aidoc.

MASTER SUBSCRIPTION AGREEMENT

("MSA")

Customer Full Legal Name:	San Bernardino County
Customer Address:	400 N Pepper Ave Colton, CA 92324

This MSA is made and entered into by and between **Aidoc, Inc**., a Delaware Corporation, with its principal place of business at 5184 S Pearl PL, Chandler, AZ 85249 ("**Company**"), and the customer named above ("**Customer**"). Each of Company and Customer shall be individually referred to herein as a "**Party**", and collectively as the "**Parties**". This MSA is effective as of the last date beneath the Parties' signatures below ("**Effective Date**").

Exhibits and Attachments attached and incorporated herein by reference:

a. <u>Exhibit A</u>: *Definitions*
b. <u>Exhibit B</u>: *Service Level Agreement*
c. <u>Exhibit C</u>: *Pricing*
d. <u>Attachment 1</u>: *Insurance Requirements*
e. <u>Attachment 2</u>: *Business Associate Agreement*

PURPOSE AND PRECEDENCE

This MSA applies to the provision of the Software and Services by Company to Customer, as described in detail in any Order Form signed by the Parties that references this MSA. All Order Forms, together with this MSA, shall collectively constitute the "**Agreement**". In the event of a conflict between this MSA and an Order Form, this MSA shall control, unless explicitly stated otherwise in the applicable Order Form, and in that case the conflicting terms and conditions in such Order Form would apply to that Order Form only.

1. GRANT OF RIGHTS

1.1. **Use of Software and Services.** Subject to the terms and conditions set forth in the Agreement and timely payment of the Fees, Company shall grant Customer a limited, revocable, non-exclusive, non-transferable, non-assignable, non-sublicensable right to enable only its Authorized Users in the Permitted Facilities to access and use the Software and Services, during the Subscription Term set forth in the applicable Order Form and within the scope of the Subscription and Entitlements granted to Customer under the applicable Order Form, provided that in each case such use and access is in a manner commensurate with the intended use of the Software and Services as prescribed by the Agreement, Order Form and applicable documentation provided by Company, and solely for the internal business purposes of Customer and not for the benefit of any third party healthcare facility.

1.2. **Reservation of Rights.** Other than the limited rights explicitly granted under the Agreement, Customer shall have no other rights, express or implied, in the Software and/or Services, and Company reserves all such rights. Nothing in the Agreement constitutes a waiver of Company's Intellectual Property Rights under any law.

2. SCOPE AND USE OF SERVICES

2.1. **Subscription and Entitlements.** Customer shall be entitled to utilize the Software and Services on a Subscription-basis, solely within the scope of the Subscription, which includes the Entitlements, set forth in the Order Form(s). If Customer exceeds any

Entitlement for two (2) consecutive months during the applicable Subscription Term, Customer will be charged for the Company calculated monthly overages in exploitation of Entitlements for such period and will thereafter be automatically moved to and billed at the next-higher Entitlement tier according to Company's customary pricing. Company may suspend Customer's access to the Software and/or Services until payment is made for the Company calculated monthly overages in the exploitation of Entitlements. Entitlements cannot be decreased during the applicable Subscription Term.

2.2. **Subscription Expansion.** Customer may, at any time during the applicable Subscription Term, extend the Subscription's scope by purchasing additional products and/or functionalities offered by Company or increasing the Entitlements in the Subscription, subject to execution of a written addendum/amendment to the Order Form(s), at a price to be determined and specified in that addendum/amendment (prorated for the portion of the Subscription Term remaining at the time the Subscription is extended).

2.3. **Usage Limits**

2.3.1. **Usage Restrictions**. Customer shall not, and shall not allow any third party to: (a) distribute, modify, translate, create derivative works of, or reproduce, the Software and/or Services; (b) decompile, reverse engineer or disassemble the Software and/or Services and/or any part thereof; (c) remove, obscure or alter any of Company's and/or its licensors' Marks, copyright notices or other proprietary notices from the Software; (d) disclose to a third party the results of any internal performance testing or benchmarking studies of, or about, the Software and/or Services; (e) develop any products, modules, add-ons or other applications, features or functionality based upon or otherwise utilizing the Software and/or Services and/or any part thereof; (f) use the Software and/or Services to transmit information or material in violation of third party rights (including without limitation privacy rights or Intellectual Property Rights); (g) use the Software and/or Services for malicious or illegal purposes, or otherwise in violation of applicable laws or regulations; (h) attempt to breach the security of the Software and/or Services, circumvent, disable or otherwise interfere with security-related features of the Software and/or Services, perform any form of hacking of the Software and/or Services, or attack the Software or Services in any way whatsoever; (i) interfere with, circumvent, manipulate, impair or disrupt the operation, integrity, performance and/or functionality of Software and/or Services; (j) use the Software and Services other than as permitted in the Agreement, work around or circumvent any technical limitations in Software and/or Services or enable features or functionalities of the Software and/or Services that are otherwise disabled or inaccessible; and/or (k) take any action that would, or that would be reasonably likely to, subject the Software to any freeware, open source or similar licensing or distribution models, including through linking to the Software.

2.3.2. **Assigning Authorized Users**. The Software and Services may be used only by the specific Authorized Users assigned by Customer to use the Software and Services. Customer shall not assign or allow anyone other than the Authorized Users to use the Software or Services, or any components thereof. Customer hereby acknowledges and agrees that: (i) the login credentials of each Authorized User are personal, may only be used by the specific Authorized User to which they were assigned, and may not be shared with any other individual (including other Authorized Users); and (ii) except as set forth in the applicable Order Form(s), a Licensed Physician User's identification may only be reassigned by Customer to a new Licensed Physician User replacing the one who will no longer use the Software and Services. Customer shall not allow any Authorized User to use the Software or Services for the Authorized User's own personal use or in any manner other than on behalf of Customer. Customer shall at all times be responsible for the acts and omissions of its Authorized Users with respect to the Software and Services, and any breach of the Agreement by an Authorized User shall be considered a breach by Customer.

2.4. **Additions and Removals.** Company reserves the right, but shall have no obligation, to upgrade and/or modify Software or Services and to add or remove features, functionalities and capabilities to the Software and/or Services during the Term (as defined below). Should Company decide to remove a material feature from the Software and/or Services, Company will provide electronic notification prior to such removal.

2.5. **Support, Maintenance and Additional Services**. Company will provide support, maintenance and additional Services in accordance with the service level agreement attached as **Exhibit B** to the Agreement.

3. **CUSTOMER RESPONSIBILITIES**

Customer acknowledges and agrees that the allocation of a Server on Customer's premises, permitting the secure remote access of Company and/or its licensors to the Server and ensuring the data feeds to the Server, including but not limited to order and results

from radiology, laboratory, and nursing, are conditions precedent to the provision of the Software and Services. Customer will: (a) secure and provide to Company all rights, licenses and authorizations required to access and use Customer's Server, Clinical Data and resources (including without limitation its computer and communications networks, personnel, workspace, equipment and facilities), and ensure the cooperation and performance of its employees and contractors, as necessary to enable Company to receive and generate all data and information and perform all activities required to provide the Software and Services in accordance with the Agreement; (b) remain responsible for its Authorized Users' compliance with the Agreement; (c) remain responsible for the accuracy, quality and legality of Clinical Data, the means by which Customer acquired Clinical Data and its transfer to Company; (d) use commercially reasonable efforts to prevent unauthorized access to or use of Software and Services, and notify Company promptly of any such unauthorized access or use thereto/of; (e) use the Software and Services only in accordance with the Agreement and applicable laws and government regulations; (f) as between the Parties, remain responsible for Customer's Applications as provided in Section 5 (*Customer's Applications*) below and comply with any technical requirements provided by Company to allow the integration and interoperability, and ensure non-interference, of Customer's Application with the Software and Services; (g) regularly update the Server with operating system patches and best industry standard anti-virus tools; (h) remain responsible for ensuring that the network hosted by the Server has intrusion detection and intrusion protection solutions; (i) take commercially reasonable efforts to protect its Server from any hackers, intruders or any other unauthorized access, including without limitation, any and all actions by its mobile application users, and apply a security policy which shall include any and all required infrastructure, network, firewall settings, and security controls; (j) use reasonable efforts to promptly inform Company of any breaches, intrusions, hacking and/or security incidents on its network or server; (k) remain responsible for the operation, security and maintenance of the Server and of its applications and information technology environment in which the Server is located and in which the Services are performed, and for protecting and backing up its systems, networks, applications, content, and data used in connection with the Software and Services. If Company's mobile application is provided as part of the Software and Services, Customer hereby agrees that: (A) it will not consider Company to be in breach of any of its obligations under the Agreement by reason of providing the mobile application, only where such obligations are not compatible with features or functionalities of the mobile application, including, without limitation, any privacy and security related documents and/or other instruction provided to Company; and (B) it will be solely responsible for its Authorized Users and any other third party accessing and using the mobile application and it will remain responsible for ensuring that all of its Authorized Users of the mobile application protect their accounts and devices.

