

Digital Physician EHR End User License Agreement

This End User License Agreement ("EULA") is incorporated by reference into an Agreement between Digital Physician LLC ("Digital Physician") a California Limited Liability Company having its principal place of business at 1021 N. Doheny Drive #2, W. Hollywood, CA 90069 and the Client named on the Order Form ("Client") between Client and Digital Physician. The Order Form together with the EULA constitute the Agreement between the parties and apply to each Hosted Program and to all Services provided by Digital Physician under the Agreement. When executed by the parties, an Order Form shall evidence the Hosted Program Subscription Rights Granted and the Services to be provided.

THE DIGITAL PHYSICIAN EHR SERVICE PROVIDES ELECTRONIC HEALTH RECORDS AND INCLUDES ELECTRONIC PRESCRIBING AND RENEWALS (WHEN AVAILABLE) THROUGH DIGITAL PHYSICIAN'S PROPRIETARY SYSTEM. THE DIGITAL PHYSICIAN EHR SERVICE DOES NOT GIVE MEDICAL ADVICE, NOR DOES IT PROVIDE MEDICAL OR DIAGNOSIS SERVICES OR PRESCRIBE MEDICATION. USE OF THE DIGITAL PHYSICIAN EHR SERVICE IS NOT A SUBSTITUTE FOR THE PROFESSIONAL JUDGMENT OF HEALTHCARE PROVIDERS IN DIAGNOSING AND TREATING PATIENTS. YOU ACKNOWLEDGE THAT YOU ARE SOLELY RESPONSIBLE FOR VERIFYING THE ACCURACY OF PATIENT INFORMATION (INCLUDING, WITHOUT LIMITATION, BY OBTAINING ALL APPLICABLE PATIENT'S MEDICAL AND MEDICATION HISTORY, AND ALLERGIES), AND FOR ALL MEDICAL DECISIONS OR ACTIONS WITH RESPECT TO THE MEDICAL CARE, TREATMENT AND WELL BEING OF YOUR PATIENTS, INCLUDING, WITHOUT LIMITATION, ALL YOUR ACTS OR OMISSIONS IN TREATING THE APPLICABLE PATIENT. ANY RELIANCE BY YOU UPON THE DIGITAL PHYSICIAN EHR SERVICE SHALL NOT DIMINISH THAT RESPONSIBILITY.

YOU MAY NOT USE THE DIGITAL PHYSICIAN EHR SERVICE TO PERFORM MEDICAL DIAGNOSTIC FUNCTIONS, TO SET TREATMENT PROCEDURES OR TO SUBSTITUTE FOR THE MEDICAL JUDGMENT OF A PHYSICIAN OR QUALIFIED HEALTHCARE PROVIDER. WHEN SELECTING A NARRATIVE CONDITION OR CODED DIAGNOSIS, YOU MUST MAKE AN INDEPENDENT AND INFORMED JUDGMENT, BASED UPON THE PATIENT'S CONDITION AND SYMPTOMS AND/OR A PHYSICIAN'S SUBMITTED DIAGNOSIS, TO SELECT AN ACCURATE DIAGNOSIS CODE APPROPRIATE FOR THAT PATIENT. NEITHER DIGITAL PHYSICIAN NOR ITS LICENSORS NOR ITS CONTRACTORS MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE APPROPRIATENESS OF ANY OF THE NARRATIVE OR CODED DIAGNOSIS CODES DISPLAYED FOR ANY OR ALL PATIENTS.

1. DEFINITIONS

1.1. "Client Data" means information entered into the Hosted Programs by Client in the course of its authorized use of the Hosted Programs and stored on the Host Server for access by the Hosted Programs and retrieval by the Client.

1.2. "Host Server" shall mean the server provided by Digital Physician or its agent through which Client accesses the Hosted Programs, identified by a URL and one or more accounts and passwords to be established by Client.

1.3. "Hosted Programs" shall mean the computer software in object code form owned or provided by Digital Physician for which Client has Subscription Rights Granted pursuant to the Agreement, updates and upgrades to the Hosted Programs, and online documentation.

1.4. "Order Form(s)" shall mean the document(s) by which Client orders Hosted Program subscriptions and Services, and which are agreed to by the parties.

