

CLINICIAN NEXUS, INC. SOFTWARE AS A SERVICE AGREEMENT

THIS CLINICIAN NEXUS, INC. SOFTWARE AS A SERVICE (SaaS) AGREEMENT (this “**Agreement**”), dated as July 1, 2024 (the “**Effective Date**”), is by and between CLINICIAN NEXUS, INC., a subsidiary of SullivanCotter Holdings, Inc. with offices located at 100 Washington Square, Suite 510, Minneapolis, MN 55401 (“**Clinician Nexus**”), and San Bernardino County on behalf of Arrowhead Regional Medical Center with a facility located at 400 North Pepper Avenue, Colton, California 92324 (“**Customer**”).

WHEREAS Customer wishes to procure from Clinician Nexus the software services described herein, and Clinician Nexus wishes to provide such services to Customer, each on the terms and conditions set forth or explicitly referenced in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Definitions.**

“**Authorized User**” means (i) Customer’s employees, authorized contractors, and agents to whom Customer gives access for the purposes of supporting Customer’s use of the Services (as defined below), and (ii) any additional individuals authorized to use the Services, in each case as approved solely by Clinician Nexus and listed on **Exhibit A** attached hereto.

2. **Services.**

2.1 **Authorization.** Subject to and conditioned on Customer’s payment of the Fees and compliance and performance in accordance with all other terms and conditions of this Agreement, Clinician Nexus hereby authorizes Customer to access and use, during the Term, Clinician Nexus’s hosting, operation and maintenance of its software applications or applications to any third-party software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Clinician Nexus provides remote access to and use by Customer and any Authorized User and any and all other information, specifications, documentation, materials, content, software, technologies, any implementation and other professional services that are provided or used by Clinician Nexus in connection therewith (collectively, the “**Services**”), as Clinician Nexus may supply or make available to Customer by and through Authorized Users as set forth in and Exhibit A hereto and in accordance with the conditions and limitations set forth in this Agreement, and the Clinician Nexus, Inc. End User License Agreement, as attached hereto and incorporated herein. (the “**End User License Agreement**”).

2.2 **Service Management.** Each party shall, throughout the Term, maintain within its organization a service manager to serve as such party’s primary point of contact for day-to-day communications, consultation, and decision-making regarding the Services. Each service manager shall be responsible for providing all day-to-day consents and approvals on behalf of such party under this Agreement. Each party shall ensure its service manager has the requisite organizational authority, skill, experience, and other qualifications to perform in such capacity. Each party shall use commercially reasonable efforts to maintain the same service manager in place throughout the Term. If either party’s service manager ceases to be employed by such party or such party otherwise wishes to replace its service manager, such party shall promptly name a new service manager by written notice to the other party. The initial service managers for each party are set forth in **Exhibit A**.

3. **Fees.** Customer shall pay Clinician Nexus the Annual Subscription Fee (“Subscription Fee”) as well as any implementation and other professional service fees (“Service Fees”) in the amount and pursuant to the payment schedule set forth in **Exhibit A** in accordance with the provisions of Section 5 of the End User License Agreement. The Subscription Fee will be locked in for the first Annual Subscription Period (as defined in Exhibit A), but Clinician Nexus may increase the Subscription Fee for each subsequent Annual Subscription Period with advanced written notice of at least thirty (30) days to Customer. This increase will not exceed the higher of 5% or the Consumer Price

Index (CPI) calculated based on the 12-month percentage change for All Items calculated on the last full month in which the CPI is available prior to Clinician Nexus's advance written notice to Customer.

4. **Term.** The initial term of this Agreement commences will be as set forth in **Exhibit A** (the "Initial Term") unless terminated earlier pursuant to the End User License Agreement. This Agreement may be renewed for up to two (2) additional successive terms of twelve (12) months each upon mutual written agreement (each, a "**Renewal Term**" and, together with the Initial Term, the "**Term**").

5. **Contract Assignability.** Neither party shall assign or otherwise transfer any of its rights or obligations under this Agreement without the other party's prior written consent except in connection with a merger, change of control, consolidation or reorganization.