4.   CUSTOMER'S APPLICATIONS

Customer acknowledges that it may be able to view, access, link to, and/or use third-party software and/or services used by Customer which were not provided by Company (collectively, "**Customer's Application(s)**") via the Software and/or Services, including without limitation, by way of integration with the Software and/or Services. For the avoidance of doubt, once Customer requests Company to enable and allow the connection or integration with a Customer's Application, or access to such Customer's Application, it is hereby agreed such action and/or request is Customer's instruction under the Agreement to do so. Customer hereby agrees and acknowledges that: (a) Customer is solely responsible and liable for receiving all the required approvals for allowing interaction and integration of the Software and/or Services with Customer's Applications, including without limitation by executing the relevant contractual documents to this effect; (b) Company has no control over Customer's Applications; (c) Company does not assume any responsibility for the content, terms of use, policies, actions or practices of any Customer's Applications, or for Customer's use thereof, including, without limitation, any use and/or processing of data by Customer's Applications; (d) Company expressly disclaims all warranties regarding, the accuracy, appropriateness, usefulness, safety, or non-infringement of, or relating to, Customer's Applications; and (e) Customer hereby waives any legal or equitable rights or remedies regarding the foregoing.

5.   FEES AND PAYMENT

5.1.   **Fees.** In consideration for the provision of the Software and Services, Customer will pay all Fees specified in the applicable Order Form(s). Fees are exclusive of any direct or indirect taxes, levies, customs, duties, and any other payment imposed in any jurisdiction whatsoever. Unless otherwise stated in this Agreement or required under applicable laws, all payment obligations under the Agreement are non-cancelable and Fees paid are non-refundable, except that if the Agreement is terminated by Customer for a breach in accordance with Section 13.2 (*Termination*), in which event Fees will be refunded on a prorated basis with respect to the then-remaining Subscription Term.

5.2.   **Invoicing and Payment.** Fees will be invoiced at the commencement of the applicable Subscription Term, and Annual Subscription Fees shall be invoiced at the beginning of each year of the applicable Subscription Term, all in accordance with the relevant Order Form and unless otherwise indicated therein. Unless otherwise stated in the Order Form(s), Fees are due NET forty-five (45) days from the invoice date. Customer is responsible for providing complete and accurate billing and contact

information to Company and notifying Company of any changes to billing and invoicing information. All invoices are payable in US Dollars without any deductions, offsets, or withholdings. Banking charges (e.g., wire transfer fees) and any VAT and other applicable tax payments (e.g., withholding tax) incurred in connection with a payment made by Customer shall be added to the Fees and paid by Customer so that the actual amount received by Company shall be the total Fees amount. Unless otherwise indicated in the Order Form(s), the Annual Subscription Fees shall be invoiced at the beginning of each year of the applicable Subscription Term. Customer's payment obligations are a covenant which is independent of other covenants in the Agreement. Customer shall not offset or reduce any payments due by it to Company.

5.3. **Escalation.** The Parties agree that the charges set forth to be billed above shall be subject to an annual escalation rate equivalent to the lower of the Employment Cost Index or 5% on the anniversary date of the Agreement unless otherwise specified in the Order Form.

5.4. **Intentionally omitted.**

5.5. **Suspension.** If any charge payable by Customer pursuant to the Agreement is sixty (60) days or more overdue, Company may, without limiting its other rights and remedies, suspend the provision of the Software and Services until such amounts are paid in full.

5.6. **Future Functionality.** Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Company regarding future functionality or features, other than those functionalities and features explicitly set forth in the Order Form(s).

6. CONFIDENTIAL INFORMATION

6.1. The Receiving Party shall: (a) retain the Disclosing Party's Confidential Information in strict confidence and use its best efforts to protect the Disclosing Party's Confidential Information from unauthorized use, access or disclosure in the same or a similar manner as the Receiving Party protects its own confidential or proprietary information of a similar nature, and in any event with no less than reasonable care; (b) not disclose any Confidential Information of the Disclosing Party to any third party, except to its employees, contractors, licensors and consultants with a need to know in connection with the provision, performance and use of the Software and/or Services, the Agreement and/or the Order Form; and (c) not use the Confidential Information for any purpose other than for the receipt, provision, performance and/or use of the Software and/or Services, to comply with its obligations under the Agreement and/or for the administration and management of the Agreement, and in compliance with the Agreement.

6.2. All documents and data provided by or obtained from Customer are deemed to be and shall remain Customer's Confidential Information. All documents, data and information provided by or obtained from Company or created as a result of the Agreement, including without limitation any information related to the Software and Services as well as the content and commercial terms of the Agreement (including all Order Forms), as well as the content and commercial terms of the Agreement (including all Order Forms) are deemed and shall remain Company's and/or its licensors' Confidential Information. At the request of the Disclosing Party, and/or upon the termination or expiration of the Agreement, the Receiving Party shall return to the Disclosing Party all of Disclosing Party's Confidential Information, provided only that the Receiving Party may retain copies of the Disclosing Party's Confidential Information only to the extent: (i) required to comply with applicable laws or regulation; (ii) required by Receiving Party's internal record keeping policies; and/or (iii) retained by the Receiving Party's automatic electronic back-up systems, provided that any such retained Confidential Information shall remain subject to the terms of this MSA for so long as it is retained.

6.3. Notwithstanding anything herein to the contrary, Receiving Party may disclose Confidential Information pursuant to an order of a court of competent jurisdiction or as otherwise required by law. In such event, Receiving Party will, if reasonably possible under the circumstance of such disclosure, provide Disclosing Party with reasonable advance notice of such disclosure to afford Disclosing Party an opportunity to take legal action to prevent or limit the scope of such disclosure, will cooperate with Disclosing Party in connection therewith and will disclose such Confidential Information only to those parties it is required or compelled to. Customer may disclose the commercial terms of the Agreement (including all Order Forms), as well as the content and commercial terms of the Agreement (including all Order Forms) to the extent required under applicable laws and regulations, including without limitation, public records and open public meetings law. It is hereby agreed and acknowledged that Confidential Information may also be disclosed as required pursuant to the San Bernardino County Sunshine Ordinance,

County Code of Ordinances Section 19.0101, California Government Code 54950, and California Public Records Act (Government Code Section 7920.005),

6.4. The Receiving Party hereby acknowledges that unauthorized disclosure or use of Confidential Information could cause irreparable harm and significant injury to the Disclosing Party that may be difficult to ascertain. Accordingly, the Receiving Party agrees that the Disclosing Party, without prejudice to any other right or remedy that it may have available to it at law or in equity, will have the right to seek and obtain immediate injunctive relief to enforce obligations under the Agreement, without the necessity of proving actual damages and without the necessity of posting bond or making any undertaking in connection therewith.

6.5. The restrictions and obligations set forth in this Section 6 (*Confidential Information*) shall survive and remain in effect for a period of five (5) years after expiration or termination of the Agreement.

7.   INTELLECTUAL PROPERTY RIGHTS

7.1. Company and its Affiliates and their respective licensors own and retain all right, title and interest (including all Intellectual Property Rights) in: (a) the Software and Services (and related documentation) and any updates, upgrades, modifications, improvements, enhancements, new versions, new releases, corrections (e.g. error corrections, patches and bug fixes), translations and derivative works of or to any of the foregoing; (b) all software, infrastructure, modules, methods, technology, tools, techniques and know how developed by or on behalf of Company and/or it's licensors and used in connection with or for the purposes of performing Services hereunder; (c) Company's and its licensors' Marks; (d) any know-how learned or obtained by Company and/or its licensors during the course of providing the Services; (e) all feedback, including all suggestions, comments, ideas or other information related to the Software and/or the Services, provided by Customer to Company (provided that Customer is under no obligation to provide such feedback); and (f) any enhancements, derivative works and modifications to any of the foregoing. Nothing in the Agreement shall constitute or be considered as constituting a transfer or sale or any similar action of any of Company's Intellectual Property Rights or any part thereof.

7.2. Customer owns and retains all right, title and interest (including all Intellectual Property Rights) in: (a) Customer's Marks; (b) Customer's pre-existing Intellectual Property Rights; (c) Clinical Data; and (d) any enhancements and/or modifications thereto. Notwithstanding the foregoing, Company may, and/or may allow its licensors to, monitor, collect, process, use and store data, results and logs processed in connection with Customer's use of the Software and Services, which does not contain any Protected Health Information ("**Production Data**"), for the purpose of providing, maintaining, supporting and analyzing the usage and performance of the Software and Services, providing analytics to Customer and further developing the Software and Services. Company agrees that Production Data shall not contain PHI and shall not be distributed or otherwise conveyed to any third party in a context that identifies any individual's identity.

7.3. Portions of the Software may include third-party open-source software and other free software that are subject to third-party terms and conditions ("**Third Party Terms**"). If there is a conflict between any Third Party Terms and the terms of the Agreement, then the Third Party Terms shall prevail but solely in connection with the related third-party open-source software. Notwithstanding anything in the Agreement to the contrary, Company makes no warranty or indemnity hereunder with respect to any third-party open-source software.

8.   RESEARCH

The Software and Services may be used for Customer research and publications. Customer will notify Company thirty (30) days prior to submitting for publication any manuscripts developed using the Services. If applicable, upon Company's request, Customer shall remove Company's Confidential Information and Intellectual Property Rights from the publication.

