



STANDARD REVENUE CYCLE MANAGEMENT AGREEMENT

The following are the terms and conditions pursuant to which AdvancedMD shall provide the services and products purchased by Client on the Order Form(s):

1. **Services.** AdvancedMD shall provide to Client (1) Revenue Cycle Management Services (the "**RCM Services**"), (2) Patient Balance Management and Patient Service Center, but only if indicated on the Order Form(s) (together, as applicable, with the RCM Services), and (3) access to and use of those Hosted Programs and/or Third Party Services specifically set forth on the Order Form(s).

2. **Definitions.** As used herein, the following terms have the following meanings:

"Agreement" means this Standard Revenue Cycle Management Agreement, all Exhibits hereto (including the Business Associate Agreement, the Terms of Service and the Linked Terms), and all Order Form(s) associated herewith.

"Billing Information" means all billing and encounter information and documentation for all patients of Client, including, but not limited to the name of the patient, patient demographics, insurance information (including a copy or scanned copy of insurance cards along with any required referral or authorization information), the date of service, the nature and extent of services provided, the applicable Current Procedural Terminology (CPT) or International Classification of Diseases (ICD) procedure codes and diagnosis codes (including associated modifiers, if applicable), and any supporting medical information that is necessary to obtain payment or reimbursement for services.

"Business Associate Agreement" means AdvancedMD's standard Business Associate Agreement attached as Exhibit 2 hereto.

"Confidential Information" means all confidential and business proprietary information of a party hereto disclosed in connection with the provision or receipt, as the case may be, of RCM Services; provided, however, that the term "Confidential Information" does not include any information that (i) is or becomes a part of the public domain through no act or omission of the receiving party; (ii) was in the receiving party's lawful possession prior to the disclosure and had not been obtained by the receiving party, either directly or indirectly, from the disclosing party; (iii) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or (iv) is independently developed by the receiving party.

"Effective Date" means the date set forth on the initial Order Form associated with this Agreement.

"First Charge Entry Date" means the first date that Client performs charge entry services in the Hosted Programs; the First Charge Entry Date shall be mutually agreed by the parties (and if the parties do not determine such a date, the First Charge Entry Date shall be the date that is 60 days following the Effective Date).

"Final Charge Submission Date" means the last day of the full calendar month following three calendar months after notification of termination is received. For example, if termination notice is provided on September 30, the Final Charge Submission Date is December 31.

"Hosted Programs" has the meaning given to such terms in the Terms of Service.

"Initial Term" means the period of time beginning on the Effective Date and ending on either (i) the last day of the 12th full month thereafter or (ii) the last day of the term set forth on an Order Form(s), if any.

"Law" means any federal or state statute or regulation, and any provider handbook or manual published by the Centers for Medicare & Medicaid Services (CMS), a state Medicaid program or any other government health care benefit program, or other policy enforced by a government entity.

"Linked Terms" means any additional terms incorporated by reference in the Terms of Service and available by hyperlink therein.

"Revenue Cycle Management" means the following services:

- a. Standard implementation and the establishment of electronic data interface agreements between Client and applicable carriers;
- b. Client access to and use of the following AdvancedMD's Hosted Programs: Professional Complete Package;
- c. Claims submission, which means the submission (in either electronic or paper format) to governmental and private third party payors of charges, exclusions, denials and secondary claims within statutory periods;
- d. Insurance accounts receivable follow up, which means appropriate correspondence with governmental and private third party payors (including follow-up, research, and resubmission of denials), customer service (e.g., payor billing inquiries) and claims appeals;
- e. Payment posting, which means the receipt from Client of EOBs or other patient payment information (e.g., co-payment information), receipt from private third party payors of electronic remittance advices and other 835 files, and the entry of relevant data into the Hosted Programs;



- f. Provision of the following standard month-end reports: account receivables summaries, productivity reports for procedures and providers, month-end close report (i.e., charges, payments, adjustments, and standing accounts receivable) and management summary;
- g. Periodic updating of the master files of CPT codes and ICD codes within the Hosted Programs; and
- h. Refund processing, which means posting of Client's refund check to the Hosted Programs.

"Order Form(s)" mean the order form(s) issued by AdvancedMD and agreed to by Client pursuant to which Client purchases services or products.

"Patient Balance Management" means the following services:

- a. Patient accounts receivable follow-up, which means generation and mailing of patient statements and soft-collection letter;
- b. Payment posting, which means the receipt from Client of any patient payments related to time of service payments, payment on patient statements or payment plans, and the entry of relevant data into the Hosted Programs; and
- c. Provision of standard month-end reports relating to patient balances and patient account issues.

For the avoidance of doubt, Patient Balance Management does not include outbound calling to patients; further, in connection with Patient Balance Management, AdvancedMD shall act in accordance with AdvancedMD's policies and procedures (which may change from time to time, subject to applicable Law), but shall not file any lawsuit for collection.

"Patient Service Center" means the following services:

- a. Call center for inbound patient inquiries;
- b. Establishment of patient payment plans within AdvancedMD's standard parameters, or parameters mutually agreed by the Client and AdvancedMD, if applicable; and
- c. Processing of payments made by patients using a credit card, if Client uses credit card functionality that is integrated into the Hosted Programs.

"Term" means the period of time beginning on the Effective Date and ending on the Termination Date.

"Terms of Service" mean the AdvancedMD's standard terms of service for all Hosted Programs and Third Party Services attached as Exhibit 3.

"Termination Date" means the last day of the second month following the month in which the Final Charge Submission Date occurs. For example, if the Final Charge Submission date is December 31, the Termination Date will be February 28.

"Termination Period" means the 90-day written notice period described in Section 8(a).

"Third Party Services" has the meaning given to such terms in the Terms of Service incorporated by reference into the Agreement.

"Wind Down Period" means the period between Final Charge Submission Date and the Termination Date.

3. Client Obligations regarding RCM Services.

- a. Client is solely responsible for the accuracy and completeness of any and all Billing Information, whether input by Client into the Hosted Programs, or provided to AdvancedMD hereunder. Client shall only submit (and shall only cause AdvancedMD to submit) claims for reimbursement that Client believes are true, correct and in accordance with applicable Law and health plan coverage requirements. Without limiting the foregoing, Client shall comply with applicable Law and official diagnosis and procedure code manuals when assigning CPT and ICD codes to items and services provided to Client's patients. Client acknowledges and agrees that AdvancedMD does not assign diagnosis and procedure codes to items and services provided by Client. Client agrees to promptly correct and resubmit any Billing Information and claims which AdvancedMD returns due to a compliance related error.
- b. From and after the First Charge Entry Date, Client shall provide to AdvancedMD (i) such Billing Information as may be requested by AdvancedMD in order to perform the RCM Services hereunder, and (ii) with such information and Client signatures as may be necessary in order for AdvancedMD (x) to assist client in properly completing electronic data interchange agreements, and (y) to be able to obtain from governmental payors or private third party payors information regarding claims submitted to such payors (including carrier website access). Client shall not take any action that could reasonably be expected to interfere with AdvancedMD's performance of the RCM Services.



- c. Client shall procure and maintain current National Provider Identifiers and other necessary provider numbers for all Client's physicians, nurse practitioners, physician assistants and other professional employees and contractors providing medical or other professional services, as necessary or appropriate to allow AdvancedMD to obtain payment or reimbursement from governmental payors and private third party payors, and Client will provide AdvancedMD with all such information, and any updates or modifications to such information, within the timeframe reasonably requested by AdvancedMD.
 - d. Notwithstanding the authority granted to AdvancedMD herein, AdvancedMD and Client agree that Client shall retain the authority to direct the medical and ethical aspects of Client's medical practices and shall retain control of all aspects of its business and affairs that may not legally be carried on by persons other than persons who are duly licensed to practice medicine or surgery in the state or states in which such persons practice.
4. Payments from Third Party Insurance Payors and Patients. All reimbursements from all governmental (including Medicare and Medicaid) payors, private third party payors, and patient payments shall be received directly by Client. Client shall promptly send all insurance correspondence and EOBs (or complete copies of these documents) to AdvancedMD. Client agrees to follow any control procedures implemented by AdvancedMD that are designed to ensure the proper transmission and receipt of such information. Client agrees to provide AdvancedMD with audit control figures containing all patient visits and payments collected so that AdvancedMD may balance charges and payments posted by AdvancedMD back to Client totals. In the event that Client utilizes a lockbox to receive insurance payments or patient payments, Client shall give AdvancedMD proper access to such lockbox to enable AdvancedMD to retrieve documents and images sent to such lockbox.
5. Indemnification. Client shall indemnify and hold harmless AdvancedMD and its affiliates, and its and their respective officers, directors, employees and representatives from and against any claims, losses, costs (including reasonable attorney's fees), damages, expenses, sanctions, fines, or penalties (collectively "Losses") arising out of or related to (i) any failure to pay any fees due hereunder, (ii) any act or omission by Client that results in AdvancedMD submitting any false or fraudulent claim to any governmental payor or private third party payor, and (iii) any violation of Law committed by Client, its employees or representatives.
6. Limitation of Liability.
 - a. AdvancedMD's total liability for Losses suffered by Client or any of its affiliates under or related to this Agreement shall in no event exceed an amount equal to three times the average monthly fee paid by Client under the Agreement.
 - b. In no event shall either party be liable under the Agreement for any indirect, incidental, special, consequential or punitive damages, or damages for business interruption, loss of profits, revenue, data or use, or cost of cover suffered by the other party or by any third party, whether in an action in contract or tort, and even if the party has been advised of or is aware of the possibility of such damages; provided, however that the foregoing limitation shall not apply to any fines or penalties imposed by any federal or state administrative agency arising from or in connection with a violation of Law. Without limiting the foregoing, in no event shall AdvancedMD be liable under the Agreement for a governmental payor's or private third party payor's denial of a claim if Client has not complied with Section 3 with respect to such claim.
 - c. This Section 6 sets forth the full extent of AdvancedMD's liability for damages resulting from the Agreement and the RCM Services, regardless of the form in which such liability of claim for damages may be asserted. The provisions of the Agreement allocate the risks between AdvancedMD and Client. The parties agree that AdvancedMD's pricing and other terms and conditions of the Agreement reflect the allocation of risk and the limitation of liability specified herein, and Client acknowledges that without such limitation on liability specified herein and Client's agreement to maintain redundant copies of all data provided to AdvancedMD in connection with Services, AdvancedMD would not have entered into this Agreement.
7. Confidential Information.
 - a. The terms of this Agreement and all Confidential Information disclosed hereunder will remain the exclusive and confidential property of the disclosing party. The receiving party will not disclose the Confidential Information of the disclosing party and will use at least the same degree of care, discretion and diligence in protecting the Confidential Information of the disclosing party as it uses with respect to its own confidential information, but in no case less than reasonable care; provided, however, that AdvancedMD may disclose Protected Health Information included within the Confidential Information in accordance with the Business Associate Agreement. The receiving party will limit access to Confidential Information to its affiliates, employees and authorized representatives with a need to know and will instruct them to keep such information confidential. Notwithstanding the foregoing, the receiving party may disclose Confidential Information of the disclosing party (i) to the extent necessary to comply with any Law, (ii) as appropriate to respond to any summons or subpoena or in connection with any litigation, and (iii) to any vendor with which AdvancedMD has an API (if Client has elected to use such API).
 - b. Client acknowledges that AdvancedMD or its affiliates may use Confidential Information to evaluate possible commercial arrangements between AdvancedMD and Client, and to communicate with Client from time to time regarding AdvancedMD's, its affiliates' or its recommended vendors' products and services that may improve



the efficiency of Client's operations or otherwise benefit Client.

- c. The obligations of set forth in this Section 7 shall not apply to any suggestions and feedback for product or service improvement, correction, or modification provided by Client in connection with any present or future AdvancedMD product or service, and, accordingly, neither AdvancedMD nor any of its clients or business partners shall have any obligation or liability to Client with respect to any use or disclosure of such information. In addition, subject to any limitations imposed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), with Client's consent (which is hereby given), AdvancedMD may use internet/website analytics software tools and programs that collect, transmit, store, disclose and analyze certain information about the actual use of the Hosted Programs by Clients (such as, but not limited to, pages viewed, links clicked, help functions used and other workflow information); such information shall not be considered Confidential Information hereunder and may be used by AdvancedMD for the purpose of license administration, error resolution and product analysis and improvement.

