



## FERTILITY PRO SUBSCRIPTION AGREEMENT

This Subscription Agreement (this “**Agreement**”; is made effective as of the execution dated indicated on the “Fertility PRO Proposal – Exhibit A”, see [Exhibit A](#) to this Agreement for the definitions of certain capitalized terms used, but not otherwise defined, in this Agreement), (the “**Effective Date**”), is by and between Practice specified (“**Client**”, “**You**”, “**Your**”), with principal offices located at Practice specified address (“**Client**”), and Fertility PRO, LLC, a Colorado limited liability company with offices located at 43 S. Jackson Street, Denver CO 80209 (“**Provider**”) and Provider are sometimes referred to herein individually as a “**Party**” or collectively as the “**Parties**”. and is comprised of the terms and conditions below together with the Business Associate Agreement (“BAA”) posted at <https://www.fertilitypro.com/business-associate-agreement> If an interface is contracted in this agreement or contracted later by addendum, in signing this agreement you consent for Fertility PRO to share your PHI with 3rd party interface vendor and also confirm you have a signed BAA with 3rd party interface vendor. BY USING THE SOFTWARE, YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT ACCEPT THESE TERMS, YOU MUST DISCONTINUE USE OF THE SOFTWARE AND NOTIFY FERTILITY PRO IMMEDIATELY OF INTENT TO TERMINATE THIS AGREEMENT.

**A.** Client desires to (a) license the Platform Application in order to use the Platform Application as described herein and (b) obtain from Provider certain, implementation, integration, and other professional services, as well as hosting and maintenance and support services with respect to the Platform Application.

For and in consideration of the premises and mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, each intending to be legally bound, agree as follows:

### 1. Provider Services.

1.1. Implementation Services. Provider agrees to provide those support, maintenance, hosting, and training services and deliverables with respect to the initial implementation, integration, and launch of the Platform Application specified on [Exhibit B](#) attached hereto (the “Implementation Services”).

### 1.2. Ancillary Services.

(a) In General. If any ancillary administrative services or other ancillary functions or responsibilities not specifically described in this Agreement or the Exhibits are required in order to perform the Services as set forth in this Agreement (“Ancillary Services”), such Ancillary Services shall be deemed to be implied by and included within the scope of the Services to the same extent as if specifically described in this Agreement. Without limiting the foregoing,

Provider agrees to make reasonable on-going Enhancements to the Platform Application to accommodate Client's functional requirements upon receipt of a written request from Client for such Enhancements, which request shall contain detailed specifications therefore (the "Enhancement Specifications"). Upon receipt of a request for Enhancement, Provider will provide Client with an estimated timeline and cost for the requested Enhancements to the Platform Application. Provider, in its sole and absolute discretion, shall have the final and ultimate decision on the acceptance, design, and development of any proposed Enhancements to the Platform Application.

(b) Client Provided Content. From time to time, Client may add, or direct Provider to add on Client's behalf, Client Provided Content to the Platform Application. If, after the completion of the Implementation Services, Client requests Provider's assistance to add the Client Provided Content to the Platform Application, Provider shall do so at Provider's then-current rates for such Services. Client shall retain all right, title and interest in and to all Client Provided Content.

1.3. e-Prescribe. Enrollment and Training, along with a 12 months subscription for e-prescribing service is included as part of setup. An additional registration fee of \$50 will apply to each additional provider added after the effective date through the first twelve months and will then revert to the then current rate. Payable after the first 12 months of this agreement, a yearly subscription fee of \$600 will apply for each provider at the practice.

1.4. Location for Provision of Services. No Services will be provided or performed by or on behalf of Provider using Personal Information or Client Confidential Information at any location outside of the United States. For the avoidance of doubt, Provider will not transmit, transfer, process, store or replicate Personal Information or Client Confidential Information outside of the United States or provide access to or otherwise make available Personal Information or Client Confidential Information to Personnel located outside of the United States.

## 2. Subscription License.

2.1. License Grant. Provider hereby, grants to Client and its Affiliates, a nonexclusive license for the then remaining Term of this Agreement to (a) use the Platform Application in object code format in accordance with the Documentation and to make available the Platform Application to Authorized Users as hosted by Provider as set forth in Exhibit B; (b) use the Documentation to support Client's authorized use of the Platform Application; and (c) provide an unlimited number of Authorized Users access to the Platform Application as hosted by Provider as set forth in Exhibit B; (d) install the Platform Application on an unlimited configuration of devices on the local Client s Network (Cloud) or in the Cloud and (e) install the Platform Application on the domains of any and all Client Partners (the "License").

2.2. Client Responsibility. Subject to Section 2, Client shall be solely responsible for the supervision, management and control of its use of the Application, including, but not limited to: (a) assuring proper configuration of the Client Networks infrastructure, hardware, related equipment and devices, and compatibility with the Platform Application; (b) establishing adequate operating methods; and (c) implementing procedures sufficient to fully and completely satisfy its obligations for security under this Agreement, including appropriate control of its employees and independent contractors, Authorized Users and Client Partners to prevent misuse, unauthorized copying, modification or disclosure of the Platform Application pursuant to Section 2.3.

2.3. No Reverse Engineering. Except as otherwise permitted herein, Client shall not have the right under this Agreement to (a) reverse engineer, decompile, disassemble, re-engineer or otherwise create or attempt to create or permit, allow, or assist others to create the source code of the Platform Application; (b) modify or create Derivative Works of the Platform Application; or (3) use, or permit any other Person to use, the Platform Application in whole or in part for any purpose except as expressly provided under this Agreement.

2.4. Rights under 11 U.S.C. § 365(n). In the event that Provider files, or has filed against it, a petition under the federal Bankruptcy Code (11 U.S.C. Section 101 et. seq.), Client shall have the following rights, in addition to all other rights under the Bankruptcy Code and any other applicable Laws:

(a) Provider acknowledges and agrees, and agrees not to contest any assertion by Client , that (i) this Agreement is an executory contract as defined in the Bankruptcy Code (11 U.S.C. Section 101 et. seq.), (ii) the Platform Application Source Code and the Intellectual Property Rights therein constitutes “intellectual property” as defined in 11 U.S.C. Section 101(35A), and (iii) Client is entitled to all of the rights and protections with respect to the Provider Property, as intellectual property, as provided in 11 U.S.C. Section 365(n).

(b) In the event that any person or entity seeks to reject this Agreement pursuant to 11 U.S.C. Section 365(a), unless Client notifies Provider in writing that Client has elected to treat this Agreement as terminated in accordance with Section 5.5 below, Provider hereby agrees, and further acknowledges that this Agreement shall constitute a written request to Provider pursuant to 11 U.S.C. Section 365(n)(4), (i) to perform all of its obligations under this Agreement or immediately provide the Platform Application Source Code and the Intellectual Property Rights therein and all of its embodiments to Client , and (ii) not interfere with the rights of Client under this Agreement.

### 3 Fees; Invoicing.

3.1. Fees. In consideration of the rights and licenses granted by Provider to Client and the Services provided by Provider to Client hereunder, Client shall pay to Provider the fees in the amounts and at the rates set forth in Exhibit B attached hereto (the "Fees").