9.   INDEMNIFICATION AND INSURANCE

9.1. Company will defend Customer from and against all claims brought against Customer to the extent based on a third party claim that the Software licensed by Customer infringes such third party's trade secrets, patents or copyrights (a "**Claim**"), and pay damages, fees, fines, and penalties finally awarded by a court of competent jurisdiction or agreed in a settlement in connection with such Claims. Company has no obligation or liability under this Section 9 (*Indemnification*) with respect to any Claim which

is based upon or results from: (a) the combination of any Software with any equipment or software not furnished by Company (except for the Server); (b) any unauthorized modification or use of the Software; or (c) failure or error related to the Server

9.2. In the event of a Claim, Customer, as a condition for Company's indemnification obligation, must: (a) give prompt written notice to Company; (b) give Company exclusive control of the defense and settlement of such Claim, provided that Customer may participate in the process with its own counsel at its expense and further provided that Company not enter into any settlement or compromise of any such Claim without Customer's prior written consent (at Customer's sole and absolute discretion); and (c) provide all reasonable assistance to Company (provided that Company reimburses Customer for its reasonable out-of-pocket expenses incurred in providing such assistance).

9.3. Should the Software become, or in Company's opinion be likely to become, the subject of any Claim or infringement of a third party's Intellectual Property Rights, then Company may, at Company's option and expense, either: (a) procure for Customer the right to continue using such Software; (b) replace or modify it so that it becomes non-infringing; or (c) if neither option is commercially reasonable, in Company's reasonable business judgment, terminate the Agreement, require Customer to return or cease using the Software and Services and refund Customer on a pro-rata basis for Fees paid in advance for the Software and Services for any future Subscription Term. Without derogating from Company's defense and indemnification obligations above, this Section 9 (*Indemnification*) states the entire liability of Company with respect to any Claim, and Company shall have no additional liability hereunder or otherwise with respect to any alleged or proven infringement.

9.4. Without in anyway affecting the indemnity herein provided and in addition thereto, Company shall secure and maintain throughout the Term the types of insurance with limits as shown and under the requirements set forth in Attachment 1, as attached hereto and incorporated herein.

10. LIMITED WARRANTIES

10.1. Each Party represents and warrants to the other Party that: (a) it has the right to enter into the Agreement and perform its obligations hereunder in the manner contemplated by the Agreement; (b) the Agreement does not conflict with any other agreement entered into by it; (c) in the performance of its obligations hereunder, it will comply with all applicable laws, regulations and ordinances; and (d) it has obtained all licenses, authorizations, approvals, consents and/or permits required to perform its obligations or utilize the rights granted under the Agreement and for the use of any Software or Services provided by Company as contemplated under the Agreement.

10.2. Company represents and warrants that the Software shall, during the applicable Subscription Term, substantially meet the specifications therefor set forth in the Agreement. Customer represents, covenants and warrants to Company that: (a) in the performance of its obligations hereunder, it will comply with all applicable laws, regulations and ordinances, including, privacy and security laws; (b) it has obtained all licenses, authorizations, approvals, consents and permits required to perform its obligations under the Agreement, including, to provide all appropriate notices and/or obtain all required informed consents and permissions to provide the Clinical Data and any other personally identifiable data provided by Customer in connection with the Services (including that of its Authorized Users), and to allow Company and its licensors to use and process such information as permitted under the Agreement and/or as needed to facilitate and enable the provision of the Software and Services; and (c) Customer will procure and maintain any and all ongoing legal bases for allowing Company to collect, use, and process the personal data in accordance with the Agreement.

11. DISCLAIMER AND LIABILITY

11.1. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN SECTION 10 (*LIMITED WARRANTIES*), THE SOFTWARE AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COMPANY, ITS AFFILIATES AND THEIR RESPECTIVE LICENSORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. NEITHER COMPANY, NOR ITS AFFILIATES NOR THEIR RESPECTIVE LICENSORS SHALL BE RESPONSIBLE FOR ANY WARRANTIES AND REPRESENTATIONS MADE BY ANY PARTNER TO CUSTOMER, AND SUCH WARRANTIES AND REPRESENTATIONS ARE THE SOLE RESPONSIBILITY OF SUCH PARTNER.

11.2. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN SECTION 10 (*LIMITED WARRANTIES*), NEITHER COMPANY, NOR ITS AFFILIATES NOR THEIR RESPECTIVE SHALL BE LIABLE FOR, OR SHALL HAVE OBLIGATION TO REMEDY, ANY FOR ANY DEFECTS

CAUSED DUE OR CONTRIBUTED TO ONE OR MORE OF THE FOLLOWING: (a) ALTERATIONS, ENHANCEMENTS OR REPAIRS OF THE SOFTWARE BY ANY PERSON OR ENTITY OTHER THAN COMPANY, ITS AFFILIATES, AND THEIR RESPECTIVE LICENSORS; (b) MISHANDLING, ABUSE, OR MISUSE OF THE SOFTWARE, INCLUDING IN ANY MANNER WHICH IS NOT IN ACCORDANCE WITH THE APPLICABLE DOCUMENTATION PROVIDED BY COMPANY OR THE AGREEMENT; (c) TECHNICAL PROBLEMS OF THE INTERNET (INCLUDING WITHOUT LIMITATION SLOW INTERNET CONNECTIONS OR OUTAGES); (d) ANY ISSUE THAT IS ATTRIBUTABLE TO CUSTOMER'S HARDWARE (INCLUDING, WITHOUT LIMITATION, THE SERVER) OR SOFTWARE OR CUSTOMER'S INTERNET OR DATA SERVICE PROVIDER; (e) ANY FORCE MAJEURE EVENT; OR (f) DOWN-TIME, ERRORS OR ANY OTHER DAMAGES CAUSED DUE TO TECHNICAL ERRORS CAUSED BY CUSTOMER (INCLUDING WITHOUT LIMITATION, SERVER-RELATED ISSUES).

11.3. NEITHER COMPANY, NOR ITS AFFILIATES NOR THEIR RESPECTIVE LICENSORS OFFER ANY WARRANTY OR MAKE ANY REPRESENTATIONS REGARDING ANY CONTENT, REPORTS, INFORMATION AND/OR RESULTS THAT CUSTOMER OBTAINS THROUGH THE USE OF THE SOFTWARE AND/OR SERVICES ("**RESULTS**") OR THAT THE RESULTS ARE COMPLETE OR ERROR-FREE. THE RESULTS DO NOT CONSTITUTE MEDICAL ADVICE AND CUSTOMER UNDERSTANDS THAT IT MUST DETERMINE FOR ITSELF ANY MEDICAL RESULTS OR FINDINGS. CUSTOMER'S USE OF AND RELIANCE UPON THE SOFTWARE AND/OR SERVICES AND/OR RESULTS IS ENTIRELY AT CUSTOMER'S SOLE DISCRETION AND RISK, AND NEITHER COMPANY, NOR ITS AFFILIATES NOR THEIR RESPECTIVE LICENSORS SHALL HAVE ANY LIABILITY WHATSOEVER TO CUSTOMER OR ANY THIRD PARTY IN CONNECTION WITH ANY OF THE FOREGOING. IN ADDITION, SERVICES MAY INCLUDE IMAGE ACQUISITION MONITORING SERVICE FOR FLAGGING SUSPECTED TECHNICAL INADEQUACY, INCLUDING SUSPECTED ARTIFACTS, SUBOPTIMAL BOLUS TIMING, OR AN INADEQUATE FIELD OF VIEW. SUCH FLAGGING DOES NOT CONSTITUTE A MEDICAL DIAGNOSIS, AND ONLY THE REVIEWING PHYSICIAN CAN DETERMINE THAT THE SUSPECTED FLAG CONTAINS A TECHNICAL INADEQUACY.

11.4. NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND REGARDLESS OF THE CAUSE OF ACTION (WHETHER BASED ON CONTRACT, TORT, EQUITY OR ANY OTHER THEORY OF LIABILITY WHATSOEVER), IN NO EVENT SHALL: (a) EXCEPT FOR COMPANY'S INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, THE TOTAL AGGREGATE LIABILITY OF COMPANY, ITS AFFILIATES AND THEIR RESPECTIVE LICENSORS, ARISING OUT OF OR RELATING TO THE AGREEMENT, EXCEED ONE MILLION DOLLARS (US$1,000,000); (b) COMPANY, ITS AFFILIATES AND/OR THEIR RESPECTIVE LICENSORS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOSSES, EXPENSES, OR FOR ANY LOSS OF DATA, REVENUE, PROFITS, BUSINESS, GOODWILL, REPUTATION, BUSINESS INTERRUPTION, WORK STOPPAGE, ACCURACY OF RESULTS, COMPUTER FAILURE, MALFUNCTION, FIRE, ELECTRICAL FAILURE OR SHORT CIRCUIT, OR OTHER INTANGIBLE LOSSES, THAT ARISE UNDER OR IN CONNECTION WITH THE AGREEMENT, OR THAT RESULTS FROM THE USE OF, OR THE INABILITY TO USE, THE SOFTWARE AND SERVICES, REGARDLESS OF THE NATURE OF THE CLAIM AND EVEN IF COMPANY, ITS AFFILIATES AND/OR THEIR RESPECTIVE LICENSORS HAVE BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. THE LIMITATIONS IN THIS SECTION 11.4 SHALL NOT APPLY TO: (i) COMPANY'S INDEMNIFICATION OBLIGATION UNDER SECTION 9 (*INDEMNIFICATION*); OR (ii) COMPANY'S WILLFUL MISCONDUCT, GROSS NEGLIGENCE, OR VIOLATION OF APPLICABLE LAW.

