



## GENERAL TERMS AND CONDITIONS AGREEMENT

### **PLEASE PRINT AND RETAIN A COPY OF THIS DOCUMENT FOR YOUR RECORDS**

Company desires to purchase Products and Services from DeliverHealth Solutions, LLC (“DHS”) as identified on the Order (as defined below) submitted by Company to DHS. If DHS accepts such Order, the Parties will have entered into a binding contract on the terms and conditions set forth in this General Terms and Conditions Agreement (“Agreement”) which shall govern the Parties’ rights and obligations with respect to the applicable transaction. This Agreement consists of the General Terms and Conditions, and all applicable Schedules and exhibits hereto DHS and Company are sometimes referred to individually as a “Party” and collectively as the “Parties”. *Neither Party shall be bound by any preprinted provisions of any purchase order, acknowledgment, nor other similar form.*

### **Agreement**

In consideration of the mutual covenants stated below, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

#### **1. DEFINITIONS.**

In addition to the terms defined elsewhere in this Agreement, the following terms used in this Agreement shall have the meanings set forth below:

- 1.1. “**Affiliates**” means any entity that is directly or indirectly controlled by, under common control with, or in control of a Party. For these purposes, an entity shall be treated as being controlled by another if that other entity (i) has fifty percent (50%) or more of the votes in such entity, or (ii) is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.
- 1.2. “**Authorized User(s)**” are those individuals who are authorized, subject to the terms and conditions of this Agreement, to access and use the DHS Software and/or Hosted Services, which individuals are limited to those authorized under the applicable Schedule or Order.
- 1.3. “**Company PO**” means a Company-generated purchase order for Software, Equipment and/or Services, that (i) references the quote number and date of the applicable DHS Quote against which the purchase order is issued, or (ii) sets forth, in detail, the Software licenses, Equipment, and/or Services that Company seeks to purchase (including number of license units and license type), the price associated with each item, and includes a cross-reference to this Agreement.
- 1.4. “**Data**” means the audio, image, and/or text data input, all data elements output (e.g. interpretation of clinical contents in xml or other format), associated transcripts or medical reports, whether in draft or final form, any information received from Company under any Order under this Agreement, or any other clinical information received by DHS from Company under this Agreement.
- 1.5. “**DHS Equipment**” means DHS manufactured hardware specified in an Order.
- 1.6. “**DHS Products**” means the DHS Software and DHS Equipment, collectively.
- 1.7. “**DHS Quote**” means a DHS-generated quotation for Software, Equipment and/or Services, that lists the Software licenses, Equipment and/or Services that Company seeks to purchase (including number of license units and license type), and the price associated with each item.
- 1.8. “**DHS Software**” means the object code version of any DHS proprietary software product specified in an Order, including all corrections, modifications, enhancements, Updates and Upgrades (if any) thereto that DHS may provide to Company under this Agreement, and all related Documentation.
- 1.9. “**Documentation**” means the administrative guide and user’s guide provided by DHS to Company to facilitate the use of the DHS Products and Hosted Services.
- 1.10. “**Effective Date**” means the date when the Order has been validly accepted by both Parties as per the requirements contained in the Order document.
- 1.11. “**Equipment**” means DHS Equipment and Third-Party Equipment, collectively.
- 1.12. “**Hosted Service**” means a DHS proprietary subscription-based software as a service (SaaS) offering specified in an Order, as more particularly described in the applicable Schedule. Any software provided by DHS which is sited at Company (for example client software to access the Hosted Services) is considered Software and subject to the terms governing Software.

- 1.13. **“Maintenance Services”** means (i) the services that DHS provides, pursuant to an Order, to maintain Software and Equipment (as applicable), or (ii) as otherwise provided in an applicable Schedule. Maintenance Services does not mean or include Hosted Service support.
  - 1.14. **“Order”** means an order for Software licenses, Equipment and/or Services that is (a) issued by Company in the form of a DHS Quote or Company PO signed by Company (physically or electronically), and (b) accepted by DHS. An Order includes any applicable Statement of Work.
  - 1.15. **“Professional Services”** means any installation, project management and/or consulting services provided by DHS pursuant to an Order, as specified in an Order and which may be more fully described in a Statement of Work.
  - 1.16. **“Schedule”** means each of the schedules set forth in **Exhibit B** of this Agreement as applicable. Schedules are a part of this Agreement and define the specific terms that apply to the applicable DHS Products and Services.
  - 1.17. **“Services”** means Maintenance Services, Training Services, Professional Services, Hosted Services and/or Transcription Services, as applicable.
  - 1.18. **“Software”** means DHS Software and Third-Party Software, collectively.
  - 1.19. **“Statement of Work”** or **“SOW”** means the supplement to an Order, setting forth, in more detail, the Professional Services and/or Training Services purchased under the Order.
  - 1.20. **“Term”** is defined in Section 7.1 of these General Terms and Conditions.
  - 1.21. **“Third Party Equipment”** means any third party manufactured hardware specified in an Order.
  - 1.22. **“Third Party Software”** means any third-party proprietary software specified in an Order.
  - 1.23. **“Training Services”** means any training services provided by DHS pursuant to an Order, as specified in an Order.
  - 1.24. **“Transcription Services”** means any transcribing services and/or editing services provided by DHS pursuant to an Order, as specified in an Order and more fully described in the applicable Schedule for Transcription Services.
  - 1.25. **“Update”** means a release of DHS Software, issued as part of Maintenance Services, that may include minor feature enhancements, and/or bug fixes and/or fixes of minor errors and/or corrections, and typically is identified by an increase in a release or version number to the right of the first decimal (for example, an increase from Version 5.1 to 5.2 or from Version 5.1.1 to 5.1.2). “Update” shall not be construed to include Upgrades.
  - 1.26. **“Upgrade”** means a release of DHS Software, issued as part of Maintenance Services, that may include some feature enhancements and/or additional capabilities (functionality) over versions of the DHS Software previously supplied to Company, and typically is identified by an increase in the release or version number to the left of the decimal (for example, an increase from Version 5.2 to Version 6.0). Upgrades do not include new software and/or products that DHS, in its sole discretion, designates and markets as being independent from the previously purchased DHS Software.
2. **SCOPE OF AGREEMENT.** Company agrees to purchase from DHS, and DHS agrees, subject to the terms and conditions of this Agreement, to supply to Company the Software licenses, Equipment and Services, as specified in each Order. DHS may accept an Order by fulfilling it.
  3. **GRANT OF RIGHTS.**
    - 3.1. **Software.**
      - 3.1.1. **License Grant.** Subject to the terms and conditions of this Agreement, DHS grants to Company, and Company accepts, a limited, non-exclusive, non-transferable, non-sub-licensable license to permit its Authorized Users to use the DHS Software and / or Hosted Services listed in the applicable Order, strictly in accordance with the license grant specified in the applicable Schedule, provided such use is (i) commensurate with the intended use of the DHS Software (as prescribed in this Agreement and the applicable Documentation), and (ii) solely for Company’s internal business purposes.
      - 3.1.2. **Third Party Software.** Third Party Software supplied by DHS is subject to the terms and conditions of this Agreement and the applicable third-party terms.
      - 3.1.3. **Updates and Upgrades.** Upon installing any Update or Upgrade to DHS Software, Company shall discontinue use of the previous version of such DHS Software and Company will be licensed to use only the updated or upgraded version of the DHS Software, in accordance with the license granted by DHS with respect to such DHS Software.
    - 3.2. **Equipment.** Equipment supplied by DHS is subject to the terms and conditions of this Agreement and, if Third Party Equipment, the applicable third-party terms.
    - 3.3. **Proprietary Rights; Restrictions.** Notwithstanding any use of the term “sale,” “purchase” or other similar terms in this Agreement, DHS and its licensors retain all right, title and interest in and to the Software, Services and Documentation, and any derivative works thereof, including, but not limited to, all patent, copyright, trade secret, trademark and other intellectual property rights associated therewith. Without limiting the generality of the foregoing, Company will not itself, directly or indirectly, and will not permit Authorized Users, other employees or contractors, or any third party to (i) access the Hosted Services with software or means other than as described in this Agreement, (ii) submit any automated or recorded requests to the Hosted Services except as otherwise