8. Term and Termination; Effect of Termination.

- a. Unless earlier terminated as provided for herein, following the Initial Term either party may terminate this Agreement at any time by a 90-day written notice (the Termination Period) to the other party.
- b. If a party commits a material breach of any representation, warranty, agreement or covenant set forth in this Agreement that remains uncured fifteen (15) days following written notice specifying the nature of the breach and identifying the measures reasonably required to correct the breach, the non-breaching party may terminate this Agreement by written notice to the other party.
- c. If (i) Client has not paid fees due hereunder within ten (10) days following AdvancedMD's delivery of written notice informing the Client of such non-payment; (ii) AdvancedMD reasonably believes that Client is engaged in any conduct that violates, or could be deemed to violate, any Law; (iii) Client becomes insolvent, generally stops paying its debts as they become due or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against Client and not dismissed within 90 days after commencement of one of the foregoing events; or (iv) Client revokes the authorization given hereunder to withdraw amounts due hereunder from Client's bank account, then, in any such case, AdvancedMD may terminate the Agreement by written notice to the Client.
- d. Following delivery of a notice of termination pursuant to Section 8a or 8b, this Agreement shall remain in effect until the Termination Date, as follows: (i) Client shall perform charge entry services through the Final Charge Submission Date, and perform all its other obligations hereunder until the Termination Date, and (ii) AdvancedMD shall perform the RCM Services until the Termination Date. Client understands and agrees that claims submitted prior to the Termination Date may not be fully resolved as of the Termination Date. Client's access to and use of the Hosted Programs and Third Party Services shall terminate on the Termination Date. Following delivery of a notice of termination pursuant to Section 8c, this Agreement shall remain in effect on the terms provided by AdvancedMD in its notice of termination, and Client's access to and use of the Hosted Programs and Third Party Services shall terminate as set forth in such notice.
- e. Termination of the Agreement (i) shall not relieve any party from any liability that may have arisen prior to such termination, (ii) shall not relieve Client of its obligation to pay all fees that have accrued or are otherwise owed by Client under the Agreement prior to such termination, and (iii) shall not limit either party from pursuing other remedies available to it under Law, including injunctive relief.
- f. AdvancedMD shall have the right to maintain a copy of all Client Data (as such term is defined in the Terms of Service incorporated by reference herein) in accordance with, and for the period of time it determines is required or permitted by, applicable Law. Sections 5, 6, 7, 8e, 8f, 8g, 9c, 9e, 9g, 9h, 9k, 9l and 9p shall survive any termination of this Agreement; AdvancedMD shall maintain all "Protected Health Information" (as such term is used under HIPAA) and explanations of benefits ("EOBs") in accordance with the Business Associate Agreement for so long as AdvancedMD maintains such data.
- g. If (x) Client terminates this Agreement (which includes delivering a notice of termination) prior to the end of the Initial Term for any reason other than in accordance with Section 8b, or (y) AdvancedMD terminates this Agreement in accordance with 8b or 8c, then, in any such case, Client shall pay to AdvancedMD a buy-out fee in an amount equal to fifty percent (50%) of the product of (1) the number of full months from the date of termination until the earliest possible Termination Date (assuming this Agreement was properly terminated on the first day following the end of the Initial Term) multiplied by (2) the average monthly fee due to AdvancedMD during the period this Agreement was in effect (it being understood that (i) if Client terminates this Agreement prior to 60 days following the First Charge Entry Date, then the average monthly fee shall be equal to the reasonably estimated monthly fee that would have been payable under the Agreement following such date, and (ii) all months prior to 60 days following the First Charge Entry Date shall be disregarded in such average monthly fee calculation). Client shall also be obligated to pay the amount contemplated by this Section 8g in the event of any reduction in the number of charges delivered to AdvancedMD by more than fifty (50) percent.

9. Miscellaneous.



- a. **Compliance with Anti-Assignment Laws.** The parties understand, acknowledge and agree that, notwithstanding anything herein to the contrary, neither AdvancedMD, nor any affiliate or agent of AdvancedMD, has the ability to either (i) receive payments of Medicare reimbursement directly from CMS, or (ii) convert any payment of benefits assigned to Client to AdvancedMD's, such affiliate's or such agent's own use and control without the payment first passing through the control of Client.
- b. **Standards, Accreditation, Licensure.** Client shall ensure that it meets all medical practice, licensure and ethical standards, which are pertinent to its activities or which by contract it has agreed to abide. Without limiting the foregoing, Client shall ensure that each physician employed by Client and any other professional employees and contractors of Client providing medical or other professional services has an unrestricted license to practice medicine or his or her other profession in the state(s) in which they practice, and Client will inform AdvancedMD immediately of any change in the status of any such unrestricted license.
- c. **Inspection and Audit Rights.** AdvancedMD shall have the right to audit or inspect and copy the books and records of the Client to ensure compliance with Client's obligations under this Agreement. In the event of any investigation, proceeding or litigation involving any governmental entity, Client shall make available to AdvancedMD for inspection and copy any clinical documentation reasonably necessary for AdvancedMD to respond, participate or defend itself in any such investigation, proceeding or litigation.
- d. **No Referrals.** The parties agree that no payment or other remuneration that is offered, paid, solicited or received hereunder is to improperly induce any person to (i) make referrals for items or services for which payment may be made in whole or in part under Medicare or other Federal Health Care Programs (as defined in 42 CFR § 1320a-7b(f)); or (ii) purchase, lease, order or arrange for or recommend purchasing, leasing, or ordering any items or services that may be covered by Federal Health Care Programs.
- e. **Governing Law.** The Agreement, and all matters arising out of or relating to the Agreement, shall be governed by the laws of the State of New York applicable to contracts made and wholly performed in such state. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT OR RIGHTS IT HAS OR MAY HAVE TO TRIAL BY JURY OF ANY DISPUTE ARISING FROM OR RELATED TO THIS AGREEMENT.
- f. **Notice.** Client agrees to notify AdvancedMD of any changes to Client's business address, business contact, and support contact within ten (10) days of any change thereto. All notices required or permitted hereunder shall be given in writing.
- g. **Non-solicitation.** During the term of the Agreement and for six (6) months after any termination or expiration of the Agreement, neither party shall, alone or in association with others, solicit any employee or contractor of the other party (or its subsidiaries) to terminate its employment or contracting relationship with the other party or its subsidiaries. Nothing herein shall preclude either party from hiring employees or contractors of the other party (or its subsidiaries) to the extent such employees or contractors respond, without any solicitation by or on behalf of the hiring party, to advertisements or job openings published or otherwise made generally available to the public by the hiring party.
- h. **Amendment; Waiver.** AdvancedMD may modify or amend this Agreement upon written notice, e-mail or otherwise, to Client. Following any such notification, Client shall have the right for a period of thirty (30) days from receipt to inform AdvancedMD in writing that it does not accept the modification or amendment. If Client does not notify AdvancedMD in writing that it does not accept such modification or amendment within such thirty (30) day period, and continues to access and use the Hosted Programs and/or receive the RCM Services, this shall be deemed agreement by the Client to the modification or amendment. If Client properly notifies AdvancedMD that it does not accept the new terms within the thirty (30) day period, then Client may continue to access and use the Hosted Programs and receive the RCM Services until the end of Client's then-current term, at which time these this Agreement, and Client's access to and use of the Hosted Programs shall terminate. The waiver by either party of any default or breach of the Agreement shall not constitute a waiver of any other, or subsequent, default or breach.
- i. **Assignment; Subcontracting.** AdvancedMD may assign this Agreement or any rights or obligations under the Agreement to a third party to which it sells all or substantially all of its assets. Client may not assign the Agreement or any rights or obligations hereunder without the prior written consent of AdvancedMD, which consent shall not be unreasonably withheld or delayed; any such assignment without the prior consent of AdvancedMD shall be void. AdvancedMD may use subcontractors to perform RCM Services (or portions thereof); provided, however, that such subcontracting shall not relieve AdvancedMD from responsibility for performance of its duties hereunder.
- j. **Insurance.** AdvancedMD or its affiliates shall maintain professional liability insurance covering risk of data loss in amounts it deems commercially reasonable, from time to time.
- k. **No Third Party Beneficiaries.** AdvancedMD has no obligation to any third party by virtue of this Agreement, including any patient of Client.
- l. **Severability.** If any of the provisions of the Agreement shall be invalid or unenforceable, such invalidity or



unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the parties hereto agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the fullest extent possible, the economic, business and other purposes of the Agreement.

- m. **Current Clients.** If, on the date of this Agreement, Client is currently a client of AdvancedMD with respect to any Hosted Program or Third Party Service, the agreement between Client and AdvancedMD governing access to, or use of, such Hosted Programs or Third Party Service is hereby terminated in its entirety (except with respect to any payment obligation of Client to AdvancedMD under such agreement).
- n. **Call Monitoring.** Client acknowledges and agrees that calls to and from AdvancedMD may be monitored or recorded.
- o. **Exclusivity.** From the First Charge Entry Date until the Final Charge Submission Date, AdvancedMD shall be the exclusive provider to Client of all RCM Services, and Client shall not either engage any other person to perform RCM Services (or any substantially similar or replacement services) or perform such services on its own behalf; provided, however, that Client may perform RCM Services on its own behalf with respect to procedures performed by Client that are not subject to reimbursement from any governmental payors or private third party payors.
- p. **Entire Agreement.** This Agreement constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement.
- q. **No Legal Advice.** Client's use of the Hosted Programs, Third Party Services, RCM Services or any Templates, forms or other documentation made available to Client in no way constitutes the provision of legal advice from AdvancedMD to Client.
- r. **Force Majeure.** AdvancedMD is not liable under this Agreement for AdvancedMD's non-performance caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or nature, strikes or other labor disputes, riots, or other acts of civil disorder or any other events, conditions or causes beyond AdvancedMD's reasonable control.
- s. **Client expressly agrees not to contest the validity of any electronic signature because the signature is performed electronically.**



Exhibit 1: Invoicing and Fee Calculation

Part 1: Fees and Invoicing

This Exhibit 1, together with the Order Form(s), sets forth the fees payable by Client to AdvancedMD. Client shall pay all one-time, per-use and monthly fees set forth on the Order Form (including fees for patient statements and letters and monthly subscription fees payable by Client in cases where Client has elected to subscribe to certain Hosted Programs on a monthly basis); in addition, Client shall pay all amounts set forth on the Order Form, as calculated in this Exhibit 1, as applicable. The fees included on the Order Form(s) do not include taxes; there shall be added to all payments amounts equal to any applicable taxes levied or based on this Agreement, exclusive of taxes based on AdvancedMD's net income.

All fees for one-time services (e.g., implementation fees) are due upon acceptance of any Order Form(s) and prior to delivery of the applicable service. All monthly or recurring fees shall be invoiced monthly in arrears (on or about the 10th day of each calendar month) and shall be debited from Client's bank account on the 20th day of each calendar month (or, if such day is not a business day, the next following business day); provided, however, that if Client is a New York Client then fees shall be debited from Client's bank account on the 20th day of the following calendar month (or, if such day is not a business day, the next following business day). Invoicing for monthly or recurring fees will begin in the month following the month in which the Effective Date occurs.

An administrative late charge of \$35.00 per invoice will be charged for any invoice not paid by the applicable due date (including any electronic transaction that is declined and any returned checks), and an additional \$35.00 shall be charged for each 30 days thereafter that such invoice remains unpaid. Additionally, any amounts payable by Client that remain unpaid after the due date shall be subject to a finance charge equal to the lesser of 1.5% per month or the maximum amount permitted under applicable Law, from the due date until the date such amount is paid.

Without limiting the additional fees and charges that shall be payable by Client, if applicable, AdvancedMD shall have the right, exercisable in its sole and absolute discretion, to suspend the provision of RCM Services hereunder, as well as Client's access to, and use of, the Hosted Programs and the Third Party Services, in the event that Client has not paid any amounts due hereunder by the time such payment is due.

Part 2: Calculation of Percentage Fee for Standard and Non-Standard Clients

Percentage Fee for Standard Client:

If Client is a Standard Client, Client shall pay AdvancedMD an amount equal to the greater of (x) the Monthly Minimum RCM Services Fee, or (y) the Percentage Fee.

Percentage Fee for Non-Standard Client:

If Client is a New York Client, Client shall pay AdvancedMD an amount equal to the greater of (x) the Monthly Minimum RCM Services Fee, or (y) the Encounter Fee.

If Client is a Florida Client or an Oregon Client, Client shall pay AdvancedMD an amount equal to the greater of (x) the Monthly Minimum RCM Services Fee, or (y) an amount equal to the sum of (i) the Medicaid Encounter Fee, plus (ii) the Percentage Fee.

Part 3: Special Channel Transfer Clients

If Client is a Special Channel Transfer Client, it shall pay the Transferred A/R Percentage Fee. This fee is in addition to the fees payable under Part 2 of this Exhibit.

Part 4: General Terms

AdvancedMD does not guarantee any minimum amount of collections from the provision of RCM Services under the Agreement.