3.2. Invoicing. Client will pay all Fees (except Disputed amounts) within thirty (30) days of Client's receipt of Provider's invoice. A "Disputed" amount is one for which Client has given Provider written notice describing the basis for the dispute prior to the end of such 30 day period. Client shall pay any amount payable upon resolution of a Disputed Amount promptly upon such resolution.

3.3. Taxes. Client will be responsible for sales, use, and excise taxes, and any like charges required to be collected by Provider with respect to the Platform Application and the Services provided. Any taxes for which Client is responsible must be listed as separate line items on Provider's invoice. Provider shall comply with and pay all contributions, taxes, assessments, charges and premiums payable under federal, state and local laws measured upon the payroll of its Personnel engaged in Services hereunder, and all sales, use, excise, transportation, privilege, occupational, consumer and other taxes based on the net income of Provider.

3.4. Expenses. Provider shall be solely responsible for travel costs and expenses incurred by it in providing any Services pursuant to this Agreement; provided, however, that, if Client requires that Provider or any of its personnel meet in person with Client with respect to the performance of such Services, Client shall reimburse Provider for the travel, meals, lodging, and other expenses incurred by Provider in accordance with Client's normal expense reimbursement policies for its own employees, which Client shall provide to Provider.

#### 4. Term and Termination.

##### 4.1. Initial Term.

(a) Initial Term. The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect until the close of business on the day prior to the fourth year.

(b) Upfront and one-time fees. Upfront and one-time fees are due at contract execution. The initial monthly fee will be invoiced 30 days after contract execution date, and will be prorated for the remainder of that month. Subsequent monthly payments will be invoiced on the 1st of each month. Contract term shall begin at the first monthly invoice. Volume-based fees, if applicable, included on monthly invoice are for the previous month's actual usage. All invoices are delivered via email.

4.2. Renewal Terms. Client shall have the right, in its sole discretion, to renew the term of this Agreement for successive one (1) year terms by providing written notice to Provider no more than 60 and no less than 30 days prior to the end of the then current term. The Initial Term and any renewal term shall be hereinafter referred to as the "Term."

#### 4.3. Termination Rights.

(a) Termination by either Party for Material Breach. If either Party (a "Breaching Party") materially breaches this Agreement and such breach is capable of cure, then the other Party (the "Non-Breaching Party") may terminate this Agreement in whole or in part if (i) the Non-Breaching Party delivers a default notice stating its intention to terminate this Agreement if the Breaching Party does not cure such breach; (ii) the Breaching Party fails to cure such breach within the applicable cure period as specified below; and (iii) following such cure period, the Non-Breaching Party notifies the Breaching Party of termination of this Agreement, which termination shall be effective upon the date specified in the notice. For the purposes of this Section 6.3(a), the cure period shall be 30 days; provided, however, if the breach is capable of cure but cannot be cured within 30 days and the Breaching Party commences its cure during such 30 day period and continues thereafter to prosecute such cure diligently, the cure period shall be such period not to exceed an additional 30 day sas may be necessary to complete such cure. Provider acknowledges and agrees that a compromise or breach of any Provider Equipment, system or database that contains Personal Information or any other Client Data resulting in material (as determined by Client in Client's reasonable good faith judgment) data privacy or security issues involving such Personal Information or Client Data, or involving any compromise of Client Networks, shall be deemed a material breach of this Agreement. Notwithstanding anything to the contrary herein, any such compromise or breach shall entitle Client , in addition to its other rights and remedies at law or in equity, to immediately terminate this Agreement as of the date of its termination notice.

(b) Termination by Client Without Cause. Upon sixty (60) days of the six month anniversary and at each year anniversary of this agreement with written notice to Provider, Client may terminate this Agreement without liability, other than payments due for valid charges incurred for conforming Services or Deliverables accepted by Client in accordance with Section 4 above through the effective date of termination. Provider shall continue to provide Services during said notice period solely to the extent requested by Client .

4.4. Both Parties. A Party may terminate this Agreement if any one of the following events occurs: (a) the other Party files a voluntary petition in bankruptcy or an involuntary petition is filed against it and is not stayed, dismissed or otherwise discharged within 60 days after such involuntary petition is filed; (b) the other Party is adjudged bankrupt; (c) a court assumes jurisdiction of the assets of the other Party under a federal reorganization act, or other statute; (d) a trustee or receiver is appointed by a court for all or a substantial portion of the assets of

the other Party; (e) the other Party becomes insolvent, suspends business or ceases to conduct its business in the ordinary course; or (f) the other Party makes an assignment of its assets for the benefit of its creditors. Each Party will give prompt written notice of any such event relating to it.

4.5. Effects of Termination. Upon expiration of the Term or termination of this Agreement as provided in Sections 3.3 or 3.4:

(a) The rights and obligations of the Parties hereunder shall cease, except that the rights and obligations under Sections 5, 6, 7, and 9 through 16 and the Parties' remedies for breach of this Agreement shall survive termination.

(b) Provider will promptly deliver to the Client all Work Product and work-in-process. Upon Client's written request or upon termination or expiration of this Agreement, Provider shall also deliver to Client or destroy (with Client's prior written consent) all records, data, computer disks and tapes, notes, reports, proposals and other documents or tangible property of any type comprising or containing any Client Data, and any and all copies and reproductions of any of such items in the possession or control of Provider, in a manner that assures such Client Data is unrecoverable. Any permitted archives containing Client Data shall be used by Provider solely for audit and recovery purposes. The Client agrees to pay a \$1,500 preparation fee per each Clinic and Lab Instance for such data export services, if requested.

(c) Provider shall promptly return to Client any and all Client Confidential Information (including Personal Information) together with any copies or reproductions thereof and, subject to the provisions of this Agreement to the contrary, destroy (by rendering unreadable and unusable all related data, including, but not limited to Client Data, in its computer and other electronic files. Provider shall at such time provide Client with a certificate signed by an officer of Provider certifying that all Client Confidential Information has been returned to Client or destroyed. Provider will erase all Client Confidential Information from all forms of magnetic and electronic media. If Client Confidential Information cannot be erased from all forms of magnetic and electronic media, Provider will use its commercially reasonable efforts to ensure that it cannot be recovered or accessed. Provider shall state in writing the method of data destruction and the date completed.

(d) Either party may elect to terminate this agreement for any reason by giving 60 days written notice to the other party. Upon termination, You agree to pay the applicable total monthly fees specified in Appendix A multiplied by the number of remaining months in the term of the agreement.

## 5. Personnel.

5.1. Compliance with Client Policies and Procedures. Whenever present on Client Premises, Provider shall comply and shall cause its Personnel to comply with all applicable Client Company on-site written policies and procedures and all reasonable instructions or directions issued by Client and made available to Provider. If Personnel are given access to any Client Networks, Provider shall cause its Personnel to: (a) comply with all Client policies made available to Provider concerning access to, use of and security of Client Networks to which such Personnel have access; (b) use such access and such Client Networks solely for purposes directly related to the Services; and (c) cease use of such Client Networks immediately upon completion or termination of the corresponding Services.

5.2. Treatment of Security Information. Provider and its Personnel shall treat all passwords, Client Networks access information and information concerning Client's security systems (physical, electronic and otherwise) as Client Confidential Information in accordance with Section 6 (Confidentiality) of this Agreement without regard to any exclusion to Client Confidential Information set forth in such Section.

