

## TECHNOLOGY SERVICE AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS SERVICE. BY USING THE SERVICE OR CLICKING “AGREE”, CUSTOMER IS AGREEING TO BE BOUND BY THIS AGREEMENT. IF CUSTOMER IS AGREEING TO THIS AGREEMENT ON BEHALF OF OR FOR THE BENEFIT OF THEIR EMPLOYER, THEN CUSTOMER REPRESENTS AND WARRANTS THAT THEY HAVE THE NECESSARY AUTHORITY TO AGREE TO THIS AGREEMENT ON THEIR EMPLOYER’S BEHALF. PLEASE REVIEW SECTION 12 CLOSELY, AS IT CONTAINS A BINDING ARBITRATION PROCESS FOR RESOLVING DISPUTES INSTEAD OF USING THE COURT PROCESS.

THIS AGREEMENT is made and entered into by and among: SDY Technologies LLC (“SDY”) and the customer agreeing to these terms and its permitted licensees listed on Exhibit A (“Customer”), and covers all services provided by SDY to Customer.

### SECTION 1

#### MEDICAL OFFICE SOFTWARE SERVICES/LICENSE

**1.1 Purpose.** This agreement provides Customer access and use of the SDY’s web-based subscription service (the “Service” or “Services”), as specified on the electronic or written order between the parties. This includes the practice management services, electronic health record services, medical billing services and any custom add-ons developed by SDY for Customer. SDY grants Customer a non-exclusive, non-assignable, non-transferable, limited license, without the right of sublicense, to use the Services for your own personal and internal business purposes, subject to the terms and conditions of this Agreement. This license is for the use of the Service only by the Customer.

### SECTION 2

#### USE OF SERVICES

**2.1 SDY Responsibilities.** SDY shall make the Service available for Customer’s use during the Term, subject to shutdowns of the Service. The Service may be shut down for scheduled maintenance between 7:00 PM and 4:00 AM (Eastern Time), during weekends and holidays, or any time with 24-hour notice. SDY shall provide reasonable customer support to Customer on an as needed basis, between the hours of 10:00 AM and 7:00 PM (Eastern Time), which schedule is subject to change at SDY’s discretion. SDY shall also provide reasonable customer support to Customer outside of their normal hours for emergency services, from time to time.

#### **2.2 Customer Responsibilities.**

**2.2.1. Access by Employees and Contractors, and Service Providers.** Customer may allow its employees and contractors to access the Service in compliance with the terms of this agreement, which access must be for the sole benefit of Customer, and clients (if acting as a

service provider to them). Customer is responsible for the compliance with this agreement by its employees, contractors and clients, as applicable.

**2.2.2. Restrictions and Responsibilities.** Customer may not (i) sell, re-sell, rent or lease the Service, (ii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party rights (including without limitation any privacy rights), (iii) interfere with or disrupt the integrity or performance of the Service, or (iv) attempt to gain unauthorized access to the Service or its related systems or networks. Customer is solely responsible for Customer Data (defined below), must use commercially reasonable efforts to prevent unauthorized access to the Service, must notify SDY promptly of any such unauthorized access, and may use the Service only in accordance with its user guide and applicable law.

**2.2.3. Access Within The United States of America.** Customer may only access and/or use the service from within the United States of America. Should SDY determine that Customer is accessing the Service from outside of the United States of America, SDY may suspend Customer's access to the Service immediately without prior notice.

**2.2.4 Customer Data.** All data entered by Customer remains the sole property of Customer, as between SDY and Customer (Customer Data), subject to the other terms of this agreement. Customer grants SDY a non-exclusive term license to use, modify and otherwise make available the Customer Data for purposes of SDY performing under this agreement.

**2.2.5. Accuracy of Information Provided By Customer to SDY.** Customer represents and warrants to SDY that all information and documents provided under Customer's account or by Customer are, to the best of Customer's knowledge, true, correct and accurate (if Customer learns that any information provided to SDY as part of the Service is not true, correct or accurate, Customer must immediately notify SDY in writing of this fact, and provide the true, correct and accurate information).

**2.2.6. Aggregate Data.** SDY may use, during and after this agreement, all aggregate non-identifiable information and data for purposes of enhancing the Service, technical support and other business purposes, all in compliance with the HIPAA Privacy Standards, including without limitation the limited data set and de-identified data.