11.5. COMPANY SHALL NOT BE LIABLE FOR ANY DIRECT OR INDIRECT DAMAGE OR LOSS, OR FOR ANY ENCUMBRANCE OR LIMITATION ON CUSTOMER'S USE OF THE SOFTWARE AND/OR SERVICES OR ANY PART THEREOF, OR ANY INABILITY TO USE THE SOFTWARE AND/OR SERVICES OR ANY PART THEREOF, WHETHER TEMPORARY OR PERMANENT, ARISING AS A RESULT OF COMPANY RECALLING THE SOFTWARE AND/OR SERVICES OR ANY PART THEREOF.

11.6. Customer recognizes and agrees that the warranty disclaimers and liability limitations in this MSA, have been bargained for, form the basis of the Agreement, and will be considered and reflected in determining any amounts to be paid by Customer under any Order Form.

12. TERM; TERMINATION

12.1. **Term.** This MSA shall become effective as of the Effective Date and will remain in force for a period of thirty-six (36) months, unless terminated sooner as permitted hereunder ("**Initial Term**"), which may be extended upon mutual written agreement or Order Form of the Parties for additional one (1) year periods (each a "**Renewal Term**"). The Initial Term together with each Renewal Term shall be referred to herein as "**Term**".

12.2. **Termination.** Either Party may terminate the Agreement (including, for the avoidance of doubt, all Order Forms) immediately upon written notice if: (a) the other Party is in breach or default of any provision hereunder or any provision of an Order Form, which breach or default is not cured within 30 days of receipt of written notice from the non-breaching Party; or (b) the other Party becomes the subject of any proceeding under any bankruptcy, insolvency or liquidation law, whether domestic or foreign

and whether voluntary or involuntary, unless dismissed within 60 days of commencement thereof. For the removal of doubt, unless otherwise set forth in the applicable Order Form, Subscriptions and Order Forms cannot be terminated or cancelled other than by termination of the Agreement according to this Section 12.2 (*Termination*).

12.3. Intentionally omitted.

12.4. **Consequences of Termination.** Upon termination and/or expiration of the Agreement, all rights granted by Company to Customer under the Agreement shall terminate, the Subscription Term will end and Customer shall: (a) promptly pay to Company any amounts due and owing to Company in relation to any Software provided and Services performed by Company prior to the date of such termination; (b) cease all use of the Services and the Software; and (c) promptly delete the Software and all data stored on the Server. The following Sections shall survive the expiration or termination of the Agreement: 5 (*Fees And Payment*), 6 (*Confidential Information*), 7 (*Intellectual Property Rights*), 11 (*Disclaimer and Liability*), 12.4 (*Consequences of Termination*) and 14 (*Miscellaneous*).

13.   PUBLICITY

No news releases, advertisements, public announcements or photographs arising out of the Agreement or Company relationship with Customer may be made or used without prior written approval of Customer. Such approval may be obtained via email, by contacting: Countycomms@cao.sbcounty.gov

14.   MISCELLANEOUS

14.1. **Entire Agreement.** The Agreement, together with its exhibits, contains the entire agreement between the Parties with respect to the matters covered herein. The Agreement may be amended or modified only by a written instrument duly executed by each Party. For the avoidance of doubt, any pre-printed provisions on Customer's purchase orders or other terms referenced from Customer's purchase orders shall not apply and have no force or effect. Acknowledgment (whether express or implied) by Company of Customer's purchase orders which contain additional, different, or conflicting terms and conditions shall not constitute acceptance of such terms and conditions by Company. Notwithstanding anything to the contrary, in the event of a conflict, discrepancy or contradiction between the terms of the Agreement and any other agreements between the Parties as pertaining the subject matter of the Agreement, the terms of the Agreement shall prevail.

14.2. **Severability.** If any provision of the Agreement is held to be unenforceable for any reason, it shall be adjusted rather than voided, if possible, in order to achieve the intent of the Parties to the fullest extent possible. In any event, all other provisions of the Agreement shall remain valid and enforceable to the fullest extent possible.

14.3. **Waiver.** No failure or delay by either Party to exercise or enforce any right, power or remedy under the Agreement shall be deemed a waiver of any such right, power or remedy or of any other right, power or remedy under the Agreement.

14.4. **Notices.** Any notice or other communication made in connection with the Agreement shall be in writing and shall be either personally delivered or mailed by certified mail or fax (with confirmation of sending) to the addresses set out in the Agreement or otherwise agreed mutually by the Parties. All notices shall be in writing and become effective when personally delivered, the next business day following sending a fax, or five (5) days following sending certified mail. Such addresses may be changed, from time to time, by means of a notice given in the manner provided in this Section 14.4 (*Notices*).

14.5. **Assignment.** A Party may not assign or transfer, in whole or in part, or delegate all or any portion of its rights or obligations under the Agreement without the prior written consent of the other Party, except that Company may assign the Agreement without the need to obtain consent to its Affiliates, or to an entity into or with which it is merged, or which purchases all or substantially all the assets of Company, provided that Company will provide written notice of the assignment to Customer with ten (10) days' prior written notice of such assignment, or if legally prohibited from providing prior notice, within 10 days after the effective date of the assignment, subject to confidentiality obligations, and Customer has the right to terminate this Agreement, if required by applicable law. Any prohibited assignment shall be null and void.

14.6. **No Third Party Beneficiaries. T**he Agreement shall be binding and inure solely to the benefit of the Parties (and their respective lawful successors and assigns). Unless stated otherwise, nothing in the Agreement is intended to or shall confer upon any third party any rights, benefits or remedies of any nature whatsoever under or by reason of the Agreement.

14.7. **Notice to U.S. Government Customers (if applicable).** For U.S. Government procurements, (i) Software is a "commercial" computer software as defined in FAR 12.212, and (ii) "commercial" software and documentation are also provided in accordance with DFARS 227.7202, "Rights in Commercial Computer Software or Commercial Computer Software Documentation", as applicable, and any successor regulations. Any use, reproduction release, performance, display, or disclosure of the Software or the applicable documentation by the U.S. Government must be in accordance with license rights and restrictions described in this MSA. Notwithstanding the foregoing, the U.S Government agrees that this software qualifies as "commercial" computer software within the meaning of the acquisition regulations applicable to this procurement. This MSA shall pertain to the U.S Government's use and disclosure of the Software and the applicable documentation, and shall supersede any conflicting contractual terms or conditions.

14.8. **Counterparts.** The Agreement may be signed in one or several counterparts, which together shall constitute one and the same agreement.

14.9. **Governing Law and Jurisdiction.** The Agreement shall be governed and construed in accordance with the law of the State of California, without regard to conflict of law rules thereof. Any dispute, controversy, or claim arising out of, or in relation to, the Agreement (including, for the avoidance of doubt any Order Form), shall be settled amicably between the Parties. The Parties agree that the venue of any action or claim brought by any party to this Agreement will be the Superior Court of California, San Bernardino County, San Bernardino District. Each Party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Agreement is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney's fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney's fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance.

14.10. **Force Majeure.** If any performance (excluding payment obligations) under the Agreement by either Party is prevented, hindered, or delayed by reason of a Force Majeure Event, the Party so affected shall be excused from such performance to the extent that, and for so long as, performance is prevented, interrupted, or delayed thereby, provided that such Party so affected shall promptly notify the other Party of the occurrence of such event. If and when performance is resumed, all dates specified in the Agreement and/or in any purchase orders accepted pursuant to the Agreement shall be automatically adjusted to reflect the period of such prevention, interruption, or delay by reason of such Force Majeure Event.

14.11. **Electronic Signatures.** The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

14.12. **Executive Order N-6-22 Russia Sanctions.** On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions   against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine (https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions), as well as any sanctions imposed under state law (https://www.dgs.ca.gov/OLS/Ukraine-Russia). The EO directs state agencies and their contractors (including by agreement or receipt of a grant) to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should it be determined that Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. Contractor shall be provided advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the County.

14.13. **Campaign Contribution Disclosure (SB 1439).** Contractor has disclosed to the County using Attachment C - Campaign Contribution Disclosure Senate Bill 1439, whether it has made any campaign contributions of more than $250 to any member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the earlier of: (1) the date of the submission of Contractor's proposal to the County, or (2) 12 months before the date this Contract was approved by the Board of Supervisors. Contractor acknowledges that under Government Code section 84308, Contractor is prohibited from making campaign contributions of more than $250 to any member of the Board of Supervisors or other County elected officer for 12 months after the County's consideration of the Contract. In the event of a proposed amendment to this Contract, the Contractor will provide the County a written statement

disclosing any campaign contribution(s) of more than $250 to any member of the Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment. Campaign contributions include those made by any agent/person/entity on behalf of the Contractor or by a parent, subsidiary or otherwise related business entity of Contractor.