5.3. Relationship of Personnel. In no event will Provider, or any of its Personnel, be considered an employee, subcontractor or agent of Client . Provider assumes full responsibility for the actions of its Personnel while performing Services. Provider shall be responsible for the supervision, direction and control of its Personnel as well as the payment of compensation (including withholding of taxes and social security), contribution to workers' compensation and unemployment compensation, overtime, disability benefits, and any other legally required benefits or compensation or discretionary benefits or compensation.

## 6. Confidentiality.

6.1. Treatment of Confidential Information Generally. Each Party (the "Receiving Party") shall maintain as confidential and shall not disclose (except to those of its (and, with respect to Client , its Affiliates') employees, contractors, consultants, Authorized Users, attorneys, accountants and other advisors, and with respect to Provider, its Personnel (collectively, "Representatives") who need to know such information in connection with this Agreement, and who have been informed of the confidentiality obligations hereunder), copy, or use for purposes other than the performance of this Agreement, any Confidential Information of the other Party (the "Disclosing Party") which, in connection with the activities under this Agreement, the Disclosing Party discloses to the Receiving Party, or to which the Disclosing Party provides the Receiving Party with access, or is otherwise obtained by the Receiving Party. As the Receiving Party, each Party agrees to protect the Disclosing Party's Confidential Information with the same degree of care a prudent person would exercise to protect its own confidential information of similar nature and to prevent the loss or unauthorized or inadvertent use, disclosure, or publication thereof and not to use the Disclosing Party's Confidential Information for any purpose not contemplated by this Agreement. The Receiving Party shall notify the Disclosing

Party in writing of any loss or unauthorized or inadvertent use or disclosure of or access to the Disclosing Party's Confidential Information promptly following the Receiving Party's discovery of such loss, use, disclosure, or access and shall promptly take measures to minimize the effect of such loss, use, disclosure, or access and to prevent its recurrence. As between Provider and Client, Client Confidential Information shall at all times belong solely and exclusively to Client and Provider Confidential Information shall belong solely and exclusively to Provider.

6.2. Exceptions. Subject to consumer privacy laws and regulations applicable to a Party, for the purposes of this Agreement, Confidential Information of a Disclosing Party shall not include any information that is: (a) publicly known at the time of the disclosure or subsequent to such disclosure becomes publicly known through no wrongful act or omission of the Receiving Party hereunder; (b) lawfully known by or in the possession of the Receiving Party prior to its receipt from the Disclosing Party as demonstrated by the written records of the Receiving Party kept in the ordinary course of its business; (c) subsequently disclosed to the Receiving Party on a non-confidential basis by a third party not, to the Receiving Party's knowledge, having a confidential relationship with the Disclosing Party and which third party rightfully, to the Receiving Party's knowledge, acquired such information; or (d) independently developed by the Receiving Party without the use of any of the Disclosing Party's Confidential Information, as demonstrated by the Receiving Party's written records kept in the ordinary course of its business. The foregoing exceptions shall not apply to any Personal Information.

6.3. Mandatory Disclosure. Nothing herein shall prevent the Receiving Party from disclosing any of the Disclosing Party's Confidential Information as necessary pursuant to the lawful requirement of any governmental agency or by any subpoena, summons, order, or other judicial process; provided that, promptly following receipt of any order compelling such disclosure, the Receiving Party has notified, to the extent not prohibited by Law, the Disclosing Party in writing of such requirement to disclose and has cooperated with the Disclosing Party's, at the Disclosing Party's cost and expense, reasonable, lawful efforts to resist, limit or delay disclosure. Nothing herein shall prevent the Receiving Party from disclosing any of the Disclosing Party's Confidential Information if, and to the extent, such disclosure was specifically approved by the Disclosing Party, in writing, prior to such disclosure by the Receiving Party. Disclosure of any of the Disclosing Party's Confidential Information under the circumstances described in this Section 6.3 shall not be deemed to render such Confidential Information as non-confidential and the Receiving Party's obligations with respect to such Confidential Information shall not be changed or lessened by virtue of any such disclosure.

#### 6.4. Personal Information.

(a) Handling of Personal Information. Solely to the extent applicable to the Services, the Parties shall comply with all Laws applicable to the handling, use, processing, transmission, sharing, destruction and protection of Personal Information.



(b) Collection and Use of Personal Information. Other than as expressly permitted in this Agreement and solely to the extent applicable to the Services, Provider shall not collect, use, transfer, transmit, store or otherwise process (collectively, “**process**”) Personal Information, individually or in the aggregate, outside of the United States without the prior written consent of Client . Provider and Client shall provide such notices to individuals, obtain such consents of individuals, and take any other steps as may be required by applicable Laws, rules or regulations with regard to the processing, exporting or disclosure to any third party of any Personal Information, individually or in the aggregate, pertaining to such individuals.

(c) Security Requirements. If and solely to the extent applicable, Provider shall (i) maintain technical, operational and organizational measures that protect against the loss of any Personal Information or any unauthorized, negligent or inadvertent use or disclosure of or access to any Personal Information; and (ii) without limiting the foregoing, comply with the provisions of the Security Requirements attached hereto as Exhibit C and, in connection with the Development Project and/or a particular Service, any additional data privacy and security-related requirements set forth in the applicable Development Project Plan.

6.5. Equitable Relief. The Parties agree that any breach of this Section 8 by the other Party (or the other Party’s Representatives) may result in immediate and irreparable harm and that any remedies at law in such event may not be adequate, and, therefore, in addition to all other remedies available at law or in equity, a Party shall have the right to seek equitable and injunctive relief, and to recover the amount of damages (including reasonable attorneys’ fees and expenses) incurred in connection with such breach without the need to post a bond of any kind. This right shall be in addition to and not in lieu of any other remedies available to such Party at law or in equity.

6.6. Disclosure to Representatives; Obligations. Each Party shall be liable to the other Party under this Agreement for any breach of this Section 6 by such Party or its Representatives. With regard to any Representative of the Receiving Party (other than the Receiving Party’s employees) which will have access to the Disclosing Party’s Confidential Information, the Receiving Party shall (a) maintain in effect a written agreement with such Representative containing obligations and restrictions that with respect to the Disclosing Party’s Confidential Information are at least as stringent as those contained in this Section 6; and (b) advise such Representative of the obligations and restrictions set forth in this Section 6.

## 7. Compliance with Applicable Laws.

7.1. Disclosure to Representatives; Obligations. Each Party shall be liable to the other Party under this Agreement for any breach of this Section 7 by its employees or representatives.

Each Party shall comply with all Laws that are applicable to its performance under this Agreement. Without limiting the foregoing:

(a) If and solely to the extent applicable, each Party hereby agrees to comply with all applicable federal, state, provincial, local, national and international Laws, statutes, rules and regulations pertaining to the privacy and security of personal information, health information and/or medical records, including, as applicable, HIPAA, and any other applicable Laws relating to the collection, use, security (including administrative, technical and physical safeguards), or disclosure of personal information including protected health information and including whether by way of electronic collection or transfer or otherwise (collectively referred to as “Applicable Privacy Laws”), and each Party agrees not to divulge, directly or indirectly, or use any information in violation of any patient’s confidentiality rights under any applicable Laws, including Applicable Privacy Laws.

