



Cedars-Sinai Cardiac Suite End User Software License Agreement

This end user license agreement (this “Agreement”) is a legal agreement between the company or organization that has licensed the Software (as defined herein) (“End User”) and Cedars-Sinai Medical Center, a California nonprofit public benefit corporation (“CSMC”). By installing and using the Software, End User accepts the Software and agrees to be bound by the terms of this Agreement. If End User does not agree to the terms of this Agreement, do not download or use the Software. THE ACCEPTANCE OF THIS AGREEMENT BY THE END USER IS REQUIRED BEFORE INSTALLING, CONFIGURING, OR OTHERWISE USING THE SOFTWARE.

1. Definitions. The following terms shall have the following meanings for purposes of this Agreement:

(a) CSMC Parties. “CSMC Parties” shall mean CSMC, its affiliated entities, and each of their officers, directors, employees, representatives and agents, and each of their respective successors and assigns.

(b) Documentation. “Documentation” shall mean documentation (regardless of the format or media in which expressed) that describes the function and use (and installation, operation and maintenance) of Software, which includes specifications, technical manuals, system manuals, procedures manuals, statements of principles of operation, flow diagrams, file descriptions and user manuals, and other written descriptions of the Software.

(c) Software. “Software” shall mean the computer software, the machine readable code and all related Documentation relating to the Cedars-Sinai Cardiac Suite software licensed by End User, including any Updates to the same.

(d) Updates. “Updates” shall mean all updates, upgrades, patches and revisions to the software code developed by CSMC which result from problem corrections of the Software, including service packs released by CSMC for the Software.

2. Grant of License. Subject to the terms and conditions herein, and upon full payment of all applicable license fees, CSMC hereby grants to End User a revocable, non-exclusive, non-assignable, non-transferable, limited license, without the right to sublicense, to use the Software for the Term.

3. Term and Termination.

(a) Term. The term of CSMC’s license to the Software shall be for the period of time specified in the invoice issued by CSMC to End User (“Term”). In the event no period of time is specified, then the Term shall be perpetual, although subject to termination as set forth in Section 3(b).

(b) Termination. CSMC reserves the unconditional right to terminate the license granted hereunder at any time without cause. The exercise of such right of termination shall be in CSMC's sole and absolute discretion. CSMC will provide written notice of such termination using the contact information provided by End User, and End User agrees to maintain such contact information and accept delivery of notices thereto (including notices by email which shall be deemed sufficient for providing notices to End User pursuant to this Agreement).

(c) Effect of Termination or Expiration. End User agrees to follow CSMC's instructions to uninstall the Software from End User's computer immediately following the expiration of the Term or End User's receipt of a notice of termination from CSMC.

4. License Restrictions.

(a) Reservation of Rights and Ownership; Limitations. End User acknowledges and agrees that the Software is the sole and exclusive property of CSMC, and the license granted under Section 2 hereof shall not be construed to confer any rights upon End User to any intellectual property not specifically included in this Agreement, whether by implication, estoppel or otherwise. CSMC shall retain all right, title and interest in and to all intellectual property rights in the Software and reserves all rights not expressly granted to End User in this Agreement. The Software contains copyrighted material, trade secrets, and other proprietary information, and is protected by both United States copyright law and international treaty provisions. Unauthorized use, reproduction, or distribution of the Software is subject to civil and criminal penalties. End User shall use the Software only as expressly permitted by this Agreement and shall keep confidential and use End User's best efforts to prevent and protect the contents of the Software (or any part thereof) from unauthorized disclosure, infringement or copying. End User is expressly prohibited from sublicensing, selling, renting, leasing, outsourcing, using in a service bureau environment, or otherwise sharing the Software. End User acknowledges and agrees that the Software is licensed and not sold, and End User warrants that End User is not purchasing the Software for redistribution or resale and CSMC does not authorize End User to engage in redistribution or resale. End User further acknowledges and agrees that the Software does not drive any treatment, provide any medical diagnosis or recommend any methods for treatment. End User acknowledges and agrees that the Software has been cleared for clinical use in the United States only, and not in other jurisdictions. If End User has listed a non-United States address in End User's registration information for the Software, End User covenants and warrants that End User shall use the Software for diagnostic, investigational or research purposes only, and not for clinical purposes. Any individual (non-concurrent) license granted hereunder allows End User to install and use one (1) copy of the Software on a single computer, and End User may not transfer an individual license to the Software from one computer to another or make such an individual license available over a network where it could be used by multiple computers at the same time. As a limited exception to the above, End User may transfer and use the Software on a single backup computer system owned by End User if, and only so long as, the primary computer system is inoperative.