6. **Campaign Contribution Disclosure (SB 1439).** Clinician Nexus has disclosed to Customer using Customer's Campaign Contribution Disclosure Senate Bill 1439 form, whether it has made any campaign contributions of more than \$250 to any member of the San Bernardino County Board of Supervisors or San Bernardino County elected officer (e.g., Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney) within the earlier of: (1) the date of the submission of Clinician Nexus's proposal to the Customer, or (2) 12 months before the date this Agreement was approved by the San Bernardino County Board of Supervisors or Purchasing Department. Clinician Nexus acknowledges that under Government Code section 84308, Clinician Nexus is prohibited from making campaign contributions of more than \$250 to any member of the San Bernardino County Board of Supervisors or San Bernardino County elected officer for 12 months after the Customer's consideration of the Agreement. In the event of a proposed amendment to this Agreement, Clinician Nexus will provide the Customer a written statement disclosing any campaign contribution(s) of more than \$250 to any member of the San Bernardino County Board of Supervisors or other San Bernardino 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 Clinician Nexus or by a parent, subsidiary or otherwise related business entity of Clinician Nexus.

7. **Entire Agreement.** This Agreement, together with the End User License Agreement, and Clinician Nexus's Privacy Policy available at <https://app.cliniciannexus.com/support/privacy> and Website Terms of Use available at <https://app.cliniciannexus.com/support/terms> constitute the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. The parties agree any alterations, variations, modifications, or waivers of the provisions of the Agreement, shall be valid only when reduced to writing, executed and approved by the person(s) authorized to do so on behalf of Clinician Nexus and Customer. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement. In the event of any inconsistency between the statements made in the body of this Agreement and the other documents incorporated herein by reference, the following order of precedence governs: (a) this Agreement, including Exhibit A; (b) the End User License Agreement, including its exhibits, schedules, attachments and appendices; (c) the Privacy Policy; (d) the Website Terms of Use; and (e) any other documents incorporated herein by reference. If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

BY ACCEPTING THIS AGREEMENT, CUSTOMER HEREBY ACKNOWLEDGES THAT IT HAS REVIEWED AND UNDERSTANDS THE END USER LICENSE AGREEMENT, THE PRIVACY POLICY AND THE WEBSITE TERMS OF USE; AND HEREBY AGREES TO BE FULLY BOUND BY EACH OF THEM.

[SIGNATURE PAGE FOLLOWS]

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CLINICIAN NEXUS, INC.

Signed: 

Name: Theodore Chien

Title: President and CEO

Date: 24/05/31

CUSTOMER: San Bernardino County in
behalf of Arrowhead Regional Medical
Center

Signed: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

1. Initial Term of Agreement:

The initial contract term will be 5 years from July 1, 2024 through June 30, 2029, unless terminated sooner.

2. Fees for Services:

Customer will pay Clinician Nexus the following fees set forth in the invoice attached hereto as Exhibit B ("Invoice").

- a. Annual Subscription Fee ("Subscription Fee"): The Annual Subscription Fee is a recurring fee, billed annually based on the number of clinical experiences hosted by the Customer. Clinical experiences are defined as any clinical experience that moves into the "Onboarding" status of Clinician Nexus for the Customer account. The maximum number of Customer clinical experiences covered by the Subscription Fee for each Annual Subscription Period (defined below) is set forth on the Invoice ("Subscribed Experiences"). Clinician Nexus will monitor the number of clinical experiences. In the event the number of clinical experiences exceed the Subscribed Experiences during an Annual Subscription Period, Clinician Nexus will invoice Customer separately for the subscription fee for the number of clinical experiences exceeding the Subscribed Experiences based on the price per clinical experience set forth on the Invoice.
- b. Professional Services Fee. The Professional Services Fee, if applicable, is a one-time fee charged for custom engineering or setup work performed by Clinician Nexus as described in the Invoice.

3. Payment Schedule:

The Initial Term consists of five annual subscription periods for payment of the Subscription Fee as follows ("Annual Subscription Periods"):

- July 1, 2024 to June 30, 2025
- July 1, 2025 to June 30, 2026
- July 1, 2026 to June 30, 2027
- July 1, 2027 to June 30, 2028
- July 1, 2028 to June 30, 2029

Clinician Nexus will invoice Customer for all Professional Service Fees and Annual Subscription Fees on September 1 of the applicable Annual Subscription Period. Customer will pay all invoices within 45 days after receipt thereof.