Signed by each Party's authorized representative:

AIDOC, INC.	**SAN BERNARDINO COUNTY**
DocuSigned by:	
By: _John Danahy_____	By: _____
4161CC03C7E948D John Danahy	
Print Name: _____	Print Name: _____
Title: _____Chief Revenue Officer___	Title: _____
Date: 31 August 2023 | 20:38:33 ISDT	Authority Level: _____
	Date:

EXHIBIT A

Definitions

Defined terms, as used in the Agreement and not elsewhere defined in the Agreement, shall have the meanings set forth in this Exhibit A.

1. "**Affiliate**" means any entity which directly or indirectly controls, is controlled by, or is under common control with a Party, where "**control**" means owning 50% or more of the voting securities of such entity or the ability to direct managerial decisions or board decisions of such entity.

2. "**Annual Subscription Fee**" means the total fees payable by Customer for each Subscription Year.

3. "**Authorized Users**" means employees or individual independent contractors of Customer designated, assigned and authorized by Customer to use the Software and Services in accordance with the access and use rights set forth in the Agreement.

4. "**Confidential Information**" means all confidential, proprietary or non-public information disclosed by one Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**"), whether any of the foregoing is disclosed orally or in tangible form, excluding information which the Receiving Party can demonstrate by contemporaneous written evidence: (i) is already in the Receiving Party's possession at the time of disclosure of such Confidential Information; or (ii) is or later becomes available to the public other than as a result of disclosure by the Receiving Party; or (iii) is lawfully received by the Receiving Party from a third party authorized to make such disclosure and without restriction on use or disclosure; or (iv) the Receiving Party can demonstrate in its records to have independently developed, without breach of the Agreement and/or any use of the Confidential Information; or (v) is approved for release by prior written consent from the Disclosing Party.

5. "**Entitlements**" means the following Subscription metrics:

   i. "**Licensed Physician Users**" means Authorized Users who are credentialed physicians. For the avoidance of doubt, License Physician Users shall not include any Authorized Users who are non-physician users, such as radiologic technologists, nurses, and systems administrators. When applicable, the Order Form shall set forth the maximum amount of Licensed Physician Users that may be assigned by Customer to use the Software and Services.

   ii. "**Licensed Site**" means a Permitted Facility which is a physical healthcare inpatient, acute care facility. For the avoidance of doubt, Licensed Sited will not include any other bespoke healthcare facilities owned or controlled by Customer, such as outpatient imaging facilities, and where Licensed Physician Users may be accessing or generating medical information data (images) with the Software and Services. When applicable, the Order Form shall set forth the maximum number of Licensed Sites that may be assigned by Customer to use the Software and Service.

   iii. "**Annual Image Volume**" means the total amount of DICOM formatted medical image studies generated for interpretation by Radiology and Cardiology departments of the Licensed Sites Customer. When applicable, the Order Form shall set forth the maximum Annual Image Volume permitted to be transmitted via the Software and Service.

6. "**Fees**" means any fees payable under an Order Form or otherwise in connection with the Agreement, including without limitation, the Annual Subscription Fee and fees for increased Entitlements.

7. "**Intellectual Property Rights**" means all intangible legal rights, titles and interests evidenced by, embodied in, connected or related to: (i) all inventions, whether patentable or unpatentable and whether or not reduced to practice, all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions and re-examinations thereof; (ii) all trademarks, service marks, trade dress, logos, trade names, corporate names, domain names together with all translations, adaptations, derivations and combinations thereof, including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith; (iii) any work of authorship, regardless of copyrightability, all compilations, all copyrightable works, all copyrights (including moral rights) and all applications, registrations and renewals in connection therewith; (iv) all mask works and all applications, registrations and renewals in connection therewith; (v) all trade secrets, Confidential Information and business information; (vi) all computer software (including data and related documentation), source code and any other related documentation; and (vii) all other proprietary rights, industrial rights and any other similar rights, in each case on a worldwide basis, and all copies and tangible embodiments thereof, or any part thereof, in whatever form or medium.

8. "**Marks**" means logos, trademarks and service marks.

9. "**Order Form**" means an order form in Company's standard format, quote, statement of work or other similar document executed by the Parties specifying, *inter alia*, the Software and Services to be provided in accordance with the parameters, specifications, scope, and limitations defined thereunder, the Entitlements, the Subscription Term, the applicable Fees, and the payment terms, that is entered into between Customer and Company or any of their Affiliates, including any statement of work, addenda and supplements thereto.

10. "**Permitted Facilities**" means bespoke facilities owned or controlled by Customer, designated, assigned and authorized by Customer for use of Software and Services in accordance with the access and use rights set forth in the Agreement. For the avoidance of doubt, Arrowhead Regional Medical Center is a Permitted Facility.

11. "**Force Majeure Event**" means (1) fire, flood, earthquake, explosion, pandemic or epidemic (or similar regional health crisis), or other act of God; (2) strikes, lockouts, picketing, concerted labor action, work stoppages, other labor disturbances, or shortages of materials or equipment, not the fault of either Party; (3) war (declared or undeclared), terrorism, riot, or civil commotion; (4) other matter beyond the reasonable control of the affected Party; and/or (5) an act of governmental or quasi-governmental authorities.

12. "**Protected Health Information**" or "**PHI**" shall have the same meaning ascribed to the term at 45 CFR § 160.103.

13. "**Server**" means a designated server located on Customer's premises and allocated by Customer solely for the purposes of hosting Company's AI Orchestrator, de-identification software and other Company Software as may be applicable, from which Clinical Data is routed to Company's AI cloud environment.

14. "**Services**" means the Subscription-based services and functionalities described in the Order Form and underlying any technology and/or Software described therein, and any maintenance, support, additional services and professional services provided by Company to Customer under an Order Form.

15. "**Software**" means the proprietary software and platform of Company and/or its licensors (including without limitation, where applicable, AI modules and software of Company's third party partners provided to Customer by Company), including their associated technology and underlying services and functionalities and any updates, revisions, upgrades and corrections (e.g. error corrections, patches and bug fixes) to the foregoing and related documentation as provided by Company to Customer. Without limitation to the foregoing, "Software" may include (to the extent provided in the Order Form) software installed on Customer's premises, any platform made available on a "Software-as-a-Service" (SaaS) basis, and mobile or web application(s).

16. "**Clinical Data**" means information, content and other data that may be transmitted electronically between Customer and Company's AI Cloud included in the Software, including without limitation DICOM data, patient scans, reports and clinical data.

17. "**Subscription**" means the limited right to access and use the Software and Services purchased by Customer from Company pursuant to an Order Form, in accordance with the specific products, parameters, specifications, scope and limitations defined in the Order Form or other written instrument executed by the Parties in accordance with the Agreement.

18. "**Subscription Term**" means the Initial Subscription Term, together with any applicable Renewal Periods.

19. "**Subscription Year**" means a twelve (12)-month period commencing from the Subscription commencement date as set forth in the applicable Order form and ending twelve (12) months thereafter and each consecutive twelve (12) months until the end of the Subscription Term.

EXHIBIT B

<u>Service Level Agreement</u>

This Exhibit B – Service Level Agreement ("**SLA**") is subject to and made a part of the attached MSA.

This document outlines the service levels to be provided in the delivery of Company Software.

1. Service Scope

1.1. Customer to provide Tier 1 IT support and escalate unsolved incidents to Company.

1.2. Company shall provide Customer with the following support and services related to Company Software:

    1.2.1. Manned telephone support.

    1.2.2. Monitored email support.

    1.2.3. Remote assistance using Remote Desktop and a Virtual Private Network when available.

    1.2.4. Planned or Emergency Onsite Assistance.

    1.2.5. Deployment of all Company Software updates applicable to the Algorithms for Clinical Use in accordance with the Order Form.

1.3. Customer shall provide all reasonably requested information to Company and grant full access to Customer's malfunctioning or testing systems at Company's request if it is technically possible and without derogating from Section 3 of the Agreement, Customer shall provide as much detailed information as possible to help Company resolve the problem.

1.4. Company shall provide Customer with an e-mail address and telephone number to which issues and urgent cases can be reported to.

2. Service Management

2.1. Company will provide to Customer the following general support:

    2.1.1. Telephone support during office hours. Calls received during out-of-office hours will be forwarded to a personal phone and reasonable efforts will be made to answer the call.

    2.1.2. Email support is available 24 hours, 7 days a week (24 x 7) basis.

    2.1.3. Proposed resolution / steps of investigation will be provided within 24 business hours of receipt.

    2.1.4. Resolution may take up to 7 working days to be submitted for release, except for issues related to Boundaries and Exclusions and Level 4 issues.

3. Support Policy

3.1. Company to prioritize tickets by severity in accordance with the following policy:

Severity Level	Definition	Expected Response Time
Level 1 – Urgent	Service is down, operations severely impacted with no workaround.	Within 60 minutes during our business hours, and except as otherwise provided herein, we guarantee response within 4 hours.
Level 2 – High	Service is operational but significant disruption of operations; no stable workaround.	Within 90 minutes during our business hours, and except as otherwise provided herein, we guarantee response within 8 hours.
Level 3 – Medium	Issues causing moderate to low service disruption or any issue for which there is a stable workaround available.	Within 2 hours during our business hours.
Level 4 – Low	Service is operational; no significant disruption of operations; issues with little time sensitivity such as general questions	Within 8 hours during our business hours.

