

## Cloud Services Agreement

This Cloud Services Agreement, and the Order which references these terms (collectively, this “**Cloud Services Agreement**”), is by and between **Evolutionary Health Solutions, LLC**, an Ohio limited liability company (“**EHS**”), and the customer identified in the applicable Order (“**Customer**”).

WHEREAS, Customer wishes to procure from EHS the Services (as defined below), and EHS wishes to provide such Services to Customer, on the terms and conditions set forth in this Cloud Services Agreement.

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

### 1. Definitions.

1.1 “*Affiliates*” of a party means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such party.

1.2 “*Authorized User*” means each of the Customer or Sub-licensee employees authorized by the Customer or a Sub-licensee and permitted by the terms and conditions of this Cloud Services Agreement to use the Services.

1.3 “*Available*” means the Services are available for access and use by Customer and its Authorized Users over the Internet and operating materially in accordance with the Specifications.

1.4 “*Customer Data*” means data (excluding PII) in any form which is collected, uploaded or otherwise received from Customer, a Sub-licensee, or an Authorized User for use with the Services. Customer Data excludes EHS Materials.

1.5 “*Customer Failure*” means Customer’s or a Sub-licensee’s delay in performing, or failure to perform, any of its obligations under this Cloud Services Agreement.

1.6 “*Customer Systems*” means the Customer’s or any Sub-licensee’s information technology infrastructure, including hardware, software, databases (including database management systems) and networks, whether operated directly by Customer, a Sub-licensee, or through the use of third-party services.

1.7 “*Documentation*” means any manuals, instructions or other documents or materials that EHS provides or makes available to Customer within embedded help files and which describe the functionality, components, features or requirements of the Services or EHS Materials, including any aspect of their installation, configuration, integration, operation, use, support or maintenance.

1.8 “*Effective Date*” has the meaning set forth in the applicable Order.

1.9 “*EHS Materials*” means the Service Software, Specifications, Documentation and EHS Systems and any and all other information, data, documents, materials, methods, processes, technologies and inventions, plans or reports, that are provided or used by EHS or any Subcontractor in connection with the Services.

1.10 “*EHS Personnel*” means individuals involved in the performance of Services as employees, agents or independent contractors of EHS or any Subcontractor.

1.11 “*EHS Systems*” means the information technology infrastructure used by or on behalf of EHS in performing the Services, including all computers, software, hardware, databases (including database management systems) and networks, whether operated directly by EHS or through the use of third-party services.

1.12 “*Exceptions*” means (a) access to or use of the Services by Customer, Sub-licensee, any Authorized User or any third party that does not strictly comply with this Cloud Services Agreement and the

Specifications; (b) Customer Failure or any deficiency or failure of Customer Systems; (c) Customer's or its Authorized User's Internet connectivity; (d) Force Majeure Event; (e) failure, interruption, outage or other problem with any software, hardware, system, network, facility or other matter not supplied by EHS pursuant to this Cloud Services Agreement; (f) Scheduled Downtime; or (g) suspension or termination of the Services pursuant to **Section 2.8**.

1.13 "*Fees*" means the fees set out in the applicable Order.

1.14 "*Harmful Code*" means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner (i) the function of any computer, software, firmware, hardware, system or network or (ii) the security, integrity, confidentiality or use of any data, or (b) prevent Customer or any Authorized User from accessing or using the Services or EHS Systems as intended by this Cloud Services Agreement.

1.15 "*HIPAA*" means the Health Insurance Portability and Accountability Act, as amended.

1.16 "*Intellectual Property Rights*" means existing and future registered and unregistered rights granted, applied for or otherwise 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.

1.17 "*Law*" means any statute, law, ordinance, regulation, rule, order, constitution, treaty, common law, judgment, decree or other requirement of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

1.18 "*Losses*" means any losses, damages, liabilities, deficiencies, claims, actions, judgments, 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.

1.19 "*Maximum Practice Locations*" means the number of Practice Locations set forth on the Order.

1.20 "*Order*" means one or more written or electronic orders specifically referencing this Cloud Services Agreement, including all Specifications set forth in such orders, which, by this reference are incorporated in and made a part of this Cloud Services Agreement.

1.21 "*Permitted Use*" means any use of the Services by an Authorized User solely in or for Customer's internal business operations or a Sub-licensee's internal business operations.

1.22 "*Person*" means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.

1.23 "*PHI*" means "protected health information" as defined under the Health Insurance Portability and Accountability Act of 1996,

1.24 "*PII*" means any information that, individually or in combination, does or can identify a specific individual or by or from which a specific individual may be identified, contacted or located. PII includes all "nonpublic personal information" as defined under the Gramm-Leach-Bliley Act, "Personal Data" as defined in local legislation enacted pursuant to the EU Data Protection Directive (Directive 95/46/EC), "Personal Information" as defined under the Children's Online Privacy Protection Act of 1998, and all rules and regulations issued under any of the foregoing. PII does not include PHI.

1.25 "*Practice Locations*" means each separate physical office that Customer or a Sub-licensee may want to utilize or access the Services.

1.26 “*Process*” means to take any action or perform any operation or set of operations that the Services are capable of taking or performing on any data, information or other content. “Processing” and “Processed” have correlative meanings.

1.27 “*Representatives*” means, with respect to a party, that party’s and its Affiliates’ employees, officers, directors, consultants, agents, independent contractors, service providers, subcontractors and legal advisors.

1.28 “*Service Availability Failure*” means a failure of the Services to meet the Availability Requirement.

1.29 “*Service Software*” means EHS software applications and any third-party software applications, and, in each case, all new versions, updates, revisions, improvements and modifications provided by EHS for remote access and use of as part of the Services.

1.30 “*Specifications*” means the specifications for the Services set forth in the applicable Order, including, the Cloud Services Product Specification as set forth in Schedule 1.