(b) Non-Exclusive License. The license granted under Section 2 hereof is, and shall be, non-exclusive, and CSMC expressly retains the right to grant other licenses relating to the Software to any third party on such terms as CSMC may, in its sole and absolute discretion, deem appropriate. CSMC also retains the right to use the Software for clinical and research purposes.

(c) No Duplication, Distribution, Modification or Decompilation. End User shall not duplicate, reproduce, copy, port, distribute, translate, modify, disassemble, decompile, reverse engineer, recreate or make derivative works of the Software or any portion or version thereof. End User shall not attempt any of the foregoing or aid, abet or permit any others to do so (including, without limitation, any of End User's affiliates). End User shall neither take nor permit any action which will delete or obscure CSMC's copyright or trademark notification, or other similar legend or identifying mark on any Software or any related Documentation.

(d) Trademarks; Intellectual Property Rights. Nothing contained or construed to be contained in this Agreement shall constitute the grant by CSMC of any right, by way of license or otherwise, to End User to use any trademark or trade name of CSMC without the prior written consent of CSMC, which consent may be withheld by CSMC in its sole and absolute discretion.

(e) Consent to Use of Data. To facilitate technical protection measures and the provision of Updates, End User agree that the CSMC Parties may collect, use, store and transmit technical and related information that identifies End User's computer (including an Internet Protocol Address and hardware identification), operating system and application software and peripheral hardware. The CSMC Parties may also use this information in the aggregate, in a form which does not personally identify End User, to improve the Software. End User agrees that CSMC will not collect, and End User will not provide to CSMC, any patient-specific information or other personally identifiable private information of any kind.

(f) Software Images. End User agrees and acknowledges that the Software (i) operates on images that have already been acquired by End User, (ii) End User has all necessary rights to use such images therewith, and (iii) the Software does not control any device of any kind that uses radiation or any other method of acquiring images of patients.

5. Fees and Payments. End User agrees to pay the applicable license fees for the Software, which shall be set forth in an invoice issued by CSMC to End User. All fees shall be nonrefundable (other than as expressly set forth in Section 9) and payable by End User within thirty (30) days of End User's receipt of CSMC's invoice. All fees are payable in United States Dollars only. CSMC may update the fees from time to time in its sole discretion by posting the updated fees on CSMC's Quantitative Diagnostic Software Group's web portal ("QUAD") at www.thecardiacsuite.com or otherwise providing notice to End User. All fees are exclusive of, and End User is responsible for, applicable federal, state, or local sales, use, excise or other applicable taxes. End User shall pay or reimburse CSMC for any such taxes and CSMC may add any such taxes to its fees. CSMC shall ensure that all Documentation and Software, which includes the initial Software version, Updates or any other programming code required to run the Software, shall be delivered to End User electronically and that End User shall not retain physical possession of media at any time during the course of the implementation or thereafter.

6. Updates. Unless this Agreement expires or is terminated sooner, QUAD will provide End User with all Updates developed or created by CSMC for the Software purchased by End User hereunder for a period of one (1) year following End User's original purchase of the Software hereunder (the "Free Update Period") at no additional charge. Following the expiration of the Free Update Period, CSMC shall only provide Updates to End User if End User pays the applicable annual license fee charged by CSMC for Updates, which shall be invoiced by CSMC to End User and payable within thirty (30) days of End

User's receipt of CSMC's invoice. QUAD will notify End User electronically when Updates are available for download from QUAD's web portal. Notwithstanding anything to the contrary set forth herein, CSMC shall have no obligation to make available to End User any additional products which have no direct relationship to the Software. By installing, copying, or otherwise using any Updates that End User receives as part of the Software, End User agrees to be bound by the additional license terms that accompany such Updates, if any. If End User does not agree to the additional license terms that accompany such Updates, End User may not install, copy or use such Updates. CSMC shall have no obligation to provide technical support services to End User with respect to the Software unless End User pays CSMC a separate fee for technical support, which shall be invoiced by CSMC separately and which shall be subject to CSMC's Technical Support Services Terms and Conditions.