3.2. Please note that these guidelines specify the time to begin investigation of the problem, not the length of time within which such problem will be resolved.

4. Boundaries and Exclusions

4.1. The Service Scope shall not apply to performance issues caused by the following:

4.1.1. A result of Customer equipment including third-party computer hardware, software, or network infrastructure not within the sole control of Company.

4.1.2. Actions or inactions of Customer (unless undertaken at the expressed directive of Company) or third parties beyond the control of Company.

4.1.3. Overall Internet congestion, slowdown, or unavailability.

4.1.4. Scheduled maintenance time.

4.1.5 Force Majeure Event.

EXHIBIT C

<u>Pricing</u>

The following pricing is provided at a discounted rate from our list price.

Pro quote: 300k annual volume, 25 users, 2 sites, 36-month term
ANNUAL PRICE
$146,625
AIDOC PROFESSIONAL

Aidoc aIOS
- Exam De-identification
- Active AI System Monitoring Platform
- Intelligent Exam Routing
- Physician-specific Routing
- AI Admin Portal – Premium

AI Driven Imaging Workflow:
- Aidoc Desktop Application
- Post-market AI Feedback
- Aidoc Interface with Reporting Software
- PACS Integration

AI Triage and Notification Algorithms - Image Based
- Pulmonary Embolism (CT)
- Incidental Pulmonary Embolism (CT)
- Intracranial Hemorrhage (CT)
- Large Vessel Occlusion M1 (CT)
- C-Spine Fracture (CT)
- Rib Fracture (CT)
- Intra-abdominal Free Gas (CT)
- Brain Aneurysm (CT)
- Pneumothorax (XR)

ATTACHMENT 1
INSURANCE REQUIREMENTS

Company agrees to provide insurance set forth in accordance with the requirements herein. If Company uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Company agrees to amend, supplement or endorse the existing coverage to do so.

1. Without in anyway affecting the indemnity herein provided and in addition thereto, Company shall secure and maintain throughout the Term the following types of insurance with limits as shown:

   a. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with $250,000 limits covering all persons including volunteers providing services on behalf of Company and all risks to such persons under this contract. If Company has no employees, it may certify or warrant to the Customer that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the Customer's Director of Risk Management.

   b. Commercial/General Liability Insurance – Company shall carry General Liability Insurance covering all operations performed by or on behalf of Company providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars ($1,000,000), per occurrence. The policy coverage shall include:
       i. Premises operations.
       ii. Products and completed operations.
       iii. Broad form property damage (including completed operations).
       iv. Explosion, collapse and underground hazards.
       v. Personal injury.
       vi. $2,000,000 general aggregate limit.

   c. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars ($1,000,000) for bodily injury and property damage, per occurrence. If Company is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars ($2,000,000) for bodily injury and property damage per occurrence. If Company owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

   d. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

   e. Product Liability and Professional Liability –Combined Product Liability and Professional Liability Insurance, including errors and omissions, with limits of not less than one million ($1,000,000) per claim and two million ($2,000,000) aggregate limits

       If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the start of the Agreement work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of two (2) years after Agreement completion. If insurance coverage is not provided on a "claims made" policy, the policy will be maintained for the term of this Agreement.

   f. Cyber Liability Insurance - Cyber Liability Insurance with limits of no less than $1,000,000 for each occurrence or event with an annual aggregate of $2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of

private information, alteration of electronic information, extortion and network security. The policy shall protect the involved Customer entities and cover breach response cost as well as regulatory fines and penalties.

2. Additional Insured. All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the Customer and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

3. Waiver of Subrogation Rights. Company shall require the carriers of required coverages except for Worker's Compensation, to waive all rights of subrogation against the Customer, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Company and Company's employees or agents from waiving the right of subrogation prior to a loss or claim. Company hereby waives all rights of subrogation against the Customer.

4. Policies Primary and Non-Contributory. The Product Liability Insurance policy will be primary and non-contributory with any insurance or self-insurance programs carried or administered by the Customer.

5. Proof of Coverage. Company shall furnish Certificates of Insurance to the Customer Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Company shall maintain such insurance from the time Company commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, Company shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

6. Acceptability of Insurance Carrier. Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

7. Deductibles and Self-Insured Retention. Except for Worker's Compensation, any and all deductibles or self-insured retentions in excess of $10,000 shall be declared to and approved by Risk Management.

ATTACHMENT 2
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (Agreement or BAA) supplements and is made a part of the Master Subscription Agreement (Contract) by and between the San Bernardino County Arrowhead Regional Medical Center (hereinafter Covered Entity) and Aidoc, Inc. (hereinafter Business Associate). This Agreement is effective as of the effective date of the Contract.

RECITALS

WHEREAS, Covered Entity (CE) wishes to disclose certain information to Business Associate (BA) pursuant to the terms of the Contract, which may include Protected Health Information (PHI); and

WHEREAS, CE and BA intend to protect the privacy and provide for the security of the PHI disclosed to BA pursuant to the Contract 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 (HITECH Act), their implementing regulations, and other applicable laws; and

WHEREAS, The Privacy Rule and the Security Rule require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, sections 164.314, subdivision (a), 164.502, subdivision (e), and 164.504, subdivision (e) of the Code of Federal Regulations (C.F.R.) and contained in this Agreement; and

WHEREAS, Pursuant to HIPAA and the HITECH Act, BA shall fulfill the responsibilities of this Agreement by being in compliance with the applicable provisions of the HIPAA Standards for Privacy of PHI set forth at 45 C.F.R. sections 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.316 (Policies and Procedures and Documentation Requirements), and, 164.400, et seq. and 42 United States Code (U.S.C.) section 17932 (Breach Notification Rule), in the same manner as they apply to a CE under HIPAA;

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

A. Definitions

Unless otherwise specified herein, capitalized terms used in this Agreement shall have the same meanings as given in the Privacy Rule, the Security Rule, the Breach Notification Rule, and HITECH Act, as and when amended from time to time.

1. Breach shall have the same meaning given to such term under the HIPAA Regulations [45 C.F.R. §164.402] and the HITECH Act [42 U.S.C. §§17921 et seq.], and as further described in California Civil Code section 1798.82.

2. Business Associate (BA) shall have the same 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 17921 and 45 C.F.R. section 160.103.

3. <u>Covered Entity (CE)</u> shall have the same meaning given to such term as under the Privacy Rule and Security Rule, including, but not limited to 45 C.F.R. section 160.103.

4. <u>Designated Record Set</u> shall have the same meaning given to such term under 45 C.F.R. section 164.501.

5. <u>Electronic Protected Health Information (ePHI)</u> means PHI that is maintained in or transmitted by electronic media as defined in the Security Rule, 45 C.F.R. section 164.103.

6. <u>Individual</u> shall have the same meaning given to such term under 45 C.F.R. section 160.103.

7. <u>Privacy Rule</u> means the regulations promulgated under HIPAA by the United States Department of Health and Human Services (HHS) to protect the privacy of Protected Health Information, including, but not limited to, 45 C.F.R. Parts 160 and 164, subparts A and E.

8. <u>Protected Health Information (PHI)</u> shall have the same meaning given to such term under 45 C.F.R. section 160.103, limited to the information received from, or created or received by Business Associate from or on behalf of, CE.

9. <u>Security Rule</u> means the regulations promulgated under HIPAA by HHS to protect the security of ePHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, subparts A and C.

10. <u>Unsecured PHI</u> shall have the same 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, subdivision (h).

B. Obligations and Activities of BA

1. <u>Permitted Uses and Disclosures</u>
BA may disclose PHI: (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) for purposes of Treatment, Payment and Operations (TPO); (iv) as required by law; or (v) for Data Aggregation purposes for the Health Care Operations of CE. Prior to making any other disclosures, BA must obtain a written authorization from the Individual. Furthermore, BA may use PHI to de-identify information consistent with the standards set forth at 45 CFR §164.514.

If BA discloses PHI to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such PHI will be held confidential as provided pursuant to this Agreement and only disclosed 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 notify BA within reasonable time of any breaches of confidentiality of the PHI, to the extent it has obtained knowledge of such

breach. [42 U.S.C. section 17932; 45 C.F.R. sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].

2. <u>Prohibited Uses and Disclosures</u>
   i.   BA shall not use, access or further disclose PHI other than as permitted or required by this Agreement and/or as specified in the attached Contract or as required by law. Further, BA shall not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act. BA shall disclose to its employees, subcontractors, agents, or other third parties, and request from CE, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
   ii. BA shall not use or disclose PHI for fundraising or marketing purposes.
   iii. BA shall not disclose PHI 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)(1)(i)(A).)
   iv. BA shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of CE and as permitted by the HITECH Act (42 U.S.C. section 17935(d)(2); and 45 C.F.R. section 164.508); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to this Agreement.

