Provisions.** The following provisions shall survive any termination or expiration of this Agreement: Sections 1, 2.1, 2.2, 2.3, 2.4, 2.5, 3.1, 3.2, 3.3, 3.5, 4, 5.1, 5.2, 5.3, 6, 7, 8.4, 8.5, 8.6, and 9.

9. **General Provisions.**

9.1 **Export Control.** Customer and its Subscribers shall not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside the U.S. in connection with this Agreement without first complying with all export control laws and regulations that may be imposed by the U.S. Government and any country or organization of nations within whose jurisdiction Customer operates or does business, such as the Export Administration Regulations ("EAR") maintained by the United States Department of Commerce, trade and economic sanctions maintained by the United States Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations ("ITAR") maintained by the United States Department of State, and shall not cause Company to violate the same. Customer also agrees to provide written assurances that may be reasonably requested in connection with this Section.

9.2 **Restricted Rights.** The Licensed Programs, documentation and other materials provided hereunder constitute Commercial Computer Software and Software Documentation and Technical Data related to Commercial Items. Any such materials licensed to the U.S. Government are provided with "Restricted Rights" as provided for in FAR, 48 CFR 52.227-14 (JUNE 1987) or DFAR, 48 CFR 252.227-7013 (OCT 1988), as applicable

9.3 **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

9.4 **Notices.** Except as specified in Section 3.4, all notices required to be sent hereunder shall be in writing and shall be deemed to have been given upon (i) the date it was delivered by courier, or (ii) if sent by certified mail return receipt requested, on the date received, in each case addressed to the addresses set forth above and, if to Company, to the attention of General Counsel, and, if to Customer, to the attention of the signatory of this Agreement, or to such other address or individual as the parties may specify from time to time by written notice to the other party.

9.5 **Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

9.6 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in full force and effect.

- 9.7 **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, the Company may assign this Agreement in its entirety (including all Order Forms), without the consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. In addition, notwithstanding the foregoing, Company may assign any of its rights or obligations under this Agreement to any subsidiary, affiliate, or parent corporation. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors, and permitted assigns.
- 9.8 **Governing Law.** This Agreement and any disputes arising out of or related hereto shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its conflicts of laws rules, the United Nations Convention on the International Sale of Goods, or the Uniform Computer Information Transactions Act.
- 9.9 **Attorneys' Fees.** If any dispute arises under, in connection with or relating to this Agreement, the Order Form, a SOW, or any transaction contemplated by the Agreement, whether to enforce any of the terms or conditions of this Agreement or otherwise, the prevailing party in any suit, arbitration or other proceedings shall, as an additional item of damages, recover its reasonable attorneys' fees and court costs, arbitration costs, arbitrator's fees, expert witness, consultant and like costs, or costs of such other proceedings as may be fixed by any court, arbitrator or other judicial or quasi-judicial body having jurisdiction thereof, including without limitation any costs incurred in any appeal and in any collection effort, whether or not such litigation or proceedings proceed to a final judgment or award. For avoidance of doubt, Section 7.1 does not limit or circumscribe a party's rights under this Section.
- 9.10 **Venue; Waiver of Jury Trial.** The state and Federal courts located in Orange County, California, shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement, including the Order Form(s). Each party hereby consents to the exclusive jurisdiction of such courts and waives any objection it might otherwise have to venue, personal jurisdiction, inconvenience of forum, and any similar or related doctrine. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement or the Order Form(s).
- 9.11 **Force Majeure.** Neither party shall be liable for delay or non-performance of its obligations hereunder (or part thereof) if the cause of delay or non-performance is an event which is unforeseeable, beyond the control of the party affected, and cannot be remedied by the exercise of reasonable diligence, including without limitation acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes, computer, telecommunications, Internet service provider or hosting facility failures, or delays involving hardware, software, or power systems not within Company's possession or reasonable control, and denial of service attacks (each a "**Force Majeure Event**"). The party affected shall be relieved from its obligations (or part thereof), except for the payment of money, as long as the Force Majeure Event lasts and hinders the performance of said obligations (or part thereof), since it being understood that a Force Majeure Event shall not excuse any obligation of Customer to pay invoices due in accordance with the provisions hereof. The party affected shall promptly notify the other party and make reasonable efforts to mitigate the effects of the Force Majeure Event with reasonable dispatch. Either party may terminate this Agreement in the event the Force Majeure Event continues for more than forty-five (45) days.
- 9.12 **Publicity.** Either party may reference the name and logo of the other party in lists of customers or vendors. Either party may issue press releases relating to this Agreement with the other party's prior written consent.
- 9.13 **Third party beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 9.14 **Compliance with Anti-corruption Laws.** Each party shall comply with the U.S. Foreign Corrupt Practices Act, and the anti-corruption laws of other countries, to the extent applicable. Each party shall not, at any time, directly or indirectly (through a subcontractor or other third party), pay, offer, give, or promise to pay or give, or authorize the payment of, any monies or any other thing of value to influence the improper performance of any individual government officials and employees of state-owned enterprises.
- 9.15 **Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all Order Forms, constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning its subject matter. The parties are not relying and have not relied on any representations or warranties whatsoever regarding the subject matter of this agreement, express or implied, except for the representations and warranties set forth in this Agreement. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment, or waiver is to be asserted. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form or Statement of Work, the terms of such exhibit, addendum, Order Form, or Statement of Work, shall prevail. No terms or conditions set forth on any purchase order, preprinted form, or document shall add to or vary the terms and conditions of this Agreement, and all such terms or conditions shall be null and void.