7.2. Additional Obligations of Provider. Provider will be responsible for obtaining, maintaining and complying with all applicable licenses, authorizations, consents, approvals and permits required of Provider in connection with the performance of its obligations under this Agreement (collectively, “Permits”). Provider will have financial, management and compliance responsibility for, and will pay, all fees and taxes associated with Permits.

## 8. Proprietary Rights.

### 8.1. Retention of Rights.

(a) Client and Provider shall each retain exclusive ownership of all right, title and interest in and to their respective pre-existing intellectual property, including, but not limited to, their respective business methods and processes, software (including source and object code), documentation, ideas, procedures, know-how, methods, as well as any derivative works of such intellectual property and all related Intellectual Property Rights and their respective Confidential Information (collectively referred to as “Pre-existing IP”) and, in the case of Client , all of the Client Items. Except for the rights expressly granted by a Party to the other Party in this Agreement, neither Client nor Provider grants, assigns or in any way transfers any right, entitlement, privilege, permission, claim, title, ownership or interest in any Pre-existing IP, either implicitly or explicitly, by operation of law or otherwise.

(b) Provider’s Ownership. Provider is and shall remain the sole and exclusive owner of all rights, including all Intellectual Property Rights, title and interest in and to the Documentation, and all of Provider’s Pre-Existing IP (collectively, “Provider Property”). Except for the rights and licenses expressly set forth in this Agreement, no other right is granted, no other use is permitted and all other rights are expressly reserved by Provider.

(c) Client’s Ownership. Client is and shall remain the sole and exclusive owner of all rights, including all Intellectual Property Rights, title and interest in and to the Client Items and all of Client ’ Pre-Existing IP (collectively, “Client Property”). Except for the rights and licenses

expressly set forth in this Agreement, no other right is granted, no other use is permitted and all other rights are expressly reserved by Client .

(d) No Restriction on Original Development. Provider acknowledges and agrees that nothing in this Agreement will restrict the ability of Client to develop internally (with or without the assistance of third parties) or use, license or purchase from a third party the same or similar Services, Deliverables or technology with functionality similar to the Provider Property; provided, however, such development, use or license does not use Provider's Confidential Information in violation of the obligations under Section 7.

## 8.2. Ownership of Work Product.

(a) Provider Owned Work Product. Client acknowledges and agrees that any Work Product that is generic in nature and is incorporated in Provider's generally available platform (as compared to the Platform Application as implemented and integrated for Client hereunder), shall be owned by Provider ("Provider Owned Work Product").

(c) Further Actions. Each Party hereto agrees that it shall execute all instruments and documents that may be reasonably necessary to vest in the intended Party ownership of the Intellectual Property Rights; and to the extent, by operation of this Agreement or otherwise, any Intellectual Property Rights of a Party shall become wrongfully vested in the other Party, such vested Party agrees that, at the request and expense of the non-vested Party, the vested Party shall execute all instruments and documents that may be reasonably necessary to protect the rights of the non-vested Party and vest or re-vest in the non-vested Party and its assigns all Intellectual Property Rights therein.

8.3. Continuity of Services. Provider acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to Client's business and operations. Accordingly, in the event of a dispute between Client and Provider, each Party will continue to perform its obligations under this Agreement in good faith during the resolution of such dispute unless and until this Agreement is terminated in accordance with its terms.

## 9. Representations and Covenants.

9.1. Provider Representations and Warranties. Provider hereby warrants, represents and covenants to Client that:

(a) Provider is a limited liability company duly formed, validly existing and in good standing under the Laws of the jurisdiction in which it is formed, and is duly qualified and in good standing in each other jurisdiction where the failure to be so qualified and in good standing would have an adverse effect on its business, activities, ability to perform its obligations under this Agreement or compliance with any of its promises, representations and warranties hereunder;

(b) Provider has all necessary limited liability company power and authority to enter into this Agreement and to perform its obligations hereunder and thereunder, and the execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all necessary corporate actions;

(c) Provider shall perform its Services in a workmanlike manner, by an adequate and sufficient number of qualified and trained Personnel;

(d) the Services shall be in compliance with the Specifications and the terms and conditions of this Agreement;

(e) the Platform Application, the Services will not infringe or misappropriate upon any Intellectual Property Right, other proprietary right or contractual license right of any third party and shall be delivered to Client free and clear of any claim of third party infringement of any patent, copyright, trademark, trade secret or other contractual or proprietary right;

(f) any Work Product delivered under this Agreement shall be free from defects in material, workmanship and design and shall conform to all Applicable Specifications; shall have been or will be developed and provided in compliance with all Laws; and shall be free from all liens and encumbrances or other restrictions. When requested, Provider shall furnish Client or appropriate authorities with certificates of compliance with any applicable laws or regulations for all Work Product covered by this Agreement;

(g) Provider is either the owner of, or authorized to use, all information and material used in connection with this Agreement, including, but not limited to the Provider Property and the Third Party Components.

(h) Provider has all necessary power and authority to own, lease and operate its assets and to carry on its business as presently conducted and as it will be conducted pursuant to this Agreement;

(i) to the best of its knowledge, the execution, delivery and performance of this Agreement by Provider and the consummation of the transactions contemplated by this Agreement shall not constitute a default under any contract by which it or any of its assets are bound, or an event that would, with notice or lapse of time or both, constitute such a default;

(j) to the best of its knowledge, there are no pending suits or actions threatened against Provider that would affect the Platform Application, the Services or Provider's performance of its obligations hereunder;

(k) Provider shall comply with all applicable Laws in providing the Platform Application and performing the Services and its obligations under this Agreement; including Title 21 CFR Part 11 and Laws relating to the regulatory environment in which the Platform Application functions; and

(l) the Platform Application, in the form implemented and integrated for Client pursuant to the Implementation Plan will (a) comply with the requirements of Title 21 CFR Part 11 and (b) otherwise perform in accordance with the Documentation.

9.2. Survival of Warranties. The warranties set forth in this Section shall survive any inspection, acceptance or delivery of or payment for, the Platform Application, Services and Work Product and shall insure to the benefit of Client , its Affiliates and its and their successors and assigns.

9.3. Disclaimers.

(a) EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT, ALL OTHER WARRANTIES BEING EXPRESSLY DISCLAIMED BY EACH PARTY AND WAIVED BY THE OTHER PARTY.

(b) EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT, Client FURTHER AGREES THAT PROVIDER SHALL NOT BE RESPONSIBLE FOR THE UNAUTHORIZED ACCESS TO OR ALTERATION OF THE PLATFORM APPLICATION (other



than any such access or alteration MADE OR PROVIDED by or on behalf of provider) OR ANY DATA SENT OR RECEIVED by or on behalf of Client using the platform application (other than any such DATA SENT OR RECEIVED by OR ON BEHALF OF provider) OR ANY USE OF THE PLATFORM APPLICATION TO EFFECT ANY TRANSMISSION(S). Client ALSO AGREES THAT PROVIDER IS NOT RESPONSIBLE FOR ANY THREATENING, DEFAMATORY, OBSCENE, OFFENSIVE OR ILLEGAL CONTENT OR CONDUCT OF ANY THIRD PARTY IN CONNECTION WITH THE USE BY Client OF THE PLATFORM APPLICATION.