1.31 “*Support & Maintenance Services Agreement*” means a separate support and maintenance agreement entered into between Customer and EHS pursuant to which EHS will provide support and/or maintenance services for a separate fee.

1.32 “*Term*” has the meaning set forth in **Section 10.2**.

## 2. Services.

2.1 *Services*. Subject to Customer’s, its Sub-licensee’s and the Authorized Users’ compliance with this Cloud Services Agreement, EHS will use its commercially reasonable efforts during the Term to provide to Customer and its Authorized Users the product/service offerings set forth in this Section 2.1 that are checked on the applicable Order (“**Services**”). The Services will be provided for no more than the Maximum Practice Locations and at the Service Levels defined in 2.2 below, substantially in accordance with the Specifications, and 24 hours per day, seven days per week, every day of the year, other than as a result of an Exception.

(a) Patient-Centered Medical Home (“**PCMH**”) Guide Initial Recognition. If the “PCMH Guide Initial Recognition” box is checked on the Order, EHS will provide the hosting, management and operation of the Service Software for use for Customer, its Sub-licensees and Authorized Users at a Practice Location for such Practice Location to pursue new recognition by the National Committee for Quality Assurance’s (“**NCQA**”) PCMH Recognition Program. Customer and each Sub-licensee recognize that EHS is not affiliated with NCQA and that EHS cannot guaranty certification, accreditation, or recognition by NCQA. Any certification, accreditation, or recognition by NCQA is in NCQA’s sole control and in NCQA’s sole discretion. In order to receive certification, accreditation, or recognition by NCQA, Customer or its Sub-licensees must register with NCQA, pay all fees required by NCQA, and comply with all terms and conditions of NCQA.

(b) PCMH Guide Annual. If the “PCMH Guide Annual Reporting” box is checked on the Order, EHS will provide the hosting, management and operation of the Service Software for use for Customer, its Sub-licensees and Authorized Users for a Practice Location after such Practice Location has received recognition by the NCQA’s PCMH Recognition Program. Customer recognizes that it is Customer’s responsibility to notify EHS in writing when a Practice Location has received NCQA PCMH recognition and thirty (30) days after such notification that Practice Location will be converted from PCMH Guide Initial Recognition to PCMH Guide Annual Reporting. Customer and each Sub-licensee recognizes that EHS is not affiliated with NCQA and that EHS cannot guaranty certification, registration or recognition by NCQA. Any certification, accreditation, or recognition by NCQA is in NCQA’s sole control and in NCQA’s sole discretion. In order to receive certification, accreditation, or recognition by NCQA, Customer or it Sub-licensees must register with NCQA, pay all fees required by NCQA, and comply with all terms and conditions of NCQA.

(c) Additional Services/Products. If any additional services or products are indicated on the Order, EHS will provide such products/services as described on the Order.

(d) Change of Status. Customer recognizes that it is Customer's responsibility to notify EHS when Customer wants to terminate a Practice Location, move a Practice Location from PCMH Guide New to PCMH Guide Annual, or move a Practice Location from Active Service Level to Glacier Storage Service Level and vice versa. Any such change will be effective thirty (30) days after EHS receives written notice of such change, subject to Section 10.5; provided, however, that EHS will move a Practice Location from Glacier Storage Service Level to Active Service Level within three (3) business days after receipt of such written notice from Customer.

2.2 *Service and System Control.* Except as otherwise expressly provided in this Cloud Services Agreement, as between the parties:

(a) Customer and Sub-licensees may only access the Services for use at Practice Locations that do not exceed the Maximum Practice Locations. Any use of the Services at any Practice Location in excess of the Maximum Practice Locations is a breach of this Cloud Services Agreement.

(b) EHS has and will retain sole control over the operation, provision, maintenance and management of the Services including the: (i) EHS Systems; and (ii) selection and deployment of the Service Software; and

(c) Customer has and will retain sole control over the operation, maintenance and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Services and EHS Materials by or through the Customer Systems or any other means controlled by Customer or any Authorized User.

2.3 *Sub-licensee.* Upon the written consent of EHS, Customer may sublicense the Services to its customers (the "**Sub-licensees**") for such Sub-licensee's internal business purposes provided that the Practice Locations for all such Sub-licensees and Customer do not exceed the Maximum Practice Locations. Such Sub-licensee may only use the Services in conjunction with the Practice Locations set forth on the written consent provided by EHS. Prior to presenting any sublicense agreement to any of Customer's customer, Customer must first present such sublicense agreement to EHS. Any such sublicense agreement will have all of the protections for EHS that are set forth in this Cloud Services Agreement. EHS will have a period of no less than seven (7) days to review the sublicense agreement and to make comments to Customer about the sublicense agreement. Customer agrees to make all changes provided by EHS to the sublicense agreement. Prior to executing any sublicense agreement with any of Customer's customer, if any changes were made to the sub-license agreement since the version EHS reviewed, Customer will again present such sublicense agreement to EHS with all such changes highlighted or redlined. EHS will again have a period of no less than seven (7) days to review the sublicense agreement and to make comments to Customer about the sublicense agreement and Customer will incorporate all changes. Customer may not execute or sublicense the Services without EHS's prior written consent. No Sub-licensee may sublicense or assign its rights under the sublicense agreement or to access the Services or EHS Materials. Customer acknowledges and agrees that any Sub-licensee's sublicense may be revoked with respect to a specific Sub-licensee if EHS determines in its sole discretion such Sub-licensee is utilizing such sublicense or the Services or EHS Material in contravention of EHS's business or in any way harms EHS's reputation.

