

# Master Subscription Agreement ActionCue<sup>®</sup> Clinical Intelligence

Parties:

**“Prista”**

Prista Corporation  
3702 Clendenin Ct  
Austin TX 78732-2254

**“Subscriber”**

Company Name: \_\_\_\_\_  
Company Address: \_\_\_\_\_  
\_\_\_\_\_  
State of Registration: \_\_\_\_\_

Term of Agreement: \_\_\_\_\_ (“Effective Date”) through \_\_\_\_\_ (the “*Initial Term*”)

**THIS MASTER SUBSCRIPTION AGREEMENT (THIS “AGREEMENT”) IS ENTERED ON THE DATE SHOWN ABOVE, BETWEEN THE UNDERSIGNED SUBSCRIBER (“SUBSCRIBER”), AND PRISTA CORPORATION, A TEXAS CORPORATION (“PRISTA”). SUBSCRIBER’S SIGNATURE BELOW, ACKNOWLEDGES SUBSCRIBER’S AGREEMENT WITH, AND ACCEPTANCE OF, THE TERMS AND CONDITIONS OF THIS AGREEMENT. THIS AGREEMENT MAY ONLY BE SIGNED BELOW BY A REPRESENTATIVE OF SUBSCRIBER WITH THE POWER AND AUTHORITY TO BIND THE SUBSCRIBER TO THESE TERMS AND CONDITIONS AND MUST ALSO BE SIGNED ON THE ATTACHED EXHIBIT A WHEN COMPLETED WITH THE DETAILS OF THE SUBSCRIPTION ORDER.**

## RECITALS:

WHEREAS, Prista developed and owns certain application software known as Clinical Intelligence (the “*Software*”), with which it provides certain facilities monitoring and management services within the health care industry (the “*Services*”, as further defined below); and

WHEREAS, Subscriber desires to have access to the Software and the Services provided by Prista, and Prista desires to grant Subscriber the right to access the Software via the Internet, and to receive the Services, as provided herein, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and obligations contained herein, the fees paid under this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Prista and Subscriber hereby agree as follows:

## 1. DEFINITIONS

- 1.1. “**Affiliate**” means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this

- definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
- 1.2. **“Agreement”** has the meaning ascribed to it in the first paragraph of this Master Subscription Agreement.
  - 1.3. **“Effective Date”** has meaning ascribed to it in the first paragraph of this Agreement.
  - 1.4. **“Facility or Facilities”** means a geographically distinct hospital operation of Subscriber, including any free standing owned and operated hospital, a unit owned and/or operated by Subscriber within another separately licensed hospital, or a hospital or unit for which Subscriber has a management or operating contract, for which Subscriber uses or applies the Purchased Services.
  - 1.5. **"Malicious Software Code"** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or other similar computer programs meant to cause malfunction, slow down or other functionality disruption to or in the Software.
  - 1.6. **“Module”** means an identified and separately orderable set of functions, data holding capabilities, and reports that is a component of the Services. Each separate Module available as part of the Services is listed on Exhibit A to this Agreement. Modules elected by Subscriber for inclusion in the Services are identified on Exhibit A attached hereto and integrated herein and as amended from time to time by agreement between Prista and Subscriber.
  - 1.7. **“Offline Services”** means professional services delivered by contact with Prista Employees, Agents and subcontractors, as opposed to the use of the Software.
  - 1.8. **"Online Users"** means those individuals Subscriber authorizes to access and use the Services, and to whom Subscriber has supplied user identifications and passwords (or by Prista at Subscriber’s request). Online users may include but are not limited to Subscriber’s employees, consultants, contractors and agents; or third parties with which Subscriber transacts business. For the purposes of this Agreement and the use of the Services, all Online Users are deemed to be agents in fact of Subscriber.
  - 1.9. **"Order"** means the process and ordering documents for obtaining additional Modules or other components of the Services hereunder, including addenda thereto, that are entered into between Subscriber and Prista from time to time. Orders shall be deemed incorporated herein by reference. All Orders must be in writing, signed by an authorized agent of Subscriber and be in the form as attached to this Agreement as Exhibit A. Orders are deemed accepted by Prista when signed by Prista and returned to Subscriber.
  - 1.10. **“Patient Day Equivalent”** means a normalized equivalency of inpatient patient days in which other types of patient encounter demographics (emergency department visits, outpatient surgeries, etc) are converted proportionately using certain ratios that reflect risk adjustment, economic impact for the Subscriber and comparative coverage by the functionality of the Purchased Services.

- 1.11. "**Purchased Services**" means Modules of the Services purchased by Subscriber pursuant to an Order, as well as the system as a whole utilized in providing the Services.
- 1.12. "**Services**" means the online, Web-based applications and platform provided by Prista via <http://actioncueci.com> and/or other designated websites as described or updated from time to time by Prista in its communication with Subscriber, that are ordered by Subscriber under an Order but excluding Third Party Applications.
- 1.13. "**Subscriber Administrator**" is Subscriber's representative appointed to act as the main point of contact on Subscriber's behalf in connection with this Agreement and the Purchased Services. Subscriber will notify Prista in writing of the initial Subscriber Administrator promptly upon the Effective Date, and each successor Subscriber Administrator upon modification. Notice to the Subscriber Administrator will for all purposes be deemed to be notification of the Subscriber.
- 1.14. "**Subscriber Data**" means any non-public information that Subscriber provides to Prista, through Subscriber's use of the Purchased Services or otherwise, regarding Subscriber, any of Subscriber's Facilities, or Subscriber's Online Users.
- 1.15. "**Term**" has the meaning ascribed to it in Section 12 of this Agreement.
- 1.16. "**Third-Party Applications**" means online, Web-based applications and offline software products that are provided by third parties, that may interoperate with the Services, and are identified as third-party applications.
- 1.17. "**We**," "**Us**" or "**Our**" means "**Prista**" and its successors or assigns.
- 1.18. "**You**" or "**Your**" means the "**Subscriber**" and its successors and assigns.

## 2. PURCHASED SERVICES

- 2.1. **Provision of Purchased Services.** Subject to the terms and conditions of this Agreement, Prista hereby grants to Subscriber during the Term of this Agreement, and Subscriber hereby accepts, a non-exclusive, non-transferable, non-assignable, license to access and perform the Software via the Internet for the sole purpose of receiving Purchased Services (the "Permitted Use"). The license granted to Subscriber in this Agreement is terminable as provided in Section 12 of this Agreement. Subscriber agrees to limit access to the Software to Online Users only, in each case for internal purposes of each of them and not for general public access or for use other than the Permitted Use. Subscriber must register each Online User with Prista and provide Prista with such information regarding each Online User, as may be reasonably requested by Prista from time to time. In any event, Prista will not be liable for any unauthorized access to the Software other than due to its own negligence or willful misconduct. Subscriber shall remain liable and solely responsible, as to Prista, for the actions of its Online Users, including the unauthorized access or use of the Services, or any violation of this Agreement. Subscriber agrees that all Orders Subscriber places are based on the functionality of the Purchased Services then available. Subscriber's purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on