3. <u>Appropriate Safeguards</u>
   i.   BA shall implement appropriate safeguards to prevent the unauthorized use or disclosure of PHI, including, but not limited to, administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of the PHI BA creates, receives, maintains, or transmits on behalf of the CE, in accordance with 45 C.F.R. sections 164.308, 164.310, 164.312 and 164.316. [45 C.F.R. sections 164.504(e)(2)(ii)(b) and 164.308(b).]
   ii. In accordance with 45 C.F.R. section 164.316, BA shall maintain reasonable and appropriate written policies and procedures for its privacy and security program in order to comply with the standards, implementation specifications, or any other requirements of the Privacy Rule and applicable provisions of the Security Rule.
   iii. BA shall provide appropriate training for its workforce on the requirements of the Privacy Rule and Security Rule as those regulations affect the proper handling, use confidentiality and disclosure of the CE's PHI.

        Such training will include specific guidance relating to sanctions against workforce members who fail to comply with privacy and security policies and procedures and the obligations of the BA under this Agreement.

4. <u>Subcontractors</u>
   BA shall enter into written agreements with agents and subcontractors to whom BA provides CE's PHI that impose substantially similar restrictions and conditions on such agents and subcontractors as those that apply to BA with respect to such PHI, and that require compliance with all appropriate safeguards as found in this Agreement.

5. Reporting of Improper Access, Use or Disclosure or Breach
    Every actual Breach shall be reported immediately, but no later than five (5) business days upon discovery, to CE's Office of Compliance, consistent with the regulations under HITECH Act.   Upon discovery of a Breach, BA shall complete the following actions:
    i.   Provide CE's Office of Compliance with the following information to include but not limited to:
         a) Date the Breach occurred;
         b) Date the Breach was discovered;
         c) Number of staff, employees, subcontractors, agents or other third parties and the names and titles of each person allegedly involved;
         d) Number of potentially affected Individual(s) with contact information; and
         e) Description of how the Breach allegedly occurred.
    ii. Conduct and document a risk assessment by investigating without unreasonable delay and in no case later than ten (10) business days of discovery of the Breach to determine the following:
         a) The nature and extent of the PHI involved, including the types of identifiers and likelihood of re-identification;
         b) The unauthorized person who had access to the PHI;
         c) Whether the PHI was actually acquired or viewed; and
         d) The extent to which the risk to PHI has been mitigated.
    iii. Provide a completed risk assessment and investigation documentation to CE's Office of Compliance within ten (10) business days of discovery of the Breach with a determination as to whether a Breach has occurred. At the discretion of CE, additional information may be requested.
         a) If BA and CE agree that a Breach has not occurred, notification to Individual(s) is not required.
         b) If a Breach has occurred, notification to the Individual(s) is required and BA must provide CE with affected Individual(s) name and contact information so that CE can provide notification.
    iv. Make available to CE and governing State and Federal agencies in a time and manner designated by CE or governing State and Federal agencies, any policies, procedures, internal practices and records relating to a Breach for the purposes of audit or should the CE reserve the right to conduct its own investigation and analysis.
    v.   This Section constitutes notice to CE of routine unsuccessful Security Incidents such as pings and other broadcast attacks on BA's firewall, port scans, unsuccessful log-on attempts, denial of service attacks, so long as no such incident results in the circumvention of a security control, or in the unauthorized access to an information system.

6. Access to PHI
    To the extent BA maintains a Designated Record Set on behalf of CE, BA shall make PHI maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within thirty (30) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule. If BA maintains ePHI, BA shall provide such information in electronic format to enable CE to fulfill its obligations

under the HITECH Act. If BA receives a request from an Individual for access to PHI, BA shall immediately forward such request to CE.

7. Amendment of PHI
   If BA maintains a Designated Record Set on behalf of the CE, BA shall make any amendment(s) to PHI in a Designated Record Set that the CE directs or agrees to, pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy CE's obligations under 45 C.F.R. section 164.526, in the time and manner designated by the CE.

8. Access to Records
   BA shall make internal practices, books, and records, including policies and procedures, relating to the use, access and disclosure of PHI received from, or created or received by BA on behalf of, CE available to the Secretary of HHS, in a time and manner designated by the Secretary, for purposes of the Secretary determining CE's compliance with the Privacy Rule and Security Rule and patient confidentiality regulations. Any documentation provided to the Secretary shall also be provided to the CE upon request, subject to confidentiality obligations.

9. Accounting for Disclosures
   BA, its agents and subcontractors shall document disclosures of PHI and information related to such disclosures as required by HIPAA. This requirement does not apply to disclosures made for purposes of TPO. BA shall provide an accounting of disclosures to CE or an Individual, in the time and manner designated by the CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. 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 PHI and, if known, the address of the entity or person; (iii) a brief description of PHI 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.

10. Termination
    CE may terminate this agreement, and any related agreements, if CE determines that BA has breached a material term of this agreement and such breach is not cured or curable within thirty (30) days of BA's receipt of notification concerning the breach. If curable, BA will have thirty (30) days following receipt of notice to cure any breach before termination of this agreement. However, if the breach is not curable, CE may terminate this agreement immediately upon notice to BA.

11. Return of PHI
    Upon termination of this Agreement, BA shall return all PHI required to be retained by the BA or its subcontractors, employees or agents on behalf of the CE. In the event the BA determines that returning the PHI is not feasible, the BA shall provide the CE with written notification of the conditions that make return not feasible. Additionally, the BA must follow established policies and procedures to ensure PHI is safeguarded

and disposed of adequately in accordance with 45 C.F.R. section 164.310, and must submit to the CE a certification of destruction of PHI. For destruction of ePHI, the National Institute of Standards and Technology (NIST) guidelines must be followed. BA further agrees to extend any and all protections, limitations, and restrictions contained in this Agreement, to any PHI retained by BA or its subcontractors, employees or agents after the termination of this Agreement, and to limit any further use, access or disclosures.

12. Breach by the CE
Pursuant to 42 U.S.C. section 17934, subdivision (b), if the BA is aware of any activity or practice by the CE that constitutes a material Breach or violation of the CE's obligations under this Agreement, the BA must take reasonable steps to address the Breach and/or end eliminate the continued violation, if the BA has the capability of mitigating said violation. If the BA is unsuccessful in eliminating the violation and the CE continues with non-compliant activity, the BA must terminate the Agreement (if feasible) and report the violation to the Secretary of HHS.

13. Mitigation
BA shall have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to BA of a use, access or disclosure of PHI by BA, its agents or subcontractors in violation of the requirements of this Agreement.

14. Costs Associated to Breach
Subject to Section 16, BA shall be responsible for reasonable direct costs arising out of a Breach. Costs shall be based upon the required notification type as required by law and as deemed appropriate and necessary by the CE and shall not be reimbursable under the Agreement at any time. CE shall determine the method to invoice the BA for said costs. Costs shall incur at the current rates and may include, but are not limited to the following:
- Postage;
- Alternative means of notice;
- Media notification, to the extent required by law; and
- Credit monitoring services, to the extent required by law to be provided at no cost to such affected individuals.

15. Compliance with HIPAA
BA will comply with HIPAA as applicable to BA in connection with this Agreement and the Contract.

16. Limitation of Liability
Notwithstanding anything in this Agreement or the Contract to the contrary, BA shall not be liable whether under contract, tort (including negligence) or otherwise, to CE or any third party for any indirect, special or consequential damages, lost profits, good will or lost data arising from and/or related to this agreement, even if BA has been advised of the possibility of such damages. In any case, to the extent legally permissible, BA's entire and aggregate liability to CE for all damages, costs, expenses or losses whatsoever (including BA's indemnification, payment or reimbursement

obligations (if any)) arising under or in relation to this Agreement, shall not exceed three times (X3) the fees paid under the commercial agreement between the parties with respect to the twelve (12) months preceding the event giving rise to the liability.

17. Indemnification

Subject to Section 16, BA agrees to indemnify, defend and hold harmless CE and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, penalties, injuries, costs and expenses (including costs for reasonable attorney fees) that are directly caused by or result from the acts or omissions of BA, its officers, employees, agents and subcontractors, with respect to the use, access, maintenance or disclosure of CE's PHI, including without limitation, any Breach of PHI or any expenses incurred by CE in providing required Breach notifications.

In the event of such claim, CE shall (a) give BA prompt written notice of the relevant claim; (b) reasonably cooperate with the BA, in the defense of such claim; and (c) give BA sole control over the defense and settlement of any such claim. Provided that CE will have the right to participate in the defense with counsel of its choice at its own expense and further provided that BA will not settle any claim without the CE's prior consent.

18. Judicial or Administrative Proceedings

CE may terminate the Contract, effective immediately, if (i) BA is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws or (ii) a finding or stipulation is made in any administrative or civil proceeding in which the BA has been joined that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws.

19. Insurance

In addition to any general and/or professional liability insurance coverage required of BA under the Contract for services, BA shall provide appropriate cyber insurance coverage during the term of this Agreement as required in the Contract.

20. Assistance in Litigation or Administrative Proceedings

BA shall make itself, and any subcontractors, employees, or agents assisting BA in the performance of its obligations under the Agreement, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers, or employees in connection with the Contract or this Agreement which is based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where BA or its subcontractor, employee or agent is a named adverse party.