2.4 *Service Management.* Each party shall, throughout the Term, maintain within its organization a service manager to serve as such party's primary point of contact for day-to-day communications, consultation and decision-making regarding the Services. Each service manager shall be responsible for providing all day-to-day consents and approvals on behalf of such party under this Cloud Services Agreement. Each party shall ensure its service manager has the requisite organizational authority, skill, experience and other qualifications to perform in such capacity. Each party shall use commercially reasonable efforts to maintain the same service manager in place throughout the Term. If either party's service manager ceases to be employed by such party or such party

otherwise wishes to replace its service manager, such party shall promptly name a new service manager by written notice to the other party.

2.5 *Orders.* Orders will be effective only when agreed in writing by Customer and EHS and executed by Customer in writing or electronically. Any modifications or changes to the Services under any executed Order, including the addition of Practice Locations that exceed the Maximum Practice Locations, will be effective only if and when memorialized in a written or electronic change order (“**Change Order**”) executed by Customer and EHS in writing or electronically.

2.6 *Subcontractors.* EHS may from time to time in its discretion engage third parties to perform part of the Services (each, a “**Subcontractor**”). Upon request at any time by the Customer, EHS shall identify all Subcontractors which Process any Customer Data.

2.7 *Suspension or Termination of Services.* Without limiting any other rights or remedies under this Cloud Services Agreement, EHS may suspend, terminate or otherwise deny Customer’s, a Sub-licensee’s or any Authorized User’s access to or use of all or any part of the Services or EHS Materials, without incurring any resulting obligation or liability, if: (a) EHS receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires EHS to do so; (b) EHS believes, in its good faith and reasonable discretion, that Customer, a Sub-licensee, or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Services; or (c) Customer, a Sub-licensee, or any Authorized User has failed to comply with any material term of this Cloud Services Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Cloud Services Agreement or in any manner that does not comply with any material instruction or requirement of the Specifications.

2.8 *Maximum Practice Locations.* Customer acknowledges that Customer may only use the Services in conjunction with Practice Locations that do not exceed the Maximum Practice Locations set forth on the Order. If Customer desires to utilize the Services in conjunction with more Practice Locations, Customer must enter into a new Order (and pay additional fees) to EHS.

### 3. **Authorization and Customer Restrictions.**

3.1 *Authorization.* Subject to Customer’s and Sub-licensee’s compliance and performance in accordance with the terms and conditions of this Cloud Services Agreement, EHS hereby authorizes Customer and each Sub-licensee to access and use, during the Term, the Services and such EHS Materials as EHS may supply or make available to Customer solely for the Permitted Use by and through Authorized Users in accordance with the Specifications and for a number of Practice Locations that do not exceed the Maximum Practice Locations. This authorization is non-exclusive and, other than as may be expressly set forth in **Section 2.4** or **Section 15.9**, non-transferable.

3.2 *Authorization Limitations and Restrictions.* Neither Customer nor any Sub-licensee shall, nor shall either of them permit any Person to, access or use the Services or EHS Materials except as expressly permitted by this Cloud Services Agreement. Without limiting the generality of the foregoing, neither Customer nor any Sub-licensee shall, nor shall either of them permit any Person to, except as this Cloud Services Agreement or applicable Law expressly permits:

- (a) copy, modify or create derivative works or improvements of the Services or EHS Materials;
- (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services or EHS Materials to any Person other than an Authorized User, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
- (c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services or EHS Materials, in whole or in part;

(d) bypass or breach any security device or protection used by the Services or EHS Materials or access or use the Services or EHS Materials other than by an Authorized User;

(e) input, upload, transmit or otherwise provide to or through the Services or EHS Systems, any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code;

(f) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, EHS Systems or EHS's provision of services to any third party;

(g) remove, delete, alter or obscure any trademarks, Specifications, Documentation, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services or EHS Materials, including any copy thereof;

(h) access or use the Services or EHS Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party, or that violates any applicable Law;

(i) access or use the Services or EHS Materials for purposes of competitive analysis of the Services or EHS Materials, the development, provision or use of a competing software service or product or any other purpose that is to EHS's detriment or commercial disadvantage;

(j) otherwise access or use the Services or EHS Materials beyond the scope of the authorization granted under **Section 3.1**; or

(k) transmit, upload, store or otherwise transfer any PII or other information set forth in **Section 6.1** to the Services or EHS Materials, and will not use the Services or EHS Materials in connection with PII or other information set forth in **Section 6.1**.

#### 4. Customer Obligations.

4.1 *Customer Systems and Cooperation.* During the Term, Customer has the responsibility to: (a) set up, maintain and operate in good repair and in accordance with the Specifications all Customer Systems on or through which the Services are accessed or used; (b) provide all cooperation and assistance as EHS may reasonably request to enable EHS to exercise its rights and perform its obligations under and in connection with this Cloud Services Agreement; (c) comply with the Customer Responsibilities set forth on Schedule 1; (d) require each Sub-licensee to set up, maintain and operate in good repair and in accordance with the Specifications all Customer Systems on or through which the Services are accessed or used; (e) provide all cooperation and assistance as EHS may reasonably request to enable EHS to exercise its rights and perform its obligations under and in connection with this Cloud Services Agreement; and (f) require each Sub-licensee to comply with the Customer Responsibilities set forth on Schedule 1.

4.2 *Effect of Customer Failure or Delay.* EHS is not responsible or liable for any delay or failure of performance caused in whole or in part by a Customer Failure.

4.3 *Corrective Action and Notice.* If Customer becomes aware of any actual or threatened activity prohibited by **Section 3.2** or otherwise in violation of this Cloud Services Agreement, Customer shall, and shall cause its Sub-licensee's and Authorized Users to, promptly: (a) take reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects; and (b) notify EHS of any such actual or threatened activity.

4.4 *No-Affiliation.* Customer hereby acknowledges and agrees EHS is in no way affiliated, associated, authorized, endorsed by, or in any way officially connected with National Committee for Quality Assurance, Amazon (who may be a Subcontractor for EHS), or any of the foregoing's affiliates, officers, directors, members, managers, officers, employees, or agents.