4. Initial Professional Service Managers:

Clinician Nexus

Collin Malaney
Collinmalaney@cliniannexus.com

Marie Stromme
Mariestromme@cliniannexus.com

Jonathan Langley
jonathanlangley@cliniannexus.com

Customer:

(Signatures on Next Page)

Clinician Nexus

Signature:  _____

Name: Theodore Chien

Title: President and CEO

Phone: 6129915206

Email: tedchien@sullivancotter.com

Customer:

Signature: _____

Name: _____

Title: _____

Phone: _____

Email: _____

EXHIBIT B

San Bernardino County ARMC - Education Suite

San Bernardino County

385 N Arrowhead Ave
San Bernardino, CA 92415
United States

Reference: 20230406-164149600

Quote created: April 6, 2023

Quote expires: July 2, 2024

Quote created by: Jonathan Langley

info@cliniciannexus.com

612.699.7795

Comments from Jonathan Langley

The following information is presented in coordination with the Clinician Nexus SaaS agreement and the End User License Agreement (EULA).

This annual subscription covers up to 2,000 clinical experiences annually. Any clinical experiences in excess of 2,000 will be invoiced at the end of each annual subscription period at \$16/rotation.

Products & Services

Item & Description	Quantity	Unit Price	Total
Student Management, Enterprise For health systems and academic medical centers that accept applications and work with affiliated schools across multiple sites.	1	\$16,000.00 / year	\$16,000.00 / year for 5 years
Implementation Service Fee Implementation Services include training and resources for ARMC staff and relevant stakeholders to establish use of Clinician Nexus Education Suite for clinical education. The Implementation Suite is calculated as 15% of the first year's annual subscription.	1	\$2,400.00	\$2,400.00

Annual subtotal	\$16,000.00
One-time subtotal	\$2,400.00
Total	\$18,400.00

Purchase terms

The Initial Term consists of five annual subscription periods for payment of the Subscription Fee ("Annual Subscription Periods"):

- July 1, 2024 to June 30, 2025
- July 1, 2025 to June 30, 2026
- July 1, 2026 to June 30, 2027
- July 1, 2027 to June 30, 2028
- July 1, 2028 to June 30, 2029

END USER LICENSE AGREEMENT

STANDARD CLINICIAN NEXUS, INC. END USER LICENSE AGREEMENT

THIS CLINICIAN NEXUS, INC. END USER LICENSE AGREEMENT (this "**Agreement**"), including, if applicable, the SaaS Agreement (as defined below), which by this reference is incorporated herein, is a binding agreement between San Bernardino County on behalf of Arrowhead Regional Medical Center (hereinafter, "**you**", "**your**" or "**Contracting User**") and Clinician Nexus, Inc., a Delaware corporation with offices located at 100 S Washington Avenue, Minneapolis, MN 55401 ("**Clinician Nexus**").

Clinician Nexus provides a hosted solution that facilitates clinician education and rounding for healthcare systems. This creates three (3) categories of end users that may be subject to parts of this Agreement:

- a. Users of the healthcare systems that contract directly with Clinician Nexus for paid subscriptions to the Clinician Nexus services ("Health Systems");

Definitions. Terms not otherwise defined herein shall have the meaning set forth below.

- "**Access Credentials**" means any username, identification number, password, license or security key, security token, PIN or other security code, method, technology, or device used, alone or in combination, to verify an individual's or entity's identity and authorization to access and use the Services.
- "**Authorized User**" means each of the individuals you authorize to use the Services on your behalf or any additional individuals or Persons authorized to use the Services as approved solely by Clinician Nexus.
- "**Contracting User**" means any Person that has purchased access to the Services pursuant to a SaaS Agreement for and on behalf of its Authorized Users. For clarity, all Health Systems are considered a Contracting User.
- "**Customer Operations Information**" means, information submitted to the Services by Contracting User or its Authorized Users.
- "**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
- "**Person**" means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.
- "**Processed Information**" means Customer Operations Information to which Clinician Nexus through the Services applies logic and calculations to derive a result.
- "**SaaS Agreement**" means the applicable SaaS Agreement executed by and/or on behalf of a Health System, and accepted by Clinician Nexus, for its (and, as applicable, your Authorized Users) purchase of the license to use the Services granted in this Agreement.

1. License Grant.

1.1 Authorization. Subject to and conditioned on the Contracting User's payment of the fees and compliance and performance in accordance with all other terms and conditions of this Agreement, Clinician Nexus hereby grants to you, and you hereby accept, a limited, nonexclusive, nontransferable, worldwide right to access and use, solely during the Term, the services described in this Agreement, including Clinician Nexus's hosting, operation and maintenance of its software applications or applications to any third-party software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Clinician Nexus provides to you for download or remote access and any and all other information, specifications, documentation, materials, content, software and technologies that are provided or used by Clinician Nexus in connection therewith (collectively, the "**Services**"), as Clinician Nexus may supply or make available to you. This authorization is non-exclusive and, other than as may be expressly set forth in **Section 13.6**, non-transferable.