- any oral or written public comments made by Prista regarding future functionality or features.
- 2.2. **Passwords.** Subscriber Administrator will set up individual usernames and passwords for each Online User. No shared or pooled accounts or passwords will be set up or used, except as may be approved or set up by Prista support staff. Subscriber shall also use its commercially reasonable best efforts to maintain the confidentiality of all passwords and information provided to it by Prista and to limit the sharing of passwords, account numbers or information to Online Users and other authorized persons.
  - 2.3. **Inspection.** Subscriber agrees to provide or cause to be provided to Prista reasonable inspection of Subscriber's business and, if Prista provides credible evidence to Subscriber of suspicious activity of any Online User that suggests unauthorized use of the Software, Services, passwords or other confidential information of Prista, then Subscriber's and such Online User's books and records (to the extent in the possession or control of Subscriber), which are necessary for Prista to verify compliance by Subscriber with this Agreement. Subscriber further agrees that promptly upon the written request of Prista, Subscriber will direct any of its employees or subcontractors identified by Prista as having made unauthorized use of the Software, Services, passwords or other confidential information of Prista to refrain from such activity and will enforce those directions upon its employees or subcontractors so as to maintain Subscriber's compliance with the terms of this Agreement.
  - 2.4. **New or Amended Orders.** Subscriber may amend an existing Order or create a new Order to purchase additional Modules or make other changes as provided in the form of Exhibit A by having the form completed and signed by an authorized representative of Subscriber and submitting as instructed by Prista. Each new or amended Order is accepted upon Prista's counter-execution and return of a copy of the Order to Subscriber. Subscriber will be charged for the new Purchased Service or changes to an Order based on Prista's then current pricing in effect as of the date of amendment or new Order. Changes to amounts billed by Prista to Subscriber reflecting new Orders will occur only when the related changes to Subscriber's application configuration have been made available by Prista.
  - 2.5. **Online Users.** Online Users do not have subscription rights or durations separate from those of the Subscriber. Registration of Online Users by the designated Subscriber Administrator is an administrative act only but is required to personally identify individuals using the Services and to control access and manage roles and responsibilities. Registered Online User Accounts cannot be shared or used by more than one Online User, except as may be approved or set up by Prista support staff.
  - 2.6. **Subscription Fees.** Monthly Subscription fees are determined by calculating Subscriber's average patient flow in Patient Day Equivalents (PDEs) for Subscriber's enterprise, using the PDE Calculator provided by Prista. Subscriber will use its existing demographic data for the three months preceding the commencement of the Services as inputs to the PDE Calculator for determining the initial Monthly Subscription Fee. The Monthly Subscription Fee will be reviewed and adjusted as

needed by comparison to actual data entered in the course of using the Services after sixty (60) days of use of the Services and at each six-month interval subsequently.

### 3. SCOPE AND USE OF INTELLECTUAL PROPERTY

- 3.1. **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Prista reserves all rights, title and interest in and to the Software and the Services, including all related intellectual property rights. No ownership rights in or to the Software or the Services are granted to Subscriber hereunder other than as expressly set forth herein.
- 3.2. **Restrictions.** Subscriber shall not (i) permit any third party to access the Services except as expressly permitted herein or in an Order, (ii) create derivate works based on the Software or Services, (iii) copy, frame or mirror any part or content of the Software or Services, (iv) reverse engineer the Software or Services, or (v) access or disclose the Services in order to (a) build a competitive product or service or assist in any way a competitor of Prista, or (b) copy any features, functions or graphics of the Software or Services.
- 3.3. **Ownership of Subscriber Data.** As between Prista and Subscriber, Subscriber exclusively own all rights, title and interest in and to all of Subscriber Data. Subscriber understands and agrees that Prista will aggregate Subscriber Data, anonymously, to provide its own value-added consolidated data values, benchmarks, other data ‘measures’ etc. that in no way identifies, or reflects in any way upon, Subscriber, or discloses Subscriber’s patients’ protected health information (PHI).
- 3.4. **Ownership of Aggregated Statistics.** Subscriber acknowledges that statistical data pertaining collectively to all subscribers to the Services are automatically aggregated by Subscriber’s use of the Services producing certain new data. Prista asserts and Subscriber acknowledges Prista’s right to disclose, publish and use in any manner whatsoever, at Prista’s sole discretion, any such aggregated data and related qualitative statements or reports, so long as any such disclosure, publication or report does not identify data as being specifically identifiable data of Subscriber, nor make any conclusion about Subscriber Data or Subscriber’s business operation without prior express written permission by Subscriber.
- 3.5. **Server Code.** The Software is not deemed to be licensed, lent or distributed to Subscriber’s Online Users and the rights to access and use the Services do not include any intellectual property rights to the Software under copyright or other intellectual property or other legal theories.
- 3.6. **Downloaded Code.** Any software code or syntactically structured data, such as HyperText Markup Language (HTML), Extensible Markup Language (XML), JavaScript or other similar code that executes in the Online User’s browser, cookies stored on and retrieved from the Online User’s computer, that are downloaded or created on the Online User’s computer are the proprietary intellectual property of Prista. Subscriber is hereby granted a restricted license to use such property only in conjunction with the Services, only during the Term, and conditioned by Subscriber’s full compliance with all terms and conditions within this Agreement.

- 3.7. **Exportable and Printable Works.** The exportable and printable reports, graphs, and charts created by use of the Services are jointly the intellectual property of Prista and Subscriber. The restrictions imposed by Prista and agreed by Subscriber include that such exportable and printable materials shall not be delivered to any third party for the purposes of creating a competitive product, public display or disclosure, or disparagement of the Services, the ActionCue trademark, or Prista.
- 3.8. **Covenant.** Prista hereby agrees to refrain from legal action against Subscriber for patent infringement by Subscriber in connection with any patent or patent application owned by Prista for technology embodied in the Software or Services, as long as Subscriber is in full compliance with the terms and conditions of this Agreement.
- 3.9. **Suggestions.** Prista shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Services or the Software any suggestions, enhancement requests, help files voluntarily written, recommendations or other feedback provided by Subscriber, including Online Users, relating to the operation of the Services or the Software.
- 3.10. **Federal Government End Use Provisions.** Prista provides the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Prista to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

#### 4. USE OF THE SERVICES

- 4.1. **Prista's Responsibilities.** Prista shall: (i) provide to Subscriber basic support for the Purchased Services at no additional charge, and/or upgraded support if purchased separately, (ii) use commercially reasonable efforts to make the Purchased Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which Prista will use its commercially reasonable efforts to notify Subscriber via the Purchased Services at least 8 hours in advance), which Prista shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Central time Friday to 3:00 a.m. Central time Monday), or (b) any unavailability caused by circumstances beyond Prista's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, or Internet service provider failures or delays, and (iii) provide the Purchased Services only in accordance with applicable laws and government regulations. Nothing in this Agreement shall be construed to directly or indirectly create any liability whatsoever for Prista, including refund or fees for the Services, related to (1) operating errors made by Online Users, whether or not related to any

training deficiencies, (2) failures of the computers of Subscriber or Subscriber's Online Users, (3) failures, outages or inaccessibility of Subscriber's internal networking infrastructures, (4) failures, outages or inaccessibility of Subscriber's Internet access provider or intermediate transit provider to Prista's data center, (5) failures caused by circumstances and events beyond Prista's reasonable control, (6) failures caused by Subscriber's use of the Software or Services in connection with Third Party Applications not expressly certified as compatible by Prista.