#### 5. Service Levels and Credits.

5.1 *Service Levels.* EHS will use commercially reasonable efforts to make the Cloud Services Available at least 99.8% of the time as measured over the course of each calendar month during the Term (each calendar month, a “**Service Period**”), excluding unavailability as a result of any Scheduled Downtime or any other Exceptions (the “**Availability Requirement**”).

5.2 *Service Availability Failures and Remedies.* In the event of a Service Availability Failure, EHS shall issue a credit to Customer for 10% of the monthly Fees for the Services due for the Service Period in which the Service Availability Failure occurred (each, a “**Service Credit**”). EHS has no obligation to issue any Service Credit unless (a) Customer reports the Service Availability Failure to EHS immediately on becoming aware of it; and (b) requests such Service Credit in writing within thirty (30) days of the Service Availability Failure. Any Service Credit payable to Customer under this Cloud Services Agreement will be issued to Customer in the calendar month following the month in which Customer requests the Service Credit. This **Section 5.2** sets forth EHS’s sole obligation and liability and Customer’s sole remedy for any Service Availability Failure.

5.3 *Service Monitoring and Management.* EHS will use commercially reasonable efforts to monitor and manage the Services to optimize Availability that meets or exceeds the Availability Requirement.

5.4 *Scheduled Downtime.* EHS will use commercially reasonable efforts to schedule downtime for routine maintenance of the Services between the hours of 9:00 p.m. on Saturday and 10:00 a.m. on Sunday (“**Scheduled Downtime**”), unless otherwise expressly set forth in the Specifications. All times are Eastern Time.

5.5 *Emergency Downtime.* EHS reserves the right to perform emergency maintenance services at any time and without prior notice to Customer (“**Emergency Maintenance**”); provided that, EHS will use commercially reasonable efforts to provide prior notice to Customer.

5.6 *Support & Maintenance.* Unless EHS and Customer enter into a Support and Maintenance Services Agreement, EHS will not provide any training, maintenance, or support to Customer relating to the Services except as set forth in this **Section 5.6**. EHS will provide Customer with:

(a) Commercially reasonable e-mail support for the EHS Materials and Services during EHS’s normal support time, which is typically the hours of 9:00 am to 4:00 pm Eastern Time Monday through Friday, except for holidays, government holidays, and days EHS’s bank is closed. EHS will provide an acknowledgement of receipt to all support e-mail inquiries within twenty-four hours (weekends and holidays excluded) with an estimate of how long it might take to resolve the issue; and

(b) Updates and enhancements for the EHS Materials and Services, but only if and to the extent that EHS generally makes such updates and enhancements available to its customers without a separate charge.

5.7 *Changes to Support and Maintenance.* EHS may amend any support and maintenance services set forth in **Section 5.6** from time to time in its sole discretion; provided that, no such modification will materially degrade the level of service or other benefits provided to Customer unless such modification has been agreed upon in writing by Customer.

## 6. PII and PHI.

6.1 *Prohibited Data.* Customer acknowledges, and will cause each Sub-licensee to acknowledge, that the Services are not designed to meet the security standards for PII, or for security standards promulgated by governmental bodies for special categories of classified information for state security, for use in defense-related applications, or for use in similar applications. It is the Customer’s and the Sub-licensee’s responsibilities to take such steps as are necessary to consider such requirements and prevent use of the Services beyond such design limitations.

6.2 *Non-transmit.* Customer agrees that it will not transmit, upload, store or otherwise transfer any PII or other information set forth in **Section 6.1** to the Services or EHS Materials, and will not use the Services or EHS Materials in connection with PII or other information set forth in **Section 6.1**, and will cause each Sub-licensee to do the same.

6.3 *PHI*. EHS represents and warrants that the Service Software is HIPAA compliant. EHS will, upon request of Customer or a Sub-licensee, execute a Business Associate Agreement reasonably acceptable to EHS.

## 7. Fees; Payment Terms.

7.1 *Fees*. Customer shall pay EHS the Fees in accordance with this **Section 7**.

7.2 *Fees During Renewal Terms*. The Fees are fixed during the Initial Term. EHS may increase the Fees for any Renewal Term by providing written notice to Customer at least sixty (60) days prior to the commencement of such Renewal Term.

7.3 *Taxes*. All Fees and other amounts payable by Customer under this Cloud Services Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on EHS's income.

7.4 *Payment*. Customer shall pay all Fees within thirty (30) days after the date of the invoice. Customer shall make all payments hereunder in US dollars. Customer shall make payments to the address or account specified in the applicable invoice.

7.5 *Inaccurate Charges*. If Customer disputes any Fees, Customer shall within thirty (30) days of the invoice date (a) pay the undisputed Fees and (b) notify EHS, in writing of the basis for disputing the Fees. The parties agree to discuss any dispute within ten (10) days of EHS's receipt of such description. If necessary, EHS shall provide a corrected invoice to Customer after the discussion and Customer will pay such invoice within thirty (30) days of the invoice date.

7.6 *Late Payment*. If Customer fails to make any payment when due then, in addition to all other remedies that may be available:

- (a) EHS may charge interest on the past due amount at the rate of 1.5% per month calculated daily;
- (b) Customer shall reimburse EHS for all reasonable costs incurred by EHS in collecting any late payments or interest, including attorneys' fees, court costs and collection agency fees; and
- (c) if such failure continues for thirty (30) days following written notice of such failure (including notice that the Services may be suspended), EHS may suspend performance of the Services until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Customer by reason of such suspension.

7.7 *No Deductions or Setoffs*. All amounts payable to EHS under this Cloud Services Agreement shall be paid by Customer to EHS in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable Law).

