



myCLAIMIQ™ End User License Agreement

IMPORTANT: This myCLAIMIQ™ End-User License Agreement (“EULA”) is a legal agreement between you (an individual person on behalf of a single legal entity, who will be referred to collectively in this EULA as “End User”) and HealthTech Solutions Group, LLC® (referred to in this EULA as “HealthTech”). READ THIS AGREEMENT CAREFULLY BEFORE USING ANY HEALTHTECH SERVICES. IT PROVIDES LICENSES TO USE THE APPLICABLE SERVICE(S), INFORMATION REGARDING SUPPORT SERVICES AND CONTAINS WARRANTY INFORMATION AND LIABILITY DISCLAIMERS.

You are entering into this EULA on behalf of yourself and your employer (“Employer”), such that the term “End User” shall include both you and Employer and the license granted and restrictions and limitations recited herein apply to Employer as well as to you as a representative of Employer. Should you cease working for Employer, Employer may continue to operate under this EULA.

By installing, copying, accessing or otherwise using any Service(s) or any Support Services, End User represents and warrants that End User has the power and authority to enter into this Agreement and agrees to be bound by the terms of this EULA. If End User does not agree to the terms of this EULA, HealthTech is unwilling to license and provide access to the Services to End User or provide any Support Services.

END USER IS ASKED TO REVIEW AND EITHER ACCEPT OR NOT ACCEPT THE TERMS OF THIS EULA. IF END USER AGREES TO BE BOUND BY ALL TERMS OF THIS EULA, CLICK THE "I AGREE" BUTTON BELOW AND PROCEED TO INSTALL, DOWNLOAD AND/OR ACCESS THE SERVICE. IF EITHER YOU OR EMPLOYER DOES NOT AGREE TO BE BOUND BY ALL THE TERMS OF THIS EULA, HEALTHTECH IS UNWILLING TO GRANT YOU OR EMPLOYER ANY RIGHTS TO USE THE SERVICE, AND YOU MUST STOP INSTALLING AND ACCESSING THE SERVICE AND INDICATE REJECTION OF THIS EULA BY CLICKING THE "CANCEL" BUTTON.

1. Definitions.

“Authorized User” means, collectively, End User and any individual employees or authorized agents of End User accessing or using the Services solely on behalf and for the benefit of End User solely in connection with the operation of End User’s internal business operations.

“End User Data” means all data or information submitted by End User to the Services.

“Service(s)” means the HealthTech proprietary software accessed pursuant to an Order Form (as defined below) or management or consulting services agreement between HealthTech (and/or its affiliates) and End User for use, as applicable, in connection with the review, analysis, status and/or use of certain End User Data relating to End User’s business and/or revenue cycle processes. As set forth in the official registration documents (each an “Order Form”) or other documentation used to procure the Service(s) and/or to identify the Service(s) procured, the Services may include, without limitation, HealthTech’s myCLAIMIQ Genie[®], myCLAIMIQ AlphaCollector[™], myCLAIMIQ AutoStatus[™], myCLAIMIQ ProFee[™], and/or the ICD10 reference software products that HealthTech has developed or other software products that HealthTech is developing and/or testing (“Development Software”).

“Suggestions” means any ideas, suggestions, enhancements, recommendations or other feedback provided by End User related to HealthTech regarding the Services.

2. Services.

- (a) *License.* HealthTech shall make the Services available to End User and its Authorized Users pursuant to the terms of this EULA. In exchange for End User’s agreement to this EULA, HealthTech hereby grants to End User a limited, non-exclusive, non-transferable license to permit its Authorized Users to use and access the Services.