4.2. **Subscriber's Responsibilities.** Subscriber shall (i) designate a Subscriber Administrator who will regularly access the Services and take actions as suggested or indicated by written notifications provided by us to Subscriber via the login account of said Subscriber ("Notifications"), and who will take principal responsibility for maintaining the administrative data used to operate the Services for the benefit of Subscriber, (ii) be responsible for Online Users' actions and compliance with this Agreement and be vicariously responsible for Online Users' compliance with the Online Users' Terms of Use, posted on the Services site and updated from time to time, and aid and support Prista in the removal of access privileges for any Online User who violates the terms of this agreement or those of the Online Users' Terms of Use (iii) be solely responsible for the accuracy, quality, integrity and legality of Subscriber Data and of the means by which Subscriber acquired Subscriber Data, (iv) use commercially reasonable efforts to prevent unauthorized disclosure of Prista's Confidential Information, or access to or use of the Services, and notify Prista promptly of any such unauthorized disclosure, access or use, and (v) use the Services only in accordance with the Agreement, and applicable laws and government regulations. Subscriber shall not (a) make the Services available to anyone other than Subscriber's own Online Users, (b) authorize any person or business entity to be an Online User who is also a competitor of Prista, (c) sell, resell, rent, license or lease the Services or access to the Software, (d) operate as a service bureau or intermediate provider of the Services to any third party without the advanced written consent of Prista, (e) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (f) use the Services to store or transmit Malicious Software Code, (g) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, (h) attempt to gain unauthorized access to the Services or their related systems or networks, other than those areas specifically authorized for Subscriber access, (i) access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes, or (j) remove or destroy any proprietary marks or legends including, but not limited to, trademarks and copyright notices placed upon or contained within the Software by Prista.

4.3. **Uploaded, Posted and Entered Data and Content.** Subscriber agrees to instruct and ensure that Subscriber's Online Users specifically refrain from uploading, posting and entering any data, information or other content for which Subscriber does not own or have sufficient rights to so use, or for which Subscriber does not grant to Prista sufficient rights to copy, display and use as needed for Prista to perform its responsibilities to Subscriber defined herein.

- 4.4. **Usage Limitations.** Services may be subject to other limitations, such as, for example, limits on disk storage space, on the number of calls Subscriber is permitted to make against Prista's application programming interface, and, for Services that enable Subscriber to provide public web pages, or the number of page views by visitors to those web pages. Any such limitations are specified in the online Terms of Use. The Services provide sufficient information to enable Subscriber to monitor Subscriber's compliance with such limitations.
- 4.5. **Minor Changes to This Agreement.** Prista reserves the right to change its policies and procedures that are outlined in this Agreement, and the Online User Terms of Use, that do not have a material impact on the delivery of the Services or the Subscriber's obligations. Subscriber will be given Notification of such policy or procedure changes. Upon such Notification, Subscriber has 30 days to advise Prista of any objection to the changes and Prista will attempt to resolve any conflict. Beyond that 30 day period, Subscriber will be deemed to have waived any and all objections.

## 5. THIRD-PARTY PROVIDERS

- 5.1. **Acquisition of Third-Party Products and Services.** Prista may offer Third-Party Applications for Subscriber's purchase and use under Orders. Any other acquisition by Subscriber of third-party products or services, including but not limited to Third-Party Applications and implementation, customization and other consulting services, and any exchange of data between Subscriber and any third-party provider, is solely between Subscriber and the applicable third-party provider. Prista does not warrant or support third-party products or services, whether or not they are designated by Us as "certified" or otherwise, except as specified in an Order. No purchase of third-party products or services is required to use the Services.
- 5.2. **Third-Party Applications and Subscriber Data.** If Subscriber installs or enable Third-Party Applications for use with Services, Subscriber acknowledges that Prista may allow providers of those Third-Party Applications to access Subscriber Data as required for the interoperation of such Third-Party Applications with the Services. Prista shall not be responsible for any disclosure, modification or deletion of Subscriber Data resulting from any such access by Third-Party Application providers. The Services shall allow Subscriber to restrict such access by restricting Users from installing or enabling such Third-Party Applications for use with the Services.

## 6. FEES AND PAYMENT FOR PURCHASED SERVICES

- 6.1. **Subscription Fees.** Subscriber shall pay all fees, costs and expenses specified in all Orders, without setoff, for Purchased Services (collectively "*Fees*") hereunder. Except as otherwise specified herein or in an Order, (i) Fees are quoted and payable in United States dollars (ii) Fees are based on Purchased Services and not actual usage of such Service, (iii) payment obligations are non-cancelable and Fees paid are non-refundable. Fees are based on monthly periods that begin on the subscription start date as indicated in each Order, and for each month thereof; therefore, Fees for



- new or amended Orders added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the Term.
- 6.2. **Subscription Fee Increases.** Aside from the Subscription Fee adjustments described in section 2.6 above, related to changes in Subscriber's Patient Day Equivalent calculations, or the addition of separately purchasable modules by an Amended Order, as outlined in section 2.4 above, Prista may increase its price rate per Patient Day Equivalent on a given module once per calendar year by no more than ten percent (10%) as applicable to existing customers. This limitation shall not apply to pricing presented to new prospective customers for their initial Subscription.
- 6.3. **Invoicing and Payment.** Subscriber may elect payment for the Services either by credit card or by check with the issuance of an Order. Invoices paid by credit card will include a convenience charge. Subscriber will provide Prista with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Prista. If Subscriber provide credit card information to Prista, Subscriber authorize Prista to charge such credit for all Services listed in the Order on a monthly basis or for any other subscription payment term as may be agreed as set forth in Section 6.3. Such charges shall be made in advance, either monthly or in accordance with any different billing frequency stated in the applicable Order. If the Order specifies that payment will be by a method other than a credit card, Prista will invoice Subscriber in advance and otherwise in accordance with the relevant Order. Unless otherwise stated in the Order, invoiced charges are due net 30 days from the invoice date. Subscriber is responsible for maintaining complete and accurate billing and contact information in the Services. Subscriber is strongly urged to set up an automatic payment for the first day of each month when service fees are due and payable. Monthly invoices will be delivered in PDF format via email as a convenience to support accounting processes. Any time period for processing of invoices will not alter the due date or Prista's handling of delinquent accounts.
- 6.4. **Other Billing Frequency.** If Subscriber chooses, Prista will invoice Subscriber and Subscriber may pay for the Services for a month, for quarter or for a year; provided, however that all payments must be made in advance of the Services being provided. Changes in billing frequency may be made only once in a calendar year and are accomplished by submitting an amended Exhibit A as attached hereto. Submitting an amended Exhibit A as an Order for changing to quarterly billing must be accomplished no later than forty-five (45) days prior to the first day of a calendar quarter to allow time for delivery of the invoice and the 30 day payment due period. Submitting an amended Exhibit A as an Order for changing to annual billing may be done at any time and will become effective on the first day of the first month that is at least forty-five (45) days after the Order is received by Prista. Subscribers who elect quarterly billing will receive a five percent (5%) discount. Subscribers who elect annual billing will receive a ten percent (10%) discount.
- 6.5. **Special Non-recurring Services.** Prista or its Affiliates may offer services to Subscriber that are separate from the ongoing Services provided under the terms of this Agreement, such as additional implementation assistance, data extraction, or operational or clinical consultation. Any such services are subject to separate pricing,