7. Experience. End User represents and warrants that End User has sufficient knowledge and experience with computer operating systems and software programs and that End User is capable of correctly installing, using, operating and maintaining the Software. In the event that End User does not have sufficient knowledge and experience, End User agrees that End User shall not install, use or operate the Software without first seeking appropriate training and assistance. CSMC shall have no obligation hereunder to provide End User with any such training or assistance.

8. Compliance with Laws.

(a) General. End User shall conduct all activities pursuant to this Agreement in an ethical and businesslike manner and in compliance with all applicable laws, rules and regulations of all applicable governmental authorities.

(b) Trade Controls. End User acknowledges and agrees that the download, activation, export, re-export, and transfer of the Software, Updates, Documentation and related license keys, technical data, and/or technical assistance, and any media in which any of the foregoing is contained (individually, an "Item" and, collectively, the "Items"), are subject to U.S. and other export controls, customs, anti-boycott, and economic sanctions laws and regulations (collectively, "Trade Control Laws" and, individually, a "Trade Control Law"). End User agrees to comply with and to obtain all necessary approvals and authorizations to import or re-export the Items and to pay all taxes and duties that are required to import the Items or are otherwise required to carry out the provisions of this Agreement at its expense. End User shall not use, export, re-export, import, or otherwise transfer or provide any Item, or any product incorporating the Item, in contravention of any Trade Control Law or Export Control Statement provided by End User, including (a) to any destination embargoed by the U.S.—including Iran, the Crimean Peninsula, Cuba, North Korea, Sudan, and Syria—where that act would be in breach of the applicable embargo or sanction; (b) to anyone listed on any restricted persons list published by the U.S. Departments of Treasury, Commerce, or State (a "Denied Person"); or (c) for a prohibited end-use (such as chemical, biological, or nuclear proliferation activities), or otherwise in contravention of any Trade Control Laws without prior authorization from the applicable governmental authority. If End User accesses QUAD's web portal at www.thecardiacsuite.com, or purchases, downloads, or activates any Item from such web portal, End User represents that End User is not in Iran, Cuba, the Crimean Peninsula, North Korea, Syria, Sudan, or any other country designated as a restricted or terrorist supporting country by the U.S. government or any of its agencies. End User certifies that it is not a Denied Person and that End User is not owned, directly or indirectly, 50% or more by one or more Denied Persons. End User agrees to provide to CSMC in a timely manner such information and assistance as may be requested by CSMC in connection

with securing any required licenses and authorizations, including, without limitation, an Export Control Statement. End User must notify CSMC before providing any technical data to CSMC that is controlled under any Trade Control Law. Any delivery schedules delineated in CSMC's offer and/or End User's order are calculated from the date of receipt of any requested export license(s). Any export classification provided by CSMC for any Item shall not be construed as a representation or warranty regarding the proper export classification for such Item or whether an export authorization is required for the exportation of such Item. In addition to any other remedy it may have, CSMC may terminate this Agreement immediately and without notice, and suspend and/or cancel the download, activation, export, upgrade, troubleshooting, and/or any maintenance or other customer service involving any Item if (a) CSMC has not received all export-related documentation requested by CSMC, including an Export Control Statement; (b) CSMC has not received the governmental approvals that CSMC deems to be required; (c) CSMC believes that such activity may violate any Trade Control Laws or CSMC's own compliance policies; or (d) upon CSMC's determination that End User have violated or attempted to violate any of End User's obligations and commitments hereunder. CSMC will not be liable to End User for any loss or expense if End User fails to comply with any Trade Control Law or with the provisions set forth in this Section 8(b). In addition to the indemnification obligations set forth in Section 12 of this Agreement, End User shall indemnify CSMC for all losses, costs, claims, damages, and expenses (including attorneys' fees and expenses) arising from End User's violation or alleged violation of any Trade Control Law. This Section 8(b) will survive the expiration or termination of this Agreement.