- (b) *User ID.* Except with the prior written consent of HealthTech, access to the Services will be solely limited to End User and its Authorized Users. Each Authorized User will be assigned by HealthTech a unique account name and password for access to and use of the Services ("User ID"). End User shall be solely responsible for ensuring the security and confidentiality of all User IDs. End User acknowledges that it will be fully responsible for any and all liability incurred through use of any User ID and that any use of the Services under a User ID will be deemed to have been performed by End User. HealthTech shall have no responsibility for the consequences of unauthorized access to the Services that arises from unauthorized disclosure of a User ID or password issued to or on behalf of End User. End User shall notify HealthTech immediately of any suspected theft, loss or fraudulent use of such User ID or password.
- (c) *End User Responsibilities.* End User is solely responsible for the acts and omissions and use of the Services by its Authorized Users and for such Authorized Users compliance with this EULA. Under the terms of this EULA, End User is not permitted, nor is End User permitted to cause or permit Authorized Users or any third party to:
- (i) transfer the license to use the Services or sublicense or assign the license or any rights under this EULA;
 - (ii) use, copy or distribute the Services or any component thereof, except as expressly permitted by this EULA or for any purpose for which the Services are not intended or authorized;
 - (iii) modify, adapt, alter, translate, decompile, disassemble, misuse or otherwise reverse engineer the Services or any license keys received in connection with the Services or reduce the Services to human-readable form by any means whatsoever;
 - (iv) remove, change or obscure any identification, copyright or other notices from the Services;
 - (v) distribute, rent, sell, loan, lease, sublicense or otherwise deal in the Services and/or any elements of the Services;
 - (vi) adapt, alter, create derivative works based on, modify, or translate the Services, in whole or in part;
 - (vii) access the Services in order to (A) build a competitive product or service, or (B) copy any ideas, features, functions or graphics of the Services; and
 - (viii) electronically transfer the Services in whole or in part from its computer server, or any other computer or device, to any third party, or enable any timesharing or service bureau use of the Services to any third party.
- (d) *Equipment.* End User shall be responsible for obtaining and maintaining any equipment and services needed to connect to, access or otherwise use the Services, including without limitation, modems, hardware, software, networking and web servers (collectively, the "Equipment"). End User shall be responsible for ensuring that all Equipment is compatible with and sufficient for use of the Services.
- (e) *Development Software.* End User acknowledges that HealthTech is developing certain software products and may provide such software without any accompanying service obligation, technical support, or improvements from HealthTech. Provision of the Development Software under this Agreement is experimental and shall not create any obligation for HealthTech to continue to develop, produce, support, repair, offer for sale or in any other way to continue to use, provide or develop the Development Software either to End User or any other party. The Development Software is believed to contain defects and any opportunity to test the Development Software hereunder is afforded solely for the purpose of encouraging collaborative testing aimed at further development of the Development Software and identification of defects. End User is advised to safeguard important data and to use caution and not to rely in any way on the correction functioning or performance of the Development Software and any accompanying materials or documentation. End User assumes all responsibility for selecting the Development Software to achieve the intended results, and or the results obtained from the use of the Development Software.
- (f) *Ownership.* The Services are proprietary to HealthTech and/or its licensors. The Services are licensed pursuant to the terms of this EULA and not sold. Without limitation, all rights, title and interest in and to the Services and all copyright, trade secret rights, patents, trademarks, moral rights, Suggestions and any other intellectual property or proprietary rights in and to the Services, and all copies of the Services or any software that forms a part of the Services regardless of the

form or media on which it exists, shall at all times, remain the exclusive property of HealthTech and/or its licensors. To the extent any Suggestions are not owned by HealthTech, End User hereby grants, a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual right and license to use, modify and/or incorporate in the Development Software any and all Suggestions. End User acknowledges that all Suggestions are provided without any expectation or obligation of payment or remuneration therefor. No obligation is assumed or may be implied on the part of HealthTech for the receipt or examination of Suggestions to use the Suggestions or compensation Client. All rights not expressly granted under this EULA are reserved by HealthTech.

- (g) *Equitable Relief.* End User agrees that in the event of actual or threatened breach of this Section by End User or any Authorized User, HealthTech will have no adequate remedy at law, may suffer irreparable damages, and will be entitled to immediate injunctive and other equitable relief, without bond and without the necessity of showing actual money damages.

3. Support and Maintenance.

HealthTech from time to time may make available certain technical support services ("Support Services") in connection with Services, which may include support to answer general inquiries regarding the use and functionality of the Services and support to correct Services issues materially affecting the operation of the Services. If End User identifies or experiences any defect, error or problem with the Services, End User shall document and promptly notify HealthTech of such error or problem by utilizing the Feedback tab located in the upper right corner of the Services screen.