provided in this Agreement, (iii) modify, port, translate, or create derivative works of the Software, Services, or Documentation, (iv) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, or algorithms of the Software or Services by any means, (v) sell, lease, license, sublicense, copy, assign, transfer, share, market, or distribute the Software, Services or Documentation, except as expressly permitted in this Agreement, (vi) grant any access to, or use of, the DHS Software or Services on a service bureau, timesharing or application service provider basis, (vii) remove any proprietary notices, labels or marks from the Software, Services or Documentation, (viii) release to a third party the results of any benchmark testing of the Software or Services, or (ix) defeat or circumvent any controls or limitations contained in or associated with the use of the Software. In no event shall anything in this Agreement or in DHS's conduct or course of dealing convey any license, by implication, estoppel or otherwise, under any patent, copyright, trademark or other intellectual property right not explicitly licensed. All rights not expressly granted to Company under this Agreement are reserved by DHS and/or its licensors.

**3.4. Authorized Users.** Company is responsible for each Authorized User's compliance with the terms of this Agreement and guarantees each Authorized User's compliance with the terms of this Agreement. Company will be liable for any act or omission by an Authorized User that, if performed or omitted by Company, would be a breach of this Agreement.

**4. SERVICES.** Subject to the terms and conditions of this Agreement, DHS will provide the Services as may be specified in an Order.

**4.1. Fixed Term Licenses.** Unless otherwise provided in an applicable Schedule or Order, Maintenance Services are provided as part of the license fees for fixed term licenses to Software.

**4.2. All Other Licenses.** Unless otherwise agreed by DHS, Company is required to purchase first year Maintenance Services for all other licenses of DHS Software. DHS will provide the first year Maintenance Services indicated in the Order. If DHS offers Maintenance Services for the applicable Software and/or Equipment for renewal periods, DHS will, at least thirty (30) days prior to the end of the then-current Maintenance Service term, invoice Company for a subsequent one-year renewal term of Maintenance Services at the rates in effect on the renewal date. Company shall, if it wishes to renew annual Maintenance Services for the applicable Software and/or Equipment, pay the invoice for renewal Maintenance Services in full within thirty (30) days of the date of such invoice.

**4.3. Maintenance Services Terms.**

(a) Company acknowledges that failure to pay its invoice for Maintenance Services within the required 30 day period will result in Maintenance Services expiring with respect to such Software and/or Equipment. If permitted by DHS, Company may reinstate Maintenance Services that have expired, provided that Company first pays all Maintenance Services fees that would have been due for the period following the expiration of the previous Maintenance Service period, and orders all Professional Services (at DHS's then-current rates) necessary to implement the then-current version of the applicable Software.

(b) The annual Maintenance Services Term shall commence as described in the applicable Schedule and Order, and each subsequent annual Maintenance Services Service Term will commence on the anniversary thereof. Company must purchase the same Maintenance Service level for all Software licenses and Equipment units for a given DHS Product.

(c) Unless otherwise agreed, DHS shall not be obligated to provide Maintenance Services for, or required as result of, (i) any Software or Equipment modified by any party other than DHS, (ii) any Software or Equipment used for other than its intended purpose, (iii) any Software or Equipment used with equipment not specified as compatible in the Documentation, (iv) any Software or Equipment being used with software not supplied by DHS, unless specified as compatible in the Documentation, (v) any Software or Equipment (or any associated equipment, software or firmware) which Company failed to properly install or maintain, (vi) any willful misconduct or negligent action or omission of Company, (vii) any computer malfunction not attributable to the Software or Equipment, or (viii) damage to Software or Equipment from any external source, including computer viruses not attributable to DHS, computer hackers, or force majeure events.

**4.4. Training Services.** Unless otherwise agreed by the Parties, Training Services will be held at a designated DHS location during DHS's standard business hours, excluding DHS recognized holidays. If the Parties agree to hold any Training Services at Company's site, all such Training Services (including associated travel time) will be conducted between the hours of 8:00 a.m. to 5:00 p.m. local Company site time, Monday through Friday, excluding DHS recognized holidays. Company shall ensure that all Training Services attendees are or will be Authorized Users and have the skills and experience to participate in the training sessions.

**4.5. Professional Services.** Unless otherwise agreed by the Parties, all Professional Services (including associated travel) will be conducted between the hours of 8:00 a.m. to 5:00 p.m. local Company site time, Monday through Friday, excluding DHS recognized holidays.

**4.6. Hosted Services.** Hosted Services will be as further described in, and will be provided by DHS in accordance with, the applicable Schedule.

**4.7. Transcription Services.** Transcription Services will be as further described in, and will be provided by DHS in accordance with, the applicable Schedule.

**4.8. On-Location.** If DHS will perform Services at a location other than a DHS facility, Company shall provide or arrange for the necessary equipment, information, and facilities required by DHS to perform such Services, as reasonably specified by DHS.

**5. MEDICAL CARE RESPONSIBILITY.** COMPANY ACKNOWLEDGES THAT SOFTWARE AND SERVICES ARE NOT ERROR FREE. FURTHERMORE, SPEECH RECOGNITION, NATURAL LANGUAGE PROCESSING, AND MEDICAL FACT EXTRACTION (SUCH AS PERFORMED IN MEDICAL TRANSCRIPTION SERVICES) ARE STATISTICAL PROCESSES THAT ARE INHERENTLY INACCURATE AND THAT ERRORS OCCUR IN THE CONTENT, OUTPUT AND RESULTS OF SUCH PROCESSES THAT DHS IS

NOT RESPONSIBLE FOR. COMPANY AGREES THAT IT IS THE SOLE RESPONSIBILITY OF COMPANY AND EACH AUTHORIZED USER TO IDENTIFY AND CORRECT ANY SUCH ERRORS AND INACCURACIES BEFORE USING AND/OR RELYING ON THE CONTENT, RESULTS OR OUTPUT OF ANY SOFTWARE AND/OR SERVICES PROVIDED UNDER THIS AGREEMENT, FOR ANY MEDICAL-PRACTICE-RELATED PURPOSES. COMPANY AGREES THAT DHS IS NOT PROVIDING MEDICAL PRACTICE ADVICE, AND THAT COMPANY AND EACH AUTHORIZED USER WILL CONSULT WITH AND RELY EXCLUSIVELY ON ITS OWN PHYSICIANS OR OTHER MEDICAL DIRECTION FOR REVIEW, NECESSARY REVISIONS AND APPROVAL OF ANY AND ALL SUCH MEDICAL-PRACTICE-RELATED CONTENT, RESULTS OR OUTPUT. DHS ASSUMES NO RESPONSIBILITY FOR ANY OF THE FOREGOING.