(c) FDA Approval. End User acknowledges that the U.S. Food and Drug Administration ("FDA") has cleared the Software for the following intended use: "The Cedars-Sinai Cardiac Suite of applications is intended to enable an automated display, review, and quantification of Nuclear Medicine Cardiology medical images and datasets. Cedars-Sinai Cardiac Suite may be used in multiple settings including the hospital, clinic, doctors office, or remotely. The results provided should be reviewed by qualified healthcare professionals (e.g., radiologists, cardiologists, or general nuclear medicine physicians) trained in the use of medical imaging devices."

9. Limited Warranty. CSMC warrants that for a period of ninety (90) days from the date on which End User accepts this Agreement, the Software will perform in substantial conformance with the technical specifications set forth in the Documentation. This warranty shall not apply in the event that the Software (a) is used for any purpose other than the uses cleared by the FDA, as described in Section 8(c) hereof; (b) has been altered or modified, except by CSMC; or (c) has not been installed, operated, repaired, or maintained in accordance with the Documentation. End User's sole and exclusive remedy, and CSMC's sole and exclusive liability under this Section 9 (Limited Warranty) shall be to return the Software to CSMC for a refund before the end of the aforesaid ninety (90) day period.

10. DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, CSMC PROVIDES THE SOFTWARE AS IS AND WITH ALL FAULTS, AND HEREBY DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR ANY EXPRESS OR IMPLIED WARRANTY THAT THE USE OF THE SOFTWARE WILL NOT INFRINGE ANY PATENT, COPYRIGHT OR OTHER RIGHT OF ANY THIRD PARTY), OF ANY KIND OR NATURE WHATSOEVER. CSMC DOES NOT WARRANT THAT THE SOFTWARE IS ERROR-FREE OR WILL OPERATE WITHOUT

INTERRUPTION. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY THE CSMC PARTIES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN. YOU HEREBY ACKNOWLEDGE THAT YOU ARE NOT RELYING UPON ANY SUCH WARRANTIES AND HEREBY RELEASE AND WAIVE ALL RIGHTS TO SUCH WARRANTIES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CSMC DOES NOT WARRANT, AND HEREBY DISCLAIMS ALL WARRANTIES, THAT THE SOFTWARE WILL MEET YOUR OPERATING REQUIREMENTS, THAT THE SOFTWARE WILL OPERATE IN COMBINATION WITH OTHER HARDWARE, SOFTWARE, SYSTEMS, OR DATA, THAT OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT SOFTWARE ERRORS WILL BE CORRECTED. CSMC IS NOT RESPONSIBLE FOR PROBLEMS CAUSED BY CHANGES IN THE OPERATING CHARACTERISTICS OF YOUR COMPUTER HARDWARE, NETWORK, VOICE, OR FAX BOARDS, OR COMPUTER OPERATING SYSTEMS. CSMC RESERVES THE RIGHT TO MAKE CHANGES TO THE SPECIFICATIONS OF THE SOFTWARE AND CONTENTS OF THE DOCUMENTATION WITHOUT OBLIGATION TO NOTIFY YOU OR ANY PERSON OR ORGANIZATION OF SUCH CHANGES. CSMC CANNOT GUARANTEE THE CONTINUED ACCURACY OF ANY DOCUMENTATION AFTER THE DATE OF PUBLICATION, AND CSMC HEREBY DISCLAIMS RESPONSIBILITY FOR ERRORS OR OMISSIONS.