## 8. Intellectual Property Rights.

8.1 *Services and EHS Materials*. All right, title and interest in and to the Services and EHS Materials, including all Intellectual Property Rights therein, are and will remain with EHS. Customer has no right, license or authorization with respect to any of the Services or EHS Materials except as expressly set forth in **Section 3.1**, in each case subject to the remainder of this Cloud Services Agreement including **Section 3.2**. All other rights in and to the Services and EHS Materials are expressly reserved by EHS. All information learned or derived by utilizing the Services and the EHS Materials and all intellectual property related thereto, including the overarching data sets derived from the Services and EHS Materials, the best paths to obtaining certification or licensing, the fastest way to obtain certification or licensing, and the correlation between certification and licensing and patient outcomes will be owned by EHS and will be the Confidential Information of EHS.



8.2 *Customer Data.* As between Customer and EHS, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data and Customer Branding, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in **Section 8.3**.

8.3 *Consent to Use Customer Data.* Customer hereby grants all such rights and permissions in or relating to Customer Data: (a) to EHS, its Subcontractors and EHS Personnel as are necessary or useful to perform the Services; and (b) to EHS as are necessary or useful to enforce this Cloud Services Agreement and exercise its rights and perform its obligations hereunder.

## 9. Confidentiality.

9.1 *Confidential Information.* In connection with this Cloud Services Agreement each party (as the “**Disclosing Party**”) may disclose or make available Confidential Information to the other party (as the “**Receiving Party**”). Subject to **Section 9.2**, “**Confidential Information**” means information in any form or medium (whether oral, written, electronic or other) that is identified as confidential at time of disclosure or if the circumstances of disclosure would reasonably indicate confidential treatment, including information consisting of or relating to the Disclosing Party’s technology, trade secrets, know-how, business operations, plans, strategies, customers, pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated or otherwise identified as “confidential”. Without limiting the foregoing, (a) all Customer Data is and will remain the Confidential Information of Customer, (b) the Service Software, Specifications and Documentation are and will remain the Confidential Information of EHS, and (c) the terms and existence of this Cloud Services Agreement are the Confidential Information of EHS.

9.2 *Exclusions.* Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information’s being disclosed or made available to the Receiving Party in connection with this Cloud Services Agreement; (b) was or becomes generally known by the public other than by the Receiving Party’s or any of its Representatives’ noncompliance with this Cloud Services Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party’s knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

9.3 *Protection of Confidential Information.* As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

(a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Cloud Services Agreement;

(b) except as may be permitted by and subject to its compliance with **Section 9.4**, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party’s exercise of its rights or performance of its obligations under and in accordance with this Cloud Services Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party’s obligations under this **Section 9.3**; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this **Section 9.3**;

(c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its sensitive information and in no event less than a reasonable degree of care: (i) with respect to trade secrets, for so long as such trade secrets qualify as trade secrets under applicable state law, (ii) with respect to Customer Data (including all PII), in perpetuity, and (iii) with respect to all other Confidential Information, five (5) years from the date of receipt or (if longer) for such period as the information remains confidential; and

(d) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this **Section 9**.

9.4 *Compelled Disclosures*. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under **Section 9.3**; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this **Section 9.4**, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

## 10. Term and Termination.

10.1 *Initial Term*. The initial term of this Cloud Services Agreement commences on the Effective Date and, unless terminated earlier pursuant to any of this Cloud Services Agreement's express provisions, will continue for the term as set forth in the applicable Order (the "**Initial Term**").

10.2 *Renewal*. This Cloud Services Agreement will automatically renew for additional successive terms equal to the initial term set forth in the applicable Order unless earlier terminated pursuant to this Cloud Services Agreement's express provisions or either party gives the other party written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term (each, a "**Renewal Term**" and together with the Initial Term, the "**Term**").

10.3 *Termination*. In addition to any other express termination right set forth elsewhere in this Cloud Services Agreement:

(a) EHS may terminate this Cloud Services Agreement, effective on written notice to Customer, if: (i) Customer fails to timely pay any amount when due under this Cloud Services Agreement and after EHS has given ten (10) days' written notice threatening termination; (ii) Customer breaches any of its obligations under **Section 3.2** (Authorization and Customer Restrictions) or **Section 9** (Confidentiality); or (iii) any Sub-licensee breaches any provision of a sublicense agreement;

(b) either party may terminate this Cloud Services Agreement, effective on written notice to the other party, if the other party materially breaches this Cloud Services Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach; and

(c) either party may terminate this Cloud Services Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

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

(a) all rights, licenses, consents and authorizations granted by either party to the other hereunder will immediately terminate;

(b) EHS shall have the right to destroy all documents and tangible materials containing, reflecting, incorporating or based on Customer Data or Customer's Confidential Information;

(c) Customer shall, and shall cause each Sub-licensee to, in accordance with the applicable Specifications, cease all use of any Services or EHS Materials and (i) promptly return to EHS, or at EHS's written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on any EHS Materials or EHS's Confidential Information and (ii) permanently erase all EHS Materials and EHS's Confidential Information from all systems Customer or such Sub-licensee directly or indirectly controls.

(d) notwithstanding anything to the contrary in this Cloud Services Agreement, with respect to information and materials then in its possession or control: (i) the Receiving Party may retain the Disclosing Party's Confidential Information, (ii) EHS may retain Customer Data, (iii) Customer may retain EHS Materials, in the case of each of sub clause (i), (ii) and (iii) in its then current state and solely to the extent and for so long as required by applicable Law, (iv) EHS may also retain Customer Data in its backups, archives and disaster recovery systems until such Customer Data is deleted in the ordinary course, (v) EHS may also retain Customer Data until Customer pays all costs and fees under this Cloud Services Agreement, the Order, and any other agreement, and (vi) all information and materials described in this **Section 10.4(d)** will remain subject to all confidentiality, security and other applicable requirements of this Cloud Services Agreement;

(e) EHS may disable all Customer, Sub-licensee, and Authorized User access to the Services and EHS Materials;

(f) if Customer terminates this Cloud Services Agreement pursuant to **Section 2.1(b)** or **Section 10.3(b)**, Customer will be relieved of any obligation to pay any Fees attributable to the period after the effective date of such termination;

(g) if EHS terminates this Cloud Services Agreement pursuant to **Section 10.3(a)** or **Section 10.3(b)**, all Fees that would have become payable had the Cloud Services Agreement remained in effect until expiration of the Term will become immediately due and payable, and Customer shall pay such Fees, together with all previously-accrued but not yet paid Fees, on receipt of EHS's invoice therefor; and

(h) EHS will at customer's cost exercise commercially reasonable efforts to effect an orderly and efficient transition to a successor ("**Transition Assistance**"). The parties shall cooperate in good faith in order to mutually agree in writing as to the Transition Assistance to be provided at the time. All Transition Assistance shall be paid for in advance on a time and materials basis by the Customer.