- terms and conditions and will be the subject of one or more separate agreements, with no ties to the terms of this Agreement.
- 6.6. **Overdue Charges.** If any Fees are not received from Subscriber by the due date, then at Prista's discretion, (a) such charges may accrue late interest at the rate of 1% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) Prista may condition future subscription renewals and Orders on payment terms shorter than those specified in Section 6.2 (Invoicing and Payment).
- 6.7. **Suspension of Service and Acceleration.** If any amount owing by Subscriber under this Agreement for Purchased Services is 30 or more days overdue, Prista may, without notice and without limiting its other rights and remedies, **suspend services to Subscriber until such amounts are paid in full.** If Prista takes such action at that juncture, all Subscriber data and configuration information will remain intact and only the access to it by Subscriber and Subscriber's Online Users will be suspended.
- 6.8. **Takedown of Subscriber Data and Account.** If any amount owing by Subscriber under this Agreement for Prista's services is 120 or more days overdue, Prista may, without limiting Prista's other rights and remedies take down, or disable Subscriber's access to, Subscriber's account, including all configuration information and data from Prista's servers. Resetting and reconfiguring the account and application instance to recover operation of the Services and use after all outstanding fee balances are paid may result in Subscriber's incurring a service charge. Subject to applicable law, Prista reserves the right to remove and delete all of Subscriber Data following termination of this Agreement, as set forth in Section 12.5 of this Agreement.
- 6.9. **Payment Disputes.** Prista shall not exercise its rights under Section 6.5 (Overdue Charges) or 6.6 (Suspension of Service and Acceleration) if the applicable charges are under reasonable and good-faith dispute and Subscriber are cooperating diligently to resolve the dispute.
- 6.10. **Taxes.** Unless otherwise stated, Prista's Fees are exclusive of taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Subscriber is responsible for paying all Taxes associated with Subscriber's purchases hereunder. If Prista has the legal obligation to pay or collect Taxes for which Subscriber is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Subscriber, unless Subscriber provides Prista with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Prista is solely responsible for taxes assessable against Prista based on its income, property and employees.

## 7. CONFIDENTIALITY

- 7.1. **Definition of Confidential Information.** As used herein, " Confidential Information" means all confidential information disclosed by a party (" **Disclosing Party**") to the other party ("**Receiving Party**"), whether orally, electronic or in writing, that is designated as confidential or that reasonably should be understood to be confidential

- given the nature of the information and the circumstances of disclosure. Subscriber's Confidential Information shall include Subscriber Data; Prista's Confidential Information shall include the Software and Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Orders, as well as business and marketing plans, technology, know-how, proprietary information and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, as evidenced by documentation in Receiving Party's files prior to the date of such initial disclosure, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, which obligation was known by the Receiving Party, or (iv) was independently developed by the Receiving Party.
- 7.2. **Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have either (a) signed a confidentiality agreement with the Receiving Party containing protections no less stringent than those herein, or (b) under another obligation of confidentiality with Receiving Party at least as stringent as this in this Agreement.
- 7.3. **Protection of Subscriber Data.** Without limiting the above, Prista shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Subscriber Data. Prista shall use its commercially reasonable best efforts not to (a) modify Subscriber Data, (b) disclose Subscriber Data except as compelled by law in accordance with Section 7.4 (Compelled Disclosure) or as expressly permitted in writing by Subscriber, or (c) access Subscriber Data except to provide the Services or prevent or address service or technical problems, at Subscriber's request in connection with customer support matters, or for internal statistical purposes.
- 7.4. **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

## 8. WARRANTIES AND DISCLAIMERS

- 8.1. **Prista's Warranties.** Prista warrants that (i) the Services shall perform materially in accordance with published specifications, descriptions and other documentation, excluding those with clear indication of conditional or future modifications, and (ii) subject to the limitations and exclusions of Section 4.1 (Prista's Responsibilities), the functionality of the Services will not be materially decreased during the Term. Such warranty shall include coverage of any new releases or enhancements as deployed on the Site and delivered with the Services. For any breach of either such warranty, Subscriber's exclusive remedy shall be as provided in Section 12.3 (Termination for Cause) and Section 12.4 (Refund or Payment upon Termination) below. Prista further warrants that it is the owner of all of the software and intellectual property embodied within, and used by, the Site and the Services, or have sufficient rights to offer, use and license such software and intellectual property rights to Subscriber, the Subscriber.
- 8.2. **Mutual Warranties.** Each party represents and warrants that (i) it has the legal power and authority to enter into this Agreement, (ii) by entering into this Agreement, such party will not be in default or violation of any agreement, contract, mortgage, judicial order or other governmentally imposed restriction, and (iii) it will not transmit to the other party any Malicious Software Code (except for Malicious Software Code previously transmitted to the warranting party by the other party).
- 8.3. **Disclaimer.** **SUBSCRIBER ACKNOWLEDGES AND AGREES, ON ITS OWN BEHALF AND ON BEHALF OF ITS ONLINE USERS, THAT OTHER THAN AS EXPRESSLY PROVIDED HEREIN, THE SOFTWARE AND SERVICES ARE BEING MADE AVAILABLE TO SUBSCRIBER AND ITS ONLINE USERS ON AN "AS IS" BASIS. THE PARTIES HAVE NEGOTIATED THIS AGREEMENT WITH DUE REGARD FOR THE PARTIES' BUSINESS RISK ASSOCIATED WITH USE OF THE SERVICES AND SOFTWARE. THE WARRANTY IN THIS SECTION IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT FOR TITLE OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. OTHER THAN AS OTHERWISE PROVIDED IN THIS AGREEMENT, PRISTA DOES NOT WARRANT THAT THE SERVICES AND SOFTWARE WILL PERFORM UNINTERRUPTED OR ERROR FREE OR THAT THE SERVICES OR SOFTWARE WILL MEET SUBSCRIBER'S OR ANY ONLINE USER'S REQUIREMENTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY PRISTA, ITS AGENTS OR EMPLOYEES SHALL IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY.**

## 9. MUTUAL INDEMNIFICATION

- 9.1. **Indemnification by Us.** Prista shall defend Subscriber against any claim, demand, suit, or proceeding ("Claim") made or brought against Subscriber by a third party alleging that the use of the Services as permitted hereunder infringes or

misappropriates the intellectual property rights of a third party, and shall indemnify and pay Subscriber for any damages finally awarded against, and for reasonable attorney's fees incurred by, Subscriber in connection with any such Claim; provided, that Subscriber (a) promptly gives Prista written notice of the Claim; (b) gives Prista, at its option, sole control of the defense and settlement of the Claim (provided that Prista may not settle any Claim unless the settlement unconditionally releases Subscriber of all liability); (c) provide to Prista all reasonable assistance, at its own expense, and (d) are not now, or at the time of such indemnifiable event, in breach of this Agreement.

- 9.2. **Indemnification by Subscriber.** Subscriber shall defend Prista, including any of its employees, officers, directors, Affiliates, agents and representatives, against any Claim made or brought against Prista by a third party alleging that Subscriber, Subscriber Data, or Subscriber's use of the Software or Services in violation of this Agreement or any applicable law, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, or has in any way damaged such third party, and shall indemnify Prista for any damages finally awarded against, and for reasonable attorney's fees incurred by, Prista in connection with any such Claim; provided, that Prista (a) promptly gives Subscriber written notice of the Claim; (b) gives Subscriber sole control of the defense and settlement of the Claim (provided that Subscriber may not settle any Claim unless the settlement unconditionally release Prista of all liability); and (c) provides to Subscriber all reasonable assistance, at its own expense, provided, however, that so long as Subscriber is using the Software and/or Services in accordance with this Agreement, the Online Terms of Use, and related documentation and Exhibits, that Prista shall indemnify Subscriber, as set forth in section 9.1 above.
- 9.3. **Exclusive Remedy.** This Section 9 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of Claim described in this Section.

## **10. HIPAA BUSINESS ASSOCIATE TERMS – SECURITY AND CONFIDENTIALITY OF PROTECTED HEALTH INFORMATION**

- 10.1. The terms of this Agreement applicable to the requirements of all sections of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended through 25 January 2013, are provided in the attached Exhibit B, which is hereby integrated into this Agreement.