## 6. PAYMENT AND DELIVERY.

- 6.1. **Fees.** Company shall pay to DHS all fees and other charges specified in each Order. All fees due under the Agreement are non-cancelable.
- 6.2. **Expenses.** Prices do not include travel expenses that may be incurred in the course of providing Services, including, but not limited to, transportation, meals, lodging and other living expenses. Company shall pay or reimburse DHS for all such charges and expenses reasonably incurred.
- 6.3. **Taxes.** Company shall pay all taxes, duties, import and export fees, and any other charges or assessments, except the withholding of income taxes, which are applicable to the performance of this Agreement, and shall reimburse DHS for any encumbrance, fine, penalty, or other expense which DHS may incur as a result of Company's failure to pay any such taxes, duties, fees, charges, or assessments. For purposes of this Agreement, the term "taxes" shall include, but is not limited to any and all assessments and other governmental charges, impositions and liabilities, including taxes based upon or measured by gross receipts, income, profits, sales, use, value added, ad valorem, consumption, transfer, franchise and withholding taxes, except taxes imposed on the net income of DHS, together with all interest, penalties and additions imposed with respect to such amounts. If any applicable law requires Company to withhold an amount from any payment to DHS hereunder, Company shall effect such withholding, remit such amount to the appropriate taxing authority, and supply DHS with the tax receipt evidencing the payment of such amount to the government within sixty (60) days of its receipt by Company. To the extent that an income tax convention between the country of DHS and the country of Company permits, upon the filing of a proper application, for a reduction or elimination of such withholding tax, the Parties shall cooperate in the completion and filing of such application. Company shall provide to DHS, and DHS shall complete and return to Company, all applicable forms required by the governing tax authority in order to secure the reduction or elimination of withholding tax as authorized by the convention.
- 6.4. **Payment.** Except as otherwise set forth in the applicable Order or Schedule, Company shall pay all invoices issued in U.S. dollars, either by mail or wire transfer, within thirty (30) days of the date of invoice in accordance with the remittance information contained on the invoice. Interest shall accrue at the rate of one- and one-half percent (1.5%) per month on any amounts past due. Company shall reimburse DHS for all reasonable costs incurred (including reasonable attorneys' fees) in collecting past due amounts from Company. If Company fails to pay for any Equipment, DHS reserves the right to repossess such Equipment. DHS reserves the right to suspend Services to Company in the event any invoice is past due. Company must notify DHS within thirty (30) days of the date of invoice if it disputes any amount contained in an invoice. Notwithstanding the foregoing, if Company elects not to renew annually-contracted auto-renewing Maintenance Services, Company shall not be required to pay the invoice for subsequent annual renewals, provided any requirements in the applicable Schedule or Order for prior written notice of non-renewal are met.
- 6.5. **Company Purchase Orders.** Company agrees to pay DHS's invoices without a purchase order reference. Company acknowledges and agrees that if it is Company's standard practice to issue unsigned purchase orders, such purchase orders are valid and binding. Neither Party shall be subject to provisions of any pre-printed terms on or attached to purchase orders generated by Company, or any Company policies, regulations, rules, or the like, including those set forth in any Company-sponsored registration system, regardless if such requires affirmative acknowledgement from a DHS representative.
- 6.6. **Leasing Arrangements.** If Company has entered into a lease arrangement with a third-party financing/leasing company ("Lessor") to finance an applicable Order, then DHS shall, at Company's request, submit the invoice(s) for the Order to, and accept payment for the Order from, the Lessor. Notwithstanding the foregoing, Company remains fully liable to DHS for all amounts due and owing under the Order. If Lessor fails to pay DHS any amount due under the Order, when due, Company shall pay such amounts to DHS immediately upon receipt of DHS's invoice.
- 6.7. **Audit.** Company shall keep full, true and accurate records and accounts to support its use of the Software and Hosted Services, as applicable, under this Agreement. DHS, or a third party appointed by DHS, will have the right, not more than once a year and upon reasonable notice, to conduct an audit of Company's systems and records, to confirm compliance with the terms of this Agreement. Any audit will be performed during Company's normal business hours. If an audit reveals that Company's Software or Hosted Services usage exceeds its usage rights, as granted by DHS, Company shall pay DHS for all such excess usage, based on DHS's standard pricing in effect at the time of the audit. If such excess usage exceeds five percent (5%) of the authorized usage, Company shall also pay DHS's reasonable costs of conducting the audit. Nothing in this Section 6.7 will limit any other remedy available to DHS.
- 6.8. **Shipment.** For Orders with Software and/or Equipment requiring delivery within the United States, such Software and/or Equipment will be shipped "FCA Shipping Point." For Orders with Software and/or Equipment requiring delivery outside the United States, unless otherwise specified in the applicable Schedule or Order, such Software and/or Equipment will be shipped "CPT Destination,"

or, at DHS's option, "EX WORKS" with carrier arranged by Company. Company shall bear all shipping, freight and transportation charges from DHS's warehouse facility.

## 7. TERM; TERMINATION.

**7.1. Term.** This Agreement commences on the Effective Date and, unless terminated earlier in accordance with the terms hereof, will continue in effect, unless the Parties otherwise agree in writing ("**Term**"). Each Party's rights and obligations related to DHS Software licenses and/or Services delivered pursuant to an Order shall be limited to the duration or term of such DHS Software license or Service as specified in the applicable Schedule or Order.

**7.2. Termination for Cause.** Either Party may terminate this Agreement or any Order upon written notice if the other Party commits a material breach of this Agreement or such Order and fails to cure such breach within thirty (30) days of receipt of written notice describing such breach. Notwithstanding the foregoing, DHS may terminate this Agreement and/or any Order immediately upon written notice to Company if Company (a) infringes DHS's intellectual property rights, (b) commits, or permits any third party to commit, any breach of confidentiality obligations under Section 9 ("**Confidentiality**"), or (c) Company has a receiver appointed to handle its assets or affairs, admits that it is insolvent, or is otherwise unable to pay its debts as they mature, or ceases to do business in the ordinary course.

**7.3. Effect of Termination.** Upon termination of this Agreement, all Orders issued under this Agreement will immediately terminate. Upon the termination of an Order, all DHS Software licenses and Services under such Order shall immediately terminate, and Company shall immediately (a) cease use of the applicable DHS Software (in any form, including partial copies in its possession or under its control) and/or Services, (b) return to DHS or destroy all copies of the DHS Software and certify in writing to DHS that no copies have been retained by Company within ten (10) days of any expiration or termination, and (c) pay any outstanding amounts due to DHS.

**7.4. Survival.** Notwithstanding anything to the contrary in this Section 7, the provisions of Sections 1, 3.3, 3.4, 5, 6, 7.3, 7.4, 8, 9, 10, 11, 12, and 14 of these General Terms and Conditions shall survive expiration or termination of this Agreement.

**8. HIPAA.** The Parties agree to the Business Associate Terms and Conditions attached hereto as **Exhibit A** and made a part of this Agreement, wherein DHS may be referred to as "Business Associate" and Company may be referred to as "Covered Entity."