4. Term and Termination.

- (a) *Term.* (i) For hospital End Users (including their Authorized Users) of myCLAIMIQ Genie[®], myCLAIMIQ AutoStatus[™], myCLAIMIQ AlphaCollector[™], myCLAIMIQ ProFee[™] and/or the ICD10 software product to which an affiliate of HealthTech provides management services pursuant to an applicable management or consulting agreement, the term of this EULA will be coterminous with such management or consulting agreement unless an applicable Order Form or other documentation used to procure the Service(s) sets forth differently; provided, however, that in the event HealthTech discontinues providing to its customers the respective Service(s) on a date (each a "Service Termination Date") prior to termination of the applicable management or consulting agreement, this EULA shall terminate on the applicable Service Termination Date(s). (ii) For all other End Users (including their Authorized Users), the term of this EULA will be the term for which End User has contracted for or, if obtained upon payment of a fee, paid the applicable fees for the respective Service(s) as described in the Order Form(s) or other documentation used to procure the Service(s) unless earlier terminated hereunder. To the extent, if any, of any conflict between this EULA and the applicable management agreement, consulting agreement, Order Form or other documentation referenced in this Section 4(a), the terms of this EULA will control with respect to the Service(s) and Support Services, as each is defined in this EULA.
- (b) *Termination.* This EULA and the licenses granted hereunder may be terminated by HealthTech, without refund, if End User fails to make full payment of any amount due to HealthTech in accordance with this or any other agreement with HealthTech. Notwithstanding the foregoing, End User's rights to use the Software will terminate automatically if End User fails to comply with any terms of this EULA. This EULA will also terminate without further action or notice by HealthTech if End User becomes bankrupt, goes into liquidation, suffers or make any winding up petition, makes an arrangement with creditors, has an administrator, administrative receiver or other receiver appointed, or if End User suffers or files any similar action in consequence of debt.
- (c) *Survival.* Notwithstanding any expiration or termination of this EULA, all payment obligations incurred prior to expiration or termination shall survive, and the following provisions shall survive: Sections 6, 7 8, 9, 10 and 11. All other rights granted hereunder will cease upon termination.

5. Taxes.

End User is responsible for the payment of all taxes associated with its use of the Services (other than taxes based on HealthTech's net income), including, but not limited to, any applicable sales or use tax, import taxes, taxes on telecommunication services, information services, data processing services or similar governmental charges that may be assessed by any jurisdiction, whether based on gross revenue or delivery of products or services.

6. Confidentiality.

- (a) *Non-Disclosure.* By virtue of this EULA, both Parties may have access to non-public or proprietary information of one another ("Confidential Information"). Each Party agrees to take reasonable precautions to safeguard such Confidential Information by using the same degree of care, but in no event less than a reasonable standard of care, to prevent unauthorized access or use as such Party uses to protect its own Confidential Information of similar nature. Except as affirmatively required by law or as required to exercise its rights and perform its obligations hereunder, neither Party shall use, provide, disclose or otherwise make available such Confidential Information to any third party.
- (b) *Exclusions.* Confidential Information does not and shall not include information that: (i) is or becomes publicly available through no act or omission of the Party that receives such information ("Receiving Party"); (ii) the Party that disclosed such information ("Disclosing Party") generally discloses to third parties without restriction on disclosure; (iii) is disclosed to the Receiving Party by a third party without restriction on disclosure and without breach of a nondisclosure obligation; (iv) is independently developed by the Receiving Party; or (v) is previously known to the Receiving Party without nondisclosure obligations.
- (c) *Relief.* The Parties acknowledge that (i) the restrictions and obligations contained in this Section are reasonable and necessary to protect each Party's legitimate interests; (ii) in the event of a violation of these restrictions, remedies at law may be inadequate and such violation may cause irreparable damages to the Disclosing Party; and (iii) the Disclosing Party shall be entitled to seek immediate injunctive and other relief against a violation of this Section, without bond and without the necessity of showing actual money damages.