## **11. LIMITATION OF LIABILITY**

- 11.1. Limitation of Liability. IN NO EVENT, EXCEPT FOR EITHER PARTY'S BREACH OF CONFIDENTIALITY OR EITHER PARTY'S RESPECTIVE INDEMNIFICATIONS OF THE OTHER SET FORTH IN SECTION 9, SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY SUBSCRIBER HEREUNDER OR, WITH RESPECT TO**

ANY SINGLE INCIDENT, THE LESSER OF \$500,000 OR THE AMOUNT PAID BY SUBSCRIBER HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT. THE FOREGOING SHALL NOT LIMIT SUBSCRIBER'S PAYMENT OBLIGATIONS UNDER SECTION 6 (FEES AND PAYMENT FOR PURCHASED SERVICES).

11.2. **Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR, AND THE OTHER PARTY HEREBY WAIVES ITS CLAIM FOR, ANY LOST PROFITS OR REVENUES, LOST DATA OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, INDEMNITY OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

11.3. **Wavier of Certain Risk.** SUBSCRIBER REPRESENTS AND WARRANTS THAT SUBSCRIBER KNOWS AND AGREES THAT NO ON-LINE SERVICE IS COMPLETELY SECURE AGAINST UNAUTHORIZED ACCESS, AND THAT, WHEN USING THE SERVICES, IT WILL BE TRANSMITTING DATA OVER PUBLIC NETWORKS THAT ARE INHERENTLY INSECURE. ALTHOUGH WE WILL TAKE COMMERCIALY AND TECHNICALLY REASONABLE PRECAUTIONS TO PREVENT UNAUTHORIZED ACCESS, SUBSCRIBER ASSUMES ALL RISK ASSOCIATED WITH UNAUTHORIZED INTERCEPTION, USE AND ACCESS TO DATA SENT BY AND TO SUBSCRIBER WHEN USING THE SERVICES. WE ARE NOT AND WILL NOT BE RESPONSIBLE FOR DISRUPTION OF SERVICES OR LOSS OF DATA, OR ANY OTHER DAMAGE, LOSS OR LIABILITY RESULTING FROM THE SERVICES.

## 12. TERM AND TERMINATION

12.1. **Term of Agreement.** The term of this Agreement will commence through and until the last day of the Initial Term, unless earlier terminated in accordance with this Agreement. The Initial Term and each Additional Term (as defined herein) will automatically renew for successive one (1) year periods (each an "Additional Term" and together with the Initial Term, the "Term") unless either party provides written notice to the other party of at least ninety (90) days prior to terminating this Agreement. This notice requirement shall not apply to Termination for Cause as described in section 12.3.

12.2. **Renewal.** The pricing for Modules, Facilities and other determinant aspects of the Services during any Additional Term shall be the same as that during the prior term unless Prista has given Subscriber written notice of a pricing increase at least 30 days before the end of such prior term, in which case the pricing increase shall be effective

- upon renewal and thereafter. Any such pricing increase shall not exceed 7% over the pricing for the same relevant Services in the immediately prior subscription term, unless the pricing in such prior term was designated in the relevant Order as promotional or one-time, or the scope and functionality of a given Module has increased in a significant way.
- 12.3. **Termination for Cause.** A party may terminate this Agreement (i) in the event of the other party's breach of this Agreement which remains uncured for more than 30 days following written notice delivered to the breaching party by the non-breaching party, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. In addition, Prista may terminate this Agreement immediately in the event that Subscriber brings any action against Prista for infringement of any intellectual property owned or controlled by Subscriber, used in connection with the Services.
- 12.4. **Refund or Payment upon Termination.** Upon any termination of this Agreement by Subscriber pursuant to Section 12.3(i) above, Prista shall refund Subscriber any prepaid but unused Fees as of the effective date of termination. Upon any termination pursuant to Section 12.3(i) above by Us, Subscriber shall pay any unpaid Fees owed to Prista as of the date of termination. In no event shall any termination relieve Subscriber of the obligation to pay any Fees payable to Prista for the period prior to the effective date of termination or for services delivered under separate agreements.
- 12.5. **Return of Subscriber Data.** Upon request by Subscriber made within 10 days after the effective date of termination of the Term, Prista will make available to Subscriber for download a file of Subscriber Data in comma separated value (.csv) format along with attachments in their native format. After such 10-day period, Prista shall have no obligation to maintain or provide any of Subscriber Data and shall thereafter, unless legally prohibited, delete all of Subscriber Data in its systems or otherwise in its possession or under its control. Prista shall not be responsible for, or obligated to Subscriber for, extraction and delivery of data in any other format, or any other data handling service and such requests by Subscriber will be considered by Prista without obligation on a fee-paid basis.
- 12.6. **Surviving Provisions.** Sections 3 (Scope and Use of Intellectual Property), Section 6.7, 6.9, 7 (Confidentiality), 8.3 (Disclaimer), 9 (Mutual Indemnification), Section 10 (Certain Health Information), 11 (Limitation of Liability), 12.4 (Refund or Payment upon Termination), 12.5 (Return of Subscriber Data), 13 (Notices) and 14 (General Provisions) shall survive any termination or expiration of this Agreement.

### 13. NOTICES AND APPLICATION OF LAW

- 13.1. **Parties.** The Parties to this Agreement are those companies identified at the beginning of this Agreement and referred to as “Prista” and “Subscriber.”
- 13.2. **Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals required or permitted hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the third

business day after mailing, (iii) the third business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). All Notices must be delivered to the address of the respective party listed on the first page of this Agreement, or at such other address as provided in writing by the requesting party. Notices to Subscriber shall be addressed to the Subscriber Administrator or other person designated by Subscriber for Subscriber's relevant account, and in the case of billing-related notices, to the relevant billing contact designated by Subscriber. Notices delivered to the Subscriber Administrator will be deemed to have been received by Subscriber.

- 13.3. **Agreement to Governing Law, Venue and Jurisdiction.** Each party agrees to the applicable governing law to be that of the State of Texas without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts in Travis County, Texas. All suits concerning any and all matters related to or arising under or by virtue of this Agreement shall be commenced exclusively in either the State Courts located in Austin, Texas or the federal courts located in Austin, Texas, and venue of any such action shall rest exclusively in Austin, Texas.
- 13.4. **Waiver of Jury Trial.** Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.
- 13.5. **Dispute Resolution.** If a dispute arises out of or relates to this Agreement, or the breach thereof, such dispute must first be submitted to mediation administered by the American Arbitration Association under its Commercial Financial Disputes Mediation Rules, before resorting to any other legal or arbitral remedies. Such mediation will be administered in Austin, Texas, as the exclusive initial forum and venue by the American Arbitration Association in accordance with its Commercial Financial Disputes Arbitration Rules. Disputes will be addressed by a single mediator unless the parties agree to resolution by a panel of mediators. Each party will share equally in the fees payable to the mediator.

## 14. GENERAL PROVISIONS

- 14.1. **Export Compliance.** Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) Subscriber shall not permit Online Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction.
- 14.2. **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Neither party may bind the other to any obligation without the express written authorization of the party to be bound.
- 14.3. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement. The benefits and obligations of Prista to Subscriber contained in this Agreement are not enforceable by any Online Users.