1.5. "Provider" shall mean each employee, contractor or agent of Client that provides billable patient care or services on behalf of Client, including without limitation Physician Providers, Mid-Level Providers, and Facility Providers as defined below. Other medical supporting staff are not considered Providers, including the following staff types: nurses, medical/therapy/dental assistants, technicians (lab, radiology, etc.), phlebotomists and case managers.

1.5.1 "Physician Provider" shall mean a Provider as defined above with a physician-level medical license, including, but not limited to, the following professional designations: MD, DPM, DPT, DSW, OD, Psy.D, DMD, DDS, DO, DC, or Ph.D.

1.5.2 "Mid-Level Provider" shall mean a Provider as defined above with a professional designation in the following categories, or any other professionally equivalent license: Nurse Practitioner, Physician Assistant, Licensed Therapist (physical, occupational, speech, respiratory, marriage/family, massage, etc.), Nurse Midwife, Registered Dietitian, Mental Health Counselor, or Social Worker.

1.5.3 "Facility Provider" shall mean a medical facility or equipment that is the billed entity for billable patient care or services. For the purposes of this Agreement, a Facility Provider shall be treated as a Physician Provider.

1.6. "Services" shall mean Hosting Services, Electronic Services, Support Services or other services specifically identified in an Order Form.

2. USE OF HOSTED PROGRAMS

2.1. Subscription Rights Granted

2.1.1. In consideration of monthly subscription fees set forth in any valid Order Form(s), Digital Physician grants to Client a nonexclusive, non-transferable right ("Subscription") for the number of Providers defined in the Order Form(s). Client shall be entitled to use the Hosted Programs as follows: (i) to assign access rights to the Hosted Programs on the Host Server solely for Client's own internal business operations; and (ii) to use the Documentation provided with the Hosted Programs (online or otherwise) in support of Client's authorized use of the Hosted Programs. Except as specifically authorized in the Order Form(s), Client may not allow third parties to access the Hosted Programs, or use the Hosted Programs for third-party training, commercial time-sharing or rental use.

2.1.2. Client agrees not to download the Hosted Programs or cause or permit the reverse engineering, disassembly or decompilation of the Hosted Programs.

2.1.3. Digital Physician retains all title, copyright, and other proprietary rights in the Hosted Programs. Client does not acquire any rights, express or implied, in the Hosted Programs, other than those specified in the Agreement.

2.2. Verification. Digital Physician shall have the right to monitor use of the Hosted Programs by Client: (i) electronically at any time; or (ii) by on-site audit of Client's use of the Hosted Programs not more than once per year upon reasonable notice to Client and to charge for additional Providers as appropriate under the Agreement.

3. SERVICES

3.1. Hosting Services. Digital Physician will provide Client with access to the online Hosted Programs selected in the Order Form(s) and will provide for the storage and retrieval of Client Data in connection with use of the Hosted Programs. Client is responsible for obtaining access to the Internet using software and hardware that meet the minimum requirements, including security requirements, set forth in Digital Physician's System Requirements. The Internet is a complex network of equipment, services and providers of information, thus the Hosted Programs may not be available to you at all times. However, Digital Physician offers high availability as described in the Service Level Policy. This is valid for only the connection to our hosted sites. Digital Physician will pursue all resources and channels available to maintain maximum uptime, however, Digital Physician is not responsible for any down time caused by client's error or insufficient Internet access, acts of God, or regional network outages.

3.2. Access. Client may designate user account names and passwords for the number of Providers stated in the Order Form(s) and for additional permitted non-Provider users associated with authorized Providers. Client is responsible for the confidentiality and use of account names and passwords. Digital Physician will deem any communication, data transfer, or use of the Hosted Programs received under Client's account names and passwords to be for Client's benefit and use. Client agrees to notify Digital Physician if account names or passwords are lost, stolen, or being used in an unauthorized manner.

Client represents and warrants that it has the rights to all Client Data. Client agrees that the Client Data and its use do not infringe the rights of any third party and agrees to indemnify and holds Digital Physician harmless from any third-party claims of infringement under the same terms and conditions set forth below for Digital Physician's infringement indemnity.