2. Services.

2.1 Services. Subject to and conditioned on your compliance and performance in accordance with all the terms and conditions of this Agreement, during the Term (as set forth in **Section 8.1**), Clinician Nexus shall use commercially reasonable efforts to provide to you the Services. Clinician Nexus will endeavor to make the Services available to you, except for: (i) scheduled downtime for routine maintenance of the Services between the hours of 12:00 a.m. CST and 6:00 a.m. CST; provided Clinician Nexus shall make a reasonable effort to provide notice of such scheduled outages; (ii) Service downtime or degradation due to an emergency or Force Majeure Event; (iii) any other circumstances beyond Clinician Nexus's reasonable control, including your use of third party materials or use of the Services other than in compliance with the express terms of this Agreement; and (iii) any suspension or termination of your access to or use of the Services as

permitted by this Agreement. You understand and acknowledge that from time to time, the Services may be inaccessible or inoperable for various reasons, including equipment malfunctions, upgrades or modifications, or causes beyond the control of Clinician Nexus which are not reasonably foreseeable by Clinician Nexus, including interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or other failures.

2.2 Service Control. Except as otherwise expressly provided in this Agreement, Clinician Nexus has and will retain sole control over the operation, provision, maintenance and management of the Services, including, without limitation, (i) Clinician Nexus's information technology infrastructure and systems, (ii) the location where any of the Services are performed, (iii) the selection, deployment, modification and replacement of the Services, and (iv) performance of Service maintenance, upgrades, corrections and repairs.

2.3 Changes. Clinician Nexus reserves the right, in its sole discretion, to make any changes to the Services that it deems necessary or useful to: (i) maintain or enhance (a) the quality or delivery of Clinician Nexus's services to its customers, (b) the competitive strength of or market of Clinician Nexus's services, or (c) the Service's cost efficiency or performance; or (ii) to comply with applicable law. Without limiting the foregoing, either party may, at any time during the Term, request in writing changes to the Services. The parties shall evaluate and, if agreed, implement all such requested changes. No requested changes will be effective unless and until memorialized in a written change order signed by both parties.

2.4 Suspension or Termination of Services. Clinician Nexus may suspend, terminate or otherwise deny your (or, as applicable, any Authorized Users) access to or use of all or any part of the Services if: (a) Clinician Nexus receives a judicial or other governmental demand or order, subpoena or law enforcement that expressly or by reasonable implication requires Clinician Nexus to do so; or (b) if Clinician Nexus believes, in its good faith and reasonable discretion, that (i) you failed to comply with, any term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement; (ii) you are, have been, or are likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Services; or (iii) this Agreement expires or is terminated. This **Section 2.4** does not limit any of Clinician Nexus's other rights or remedies, whether at law, in equity or under this Agreement. Clinician Nexus is not obligated to publish any information or content on the Service and can remove it with or without notice in Clinician Nexus's sole discretion. Clinician Nexus is not responsible for any information or content that a Contracting User, Authorized User, home institution, clinical site, and/or any other Person uses, reproduces, distributes, or publishes about you.

3. Restrictions.

3.1 Authorization Limitations and Restrictions. You shall not, and shall not permit any other Person to, access or use the Services except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, you shall not, except as this Agreement expressly permits:

- a. copy, modify or create derivative works or improvements of the Services;
- b. rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
- c. reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services, in whole or in part;
- d. bypass or breach any security device or protection used by the Services or access or use the Services other than by your use of his, her or its own then valid Access Credentials;
- e. input, upload, transmit or otherwise provide to or through the Services any information or materials that are unlawful or injurious, or contain, transmit or activate any harmful virus, worm, malware or other malicious computer code;
- f. damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services or Clinician Nexus's provision of services to any third party, in whole or in part;
- g. access or use the Services in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction or disclosure of the data of any other Clinician Nexus customer), or that violates any applicable law;
- h. access or use the Services for purposes of competitive analysis of the Services, the development, provision or use of a competing software service or product or any other purpose that is to the Clinician Nexus's detriment or commercial disadvantage; or
- i. otherwise access or use the Services beyond the scope of the authorization granted under **Section 1.1** of this Agreement.