10.5 *Adjustment of Service Level.* If Customer desires to change its Service level (from Active Service Level to Glacier Storage Service Level, for example), Customer must provide EHS with at least thirty (30) days' prior written notice of such request. Customer and EHS will during such thirty (30) day period negotiate the fees and other provision related to such change and will execute a Change Order upon agreement of such changes. If the parties are unable to agree, the Cloud Services Agreement shall continue until otherwise terminated as set forth in this Agreement.

10.6 *Surviving Terms.* Each provision of this Cloud Services Agreement that, by its nature, should survive termination or expiration of this Cloud Services Agreement, will survive any expiration or termination of this Cloud Services Agreement.

## 11. Representations and Warranties.

11.1 *Mutual Representations and Warranties.* Each party represents and warrants to the other party that:

(a) it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;

(b) it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this Cloud Services Agreement;

(c) the execution of this Cloud Services Agreement by its representative has been duly authorized by all necessary corporate or organizational action of such party; and

(d) this Cloud Services Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

11.2 *Additional EHS Representations, Warranties and Covenants.* EHS represents, warrants and covenants to Customer that EHS will perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Cloud Services Agreement.

11.3 *Additional Customer Representations, Warranties and Covenants.* Customer represents, warrants and covenants to EHS that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data and Customer Branding. Customer represents, warrants and covenants that the Customer Data and Customer Branding does not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law.

11.4 ***DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 11.1 AND SECTION 11.2, ALL SERVICES AND EHS MATERIALS ARE PROVIDED “AS IS” AND EHS HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND EHS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE, OR RELATED TO LOSS OF DATA. WITHOUT LIMITING THE FOREGOING, EHS MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR EHS MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER’S OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THE SPECIFICATIONS, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE.***

## 12. Indemnification.

12.1 *EHS Indemnification.* EHS shall indemnify, defend and hold harmless Customer from and against Losses incurred by Customer arising out of or relating to any claim by a third party (other than a Sub-licensee or an Affiliate of Customer) to the extent that such Losses arise from any allegation in such claim that use of the Services in compliance with this Cloud Services Agreement (including the Specifications) infringes a U.S. Intellectual Property Right of such third party. The foregoing obligation does not apply to any claim or Losses arising out of or relating to any:

(a) access to or use of the Services or EHS Materials in combination with any hardware, system, software, network or other materials or service not provided or authorized in the Specifications or otherwise in writing by EHS;

(b) modification of the Services or EHS Materials other than: (i) by or on behalf of EHS; or (ii) with EHS’s written approval in accordance with EHS’s written specification;

(c) failure to timely implement any modifications, upgrades, replacements or enhancements made available to Customer or a Sub-licensee by or on behalf of EHS; or

(d) act, omission or other matter described in **Section 12.2(a)** or **Section 12.2(d)**, whether or not the same results in any claim against or Losses by any EHS Indemnitee.

12.2 *Customer Indemnification.* Customer shall indemnify, defend and hold harmless, and shall cause each Sub-licensee to indemnify, defend and hold harmless, EHS and its Subcontractors and Affiliates, and each of its and their respective officers, directors, employees, agents, successors and assigns (each, an “**EHS Indemnitee**”) from and against Losses incurred by such EHS Indemnitee in connection with any claim that arises out of or relates to any:

(a) Any breach of this Cloud Services Agreement by Customer;

(b) Customer Data, including any Processing of Customer Data by or on behalf of EHS in accordance with this Cloud Services Agreement, and including any claim that such Customer Data infringes, misappropriates or otherwise violates any Intellectual Property Rights, or any privacy or other rights of any third party or violates any applicable Law;

(c) Customer Branding, including any Processing of Customer Branding by or on behalf of EHS in accordance with this Cloud Services Agreement, and including any claim that such Customer Branding infringes, misappropriates or otherwise violates any Intellectual Property Rights, or any privacy or other rights of any third party or violates any applicable Law;

(d) EHS’s compliance with any specifications or directions provided by or on behalf of Customer, any Sub-licensee, or any Authorized User to the extent prepared without any contribution by EHS.

12.3 *Indemnification Procedure.* Each party shall promptly notify the other party in writing of any claim for which such party believes it is entitled to be indemnified pursuant to **Section 12.1** or **Section 12.2**. The party seeking indemnification (the “**Indemnitee**”) shall cooperate with the other party (the “**Indemnitor**”) at the Indemnitor’s sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such claim and shall employ counsel of its choice to handle and defend the same, at the Indemnitor’s sole cost and expense. The Indemnitee’s failure to perform any obligations under this **Section 12.3** will not relieve the Indemnitor of its obligations under this **Section 12** except to the extent that the Indemnitor can demonstrate that it has been prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

12.4 *Mitigation.* At its option and sole cost and expense, EHS is entitled to mitigate the risk or Losses of any actual or threatened infringement of any third-party’s Intellectual Property Right by:

(a) obtaining the right for Customer to continue to use the Services and EHS Materials materially as contemplated by this Cloud Services Agreement;

(b) modifying or replacing the Services and EHS Materials, in whole or in part, to make the Services and EHS Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services and EHS Materials, as applicable, under this Cloud Services Agreement; or

(c) by written notice to Customer, terminating this Cloud Services Agreement with respect to all or part of the Services and EHS Materials, requiring Customer to immediately cease any use of the Services and EHS Materials or any specified part or feature thereof, and issuing Customer a refund equal to the balance of any prepaid amount.