## 9. CONFIDENTIALITY.

**9.1. Definition.** Subject to the exceptions contained in this Section 9.1, "Confidential Information" shall mean (a) all information disclosed by a Party or its Affiliates (the "Disclosing Party"), in whatever tangible form or otherwise, to the other Party or its Affiliates (the "Receiving Party") that is clearly marked "confidential" or with some other proprietary notice, (b) all information disclosed orally or otherwise in intangible form by the Disclosing Party and designated as confidential or proprietary at the time of the disclosure, and (c) the DHS Software, Documentation, and information provided as part of any Services. Notwithstanding the above, information shall not be deemed Confidential Information to the extent that it (i) was generally known and available in the public domain at the time it was disclosed or subsequently becomes generally known and available in the public domain through no fault of the Receiving Party, (ii) was rightfully known to the Receiving Party at the time of disclosure without any obligation of confidentiality, (iii) is disclosed with the prior written approval of the Disclosing Party, (iv) was independently developed by the Receiving Party without any use of the Confidential Information of the Disclosing Party, or (v) is protected health information or any other personally identifiable information, the protection of which is governed by the Business Associate Terms and Conditions identified in Exhibit A. The obligation not to use or disclose Confidential Information will remain in effect until one of these exceptions occurs.

**9.2. Permitted Disclosure.** Notwithstanding any other provision of this Agreement, disclosure of Confidential Information shall not be precluded if such disclosure (a) is in response to a valid order of a court or other governmental body, provided, however, that the responding Party shall first have given notice to the other Party hereto and shall have made a reasonable effort to obtain a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued, (b) is otherwise required by law, or (c) is otherwise necessary to establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary.

**9.3. Use and Obligations.** The Receiving Party will not use the Disclosing Party's Confidential Information for purposes other than as provided in this Agreement. The Receiving Party shall protect the Disclosing Party's Confidential Information, to prevent its unauthorized use, disclosure, or publication to third parties, by using the same degree of care, but no less than a reasonable degree of care, as the Receiving Party uses to protect its own Confidential Information of a like nature. Confidential Information received by a Receiving Party hereto may be disclosed to and used by such Receiving Party's employees, agents and contractors in accordance with the terms and conditions of this Agreement, and each Party shall be liable for any act or omission by its Affiliates, and its and their respective employees, agents and contractors, which, if performed or omitted by such Party, would be a breach of this Agreement. Each Party agrees that its Affiliates, and its and their respective employees, agents and contractors, shall be bound by the terms of an agreement protecting against unauthorized use or disclosure of Confidential Information that is at least as protective of the Disclosing Party's rights as this Agreement. No Confidential Information shall be disclosed to any person who does not have a need for such information.

**9.4. Return of Confidential Information.** The Receiving Party shall return to the Disclosing Party, or destroy, all Confidential Information of the Disclosing Party in tangible form (i) upon the written request of the Disclosing Party, or (ii) upon the expiration or termination of this Agreement, whichever comes first. In both cases, the Receiving Party shall, upon request, promptly certify in writing that it has complied with the obligations of this Section 9.4. Notwithstanding the foregoing, each Party may retain a copy of the Confidential Information in electronic format in accordance with its corporate security and/or disaster recovery procedures.

**10. DATA.** Company is solely responsible for obtaining all necessary consents under applicable laws and regulations in order to allow DHS to use the Data in accordance with this Section 10. Company gives DHS the right, and DHS has permission to use, the Data in accordance with this Section 10, and to de-identify the Data in accordance with 45 C.F.R. §164.514. DHS and third parties acting under the direction of DHS may use, compile (including creating statistical and other models), annotate and otherwise analyze the Data to develop, train, tune, enhance and improve the speech recognition, natural language understanding and other components of its software and services. DHS shall own all intellectual property rights in all enhancements and improvements to its software and services that result from such use of the Data. Any and all information that Company provides will remain confidential, and DHS may only provide access to Data to third parties acting under the direction of DHS in order to fulfill the foregoing use of the Data, pursuant to confidentiality agreements, or to meet legal or regulatory requirements, such as under a court order or to a government institution if required or authorized by law. DHS will not use the names of individuals and companies to contact anyone for any reason. DHS receives, uses and/or maintains only copies of official medical records or portions thereof, the originals of which must continue to be maintained by Company or its contractors. Accordingly, the foregoing Data shall not be deemed an official medical record or health record for any patient.

**11. LIMITED WARRANTIES.**

**11.1. DHS Software Warranty.** DHS warrants that upon initial installation of the DHS Software (in the case of DHS Software that, pursuant to the applicable Order, is to be installed by DHS) or initial delivery of the DHS Software to Company (in all other cases), and for a period of ninety (90) days thereafter (the "Software Warranty Period"), the DHS Software will operate in all material respects in conformity with its Documentation. Company's sole and exclusive remedy and DHS's sole obligation for any breach of the warranty set forth in this Section 11.1 will be for DHS, at DHS's option, to undertake reasonable efforts to correct or replace the nonconforming DHS Software reported by Company during the Software Warranty Period, or to accept a return of and refund to Company, the fees paid by Company to DHS for such nonconforming DHS Software, and terminate the license to any such non-conforming DHS Software.

**11.2. DHS Equipment Warranty.** DHS warrants that upon initial installation of the DHS Equipment (in the case of DHS Equipment that, pursuant to the applicable Order, is to be installed by DHS) or initial delivery of the DHS Equipment to Company (in all other cases), and for a period of ninety (90) days thereafter (the "Equipment Warranty Period"), the DHS Equipment will operate in all material respects in conformity with its Documentation. Company's sole and exclusive remedy and DHS's sole obligation for any breach of the warranties set forth in this Section 11.2 will be for DHS, at DHS's option, to undertake reasonable efforts to correct or replace the nonconforming DHS Equipment reported by Company during the Equipment Warranty Period, or to accept a return of and refund to Company, the fees paid by Company to DHS for such non-conforming DHS Equipment.

**11.3. Services Warranty.** DHS warrants that the Maintenance Services, Training Services and Professional Services provided by DHS pursuant to this Agreement shall be performed in a professional manner by trained and skilled personnel. Company must notify DHS of any breach of such warranty within ninety (90) days following performance of the non-conforming Services giving rise to the breach of warranty claim. Company's sole and exclusive remedy and DHS's entire liability for any breach of the warranty set forth in this Section 11.3 will be for DHS to re-perform such non-conforming Services that Company notified DHS of in accordance herewith.

**11.4. Limitation of Warranties.** The warranties set forth in this Section 11 ("Limited Warranties") shall not apply, and DHS shall have no warranty obligation or liability with respect to, (a) any DHS Product that (i) is damaged through no fault of DHS, (ii) is modified by anyone other than DHS, (iii) is used for any purpose other than its intended purpose (as specified in the Documentation), (iv) is used with equipment not specified as compatible with the DHS Product in such DHS Product's Documentation, (v) is used with software not specified as compatible with said DHS Product in the DHS Product's Documentation, (vi) Company fails to properly install or maintain, (b) any computer malfunction not attributable to the DHS Products or DHS, (c) any incorrect use of the DHS Products, or (d) any willful misconduct or negligent action or omission of Company.