3.3. Data Security. Client agrees to access the Hosted Programs and to store and retrieve data using third party programs, including specifically Internet "browser" programs that support data security protocols compatible with those specified by Digital Physician. Unless otherwise agreed in writing, the parties agree that all software used to access the Hosted Programs will support the Secure Socket Layer (SSL) protocol. Digital Physician agrees to maintain the security of Client Data using industry-standard data security protocols, and other methods reasonably deemed to be adequate for secure business data and to notify Client in the event of a breach of security involving Client Data. Digital Physician agrees to retain Client data on a secure server and to maintain data recovery and data backup facilities in accordance with accepted industry practices.

3.4. Ownership of Data and Subscription. Client shall retain ownership of all Client Data stored or retrieved in connection with use of the Hosted Programs, which data shall be subject to the confidentiality provisions set forth below. Client agrees that storage or caching of Client Data is not an infringement of any intellectual property rights of Client. Client agrees that it will not store data on the Host Server that is subject to the rights of any third parties without first obtaining all required authorizations and rights in writing from such third parties. Provided that Digital Physician implements appropriate de-identification criteria in accordance with the Standards for Privacy of Individually Identifiable Health Information set forth in 45 C.F.R. §164.514(b), Client acknowledges and agrees that de-identified information is not Protected Health Information as defined in the applicable regulations and that Digital Physician may use such de-identified information for any lawful purpose.

3.5. Support Services. Digital Physician will provide Support Services as described in the applicable Order Form(s) and in accordance with the Support Policy available at www.digitalphysician.com in effect on the date Support is provided, so long as Client is currently entitled to use the Hosted Programs and Services.

3.6. Electronic Services. In connection with use of the Hosted Programs, Digital Physician may provide certain Electronic Services to Client, as set forth in the applicable Order Form(s), in conjunction with one or more third-party partners, and Client hereby waives any and all liability and claims which Client may have against Digital Physician or the partner in connection with the provision of Electronic Services except to the extent directly caused by the willful misconduct or gross negligence of Digital Physician. Such Electronic Services are subject to availability via Digital Physician clearinghouse partners.

3.7. Data Import Limitations. Client is responsible to provide data exactly in the format specified by Digital Physician documentation. The Digital Physician database resulting from import of Client's data will be a reflection of the quality of data provided by the Client. Digital Physician is not responsible for inability to perform services due to improperly formatted or corrupt files, viruses on media provided, or incompatible backup media or software. Client acknowledges that transferring data is subject to the possibility of human and machine errors, omissions, and losses, including inadvertent loss of data or damage to media that may give rise to loss or damage. Digital Physician shall not be liable for any such errors, omissions, or losses. Client is responsible to adopt reasonable measures to limit the impact of such problems, including backup of original data. Client is also responsible for complying with all local, state, and federal laws pertaining to the use and disclosure of any data.

3.8. Data Import Acceptance. Following a data import, Digital Physician warrants the integrity of the supplied production database for a period of 5 business days from the delivery date, or until the database is altered in any way by the Client, whichever comes first. During the warranty period, Client may report any discrepancies or errors, and upon verification of the error, Digital Physician may at its option correct the database or refund the amount paid for the data import service.

3.9. Onsite Training. Onsite training is billed at a day rate. A 'day' is defined as a standard business day of at most 8 hours (excluding a meal break). Hours beyond that definition will be billed additionally at current after-hours consulting rates. Airfare or equivalent travel for Onsite Training is billed separately, as incurred by Digital Physician. Client is responsible for non-refundable airfare fees and one day of services fees for all services cancelled or rescheduled less than 7 days prior to the start of the services.

3.10. Deadlines. Digital Physician's ability to deliver the requested Services, at the scope and scale described, depend on Client meeting the indicated Approval Deadline as well as interim Client Deliverable dates that may apply to specific Services. Should approval be withheld past the Approval Deadline, or should Client Deliverable dates not be met in the course of delivering the Services, target delivery dates may require rescheduling by Digital Physician staff based on availability.

3.11. Consulting Limitations. Digital Physician warrants that all consulting services are performed by qualified personnel, and that services will be provided for the scope and time period indicated. However, Digital Physician does not guarantee any specific results from training or other consulting services. As with all consulting services, effectiveness depends largely upon Client's ability and willingness to utilize and implement ideas, concepts, and practices presented by Digital Physician consultants.