11. LIMITATION ON DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL CSMC BE LIABLE FOR ANY LOSS OF OR DAMAGE TO REVENUES, PROFITS OR GOODWILL OR OTHER SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND RESULTING FROM CSMC'S PERFORMANCE OR FAILURE TO PERFORM ANY OBLIGATIONS UNDER THIS AGREEMENT, OR RESULTING FROM THE FURNISHING, PERFORMANCE, USE OR LOSS OF USE OF ANY PART OF THE SOFTWARE OR ANY OF YOUR DATA, INFORMATION OR OTHER PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY INTERRUPTION OF YOUR BUSINESS, WHETHER RESULTING FROM BREACH OF CONTRACT OR BREACH OF WARRANTY, EVEN IF YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. CSMC'S TOTAL LIABILITY TO YOU FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER SHALL BE LIMITED TO THE GREATER OF \$500 OR THE AMOUNT PAID BY YOU DURING THE PRIOR ONE (1) YEAR FOR THE SOFTWARE. THE FOREGOING LIMITATIONS ON LIABILITY SHALL APPLY TO THE DISCLAIMERS SET FORTH ABOVE AND ALL OTHER ASPECTS OF THIS AGREEMENT.

12. Indemnification. End User shall indemnify, defend and hold harmless the CSMC Parties from and against any and all claims, demands, lawsuits, actions, proceedings, liabilities, losses, damages, fees, costs and expenses (including, without limitation, attorneys' fees, allocated costs of internal counsel, and costs of investigation and experts (whether or not suit is filed)), arising out of or related to End User's breach of this Agreement. This indemnity will survive any termination or expiration of this Agreement.

13. Assignment. End User's rights and obligations under this Agreement shall not be assignable without the prior written consent of CSMC (which consent may be granted or withheld by CSMC in its sole and absolute discretion) except in the event of a merger, consolidation or sale of substantially all of End User's assets. The rights and obligations of CSMC hereunder shall be assignable without End User's prior written consent, upon written notice to End User.

14. Governing Law; Dispute Resolution; Attorneys' Fees.

(a) Governing Law. This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of laws principles, except where such are governed exclusively by federal law. End User acknowledges and agrees that the 1980 U.N. Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

(b) Dispute Resolution. The parties agree that Los Angeles County, California shall be the exclusive venue for any legal proceeding arising out of or relating to this Agreement. Each party hereby waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section, and stipulates that the state and federal courts located in Los Angeles, California shall have *in personam* jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Agreement. Each party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this Section by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this Agreement.

(c) Attorneys' Fees. In any action between the parties seeking enforcement of any of the provisions of this Agreement, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorneys' fees.

15. Restricted Rights Legend. Any Software which is downloaded for or on behalf of the United States of America, its agencies or instrumentalities ("U.S. Government"), is provided with Restricted Rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software – Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is Cedars-Sinai Medical Center, 8700 Beverly Boulevard, Los Angeles, CA 90048.

16. Amendment. CSMC shall have the right to amend the terms of this Agreement at any time and at its sole discretion upon written notice to End User.

17. Audit Rights. End User hereby grants to CSMC the right to perform an audit to verify that End User is using the Software in compliance with this Agreement. End User agrees to provide CSMC with all records reasonably related to End User's use of the Software and to otherwise cooperate with CSMC in such audit. In the event that such audit discloses non-compliance with this Agreement, End User shall reimburse CSMC for all reasonable expenses related to such audit and CSMC shall have the right to exercise any remedies available hereunder or under applicable law, including, without limitation, terminating End User's license to the Software in accordance with Section 3 hereof.

18. Use of Data. End User hereby grants to CSMC, and CSMC accepts, a non-exclusive, non-transferable, non-sublicensable, fully paid-up, royalty-free, perpetual, irrevocable, worldwide license to use or disclose any de-identified images or other data that CSMC may access in connection with this Agreement (the “De-Identified Data”). CSMC shall have the right to use and disclose the De-Identified Data for any purpose, including for marketing purposes, published in peer-reviewed publications and shared with regulatory authorities. CSMC shall ensure that, prior to use or disclosure, (a) the De-Identified Data will be stripped of all direct or indirect identifiers in accordance with 45 CFR § 164.514(b), (b) shall not include any individually identifiable health information, and (c) shall be used in compliance with all applicable statutes, laws and regulations.