**THIS SECTION 12 SETS FORTH CUSTOMER’S SOLE REMEDIES AND EHS’S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS CLOUD SERVICES AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND EHS MATERIALS) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHT.**

### 13. Limitations of Liability.

13.1 *EXCLUSION OF DAMAGES.* EXCEPT AS OTHERWISE PROVIDED IN SECTION 13.3, IN NO EVENT WILL EHS OR ANY OF ITS LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS CLOUD SERVICES AGREEMENT, THE ORDER OR OTHERWISE UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, DATA, USE, BUSINESS, REVENUE OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, OTHER THAN FOR THE ISSUANCE OF ANY APPLICABLE SERVICE CREDITS PURSUANT TO SECTION 5.2; OR (c) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13.2 *CAP ON MONETARY LIABILITY.* EXCEPT AS OTHERWISE PROVIDED IN SECTION 13.3, IN NO EVENT WILL THE AGGREGATE LIABILITY OF EHS UNDER OR IN CONNECTION WITH THIS CLOUD SERVICES AGREEMENT, THE ORDER OR OTHERWISE, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE VALUE OF ALL AMOUNTS PAID BY CUSTOMER UNDER THIS CLOUD SERVICES AGREEMENT OR THE ORDER DURING THE 12 MONTHS PRECEDING THE DATE CUSTOMER FIRST MAKES A CLAIM. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13.3 *Exceptions.* THE EXCLUSIONS AND LIMITATIONS IN SECTION 13.1 AND SECTION 13.2 DO NOT APPLY TO (A) LIABILITY FOR EHS'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR (B) A BREACH OF OBLIGATIONS UNDER SECTION 9, PROVIDED THAT, EHS'S TOTAL AGGREGATE LIABILITY (INCLUDING COSTS AND EXPENSES) FOR LOSSES ARISING OUT OF OR RELATING TO A BREACH OF EHS'S OBLIGATIONS UNDER THIS CLOUD SERVICES AGREEMENT OR THE ORDER (INCLUDING SECTION 6 AND SECTION 9) THAT RESULT IN UNAUTHORIZED ACCESS TO, USE OR DISCLOSURE OF CUSTOMER DATA OR CUSTOMER CONFIDENTIAL INFORMATION SHALL NOT EXCEED \$100,000.

#### 14. Force Majeure.

14.1 *No Breach or Default.* In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Cloud Services Agreement, for any failure or delay in fulfilling or performing this Cloud Services Agreement, except for any payment obligation, when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Cloud Services Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances (other than within EHS), passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Either party may terminate this Cloud Services Agreement if a Force Majeure Event continues substantially uninterrupted for a period of thirty (30) days or more.

14.2 *Affected Party Obligations.* In the event of any failure or delay caused by a Force Majeure Event, the affected party shall give prompt written notice to the other party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

## 15. Miscellaneous.

15.1 *National Committee for Quality Assurance.* EHS is not affiliated with NCQA. Any trademarks, service marks, or other intellectual property owned by NCQA is the sole property of NCQA. Any certification, accreditation, or recognition by NCQA is in NCQA's sole control and in NCQA's sole discretion. In order to receive certification, accreditation, or recognition by NCQA, Customer or its Sub-licensees must register with NCQA, pay all fees required by NCQA and comply with all terms and conditions of NCQA.

15.2 *Headings.* The headings in this Cloud Services Agreement are for reference only and do not affect the interpretation of this Cloud Services Agreement.

15.3 *Relationship of the Parties.* The relationship between the parties is that of independent contractors. Nothing contained in this Cloud Services Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

15.4 *Marketing.* Customer agrees that EHS may include Customer's name, logo, and Customer Branding in EHS's list of customers, press releases, website, and other promotional materials.

15.5 *Notices.* Any notice or other communication by one party to the other hereunder must be in writing and will be given, and be deemed to have been given, if either hand delivered or mailed, postage prepaid, certified mail (return receipt requested), or by nationally recognized courier, delivered as follows:

**If to EHS:**

Evolutionary Health Solutions, LLC  
2985 Pascal Dr.  
Dayton, OH 45431-8515  
Attn: Chief Executive Officer

with a copy to (which shall not constitute notice):

Sebaly Shillito + Dyer  
A Legal Professional Association  
1900 Kettering Tower  
40 N. Main Street  
Dayton, OH 45423  
Attn: Michael A. Booth, Esq.

If to Customer:

At the address set forth on the Order

Notices sent in accordance with this **Section 15.5** will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or e-mail, in each case, with confirmation of transmission, if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours, and followed-up with sending via a nationally recognized overnight courier, signature required; and (d) on the third day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

15.6 *Interpretation.* For purposes of this Cloud Services Agreement: (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Cloud Services Agreement as a whole; and (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa. The parties intend this Cloud Services Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing

any instrument to be drafted. The exhibits, schedules, attachments and appendices referred to herein are an integral part of this Cloud Services Agreement to the same extent as if they were set forth verbatim herein.

15.7 *Entire Agreement.* This Cloud Services Agreement, together with the Order any other documents incorporated herein by reference, constitutes the entire agreement between Customer and EHS with respect to the subject matter hereof, and supersedes all prior discussions and agreements between the parties with respect to the subject matter hereof. In the event of any inconsistency between the statements made in the body of this Cloud Services Agreement, the related exhibits, schedules, attachments and appendices (other than an exception expressly set forth as such therein) and any other documents incorporated herein by reference, the following order of precedence governs: (a) first, this Cloud Services Agreement, excluding its exhibits, schedules, attachments and appendices; (b) second, the Order; (c) third, the exhibits, schedules, attachments and appendices to this Cloud Services Agreement as of the Effective Date; and (d) fourth, any other documents incorporated herein by reference.