**11.5. Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION 11 ("LIMITED WARRANTIES") ARE EXCLUSIVE AND THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND DHS HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, AND/OR NON-INFRINGEMENT AND TITLE. DHS DOES NOT GUARANTEE THAT THE SOFTWARE, EQUIPMENT OR SERVICES WILL YIELD ANY PARTICULAR BUSINESS OR FINANCIAL RESULT, OR THAT THE SERVICES WILL BE PERFORMED WITHOUT ERROR OR INTERRUPTION. DHS MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO ANY THIRD-PARTY SOFTWARE OR ANY THIRD-PARTY EQUIPMENT. UNDER NO CIRCUMSTANCES SHALL DHS'S THIRD PARTY SUPPLIERS OF ANY COMPONENT OF THE DHS SOFTWARE, HOSTED SERVICES OR DHS EQUIPMENT BE RESPONSIBLE OR LIABLE TO COMPANY OR ITS AFFILIATES FOR ANY DAMAGES, DIRECT OR OTHERWISE, ARISING UNDER THIS AGREEMENT OR OTHERWISE ARISING FROM THE TRANSACTIONS CONTEMPLATED HEREIN. SUCH THIRD-PARTY SUPPLIERS ARE THIRD PARTY BENEFICIARIES OF THE FOREGOING SENTENCE.

**11.6.** Company acknowledges its responsibility to regularly back-up data and to adequately test prior to deployment each production version of the Software in a configuration that reasonably simulates Company's planned production environment.

**12. LIMITATION OF LIABILITY.**

**12.1.** The following provisions set out the exclusions and limitations of liability of DHS and its Affiliates, and their respective officers, agents, contractors and employees, to Company and its Affiliates, and their respective officers, agents, customers, contractors and employees, under or in connection with this Agreement, and/or in connection with any tortious act or omission including without limitation negligence and/or breach of duty including statutory duty arising under or in connection with this Agreement.

**12.2.** Nothing in this Agreement shall be taken to exclude or limit DHS's liability for fraud or fraudulent misrepresentation, for intentional or criminal misconduct; for death, personal injury or tangible property damage caused by its negligence in providing services at Company locations; or to the extent that such exclusion or limitation is not otherwise permitted by law.

**12.3.** Subject to the foregoing provisions of this Section, DHS shall not be liable for loss of profits or revenues, loss of anticipated savings, loss of customers, or loss of use of any software or data, nor for any special, consequential or indirect loss or damage, costs, expenses or other claims for consequential compensation, howsoever caused, which arise out of or in connection with this Agreement or the Services.

**12.4.** Save for DHS's liability under the second subsection of this Section 12 ("Limitation of Liability"), which shall not be excluded or limited under this Agreement, the Parties, having assessed the risks, agree that DHS's total liability shall not exceed for each consecutive 12 months period ("Annual Period") of this Agreement (the first period commencing on the Effective Date) an aggregate amount equal to 100% of the amount paid by the Company during the corresponding Annual Period.

**13. INDEMNIFICATION.** DHS shall, at its own expense, defend or, at its option, settle, any action brought against Company by a third party, during the Term, to the extent it is based on a claim that the DHS Software and/or Hosted Services infringes any United States patent, copyright or trademark, or misappropriates a trade secret of such third party. DHS will indemnify Company against any damages and losses that are attributable to such claim or action and are assessed against Company in a final judgment. DHS shall have the foregoing obligations only if Company provides DHS with (a) a prompt written request to undertake the defense in such claim or action, (b) sole control and authority over the defense and settlement thereof, and (c) all available information and assistance necessary to settle and/or defend any such claim or action. If the DHS Software and/or Hosted Services becomes, or in the opinion of DHS, is likely to become, the subject of an infringement claim or action, DHS may, at its option, (a) procure, at no cost to Company, the right to continue using the DHS Software and/or Hosted Services, (b) replace or modify the DHS Software and/or Hosted Services to render it non-infringing, provided there is no material loss of functionality, or (c) if, in DHS's reasonable opinion, neither (a) nor (b) above are commercially feasible, terminate Company's right to use such DHS Software and/or Hosted Services and (i) with respect to perpetual DHS Software licenses, refunding the license fees Company paid for such DHS Software, depreciated on a straight-line sixty (60) month basis from the delivery date, and (ii) with respect to Hosted Services, or term licenses or maintenance and support fees for DHS Software, refund any prepaid and unused fees paid by the Company for the infringing DHS Software and/or Hosted Services. DHS will have no obligation or liability under this Section for any claim or action resulting from any of the following: (a) any claim or action that would have arisen due to Company's business activities without use of the particular technology employed by the DHS Software and/or Hosted Services, or (b) any claim or action resulting from any of the following: (i) modifications to the DHS Software and/or Hosted Services by a party other than DHS, (ii) the combination of the DHS Software and/or Hosted Services with other products, processes, or materials not provided by DHS if the DHS Software and/or Hosted Services itself would not infringe, (iii) specifications or requirements supplied by Company that were used for the configuration of the DHS Software and/or Hosted Services, or (iv) where Company continues allegedly infringing activities after being provided with modifications that would have avoided the alleged infringement. This Section states the sole obligation and exclusive liability of DHS (express, implied, statutory or otherwise), and the sole remedy of Company, for any third-party claims or actions of infringement of any intellectual property or other proprietary right.

**14. MISCELLANEOUS.**

**14.1. Assignment.** Company shall not assign or otherwise transfer its rights, obligations or remedies under this Agreement, in whole or in part, to a third party unless such assignment is approved in writing by DHS. Notwithstanding the foregoing, either Party may assign its rights and obligations hereunder to a third party in connection with (i) a merger with, (ii) the sale of substantially all of its assets to, (iii) a consolidation with, or (iv) the sale or intercompany assignment of a substantial part or all of its business utilizing this Agreement, provided (a) the assigning Party provides the other Party with prompt written notice of such sale, merger or consolidation, and (b) the assignee agrees to be bound by all terms and conditions set forth by this Agreement. Any such assignment by Company shall not increase the scope of any license or Service without the prior written consent of DHS.

**14.2. Force Majeure.** Except for the obligation to make payments, nonperformance of either Party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, acts of God, governmental acts or orders or restrictions, acts of terrorism, war, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing Party and not due to its fault or negligence.

**14.3. Notices.** All notices hereunder shall be sent by the notifying Party, in writing, to the other Party (Attention: General Counsel) at its address set forth above (or such other address as it may communicate to the notifying Party in writing). Notice shall be deemed delivered and effective (i) when delivered personally, (ii) five (5) days after posting when sent by certified United States mail (return receipt requested), or (iii) one (1) day after posting when sent by reputable private overnight courier (e.g., DHL, Federal Express, etc.).

**14.4. Relationship between the Parties.** In all matters relating to this Agreement, Company and DHS shall act as independent contractors. Except as may be otherwise expressly permitted hereunder, neither Party will represent that it has any authority to assume or create any obligation, expressed or implied, on behalf of the other Party, or to represent the other Party as agent, employee, or in any other capacity. DHS shall at all times have the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all work to be performed by DHS hereunder unless otherwise provided herein. DHS shall, at all times, be responsible for the compliance of its third parties involved in the delivery of the Services in accordance with the terms and conditions of this Agreement. Nothing in this Agreement shall be construed to create any contractual relationship between Company and any such third parties, nor any obligation on the part of Company, to pay or to ensure the payment of any money due any such third party.