19. Protected Health Information. The parties shall comply with the terms of the Business Associate Agreement set forth in Exhibit A hereto.

20. Equitable relief. End User hereby agrees that, if the terms of this Agreement are not specifically enforced, CSMC will be irreparably damaged, and therefore End User agrees that CSMC shall be entitled, without bond, other security, proof of damages, to appropriate equitable remedies with respect any breach(es) of this Agreement, in addition to any other available remedies.

21. General.

(a) Relationship of Parties. Each party shall conduct all business in its own name as an independent contractor. No joint venture, partnership, employment, agency or similar arrangement is created between the parties. Neither party has the right or power to act for or on behalf of the other or to bind the other in any respect, to pledge its credit, to accept any service of process upon it, or to receive any notices of any nature whatsoever on its behalf.

(b) Severability. If any provision of this Agreement is determined to be illegal, invalid or otherwise unenforceable by a court of competent jurisdiction then, to that extent and within the jurisdiction in which it is illegal, invalid or unenforceable, it shall be limited, construed or severed and deleted from this Agreement, and the remaining extent and/or remaining portions hereof shall survive, remain in full force and effect and continue to be binding and shall not be affected except insofar as may be necessary to make sense hereof, and shall be interpreted to give effect to the intention of the parties insofar as that is possible.

(c) Entire Agreement. This Agreement (including all exhibits attached hereto which are herein incorporated by this reference) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous negotiations, agreements, arrangements and understandings with respect to the subject matter hereof, whether written or oral, express or implied. End User agrees that any varying or additional terms contained in any purchase order or other written notification or document issued by End User in relation to the Software shall be of no effect.

(d) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns.

(e) No Waiver. A waiver of any breach of this Agreement shall not create a waiver of the term or of any subsequent breach.

Exhibit A
BUSINESS ASSOCIATE AGREEMENT
(CSMC as Business Associate)

This Exhibit constitutes the Business Associate Agreement (“Agreement”) between Cedars-Sinai Medical Center, a California nonprofit public benefit corporation (“CSMC” or “Business Associate”) and the End User specified in the End User License Agreement to which this Exhibit is attached (“Company”).

RECITALS

- A. Company, as a Covered Entity, will be disclosing certain information to CSMC in connection with the End User License Agreement and related agreements between CSMC and Company for CSMC’s proprietary software (“Services Agreement”).
- B. Some of the information to be made available by Company will constitute Protected Health Information (“PHI”) (defined below).
- C. Company and CSMC intend to protect the privacy and provide for the security of PHI disclosed to CSMC in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws.
- D. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Company to enter into a contract with CSMC as Company’s Business Associate containing specific requirements with CSMC prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(a) and (e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this Agreement.

In consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

1. Definitions

- a. Breach shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402].
- b. Breach Notification Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.

- c. Business Associate shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- d. Covered Entity shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- e. Data Aggregation shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. Designated Record Set shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- g. Electronic Protected Health Information means Protected Health Information that is maintained in or transmitted by electronic media.
- h. Electronic Health Record shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
- i. Health Care Operations shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- j. Privacy Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- k. Protected Health Information or PHI means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- l. Protected Information shall mean PHI provided by Company to CSMC or created, maintained, received or transmitted by CSMC on Company's behalf.
- m. Security Incident shall have the meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.
- n. Security Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

- o. Unsecured PHI shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

2. **Obligations of Business Associate**

- a. **Permitted Uses.** CSMC shall use Protected Information only as permitted or required under the Services Agreement or this Agreement, or as required by law. Further, CSMC shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by Company. However, CSMC may use Protected Information as necessary (i) for the proper management and administration of CSMC; (ii) to carry out the legal responsibilities of CSMC; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of Company [45 C.F.R. Sections 164.504(e)(2) and 164.504(e)(4)(i)].
- b. **Permitted Disclosures.** CSMC shall disclose Protected Information only as permitted or required under the Services Agreement or this Agreement, or as required by law. CSMC shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by Company. However, CSMC may disclose Protected Information as necessary (i) for the proper management and administration of CSMC; (ii) to carry out the legal responsibilities of CSMC; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of Company. If CSMC discloses Protected Information to a third party, CSMC must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Agreement and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify CSMC of any breaches, suspected breaches, Security Incidents, or unauthorized uses or disclosures of the Protected Information, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)].
- c. **Prohibited Uses and Disclosures.** CSMC shall not use or disclose PHI other than as permitted or required by the Services Agreement, or as required by law. CSMC shall not use or disclose Protected Information for fundraising or marketing purposes. CSMC shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(vi)]. CSMC shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Company and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and the HIPAA regulations, 45 C.F.R.