## 10. Indemnification.

### 10.1. Provider Indemnity Obligations.

(a) Infringement or Misappropriation of Intellectual Property Rights. Provider shall defend, indemnify and hold the Client Indemnitees harmless from and against all Losses based on, arising out of or otherwise in connection with any claim (threatened or actual) made by a third party based upon infringement or misappropriation of any Intellectual Property Right in connection with the Provider Property, or any Services provided under this Agreement. If, as a result of any such claim, Provider is enjoined from performing any Services for Client or Client is enjoined from using the Provider Property, or any Services, or in Provider's or Client's reasonable opinion either of the foregoing is likely to occur, Provider, at its expense, shall take one or more of the following actions: (i) modify the Provider Property,

or any Services, as the case may be, so that it is no longer infringing (provided its functionality is not impaired); (ii) replace the Provider Property, or any Services, as the case may be, with functionally equivalent products, materials or services; or (iii) obtain the right for Provider to continue to provide the Provider Property, or any Services, as the case may be, to Client or the right for Client to continue using the Provider Property, or any Services, as the case may be. Notwithstanding any such replacement or modification, Provider's obligations to defend and indemnify Client shall not be diminished or eliminated.

(b) Other Indemnification Obligations. Provider shall defend, indemnify and hold the Client Indemnitees harmless from and against all reasonably foreseeable Losses based on, arising out of or otherwise in connection with any claim (threatened or actual), arising out of or otherwise in connection with: (1) any gross negligence, willful misconduct or fraud of the Provider or Personnel in the performance of this Agreement; and (2) any breach of any warranty, representation, covenant or agreement made by Provider in this Agreement.

(c) All final decisions made regarding the use of the Platform Application or any Deliverables provided by Provider under this Agreement shall be Providers.

(d) Client shall indemnify, defend, and hold Provider and its affiliates, and all of their respective directors, officers, members, managers, partners, employees, agents, successors

and assigns, harmless from and against any and all reasonably foreseeable Losses based on, arising out of or otherwise in connection with any claim (threatened or actual), arising out of or otherwise in connection with: (i) any breach of any warranty, representation, covenant or agreement made by Client in this Agreement, or (ii) any gross negligence, willful misconduct or fraud of Client in the performance of this Agreement. 10.2. Indemnification Procedure.

(a) In the event of a claim by a third party for which an Client Indemnitee or a Provider Indemnitee (each, in such capacity, an "Indemnitee") seeks indemnification hereunder ("Third Party Claim"), the Indemnitee or its legal representative shall promptly notify the other Party (in such capacity, an "Indemnitor") in writing of any such claim and forward all related documents received with the Third Party Claim to Indemnitor (and any delay or failure of notice will not relieve Indemnitor of its obligations except to the extent it has been actually and materially prejudiced thereby). Indemnitee reserves the right to be represented by counsel (unless otherwise set forth below at the expense of such Indemnitees) at any proceeding or settlement discussions related thereto. Indemnitor shall have sole control of the defense of any Third Party Claim. The foregoing notwithstanding:

(i) Indemnitee and its counsel shall have the right at its expense to participate in the defense of the Third Party Claim. The foregoing notwithstanding, Indemnitor, at its own expense, shall assign separate counsel to itself and to the Indemnitees if (1) the employment of separate counsel by Indemnitees has been previously authorized by Indemnitor; or (2) the Indemnitees shall have reasonably concluded that there may be a conflict of interest between the Indemnitor and Indemnitee in the conduct of any defense; or (3) Indemnitor shall not continue to retain counsel to fulfill its indemnification obligation under this Section 10.

(ii) Indemnitor shall not agree to any non-monetary settlement (or a portion of a settlement) of any Third Party Claim if such settlement (1) imposes restrictions on any Indemnitee; (2) requires any action by any Indemnitee without Indemnitor first obtaining such Indemnitee's written consent, which consent shall not be unreasonably withheld or delayed; or (3) in Indemnitee's reasonable opinion, may have an adverse effect on the Client Indemnitee's reputation;

(iii) Indemnitor shall not agree to any monetary settlement (or a portion of a settlement) that requires an Indemnitee to make a payment or be contractually or legally required to incur any Loss that Indemnitor does not agree in writing to pay or fully indemnify for; and

(iv) if Indemnitor fails to or elects not to either defend or settle any such Third Party Claim, the Indemnitee may defend or settle such Third Party Claim and all cost and expenses related thereto shall be deemed Losses indemnifiable by Indemnitor hereunder.

10.3. No Limitation. The foregoing indemnities will not be limited in any manner whatsoever by any required or other insurance coverage maintained by Provider.

## 11. Limitation of Liability.

11.1. Punitive/Consequential/Incidental Damages. Neither Provider nor Client shall be liable to the other for any punitive, consequential or incidental damages arising in connection with this Agreement, whether in an action in contract, tort, strict liability or negligence, or other actions, even if advised of the possibility of such damages.

11.2. Claim Cap. A Party's sole and aggregate liability to the other Party for Losses resulting from claims or causes of action (each, a "Claim") accruing from the Effective Date and throughout the Term shall be subject to a cap equal to the dollar amount invested by either party plus 10% (the "Claim Cap").

11.3. Exclusions. None of the limitations and restrictions set forth in this Section 11 shall apply to (i) any amounts payable pursuant to Sections 11.1(a) (Infringement or Misappropriation of Intellectual Property Rights), or 11.1(b) (Other Indemnification Obligations), of this Agreement; or (ii) Losses arising from or relating to a Party's willful misconduct, fraud or gross negligence; or (iii) Losses arising from or relating to Provider's violation of Laws.

## 12. Insurance.

12.1. Provider's Insurance Coverage Obligations. Provider, at its own expense, shall procure and maintain during the Term and for a period of two (2) years after its expiration or termination, policies of insurance to include the following coverage:

- (a) Workers' Compensation with statutory limits required by each state exercising jurisdiction over the Provider employees engaged in performing Services under this Agreement;
- (b) Commercial General Liability coverage (including products and completed operations, blanket or broad form contractual, personal injury liability and broad form property damage) with minimum limits of two million dollars (\$1,000,000) per occurrence for bodily injury/property damage and two million dollars (\$1,000,000) for personal injury and products/completed operations; and
- (c) Errors & Omissions coverage in the amount of one million dollars (\$1,000,000).

### Provider's Acknowledgment.

- (a) Provider's policies shall be primary and any insurance maintained by Client is excess and noncontributory.
- (b) With respect to items 12.1(b) and (c) above, Provider shall ensure that Client is named as an additional insured and include a waiver of subrogation.
- (c) This insurance requirement and coverage does not replace or otherwise amend, in any respect, the indemnification or limitations on Provider's liability as set forth elsewhere in this Agreement.

13. Regulatory Inspections. Unless prohibited by applicable Law, Provider shall notify Client promptly by telephone or by email if any governmental or regulatory authority requests an inspection or makes written or oral inquiries of Provider regarding any aspect of the Services. Unless otherwise required by applicable Law, Provider and Client shall reasonably cooperate in resolving any concerns of any governmental or regulatory authority regarding any aspect of this Agreement.