- 14.4. **Waiver and Cumulative Remedies.** Except as noted in Section 4.4 (Minor Changes to this Agreement), no failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- 14.5. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- 14.6. **Attorney Fees.** Subscriber shall pay on demand all of Prista's reasonable attorney fees and other costs incurred by Prista to collect any fees or charges due Prista under this Agreement. In the event either Party brings an action against the other Party to enforce the terms of this Agreement, the necessary and reasonable attorneys fees of the prevailing party shall be reimbursed by the non-prevailing party upon entry of a final dispositive order.
- 14.7. **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, Prista may assign its rights and obligations in and to this Agreement in its entirety (including all Orders), without consent of Subscriber, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of Subscriber. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, Prista shall refund to Subscriber any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 14.8. **Entire Agreement.** This Agreement, including the Online Users Terms and Conditions, and all exhibits and addenda hereto and all Orders, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Except as set forth in Section 4.4 of this Agreement, no modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order, the terms of such exhibit, addendum or Order shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Subscriber's purchase order or other order documentation (excluding Orders) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

14.9. **Counterparts/Facsimile.** This Agreement may be executed in several counterparts and by facsimile, each of which shall be deemed an original and all of which taken together shall constitute one single agreement between the parties.

**For Subscriber**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**For Prista:**

\_\_\_\_\_  
Don B. Jarrell, Executive Vice President

\_\_\_\_\_  
Date

## EXHIBIT A – Order for Purchased Services

Order/Amendment Sequence Number	1
Date	_____
Modules:	Monthly Subscription Fee
<input checked="" type="checkbox"/> Basic Package : Clinical Performance (CP) & Risk Management (RM)	_____ PDE* s @ \$1.20 each = _____ (Minimum \$1,500/month/client)
Implementation Fee (application set-up, assistance & training)	\$4,000 (one time, per Subscriber) plus \$400 per 3 <sup>rd</sup> and subsequent facilities

\* - See Section 2.6 for information regarding Patient Day Equivalents and the Monthly Subscription Fee.

Billing frequency (in advance):

- Monthly
- Quarterly
- Annually

### Authorized Signature for Subscriber:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

### Accepted by Prista Corporation:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**Exhibit B**  
**BUSINESS ASSOCIATE AGREEMENT**  
**(WITH 2010 HITECH AND 2013 OMNIBUS AMENDMENTS)**

The terms in this Exhibit B (hereunder "**Business Associate Agreement**" or "this Agreement") are incorporated and integrated within the Master Subscription Agreement (MSA) between Prista (hereunder "Business Associate") and Subscriber, as identified in the Master Subscription Agreement (MSA) to which this is attached and hereby integrated (hereunder "Covered Entity") with the same Effective Date of the Master Subscription Agreement (MSA) to which this Exhibit is attached (the "Effective Date").

**RECITALS:**

A. Covered Entity will make available and/or transfer to the Business Associate certain Protected Health Information (defined below), in conjunction with goods or services that are being provided by the Business Associate to Covered Entity that is confidential and must be afforded special treatment and protection under the Privacy Rule (defined below) and the Security Rule (defined below).

B. The Business Associate will have access to and receive from Covered Entity certain Protected Health Information in connection with the Business Associate's performance of services for Covered Entity.

C. Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Supplemental Healthcare Staffing Agreement ("Contract") in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services ("HIPAA Regulations") and other applicable laws.

D. WHEREAS, amendments to the HIPAA Regulations contained in the HIPAA Omnibus Final Rule became effective on March 26, 2013, and amended HIPAA's Privacy, Security, Breach Notification and Enforcement Rules; and

WHEREAS, The requirements of the HIPAA Administrative Simplification Regulations (including the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules) implement sections 1171-1180 of the Social Security Act (the Act), sections 262 and 264 of Public Law 104-191, section 105 of 492 Public Law 110-233, sections 13400-13424 of Public law 111-5, and section 1104 of Public Law 111-148.

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby Business Associate will provide certain services to Covered Entity, and, pursuant to such arrangement, Business Associate may be considered a "Business Associate" of Covered Entity as defined in the HIPAA Privacy Rule; and

WHEREAS, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under such arrangement;

THEREFORE, in consideration of the Parties' continuing obligations under the HIPAA Privacy Rule and Security Rule, and other good and valuable consideration, the receipt

and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Privacy Rule and Security Rule and to protect the interests of both Parties.

E. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entity to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 165.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and contained in this Agreement.

**Now, THEREFORE,** for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Covered Entity and the Business Associate agree as follows:

- 1 **DEFINITIONS.** Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those ascribed to the terms in the Code of Federal Regulations ("C.F.R.") at Title 45, Part 160 and Part 164. The following terms shall have the meaning ascribed to them in this Section. Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear:
  - 1.1 "Breach" shall have the meaning given to such term under the HITECH Act 42 U.S.C. Section 17921.
  - 1.2 "Business Associate" — the term "Business Associate" (abbreviated as "BA") means, with respect to a Covered Entity, a person who: (1) On behalf of such Covered Entity or of an organized health care arrangement (as defined in this section) in which the Covered Entity participates, but other than in the capacity of a member of the workforce of such Covered Entity or arrangement, creates, receives, maintains, or transmits protected health information for a function or activity regulated by this subchapter, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, patient safety activities listed at 42 CFR 3.20, billing, benefit management, practice management, and repricing; or (2) Provides, other than in the capacity of a member of the workforce of such Covered Entity, legal, actuarial, accounting, consulting, data aggregation (as defined in § 164.501 of this subchapter), management, administrative, accreditation, or financial services to or for such Covered Entity, or to or for an organized health care arrangement in which the covered entity participates, where the provision of the service involves the disclosure of protected health information from such

Covered Entity or arrangement, or from another Business Associate of such Covered Entity or arrangement, to the person.

Business Associates, under the 2013 HIPAA Final Rule amendments, include the following:

- Subcontractors.
- Patient safety organizations.
- HIOs. Health Information Organizations, including Health Information Exchanges (HIEs) and regional Health Information Organizations.
- E-Prescribing gateways.
- PHRs — Personal health Record vendors that provide services on behalf of a covered entity. PHR vendors that do not offer PHRs on behalf of CEs are not BAs.
- Other firms or persons who "facilitate data transmission" that requires routine access to PHI.

- 1.3 Covered Entity The term "Covered Entity" (abbreviated as "CE") means (1) a health plan; (2) a health care clearinghouse; (3) a health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.
- 1.4 "Data Aggregation" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- 1.5 "Designated Record Set" shall have the meaning given to such term under the Privacy Rule, including, but not limited to 45 C.F.R. Section 164.501.
- 1.6 "Electronic Protected Health Information" shall mean individually identifiable health information that is transmitted or maintained by electronic media as described in 45 C.F.R. 160.103.
- 1.7 "Health Care Operations" shall have the meaning given to such term under the Privacy Rule, including, but not limited to 45 C.F.R. Section 164.501.
- 1.8 "HHS" shall mean Department of Health and Human Services.
- 1.9 HIPAA Rules — The term "HIPAA Rules" means the HIPAA Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- 1.10 "Individual" shall mean the person who is the subject of the Protected Health Information, and has the same meaning as the term "individual" as defined by 45 C.F.R. 164.501 and shall include a personal representative in accordance with 45 C.F.R. 164.502(g).

- 1.11 "Party" shall mean the Business Associate or Covered Entity individually. 1.12. "Parties" shall mean the Business Associate and Covered Entity.
- 1.13 "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information, C.F.R. at Title 45, Parts 160 and 164, Subpart E.
- 1.14 "Protected Health Information" or "PHI" means any individually identifiable health information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (ii) that identifies the individuals or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. "Protected Information" shall mean PHI provided by Covered Entity to Business Associate or created or received by Business Associate on Covered Entity's behalf.
- 1.15 "Required By Law" shall have the same meaning ascribed to it in 45 C.F.R. 164.501.
- 1.16 "Secretary" shall mean the Secretary of HHS or his or her designee.
- 1.17 "Security Rule" shall mean the Standards for the Security of Electronic Protected Health Information, C.F.R. at Title 45, parts 160 and 164, Subpart C.
- 1.18 "Unsecured PHI" shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 C.F.R. Section 17932(h).