Refund amounts (monies returned to any governmental payor or private third party payor, or patients) made by Client as requested by AdvancedMD, shall be deducted from the total payments on which the Percentage Fee and the Transferred A/R Percentage Fee, as applicable, is calculated.

The Percentage Fee, and the Encounter Rate shall only be applied to services and procedures performed on or after the First Charge Entry Date and until the Final Charge Submission Date; provided, however, that for Channel Transfer Clients, the Percentage Fee (or the Transferred A/R Percentage Fee, if applicable) shall in addition be applied to all charges existing in the Hosted Programs as of the First Charge Entry Date for which no payment has been posted.

The Percentage Fee (and the Transferred A/R Percentage Fee, if applicable) shall be based on all amounts received by either Client or AdvancedMD (on behalf of Client), in either case, from governmental payors or private third party



payors (including all payments and co-payments collected at Client's location, and any amount received by Client related to patient accounts under capitated contracts).

RCM Services are not provided with respect to procedures coded by the Client to the Excluded Codes (if applicable); accordingly, the Percentage Fee shall in all cases be calculated excluding any amounts received in respect of procedures coded by the Client to the Excluded Codes, and Encounter Rates shall not be applied to procedures coded by the Client to the Excluded Codes. Client shall not code any procedure to an Excluded Code except those procedures mutually agreed by Client and AdvancedMD.

Part 5: Definitions Applicable to this Exhibit 1

As used in this Exhibit 1, the following terms have the following meanings:

"Channel Transfer Client" means any Client that, immediately prior to the Effective Date, was either (i) a client of AdvancedMD, or (ii) a client of a third party that is a client of AdvancedMD and whose data is resident in the Hosted Programs.

"Encounter Fee" means the product of (i) the Encounter Rate, *multiplied by* (ii) the number of billable encounters that were posted to the Hosted Programs in the previous month.

"Encounter Rate" means the Encounter Rate set forth on the Order Form.

"Excluded Codes" means non-industry standard procedures codes for procedures performed by Client that are not billable to a governmental or third party payor, and which shall be mutually agreed by Client and AdvancedMD.

"Medicaid Encounter Fee" means the product of (i) the Encounter Rate, *multiplied by* (ii) the number of billable encounters that were posted to the Hosted Programs in the previous month for which Florida Medicaid or Oregon Medicaid will be billed.

"Monthly Minimum RCM Services Fee" means the Monthly Minimum RCM Services Fee set forth on the Order Form.

"Non-Standard Client" means any of a New York Client, a Florida Client or Oregon Client, in any case, as indicated on the Order Form.

"Percentage Fee" means the product of (i) the Percentage Rate, *multiplied by* (ii) all payments received by Client during the previous month relating to the RCM Services; provided, however, that: (a) for Florida Clients and Oregon Clients, this shall be calculated excluding in all cases payments received which were taken into account in calculating the Medicaid Encounter Fee in any month; and (b) for Special Channel Transfer Clients, excluding any payments received which were taken into account in calculating the Transferred A/R Percentage Fee.

"Percentage Rate" means the Percentage Rate set forth on the Order Form.

"Standard Client" means any Client that is not a Non-Standard Client.

"Special Channel Transfer Client" means any Client that, immediately prior to the Effective Date, was either (i) a client of AdvancedMD, or (ii) a client of a third party that is a client of AdvancedMD and whose data is resident in the Hosted Programs, and, in either case, has a Transferred A/R Percentage Rate.

"Transferred A/R Percentage Fee" means the product of (i) the Transferred A/R Percentage Rate, *multiplied by* (ii) all payments received by Client during the previous month relating to the RCM Services with respect to charges existing in the Hosted Programs as of the First Charge Entry Date for which no payment has been posted.

"Transferred A/R Percentage Rate" means the Transferred A/R Percentage Rate set forth on the Order Form.



**Exhibit 2: HIPAA Business Associate Agreement
(Updated for January 2013 Omnibus Final HIPAA Rule)**

This Business Associate Agreement (“**BA Agreement**”) is between AdvancedMD, Inc., a Delaware corporation (“**AdvancedMD**” or “**Business Associate**”) and Client (“**Covered Entity**”), and forms part of the agreement between AdvancedMD and Client relating to the provision of revenue cycle management to Client by AdvancedMD (the “**Agreement**”).

WHEREAS, pursuant to the federal Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) and the HITECH Act, the U.S. Department of Health and Human Services issued “Standards for Privacy of Individually Identifiable Health Information” (the “**Privacy Rule**”), Security Standards for the Protection of Electronic Protected Health Information (the “**Security Rule**”) and Breach Notification Standards for Unsecured Protected Health Information (the “**Breach Notification Rule**”) at 45 CFR parts 160 and 164;

WHEREAS, the Privacy Rule requires certain entities to have their Business Associates with whom the entities may share Protected Health Information (as such term is defined in the Privacy Rule) to agree to certain provisions related to the use and disclosure of such Protected Health Information (the “**Business Associate Contract Provisions**”);

WHEREAS, the Security Rule and the Breach Notification Rule impose obligations on Covered Entities and their Business Associates that must be addressed in the Business Associate Contract Provisions; and

WHEREAS, Client and AdvancedMD desire to enter into this BA Agreement in order to make the Business Associate Contract Provisions part of the Agreement.

Now therefore, the parties hereby agree as follows:

1. Definitions. Capitalized terms used, but not otherwise defined, in this BA Agreement shall have the same meaning as those terms in the Privacy Rule, the Security Rule and the Breach Notification Rule, and if no such definition is provided in such rules, then the meaning shall be that given to such capitalized term in the Terms of Service (Exhibit 3) or the Standard Revenue Cycle Management Agreement to which this BA Agreement is an Exhibit.
2. Obligations and Activities of AdvancedMD.
 - a. AdvancedMD agrees to not use or further disclose Protected Health Information received from or on behalf of Client or created for Client (collectively, “**PHI**”) other than as permitted or required by the Agreement or as Required By Law. AdvancedMD further agrees that, when using or disclosing PHI, it shall limit PHI, to the extent practicable, to a limited data set as defined in 45 CFR 164.514(e)(2) or, if a limited data set is not practicable, limit PHI to the minimum amount of PHI reasonably necessary to accomplish the intended purpose of such use or disclosure.
 - b. AdvancedMD agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by the Agreement and this BA Agreement, including implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of Client. AdvancedMD further agrees to comply with the requirements of the Security Rule.
 - c. AdvancedMD agrees to mitigate, to the extent commercially practicable, any harmful effect that is known to AdvancedMD of a use or disclosure of PHI by AdvancedMD in violation of the requirements of the Agreement or this BA Agreement.
 - d. AdvancedMD agrees to report to Client any use or disclosure of PHI that is not provided for by the Agreement or this BA Agreement of which it becomes aware. AdvancedMD also agrees to notify Client of any Breach of Unsecured PHI in accordance with 45 CFR 164.410; such notification shall be made in as expeditious a manner as possible and in no event later than 60 calendar days after discovery, as defined in 45 CFR 164.410 (a)(2) and shall comply with the requirements of the Breach Notification Rule. AdvancedMD shall also, without unreasonable delay, but in no event later than five business days after becoming aware of any Security Incident that is not an Unsuccessful Security Incident (as defined herein), report the successful Security Incident to Covered Entity. Covered Entity acknowledges that AdvancedMD experiences Unsuccessful Security Incidents from time-to-time. Covered Entity acknowledges receipt of this report of Unsuccessful Security Incidents. “**Unsuccessful Security Incident**” means an immaterial Security Incident that does not involve an unauthorized use or disclosure of Unsecured Protected Health Information.
 - e. Client acknowledges that AdvancedMD may use Subcontractors when performing the revenue cycle management services. AdvancedMD agrees to ensure that any Subcontractor to whom it provides PHI received from, or created or received by AdvancedMD on behalf of, Client agrees to substantially the same restrictions and conditions that apply through this BA Agreement to AdvancedMD with respect to such information.
 - f. AdvancedMD agrees to provide access, at the request of Client to PHI in a Designated Record Set to Client in order to meet the requirements under 45 CFR 164.524, by making the Hosted Programs available to Client, or by other mutually agreed means.
 - g. AdvancedMD agrees to make any amendment(s) to PHI in a Designated Record Set that the Client directs or agrees to pursuant to 45 CFR 164.526, by making the Hosted Programs available to Client, or by other mutually



agreed means.

- h. AdvancedMD agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by AdvancedMD on behalf of, Client available to the Secretary, in a time and manner designated by the Client or the Secretary and not materially disruptive of AdvancedMD's operations or business, for the purposes of the Secretary determining Client's or AdvancedMD's compliance with the Privacy Rule. The AdvancedMD business unit providing the RCM Services shall reasonably cooperate with Client and Secretary in responding to the Secretary's requests. All information provided by AdvancedMD pursuant to this provision shall remain "Confidential Information" under the Agreement and subject to the restrictions on disclosure of such information as set forth therein.
 - i. AdvancedMD agrees to document such disclosures of PHI and information related to such disclosures as would be required for Client to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528 and the regulations adopted pursuant to 42 USC 17935(c), and to reasonably cooperate with Client in responding to such requests.
 - j. AdvancedMD agrees to provide to Client or, at Client's direction, to an Individual, in time and manner designated by Client and not materially disruptive of AdvancedMD's operations or business, information collected in accordance with Section 8i of this BA Agreement, to permit Client to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528 and any regulations adopted pursuant to 42 USC 17935(c). All information provided by AdvancedMD pursuant to this provision shall remain "Confidential Information" under the Agreement and subject to the restrictions on disclosure of such information as set forth therein.
 - k. To the extent AdvancedMD carries out any of Client's obligations under the Privacy Rule, AdvancedMD shall comply with the requirements of the Privacy Rule that apply to Client in the performance of such obligations, provided that Client advises AdvancedMD of such obligations which are not included in the Services under the Agreement and agrees to a fee for AdvancedMD's performance of such obligations in accordance with Section 2l.
 - l. If, in the performance of its obligations set forth in Sections 2f through 2k (inclusive), or 5a to 5c, (inclusive), AdvancedMD expends time and materials in addition to the RCM Services to be provided by AdvancedMD pursuant to the Agreement, AdvancedMD shall provide Client with an estimate of the fees for such time and materials. Upon the mutual agreement by Client and AdvancedMD as to the fees to be charged by AdvancedMD for such time and materials, AdvancedMD shall invoice Client on a time and materials basis at the agreed-upon rate(s), and Client shall pay AdvancedMD all such fees in accordance with the payment terms of the Agreement.
3. Permitted Uses and Disclosures by AdvancedMD. Except as otherwise limited in this BA Agreement, AdvancedMD may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Client as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Client or the minimum necessary policies and procedures of the Client of which AdvancedMD has been informed.
4. Specific Use and Disclosure Provisions.
- a. Except as otherwise limited in this BA Agreement, AdvancedMD may use PHI for the proper management and administration of AdvancedMD or to carry out the legal responsibilities of AdvancedMD.
 - b. Except as otherwise limited in this BA Agreement, AdvancedMD may disclose PHI for the proper management and administration of AdvancedMD, provided that disclosures are Required by Law, or AdvancedMD obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies AdvancedMD of any instances of which it is aware in which the confidentiality of the information has been breached.
 - c. Except as otherwise limited in this BA Agreement, AdvancedMD may use and disclose PHI to provide Data Aggregation services to Client and other Covered Entities as permitted by 42 CFR 164.504(e)(2)(i)(B).
 - d. AdvancedMD may use PHI to create de-identified health information in accordance with the Privacy Rule's de-identification standards and use and disclose the de-identified health information for commercial purposes and any other purposes not prohibited by law. Client agrees that AdvancedMD shall be the exclusive owner of any de-identified health information.
5. Obligations of Client.
- a. Client shall provide AdvancedMD with any limitations in its notice of privacy practices of Client in accordance with 45 CFR 164.520, to the extent that such limitation may affect AdvancedMD's use or disclosure of PHI.
 - b. Client shall provide AdvancedMD with any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect AdvancedMD's use or disclosure of PHI.