**14.5. Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, USA, without regard to choice of law rules, and Company hereby submits to the jurisdiction of the federal and state courts located in said Commonwealth and the applicable service of process. The official text of the Agreement and any Addendum or any notices given on accounts or statements required

hereby shall be in English. In Canada, Province of Quebec for all contracts drafted in English, both Parties agree to write this document in English. Les Parties ont convenu de rédiger le présent document en langue anglaise.

**14.6. Injunctive Relief.** Each Party acknowledges that any use or disclosure of Confidential Information by a Receiving Party in breach of this Agreement or any violation of DHS's, its Affiliates' or their respective licensors' intellectual property rights may cause irreparable damage to the non-breaching Party, for which remedies other than injunctive relief may be inadequate, and the breaching Party agrees that it shall not object to the non-breaching Party seeking injunctive or other equitable relief to restrain the alleged breach or violation. The Parties further agree that in the event such equitable relief is granted in the United States, they will not object to courts in other jurisdictions granting provisional remedies enforcing such United States judgments.

**14.7. Partial Invalidity; Waiver.** If any provision of this Agreement or the application thereof to any Party or circumstances shall be declared void, illegal or unenforceable, the remainder of this Agreement shall be valid and enforceable to the extent permitted by applicable law. In such event the Parties shall use reasonable efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by applicable law, achieves the purposes intended under the invalid or unenforceable provision. Any deviation by a Party from the terms and conditions required under applicable laws, rules and regulations shall not be considered a breach of this Agreement. Neither a failure of a Party to exercise any power or right given such Party hereunder or to insist upon strict compliance by the other Party with its obligations hereunder, nor any custom or practice of the other Party at variance with the terms hereof, shall constitute a waiver of a Party's right to demand exact compliance with the terms of this Agreement.

**14.8. Publicity.** Each Party is authorized to use the name and logo of the other Party on its website solely to identify such Party's relationship. In addition, either Party may refer to the existence of the Agreement or the relationship of the Parties in connection with a press release related to regulatory filings. DHS may include Company's name in DHS's customer list, and may identify Company as its customer in its sales presentations, marketing materials, advertising, promotion and similar public disclosures. Any additional statements regarding the relationship of the Parties hereunder shall require mutual written consent.

**14.9. Entire Agreement; Headings; Counterparts.** This Agreement, its Schedules, Exhibits, Amendments, and all Orders issued hereunder constitute the entire agreement and understanding between the Parties with respect to the subject matter hereof, and supersede all prior agreements, arrangements and undertakings between the Parties. No addition to or modification of any provision of this Agreement shall be binding upon the Parties unless made by a written instrument signed by a duly authorized representative of each of the Parties. The headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement. This Agreement may be executed in counterparts and via electronic transmission, each of which shall be deemed to be an original and all of which shall be deemed to be an original instrument.

**14.10. Order of Precedence.** In the event of a conflict between or among the provisions in this Agreement, the order of precedence shall be as follows: (i) Schedules, (ii) General Terms and Conditions, (iii) Business Associate Terms and Conditions, (iv) Maintenance Services terms, and (v) each Order (except for any Order-specific invoicing or delivery terms which may supersede those in the applicable Schedule).

**14.11. No Third-Party Beneficiaries.** Except as expressly stated otherwise in this Agreement, nothing in this Agreement is intended to create any rights in, or confer any benefits upon, any person or entity other than the Parties to this Agreement.

**14.12. Export Controls; Government Use.** Company shall comply with all applicable export and import laws and regulations and, unless authorized by applicable governmental license or regulation, shall not directly or indirectly export or re-export any technical information or software subject to this Agreement to any prohibited destination. If software or services are being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), the software, services and related documentation are "commercial items" as that term is defined at 48 C.F.R. 2.101. The software and documentation consists of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end-users acquire the software and documentation with only those rights set forth herein.

**14.13. Foreign Corrupt Practices Act.** Company shall comply with all applicable laws or regulations in all countries in which Company conducts business. The fact that in some countries certain laws prohibiting particular conduct are not enforced in practice or that violation is not subject to public criticism or censure, will not excuse noncompliance with those laws. Furthermore, Company confirms by way of signature of this Agreement that Company has knowledge and understanding of the Foreign Corrupt Practices Act of the United States of America ("FCPA") and shall comply with the FCPA at all times.

**14.14. HHS Audit Right.** Until the expiration of four (4) years after the furnishing of Services under this Agreement, DHS shall make available, upon written request of the Secretary of the Department of Health and Human Services ("Secretary"), or upon request of the Comptroller General, or any of their duly authorized representatives, this Agreement and the books, documents and records of DHS that are necessary to certify the nature and extent of the costs for which Company seeks reimbursement. DHS further agrees that if DHS carries out any of the duties of this Agreement through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after furnishing services pursuant to such subcontract, the related organization shall make available to the Secretary or the Comptroller General, as the case may be, or any of their duly authorized representatives, the subcontract, and such books and documents and records of such organization that are necessary to verify the nature and extent of such costs.

**14.15. Discount Reporting Obligations.** Any discount or rebate, including a single discounted item or bundled discounts, received by Company hereunder is a "discount or other reduction in price," as such terms are defined under (i) the discount exception of the Medicare/Medicaid Anti-Kickback Statute (42 U.S.C. § 1320a 7b(b)(3)(A)) ("Discount Exception") and (ii) the "safe harbor" regulations regarding discounts or other reductions in price set forth in 42 C.F.R. § 1001.952(h) ("Discount Safe Harbor"), on the products or services



purchased by Company under the terms of this Agreement. Under the Discount Exception or Discount Safe Harbor, Company may have an obligation to accurately report the net cost actually paid by Company, under any state or federal program which provides cost- or charge-based reimbursement for the products or services covered by this Agreement, or as otherwise requested or required by any governmental agency.

**14.16. GPO.** DHS and Company agree that this Agreement (inclusive of any Schedules and Orders) is not connected in any way to any General Purchasing Organization (“GPO”), and is not made part of or subject to the provisions of any GPO contract. No administrative fees (or similar fees) will be paid to any GPO as a result of the revenue hereunder.

## Exhibit A

### HIPAA BUSINESS ASSOCIATE ADDENDUM

#### Business Associate Terms and Conditions

WHEREAS, DHS (or “Business Associate”) may, pursuant to the agreement to which this **HIPAA Business Associate Addendum** is attached (the “Agreement”), perform certain services on behalf of or for Company (or “Covered Entity”) that require DHS to access, create and use health information that is subject to the Health Insurance Portability and Accountability Act of 1996, Subtitle D of the Health Information Technology for Economic and Clinical Health Act, and their implementing regulations, as amended (collectively, “HIPAA”); and

WHEREAS, this Exhibit A, which is attached to and made part of the Agreement, serves to establish the responsibilities of both Parties regarding Protected Health Information (“PHI”), and to bring this Agreement into compliance with HIPAA.