C. **Obligations of CE**
   1. CE shall notify BA of any of the following, to the extent that such may affect BA's use, access, maintenance or disclosure of PHI:

    i.   Any limitation(s) in CE's notice of privacy practices in accordance with 45 C.F.R. section 164.520.

    ii.   Any changes in, or revocation of, permission by an individual to use, access or disclose PHI.

    iii.   Any restriction to the use, access or disclosure of PHI that CE has agreed to in accordance with 45 C.F.R. section 164.522.

D. General Provisions

1. Remedies
BA agrees that CE shall be entitled to seek immediate injunctive relief as well as to exercise all other rights and remedies which CE may have at law or in equity in the event of an unauthorized use, access or disclosure of PHI by BA or any agent or subcontractor of BA that received PHI from BA.

2. Ownership
The PHI shall be and remain the property of the CE. BA agrees that it acquires no title or ownership rights to the PHI.

3. Regulatory References
A reference in this Agreement to a section in the Privacy Rule and Security Rule and patient confidentiality regulations means the section as in effect or as amended.

4. No Third-Party Beneficiaries
Nothing express or implied in the Contract or this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

5. Amendment
The parties acknowledge that state and federal laws related to privacy and security of PHI are rapidly evolving and that amendment of the Contract or this Agreement may be required to ensure compliance with such developments. The parties shall negotiate in good faith to amend this Agreement when and as necessary to comply with applicable laws. If either party does not agree to so amend this Agreement within 30 days after receiving a request for amendment from the other, either party may terminate the Agreement upon written notice. To the extent an amendment to this Agreement is required by law and this Agreement has not been so amended to comply with the applicable law in a timely manner, the amendment required by law shall be deemed to be incorporated into this Agreement automatically and without further action required by either of the parties. Subject to the foregoing, this Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed and agreed to by BA and CE.

6. Interpretation
Any ambiguity in this Agreement shall be resolved to permit CE to comply with the Privacy and Security Rules, the HITECH Act, and all applicable patient confidentiality regulations.

7. <u>Compliance with State Law</u>

    In addition to HIPAA and all applicable HIPAA Regulations, BA acknowledges that BA and CE may have confidentiality and privacy obligations under State law, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq. ("CMIA")). If any provisions of this Agreement or HIPAA Regulations or the HITECH Act conflict with CMIA or any other California State law regarding the degree of protection provided for PHI and patient medical records, then BA shall comply with the more restrictive requirements.

8. <u>Survival</u>

    The respective rights and obligations and rights of CE and BA relating to protecting the confidentiality or a patient's PHI shall survive the termination of the Contract or this Agreement.

Business Associate Addendum for Cloud Services
Software as a Service (SaaS)

This Business Associate Addendum for Cloud Services is entered into by and between the San Bernardino County (County) and Business Associate (Contractor) for the purposes of establishing terms and conditions applicable to the provision of services by Business Associate to the County involving the use of hosted cloud computing services. County and Business Associate agree that the following terms and conditions will apply to the services provided under this addendum and the associated Business Associate Agreement as applicable.   In the event of a conflict or inconsistency between the terms of the Contract and this Addendum, the terms of the Contract shall control.

1. **DEFINITIONS:**
    a) "**Software as a Service (SaaS**)" - The capability provided to the consumer is to use applications made available by the provider running on a cloud infrastructure. The applications are accessible from various client devices through a thin client interface such as a web browser or application. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
    b) "**Data**" - means any Personally Identifiable Information (PII), Protected Health Information (as defined by the Health Insurance Portability and Accountability Act (HIPAA).
    c) "**Data Breach**" - means any access, destruction, loss, theft, use, modification or disclosure of Data by an unauthorized party or that is in violation of Contract terms and/or applicable state or federal law.

2. **Reserved**

3. **Reserved**

4. **DATA SECURITY:**
    a) In addition to the provisions set forth in the Business Associate Agreement, Contractor shall certify to the County:
        1) The sufficiency of its security standards, tools, technologies and procedures in providing SaaS under this Contract;
        2) Compliance with the following:
            i. Undergo an annual Statement on Standards for Attestation Engagements (SSAE) 16 Service Organization Control (SOC) 2 Type II audit. Audit results and Contractor's plan to correct any negative findings shall be made available to the County within thirty (30) business days of Contractor's receipt of such results.
    b) Contractor shall implement and maintain all appropriate administrative, physical, technical and procedural safeguards in accordance with section a) above at all times during the term of this Addendum to secure such Data from Data Breach, protect the Data and the SaaS from hacks, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the County's access to its Data.

c) Reserved

d) Contractor assumes responsibility for the security and confidentiality of the Data under its control.

e) No Data shall be copied, modified, destroyed or deleted by Contractor other than for normal operation or maintenance of SaaS during the Addendum period without prior written notice to and written approval by the County.

f) Contractor shall provide access to Data only to those employees, contractors and subcontractors who need to access the Data to fulfill Contractor's obligations under this Agreement. Contractor will ensure that, prior to being granted access to Data, staff who perform work under this agreement have all undergone and passed criminal background screenings; have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all data protection provisions of this Addendum and the associated Business Associate Agreement; and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the Data they will be handling.

5. **ENCRYPTION:**   To the extent applicable, Contractor warrants that all Data will be encrypted in transmission (including via web interface) using Transport Layer Security (TLS) version 1.2 or equivalent and in storage at a level equivalent to or stronger than Advanced Encryption Standard (AES) 128-bit level encryption.

6. **DATA LOCATION:**   All PHI will be stored on servers located solely within the Continental United States. Notwithstanding the foregoing, County hereby acknowledges and agrees that Contractor and its affiliate's technical support and operations personnel (including subcontractors), may access a production environment, including from outside the geographic boundaries of the United States, and be exposed to PHI during such connection.

7. **RESERVED**

8. **RESERVED**

9. **DISASTER RECOVERY/BUSINESS CONTINUITY:**   Unless otherwise stated in the Statement of Work,

a) In the event of disaster or catastrophic failure that results in significant Data loss or extended loss of access to Data, Contractor shall notify the County by the fastest means available and also in writing. Contractor shall provide such notification within twenty-four (24) hours after Contractor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Contactor shall inform the County of:

1) The scale and quantity of the Data loss;

2) What Contractor has done or will do to recover the Data and mitigate any deleterious effect of the Data loss; and

3) What corrective action Contractor has taken or will take to prevent future Data loss.

b) If Contractor fails to respond immediately and remedy the failure, the County may exercise its options for assessing damages or other remedies.

c) Contractor shall restore continuity of SaaS, restore Data, restore accessibility of Data, and repair SaaS as needed to meet the Data and SaaS Availability requirements under this Addendum. Failure to do so may result in the County exercising its options for assessing damages or other remedies.

    d) Contractor shall conduct an investigation of the disaster or catastrophic failure and shall share the report of the investigation with the County. The County and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Contractor shall cooperate fully with the County, its agents and law enforcement.

10. **EXAMINATION AND AUDIT:** Unless otherwise stated in the Statement of Work:
    a) Upon advance written request and subject to a written confidentiality agreement, Contractor agrees that the County or its designated representative shall have access to Contractor's SaaS operational documentation and records, including online inspections that relate to the security of the SaaS product purchased by the County. The audit and any information provided in connection therewith shall be used solely and strictly to evaluate Contractor's compliance with the security requirements.
    b) Contractor shall allow the County, its authorized agents, or a mutually acceptable third party to test that controls are in place and working as intended. Tests may include, but not be limited to, the following:
        1) Operating system/network vulnerability scans,
        2) Web application vulnerability scans,
        3) Database application vulnerability scans, and
        4) Any other scans to be performed by the County or representatives on behalf of the County.
    c) Such audits will be conducted during Contractor's regular business hours and no more often than once in a successive 12-month period.
    d) After any significant Data loss or Data Breach or as a result of any disaster or catastrophic failure, Contractor will at its expense have an independent, industry-recognized, County-approved third party perform an information security audit. The audit results shall be shared with the County within seven (7) days of Contractor's receipt of such results. Upon Contractor receiving the results of the audit, Contractor will provide the County with written evidence of planned remediation within thirty (30) days and promptly modify its security measures in order to meet its obligations under this Contract.

11. **DISCOVERY:** Contractor shall promptly notify the County upon receipt of any requests which in any way might reasonably require access to the Data of the County or the County's use of the SaaS. Contractor shall notify the County by the fastest means available and also in writing, unless prohibited by law from providing such notification. Contractor shall provide such notification within five (5) business days after Contractor receives the request. Contractor shall not respond to subpoenas, service of process, Public Records Act requests, and other legal requests directed at Contractor regarding this Contract without first notifying the County unless prohibited by law from providing such notification. Contractor agrees to provide its intended responses to the County with adequate time for the County to review, revise and, if necessary, seek a protective order in a court of competent jurisdiction. Contractor shall not respond to legal requests directed at the County unless authorized in writing to do so by the County.

12. **DATA SEPARATION:** Data must be partitioned from other data in such a manner that access to it will not be impacted or forfeited due to e-discovery, search and seizure or other actions by third parties obtaining or attempting to obtain Service Provider's records, information or data for reasons or activities that are not directly related to Customer's business.