## **2 PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.**

2.1 GENERAL USES AND DISCLOSURES. Except as otherwise limited in this Agreement, the Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity , if such use or disclosure by the Business Associate complies with the Privacy Rule's minimum necessary policies and procedures required of Covered Entity, and if such use or disclosure of Protected Health Information would not violate the Privacy Rule or the Security Rule if done by Covered Entity.

### 2.2 CONFIDENTIALITY REQUIREMENTS.

(A) Business Associate agrees: (i) to use or disclose any Protected Health Information solely: (1) for meeting its obligations as set forth in any agreements between the Parties evidencing their business relationship, or (2) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise

permitted under this Agreement, or the HIPAA Privacy Rule or Security Rule; (ii) at termination of this Agreement, or any similar documentation of the business relationship of the Parties, or upon request of Covered Entity, whichever occurs first, if feasible, Business Associate will return or destroy all Protected Health Information received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information, or if such return or destruction is not feasible, Business Associate will extend the protections of this Agreement to the information in perpetuity and limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible; and (iii) to ensure that its agents, including a subcontractor, to whom it provides Protected

Health Information received from or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Business Associate with respect to such information. In addition, Business Associate agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement or the mandatory requirements of the HIPAA Privacy Rule and Security Rule that may apply to Business Associate.

- (B) Notwithstanding the prohibitions set forth in this Agreement, Business Associate may use and disclose Protected health Information as follows: (i) if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met: (a) the disclosure is required by law, not merely permitted by law; or (b) Business Associate obtains reasonable written assurances from the person or party to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person or party, and the person or party notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; (ii) for data aggregation services, if to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship. For purposes of this Agreement, data aggregation services means the combining of Protected health Information by Business Associate with the Protected Health Information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities. (c) Business Associate will implement appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted in this Agreement. The Secretary of Health and Human Services shall have the right to audit Business Associate's records and practices related to uses and disclosures of Protected Health Information to ensure Covered Entity's compliance with the terms of the HIPAA Privacy Rule and Security Rule. Business Associate shall timely report to



Covered Entity any use or disclosure of Protected Health Information which is not in compliance with the terms of this Agreement of which it becomes aware.

### **3 BUSINESS ASSOCIATE'S OBLIGATIONS:**

- 3.1 Business Associate agrees that it is required under the amended HIPAA regulations to comply with, and shall comply with, the HIPAA Security Rule, including the Security Rule's Administrative, Physical, and Technical safeguard requirements.
- 3.2. Business Associate agrees that it is required under the amended HIPAA regulations to comply with, and shall comply with, the use and disclosure provisions of the HIPAA Privacy Rule.
- 3.3 Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- 3.4 Business Associate agrees that it may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.
- 3.5 Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement.
- 3.6 Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- 3.7 Breach Disclosures to Covered Entity: Business Associate agrees to immediately report to Covered Entity any use or disclosure of Protected Health Information not provided for by this Agreement of which it becomes aware; and any security incident of which it becomes aware. Further, Business Associate agrees to notify the Covered Entity of any individual whose Protected Health Information has been inappropriately or unlawfully released, accessed, or obtained. Business Associate agrees that such notification will meet the requirements of 45 CFR 164.410 of the amended HIPAA regulations. Specifically, the following shall apply:
  - i. A breach is considered discovered on the first day of the Business Associate knows or should have known about it.
  - ii. In no case shall the Business Associate notify the Covered Entity of any breach later than 24 hours after a breach is discovered.

- iii. Business Associate shall notify the Covered Entity of any and all breaches of Protected Health Information, and provide detailed information to the Covered Entity about the breach, along with the names and contact information of all individuals whose Protected Health Information was involved.
  - iv. For breaches determined to be caused by the Business Associate, where such breaches require notifications to patients or consumers, the cost of such breach notifications shall be borne by the Business Associate.
- 3.8 Business Associate agrees, in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;
- 3.9 Business Associate agrees to apply HIPAA's Minimum Necessary Standard to all uses, disclosures, and requests for Protected Health Information, and to make reasonable efforts to limit the Protected Health Information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.
- 3.10 Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements of 45 CFR §164.524.
- 3.11 Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner.
- 3.12 Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity or to the Secretary, in a time and manner.
- 3.13 Business Associate agrees to document such disclosures of Protected health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- 3.14 Business Associate agrees to provide to Covered Entity or an Individual, in time and manner as stipulated in contract to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

- 3.15 Business Associate agrees to comply with the requirements of the "Red Flags" Rule and implement a compliant date, and ongoing thereafter, as applicable.
- 3.16 **BUSINESS ASSOCIATE'S INSURANCE**. Business Associate shall have commercially reasonable insurance coverage to cover Business Associate's use and disclosure of Protected Information under this Agreement.
- 3.17 **BREACH PATTERN OR PRACTICE BY COVERED ENTITY**. Pursuant to 42 U.S.C. Section 17934 (b), if the Business Associate knows of a pattern of activity or practice of the Covered Entity that constitutes a material breach or violation of the Covered Entity's obligations under the Contract or Agreement or other arrangement, the Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the Business Associate must terminate the Contract or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary of HHS. Business Associate shall provide written notice to Covered Entity if any pattern of activity or practice of the Covered Entity that Business Associate believes constitutes a material breach or violation of the Covered Entity's obligations under the Contract or this Agreement or other arrangements within five (5) days of discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.
- 3.18 **AUDITS, INSPECTIONS AND ENFORCEMENT**. Within ten (10) days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Agreement for the purpose of determining whether Business Associate has complied with this Agreement; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with this Agreement, nor does Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under the Contract or Agreement, Business Associate shall notify Covered Entity within ten (10) days of learning that Business Associate has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

3.19 **AVAILABILITY OF PHI.** (a) Business Associate agrees to make available Protected Health Information to the extent and in the manner required by Section 164.524 of the HIPAA Privacy Rule. (b) Business Associate agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Privacy Rule. (c) In addition, Business associate agrees to make Protected Health Information available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Privacy Rule.

**4. COVERED ENTITY OBLIGATIONS:**

4.1 **PROVIDE NOTICE.** Covered Entity shall provide the Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. 164.520, as well as any changes to such notice, when such copy of the notice or amended notice is required for compliance with the Privacy Rule.

4.2 **PROVIDE CHANGES OF AUTHORIZATION OR PERMISSION.** Covered Entity shall provide the Business Associate with any changes in, or revocation of, authorization or permission by Individual to use or disclose Protected Health Information, if such changes affect the Business Associate's permitted or required uses and disclosures.

4.3 **PROVIDE RESTRICTIONS.** Covered Entity shall notify the Business Associate of any restrictions to the use or disclosure of Protected Health Information changing the Business Associate's obligations that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522.

4.4 **PERMISSIBLE REQUESTS BY COVERED ENTITY.** Covered Entity shall not request the Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule, the Security Rule, or this Agreement if done by Covered Entity.

5 **TERM.** The term of this Agreement shall commence as of the Effective Date, and shall terminate when all of the Protected Health Information provided by Covered Entity to the Business Associate, or created or received by the Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity in compliance with **Section 11** of this Agreement.

**6 TERMINATION.**

6.1 **Material Breach.** A breach by Business Associate of any provision of this Agreement, as determined by Covered Entity shall constitute a material breach of the Contract and shall provide grounds for immediate termination of the Contract, any provision in the Contract to the contrary notwithstanding.