3.2 Ownership of Improvements. All improvements, systems, programs, operating instructions and other documentation, rights in patentable inventions, trade secrets and know how, database interests and copyrights associated therewith related to the Services, which are conceived, prepared, developed or delivered during the Term of this Agreement (whether

developed by you alone or with others, and whether independent of or in connection with performance hereunder), shall be and remain the sole property of Clinician Nexus. You agree to cooperate with Clinician Nexus and execute, or cause its personnel to execute, such further acknowledgments and instruments as may be necessary to establish such ownership.

3.3 Third-Party Materials. The Services may include content, data, or other materials, including related documentation, that are owned by Persons other than Clinician Nexus and that are provided to you on licensee terms that are in addition to and/or different from those contained in this Agreement ("Third-Party Licenses"). You are bound by and shall comply with all Third-Party Licenses. A breach of any Third-Party License is also a breach of this Agreement.

4. Security.

4.1 Security Obligations. Clinician Nexus will employ security measures in accordance its Privacy Policy, and you consent to all actions we take with respect to your information consistent with the Privacy Policy.

4.2 Your Control and Responsibility. You have and will retain sole responsibility for: (a) all Customer Operations Information, including its content and use; (b) all information, instructions and materials provided by or on behalf of you in connection with the Services; (b) your information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by you or through the use of third-party services ("**Your Systems**"); (c) the security and use of your Access Credentials; and (d) all access to and use of the Services directly or indirectly by or through Your Systems or its or your Access Credentials, with or without your knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

5. Fees; Payment Terms.

5.1 Fees. Contracting Users shall pay Clinician Nexus the fees for the Services on or prior to the date due, which shall be payable to Clinician Nexus in US dollars in the amount and pursuant to the payment schedule set forth the applicable SaaS Agreement. Such fees may be increased during the Term by Clinician Nexus's advanced written notice of at least thirty (30) days to you. In the absence of a SaaS Agreement, the applicable fees are set forth on Clinician Nexus's website. Unless noted otherwise on the website, the subscription fees for the product offerings for Student Manager include the functionality described and a maximum number of Clinical Experiences. A Clinical Experience means a student application for a rotation, placement, or clerkship, etc. that is accepted by a clinical site within the applicable subscription period. Unaccepted applications do not constitute a billable Clinical Experience. However, each accepted clinical placement for a particular student count as a separate Clinical Experience.

5.2 Taxes. All fees and other amounts payable by you under this Agreement are exclusive of taxes and similar assessments. Contracting Users are responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by you hereunder, other than any taxes imposed on Clinician Nexus's income.

5.3 Late Payment. If you fail to make any payment when due, and should you fail to settle amounts past due within sixty (60) days of your invoice receipt, Clinician Nexus may, without notice suspend performance of the Services for you (and, as applicable, your Authorized Users) until all past due amounts and interest thereon have been paid. You shall reimburse Clinician Nexus for all costs in collecting any late payments or interest, including attorneys' fees, court costs and collection agency fees.

5.4 No Deductions or Setoffs. All amounts payable to Clinician Nexus under this Agreement shall be paid to Clinician Nexus in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable law).

6. Intellectual Property Rights and Data Use.

6.1 Services. All right, title and interest in and to the Services, including all Intellectual Property Rights therein, are and will remain with Clinician Nexus. You have no right, license or authorization with respect to any of the Services except as expressly set forth in **Section 1.1**. All other rights in and to the Services are expressly reserved by Clinician Nexus and the respective third-party licensors. In furtherance of the foregoing, you hereby unconditionally and irrevocably grant to Clinician Nexus an assignment of all right, title and interest in and to the Processed Information, including all Intellectual Property Rights relating thereto, subject to the requirements and limitations in Sections 6 and 7 of this Agreement.

6.2 Customer Operational Information. As between you and Clinician Nexus, you are and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Operational Information, including all Intellectual Property

Rights relating thereto, subject to the rights and permissions granted in **Section 6.3** and **Section 6.4**. The Services may contain interactive features that allow Authorized Users to post, submit, publish, display, or transmit to other users or other persons content or materials ("User Contributions"). Each Authorized User is responsible for such User Contributions and shall have full responsibility for such content, including its legality, reliability, accuracy, and appropriateness. Clinician Nexus is not responsible or liable for the content and accuracy of any User Contributions. In no event shall Contracting User provide personally identifiable information to Clinician Nexus under this Agreement.