7. Disclaimer of Warranties.

- (a) *Disclaimer.* THE SERVICES ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" (AND FOR DEVELOPMENT SOFTWARE ON A "WITH ALL FAULTS") BASIS AND ARE INTENDED FOR EDUCATIONAL AND INFORMATIONAL PURPOSES ONLY. HEALTHTECH HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS AND IMPLIED (WHETHER ARISING UNDER LAW OR EQUITY OR CUSTOM OR USAGE), INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. END USER EXPRESSLY WAIVES RELIANCE UPON ANY SUCH WARRANTIES. THE SERVICES IN NO WAY PROVIDE OR ATTEMPT TO PROVIDE DEFINITIVE INFORMATION ON THE CODING, DATA ELEMENTS, DOCUMENTATION, OR BILLING OF ANY CLAIMS FOR REIMBURSEMENT NOR DO THEY PURPORT OR ATTEMPT TO ASSIST END USER IN IDENTIFYING EVERY CLAIM THAT MAY NOT HAVE BEEN CORRECTLY OR COMPLETELY CODED OR BILLED. CERTAIN CODING AND/OR DATA ELEMENTS MAY BE UPDATED BY HEALTHTECH PERIODICALLY, BUT ARE NEITHER INTENDED NOR GUARANTEED TO BE CURRENT AT ALL TIMES. WHILE USE OF CERTAIN OF THE SERVICES MAY ASSIST END USER IN IDENTIFYING CHARGES APPROPRIATE TO BE BILLED, THE END USER EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THE SERVICES MAY NOT MEAN THAT END USER'S REIMBURSEMENT FROM THE MEDICARE AND/OR MEDICAID PROGRAM(S) WILL INCREASE. PLEASE CONSULT YOUR MEDICARE AND/OR MEDICAID SPECIALIST OR QUALIFIED HEALTHCARE LEGAL COUNSEL IN ORDER TO ESTIMATE THE REIMBURSEMENT EFFECT FOR YOUR HOSPITAL AND BEFORE SUBMITTING ANY BILL AS A NUMBER OF ISSUES IMPACT CORRECT BILLING. THE SERVICES ARE REFERENCE TOOLS FOR IDENTIFYING FOLLOW-UP AREAS FOR END USER; THE SERVICES DO NOT

PROVIDE LEGAL, CODING, BILLING OR CLAIMS STATUS ADVICE. END USER MUST REVIEW SUPPORTING DOCUMENTATION FOR CLAIMS IN ORDER TO DETERMINE WHETHER ANY PARTICULAR CODING OR CHANGE IN BILLING IS SUPPORTED. HEALTHTECH MAKES NO WARRANTIES REGARDING THE ACCURACY OR COMPLETENESS OF ANY INFORMATION OR RESULTS OBTAINED THROUGH USE OF THE SERVICES, AND HEALTHTECH SHALL HAVE NO LIABILITY FOR ANY CLAIM ARISING FROM ANY USE OF SUCH INFORMATION OR RESULTS. WITHOUT LIMITATION OF THE FOREGOING, HEALTHTECH EXPRESSLY DISCLAIMS ANY WARRANTY THAT DEVELOPMENT SOFTWARE WILL MEET END USER'S REQUIREMENTS OR THAT ITS OPERATIONS WILL BE UNINTERRUPTED OR ERROR-FREE.

- (b) *Medical Disclaimer.* Various expressions of medically related information, analysis and/or reasoning may be provided through the Services and may be used by End User. While such medical information provided by the Services may enhance the quality of clinical reasoning and may provide useful information for quality improvement and quality assurance, it is not a substitute for the professional judgment of a clinician or administrator and in no event should any such information be used as the sole or primary basis for clinical decision-making or clinical reasoning. The Services do not provide medical advice, diagnoses or recommendations about medical treatment, and do not recommend or endorse any products, actions or information for any particular circumstances. End User shall be solely responsible for assuring appropriate use by its Authorized Users of all medical information provided through the Services and for communicating the content of this Section to its Authorized Users and any other personnel who may have access to the medical information provided through the Services.
- (c) *No Other Warranty.* No employee, agent, representative or affiliate of HealthTech has authority to bind HealthTech to any oral representations or warranty concerning the Services. Any written representation or warranty not expressly contained in this EULA will not be enforceable.

8. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, HEALTHTECH SHALL NOT BE LIABLE, UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY OF THE FOLLOWING, HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT OR TORT, INCLUDING NEGLIGENCE OR OTHERWISE:

- (A) ANY LOSS OF BUSINESS;
- (B) LOSS OF REPUTATION;
- (C) LOSS OF PROFITS OR GOODWILL;
- (D) LOSS OF USE;
- (E) LOSS OR DAMAGE TO OR CORRUPTION OF DATA;
- (F) THE UNAUTHORIZED DISCLOSURE OF SENSITIVE, VALUABLE, OR CONFIDENTIAL INFORMATION;
- (G) LOSS ATTRIBUTABLE TO THE FAILURE TO MAKE AND RETAIN REASONABLE BACK-UPS OF DATA;
- (H) INTERRUPTION OF BUSINESS;
- (I) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING FROM THE SERVICE AND/OR ANY SUPPORT SERVICES; AND
- (J) ANY COSTS OF PROCURING SUBSTITUTE GOODS, SERVICES, TECHNOLOGY OR RIGHTS;
- (K) REPAYMENT, FINES, OR PENALTIES OF ANY SORT RELATING TO ANY REIMBURSEMENT REQUESTED BY, OR MADE TO, END USER, OF OR BY ANY PAYOR, INCLUDING WITHOUT LIMITATION ANY GOVERNMENTAL PAYOR.

END USER ACKNOWLEDGES AND CONFIRMS THAT THE COMMERCIAL AND ECONOMIC TERMS UPON WHICH HEALTHTECH AGREES TO LICENSE THE SERVICES HAVE BEEN CONDITIONED TO A SUBSTANTIAL EXTENT BY THE ABILITY OF HEALTHTECH TO MAKE AND ENJOY THE FULL PROTECTION OF THE DISCLAIMER AND LIMITATION OF LIABILITY SET FORTH IN THIS EULA AND AGREES, REPRESENTS AND CONFIRMS THAT THE CONTENTS OF SUCH SECTIONS ARE FAIR AND REASONABLE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF

LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY IN ALL INSTANCES. IF ANY EXCLUSION, DISCLAIMER OR OTHER PROVISION CONTAINED IN THIS EULA IS HELD TO BE INVALID FOR ANY REASON BY A COURT OF COMPETENT JURISDICTION AND HEALTHTECH BECOMES LIABLE THEREBY FOR LOSS OR DAMAGE THAT COULD OTHERWISE BE LIMITED, SUCH LIABILITY WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT ACTUALLY PAID FOR THE SERVICES UNDER THIS EULA.

9. Indemnification.

End User shall defend, indemnify and hold HealthTech and its officers, directors, employees, representatives and/or agents or each of them harmless at all times from and against any and all losses in connection with or as a result of any claim that arises from (i) the conduct of End User's business; (ii) any breach of this EULA by End User; and/or (iii) End User's unauthorized release of health information, release of inaccurate or improperly formatted health information, and/or failure to follow applicable contracts or federal and/or state law and/or regulations, including without limitation, regarding reimbursement and/or privacy and security of health information. HealthTech will provide End User with prompt written notice of any such claim, action or proceeding to which the foregoing indemnity relates, and HealthTech will have the right to participate in the defense thereof with counsel of HealthTech's choice.

10. End User Data; Protected Health Information.

End User acknowledges and agrees that in the course of accessing and receiving the Services, it may provide certain protected health information to HealthTech. End User shall provide all data necessary for the Services and acknowledges and agrees that End User is solely responsible for ensuring the accuracy and security of its data. End User shall ensure that all End User data provided to HealthTech is accurate and complete in all respects. End User shall be solely responsible for obtaining all requisite consents for use of End User data contemplated by this EULA and shall collect, store and transmit all such data in secure environments and through secure connections compliant with HIPAA (as defined below) requirements using industry-accepted security technologies.

End User and HealthTech agree to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (PL 104-91) ("HIPAA"), the HITECH Act provisions of the American Recovery and Reinvestment Act of 2009 (PL 111-5) ("ARRA") and regulations enacted by the United States Department of Health and Human Services at 45 C.F.R. Parts 160 – 164 (the "Privacy and Security Rules") in the performance of their respective obligations hereunder. In that regard, End User and HealthTech further agree to comply with the provisions of the Business Associate Addendum attached hereto and incorporated herein by reference. In the event of conflict between the Business Associate Addendum and any provision of this EULA, the terms of the Business Associate Addendum shall control.

In the event End User encounters any protected health information not belonging to End User, End User shall immediately notify HealthTech and shall not use or disclose such information for any purpose.

11. Miscellaneous.

(a) *Severability.* If a court of competent jurisdiction finds any provision of this EULA invalid or unenforceable, that provision of the EULA will be amended to achieve as nearly as possible the intent of the Parties, and the remainder of this EULA will remain in full force and effect.