14. Force Majeure. The performance of Provider or of Client under this Agreement may be suspended to the extent and for the period of time that such Party is prevented or delayed from fulfilling its obligations due to a Force Majeure. After thirty (30) cumulative days of suspension on the part of Provider due to a Force Majeure, Client may, at its sole discretion, terminate this Agreement without further liability. Notwithstanding the foregoing, a Force Majeure shall not excuse or suspend Client's obligation to make any payment required to be made hereunder.

15. Governing Law; Venue. This Agreement is deemed to be made under and shall be interpreted in accordance with the laws of the state of Colorado, excluding its conflict of laws provisions. The parties hereby submit to the jurisdiction and venue of the state and federal courts of the state of Colorado for purposes of all legal proceedings arising out of or relating to this Agreement. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. The Parties hereby irrevocably waive any and all rights to trial by jury in any legal proceeding arising out of or relating to this Agreement. The Parties negotiated this Agreement in good faith. Any ambiguities in the language of this Agreement are not to be construed or resolved against either Party based on the fact that such Party was principally responsible for drafting this Agreement.

16. Miscellaneous.

16.1. Publicity. Without the prior written consent of Client, Provider shall not in any manner disclose, advertise or publish the fact that Provider has furnished or contracted to furnish to Client the Platform Application, any of the Services described in this Agreement and Provider shall not use the name, trade name or trademarks of Client in any manner in any of its advertising or marketing literature, customer lists, websites, press releases or any other document or communication (in electronic or paper form). Under no circumstances, will Client provide any endorsements or recommendations of any kind to Provider as it pertains to the Platform Application, the Services or this Agreement.

16.2. Entire Agreement. This Agreement together with all of its exhibits and attachments constitutes the entire agreement between Provider and Client relating to the subject matter hereof and supersedes all other such prior or contemporaneous oral and written agreements and understandings. Any modification or waiver of any provision must be made in writing and signed by authorized representatives of both Parties.

16.3. Assignment. Neither Party shall assign or transfer (by operation of law or otherwise) this Agreement or any of its obligations hereunder without the other Party's express, prior written consent, which consent shall not be withheld unreasonably except that the Provider's consent shall not be necessary in the event Client assigns or transfers this Agreement to a purchaser of Client's assets, or such purchaser's Affiliate, with net worth or liquidity on its balance sheet equal to or exceeding that of Client. Notwithstanding the foregoing, Client may assign this Agreement to an Affiliate. In any event, an assignment will not relieve the assignor of its obligations hereunder. Any assignment made without the required consent or compliance with the foregoing provisions of this Section 19.3 shall be void and of no effect. Subject to the foregoing, the provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of each Party. Following a permitted and valid assignment by Provider, the definition of Provider shall be deemed to mean such assignee.

16.4. Independent Contractors. This Agreement is not intended to create, nor should it be construed as creating, an agency, joint venture, partnership or similar relationship between the Parties. Provider will act solely as an independent contractor of Client and neither Client nor Provider will have the right to act for or bind the other Party in any way or to represent that the other Party is in any way responsible for any acts or omissions of such Party.

16.5. Severability. In the event any provision of this Agreement, in whole or in part, is invalid, unenforceable or in conflict with the applicable laws or regulations of any jurisdiction, such provision will be replaced, to the extent possible, with a provision which accomplishes the original business purposes of the provision in a valid and enforceable manner, and the remainder of this Agreement will remain unaffected and in full force.

16.6. No Waivers. Failure of Provider or Client at any time to enforce any of the provisions of this Agreement shall not be deemed to be a waiver of such or any other provision hereof.

16.7. Notices. All notices under this Agreement shall be in writing, properly addressed and shall be: (a) mailed by first-class or express mail, postage prepaid; (b) sent by reputable overnight delivery service; or (c) personally delivered to the receiving Party. Each notice shall be deemed given upon receipt of such notice by the other Party. All notices shall be sent to Provider at its address as set forth in the recitals to this Agreement and to Client at its address as set forth in the recitals to this Agreement. Any notices not addressed as specified shall be deemed to not have been given.

16.8. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be an original, with the same effect as if the signatures were upon the same document. A copy of this Agreement executed by a Party hereto that is provided to the other Party via facsimile or other electronic means shall have the same effect as the original executed copy of this Agreement.



16.9. Construction. The following rules shall apply to the construction of this Agreement, unless specifically indicated to the contrary: (a) wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural; (b) the term “or” is not exclusive; (c) the term “including” (or any form thereof) shall not be limiting or exclusive; (d) all references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations; (e) the words “this Agreement,” “herein,” “hereof,” “hereunder” or other words of similar import refer to this Agreement as a whole including the Exhibits hereto as the same may be amended, modified or supplemented; and (f) all references in this Agreement to sections and exhibits shall refer to the corresponding sections and exhibits of or to this Agreement and include all subsections of such sections.

16.10. Cumulative Remedies. Subject to the terms and provisions hereof, remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law (subject to the limitations set forth in this Agreement) or in equity.

16.11. Headings. Section and paragraph headings used herein are for convenience only and will not be used to broaden or limit this Agreement.

16.12. Equitable Relief. Provider acknowledges that any failure by Provider to perform its obligations under this Agreement or any Exhibit hereto may result in damage to Client and that Client is entitled to seek specific performance or an injunction (without posting a bond) to enforce its rights to receive such services from Provider in accordance with the terms of this Agreement, any exhibit because monetary damages may not be sufficient relief.



IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives and are authorized to bind each to the agreement.

Client Fertility PRO, LLC

By: \_\_\_\_\_

(signature)

By: \_\_\_\_\_

(signature)

Name: \_\_\_\_\_

(please print)

Name: \_\_\_\_\_

(please print)

Title: \_\_\_\_\_

(please print)

Title: \_\_\_\_\_

(please print)

## Exhibit A

### Definitions

For the purposes of this Agreement, the definitions set forth in this Exhibit A shall apply to the respective capitalized terms:

**“Administrative User”** is an employee or agent of Client or an Client Agent who requires access to the Platform Application in order to perform site administration, Authorized User communication and other supported “back office” functionality.

**“Affiliate”** shall mean, with respect to any Party, any other person or entity that, directly or indirectly, controls or is controlled by or is under common control with, such Party. For purposes of this definition, “control” shall mean (a) ownership of fifty percent (50%) or more of the shares of stock entitled to vote for the election of directors in the case of a corporation or fifty percent (50%) or more of the equity interests in the case of any other type of legal entity, (b) status as a general partner in any partnership, or (c) any other arrangement whereby a person or entity controls or has the right to control the board of directors of a corporation or equivalent governing body of an entity other than a corporation.

**“Agreement”** has the meaning set forth in the Preamble.

**“Applicable Specifications”** shall mean the specifications, technical, business, operational, and functional requirements, standards and descriptions including the applicable format and content parameters, if any, applicable to the Services, the Ancillary Services, the Platform Application, and Deliverables, as described in, and referenced by, the applicable Exhibit, any applicable Documentation, or other written document mutually agreed upon by the Parties.

**“Authorized User”** shall mean an individual (a) who is an employee, independent contractor, representative, or agent of Client or an Client Partner and (b) with respect to whom, an account for use of the Platform Application has been created.

**“Business Day”** shall mean Monday through Friday, excluding holidays.

**“Change Request”** has the meaning set forth in Section 1.1(b) of this Agreement.

**“Claim”** has the meaning set forth in Section 13.2 of this Agreement.

**“Claim Cap”** has the meaning set forth in Section 13.2 of this Agreement.

**“Confidential Information”** shall mean Client Confidential Information or Provider Confidential Information, as applicable.