3.12. Expiration of Purchased Services. All purchased Service(s) must be utilized by Client within 90 days from purchase (the Effective Date of the Order Form). Services delivered in that period will be considered rendered and non-refundable, except in the event that Digital Physician is unable to deliver the Services within that period.

3.13 Digital Physician Connect Interfaces. The Digital Physician Connect Interface ("Connect") makes available to Client Digital Physician's standard external data interface functions ("APIs") for the purpose of enabling Client to share specific data between Digital Physician's Hosted Programs and other software and/or data sources owned or licensed by Client unrelated to Digital Physician (the "External System"). The Connect service fee does not include (i) documentation for the APIs; (ii) the right to develop software that accesses the APIs; (iii) any configuration, interface development, or non-standard configuration of the external data interface that may be required by the External System but is not already available from Digital Physician or approved for development by Digital Physician.

3.14 Limitation of Connect Use. Client's use of the Connect interface and all Digital Physician APIs is expressly limited to the registered interfaced External Systems described in each applicable Order Form. Access to or use of the Connect service by External Systems not disclosed therein is strictly prohibited. Support is limited to verification of performance of the Connect interface APIs as interfaced to the External System. Additional Client support may be available at Digital Physician's then-current rates for custom technical services.

3.15 Limitation of Connect Liability. Notwithstanding any other provision of this Agreement, Digital Physician has no liability under this Order Form or the Existing Agreement, including the HIPAA Business Associate Addendum, for any disclosure of Protected Health Information ("PHI") made by means of access to the APIs by or on behalf of Client, or by means of access by any third party to the extent such third party obtained access to the APIs as a result of intentional disclosure by Client or any breach of this Order Form or the Existing Agreement or any negligence by Client, its personnel, agents or third-party contractors. In addition, Digital Physician has no liability under this Agreement for any modification of Client's hosted application data, or for any consequences that may arise from such modifications (including, but not limited to, incorrectly modified or lost data) made by means of access to the APIs by or on behalf of Client, or by means of access by any third party to the extent such third party obtained access to the APIs as a result of intentional disclosure by Client or any breach of this Agreement or any negligence by Client, its personnel, agents or third-party contractors.

4. TERM AND TERMINATION

4.1. Term. Client's rights to use the Hosted Programs and Services shall remain in effect for the Initial Term set forth in the Order Form(s) or Subscription and Services Agreement. Thereafter, the term shall automatically renew for additional terms as set forth in the Agreement at then-current prices unless either party gives ten (10) days advance written notice prior to the end of the then-current term of its intention to terminate the Agreement, or until otherwise terminated as provided herein.

4.2. Termination for Cause. Either party may terminate the Agreement at any time upon thirty (30) days prior written notice if the other party commits a material breach that remains uncured after thirty (30) days written notice specifying the nature of the breach and identifying the measures required to correct the breach. Notwithstanding the foregoing, Digital

Physician may terminate the Agreement and access to the Hosted Programs for non-payment of fees upon ten (10) days prior notice, at which time fees for the current term shall be due and payable in full.

4.3. Termination for Failure to Meet Service Level Commitment. Client shall have the right to terminate the Agreement at any time if Digital Physician (i) fails to meet the Uptime Commitment set forth in Digital Physician's Service Level Policy for two (2) consecutive months; OR the Hosted Programs are not available during Peak hours (as defined in the Service Level Policy) for a period of twelve (12) hours or more consecutively; provided that Client's notice of termination under this provision must be provided in writing to Digital Physician within ten (10) days of the event giving rise the right of termination.

4.4. Effect of Termination. Termination of the Agreement shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve Client's obligation to pay all fees that have accrued or are otherwise owed by Client under any Order Form or under the Agreement. Upon termination of the Agreement, access to the Hosted Programs and all Services shall be terminated. Upon termination, other than for breach on the part of Digital Physician under Section 4.2 or 4.3 above, all unpaid fees related to the initial term or any renewal term shall be due and payable in full immediately.

5. INDEMNITY, WARRANTIES, REMEDIES

5.1. Infringement Indemnity. Digital Physician will defend and indemnify Client against a claim that the Hosted Programs infringe a copyright or patent, provided that: (a) Client notifies Digital Physician in writing within 30 days of the claim; (b) Digital Physician has sole control of the defense and all related settlement negotiations; and (c) Client provides Digital Physician with the assistance, information and authority necessary to perform Digital Physician's obligations under this Section. Reasonable out-of-pocket expenses incurred by Client in providing such assistance will be reimbursed by Digital Physician.