- 9.16 **Modifications to this Agreement.** Company reserves the right to modify the terms and conditions of this Agreement, including any referenced policies and other documents, effective upon the commencement of any Renewal Term. If Company modifies the Agreement during your Subscription Term, the modified version will be effective upon your next renewal of the Subscription Term, i.e., the next Renewal Term. In this case, if you object to the updated Agreement, as your exclusive remedy, you may choose not to renew, including cancelling any terms set to auto-renew. You may be required to click through the updated Agreement to show your acceptance. If you do not agree to the updated Agreement after it becomes effective, you will no longer have a right to use the Licensed Program(s). For the avoidance of doubt, any Order Form or Statement of Work is subject to the version of the Agreement in effect at the time of such Order Form or Statement of Work.
10. **Maintenance.**
- 10.1 **Maintenance Service.** Maintenance service for a Licensed Program is governed by the terms and conditions of Order Form, any SOWs, and this Agreement, including Section 10. Maintenance service for a Licensed Program entitles Customer to receive Updates (minor feature enhancements and error corrections) of any Licensed Program to which it has a Subscription, technical bulletins and documentation updates as they become public releases. Maintenance service also entitles Customer to receive telephone, web-based or e-mail technical support of Customer's permitted use of any Licensed Programs for which it has a Subscription. Maintenance service does not apply to product upgrades (major product changes as determined by Company). Company reserves the right to make changes to the features and functionality of each Licensed Program from time to time as Company may deem advisable due to any new, or change in, applicable legislation or government regulation or interpretation thereof.
- 10.2 **Error Corrections.** Company shall use reasonable efforts to correct any documented reproducible program errors in a Licensed Program within a reasonable time, provided that such program errors are not caused by Customer's computing environment. Technical support with respect to a given program error will be provided after Company receives a request from Customer which specifies in reasonable detail the nature of the error. Company shall have no responsibility under this Agreement to correct any alleged program error if Customer fails to use a version of the Licensed Program that is eligible for technical support at the time of the error report. If Customer reports a program error to Company, Customer shall give Company reasonable access to Customer's computing environment on a remote basis as may be deemed necessary by Customer, verification of the exact version of the Licensed Program being used by Customer and all relevant documentation and records, and shall provide all reasonable assistance as Company may request, including without limitation sample output and other diagnostic information to assist Company in providing the Maintenance.
- 10.3 **Error Classification.** Three classes of program errors are provided for, and Company shall respond under this Agreement, as follows:
- 10.3.1 **CRITICAL.** Program errors that cause software crashes, or similar events. The maximum time from notification to initiation of Company response shall be one (1) business day.
- 10.3.2 **MODERATE.** Program errors that do not cause software crashes or for which a work-around is possible. The maximum time from notification to initiation of Company response shall be less than three (3) business days.
- 10.3.3 **NON-CRITICAL.** Program Documentation errors. The maximum time from notification to initiation of Company response shall be less than five (5) business days.
- 10.4 **Product Updates.** For every critical error found by Customer, and properly reported to Company, or found by Company in a Licensed Program, Company will undertake to (a) incorporate an error correction in the next Public Release of that specified Licensed Program which initially contained the error; and (b) supply Customer, subject to the applicable provisions of this Agreement, a non-Public Release of the Licensed Program containing such error correction as soon as it is available, and (c) supply Customer, subject to the applicable provisions of this Agreement, the latest Public Release of the Licensed Program containing such error correction as soon as it is released. "Public Release" means a version of a Licensed Program or documentation that is made available by Company to its active licensees generally.
- 10.5 **Product Upgrades.** Should Company make a Public Release of any upgrade of a Licensed Program, Company will undertake to inform Customer of any such upgrade and provide Customer with upgrade pricing for such upgrade to be available for a reasonable period of time.
- 10.6 **Limitations.** If Company is requested, pursuant to the applicable provisions of this Agreement, to correct a program error and such program error is found to be caused by Customer's computing environment, user error or misuse, or any other cause not inherent in the Licensed Programs, Customer agrees to pay for such support services on a time and material basis at Company's then-prevailing standard rates when invoiced by Company. Under no circumstances does Company warrant or represent that every error can or will be corrected.