NOW, THEREFORE, the Parties agree to the following additional terms and conditions to those otherwise in the Agreement:

#### AGREEMENT

1. Definitions. Capitalized terms used in this Exhibit A, but not otherwise defined, shall have the same meanings ascribed to them in HIPAA.
2. No Third-Party Beneficiary. Nothing in this Exhibit A is intended, nor shall be deemed, to confer any benefits on any third party.
3. Permitted Uses and Disclosures. Except as otherwise specified herein, Business Associate may use and/or disclose PHI to perform the functions, activities, or services for or on behalf of Covered Entity as specified in this Agreement or a Required by Law, but shall not otherwise use or disclose PHI. Business Associate will not use or disclose PHI in a manner that would violate HIPAA if done by Covered Entity. Except as otherwise limited in this Agreement, Business Associate may:
  - a. use PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate, and except as otherwise limited by this Exhibit A or the Agreement, as permitted by HIPAA.
  - b. disclose PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate, provided that the disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom PHI is disclosed that the PHI will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of PHI has been breached.
  - c. use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. §164.504(e)(2)(i)(B).
  - d. use PHI to create de-identified health information in accordance with 45 C.F.R. §164.514(b) and may disclose deidentified health information for any purpose permitted by law.
  - e. use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. §164.502(j)(1).
4. Responsibilities of Business Associate. Business Associate agrees:
  - a. to use appropriate safeguards, and to comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement.
  - b. to report to Covered Entity promptly, but in no case longer than fifteen (15) business days, any use or disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware, including a Breach of Unsecured PHI as required by 45 C.F.R. § 164.410, and any successful Security Incident of which it becomes aware. The Parties acknowledge and agree that this section 4.b. constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence or attempts of Unsuccessful Security Incidents for which no additional notice to Covered Entity shall be required. “Unsuccessful Security Incidents” means, without limitation, pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access, use, or disclosure of PHI. The contact information for the Business Associate and Covered Entity employees to whom reports of unauthorized use or disclosure of PHI, Breaches of Unsecured PHI and successful Security Incidents under this Section shall be made as provided below (as such information may be updated from time to time between the parties). Notification shall be made using the methods as provided in the relevant Underlying Agreement.

Business Associate:

Tammy Preisner, Chief Legal & Compliance Officer  
DeliverHealth Solutions, LLC  
2450 Rimrock Rd., Suite 201  
Madison, WI 53713  
Email: [compliance@deliverhealth.com](mailto:compliance@deliverhealth.com)

Covered Entity:

[Employee Name and Title]  
[Company Name]  
[Street Address]  
[City, State, Zip]  
[Phone]  
[Email]

- c. to take reasonable steps to mitigate, to the extent practicable, any known harmful effect of a use or disclosure of PHI in violation of the requirements of this Exhibit A. Upon request, Business Associate shall promptly provide Covered Entity with information reasonably related to its discovery, investigation and mitigation activities associated with a Breach that affects Covered Entity.
- d. to make PHI about an Individual contained in any Designated Record Set of Covered Entity maintained by Business Associate available to Covered Entity for Covered Entity to comply with an Individual's right of access to their PHI in compliance with 45 C.F.R. §164.524; provided, however, that unless otherwise expressly set forth in the Agreement, Covered Entity acknowledges that Business Associate does not maintain any Designated Record Set on behalf of Covered Entity..
- e. to make PHI about an Individual contained in any Designated Record Set of Covered Entity maintained by Business Associate available to Covered Entity for amendment and incorporate any amendment(s) to PHI that Covered Entity directs, in accordance with 45 C.F.R. §164.526; provided, however, that unless otherwise expressly set forth in the Agreement, Covered Entity acknowledges that Business Associate does not maintain any Designated Record Set on behalf of Covered Entity..
- f. to make the information required to provide an accounting of disclosures of PHI with respect to the Individual available to Covered Entity in response to a request from an Individual in accordance with 45 C.F.R. §164.528.
- g. to the extent this Agreement requires Business Associate to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, to comply with the requirements of Subpart E that apply to Covered entity in the performance of such obligation(s).
- h. to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary of the Department of Health and Human Services or his/her designee (the "Secretary"), in a time and manner designated by the Secretary, for purposes of determining Covered Entity's compliance with the HIPAA.
- i. to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to substantially the same restrictions and conditions that apply to Business Associate with respect to such information in accordance with 45 C.F.R. § 164.502(e)(1)(ii).
- j. if Business Associate knows of a pattern of activity or practice of a Subcontractor that constitutes a material breach or violation of HIPAA, to take reasonable steps to cure the breach or end the violation, as applicable, and if such steps are unsuccessful, terminate the contract or arrangement with such entity, if feasible.
- k. to the extent required by the "minimum necessary" requirements of HIPAA, Business Associate shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure.

- l. to refrain from receiving any remuneration in exchange for any Individual's PHI unless such exchange (i) is pursuant to a valid authorization that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving PHI of that Individual, or (ii) satisfies one of the exceptions enumerated in the HIPAA regulations and specifically Section 13405(d)(2) of the HITECH Act.
    - m. to refrain from marketing activities that would violate HIPAA and specifically Section 13406 of the HITECH Act.
    - n. to provide training to applicable employees as required by HIPAA.
5. Responsibilities of Covered Entity. Covered Entity shall:
  - a. provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. §164.520, as well as any changes to such notice.
  - b. provide Business Associate, in writing, with any changes in, or revocation of, permission by Individual to the use or disclosure of PHI, if such changes affect Business Associate's permitted or required uses or disclosures. Upon receipt by Business Associate of such notice of changes, Business Associate shall cease the use and disclosure of any such Individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under HIPAA expressly applies.
  - c. notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522.
  - d. not request or require Business Associate to use and/or disclose PHI in a manner not permitted by HIPAA.
6. Termination.
  - a. Termination for Cause. Either Party may immediately terminate this Agreement if such Party (the "Non-Breaching Party") determines that the other Party (the "Breaching Party") has breached a material term of this Exhibit A. Alternatively, the Non-Breaching Party may choose to provide the Breaching Party with written notice of the existence of an alleged material breach and afford the Breaching Party an opportunity to cure the alleged breach. Failure to cure the material breach within thirty (30) days of the written notice constitutes grounds for immediate termination of this Agreement.
  - b. Effect of Termination.
    - (1) Except as provided in paragraph (2) of this Section 6(b), upon termination of this Agreement for cause, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This Section 6(b)(1) shall apply to PHI that is in the possession of Business Associate and its Subcontractors or agents. Business Associate, its Subcontractors or agents shall retain no copies of the PHI.
    - (2) In the event that Business Associate reasonably determines that returning or destroying the PHI is infeasible, Business Associate shall extend the protections of this Exhibit A to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.
7. Indemnification.

Business Associate shall reimburse, indemnify and hold harmless Covered Entity for all Reasonable Indemnification Amounts (as defined in this paragraph) to the extent resulting from the negligence of the Business Associate that causes a breach of this Business Associate Addendum, Security Incident or Breach of PHI maintained by Business Associate or Business Associate's agent or Subcontractor, subject to the provisions of the Agreement. "Reasonable Indemnification Amounts" means: fines or settlement amounts owed to a state or federal government agency; the cost of any notifications to individuals or government agencies; credit monitoring for affected individuals; damages or settlement amounts payable to affected individuals; and reasonable attorneys' fees paid by Covered Entity. Notwithstanding the foregoing or any contrary provisions set forth in the Agreement, in no event shall Business Associate's obligations for Reasonable Indemnification Amounts exceed an aggregate amount of five hundred thousand dollars (\$500,000.00).

## Schedule for eScription

The General Terms and Conditions and this Schedule for eScription ("Schedule") apply to the Hosted Services defined below as specified in the Order that Company places with DHS for the purchase of the Hosted Solution (such Order, the "Applicable Order"). In the event of a conflict between the General Terms and Conditions and the terms of this Schedule, the terms of this Schedule will prevail.