- c. Client shall notify AdvancedMD in writing of any restriction to the use or disclosure of PHI that Client has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect AdvancedMD's use or disclosure of PHI.
 - d. Client shall not request AdvancedMD to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Client.
6. Term and Termination.
- a. *Term.* The Term of this BA Agreement shall be effective as of the Activation Date contemplated by the Terms of Service to which this BA Agreement is an Exhibit, and shall terminate when all of the PHI provided by Client to AdvancedMD, or created or received by AdvancedMD on behalf of Client, is destroyed or returned to Client, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
 - b. *Termination For Cause.* In addition to any termination rights set forth in the Agreement, in the event of a material breach of this BA Agreement, the other party shall either: (i) provide the breaching party with an opportunity to cure the breach or end the violation, and terminate the Agreement (including this BA Agreement) if the breaching party does not cure the breach or end the violation within sixty (60) days, or (ii) immediately terminate the Agreement (and this BA Agreement) if cure is not possible.
 - c. *Termination upon Issuance of Guidance or Change In Law.* If the Secretary provides additional guidance, clarification or interpretation on the Privacy Rule, or there is a change or supplement to the HIPAA statutes or regulations (both referred to as a "**HIPAA Change**"), such that a party hereto determines that the service relationship between AdvancedMD and Client is no longer a Business Associate relationship as defined in HIPAA, such party shall provide written notice to the other party of the HIPAA Change, and upon mutual agreement of the parties that the HIPAA Change renders this BA Agreement unnecessary, this BA Agreement shall terminate and be null and void.
 - d. *Effect of Termination.*
 - i. Except as provided in paragraph (ii) of this subsection, upon termination of this BA Agreement, for any reason, AdvancedMD shall return or destroy all PHI received from Client, or created or received by AdvancedMD on behalf of Client. This provision shall apply to PHI that is in the possession of Subcontractors of AdvancedMD. Except as provided in paragraph (ii) below, AdvancedMD shall retain no copies of the PHI.
 - ii. In the event that AdvancedMD determines that returning or destroying the PHI is infeasible, AdvancedMD shall provide to Client notification of the conditions that make return or destruction infeasible. In such event, AdvancedMD shall extend the protections of this BA Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as AdvancedMD maintains such PHI.
7. Miscellaneous.
- a. *Client Rights and Remedies Upon Breach By AdvancedMD.* In the event AdvancedMD fails to perform its obligations hereunder or otherwise breaches this BA Agreement, Client may exercise all rights and remedies available to it under the Agreement, subject to applicable limitations of liability set forth in the Agreement or such other conditions as may apply to Client rights or remedies.
 - b. *Amendment.* The parties agree to take such action as is necessary to amend the Agreement from time to time as is necessary for Client and AdvancedMD to comply with the Privacy Rule and/or HIPAA. If, following good faith negotiations that shall not exceed ninety (90) calendar days from the date of the request for negotiations, the parties are unable to agree on the modifications to the terms of the Agreement that may be necessary or appropriate in order for Client to comply with the Privacy Rule and/or HIPAA, either party shall have the right to terminate the Agreement without cause as of a date specified in a notice of termination, such date to be no less than thirty days following the effective date of such notice.
 - c. *Survival.* The respective rights and obligations of AdvancedMD under Section 6d of this BA Agreement shall survive the termination of the Agreement.
 - d. *Interpretation.* Any ambiguity in this BA Agreement shall be resolved in favor of a meaning that permits Client and AdvancedMD to comply with the Privacy Rule, Security Rule and Breach Notification Rule.
 - e. *Regulatory References.* A reference in this BA Agreement to a section in the Privacy Rule, Security Rule or Breach Notification Rule, as applicable means the section as in effect or as amended.

In the event of any conflict between the terms and conditions of this BA Agreement and the terms and conditions of the other provisions of the Agreement, this BA Agreement shall prevail.



Exhibit 3: Terms of Service

These Terms of Service apply to the Hosted Programs and Third Party Services offered, or made available, by AdvancedMD. By subscribing for access to, or using, the Hosted Programs and the Third Party Services, Client agrees to be bound by these Terms of Service.

1. DEFINITIONS

- 1.1 **"AdvancedMD"** means AdvancedMD, Inc., a Delaware corporation.
- 1.2 **"Client Data"** means all information entered by Client into the Hosted Programs or the Third Party Services. For the avoidance of doubt, the term "Client Data" does not include any information that has been properly de-identified as contemplated by Section 3.4 hereof.
- 1.3 **"Data Storage"** means disk space allocated for the storage of documents, images, scheduled reports and other files (including Client Data). Data Storage does not include application data stored in the SQL server database, or data such as claim files submitted to a clearinghouse, or remittance files received from a clearinghouse.
- 1.4 **"Diamond Services"** means the provision of print and mail services available through the Hosted Programs provided by Diamond Healthcare Communications, an independent third party.
- 1.5 **"DrFirst Services"** means the provision of Electronic Prescriptions for Controlled Substances (EPCS) by DrFirst.com, an independent third party.
- 1.6 **"Dyn Services"** means the provision of email delivery services within the Hosted Programs provided by Dynamic Network Services, Inc., an independent third party.
- 1.7 **"Electronic Services"** means the transmission and processing of claim information (including a distinct claim, remit, inquiry, information request, statement collection letter print image or other item) by an independent third party between the Hosted Programs, on the one hand, and a payor, on the other.
- 1.8 **"First Databank Services"** means the provision of and access to drug product information within the Hosted Programs, which drug product information is provided by First Databank, Inc., an independent third party.
- 1.9 **"Healthwise Services"** means the provision of and access to healthcare information and education available through the Hosted Programs or otherwise provided by Healthwise, Inc., an independent third party.
- 1.10 **"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996, as amended, and the rules and regulations promulgated thereunder.
- 1.11 **"Hosted Programs"** means the computer software programs owned or licensed by AdvancedMD in object code form, and that Client has access to in connection with the receipt of Services; provided, however, that the term "Hosted Programs" does not include any Third Party Service.
- 1.12 **"Hosting Services"** means (i) AdvancedMD's provision of access to and use of the Hosted Programs or the Third Party Services by Client, and (ii) and the storage, retrieval and processing of Client Data in connection with the use of the Hosted Programs and the Third Party Services.
- 1.13 **"Jive Services"** means the provision of educational, product and online support tools available through the Hosted Programs provided by Jive Software, Inc., an independent third party.
- 1.14 **"Office Key"** means an authorization code issued by AdvancedMD to Client, pursuant to which Client is authorized to access and use the Hosted Programs and the Third Party Services.
- 1.15 **"Optum Services"** means the analysis (using a proprietary rules engine and knowledgebase provided by Optum, Inc., an independent third party) of claim coding and editing performed by Clients.
- 1.16 **"Penetration Testing"** means the practice of testing the Hosted Programs or Third Party Services and any related networks or web applications to find vulnerabilities that an attacker could exploit.
- 1.17 **"Personnel"** means the employees, agents, subcontractors, or assistants of the Clients. The use of the term "Client" shall include Client's Personnel.
- 1.18 **"Standard Rate"** means, with respect to any service, AdvancedMD's standard rate for such service (including, if applicable, time and material charges), as set forth in AdvancedMD's standard fee schedules, as in effect from time to time.
- 1.19 **"Support Services"** means those support services provided by AdvancedMD as set forth at [Support Policy](http://www.advancedmd.com/service-support-policy) available at <http://www.advancedmd.com/service-support-policy>, as such may change from time to time in the sole and absolute discretion of AdvancedMD.
- 1.20 **"Surescripts Services"** means the electronic prescription functionality and clinical interoperability functionality, in either case, that is accessible through the Hosted Programs, and in each case is provided by Surescripts, LLC, an independent



third party.

1.21 **"Terms of Service"** means these terms of service, including any Exhibit hereto, in all cases, as such may be updated, revised, modified or amended from time to time as permitted herein.

1.22 **"Third Party Services"** means any software, offering, product or functionality that Client uses (whether or not specifically subscribed for) but which is provided by an independent third party. Third Party Services currently include CareAgent Services, Diamond Services, DrFirst Services, Dyn Services, Electronic Services, First Databank Services, Healthwise Services, Jive Services, Optum Services, Surescripts Services, Twilio Services, Updox Services, and Zoom Services.

1.23 **"Twilio Services"** means the provision of texting and telecommunication services accessible through the Hosted Programs provided by Twilio, Inc., an independent third party.

1.24 **"Updox Services"** means an integrated electronic service for inbound and outbound faxes and secure messaging, in either case, that is an option accessible through the Hosted Programs, and in each case is provided by Updox LLC, an independent third party.

1.25 **"Zoom Services"** means the provision of web services, video conferencing and telemedicine services accessible through the Hosted Programs or otherwise provided by Zoom Video Communications, Inc., an independent third party.

2. USE OF HOSTED PROGRAMS AND THIRD PARTY SERVICES

2.1 Right to Use Hosted Programs and Third Party Services.

A. AdvancedMD grants to Client a non-exclusive, non-transferable right for Client to access and use the Hosted Programs and Third Party Services subscribed to by Client. Client shall be entitled to access and use the Hosted Programs and the Third Party Services solely for Client's own internal business operations.

B. Client shall not transfer, sell, lease, or lend the Hosted Programs or the Third Party Services, or any software or systems used to provide the Hosted Programs or the Third Party Services, or any contents, information, tools, and resources therein, to any third party. Client shall not (i) allow any third party to access or use the Hosted Programs or the Third Party Services, or (ii) access or use the Hosted Programs or the Third Party Services for third-party training, commercial time-sharing, software hosting, rental or service bureau use.

C. Client shall not download, modify, create derivative works from, reverse engineer, decompile or disassemble or otherwise attempt to discover any trade secret contained in the Hosted Programs or the Third Party Services or in any software or system used by AdvancedMD in connection with providing the Hosted Programs or the Third Party Services.

D. As between the parties, AdvancedMD retains all title and interest in any copyrights, patents, trade secrets, know-how and other proprietary rights of any kind in the Hosted Programs, the Third Party Services, any custom Templates (including without limitation reports, forms, or similar documents found in or derived from those found in AdvancedMD's library) developed by AdvancedMD on behalf of Client or otherwise, and any software or other intellectual property developed by AdvancedMD. Client does not acquire any rights, express or implied, in the Hosted Programs, the Third Party Services, or any software or other intellectual property developed by AdvancedMD, other than the right to access and use the Hosted Programs, the Third Party Services, and such software or intellectual property as set forth in the Agreement. Any information provided to AdvancedMD by the Client during the process of developing custom Templates for use by the Client will not serve as a basis for the Client to claim any right to any copyrights, patents, trade secrets, know-how and other proprietary rights of any kind in the Hosted Programs, the Third Party Services, any custom Templates developed by AdvancedMD on behalf of the Client, and any software or other intellectual property developed by AdvancedMD as part of the Services. The Client agrees not to modify, copy, distribute, transmit, display, perform, publish, create derivative works from, sublicense, transfer, assign, rent, sell, or otherwise convey any of the Hosted Programs, the Third Party Services, and custom Templates developed by AdvancedMD on behalf of the Client, and any software or other intellectual property developed by AdvancedMD as part of the Services. AdvancedMD may terminate or suspend Client's access to and use of the Hosted Programs, the Third Party Services and such software or intellectual property (in whole or in part) at any time, with or without notice, if AdvancedMD has reason to believe that Client has violated the terms set forth in this Section 2.1

2.2 **Verification.** AdvancedMD or its agents shall have the right to monitor use of the Hosted Programs and the Third Party Services by Client. This audit right includes, but is not limited to (i) electronic monitoring at any time, and (ii) an on-site audit, which may be conducted not more than once per year upon reasonable notice to Client (and which shall be conducted in a manner so as not to unreasonably interfere with Client's business).

3. SERVICES

3.1 Provision of Hosting Services and Support Services.

A. AdvancedMD shall provide the Hosting Services subscribed to by Client.

B. AdvancedMD will provide Support Services.

3.2 **Terms Applicable to Third Party Services.** The terms applicable to Client related to Third Party Services are set forth on **Annex A** to this Exhibit 3.



3.3 Security of Client Data. AdvancedMD agrees to maintain the security of Client Data using industry-standard data security protocols, and other methods reasonably deemed to be adequate for secure business data. AdvancedMD shall employ commercially reasonable storage and reasonable precautions to prevent the loss of or alteration to Client's Data, but AdvancedMD does not guarantee against any such loss or alteration. AdvancedMD is not and will not be, Client's official record keeper.

3.4 De-Identification. AdvancedMD may use and disclose Protected Health Information to create de-identified health information and use and disclose the de-identified health information in accordance with the Business Associate Agreement in effect between the parties from time to time.

3.5 Data Storage. Unless otherwise set forth in a written agreement between AdvancedMD and Client, during the term of the agreement between AdvancedMD and Client, each provider associated with an Office Key is allowed 10 gigabytes of Data Storage and any Data Storage in excess of 10 gigabytes for a provider will be billed in increments and at AdvancedMD Standard Rate.