(b) *Governing Law; Venue.* This EULA shall be construed and interpreted in accordance with the domestic laws of the state of Tennessee, excluding any choice of law rules. Unless the Parties agree in writing to mediate or arbitrate a dispute, all disputes arising out of this EULA will be subject to the exclusive jurisdiction of the state and federal courts with applicable jurisdiction located in the metropolitan area of Nashville, Tennessee, and each Party hereby consents to the personal jurisdiction thereof. Each Party hereby waives any right to trial by jury with respect to any dispute, suit, action or proceeding arising out of or relating to this EULA or otherwise relating to the relationship of the Parties, whether in contract, tort or otherwise.

(c) *No Waiver.* No modification, amendment or waiver of any provision of this EULA shall be effective unless in writing and signed by the Party to be charged. The failure of either Party to enforce at any time the provisions of this EULA shall in no way constitute a present or future waiver of such provisions, nor shall it in any way affect the right of either Party to enforce each and every such provision thereafter.

- (d) *No Assignment.* End User may not sell, assign, sublicense, encumber or otherwise transfer this EULA, the Services, the license granted hereunder, or any rights in and to any of the foregoing, directly or indirectly without the express prior written consent of HealthTech. For purposes of this EULA, any merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets with respect to End User shall, without limitation, be deemed an attempted assignment of this EULA by End User. Any attempt by End User to assign its rights or obligations under this EULA in breach of this Section shall be void and of no effect. HealthTech may assign its interests under this EULA on notice to End User. This EULA shall be binding upon and inure to the benefit of HealthTech and End User and their successors and permitted assigns.
- (e) *Independent Contractors.* In performing their duties hereunder, the Parties shall be and shall act as independent contractors, and neither Party is or will act as a partner, agent, employee of, or in joint venture with, the other Party. Neither Party will have the authority to bind the other Party, contractually or otherwise, except as specifically authorized in this EULA
- (f) *Access to Books and Records.* HealthTech shall retain and make available, upon request, for a period of four years after the furnishing of the Services as part of this EULA, the agreement and books, documents and records which are necessary to certify the nature and extent of the costs thereof when requested by the Secretary of Health and Human Services or the Controller General or any of their duly authorized representatives. This provision relating to the retention and production of documents is included because of possible application of section 1861(v)(1)(H) of the Social Security Act to this EULA. If section 1861(v)(1)(H) is inapplicable, then this Section shall be inoperative and without force or effect.
- (g) *Non-Exclusion.* Neither Party is, or during the term of this EULA will be, excluded from participation in any federal healthcare program.
- (h) *Force Majeure.* If either Party is prevented from performing any of its obligations under this EULA due to any cause beyond such Party's reasonable control, including, without limitation, an act of God, fire, flood, explosion, war, strike, embargo, government regulation, civil or military authority, acts or omissions of carriers, transmitters, providers of telecommunications or Internet services, vandals, or hackers, time for that Party's performance will be extended for the period of the delay or inability to perform due to such occurrence without liability to the other Party; provided, however, that End User will not be excused from the payment of any sums of money owed by End User to HealthTech.
- (i) *Export Controls.* The Services provided in connection with this EULA is for use in the United States only. End User will not export or send the Services and any software provided therein or any portion or aspect thereof to any other country or territory.
- (j) *Notices.* Notices under this EULA shall be sent to the other Party User at the address shown on the Order Form or as shown on another agreement between the parties, as applicable, and notices to HealthTech shall be sent to HealthTech Solutions Group, LLC, 405 Duke Dr., Suite 210 Franklin, TN 37067 with a copy also to Legal Counsel for HealthTech at HealthTech, LLC, 405 Duke Dr., Suite 210, Franklin, TN 37067 ATTN: Legal Counsel, or as updated from time to time in writing by either Party, and will be deemed delivered to the receiving party three (3) days after being placed in the U.S. Mail, postage pre-paid, on actual receipt upon hand delivery, or the next day upon delivery by overnight carrier.
- (k) *Entire Agreement; Counterparts.* With respect to the subject matter hereof, this EULA and any exhibits or Order Form pertaining hereto contain the entire agreement between the Parties concerning the Services, and such agreement supersedes all prior written and oral and all contemporaneous oral agreements and understandings between HealthTech and End User concerning the Services. Any exhibits or Order Form pertaining hereto may be executed in counterparts, each of which will be deemed an original, but all of which together constitute one and the same agreement. Signatures transmitted by facsimile transmission, by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

[EULA BUSINESS ASSOCIATE ADDENDUM ON FOLLOWING PAGE]

EULA BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum ("Addendum") supplements and is made part of that certain End User License Agreement ("EULA"), by and between the End User and HealthTech Solutions Group, LLC[®] ("Associate").