6.3 Consent to Use Customer Operations Information for Providing Services. You hereby irrevocably grant all such rights and permissions in or relating to Customer Operations Information to Clinician Nexus, its subcontractors, vendors, partners, and the Clinician Nexus personnel as are necessary or useful to perform the Services or exercise its rights, including, without limitation, to use, reproduce, disclose, distribute, and publish your personal statements, interests, codes of conduct, background checks, rotation experiences, scores, evaluations, transcripts, employment histories, and other information. Where Clinician Nexus has made settings available to Authorized Users, Clinician Nexus will honor the choices you make about who can see Customer Operations Information.

6.4 Intentionally omitted.

6.5 License to and Consent for Use of Data for other Clinician Nexus Purposes. You further agree that Customer Operations Information and Processed Information may be used, aggregated and retained by Clinician Nexus (and its affiliates and parent company) for other internal business purposes, including but not limited to: service and product development and improvement, analysis, and research, provided that Client Data and Processed Information is not disclosed to third parties and subject to the applicable confidentiality and data security requirements of this Agreement and other applicable agreements. You further agree that Clinician Nexus (and its affiliates and parent company) may use, retain and disclose Customer Operations Information and Processed Information for other business purposes, including but not limited to: publication of national reports, customized reports, research partnerships with other organizations, and/or to supplement other Clinician Nexus (and its affiliates and parent company) surveys, reports, products, databases, and services. In such case, the Customer Operations Information and Processed Information will be purged of any identifying information and only aggregated data will be disseminated in reports or otherwise be disclosed to third parties in a manner that the information does not, and cannot reasonably be used to, relate back to or identify you or any individuals whose information is included in the Customer Operations Information or Processed Information.

7. Confidentiality.

7.1 Confidential Information. Each of the parties hereto ("**Receiving Party**") agrees to protect and maintain as secret all information designated as confidential by the other party, including, without limitation, source code, technical specifications, capabilities, and logic and function of the Services ("**Confidential Information**"), by (i) treating the Confidential Information of the other party with at least the same care and protection accorded its own Confidential Information, but in no event exercising less than reasonable care; (ii) using care in the assignment of personnel who receive Confidential Information of the other party, and instructing such personnel to take all reasonable precautions to prevent unauthorized use or disclosure thereof; and (iii) not using or disclosing such Confidential Information except as necessary to fulfill the terms of this Agreement or as otherwise authorized by this Agreement or the party disclosing the Confidential Information ("**Disclosing Party**"). However, neither party shall have an obligation of confidentiality with regard to any information that: (i) is known to such party prior to disclosure; (ii) is or becomes publicly available other than as a result of a breach of this Agreement; or (iii) is disclosed to such party by a third party not subject to an obligation of confidentiality. The parties agree to treat as Confidential Information at least any information that (i) is marked as confidential; or (ii) is or reasonably should be known to be confidential.

7.2 Residual Works. In addition to other rights and provision in this Agreement, Clinician Nexus may use, retain and disclose Customer Confidential Information in accordance with **Section 6.5** of this Agreement.

7.3 Feedback. You may from time to time provide suggestions, comments or other feedback ("**Feedback**") to Clinician Nexus with respect to the Services. Both parties agree that all Feedback is and shall be given entirely voluntarily. Feedback, even if designated as confidential by the party offering the Feedback, shall not, absent a separate written agreement, create any confidentiality obligation for the receiver of the Feedback. Receiving Party will not give Feedback that is subject to license terms that seek to require any Clinician Nexus Services to be licensed or otherwise shared with any third party. Furthermore, except as otherwise provided herein or in a separate subsequent written agreement between the parties, you hereby unconditionally and irrevocably grant to Clinician Nexus an assignment of all right, title and interest in and to the Feedback, and Clinician Nexus will own the Feedback and shall be free to use, disclose, protect (e.g., patent, copyright, trademark, trade secret, etc.), reproduce, license or otherwise distribute, and exploit the Feedback provided to it as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise.

7.4 Compelled Disclosures. If the Receiving Party or any of its representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under **Section 7.1** ; and (b) provide reasonable assistance to the Disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this **Section 7.4**, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

8. Term and Termination.

8.1 Term. This Agreement and the license granted hereunder shall remain in effective for the term set forth on the applicable SaaS Agreement or until terminated as set forth herein (the "**Term**").

8.2 Termination. In addition to any other express termination right set forth elsewhere in this Agreement:

- a. Clinician Nexus may terminate this Agreement, effective immediately, if the applicable Contracting User: (i) fails to pay any amount when due hereunder, and such failure continues more than thirty (30) days after the date such amounts are due; or (ii) breaches any of its obligations under **Section 3.1** (Use Limitations and Restrictions), or **Section 7** (Confidentiality).
- b. Clinician Nexus or a Contracting User may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; and
- c. Clinician Nexus or a Contracting User may terminate this Agreement, for any or no reason, upon thirty (30) days' advanced written notice to the other party.