6.2 **Judicial or Administrative Proceedings.** Covered Entity may terminate the Contract, effective immediately, if (i) Business Associate is named as a

defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other Security or Privacy Laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other Security or Privacy Laws is made in any administrative or civil proceeding in which the party has been joined.

7 **AMENDMENT TO COMPLY WITH LAW.**

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Contract or Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement that standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all Protected Information. Upon the request of either party, the other part agrees to promptly enter into negotiations concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rules, the Security Rules or other applicable laws. Covered Entity may terminate the Contract upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend the Contract or Agreement to the Contract or Agreement when requested by Covered Entity pursuant to this Section or (ii) Business Associate does not enter into an amendment to the Contract or Agreement providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

8 **EFFECT OF TERMINATION.**

8.1 Except as provided in Section 8.2 of this Agreement, upon termination of this Agreement, for any reason, the Business Associate hereby agrees to return all Protected Health Information received from Covered Entity, or created or received by the Business Associate on behalf of Covered Entity or to the extent authorized by Covered Entity destroy such Protected Health Information. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of the Business Associate. The Business Associate shall retain no copies of the Protected Health Information.

8.2 In the event that the Business Associate determines that returning or as authorized by Covered Entity, destroying the Protected Health Information is not feasible, the Business Associate shall provide to Covered Entity notification, in writing, of the conditions that make return or destruction of the Protected Health Information not feasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is not feasible, the Business Associate shall extend the protections of this Agreement to such Protected

Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction not feasible, for so long as the Business Associate maintains such Protected Health Information and for so long as maintaining such Protected Health Information remains necessary for compliance with this Agreement, the Privacy Rule and/or the Security Rule.

9 **INDEMNIFICATION.**

9.1 **INDEMNIFICATION BY BUSINESS ASSOCIATE.** The Business Associate shall indemnify and hold harmless Covered Entity against any claims, liabilities, damages, and expenses, including reasonable attorneys' fees, incurred by Covered Entity in defending or compromising actions brought against Covered Entity arising out of or related to the acts or omissions of the Business Associate or its employees in connection with the Business Associate's negligent or fraudulent performance of the Business Associate's applicable duties under this Agreement. This indemnity shall be in proportion to the amount of responsibility found attributable to the Business Associate.

9.2 **INDEMNIFICATION BY COVERED ENTITY.** Covered Entity shall indemnify and hold harmless the Business Associate against any claims, liabilities, damages, and expenses, including reasonable attorneys' fees, incurred by the Business Associate in defending or compromising actions brought against the Business Associate arising out of or related to the acts or omissions of Covered Entity or their employees in connection with Covered Entity's negligent or fraudulent performance of Covered Entity's applicable duties under this Agreement. This indemnity shall be in proportion to the amount of responsibility found attributable to Covered Entity.

10 **DISCLAIMER.** Covered Entity makes no warranty or representation that compliance with Business Associate with this Agreement, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

11 **CERTIFICATION.** To the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security practices, Covered Entity or its authorized agents or contractors may, at Covered Entity's expense, examine Business Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the HITECH Act, the HIPAA Regulations or this Agreement.

12 **SURVIVAL OF OBLIGATIONS.** Termination of this Agreement shall not relieve any party from fulfilling any obligation that, at the time of termination, has already

accrued to the other party or which thereafter may accrue with respect to any act or omission that occurred prior to such termination.

- 13 **DISPUTES.** Except as provided in Section 14, any controversy or claim arising out of or relating to this Agreement will be finally settled in Smith County, Texas by compulsory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.
- 14 **INJUNCTIVE RELIEF AND/OR SPECIFIC PERFORMANCE.** The Business Associate understands and acknowledges that any disclosure or use of Protected Health Information in violation of this Agreement may cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach. Such right of Covered Entity is to be in addition to the remedies otherwise available to Covered Entity at law or in equity. The Business Associate expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.
- 15 **GOVERNING LAW; VENUE; CONSENT TO JURISDICTION.** This Agreement, and the rights, remedies, obligations, and duties of the Parties under this Agreement, shall be governed by, construed in accordance with and enforced under the laws of the State of Texas, without giving effect to the principles of conflict of laws of such state.
- 16 **BINDING NATURE AND ASSIGNMENT.** This Agreement shall be binding on the Parties hereto and their successors and assigns, but no Party may assign this Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably withheld.
- 17 **NOTICES.** Whenever under this Agreement one Party is required to give notice to the other(s), such notice shall be deemed given if in writing, and shall be either
- (i) personally delivered,
  - (ii) mailed by certified mail, postage prepaid with return receipt requested,
  - (iii) delivered by overnight express delivery service or same-day local courier service, or
  - (iv) delivered by telex or facsimile transmission to the addresses set forth below, or at such other addresses as may be designated by the Parties from time to time in accordance with this Section 17.

Addresses to be used for the respective Parties, the Business Associate and the Covered Entity, are the same as those included in the Master Subscription Agreement (MSA) to which this Exhibit is attached

- 18 **COOPERATION.** The Business Associate and Covered Entity acknowledge that mutual cooperation and assistance is essential to each Party's performance under this Agreement; therefore, it will be the duty of all Parties to make all good faith efforts to fully cooperate in the execution of this Agreement.
- 19 **ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS.** Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Contract or Agreement, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- 20 **HEADINGS.** The headings of this Agreement are inserted for convenience only and are not to be considered in the interpretation of this Agreement. They shall not in any way limit the scope or modify the substance or context of any sections of this Agreement.
- 21 **FORCE MAJEURE.** A Party shall not be liable or be deemed in breach of this Agreement for any failure or delay of performance, which results, directly or indirectly, from acts of God, civil or military authority, public disturbance, accidents, fires, or any other cause beyond the reasonable control of any Party, and such nonperformance shall not be grounds for termination.
- 22 **ATTORNEY'S FEES.** Except as otherwise specified in this Agreement, if any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of this Agreement, each Party shall bear their own legal expenses and the other cost incurred in that action or proceeding.
- 23 **REGULATORY REFERENCES.** A reference in this Agreement to a section in the Privacy Rule or the Security Rule means the section as in effect or as amended, and for which compliance is required.
- 24 **AMENDMENT.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, the Security Rule, and the Health Insurance Portability and Accountability Act, Public Law 104-191. No changes in or additions to this Agreement shall be recognized unless incorporated herein by written amendment by the Parties, such amendment(s) to become effective on the date stipulated in such amendment(s). No discharge of obligations arising under this Agreement shall be valid unless in writing and executed by the Party against whom such discharge is sought to be enforced.



- 25 **INTERPRETATION.** The provisions of this Agreement shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Agreement. This Agreement and the Contract shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rules and the Security Rule. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that, in the event that any documentation of the arrangement pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of Protected Health Information.
- 26 **NO THIRD-PARTY BENEFICIARIES.** Nothing express or implied in the Contract or Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- 27 **MISCELLANEOUS.** In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of

this Agreement will in full force and effect. In addition, in the event a party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Privacy Rule or Security Rule, such party shall notify the other party in writing. For a period of up to thirty days, the parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the requirements of the HIPAA Privacy Rule and Security Rule, then either party has the right to terminate upon written notice to the other party.

[Signature Page Follows]

**IN WITNESS WHEREOF**, The Business Associate and Covered Entity have caused this Agreement to be signed and delivered by their duly authorized representatives, as of the date set forth above.

**BUSINESS ASSOCIATE:**

**PRISTA CORPORATION**

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

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

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

**COVERED ENTITY:**

\_\_\_\_\_

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

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

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

\*\*\*\*\* End of EXHIBIT B – HIPAA Business Associate Provisions \*\*\*\*\*