**2.2.7. Intentionally Omitted.**

**2.2.8. User Compliance.** Customer shall (i) be solely responsible for the accuracy, quality, integrity and legality of data and of the means by which data was acquired, (ii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify SDY promptly of any such unauthorized access or use, (iii) keep its user name and

password confidential, (iv) notify SDY immediately upon learning of any unauthorized use of its user name or password, (v) maintain commercially reasonable business practices in conjunction with use of the Services, and (vi) use the Services only in accordance with applicable use policies, laws and government regulations.

**2.2.9. Infrastructure.** Customer agrees that it shall be responsible for providing and maintaining its own Internet access and all necessary telecommunications equipment, software and other materials ("Customer Equipment") at Customer's location as necessary for accessing the Service through the Internet. Customer agrees to notify SDY of any changes in the Customer Equipment, including any system configuration changes or any hardware or software upgrades, which may affect the Services provided hereunder.

**2.2.10 Connection.** Customer agrees to connect to SDY's hosting solution via any means required by SDY. Customer recognizes that connection may be intermittent as a result of events beyond SDY's control and agrees to hold SDY harmless for connection outages.

**2.2.11 Backup.** SDY is responsible to perform daily backup of the entire system.

## **SECTION 3**

### **PAYMENT TERMS**

**3.1 Payment.** Fees for the Service and any associated services shall be invoiced monthly pursuant to the attached Pricing Addendum. Customer will pay SDY within thirty (30) days of receipt of such invoices to avoid late charges or suspension of the Service.

**3.2 Late Payments.** If payment is not made within thirty (30) days of the invoice date, a one-and one-half percent (1.5%) per month interest charge shall be assessed until date of payment. If payment is not made timely, SDY reserves the right to suspend the Service. In such a case of suspension, SDY will maintain the Customer's data for 180 days, and upon the expiration of such time, the Customer's data shall be deleted, unless otherwise agreed to by SDY in writing.

**3.3 Reinstatement Fee.** In the event that, after suspension of the Services, SDY agrees to reinstate Customer's access to and use of the Service, Customer shall pay SDY a reinstatement fee in the amount of equal to one (1) month of service fees.

## **SECTION 4**

### **WARRANTY/SERVICE LEVEL AGREEMENT/DISCLAIMERS**

**4.1 Mutual Compliance with Laws.** Each party represents and warrants to the other party that it will comply with all applicable laws regarding its performance under this agreement.

**4.2 No Warranty/Service Levels.** EXCEPT AS EXPRESSLY SET FORTH ABOVE AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, SDY MAKES NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICES AND ALL SUCH WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF FITNESS FOR PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE HEREBY EXPRESSLY DISCLAIMED BY SDY. CUSTOMER ACKNOWLEDGES THAT SDY HAS NOT REPRESENTED OR WARRANTED THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR WITHOUT DELAY OR WITHOUT COMPROMISE OF THE SECURITY SYSTEMS RELATED TO THE SERVICES. SDY IS NOT RESPONSIBLE FOR ANY DAMAGES ASSOCIATED WITH VIRUS OR MALWARE WHICH MAY BE TRANSFERRED TO ANY CUSTOMER AS A RESULT OF CUSTOMER'S USE OF THE SERVICE, AND EACH CUSTOMER IS RESPONSIBLE FOR ITS OWN VIRUS AND MALWARE PROTECTION. WHILE SDY TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURE TO SECURE THE SERVICE, SDY DOES NOT GUARANTY THAT THE SERVICE CANNOT BE COMPROMISED.

**4.3 Privacy.** Customer represents and warrants that it shall comply with all applicable privacy, consumer and other laws and regulations with respect to its (i) provision, use and disclosure of the data; (ii) dealings with the Users providing the data; and (iii) use of the Service.