8.3 Effect of Expiration or Termination. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

- a. all rights, licenses, consents and authorizations granted hereunder will immediately terminate;
- b. All users shall immediately cease all use of any Services and (i) promptly return to Clinician Nexus, or at Clinician Nexus's written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on Clinician Nexus's Confidential Information; and (ii) permanently erase Clinician Nexus's Confidential Information from all systems you directly or indirectly controls; except to the extent and for so long as required by applicable law and all such information and materials will remain subject to all confidentiality requirements of this Agreement;
- c. Clinician Nexus may disable all your (and, as applicable, your Authorized Users') access to the Services; and
- d. if a party terminates this Agreement pursuant to **Section 8.2**, Contracting Users will be relieved of any obligation to pay any fees attributable to the period after the effective date of such termination and Clinician Nexus will refund to such Contracting User the fees paid in advance for Services that Clinician Nexus has not performed as of the effective date of termination.

8.4 Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: **Section 3.1, Section 6.5, Section 7, Section 8.3, this Section 8.4, Section 9, Section 10, Section 11 and Section 13.**

9. Representations and Warranties.

9.1 Representations and Warranties. Contracting Users represent and warrant to Clinician Nexus that you have the full right, power and authority to enter into and perform the obligations and grant the rights, licenses, consents and authorizations granted or required to be granted under this Agreement; and you own or otherwise have and will have the necessary rights and consents in and relating to the Customer Operations Information so that, as received by Clinician Nexus and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy, publicity or other rights of any third party or violate any applicable law. The Services may be subject to US export control laws, including the Export Control Reform Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the Services, or make the Services accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining

any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Services available outside the US.

9.2 DISCLAIMER OF WARRANTIES. ALL SERVICES ARE PROVIDED "AS IS" AND CLINICIAN NEXUS HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND CLINICIAN NEXUS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, CLINICIAN NEXUS MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET YOUR OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ANY THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN YOU AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

10. Indemnification and Insurance.

10.1 Indemnification.

(a) Contracting Users shall indemnify, hold harmless and defend Clinician Nexus and its affiliates from and against any and all third-party claims (including related liability, damages, costs, reasonable attorneys fees and other expenses) alleging that Customer Operations Information or any other information or materials provided to the Service or otherwise provided to Clinician Nexus infringe a third-party's Intellectual Property Rights, privacy, publicity or other proprietary rights.

(b) Clinician Nexus will indemnify, defend, and hold harmless Contracting User and its Authorized Users, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by the Services when used by Contract User and its Authorized Users as contemplated and permitted under the terms of the Agreement. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against you, or you receive a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, you will use reasonable efforts to notify Clinician Nexus promptly of such lawsuit, claim or election. However, your failure to provide or delay in providing such notice will relieve Clinician Nexus of its obligations only if and to the extent that such delay or failure materially prejudices Clinician Nexus's ability to defend such lawsuit or claim. You will give Clinician Nexus sole control of the defense and settlement of such claim; provided that Clinician Nexus may not settle the claim or suit absent your written consent unless such settlement (a) includes a release of all claims pending against you, (b) contains no admission of liability or wrongdoing by you, and (c) imposes no obligations upon you other than an obligation to stop using the Services that are the subject of the claim.

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

- a. Without in anyway affecting the indemnity herein provided and in addition thereto, Clinician Nexus shall secure and maintain throughout the contract term the following types of insurance with limits as shown:
 - i. 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 Clinician Nexus and all risks to such persons under this contract. If Clinician Nexus has no employees, it may certify or warrant to Contracting User 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 Contracting User's Director of Risk Management. With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.
 - ii. Commercial/General Liability Insurance – Clinician Nexus shall carry General Liability Insurance covering all operations performed by or on behalf of Clinician Nexus 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:
 - (1) Premises operations and mobile equipment.

- (2) Products and completed operations.
- (3) Explosion, collapse and underground hazards.
- (4) Personal injury.
- (5) Contractual liability.
- (6) \$2,000,000 general aggregate limit.