In the event the Hosted Programs are held or are believed by Digital Physician to infringe, Digital Physician shall have the option, at its expense, to (a) modify the Hosted Programs to be non-infringing; (b) obtain for Client a subscription to continue using the Hosted Programs; or (c) terminate the subscription for the infringing Hosted Programs. This Section 5.1 states Digital Physician's entire liability and Client's exclusive remedy for infringement.

5.2. Warranties and Disclaimers

A. Hosted Program Warranty. Digital Physician warrants that the Hosted Programs will materially perform in accordance with the documentation so long as (i) the Client has a current, paid-up right to use the Hosted Programs; and (ii) Client's access to the Host Server will meet the minimum criteria set forth in Digital Physician's System Requirements document available at www.digitalphysician.com.

B. Services Warranty. Digital Physician warrants that its Hosted Program Services, Support Services, Electronic Services, and other Services described in an applicable Order Form will be performed consistent with generally accepted industry standards.

C. Disclaimers. THE WARRANTIES ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Digital Physician does not warrant that the Hosted Programs will operate in the combinations that Client may select for use, that the operation of the Hosted Programs will be uninterrupted or error-free, or that all Hosted Program errors will be corrected.

5.3. Exclusive Remedies. For any breach of the warranties contained in Section 5.2, Client's exclusive remedy, and Digital Physician's entire liability, shall be:

A. For Hosted Program Services and Electronic Services: The correction of Hosted Program errors that cause breach of the warranty. Any error not reported to Digital Physician by Client within thirty (30) days of its discovery will be deemed waived and accepted by Client.

B. For all other Services: The reperformance of the Services, provided that Client notifies Digital Physician in writing of any defects in the Services within thirty (30) days of their performance.

6. PAYMENT PROVISIONS

6.1. Invoicing and Payment. Invoices for payment of Monthly Application Subscription and all Service Fees shall be in accordance with the applicable Order Form(s). In the absence of specific provisions in the applicable Order Form(s), fees that are fixed, such as Monthly Application Subscription and Service Fees shall be payable monthly in advance and due in full upon the first day of each month; all other Services that are variable and dependent on actual usage are billed in arrears and due upon receipt. An administrative late charge of \$35.00 per invoice per month will be charged for any invoice not paid by the due date and which remains unpaid each 30 days thereafter, including any electronic transaction that is declined and any returned checks. Additionally, any amounts payable by Client hereunder which remain unpaid after the due date shall be subject to a finance charge equal to the lesser of 1.5% per month or the maximum amount permitted under applicable law, from the due date until such amount is paid.

6.2. Taxes. The fees listed in the Agreement do not include taxes; if Digital Physician is required to pay sales, use, property, value-added, withholding, excise or other taxes, duties, or governmental charges based on the Subscription Rights Granted or Services provided under the Agreement or on Client's use of Hosted Programs or Services, then such taxes, duties, or governmental charges shall be billed to and paid by Client. If Digital Physician is found to be responsible

for the withholding and payment of taxes on behalf of Client, Client agrees to indemnify Digital Physician with respect to the full amount of taxes due together with applicable interest and penalties. If Client is required to withhold any tax from any payment, then the amount of the payment will be automatically increased to totally offset such tax so that the amount remitted to Digital Physician, net of all taxes, equals the amount invoiced or otherwise due. This Section shall not apply to taxes based on Digital Physician's net income.

6.3. Variable Use Service Fees. Variable use service fees are subject to external costs (such as postage rates, paper, etc.) and therefore are subject to change with 30-day written notice to Client.

7. GENERAL TERMS

7.1. Nondisclosure. By virtue of the Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). Confidential Information shall be limited to the Programs, the terms and pricing under the Agreement, and all information clearly identified as confidential.

A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (d) is independently developed by the other party.

The parties agree to hold each other's Confidential Information in confidence during the term of the Agreement and for a period of two years after termination of the Agreement. In the event that either party is requested or required for the purposes of legal, administrative, or arbitration to disclose any Confidential Information, the party receiving such disclosure request will provide the other party with immediate written notice of any such request or requirement so that such party may seek an appropriate protective order or other relief.