**4.4. No Medical Advice Provided By SDY.** The Service does not provide medical advice, provide medical or diagnostic services, or prescribe medication. Use of the service is not a substitute for the professional judgment of health care providers in diagnosing and treating patients. Customer agrees that it is solely responsible for verifying the accuracy of patient information (including, without limitation, by obtaining all applicable patients' medical and medication history and allergies), obtaining patient's consent to use the Service (including without limitation any patient portals that are or become part of the Service), and for all of its decisions or actions with respect to the medical care, treatment, and well-being of its patients, including without limitation, all of its acts or omissions. Any use or reliance by you upon the Service will not diminish that responsibility. Customer assumes all risks associated with your clinical use of the Service for the treatment of patients. Neither SDY nor its principals, affiliates, members, managers, officers, directors, employees, agents, successors and assigns assume any liability or responsibility for damage or injury (including death) to Customer, a patient, other person, or property arising from any use of the Service.

**4.5 Customer's Compliance With Medical Retention Laws And Patient Records Access.** Customer is responsible for understanding and complying with all state and federal laws related to retention of medical records, patient access to information and patient authorization to release data.

## **SECTION 5**

### **MUTUAL CONFIDENTIALITY**

**5.1 Definition of Confidential Information.** Confidential Information means all non-public information disclosed by a party (Discloser) to the other party (Recipient), whether orally or in

writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (Confidential Information). SDY's Confidential Information includes without limitation the non-public portions of the Service.

**5.2 Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees, contractors and clients (as the case may be) who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement. The Recipient may disclose Confidential Information to the extent required by law or legal process

**5.3 Exclusions.** Confidential Information excludes information that: Is or becomes generally known to the public without breach of any obligation owed to Discloser, Was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, Is received from a third party without breach of any obligation owed to Discloser, or Was independently developed by the Recipient without use or access to the Confidential Information.

## **SECTION 6**

### **PROPRIETARY RIGHTS/SUSPENSION RIGHTS**

**6.1 Reservation of Rights by SDY.** The software, workflow processes, user interface, designs, know-how and other technologies provided by SDY as part of the Service are the proprietary property of SDY, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with SDY. SDY reserves all rights unless expressly granted in this agreement.

**6.2 Customer Restrictions/No Reverse Engineering.** Customer may not: a) use the Service or any materials provided by SDY to Customer beyond its internal operations, which include use of same for patient care and related operations; b) Reverse engineer the Service or any of the components thereof; c) remove or modify any proprietary marking or restrictive legends in the Service; or d) access the Service to build a competitive product or service, or copy any feature, function or graphic of the Service for competitive purposes. Customer may not rent, lease, lend, sublicense, redistribute, export, import, act as an intermediary or provider, or otherwise allow third parties to use the Services directly or indirectly, whether on a time sharing, remote job entry, or service bureau arrangement or provide commercial hosting services to third parties. Customer's licensed right to use the Services does not include any right to copy, sell, license, distribute, perform, display, make derivative works of, or integrate the Services or any components thereof or use the Services in connection with any third party software, hardware or firmware.

**6.3 SDY Suspension Rights.** SDY monitors the activity on the Service. In the event that SDY, in SDY's sole and exclusive judgment, suspects or detects any abnormal activity (which shall include, but not be limited to, activity that indicates the Service is being used in a way other than intended hereunder or being used by unauthorized users or from unauthorized locations) in Customer's use of the Services, SDY has the right to suspend Customer's access to the Services as it deems appropriate. In the event that, after suspension of the Services, SDY agrees to reinstate Customer's access to and use of the Service, Customer shall pay SDY a reinstatement fee in the amount that equals 1 (one) monthly invoice amount. SDY shall have no liability to Customer in the event that the services are suspended by SDY as contemplated herein.

## **SECTION 7**

### **LIMITS ON LIABILITY**

**7.2 Limitation of Liability.** SDY shall have no liability to Customer for any damages resulting from any interruptions, delays, inadequacies, errors or omissions relating to the Service or from the loss of Customer data or otherwise. IN NO EVENT SHALL SDY HAVE ANY LIABILITY, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, FOR LOST PROFITS OR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES, WHETHER OR NOT CAUSED BY THE NEGLIGENCE OF SDY, EVEN IF SDY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, SDY'S MAXIMUM LIABILITY TO CUSTOMER FOR ANY DAMAGES UNDER THIS AGREEMENT SHALL NOT EXCEED THE AGGREGATE TOTAL FEES PAID BY CUSTOMER TO SDY WITHIN THE TEN (10) MONTH PERIOD PRECEDING THE EVENT WHICH GAVE RISE TO THE CLAIM.