3.6 AdvancedMD Connect Interfaces.

A. The AdvancedMD Connect Interface ("**Connect**") makes available to Client AdvancedMD's standard application program interface functions ("**APIs**") for the purpose of enabling Client to share specific data between the Hosted Programs or Third Party Services and other software and/or data sources owned or licensed by Client or a third party that provides services to Client (the "**External System**"). AdvancedMD charges a separate fee for Client's use of Connect; this fee, however, does not (i) include any documentation for the APIs; (ii) include any development hours from AdvancedMD to develop software that accesses the APIs; or (iii) include any development hours from AdvancedMD for any configuration, interface development, or non-standard configuration of the external data interface that may be required by the External System but is not already available from AdvancedMD or approved for development by AdvancedMD. Support is limited to verification of performance of the APIs as interfaced to the External System. Additional Client support may be available at AdvancedMD's then-current Standard Rate.

B. Client's use of Connect and all APIs is expressly limited to the registered interfaced External Systems identified by Client in writing. Access to or use of Connect by External Systems not disclosed therein is strictly prohibited.

C. AdvancedMD reserves the right to suspend or terminate access to Connect, use of the APIs and the sharing of data with an External System if (i) AdvancedMD suspects any breach of security; (ii) AdvancedMD determines that the External System is, directly or indirectly, affecting the proper performance of the Hosted Programs or the Third Party Services; or (iii) for any other valid business purpose.

3.7 Suspension of Access to Hosted Programs. AdvancedMD shall have the right, exercisable in its sole and absolute discretion, to suspend Client's access to, and use of, the Hosted Programs and the Third Party Services in the event that Client has not paid any amounts due to AdvancedMD by the time such payment is due.

4. CLIENT OBLIGATIONS AND RESPONSIBILITIES

4.1 Client Representations and Covenants.

A. Client represents and warrants to AdvancedMD that (i) Client's use of the Client Data (including the right to transfer, store, process and cache Client Data in connection with the use of the Hosted Programs and the Third Party Services) complies with all applicable federal, state and local laws and regulations, and that Client has received all necessary third party approvals with respect to the its use of the Hosted Programs and the Third Party Services, and (ii) the Client Data, and Client's use of the Client Data (including storage, processing and caching of Client Data), do not infringe the intellectual property rights of any third party, and Client agrees to indemnify and hold AdvancedMD harmless from any third-party claims arising from Client's use of the Client Data.

B. Client shall comply with all federal, state and local laws and regulations applicable to Client's conduct of its business, including, without limitation, obtaining and maintaining all federal, state and local licenses.

C. Client shall not conduct any form of Penetration Testing of the Hosted Programs and Third Party Services or any related networks or web applications without the express written approval of AdvancedMD that must include the scope and parameters by which Penetration Testing may occur.

4.2 Data Import Limitations. Client is responsible for providing all Client Data in an industry standard format regularly used by AdvancedMD in the ordinary course of business. Client acknowledges and agrees that the Client Data available in the Hosted Programs and Third Party Services will be a reflection of the quality of the data provided by the Client. AdvancedMD is not responsible for inability to perform or access the Hosted Programs or Third Party Services due to improperly formatted or corrupt files, viruses on media provided, or incompatible backup media or software. Client shall maintain (on a server owned or under the control of Client, or in any other manner Client shall elect) an accurate backup copy of all data provided to AdvancedMD. Client acknowledges that transferring Client Data in connection with the use of the Hosted Programs or Third Party Services is subject to the possibility of human and machine errors, omissions, and losses, including inadvertent loss of data, or damage to media that may give rise to loss or damage. Client is responsible to adopt reasonable measures to limit the impact of such problems.

4.3 Software and Hardware Requirements.

A. Client is responsible for obtaining access to the Internet using software and hardware that meet AdvancedMD's published system requirements, including security requirements. These system requirements are available at



<http://www.advancedmd.com/system-requirements>, as such may be in effect from time to time.

B. Client agrees to access the Hosted Programs and Third Party Services, and to store and retrieve data using third party programs, including (without limitation) Internet "browser" programs, that support data security protocols compatible with those specified by AdvancedMD. Client agrees that all software it uses to access the Hosted Programs or Third Party Services will support the Secure Socket Layer (SSL) protocol.

4.4 Account Name and Passwords.

A. Client may designate user account names and passwords for users that have access to the Hosted Programs or Third Party Services. Client is responsible for safeguarding the confidentiality and use of account names and passwords, and agrees to take any and all actions necessary to maintain the privacy of such information.

B. Client shall be liable and responsible for any and all activities conducted through its account, whether or not such activities have been authorized by Client. AdvancedMD will deem any communication, data transfer, or use of the Hosted Programs or Third Party Services received under Client's account names and passwords to be for Client's benefit and use.

C. Client will promptly notify AdvancedMD if account names or passwords are lost, stolen, or are being used in an unauthorized manner. Upon AdvancedMD's request, Client will provide AdvancedMD with accurate and complete registration information for users that have access to the Hosted Programs or Third Party Services.

4.5 Ownership of Client Data. As between the parties, Client is the owner of all Client Data; provided, however, that nothing herein shall prevent AdvancedMD from using or disclosing such Client Data as may be required by law, or as otherwise permitted in the Terms of Service or the Business Associate Agreement in effect between the parties from time to time. Without limiting the foregoing, AdvancedMD may use and disclose Protected Health Information to create de-identified health information and may use Client Data to provide data aggregation services. As between the parties, AdvancedMD is the owner of any de-identified health information and any data set that aggregates Client Data with client data from other AdvancedMD clients. In all cases, the identity of Client will not be determinable from the de-identified health information or any aggregated data set.

5. SUSPENSION OF ACCESS

5.1 AdvancedMD may suspend Client's use and access to the Hosted Services or Third Party Services immediately in the event Client or its employee(s) includes in the Hosted Programs any content that is obscene, offensive, threatening or malicious, or which violates any applicable law or regulation or which otherwise exposes AdvancedMD to civil or criminal liability.

5.2. AdvancedMD may suspend Client's use and access to the Hosted Services or Third Party Services immediately in the event of any wrongful or unauthorized access to or use of the Hosted Programs or the Third Party Services by Client or other third party.

6. INDEMNITY, WARRANTIES, LIMITATION ON LIABILITY; REMEDIES

6.1 AdvancedMD Ownership; Infringement Indemnity.

A. All computer programs and related documentation made available, directly or indirectly, by AdvancedMD to Client are the exclusive property of AdvancedMD or the third parties from whom AdvancedMD has secured the rights to such services or products. All rights, title and interest in or to any copyright, trademark, service mark, trade secret and other proprietary right relating to the Hosted Programs are reserved.

B. AdvancedMD shall indemnify, defend and hold harmless Client from and against any and all suits, proceedings, claims, demands, or causes of action by a third party that the Hosted Programs infringe upon or misappropriate any United States copyright, patent, trade secret or other intellectual or industrial property right of any kind or nature whatsoever (a "Claim").

C. AdvancedMD shall have no liability under this Section 6.1 to the extent a Claim is attributable to (i) combination or use of the Hosted Programs with any item, component, product, material, software or process not provided by AdvancedMD, if liability would not have arisen but for such combination or use with such item, component, product, material, software or process; (ii) use of the Hosted Programs in any way not authorized nor contemplated by these Terms of Service or any agreement under which Client is granted access to, or use of, the Hosted Programs or Third Party Services, if liability would not have arisen but for such unauthorized use; or (iii) any breach by Client of these Terms of Service or any agreement under which Client is granted access to, or use of, the Hosted Programs or Third Party Services, if liability would not have arisen but for such breach.

D. In the event the Hosted Programs are held by a court of competent jurisdiction to, or are believed by AdvancedMD to, infringe or misappropriate any third party right, AdvancedMD shall have the option, at its expense, to (i) modify the Hosted Programs to be non-infringing, (ii) replace the Hosted Programs with a non-infringing substitute, (iii) resolve any Claim to allow use of the Hosted Programs, or (iv) obtain for Client a subscription to continue using the Hosted Programs, (v) terminate the subscription for the infringing Hosted Programs.

E. The indemnification obligations set forth in this Section 6.1 are subject to the following conditions: (i) Client shall give AdvancedMD written notice of any Claim for which Client intends to claim indemnification within ten (10) business days of the Claim; (ii) Client shall give AdvancedMD the sole right to control and direct the investigation, defense and settlement of the Claim, including selection of defense counsel; and (iii) Client shall reasonably cooperate with AdvancedMD in the investigation, defense and settlement of the Claim. Reasonable out-of-pocket expenses incurred by Client in providing such assistance will be reimbursed by AdvancedMD. Client shall not settle or compromise any Claim, and any such settlement or compromise shall be



void as against AdvancedMD and shall terminate AdvancedMD's obligation to indemnify Client with respect to such Claim.

F. Client acknowledges and agrees that the remedies provided in this Section 6.1 are the sole and exclusive remedies of Client, and consequently the sole and exclusive liability of AdvancedMD, with respect to any Claim.

6.2. AdvancedMD Warranties; Time Period; Disclaimers.

A. Warranty for the Hosted Programs and Hosting Services. Subject to Client's compliance with its obligations under Sections 4.2 and 4.3, AdvancedMD represents and warrants that the Hosted Programs and Hosted Services will perform in all material respects in accordance with the documentation provided by AdvancedMD within the Hosted Programs (titled "Help Files"), or paper or CD copies of such documentation. This warranty shall apply for a period of ninety (90) days from the Effective Date. Any breach not reported within such period will be deemed waived and accepted by Client.

B. Warranty for Data Importation. Subject to Client's compliance with the terms of Section 4.2, AdvancedMD represents and warrants that the importation of data by AdvancedMD will conform in all material respects with the written documentation provided by AdvancedMD. This warranty shall apply until the earlier of (i) the expiration of five (5) business days from the date the data at issue is imported, or (ii) the date the database is first altered in any way by the Client. Any breach not reported within such period will be deemed waived and accepted by Client.

C. Warranty for Certain Third Party Services. AdvancedMD represents and warrants that (i) Electronic Services shall be provided in a professional manner, consistent with reasonable industry standards, upon timely receipt of properly entered, formatted and coded data files, documents, balancing totals or other required information from Client, and (ii) a minimum of 95% (calculated on an annual basis) of Client's claims will be transmitted to the applicable payor on first submission; provided, however, that the guarantee contemplated by clause (ii) only applies to claims with respect to which Client uses the Optum Services and AdvancedMD transmits the applicable claim information to the independent third party performing the Electronic Services. Changes in laws, regulations or health care industry standards (including, but not limited to, the requirement that Version 5010 and ICD-10 codes be used on all transactions covered by HIPAA), may, in the future, affect or limit AdvancedMD's ability to provide the guarantee set forth in clause (ii) of the previous sentence.

D. Warranty for Other Services. AdvancedMD warrants that the Support Services will be performed in a manner that is consistent with generally accepted industry standards for such service.

E. Disclaimers. THE WARRANTIES SET FORTH IN THIS SECTION 6.2 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY ORAL REPRESENTATIONS OR WARRANTIES MADE BY OR ON BEHALF OF ADVANCEDMD AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. AdvancedMD does not warrant that the Hosted Programs or the Third Party Services will operate in the combinations that Client may select for use, that the operation of the Hosted Programs or the Third Party Services will be uninterrupted or error-free, free of viruses or any other malicious code, or fit for its intended purpose, or that all Hosted Program errors or the Third Party Services errors will be corrected. Any description of the Hosted Programs contained on AdvancedMD's website or promotional materials is for the sole purpose of identifying them, and any such description is not a part of the basis of the bargain and does not constitute a warranty or representation.

6.3. Exclusive Remedies. For any breach of the representations and warranties contained in Section 6.2, Client's exclusive remedy, and AdvancedMD's entire liability, shall be as follows:

A. With respect to a breach of the representation and warranty set forth in 6.2A, AdvancedMD shall correct the errors that caused AdvancedMD to breach its warranty to Client.

B. With respect to a breach of the representation and warranty set forth in 6.2B, upon verification of the error, AdvancedMD shall, at its option, either correct the database or refund the amount paid for the data import service.

C. With respect to a breach of the representation and warranty set forth in 6.2C, (i) in the case of Electronic Services, subject to the terms of Section 6.4, Client shall have such remedies as may be available under law, and (ii) in the case of Optum Services, AdvancedMD shall perform a root cause analysis to determine the reason for the Client's claims acceptance rate and provide reasonable training to improve Client's acceptance rate.

D. With respect to a breach of the representation and warranty set forth in 6.2D, AdvancedMD shall re-perform the applicable Support Service.

6.4 Exculpation of Certain Claims; Limitation on Liability.

A. AdvancedMD uses unrelated third parties to provide the Third Party Services, and the availability, and accuracy of such Third Party Services is not within AdvancedMD's control. Client hereby waives any and all liability and claims which Client may have against AdvancedMD in connection with the Third Party Services, except as specifically set forth in Section 6.3, and for liability directly caused by the gross negligence or willful misconduct of AdvancedMD.