**1. Definitions.** For purposes of this Schedule, the following capitalized terms shall have the following meanings:

- “*Authorized User*” is as defined below in Section 2.1 of this Schedule.
- “*Client Software*” means the DHS Software identified in the Applicable Order that DHS provides to Company for the purpose of accessing and interfacing with the Hosted Services.
- “*Contractor*” means any individual person that Company hires as an independent contractor who has a need to use the Hosted Services and Client Software to perform transcription services for the benefit of the Company based upon a contractual relationship with Company.
- “*Dictation*” means audio dictated by a physician or clinician which exists as a computer digital audio file of patient information meant for transcription from voice into text or data.
- “*Expected Volume*” means the expected volume set forth on the applicable Order. Company acknowledges DHS’s reliance on the Expected Volume in its calculation of the rates in the applicable Order.
- “*Healthcare Facility*” means a hospital or other healthcare facility that is wholly owned or controlled by Company. For purposes of this definition, "control" means (i) the power to elect a majority of the directors of a corporation or similar officers of an entity, or (ii) the power by contract to operate or manage the day-to-day operations of a health care facility.
- “*Hosted Services*” means the eScription software and services offering owned and operated by DHS which software and services offering are made available to Company as a service via the Internet.
- “*Hosted Solution*” means the collective offering of the Hosted Services and the associated Client Software.
- “*DHS Transcriptionists*” means those employees, individual contractors or subcontractors of DHS who transcribe or edit Dictation for Company based on a separate Order and Schedule for DHS transcription services.
- “*Order Effective Date*” means the date when the Order has been validly accepted by both Parties as per the requirements contained in the Order document.
- “*Order Term*” means the period of time an Applicable Order is in effect, as specified by the Applicable Order, which shall begin on the Order Effective Date.

**2. Grant of Rights.**

2.1 Hosted Services. Subject to the terms and conditions of the General Terms and Conditions, this Schedule and the Applicable Order, Company is granted a revocable, non-exclusive, non-transferable, limited right to allow its employees and Contractors and DHS Transcriptionists, if any (each, an "Authorized User") to remotely, via the internet, access and use the Hosted Services during the Order Term; provided that such access and use is (i) in a manner commensurate with the intended use of the Hosted Services (as prescribed by the applicable Documentation), and (ii) solely for Company's internal business purposes associated with the Healthcare Facilities. The Parties acknowledge and agree that DHS shall not be liable or responsible for the acts or omissions of Company’s employees, agents and Contractors.

2.2 Client Software. Subject to the terms and conditions of the General Terms and Conditions, this Schedule and the Applicable Order, DHS hereby grants Company, and Company hereby accepts, a revocable, non-exclusive, non-transferable, nonsubicensable, limited license to allow Authorized Users to use the Client Software during the Order Term, for the sole and limited purpose of accessing and using the Hosted Services as per the rights granted in Section 2.1 of this Schedule; provided that such use is in a manner commensurate with the intended use of the Client Software (as prescribed by the applicable Documentation).

2.3 Restrictions. Company shall not allow any Authorized User to access and use the Hosted Services or the Client Software for (a) the Authorized User's own personal use, or (b) the benefit of any third party. Company shall not (i) allow anyone other than the Authorized Users to access or *use* the Hosted Services, or any components thereof, or (ii) interfere with or disrupt the integrity or performance of the Hosted Services.

2.4 Proprietary Rights. Company shall not (i) create derivate works based on the Hosted Services, (ii) reverse engineer the Hosted Services, or (iii) access the Hosted Services in order to build a competitive product or service, or to copy any features, functions or graphics of the Hosted Services.

**3. DHS Responsibilities.**

- 3.1 Hosted Services. DHS agrees to host, operate and maintain the equipment and software comprising its Hosted Services, and to allow Company to access and use the Hosted Services, during the Order Term, in accordance with the terms of the Agreement.
- 3.2 Support and Maintenance. During the Order Term, DHS shall provide Company with maintenance and support in accordance with the terms set forth in this Section 3.2.
- a. Error Correction. DHS shall promptly repair any errors which are reported either in writing or verbally. An error is defined as any operation of the Hosted Solution that is different than described in the Documentation. An error also includes a “bug” or “crash” in which the Hosted Solution or portions of the Hosted Solution cease to function.
- b. Company Contact; Question and Answer Support. Company must identify an administrative contact, a technical contact and an executive contact. These individuals must communicate to DHS about the services rendered hereunder and then will be responsible for communicating, as needed, with Company staff. DHS will provide question and answer support only to the administrative contact, the technical contact, and the executive contact or their designee. DHS is not responsible for providing support services directly to transcriptionists or to clinicians. DHS does not designate a specific limit on the Question/Answer support that it provides, but rather assumes that the existing staff will be adequately trained. However, if over a period of two consecutive weeks, a Company contact persistently calls DHS for question/answer support, and such Company contact has not attended the appropriate DHS training classes, then Company agrees to either send the contact(s) to DHS University classes at DHS’s then-standard rates, or, alternatively, meet with DHS to review the situation. For the purposes of this Section, the term “persistently” shall mean multiple telephone calls with questions every day.
- c. Service Hours. DHS shall provide service/support from 8:30 am to 5:00 pm, Monday through Friday in Company time zones, excluding the following holidays: New Year’s Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, and Christmas Day. DHS shall provide seven days a week, 24-hour per day support for Emergency Events. An Emergency Event is defined as a problem that (a) prevents clinicians from dictating reports; (b) prevents users from accessing the Hosted Solution; (c) prevents multiple transcriptionists from transcribing or editing documents; (d) prevents the printing of documents or (e) prevents interface transactions (i.e., the transmission from or receipt of data by Company’s computer systems).
- d. Third Party Supplied Software interoperability. Software residing on Company’s workstations is not covered by this Schedule. Upgrades and new releases of all such third-party software are not provided or maintained by DHS and must be obtained separately by Company. In a Microsoft environment, it is possible that programs provided by other vendors (e.g. an email program) may conflict with the Hosted Services. DHS disclaims responsibility for any such conflicts.

#### **4. Company Responsibilities.**

- 4.1 Project Manager. During installation and operation of the Hosted Solution, Company shall provide a qualified individual who will manage and monitor the installation and assist with any issues that may arise during routine operation of the Hosted Solution.
- 4.2 Equipment and Internet Connectivity. Company shall provide, at its own expense, telecommunications (including internet connectivity), firewall, and all equipment and operating system software necessary for Authorized Users to access and use the Hosted Solution, as recommended in the Documentation. DHS shall have no responsibility for any costs incurred in connection with modifications or enhancements to Company's system necessary for implementing Company's interface with the Hosted Services or in connection with Company's use of the Hosted Services. The communications and network interoperability requirements for internet access to the Hosted Services are as described in the Documentation.

#### **5. Term and Termination.**

- 5.1 Order Term. An Applicable Order shall be effective for the Order Term and unless sooner terminated in accordance with the General Terms and Conditions, shall subsequently renew for additional one (1) year periods unless either Party gives ninety (90) days prior written notice of its decision to terminate.
- 5.2 Effect of Termination. Upon the expiration or termination of the Applicable Order, the Order Term or the Agreement by either Party, Company's rights to access and use the Hosted Services, as well as Company's rights to use the associated Client Software, will terminate.