- iii. 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.
 - iv. Professional Liability –Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits or
 - v. Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits
 - vi. 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 Contracting User entities and cover breach response cost as well as regulatory fines and penalties.
- b. 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 five (5) years after Agreement completion.
- c. Additional Insured. All policies, except for Worker’s Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming Contracting User and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder.
- d. Waiver of Subrogation Rights. Clinician Nexus shall require the carriers of required coverages to waive all rights of subrogation against Contracting User, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Clinician Nexus and Clinician Nexus’s employees or agents from waiving the right of subrogation prior to a loss or claim. Clinician Nexus hereby waives all rights of subrogation against Contracting User.
- e. Policies Primary and Non-Contributory. All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by Contracting User.
- f. Severability of Interests. Clinician Nexus agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between Clinician Nexus and Contracting User or between Contracting User and any other insured or additional insured under the policy.
- g. Proof of Coverage. Clinician Nexus shall furnish Certificates of Insurance to Contracting User 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 Clinician Nexus shall maintain such insurance from the time Clinician Nexus commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, Clinician Nexus 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.
- h. 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”.
- i. Deductibles and Self-Insured Retention. Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to Customer.

- j. **Failure to Procure Coverage.** In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, Contracting User has the right but not the obligation or duty to cancel the contract.
- k. **Insurance Review.** Insurance requirements are subject to periodic review by Contracting User. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of Contracting User. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against Contracting User, inflation, or any other item reasonably related to Contracting User's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Clinician Nexus agrees to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of Contracting User to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of Contracting User.

11. Limitations of Liability.

11.1 EXCLUSION OF DAMAGES. EXCEPT AS OTHERWISE PROVIDED IN **SECTION 11.3**, IN NO EVENT WILL CLINICIAN NEXUS OR ANY OF ITS LICENSORS, AFFILIATES, SUBSIDIARIES, PARENTS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

11.2 CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF CLINICIAN NEXUS AND ITS LICENSORS, AFFILIATES, SUBSIDIARIES, PARENTS, SERVICE PROVIDERS AND SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED TWO TIMES THE FEES RECEIVED BY CLINICIAN NEXUS PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

11.3 Exceptions. The exclusions and limitations in **Section 11.1** and **Section 11.2** do not apply to either party's indemnification obligations, or liability for gross negligence, willful misconduct.

12. Force Majeure.

12.1 No Breach or Default. In no event will Clinician Nexus be liable or responsible to you, or be deemed to have breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by any circumstances beyond Clinician Nexus's reasonable control (a "**Force Majeure Event**"), including, but not limited to, failures or interruptions of communications facilities or equipment of third parties, labor strikes or slowdowns, shortages of resources or materials, acts of God, natural disasters, pandemics, world events, delay or disruption of shipment or delivery, trespass or interference of third parties, or similar events or circumstances outside Clinician Nexus's reasonable control, whether or not otherwise enumerated. Either party may terminate this Agreement if a Force Majeure Event continues substantially uninterrupted for a period of thirty (30) days or more.

13. Miscellaneous

13.1 Further Assurances. Upon a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.

13.2 No Agency. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

13.3 Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing. Such notices shall be given (i) by delivery in person (ii) by a nationally recognized next day courier service, (iii) by first class, registered or certified mail, postage prepaid, or (iv) by facsimile to the address of the party specified in this Agreement or such other address as either party may specify in writing. Notices so given shall be effective upon (a) receipt by the party to which notice is given, or (b) on the day following mailing, whichever occurs first. All communications under this Agreement to Clinician Nexus shall be addressed to the party as follows (or to such other address or such other person that such party may designate from time to time): Clinician Nexus, Inc. 100 S. Washington Avenue, Suite 510, Minneapolis, MN 55401 Attn: Katrina Anderson Email: katrina.anderson@cliniannexus.com

13.9 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the substantive and procedural laws of the State of New York or Delaware. **I**

13.10 Intentionally omitted.

13.11 Equitable Relief. You acknowledge and agree that a breach or threatened breach by you of any of your obligations under **Section 3.1** or **Section 7** may cause Clinician Nexus irreparable harm for which monetary damages may not be an adequate remedy and agrees that, in the event of such breach or threatened breach, Clinician Nexus will be entitled to seek equitable relief, without any requirement to post a bond. Such remedies are in addition to all other remedies that may be available at law, in equity or otherwise.

13.12 US Government Rights. The Services are a commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if you are the US Government or any contractor therefor, you shall receive only those rights with respect to the Services as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

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Final Audit Report

2024-05-31

Created:	2024-05-31
By:	Rae Pierce (PierceRa@armc.sbcounty.gov)
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