B. Client shall be liable for (and Client hereby waives any and all liability and claims which Client may have against AdvancedMD for), (i) any inaccuracy in Client Data provided by Client, (ii) the consequences of any instructions Client may give to AdvancedMD, (iii) maintaining and backing up any Client Data, and (iv) Client's failure to protect user account names and passwords. In addition, AdvancedMD is not responsible for (x) Client's access to the Internet, (y) interception or interruptions of communications through the Internet or (z) changes or losses of data through the Internet, in each case, other than to the extent



caused solely by AdvancedMD.

C. In connection with use of the Hosted Programs and the Third Party Services, AdvancedMD may provide or make available to Client certain Templates and forms. Client hereby waives any and all liability and claims which Client may have against AdvancedMD or any third party in connection with the use, modification, and/or customization of such Templates and forms, except for liability direct caused by the gross negligence or willful misconduct of AdvancedMD. FURTHER, ADVANCEDMD IS IN NO WAY ENGAGED IN THE PRACTICE OF MEDICINE OR ACTING AS A PHYSICIAN OR OTHER HEALTH CARE PROFESSIONAL OR PROVIDER. ANY TREATMENT, THERAPY, PROCEDURE, INFORMATION, MEDICATION, PRODUCT OR OTHER INFORMATION REFERENCED BY OR THROUGH SERVICES ARE NOT INTENDED AS A RECOMMENDATION OR ENDORSEMENT OF ANY COURSE OF TREATMENT, THERAPY, PROCEDURE, INFORMATION, MEDICATION, PRODUCT OR OTHER INFORMATION. THE ULTIMATE RESPONSIBILITY FOR DIAGNOSING AND TREATING ANY PATIENT RESTS WITH THE PATIENT'S HEALTH CARE PROVIDER.

D. AdvancedMD shall not have any liability under these Terms of Service for any disclosure or modification of Client Data, or for any consequences that may arise from such modifications (including, but not limited to, incorrectly modified or lost data), in either case, made by means of access to the APIs by or on behalf of Client, or by means of access by any third party to the extent such third party obtained access to the APIs as a result of disclosure by Client of Office Keys, user IDs or passwords to such third party, any breach of these Terms of Service by Client, or any negligence by Client, its employees, agents or representatives.

E. This Section 6.4 sets forth the full extent of AdvancedMD's liability for damages resulting from these Terms of Service, regardless of the form in which such liability of claim for damages may be asserted. The provisions allocate the risks between AdvancedMD and Client. The parties agree that AdvancedMD's pricing and other terms and conditions reflect the allocation of risk and the limitation of liability specified herein, and Client acknowledges that without such limitation on liability and Client's agreement to maintain redundant copies of all data provided to AdvancedMD in connection with the Services, AdvancedMD would not have granted Client access to, or allowed Client to use, the Hosted Programs or Third Party Services.

7. GENERAL TERMS

7.1. Trademarks and Publicity. Except for linking to AdvancedMD web sites, Client may not use any AdvancedMD logo or trademark, whether or not such mark(s) are registered, without prior written approval from AdvancedMD. This includes use on printed materials of any kind as well as electronic mediums such as internet web pages or email. Furthermore, the use of the AdvancedMD name (or any derivative thereof) in Client's URL, Business Name, or the names of any add-on products or services Client may be offering independent of AdvancedMD is strictly prohibited. Additionally, using the AdvancedMD name in paid targeted keyword advertising campaigns on search engines is also prohibited. Client shall not use AdvancedMD's name, nor any adaptation or variation thereof, in any advertising, promotion or sales literature without AdvancedMD's prior written consent in each instance.

7.2. Governing Law and Dispute Resolution. These Terms of Service, and all matters arising out of or relating to these Terms of Service, shall be governed by the laws of the State of New York applicable to contracts made and wholly performed in such state. Any controversy or claim arising out of or relating to the Terms of Service, or breach thereof, shall be submitted to the following procedure: (i) direct negotiation in a settlement conference to be scheduled as soon as possible after the dispute arises; (ii) if no resolution is reached within sixty (60) days of the settlement conference, the parties will submit the dispute to non-binding mediation in Salt Lake County, Utah under the mediation rules of the American Arbitration Association; and (iii) if no settlement is reached within sixty (60) days of the start of mediation, either party may seek legal redress in a forum of competent jurisdiction.

7.3. U.S. Government. The Hosted Programs and accompanying documentation are commercial computer software and documentation developed exclusively at private expense and in all respects are proprietary data belonging to AdvancedMD. If the Hosted Programs and accompanying documentation are used under the terms of a DoD or civilian agency contract, use, reproduction and disclosure of such software and documentation by the Government is subject to the restrictions set forth in these Terms of Service in accordance with 48 C.F.R. 227.7202 or 48 C.F.R. 12.212, respectively.

7.4. Other Terms.

A. The waiver by either party of any default or breach of these Terms of Service shall not constitute a waiver of any other, or subsequent, default or breach.

B. Except for actions for breach of AdvancedMD's proprietary rights in the Hosted Programs, no action, regardless of form, arising out of these Terms of Service may be brought by either party more than one year after the cause of action has accrued.

C. These Terms of Service constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter hereof.

D. AdvancedMD may assign these Terms of Service or any rights or obligations under these Terms of Service to a third party. Client may not assign these Terms of Service or any rights or obligations hereunder without the prior written consent of AdvancedMD, which consent shall not be unreasonably withheld or delayed; any such assignment without the prior consent of AdvancedMD shall be void. AdvancedMD may use subcontractors to perform services under these Terms of Service; provided, however, that such subcontracting shall not relieve AdvancedMD from responsibility for performance of its duties hereunder.

E. AdvancedMD has no obligation to any third party by virtue of these Terms of Service, including any patient of any Client. Providers of Third Party Services shall be third party beneficiaries to these Terms of Service with respect to the services



provided to Client.

F. If any of the provisions of these Terms of Service shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire these Terms of Service, but rather the parties hereto agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, the fullest extent possible, the economic, business and other purposes of these Terms of Service.

G. AdvancedMD may modify or amend the Business Associate Agreement between the parties, these Terms of Service and the terms applicable to any Third Party Services (including the Terms of Use applicable thereto) upon written notice, e-mail or otherwise, to Client. Following any such notification, Client shall have the right for a period of thirty (30) days from receipt to inform AdvancedMD in writing that it does not accept the modification or amendment. If Client does not notify AdvancedMD in writing that it does not accept such modification or amendment within such thirty (30) day period, and continues to access and use the Hosted Programs and/or receive the RCM Services, this shall be deemed agreement by the Client to the modification or amendment. If Client properly notifies AdvancedMD that it does not accept the new terms within the thirty (30) day period, then Client may continue to access and use the Hosted Programs, and receive the RCM Services until the end of Client's then-current term, at which time Client's access to and use of the Hosted Programs shall terminate.



Annex A: Third Party Services Terms and Conditions

The terms and conditions set forth in this **Annex A** apply to use by Client of various Third Party Services constituting part of the Hosted Programs and are required by the third parties that provide such services. Capitalized terms used but not defined in these terms and conditions shall have the meaning ascribed to such terms in the Agreement.

1.1 **Electronic Services.** If Client uses the Electronic Services, Client acknowledges and agrees that Electronic Services are generally available approximately 4 to 8 weeks after Client has properly completed and returned to AdvancedMD all applicable implementation forms related to Client's use of Electronic Services.

1.2 **First Data Bank Services.** If Client uses the First Data Bank Services:

A. Client hereby covenants and agrees to indemnify and hold First Databank, Inc. ("FDB") harmless from and against any liability, loss, injury or expense (including reasonable attorneys' fees and court costs) imposed upon, incurred or suffered by FDB relating to or arising out of any allegation or claim that the use of the medical, pharmaceutical and nutritional information originally provided by FDB and made available to Client through its use of the Hosted Programs (including any user manuals), or any information contained therein, caused or contributed to the personal injury or death of an individual; provided, however, that this indemnity shall not apply in the case of FDB's gross negligence or willful misconduct. FDB is an intended third party beneficiary of this Section 1.2A of this **Annex A**. This Section 1.2A will survive any termination of the Agreement with AdvancedMD.

B. Client hereby acknowledges and agrees that AdvancedMD's electronic health record application utilizes information provided by FDB. FDB takes actions designed to ensure that the information provided by FDB is accurate, up-to-date, and complete, but no guarantee is made to that effect. FDB's product is designed to supplement, and not a substitute for, the expertise, skill, knowledge and judgment of healthcare practitioners. FDB's drug information does not endorse drugs, diagnose patients or recommend therapy. The absence of a warning for a given drug or drug combination in no way should be construed to indicate that the drug or drug combination is safe, effective or appropriate for any given patient. The information contained therein is not intended to cover all possible uses, directions, precautions, warnings, drug interactions, allergic reactions, or adverse effects. In addition, the drug information contained therein may be time sensitive. FDB information is compiled for use by healthcare practitioners in the United States. Neither AdvancedMD nor FDB warrants that uses outside of the United States are appropriate. Client acknowledges that the professional duty to the patient in providing healthcare services lies solely with the healthcare professional providing patient care services. Client and healthcare practitioners should use their professional judgment in using the information provided. Neither AdvancedMD nor FDB assumes any responsibility for actions of Client which may result in any liability or damages due to the malpractice, failure to warn, negligence or any other basis.

1.3 **Surescripts Services.** If Client uses the Surescripts Services, Client hereby acknowledges and agrees that:

A. **Access to and Use.** Client shall ensure that (i) only persons that qualify as Prescriber End Users hereunder access and use the Surescripts through the AdvancedMD e-Prescribing solution, and (ii) all Prescriber End Users are registered with AdvancedMD.

B. **Surescripts Information.** Client agrees that it shall keep confidential any data or information relating to Surescripts, or its services or operations, of which it becomes aware in connection with the use of the Hosted Programs.

C. **Adherence to Applicable Law and Commercial Messaging Rules.**

i. Client shall comply with all Applicable Law and Client shall ensure that each Prescriber End User shall obtain all necessary patient consents and authorizations prior to requesting medication history for such patient.

ii. Client shall not, and shall ensure that its Prescriber End Users do not, use any means, program, or device, or permit any other person to use any means, program, or device, including, but not limited to, advertising, instant messaging, and pop-up ads, to influence or attempt to influence, through economic incentives or otherwise, the Prescribing Decision of a prescriber at the Point of Care if: (i) such means, program, or device (as described above) is triggered by, initiated by, or is in specific response to, the input, selection, and/or act of a prescriber or his/her agent prescribing a pharmaceutical or selecting a pharmacy for a patient; and (ii) that prescription shall be delivered via the Surescripts network. Notwithstanding the above Client may: (A) show information regarding a payer's formulary and benefit plan design, including patient lowest cost options, on/off tier, prior authorization, step therapy, coverage status, and co-pay information; and/or (B) deliver or have delivered to Prescriber End Users clinical alerts that are sourced from payers and/or are attributed to generally recognized and reputable sources providing clinical information to the prescriber, even if, in the event of either (A) or (B), such information influences the patient or prescriber's choice of pharmacy or other prescribing decisions. Any custom lists created and maintained by Prescriber End Users within the Hosted Programs, including but not limited to: (i) an individual Prescriber End User's most often prescribed medication list; (ii) an individual Prescriber End User's most often used pharmacy list; and/or (iii) an individual Prescriber End User's most often used SIGs (*i.e.*, instructions for the use of medications), would not be considered a violation of this section.

D. **Surescripts Policies.** In the event that Surescripts or any Data Source issues privacy and patient consent policies related to the delivery of Private Information, Client shall ensure that Prescriber End Users promptly comply with such policies.