**“Derivative Work”** shall mean a work that is based upon one or more preexisting works, such as a revision, modification, translation, abridgment, condensation, expansion, or any other form in which a preexisting work may be recast, transformed, or adapted, and that, if prepared without the authorization of the owner of the preexisting work, would constitute a copyright infringement, or any improvement, Enhancement, modification or adaptation of or to a preexisting work.

**“Designated Executive Officer”** shall mean the a designated Officer of Client and Managing Partner, John Butler of Provider.

**“Disclosing Party”** has the meaning set forth in Section 7.1 of this Agreement.

**“Disputed”** has the meaning set forth in Section 3.2 of this Agreement.

**“Documentation”** shall mean documentation describing the design, features, use of and functionality of the Platform Application or of a Deliverable, including, without limitation, User Documentation and Technical Documentation.

**“Effective Date”** has the meaning set forth in the Preamble.

**“Enhancement”** shall mean a change or addition other than a Maintenance Modification that improves the function, including all new Releases, provided by Provider to customers that add new function or improve performance of the Platform Application, except for changes or additions which are Client Owned Work Product.

**“Equipment”** shall mean computers and related equipment, including central processing units and other processors, controllers, modems, communications and telecommunications equipment (voice, data and video), cables, storage devices, printers, terminals, other peripherals and input and output devices, and other tangible mechanical and electronic equipment intended for the processing, input, output, storage, manipulation, communication, transmission, networking and retrieval of information and data.

**“Error”** means any error, problem, or defect caused by or resulting from: (a) an incorrect functioning; or (b) an incorrect or incomplete statement or diagram in Documentation, if such error, problem, or defect renders the Platform Application inoperable, causes the Platform Application to fail to meet Applicable Specifications, causes Documentation to be inaccurate or incomplete in any material respect, or causes incorrect functions to occur when the Platform Application is used for its intended purposes.

**“Fees”** has the meaning set forth in Section 4.1 of this Agreement.

**“Force Majeure”** shall mean any unforeseeable event beyond a Party’s reasonable control (including, without limitation, acts of God, acts of terrorism, acts of civil or military authority

including governmental priorities, fires, floods, wars, or riots); provided the non-performing Party is without fault in failing to prevent or causing such default or delay, and such default or delay could not have been prevented or circumvented by the non-performing Party through the use of alternate sources, workaround plans or other reasonable precautions.

**“Go-Live”** shall mean the first calendar date on which the Platform Application is used in a production environment by an Authorized User (other than Administrative Users) to process transactions.

**“HIPAA”** shall mean the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, including the Privacy Rule and the Security Rule, and guidance issued by the Secretary of the Department of Health and Human Services, all as amended from time to time.

**“Implementation Services”** has the meaning set forth in Section 1.1 of this Agreement.

**“Implementation Fees”** shall mean the fees and expenses incurred for the Implementation Services.

**“Initial Term”** has the meaning set forth in Section 5.1 of this Agreement.

**“Intellectual Property Rights”** shall mean all patents, trade secrets, confidential information, technology, trademarks, trade names, copyrights, moral rights, designs, drawings, discoveries, programming code (including Source Code), inventions (whether or not patentable), products, proprietary methodologies, procedures, improvements, developments, system documentation, information, materials made, conceived, developed or produced; rights of publicity, mask work rights, utility models, and other industrial or intangible property rights of a similar nature; all grants and registrations worldwide in connection with the foregoing and all other rights with respect thereto existing other than pursuant to grant or registration; all applications for any such grant or registration, all rights of priority under international conventions to make such applications and the right to control their prosecution, and all amendments, continuations, divisions and continuations-in-part of such applications; and all corrections, reissues, patents of addition, extensions and renewals of any such grant, registration or right.

**“Laws”** shall mean any law, declaration, decree, standards, legislative enactment, order, ordinance, regulation, rule or other binding restriction of or by any federal, state, municipal, local, territorial, or other governmental department, regulatory authority, judicial or administrative body, domestic, international, or foreign, and any rules and regulations of self-regulatory organizations that may be applicable to the provision, access, or use of the Platform Application as contemplated hereunder and/or the delivery and operation of the Platform Application and performance of the Services, in each case that are in effect from time to time during the term of this Agreement.

“**Losses**” shall mean any and all damages, losses, costs, obligations, claims, causes of action, demands, assessments, judgments, settlements, or liability including, regulatory and other fines and penalties, and all reasonable costs and expenses (including prejudgment interest and other interest, penalties and reasonable attorneys’ and accountants’ fees and disbursements) of defending any of the foregoing or of enforcing this Agreement.

“**License**” has the meaning set forth in Section 2.1 of this Agreement.

“**Maintenance Modifications**” shall mean all modifications or revisions to the Platform Application or Documentation, which correct Errors, support new releases of the operating systems with which the Platform Application is designed to operate, support new input/output (I/O) devices, or provide other updates or corrections. For clarity, Maintenance Modifications do not include Enhancements.

“**Object Code**” shall mean executable, machine- readable software code.

“**Client Agents**” shall mean the agents, contractors, subcontractors, providers and representatives of Client (excluding Provider).

“**Client Confidential Information**” shall mean Client Data and any other information or data disclosed or made available to Provider hereunder whether disclosed orally (so long as such oral disclosure is reduced to writing within a reasonable time), visually or in writing, by way of any media, by of Client , and the terms or existence of this Agreement, and all copies, summaries, and compilations of any of the foregoing.

“**Client Data**” shall mean the following data and information: (a) all data and information that is provided by or on behalf of Client , by means of, or in connection with, this Agreement; (b) all data and information that is generated through the use of the Platform Application or performance of Services hereunder or is a derivative thereof; and (c) all reports produced by Provider, and any data and information included therein, pursuant to this Agreement. Without limiting the generality of the foregoing, Client Data includes data and Personal Information collected or derived in connection with the performance of the Services and/or use of the Platform Application as permitted hereunder.

“**Client Development Activities**” shall mean the activities to be conducted by Client as part of the Development Project.

“**Client Indemnitees**” shall mean Client and its officers, directors, shareholders, employees, and agents (as such persons and entities may exist at any time during the term of this Agreement and thereafter), and their respective successors and assigns and shall exclude all customers and clients of Client .

“**Client Items**” shall mean any and all property belonging to Client and provided to or access to which is provided to Provider in connection with this Agreement, including: (a) all documents, materials and tangible property, including all tangible embodiments of Client Confidential



Information, and all reports, communications, designs, data, analyses, source code, Software, tools, digital images, methodologies, specifications, models, prototypes, samples, and any other materials including improvements, Enhancements and derivative works thereto and thereof; (b) Client Networks; (c) Client Confidential Information; (d) Client Provided Content; (e) Client Equipment;

**“Client Networks”** shall mean collectively, all Software and Equipment owned or leased by or licensed to Client .

**“Client Owned Work Product”** has the meaning set forth in Section 9.2(a) of this Agreement.

**“Client Partner”** shall mean any Third Party (including any clinic or manufacturer) that provides Client with products or services, including any Third Party that is engaged by Client to process or analyze Client Data.