End User and Associate agree that the parties incorporate this Addendum into the EULA in order to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) ("ARRA") and their implementing regulations set forth at 45 C.F.R. Parts 160 and 164 (the "Privacy and Security Rule"). To the extent Associate is acting as a Business Associate of End User pursuant to the EULA, the provisions of this Addendum shall apply and Associate shall be subject to the penalty provisions as specified by ARRA (42 USC §§ 17931(c), 17934(c)). To the extent Associate is to carry out an obligation of a Covered Entity under the Privacy and Security Rule, Associate shall comply with the requirements of the Privacy and Security Rule that apply to Covered Entities in the performance of such obligation.

1. **Definitions.** Capitalized terms not otherwise defined in this Addendum shall have the meaning set forth in the Privacy and Security Rule. References to "PHI" mean Protected Health Information created or received by Associate from End User or on End User's behalf.

2. **Uses or Disclosures.** Associate will neither use nor disclose PHI except as permitted or required by this Addendum or as Required By Law. Associate will not sell PHI or use or disclose PHI for purposes of marketing or fundraising, as defined and proscribed in the Privacy and Security Rule and ARRA. Associate is permitted to use and disclose PHI:
 - (i) to perform any and all obligations of Associate as described in the EULA, provided that such use or disclosure would not violate the Privacy and Security Rule, if done by End User directly;
 - (ii) as otherwise permitted by law, provided that such use or disclosure would not violate the Privacy and Security Rule, if done by End User directly and provided that End User gives its prior written consent;
 - (iii) to perform Data Aggregation services relating to the health care operations of End User;
 - (iv) to report violations of the law to federal or state authorities consistent with 45 C.F.R. § 164.502(j)(1);
 - (v) as necessary for Associate's proper management and administration and to carry out Associate's legal responsibilities (collectively "Associate's Operations"), provided that Associate may only disclose PHI for Associate's Operations if the disclosure is Required By Law or Associate obtains reasonable assurance, evidenced by a written contract, from the recipient that the recipient will: (1) hold such PHI in confidence and use or further disclose it only for the purpose for which Associate disclosed it to the recipient or as Required By Law; and (2) notify Associate of any instance of which the recipient becomes aware in which the confidentiality of such PHI was breached;
 - (vi) to de-identify PHI in accordance with 45 C.F.R. § 164.514(b), provided that such de-identified information may be used and disclosed only consistent with applicable law.

In the event End User notifies Associate of a restriction request that would restrict a use or disclosure otherwise permitted by this Addendum, Associate shall comply with the terms of the restriction request.

3. **Information Safeguards.** Associate will maintain appropriate administrative, technical and physical safeguards to prevent use or disclosure of PHI not permitted by this Addendum. Associate will also maintain administrative, technical and physical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI in compliance with the Privacy and Security Rule.

4. **Subcontractors and Agents.** Associate will require any of its subcontractors and agents, to which Associate discloses any PHI, to agree to comply with the same privacy and security obligations as Associate with respect to such PHI.

5. **Minimum Necessary.** Associate represents that the PHI requested, used or disclosed by Associate shall be the minimum amount necessary to carry out the purposes of the EULA. Associate will limit its uses and

disclosures of, and requests for, PHI (i) when practical, to the information making up a Limited Data Set; and (ii) in all other cases subject to the requirements of 45 CFR § 164.502(b), to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure or request.