E. **Surescripts Disclaimers.**

- i. **Availability of Data Sources.** No representation or warranty is made regarding the availability of any particular Data Source or other Participant in the Surescripts network. At any time, Data Sources or other Participants in the Surescripts network may be added to or deleted from the Surescripts network or may limit access to their data, such changes may occur without prior notice.
 - ii. **Limitations of the Surescripts network.** Surescripts uses available technology to match patient identities. Because patient information is maintained in multiple places, not all of which are accessible to Surescripts, and because not all patient information is kept in a standard fashion or is regularly updated, it is possible that false matches may occur or that there may be errors or omissions in the prescription benefit and/or medication history information provided. Therefore, it is the responsibility of any treating physician or other health care provider or facility (not the responsibility of Surescripts or AdvancedMD) to verify prescription benefit or medication history information through other means with each patient and/or the patient's representatives before such information is relied upon or utilized in diagnosing or treating the patient. Surescripts is not a health plan, health care provider or prescriber. Surescripts does not and cannot independently verify or review the information transmitted through the Surescripts network for accuracy or completeness. Pursuant to the foregoing, Client acknowledges that the prescription benefit and medication history information provided hereunder is not complete or accurate, and that neither Surescripts nor any Data Source provides any representations or warranties with respect to the accuracy or completeness of the prescription benefit or medication history information, and Client releases and hold harmless, Surescripts and any person or entity providing prescription benefit or medication history information from any liability, cause of action, or claim related to the completeness or lack thereof of the prescription benefit or medication history information. In addition, Client and each Prescriber End User shall confirm the accuracy of the prescription benefit and medication history information with his/her/its patient prior to providing any medical services based thereon, and that the Client and each Prescriber End User shall use his/her/it professional judgment in the provision of care.
 - iii. **No Substitution for Written Prescription or Documentation.** The Surescripts network is not intended to serve as a replacement for: (i) a written prescription where not approved as such by the appropriate Governmental authorities or where such written prescription is required for record keeping purposes; or (ii) applicable prescription documentation. Use of the Surescripts network is not a substitute for a health care provider's standard practice or professional judgment. Any decision with regard to the appropriateness of treatment, or the validity or reliability of information, is the sole responsibility of a patient's health care provider.
- F. **Surescripts Data Sources.** Client acknowledges that any Data Source, in its sole discretion, may elect not to receive prescriptions and other messages from Client and/or any Prescriber End User.
- G. **Audit by Surescripts.** Client acknowledges and agrees that Surescripts may access, inspect, and audit any information in the Hosted Programs relating to Client's use of the Surescripts network and/or Surescripts Data.
- H. **Use of Data by Surescripts.** Subject to compliance with all Applicable Law (including without limitation all laws regarding the protection of protected health information (as defined under HIPAA)), Surescripts shall be entitled to use and disclose information received from Client and Prescriber End Users for the purpose of Surescripts' business.
- I. **Clinical Operability Services.** In the event Client uses the clinical operability services provided by Surescripts as part of the Hosted Programs, Client shall obtain any and all necessary patient consents and authorizations required by Applicable Law. Client shall, upon request, certify to having obtained all such necessary patient consents and authorizations.
- J. As used in this Section 1.3 to this **Annex A** only, the following terms have the following meanings:
- "Applicable Law"** means any and all applicable federal, state, local, common law, rules, regulations, directives, and guidelines, including but not limited to the Health Insurance Portability and Accountability Act ("HIPAA") and related regulations; the Health Information Technology for Economic and Clinical Health Act ("HITECH") and related regulations; the Anti-Kickback provisions of the Social Security Act and related regulations; the federal Physician Self-Referral Prohibition provisions of the Social Security Act and related regulations; state and federal pharmacy laws and regulations; and state and federal laws and regulations regarding breach notifications.
- "Data Source"** means all PBM Data Sources and Pharmacy Data Sources.
- "PBM Data Source"** means a pharmacy benefit manager, health benefit payor or administrator, or other similar entity which has entered into a written agreement with Surescripts to allow access through the Surescripts network to information in its possession.
- "Pharmacy Data Source"** means a pharmacy, pharmacy chain, or aggregator that aggregates information on behalf of pharmacies, or other similar entity which has entered into a written agreement with Surescripts to allow access through the Surescripts network to information in its possession.
- "Point of Care"** means the place and time that a prescriber or his/her agent is in the act of prescribing a pharmaceutical for a patient.



“Prescribing Decision” means a prescriber’s decision to prescribe a certain pharmaceutical or direct a patient to a certain pharmacy.

“Prescriber End User” means an individual, located in the United States or a United States territory, that: (1) is employed by, an active member of the medical staff of, or otherwise performing healthcare services as a legally authorized representative of Client; and (2) if required by applicable law to be licensed, registered, or otherwise authorized by a governmental authority, is properly and duly licensed, registered, or otherwise authorized with the appropriate governmental authority to perform the applicable healthcare services.

“Private Information” means: (i) Protected Health Information (“PHI”), as defined under HIPAA and related regulations, created or received on behalf of, or received from Surescripts; (ii) Nonpublic Personal Financial Information and, as applicable, Nonpublic Personal Health Information, as defined by the Gramm-Leach-Bliley Act; or (iii) any data or information that: (1) relates to an individual, and (2) identifies or can reasonably be believed to form the basis for identifying an individual (such as, but not limited to, an individual’s name, postal address, e-mail address, telephone number, date of birth, Social Security number, driver’s license number, financial account number, or any other unique identifier), in each case, that is provided to AdvancedMD to Client.

“Surescripts” means Surescripts, LLC.

“Surescripts Data” means any data or information relating to Surescripts, or its services or operations, provided to AdvancedMD and/or Prescriber End Users) by or on behalf of Surescripts, including statistics collected by Surescripts regarding transactions processed by the Surescripts network.

“Surescripts network” means the Surescripts proprietary technology for a secure, nationwide, interoperable health information infrastructure, including Surescripts materials, interfaces, functionality, and transaction maps, as they may be further modified or developed by Surescripts from time to time.

1.4 **Updox Services.** If Client uses the Updox Services, Client acknowledges and agrees that (i) in order for the Updox Services to be enabled, Updox requires that Client agree to the Updox Terms of Use, (ii) the Updox Terms of Use, available at <http://www.advancedmd.com/tos/updox.pdf> exclusively governs the provision of, and Client’s use of, the Updox Services, and (iii) it has reviewed and accepts such Updox Terms of Use.

1.5 **CareAgent Services.** If Client uses the CareAgent services, Client agrees to the following terms: (A) Client has authorization to use the CareAgent Software internally only, and solely in conjunction with the Corepoint Community Exchange Server Software Product and the above-specified Hosted Offering; (B) Client is prohibited from any copying of the CareAgent Software; (C) Client shall destroy all copies of the CareAgent Software after license termination; (D) Client is prohibited from reverse assembling, reverse compiling or translating the CareAgent Software except where applicable law permits it despite this limitation. The CareAgent Software is copyrighted and licensed; it is not sold. AdvancedMD disclaims all implied warranties, including any implied warranties of noninfringement, merchantability, and fitness for a particular purpose. The collective liabilities of the seller/licensor and its third party suppliers are subject to the limitation of liabilities described in this agreement. Third party suppliers disclaim all liability for all consequential, punitive, incidental, and other indirect damages including, but not limited to, lost profits, lost or damaged data, and the provision of substitute goods. The third party supplier is an intended beneficiary of these limitations and disclaimers, and the limitation of liabilities for seller/licensor and its suppliers are not cumulative. Licensee will indemnify Corepoint Health for any failure by Licensee to distribute the CareAgent Software in accordance with this requirement.

1.6 **DrFirst Services.** Use by Client of DrFirst services related to Electronic Prescriptions for Controlled Substances (EPCS) and are required by the third parties that provide such services. Capitalized terms used but not defined in these terms and conditions shall have the meaning ascribed to such terms in the Agreement.

A. **Prescribing Providers.** Each EPCS Account shall be assigned to a specific provider (the “Prescribing Provider”). Each Prescribing Provider must properly register through the Licensed Software and the DrFirst website. As part of the two-factor authentication setup requirement for the EPCS Feature, each Prescribing Provider will be provided with a complimentary Identity-Proof Hard Token (“IDP Hard Token”) and confirmation letter. In the event the IDP Hard Token is lost, damaged or becomes inoperable thereafter, Client shall pay **AdvancedMD** the then-current Fee for each additional IDP Hard Token and confirmation letter, as applicable. Prescribing Provider secures and elects to use an Identity-Proof Soft Token (“IDP Soft Token”), provided by a third-party, (e.g. Symantec mobile application, etc.), the IDP Soft Token must be downloaded/stored on a separate device from the computer or device on which the Prescribing Provider gains access to the EPCS Feature and transmits prescriptions. (The IDP Hard Token and IDP Soft Token are sometimes referred to generally as an “IDP Token”)

B. **Client Responsibilities.** Client and each Prescribing Provider understand and agree: (a) to retain sole possession of the IDP Hard Token, and not to share the login passphrase with any other person; (b) that it shall not allow any other person to use an IDP Token or enter the login passphrase in order to sign controlled substance prescriptions; (c) that failure to secure the IDP Token, login passphrase, or any biometric information may provide a basis for revocation or suspension of the EPCS Account; (d) to notify **AdvancedMD** within one business day of discovery if: (i) CUSTOMER or a Prescribing Provider is contacted by a pharmacy because one or more controlled substance prescriptions are displaying the incorrect United States Drug Enforcement Administration (the “DEA”) number; (ii) if Client or a Prescribing Provider discover that one or more controlled substance prescriptions issued using a Prescribing Provider DEA number were not consistent with the prescriptions actually signed, or were not signed at all; (iii) if a Prescribing Provider’s IDP Token has been lost, stolen, or the authentication protocol has been compromised in any way; (e) that the Prescribing Provider is responsible for any controlled substance prescriptions written using its two-factor authentication credential; (f) that Prescribing Providers have the same responsibilities when issuing electronic prescriptions for controlled substances as when issuing paper or oral prescriptions; (g) to prescribe controlled substances only for legitimate medical purposes; (h) to review security logs on a daily basis for any security incidents; and (i) to report to the DEA any



security incident and provide **AdvancedMD** with a copy of such report. Client agrees to keep all security incident reports on file for a period of two (2) years.

1.7 Dyn Services. If Client uses Dyn Services, Client agrees that neither it, nor its end users, if any, will use the Services: (a) for illegal purposes (including but not limited to use in violation of the CAN-SPAM Act of 2003, as amended); (b) in a way that interferes with or disrupts networks connected to the Dyn Services; (c) in a way that violates any regulation, policy, or procedure of the networks connected to the Dyn Services; (d) in a way that violates, that facilitates the violation of, any applicable local, state or federal law, including, without limitation, those that relate to the exportation of technical data from the United States to foreign countries or any international law; (e) in a way that facilitates, coordinates, or implements any terrorist activity, (f) in way that facilitates, coordinates or implements "botnets"; (g) in a way that interferes with another's use and enjoyment of the Dyn Services or similar services; (h) to store, distribute or facilitate the distribution of illegal software or illegal pornography; (i) to facilitate spamming, linkspamming, spamdexing, or any other distribution of electronic mail to one or more people who have not given specific permission to be included in such a distribution; (j) to engage in or facilitate online gambling; (k) to distribute or otherwise make available to others any copyrighted material that Client does not have authorization or the legal right to distribute; (l) to transmit or to aid in the transmission of any unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind or nature; (m) to transmit or aid in the transmission of any material that encourages conduct that could constitute a criminal offense or give rise to civil liability; or (n) to gain or attempt to gain unauthorized access to computers or computer networks. The Dyn Services make use of the Internet's DNS protocol to create and delegate domain names, therefore, Client agrees that it, and its end users, if any, will use the Dyn Services in a way that complies with all Internet regulations, policies, and procedures. For purposes of these terms, facilitation of the unauthorized distribution of copyrighted materials through operation of a "hub", "tracker", or other file similar sharing mechanism, shall be considered identical to the actual illegal distribution of those copyrighted materials. 4. Additionally, Client agrees that neither it nor its end users, if any will use Dyn's email delivery services: (a) to send email to any email address that is not opt-in and that was not obtained through lawful and authorized means; (b) to send email to recipients whose addresses was manually or automatically "scraped" or "aggregated" from websites or third party lists; (c) without ensuring that every email includes a link or instructions allowing recipients to remove themselves from Client's email list; (d) to distribute content it does not have the right to distribute; (e) if Client fails to regularly, but in no case less than every ten (10) days, remove undeliverable email addresses from its list and honor unsubscribe requests; (f) send unsolicited email of a commercial or non-commercial nature; (g) to send mail that Client knows or should know will threaten Dyn's ability to maintain positive working relationships with the networks and/or entities are responsible for accepting email sent by Dyn on behalf of its clients. 5. If, in Dyn's reasonable discretion, Client and/or its end users, if any, (i) use the Dyn Services in a manner that, directly or indirectly, intentionally or unintentionally, negatively effects Dyn or its systems or networks (including without limitation, overloading servers on the Dyn network or causing portions of the Dyn network to be blocked) or (ii) attempts or succeeds in penetrating Dyn's security, then Dyn may terminate or suspend the Dyn Services. 6. A cleanup fee of \$100.00/hour (minimum 4 hours) may be assessed by Dyn to Client for violation of these terms by Client or its end users. 7. Dyn reserves the right to change these terms and conditions as it, in its reasonable discretion, deems prudent or necessary. Revised versions, if any, of these terms will be available at www.dynect.com, where such revised terms will be posted with a modification date. Dyn will notify Client sixty (60) days before the effective date of any revision so that Client has time to revise its own end user terms of service and otherwise comply with the revisions. Dyn expects Client to ensure that it complies with the then current terms. In the event that Dyn revises these terms, and such revision materially and negatively affects Client's ability to use the Dyn Services, Client may terminate the agreement (including any order) without penalty by notifying Dyn within thirty (30) days of receiving notice of a change in the revised terms. 8. Dyn assumes no responsibility for the content of any material located on the hosts provided from the Dyn Services. Client acknowledges that Dyn has no control over these websites or other material hosted on external hosts. 9. Dyn may immediately terminate the Dyn Services and the agreement (including any order) should it determine, in its sole discretion, that Client's conduct fails to conform to these terms and conditions or the spirit of its terms and conditions in a fashion that critically impacts Dyn or its systems or networks. If Dyn determines that Client's conduct fails to conform to these terms and conditions in a fashion that does not critically impact Dyn or its systems or networks, Dyn shall still have the right to terminate the agreement (including any order) and/or suspend provision of the Dyn Services to Client; provided however that Dyn shall provide Client with five (5) business days advanced electronic notice of such impending termination and/or suspension. Client's failure to come into compliance with these terms within five (5) business days of Dyn's transmission of said electronic notice, will entitle Dyn to terminate the agreement and/or suspend the Dyn Services immediately.