Section 164.502(a)(5)(ii); however, this prohibition shall not affect payment by Company to CSMC for services provided pursuant to the Services Agreement.

- d. **Appropriate Safeguards.** CSMC shall implement appropriate safeguards to prevent the use or disclosure of Protected Information other than as permitted by the Services Agreement, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including, but not limited to, 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. CSMC shall comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931].
- e. **CSMC's Subcontractors and Agents.** CSMC shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of CSMC, agree in writing to the same restrictions and conditions that apply to CSMC with respect to such Protected Information and implement the safeguards required by paragraph 2.d above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. CSMC shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- f. **No Designated Record Set.** The parties acknowledge and agree that CSMC shall not be engaged by Company to maintain or service any Protected Information that constitutes a Designated Record Set.
- g. **Accounting of Disclosures.** Promptly upon any disclosure of Protected Information for which Company is required to account to an individual, CSMC and its agents and subcontractors shall make available to Company the information required to provide an accounting of disclosures to enable Company to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by Company. CSMC agrees to implement a process that allows for an accounting to be collected and maintained by CSMC and its agents and subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that CSMC maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. If a patient submits a

request for an accounting directly to CSMC or its agents or subcontractors, CSMC shall within five (5) days of the request forward it to Company in writing.

- h. **Governmental Access to Records.** CSMC shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to Company and to the Secretary of the U.S. Department of Health and Human Services (the “Secretary”) for purposes of determining CSMC’s compliance with HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. CSMC shall provide Company a copy of any Protected Information and other documents and records that CSMC provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- i. **Minimum Necessary.** CSMC, its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)] CSMC understands and agrees that the definition of “minimum necessary” is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes “minimum necessary.”
- j. **Notification of Possible Breach.** CSMC shall notify Company promptly of any suspected or actual breach of Protected Information; any use or disclosure of Protected Information not permitted by the Services Agreement or this Agreement; any Security Incident (i.e., any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system) related to Protected Information, and any actual or suspected use or disclosure of data in violation of any applicable federal or state laws by CSMC or its agents or subcontractors. Notwithstanding the foregoing, the parties understand that pings and other broadcast attacks on CSMC’s firewall, port scans, unsuccessful log-on attempts, denial of service attacks and any combination of the above shall not be considered a Security Incident, so long as no such incident results in the defeat or circumvention of any security control, or in the unauthorized access, use or disclosure of PHI provided by Covered Entity. The notification shall include, to the extent possible, the identification of each individual whose unsecured Protected Information has been, or is reasonably believed by the business associate to have been, accessed, acquired, used, or disclosed, as well as any other available information that Company is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. CSMC shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. (This provision should be negotiated.) [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].

- k. **Breach Pattern or Practice by Business Associate's Subcontractors and Agents.** Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(ii), if CSMC knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Services Agreement or other arrangement, the CSMC parties must take reasonable steps to cure the breach or end the violation.

3. Termination

- a. **Material Breach.** A breach by CSMC of any provision of this Agreement, as determined by Company, shall constitute a material breach of the Services Agreement and shall provide grounds for immediate termination of the Services Agreement, any provision in the Services Agreement to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].
- b. **Effect of Termination.** Upon termination of the Services Agreement for any reason, CSMC shall retain all Protected Information that CSMC and its agents and subcontractors still maintain in any form. CSMC shall continue to extend the protections and satisfy the obligations of Section 2 of this Agreement to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible [45 C.F.R. Section 164.504(e)(ii)(2)(J)].