## **SECTION 8**

### **TERM, TERMINATION, AND RETURN OF DATA**

**8.1 Term.** The initial term of this Agreement shall commence as of the date that Customer accepts this Agreement and shall continue for a period of twelve (12) months (the "Initial Term"). Thereafter, this Agreement shall automatically renew for renewal terms of twelve (12) month each, until terminated as provided herein. Any automatic renewal shall be on the same terms and conditions as are set forth in this Agreement. Any change in fees shall not take place within the Initial Term. After the Initial Term SDY shall provide Customer with ninety (90) days written notice before any change in fees are implemented.

**8.2 Termination.** Either party may terminate this Agreement by providing the other party with thirty (30) days written notice in advance of the termination date.

**8.3 Termination for Cause.** Upon a Party's knowledge of a breach by the other Party of any provision of this Agreement, the non-breaching party may: notify the breaching party of the breach, provide an opportunity for the breaching Party to cure the breach within the time specified by the Agreement (or such greater amount of time as specified by the non-breaching

party), and terminate the Agreement for cause, upon notice, provided that SDY shall have the right to cancel this Agreement immediately upon a material breach by Customer, which material nature shall be determined in the sole and exclusive discretion of SDY.

**8.4. Termination or Amendment as a Result of Government Regulation.** The parties acknowledge that legal requirements with respect to the subject matter of this Agreement and the Services are likely to change. Accordingly, SDY may terminate or unilaterally amend this Agreement or make changes to the Service, without liability, to comply with any order issued or proposed to be issued by a federal or state department, agency, or court, or to comply with any provision of law or reimbursement that would invalidate or be inconsistent with this Agreement or the Service or cause a Party to violate the law. If SDY amends this Agreement as provided in this Section and the amendment is unacceptable to Customer, Customer, within seven (7) days, may terminate the Agreement upon notice to SDY. Failure to provide such notice of termination within the time specified constitutes acceptance of the amendment.

**8.5 Payments Upon Termination.** Upon termination, Customer must pay any unpaid fees and destroy all SDY property in Customer's possession. Customer upon request will confirm that it has complied with this requirement.

**8.6 Return of Data.** Customer shall arrange for their data to be exported to them prior to the actual termination date of the Agreement. SDY shall only maintain Customer's data for 90 days after the termination of this Agreement. During such 90-day period, SDY shall make customer's data available for export at customer's sole cost and expense. SDY shall provide reasonable cooperation with regards to Customer's export of data. At the conclusion of the 90-day period, SDY shall bear no liability for Customer's data, and may, without further notice, destroy and/or delete Customer's data.

**8.7 Suspension of Service for Violations of Law.** SDY may immediately suspend the Service and immediately remove, destroy, and/or delete applicable Customer Data if SDY, in good faith, believes that, as part of using the Service, Customer may have violated a law. SDY may try to contact Customer in advance, but it is not required to do so.

## **SECTION 9**

### **INDEMNITY**

**9.1 Indemnification by Customer.** Customer must indemnify, defend, and hold harmless SDY against all third-party claims (including without limitation by governmental agencies), demands, damages, costs, penalties, fines, and expenses (including reasonable attorneys' fees and costs) arising out of or related to: Customer's breach of any term in this agreement, any unauthorized use, access or distribution of the Service by Customer, violation of any individual's privacy rights related to information submitted under Customer's account, or false, duplicate,

incomplete, unauthorized, or misleading information submitted under Customer's account or by Customer.

**9.2 Indemnification by SDY.** SDY agrees that it will indemnify, defend and hold Customer harmless from any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgements and awards, and costs and expenses (including reasonable attorneys' fees), arising directly or indirectly, in whole or in part, out of any matter related to: (a) any breach by SDY of this Agreement or any representations, covenants or obligations contained herein; (b) any default or breach of any services (including supervision) to be performed or provided by SDY under this Agreement; or (c) any claim or action by any party that: (i) SDY did not have the authority to enter into this Agreement; or (ii) by entering into this Agreement, SDY breached any other agreement to which SDY was or is a party.