1.8 Healthwise Services. If Client utilizes Healthwise products and services, Client hereby acknowledges and agrees that:

A. **Disclaimer.** (i) HEALTHWISE DOES NOT GIVE MEDICAL ADVICE. Healthwise content is based on current medical literature and physician review. Healthwise content is intended to help people make better health care decisions and take greater responsibility for their own health. However, use of Healthwise content is not intended to replace the advice of a doctor. Healthwise products have been developed and are intended for use by consumers in the United States. (ii) HEALTHWISE AND ITS SUPPLIERS ARE NOT RESPONSIBLE FOR THE RESULTS OF THE HEALTHWISE CONTENT, INCLUDING BUT NOT LIMITED TO, USERS' CHOOSING TO SEEK OR NOT TO SEEK PROFESSIONAL MEDICAL CARE, OR USERS' CHOOSING OR NOT CHOOSING SPECIFIC TREATMENT BASED ON THE HEALTHWISE CONTENT.

B. **Disclaimer of Warranties.** (i) Except for the warranties expressly made by Healthwise, Healthwise provides its licensed product, including, without limitation, Healthwise content to Client "AS-IS" and Healthwise makes no representation or warranty as to the accuracy or completeness of the information. HEALTHWISE'S EXPRESS WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES OR OBLIGATIONS, EXPRESS OR IMPLIED. HEALTHWISE EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. Client's exclusive remedy for breach of the warranty is termination of this agreement and a refund of fees pre-paid b Client for the period following the date of the termination. (ii) NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER PARTY FOR THE RESULTS OF CLIENT'S OR PERMITTED



USERS' USE OF THE LICENSED PRODUCT, INCLUDING, BUT NOT LIMITED TO, PERMITTED USERS CHOOSING TO SEEK OR NOT TO SEEK PROFESSIONAL MEDICAL CARE, OR USERS CHOOSING OR NOT CHOOSING SPECIFIC TREATMENT ON THE LICENSED PRODUCT.

C. Limitation on Liability. EXCEPT FOR LIABILITY FOR VIOLATION OF COPYRIGHTS, TRADEMARKS, OR PATENTS, OR AS SET FORTH IN 1.9.B (ABOVE) NEITHER HEALTHWISE NOR CLIENT SHALL HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR INCIDENTAL DAMAGES RESULTING FROM THE INTERRUPTION OF BUSINESS, LOSS OF DATA, SUBSTITUTE SERVICES, OR ANY OTHER INDIRECT DAMAGES CAUSED BY OR OTHERWISE ASSOCIATED WITH THE USE OF THE LICENSED PRODUCT OR PERFORMANCE OF THIS AGREEMENT.

D. As used in this Section to this Exhibit E only, the following terms have the following meanings:

“Licensed Product” means the Healthwise products which Client is licensing as described in the Product Schedules that are part of Client’s agreement with Healthwise (the “Agreement”) and/or any future Product Schedule(s) entered into between the parties and incorporated into the Agreement (“Product Schedule”). All Product Schedules will be governed by the terms of the Agreement. The Licensed Product shall also include all Updates. “Updates” means new versions of the Licensed Product, bug fixes, error corrections and other upgrades which Healthwise will provide to Client on the same schedule it supplies Updates to other licenses. Updates do not include any new release, content, software, or module that Healthwise develops and/or licenses separate and apart from the Licensed Product licensed under this Agreement.

1.9 **Jive Services.** If Client uses Jive Services, Client agrees to be bound by the terms and conditions of the Acceptable Use Policy available here: <https://www.jivesoftware.com/legal>, which may be modified from time to time by Jive as described therein.

1.10 **Twilio Services.** If Client uses Twilio Services, Client agrees to be bound by the terms of use available here: <https://www.twilio.com/legal/tos> and the acceptable use policy available here <http://www.twilio.com/legal/aup> both of which may be modified from time to time by Twilio as described therein.

1.11 **Zoom Services.** If Client uses Zoom Services, Client agrees to be bound by the terms of use available here: <https://zoom.us/terms>, which may be modified from time to time by Zoom as described therein.

1.12 **Ephox Services.** If Client uses Ephox Services, Client hereby acknowledges and agrees that:

A. As used in this Section 1.12 of this Exhibit E only, “Licensed Software” shall mean executable code versions of Ephox’s software and all updates or successor software products that Ephox may provide to AdvancedMD that is used by Client.

B. Client is granted a nonexclusive, nontransferable right to use the Licensed Software solely in connection with the business of the Client.

C. Client may use the Licensed Software only in a Subscription Service provided by the Client. As used in this Section 1.12 of this Exhibit E only, “Subscription Service” means software-as-a-service that is an application that is provided in a hosted environment and provided to users via the Internet or a private network.

D. CLIENT IS PROVIDED THE LICENSED SOFTWARE AS IS AND EPHOX DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, CONCERNING THE LICENSED SOFTWARE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR ANY WARRANTIES ARISING OUT OF CONDUCT OR INDUSTRY PRACTICE.

E. Title to the Licensed Software remains with Ephox.

F. Client’s right to use Licensed Software will terminate if the Client breaches any of the terms set out in the Terms of Service and is unable to cure such breach within the cure period specified therein.

G. Client shall not copy, manufacture, adapt, rent, lease, lend, trade-in, create derivative works from, translate, reverse engineer, disassemble, decompile, or modify the Licensed Software, nor shall the Client take any action to circumvent or defeat the security or content usage rules provided, deployed or enforced by any functionality (including without limitation digital rights management functionality) contained in the Licensed Software.

H. Client will not remove, obscure, or alter Ephox’s copyright notices, trademarks, or other proprietary rights affixed to, contained in, or accessed in conjunction with or through the Licensed Software.

I. Ephox is an express third party beneficiary of the license as it pertains to the Licensed Software.

J. The Licensed Software is subject to certain export restrictions of the United States Government. If Client is in (a) a country to which export from the United States is restricted for anti-terrorism reasons, or a national of any such country,



wherever located, (b) in a country to which the United States has embargoed or restricted the export of goods and services, or a national of any such country, wherever located, or (c) a person or entity who has been prohibited from participating in United States export transactions by any agency of the United States Government, then Client may not install, download, access, or use the Licensed Software. Client warrants and represents to Ephox that (1) Client does not match the criteria set forth in (a), (b), or (c) above, (2) that Client will not export or re-export the Licensed Software to any country, person, or entity subject to U.S. export restrictions, including those persons and entities that match the criteria set forth in (a), (b), or (c) above, and (3) that neither the United States Bureau of Industry and Security, nor any other U.S. federal agency, has suspended, revoked, or denied Client's export privileges. Ephox understands that AdvancedMD product that Client has licensed is web based and accessible from anywhere there is an internet connection, and as such, mere access of the Licensed Software from outside the United States does not violate this section 1.12.

1.13 Rand Health. If Client uses the Rand Health 36-Item Short Form Survey ("SF-36"), Client hereby acknowledges and agrees that:

A. Any changes to SF-36 may be made without the written permission of Rand Health. However, all such changes shall be clearly identified as having been made by the Client.

B. Client accepts full responsibility, and agrees to indemnify and hold Rand Health harmless, for the accuracy of any translations of the SF-36 into another language and for any errors, omissions, misinterpretations, or consequences thereof.

C. Client accepts full responsibility, and agrees to indemnify and hold Rand Health harmless, for any consequences resulting from the use of the SF-36.

D. Client will provide a credit line when printing and distributing the SF-36 document acknowledging that it was developed at Rand health as part of the Medical Outcomes Study.

E. For the avoidance of doubt, no written permission is needed for use of SF-36.

1.14 Dynamicsoft Services. If Client uses the Dynamicsoft Services, Client hereby acknowledges and agrees that:

A. Client must not distribute the DyanmicWebTwain.lic file under any circumstances.

B. Client is prohibited from using the Dynamicsoft software to develop another tool designed to be used for creating other end user applications.

C. Client may not use the Dynamicsoft software, in whole or in part, for software development, copying or distribution. Client is not permitted to directly or indirectly expose the properties and methods of the Dynamicsoft software.

D. All rights reserved. Client shall not use, copy, modify, reverse engineer, decompile, disassemble, sell, transfer, hire, lend or otherwise distribute the Dynamicsoft software or any accompanying materials in whole or in part, except as expressly provided for in this agreement.

1.15 IBM Embedded Solution Services. If Client uses the IBM Embedded Solution Services, Client hereby acknowledges and agrees that:

A. IBM DISCLAIMS ANY AND ALL LIABILITY FOR CONSEQUENTIAL AND OTHER INDIRECT DAMAGES AND IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

B. The collective liabilities of AdvancedMD and IBM are subject to the limitations of liability in the Terms of Service.

C. Client shall not use the IBM Embedded Solution Services separately from the Hosted Programs.

D. Client shall maintain all IBM Embedded Solution Services documents, books and records, if any, and, Client shall permit AdvancedMD to audit any such documentation as necessary for AdvancedMD to confirm compliance with applicable laws and regulations.



Annex B: CPT Addendum

This AMA CPT ADDENDUM, by and between AdvancedMD and Client, applies to use of any Hosted Programs that include access to the master database of the American Medical Association (“AMA”) CPT Codes in electronic form (“CPT”) and is required by the AMA. Capitalized terms used but not defined in this **Annex B** shall have the meaning ascribed to such terms in the Agreement.

Client hereby acknowledges and agrees that:

1. AdvancedMD’s provision of updated versions of CPT depends upon the AMA continuing to permit AdvancedMD to distribute such content;
2. Client’s use of CPT is nontransferable, nonexclusive, and for the sole purpose of internal use in the territory and language as designated in the Agreement (and if no territory or language is designated, then the territory shall be the United States of America and the language shall be English);
3. Client is prohibited from using CPT or information contained therein in any public computer based information system or public electronic bulletin board (including the Internet and World Wide Web);
4. Client is prohibited from publishing, translating, or transferring possession of CPT or any copy or portion thereof;
5. Client is prohibited from creating derivative works based on CPT, or selling, leasing or licensing it or otherwise making CPT or any portion thereof available to any unauthorized party;
6. Client shall ensure that anyone who has authorized access to the Hosted Program(s) complies with the provisions of this **Annex B**;
7. Certain Hosted Product(s) include CPT which is commercial technical data and/or computer databases and/or commercial computer software and/or commercial computer software documentation, as applicable, which were developed exclusively at private expense by the American Medical Association, 515 North State Street, Chicago, Illinois, 60610. U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or computer software and/or computer software documentation are subject to the limited rights restrictions of DFARS 252.227-7015(b)(2) (November 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (June 1987) and/or subject to the restricted rights provisions of FAR 52.227-14 (June 1987) and FAR 52.227-19 (June 1987), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements;
8. CPT is provided “as is” without any liability to AdvancedMD or the AMA, including, without limitation, no liability for consequential or special damages or lost profits for sequence, accuracy or completeness of data, or that it will meet Client’s requirements, and that AdvancedMD’s and AMA’s sole responsibility is to use reasonable efforts for Client to correct defects or replace the CPT database; AMA disclaims any liability for any consequences due to use, misuse or interpretation of information contained or not contained in CPT;
9. In the event that a provision of this **Annex B** is determined to violate any law or is unenforceable, the remainder of this **Annex B** shall remain in full force and effect.