15.8 *No Third-party Beneficiaries.* This Cloud Services Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Cloud Services Agreement.

15.9 *Assignment.* Except as explicitly set forth in this Cloud Services Agreement, Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Cloud Services Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without EHS's prior written consent. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Customer (regardless of whether Customer is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under this Cloud Services Agreement for which EHS's prior written consent is required. No delegation or other transfer will relieve Customer of any of its obligations or performance under this Cloud Services Agreement. Any purported assignment, delegation or transfer in violation of this **Section 15.8** is void. This Cloud Services Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

15.10 *Amendment and Modification; Waiver.* No alteration or modification of this Cloud Services Agreement will be valid unless made in writing and executed by both parties. The waiver by a party hereof of any breach of any provision of this Cloud Services Agreement will not be construed as, or constitute, a continuing waiver or a waiver of any other breach of any provision of this Cloud Services Agreement. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Cloud Services Agreement shall operate or be construed as a waiver thereof.

15.11 *Severability.* If any provision of this Cloud Services Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Cloud Services Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

15.12 *Governing Law; Submission to Jurisdiction.* This Cloud Services Agreement is governed by and will be construed in accordance with the internal laws (but not the choice of law rules) of the State of Ohio. Customer and EHS agree to submit to the exclusive jurisdiction of the courts of the State of Ohio located in Montgomery County, Ohio, or the Federal Courts located in Montgomery County, Ohio, for any matter or dispute related to this Cloud Services Agreement and waive any defense that such courts lack personal jurisdiction over Customer or EHS.

15.13 *Waiver of Jury Trial.* **EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTIONS ARISING OUT OF OR RELATING TO THIS CLOUD SERVICES AGREEMENT OR THE TRANSACTIONS COMTEMPLATED HEREBY.**



15.14 *Equitable Relief*. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under **Section 9** or, in the case of Customer, **Section 3.2**, **Section 4.3** or **Section 6**, would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

15.15 *Attorneys' Fees*. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Cloud Services Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

15.16 *Counterparts; Electronic Signatures*. This Cloud Services Agreement and the Order may be executed in any number of counterparts, each of which constitutes an original, but all of which, taken together, are to constitute one in the same instrument. This Cloud Services Agreement and the Order may be signed electronically which will be deemed to be an original signature. The scanned, emailed, .pdf version or other electronic copy of any signed documents including this Cloud Services Agreement and the Order shall be the same as delivery of an original.

## SCHEDULE 1

### CLOUD SERVICES PRODUCT SPECIFICATION

#### 1. SPECIFICATIONS

- 1.1. EHS will provide access via the Services to the EHS Materials that will allow the Customer and its Sub-licensees to load documentation via a structured manor with active reporting and analytics to inform the Customer how the Customer is progressing against PCMH's scoring metrics and deadlines that are managed by the Customer.
- 1.2. The Services will provide data from the EHS Materials to the Customer that the Customer will use to generate custom reporting internally.
- 1.3. EHS will delegate the loading of content into the EHS Materials. Customer will provide a framework to allow EHS to build these delegations and assignments.
- 1.4. EHS will use commercially reasonable efforts to offer guidance, reporting, and analytics associated with the EHS Materials.
- 1.5. The EHS Materials include desktop, mobility and web based user interfaces for content management, search, records management and workflow/process automation, with the requisite server software to support this functionality.

#### 2. DATA RETURN ARRANGEMENTS

- 2.1. **Data Return – On Termination.** After the termination or expiration of the Term, if desired by Customer, EHS will return a copy of the Customer Data to the Customer in the format described below; provided, however, that prior to EHS being obligated to provide such Customer Data, Customer must pay to EHS all costs and fees due under the Cloud Services Agreement, and Order, any other agreement, and must pay EHS's standard fee for return of such data.
- 2.2. **Data Format.** When Customer Data is returned to Customer by EHS, EHS will send the database in a flat file dump in Excel or whatever format the Customer Data was provided to EHS.
- 2.3. **Data Deletion – On Termination.** No earlier than thirty days after the termination or expiration of the Term, EHS may delete Customer Data.

#### 3. CUSTOMER RESPONSIBILITIES

- 3.1. **Customer Network Connections and Hardware.** Customer will be solely responsible for procuring and maintaining the network connections that connect the Customer network to the Services. In addition, Customer will be solely responsible for procuring and maintaining any hardware located at a Customer site and utilized in connection with the Services. EHS assumes no responsibility for the reliability or performance of any connections or hardware as described in this section.

- 3.2. **Customer Control Considerations.** The Services were designed with the assumption that the Customer would implement internal controls. The following controls will be in operation at the Customer to complement the EHS control policies and procedures:
- 3.2.1. Properly configuring Customer's browser and/or other clients to interact with the Services;
  - 3.2.2. Where applicable, properly configuring Customer's network devices to access the Services through direct, private or virtual private network connection;
  - 3.2.3. Ensuring proper security, access, maintenance and configuration of the network devices and connections that are used for direct connection from Customer's network location to the Services network;
  - 3.2.4. Ensuring that Customer appoints organizational administrators for access to the Services;
  - 3.2.5. Ensuring that Customer configures its Services account to require that Authorized User passwords are sufficiently strong and properly managed;
  - 3.2.6. Ensuring that such passwords are kept confidential;
  - 3.2.7. Notifying EHS of any unauthorized use of any password or account or any other known or suspected breach of security related to the use of the Services; and
  - 3.2.8. Ensuring that appropriate procedures are in place to ensure proper access approvals, modifications and terminations.