**“Client Premises”** shall mean the premises of Client .

**“Client Property”** has the meaning set forth in Section 9.1(c) of this Agreement.

**“Client Provided Content”** means any data, content or communications other than Personal Information which are provided by Client to Provider for inclusion in the Platform Application as implemented and integrated for Client under this Agreement.

**“Party (ies)”** has the meaning set forth in the Preamble.

**“Permits”** has the meaning set forth in Section 8.2 of this Agreement.

**“Personal Information”** shall mean any personally identifiable information or data (including, without limitation, each of the following: name, social security number, telephone number, bank account or other financial institution account number, credit or debit card number, driver’s license number, passport number and any other government-issued identification number, and personal health information) of, concerning or relating to an employee, customer or prospective customer of a Client or a Client of Client , or any information or data that identifies or that could be used to identify an individual or otherwise relates to an identified individual that Provider collects or derives from interactions with an employee, customer or prospective Client /customer of Client or a Client of Client .

**“Personnel”** shall mean Provider’s employees.

**“Platform Application Specifications”** shall mean the specifications applicable to the Platform Application to be developed by the Parties under this Agreement, as set forth in the Development Project Plan.

**“Pre-existing IP”** has the meaning set forth in Section 9.1(a) of this Agreement.

**“Privacy Rule”** shall mean the Standards for Privacy of Individually Identifiable Health Information under HIPAA, as set forth under 45 C.F.R. parts 160 and 164, Subparts A and E.

**“Provider”** has the meaning set forth in the Preamble.

**“Provider Owned Work Product”** has the meaning set forth in Section 9.2(b) of this Agreement.

**“Provider Property”** has the meaning set forth in Section 9.1(b) of this Agreement.

**“Provider Development Activities”** shall mean the activities to be conducted by Provider as part of the Development Project.

**“Provider Confidential Information”** shall mean any confidential or proprietary information, whether disclosed hereunder or prior to the Effective Date, whether orally (so long as such oral disclosure is promptly reduced to writing), visually, or in writing, by way of any media, of Provider, or any third party which has disclosed such information to Provider on a confidential basis, including but not limited to, Provider’s, its respective customers’ or such third party’s business or financial affairs, trade secrets, technology, research and development, pricing, product plans, marketing plans or the terms of this Agreement, and all copies, summaries, and compilations of any of the foregoing.

**“Receiving Party”** has the meaning set forth in Section 7.1 of this Agreement.

**“Records”** shall mean any and all invoices, back-up to invoices, service level reports and other records created by Provider to verify Provider’s performance of its obligations in accordance with the terms of this Agreement.

**“Release”** shall mean any release or version of the Platform Application that add new features or functionality to the Platform Application or redesign the Platform Application.

**“Security Rule”** shall mean the Security Standards for the Protection of EPHI, as set forth under 45 C.F.R. parts 160 and 164, Subpart C.

**“Services”** shall mean any services performed and provided by Provider and its Personnel under this Agreement, including without limitation the Implementation Services, Hosting Services, Training Services and Support and Maintenance Services.

**“Software”** shall mean all software programs and programming, applications, operating systems, utilities and interfaces, including object code and source code and all documentation relating thereto, together with all corrections, improvements, updates and releases thereof.

**“Technical Documentation”** shall mean design and technical documentation that will enable a reasonably skilled computer programmer or analyst to understand, build, compile, operate, modify, maintain, enhance and support the Platform Application without the aid of Provider or

any other person or reference to any materials that have not been provided to Client or that are not part of the public domain.

“**Term**” has the meaning set forth in Section 5.2 of this Agreement.

“**Third Party Claim**” has the meaning set forth in Section 12.2(a) of this Agreement “**Third**

**Party Components**” has the meaning set forth in Section 11.1(g) of this Agreement.

“**User Documentation**” shall mean user documentation describing the features and functionality of the Platform Application and describing the use thereof.

“**Work Product**” shall mean all Deliverables, including but not limited to, all written or computer coded materials manifested in any media, and all other data, specifications, ideas, inventions, reports, or other items of any nature whatsoever produced, developed, presented, and/or distributed by Provider in connection with the Platform Application, the Services and/or Deliverables, whether developed individually by Provider or jointly with Client , and whether or not patentable or copyrightable or protectable by any other intellectual property interests, and whether or not reduced to writing or other physical form.

## **Exhibit B**

### **General Services**

Fees for any additional services not contemplated in this Agreement but requested by Subscriber and performed by Service Provider pursuant to this Agreement will be billed hourly at the Service Provider's standard per hour rate, currently \$125.00-\$250.00, provided, that, all such costs are pre approved by Client in writing.

Subscriber agrees to make prompt payment upon submission of invoices by Service Provider.

### **Sales and/or Usage Taxes**

Subscriber agrees to remit any applicable sales and/or usage fees applicable for all Platform Application, hardware and services provided by Service Provider. The fees defined in this Agreement do not include any applicable sales and/or usage taxes for the Platform Application and related services.

### **Support and Maintenance Services**

From time to time Service Provider agrees to provide Subscriber Subscription upgrades to the Applications in conjunction with development and enhancement announcements made periodically as new applications, features, fixes and upgrades are made available.

Provider agrees to provide to Client long-term support and maintenance for the Platform Application, which shall include: (1) five (5) hours per month of toll-free telephone consultation between the hours of 7am. and 5pm MST, Monday through Friday, excluding holidays, regarding the use and operation of the Platform Application, which hours shall not be accumulated for use in a future month and any excess hours will be billed at Provider's standard hourly rate; (2) correction of defects that materially affect the performance or operation of the Platform Application or its features; and (3) new releases, modifications or Enhancements to the defined Platform Application within sixty (60) days of their authorization and general availability to other customers of Provider as service release updates and not new Platform Application and Client reasonably will limit the number of personnel designated to request maintenance service under this Agreement.

Provider agrees to make reasonable on-going Enhancements to the Platform Application to accommodate Client's functional requirements upon receipt of a written request from Client for such Enhancements. Upon receipt of a request for Enhancement, Provider will provide Client with an estimated timeline and cost for the requested Enhancements. Provider, in its sole and absolute discretion, shall have the final and ultimate decision on the acceptance, design and

deployment of any proposed Enhancements to the Platform Application. Any and all Enhancements shall be Provider's sole property, shall be part of all applicable copyright and trade secret rights of Provider and Client shall have no right, title or interest in or to the Enhancements except as expressly provided for in this Agreement.

#### Subscription Support Services

Commencing on the "Go-Live" event, Provider agrees to provide Client up to twenty (20) non accumulating hours of support.

### **Exhibit C**

#### **Security Requirements**

The following Security Requirements will apply if and to the extent Personal Information is included as part of the Services.

(i) Compliance with Privacy Policy. In addition to any other obligation of Provider hereunder, Provider shall comply with its own privacy policies applicable to the Platform Application and any Services provided by Provider under this Agreement, and shall provide

Client with written updates to such policies promptly as they may become effective from time to time.

(iii) Notification of Threat of Identity Theft. If, in the course of performing Services hereunder, Provider identifies indicators of potential identity theft concerning an Authorized User, employee, individual shareholder or customer, or other person to which such Services relate, Provider shall promptly, unless prohibited by Law, notify Client in writing of such situation.