**9.3 Intellectual Property Rights Indemnification.** SDY shall indemnify, defend, and hold harmless Customer and each of its members, managers, officers, directors, employees, agents, successors and assigns (each, a "Licensee Indemnitee") from and against any and all Losses incurred by the Licensee Indemnitee resulting from any Action by a third party (i) that the software, any report, documentation, or deliverable, or any use of the Software, any report, documentation, or deliverable in accordance with this Agreement, misappropriates or infringes on such third party's Intellectual Property Rights. For purposes of this section, (i) "Losses" shall mean all losses, damages, deficiencies, claims, actions, judgements, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; (ii) Action shall mean any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or otherwise, whether at law, in equity, or otherwise; and (3) Intellectual Property Rights shall mean 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.

## **SECTION 10 NON-COMPETITION**

**10.1 Non-Competition Agreement.** During the term of this Agreement and for a period of two (2) years after the Termination of this Agreement, Customer shall not, directly or indirectly, manage, operate, control, or participate in the ownership, management, operation, or control of any other entity or person which is a competitor of SDY (a "Competitor"), or enter into competition with SDY, either directly or through any entity, group or organization owned or managed, directly or through a family member. For the sake of clarity, a "Competitor" will be deemed to include any company, partnership, proprietorship, group, organization, person, entity, venture that develops, manufacturers, markets, distributes and/or sells the same or similar products or services as SDY.

## **SECTION 11**



## INTELLECTUAL PROPERTY RIGHTS

**11.1 Ownership of Software; Marks; Logos; Marketing.** Customer acknowledges that the Service, including the software and source code used therein, is the sole and exclusive property of SDY, and SDY retains all, and has not transferred to Customer any, intellectual property rights in and to the any of the Services or software or code, except for the limited license expressly granted herein. Customer shall use the Service only as expressly permitted by this Agreement and shall keep confidential and use best efforts to prevent and protect the contents of the Service (or any part thereof) from unauthorized disclosure. Customer shall neither take nor permit any action which will delete, obscure or affect SDY's copyright, trademark notification, or other similar legend or identifying mark on any Service or elements thereof and any related documentation and materials. Customer agrees to be identified as a customer of SDY, and Customer agrees that SDY may refer to Customer by name, trade name, and trademark, if applicable, and may describe Customer's business in SDY's marketing materials and website. Customer hereby grants SDY a license to use Customer's name and any of Customer's trade names and trademarks in connection with the foregoing sentence in perpetuity, worldwide, and in any media.

## SECTION 12

### GENERAL PROVISIONS

**12.1 Governing Law.** This Agreement and the rights and obligations of the parties under it are governed by and interpreted in accordance with the laws of the State of New Jersey (without regard to principles of conflicts of law).

**12.2 Entire Agreement; Modification.** This Agreement constitutes the entire understanding and agreement between SDY and Customer with respect to the subject matter of this Agreement. No agreements, understandings, restrictions, representations, or warranties exist between or among the members other than those in this Agreement or referred to or provided for in this Agreement. No modification or amendment of any provision of this Agreement will be binding on any Member unless in writing and signed by SDY.

**12.3 Attorney Fees.** In the event of any suit or action to enforce or interpret any provision of this Agreement (or that is based on this Agreement), the prevailing party is entitled to recover, in addition to other costs, reasonable attorney fees in connection with the suit, action, or arbitration, and in any appeals. The determination of who is the prevailing party and the amount of reasonable attorney fees to be paid to the prevailing party will be decided by the tribunal in which the matter is tried, heard, or decided.

**12.4 Further Effect.** The parties agree to execute other documents reasonably necessary to further effect and evidence the terms of this Agreement, as long as the terms and provisions of the other documents are fully consistent with the terms of this Agreement.

**12.5 Severability.** If any term or provision of this Agreement is held to be void or unenforceable, that term or provision will be severed from this Agreement, the balance of the Agreement will survive, and the balance of this Agreement will be reasonably construed to carry out the intent of the parties as evidenced by the terms of this Agreement.

**12.6 Captions.** The captions used in this Agreement are for the convenience of the parties only and will not be interpreted to enlarge, contract, or alter the terms and provisions of this Agreement.

**12.7 Notices.** All notices and other communications provided for or permitted hereunder shall be made in writing by hand-delivery, first-class mail (registered or certified, return receipt requested), air courier guaranteeing overnight delivery or by e-mail to SDY at [info@sdyusa.com](mailto:info@sdyusa.com) or to Customer at email provided during a signup process.