6. **Obligations of End User.** End User shall (i) provide Associate with a copy of the notice of privacy practices that End User produces pursuant to 45 C.F.R. § 164.520, and End User shall promptly furnish Associate with copies of any material changes to such notice; (ii) notify Associate of any changes in, or revocation of, permission by an individual to use or disclose PHI, if such changes affect Associate's permitted or required uses or disclosures; (iii) notify Associate of any confidential communication request or restriction to the use or disclosure of PHI affecting Associate that End User has agreed to in accordance with 45 C.F.R. § 164.522.
7. **Access and Amendment.** Associate shall permit End User or, at End User's request, an individual (or the individual's personal representative) to inspect and obtain copies of any PHI about the individual that is in Associate's custody or control and that is maintained in a Designated Record Set. Associate will, upon receipt of notice from End User, promptly amend or permit End User access to amend any portion of PHI so that End User may meet its amendment obligations under 45 C.F.R. § 164.526.
8. **Disclosure Accounting.** Except for disclosures excluded from the accounting obligation by the Privacy and Security Rule and regulations issued pursuant to ARRA, Associate will record for each disclosure that Associate makes of PHI the information necessary for End User to make an accounting of disclosures pursuant to the Privacy and Security Rule. Associate will make this information available to End User promptly upon End User's request for the period requested, but for no longer than the six (6) years preceding End User's request for the information (except Associate need not have any information for disclosures occurring before the effective date of this Addendum or with respect to disclosures required to be recorded by ARRA, the effective date of the ARRA regulations with respect to End User).
9. **Inspection of Books and Records.** Associate will make its internal practices, books, and records, relating to its use and disclosure of PHI, available upon request to End User or the Secretary of U.S. Department of Health and Human Services ("HHS") to determine End User's compliance with the Privacy and Security Rule.
10. **Reporting.** To the extent known to or discovered by Associate, Associate shall promptly report to End User any use or disclosure of PHI not permitted by this Addendum, any Security Incident involving electronic PHI and any Breach of Unsecured Protected Health Information. Associate shall mitigate, to the extent practicable, any harmful effect known to it of a Security Incident, Breach or use or disclosure of PHI by Associate not permitted by this Addendum. Notwithstanding the foregoing, the parties acknowledge and agree that this section constitutes notice by Associate to End User of the ongoing existence and occurrence of Deminimus Incidents (as defined below) for which no additional notice to End User shall be required. "Deminimus Incidents" means (i) attempted but unsuccessful security incidents, including, but not limited to, pings and other broadcast attacks on Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of electronic PHI; and (ii) incidents involving the incidental access to, or minimal encounter, with PHI provided that the recipient would not reasonably be able to retain such PHI and the incident does not pose a significant risk of harm to the individual who is the subject of the PHI, as reasonably determined by Associate. All reports of Breaches shall be made in compliance with 45 CFR § 164.410.
11. **Term and Termination.**
 - 11.1 **Term.** This Addendum shall be effective as of the effective date of the EULA and shall remain in effect until termination of the EULA. Either party may terminate this Addendum and the EULA effective immediately if it determines that the other party has breached a material provision of this Addendum and failed to cure such breach within thirty (30) days of being notified by the other party of the breach. If the non-breaching party determines that cure is not possible, such party may terminate this Addendum and the EULA effective immediately upon written notice to other party. If termination is not feasible, the non-breaching party shall report the breach to HHS.
 - 11.2 **Obligations upon Termination.** Upon termination of this Addendum for any reason, Associate will, if feasible, return to End User or destroy all PHI maintained by Associate in any form or medium, including all copies of such PHI. Further, Associate shall recover any PHI in the possession of its

agents and subcontractors and return to End User or destroy all such PHI. In the event that Associate determines that returning or destroying any PHI is infeasible, Associate may maintain such PHI but shall continue to abide by the terms and conditions of this Addendum with respect to such information and shall limit its further use or disclosure of such information to those purposes that make return or destruction of the information infeasible.

- 11.3 Survival. Upon termination of this Addendum for any reason, all of Associate's obligations under this Addendum shall survive termination and remain in effect (a) until Associate has completed the return or destruction of PHI as required by Addendum Section 11.2 and (b) to the extent Associate retains any PHI pursuant to Addendum Section 11.2.
12. General Provisions. In the event that any law, final regulation or amendment to final regulations is enacted by legislative authority or promulgated by HHS or other government regulatory authority with respect to PHI, the parties shall negotiate in good faith to amend this Addendum to remain in compliance with such law and/or regulations. In the absence of any such amendment, this Addendum shall be amended as a matter of law to conform to the requirements of law. Any ambiguity in this Addendum shall be resolved to permit End User to comply with the Privacy and Security Rule. Nothing in this Addendum shall be construed to create any rights or remedies in any third parties or any agency relationship between the parties. A reference in this Addendum to a section in the Privacy and Security Rule means the section as in effect or as amended. The terms and conditions of this Addendum override and control any conflicting term or condition of the EULA. All non-conflicting terms and conditions of the EULA remain in full force and effect.