7.2. Trademarks. Except for linking to Digital Physician web sites, Client may not use any Digital Physician logo or trademark, whether or not such mark(s) are registered, without prior written approval from Digital Physician. This includes use on printed materials of any kind as well as electronic mediums such as Internet web pages or email. Furthermore, the use of the Digital Physician name (or any derivative thereof) in Client's URL, Business Name, or the names of any add-on products or services Client may be offering independent of Digital Physician is strictly prohibited. Additionally, using the Digital Physician name in paid targeted keyword advertising campaigns on search engines is also prohibited.

7.3. Governing Law and Dispute Resolution. The Agreement, and all matters arising out of or relating to the Agreement, shall be governed by the laws of the State of California, without giving effect to principles regarding conflicts of laws. Any controversy or claim arising out of or relating to the Agreement, or breach thereof, shall be submitted to the following procedure: (a) direct negotiation in a settlement conference to be scheduled as soon as possible after the dispute arises; (b) if no resolution is reached within sixty (60) days of the settlement conference, the parties will submit the dispute to non-binding mediation in Los Angeles County, California under the mediation rules of the American Arbitration Association; (c) if no settlement is reached within sixty (60) days of the start of mediation, either party may seek legal redress in a forum of competent jurisdiction.

7.4. Notice. Client agrees to notify Digital Physician of any changes to Client's business address, business contact, and support contact within ten (10) days of any change thereto. All notices required or permitted hereunder shall be given in writing or as specifically set forth in the applicable section of the Agreement. To expedite order processing, Client agrees that Digital Physician may treat documents emailed or faxed by Client to Digital Physician as original documents; nevertheless, either party may require the other to exchange original signed documents to evidence an order for Hosted Programs or for Services.

7.5. Limitation of Liability. In no event shall either party be liable for any indirect, incidental, special or consequential damages, or damages for loss of profits, revenue, data or use, incurred by either party or any third party, whether in an action in contract or tort, even if the other party has been advised of the possibility of such damages. Digital Physician's liability for damages hereunder shall in no event exceed the amount of fees paid by Client under the Agreement for the most recent three (3) month period. The provisions of the Agreement allocate the risks between Digital Physician and Client. The parties agree that Digital Physician's pricing and other terms and conditions of the Agreement reflect the allocation of risk and the limitation of liability specified herein.

7.6. U.S. Government and HIPAA. The Hosted Programs and accompanying documentation are commercial computer software and documentation developed exclusively at private expense and in all respects are proprietary data belonging to Digital Physician. If the Hosted Programs and accompanying documentation are used under the terms of a DoD or civilian agency contract, use, reproduction and disclosure of such software and documentation by the Government is subject to the restrictions set forth in the Agreement in accordance with 48 C.F.R. 227.7202 or 48 C.F.R. 12.212, respectively. The HIPAA Business Associate Agreement attached hereto as Exhibit A is incorporated into the EULA by this reference.

7.7. Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

7.8. Other Terms. In the event any provision of the Agreement is held to be invalid or unenforceable, the remaining provisions of the Agreement will remain in full force. The waiver by either party of any default or breach of the Agreement shall not constitute a waiver of any other or subsequent default or breach. Except for actions for nonpayment or breach of Digital Physician's proprietary rights in the Hosted Programs, no action, regardless of form, arising out of the Agreement

may be brought by either party more than one year after the cause of action has accrued. The Agreement constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of the Agreement. Client may not assign the Agreement or any rights or obligations hereunder without prior written consent of Digital Physician, which consent shall not be unreasonably withheld or delayed; any such assignment without prior consent shall be void. Digital Physician may modify the terms of the Agreement between the parties, including these Terms of Service and any incorporated Order Form(s) or Subscription and Services Agreements upon written notice, e-mail or otherwise, to Client. Client may notify Digital Physician in writing within thirty (30) days of receipt of a modification notification that Client does not wish to accept the new terms. In the absence of such written non-acceptance notification with the thirty (30) day period, Client confirms acceptance of the new terms by continuing to use the Hosted Programs and/or Services. If Client does not accept the new terms by notifying Digital Physician within the thirty (30) day period, then Client may continue to use Digital Physician under Client's existing terms until the end of Client's then current term, at which time Client's Agreement will not automatically renew, but will instead terminate. It is expressly agreed that the terms of the Agreement and any Order Form shall supersede the terms in any Client purchase order or other ordering document.

EXHIBIT A:

HIPAA BUSINESS ASSOCIATE AGREEMENT ADDENDUM

This HIPAA BUSINESS ASSOCIATE AGREEMENT ADDENDUM (the "BAA Addendum"), by and between Digital Physician and the above-referenced Client, is hereby incorporated into the above End User License Agreement and is effective as of the Effective Date of the Agreement.

RECITALS

A. Client and Digital Physician are parties to one or more agreements (each such agreement, a "Covered Contract," and collectively, the "Agreement") pursuant to which Digital Physician provides certain services to Client, and, in connection with those services, Client discloses to Digital Physician certain health information (the "Protected Health Information" as defined in 45 CFR §164.504) that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and certain regulations promulgated by the U.S. Department of Health and Human Services to implement certain provisions of HIPAA (herein "HIPAA Regulations" found at 45 CFR Parts 160-164).

B. Digital Physician, as a recipient of Protected Health Information from Client, is a "Business Associate" as that term is defined in the HIPAA Regulations.

C. Pursuant to the HIPAA Regulations, all Business Associates of entities such as Client must, as a condition of receiving Protected Health Information in the course of doing business with Client, agree in writing to certain mandatory provisions regarding, among other things, the use and disclosure of Protected Health Information.

D. The purpose of this Addendum is to satisfy the requirements of the HIPAA Regulations, including, but not limited to, 45 CFR §164.504(e), as the same may be amended from time to time.

OBLIGATIONS OF THE PARTIES

1. **Scope of Use of Protected Health Information.** Digital Physician may not: (a) use or disclose Protected Health Information it receives from Client for any purpose other than the purposes contemplated by the Agreement, as required or allowed under the HIPAA Regulations, or as otherwise required by law; or (b) use or disclose Protected Health Information in a manner that violates or would violate the HIPAA Regulations if such activity were engaged in by Client. Client hereby represents and warrants (i) that the execution and performance of this Addendum will not conflict with or violate any provision of any law having applicability to Client; (ii) that Client has the right to provide the Protected Health Information provided to Digital Physician under this Addendum; and (iii) that the use, provision of access and/or disclosure by Digital Physician of any Protected Health Information as authorized or contemplated by this Agreement will not conflict with or violate any provision of any law having applicability to either of the Parties, including, without limitation, HIPAA and the HIPAA Regulations, nor constitute a tort against any third party, nor constitute a breach of contractual obligations between any third party and Client.

2. **Safeguards for the Protection of Protected Health Information.** Digital Physician will use reasonable efforts to implement and maintain such business and technological safeguards as are necessary to ensure that the Protected Health Information disclosed between Client and Digital Physician is not used or disclosed by Digital Physician except as is provided in the Agreement.

3. **Reporting of Unauthorized Use or Disclosure.** Digital Physician shall promptly report to Client any use or disclosure of Protected Health Information of which Digital Physician becomes aware that is not provided for or permitted in the Agreement or the HIPAA Regulations. Digital Physician shall permit Client to investigate any such report in accordance with Section 8 of this Addendum.

4. **Use of Subcontractors.** To the extent that Digital Physician uses one or more subcontractors or agents to provide services under the Agreement, and such subcontractors or agents receive or have access to the Protected Health Information, Digital Physician shall either sign a Business Associate Agreement with such subcontractor or agent containing substantially the same restrictions and conditions related to the Protected Health Information as those that apply to Digital Physician under this addendum, or ensure that such subcontractor or agent agrees to implement reasonable and appropriate safeguards to protect such information consistent with the requirements of 45 CFR 164.314(a)(1)(i).

5. **Data Transfer Security.** Digital Physician will take reasonable measures to protect the security and integrity of the Protected Health Information when electronically transferring such information.

6. **Access Security.** Digital Physician will take reasonable security measures to protect the Protected Health Information from unauthorized access. Access to Digital Physician's computer networks and systems and the Protected Health Information will be controlled via a user ID and password. Digital Physician IS NOT RESPONSIBLE FOR ANY UNAUTHORIZED USE OR DISCLOSURE OF A USER ID OR PASSWORD, OR FOR ANY BREACH OF THIS ADDENDUM ARISING AS A RESULT OF ANY SUCH UNAUTHORIZED USE OR DISCLOSURE BY OR ON BEHALF OF CLIENT.

7. **Authorized Access to and Alteration of Protected Health Information.** In order to help ensure the accuracy of the Protected Health Information, Digital Physician, on an ongoing basis, will provide Client access for inspection to any such Protected Health Information then retained in Digital Physician's possession. If any of the Protected Health Information is found to be inaccurate or incomplete, Client may submit amendments or corrections to the Protected Health Information and Digital Physician shall promptly incorporate all such amendments or corrections. Digital Physician shall cooperate promptly with Client in responding to any request made by any subject of such information to Client to inspect and/or copy such information. Digital Physician may not deny Client access to any Protected Health Information if such information is requested by the subject seeking access to it.

8. De-identified Information. Provided that Digital Physician implements appropriate de-identification criteria in accordance with the Standards for Privacy of Individually Identifiable Health Information set forth in 45 C.F.R. §164.514(b), Client acknowledges and agrees that de-identified information is not Protected Health Information as defined in the applicable regulations and that Digital Physician may use such de-identified information for any lawful purpose.

9. Accounting, Audits, and Inspection.

a. Digital Physician will keep an accounting of all disclosures, outside its normal course of business, of the Protected Health Information (the "Disclosure Accounting") on an ongoing basis and maintain the Disclosure Accounting for a period of at least six (6) years. At a minimum, the Disclosure Accounting will contain (i) the date of the disclosure; (ii) the name of the entity or person who received the Protected Health Information and, if known, the address of such entity or person; (iii) a brief description of the Protected Health Information disclosed; and (iv) a brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure; or in lieu of such statement a copy of the subject's written authorization or request for disclosure pursuant to the HIPAA Regulations. Digital Physician will provide the Disclosure Accounting to Client or a subject individual within sixty (60) days of receiving a written request from Client or such subject individual.

b. Subject to compliance with Digital Physician's security requirements, the Secretary of Health and Human Services and/or Client, or their respective authorized agents or contractors, may, at their expense, examine Digital Physician's facilities, systems, procedures and records related to the Protected Health Information, as may be required to determine that Digital Physician is in compliance with the HIPAA Regulations, the Agreement or this Addendum. If it is determined that Digital Physician is in violation of the HIPAA Regulations, the Agreement or this Addendum, Digital Physician shall promptly remedy any such violation and shall certify the same in writing. The fact that Client inspects, or fails to inspect, or has the right to inspect, Digital Physician's facilities, systems and procedures does not relieve Digital Physician of its responsibility to comply with this Addendum, nor does Client's failure to detect, or to detect but fail to call Digital Physician's attention to or require remediation of any unsatisfactory practice, constitute acceptance of such practice or a waiver of Client's enforcement rights.

10. Right of Termination. In the event that Digital Physician breaches a material term of this Addendum and fails to cure such breach within thirty (30) days after receipt of written notice thereof, Client will have the right to terminate the relevant Covered Contract under which Client disclosed the Protected Health Information that is the subject of the relevant breach.

11. Effect of Termination. Upon the termination or expiration of a Covered Contract for any reason, Digital Physician, at its option, will either (i) return, delete, purge or destroy, all Protected Health Information received from Client under such Covered Contract that Digital Physician maintains in any form, or (ii) if Digital Physician determines that such return or destruction is not feasible, Digital Physician will continue to restrict such Protected Health Information in compliance with this Addendum.

12. Incorporation; Effect on Agreement. This Addendum is incorporated into and made part of each Covered Contract and in each case is subject to the terms and conditions set forth therein, provided that, in the event that a conflict arises between this Addendum and any Covered Contract (exclusive of this Addendum), the terms and conditions of this Addendum shall govern. Except as specifically required to implement the purposes of this Addendum, and otherwise except to the extent inconsistent with this Addendum, all other terms of the Agreement shall remain in full force and effect, and the Parties hereby ratify and affirm the Agreement except as superseded or modified by this Addendum.

13. Construction. This Addendum shall be construed as broadly as necessary to implement and comply with the HIPAA Regulations. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Regulations.