

# AUTONOTES AI, LLC

## END USER LICENSE AGREEMENT

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**PLEASE READ THIS END-USER LICENSE AGREEMENT BEFORE INSTALLING OR USING THE LICENSED PRODUCT. BY INSTALLING OR USING THE SOFTWARE, THE LICENSEE AGREES AND CONSENTS TO BE A PARTY AND BE BOUND BY ALL THE TERMS OF THIS END-USER LICENSE AGREEMENT, INCLUDING ITS WARRANTY & DISCLAIMER PROVISIONS.**

This End-User License Agreement (“EULA”) is made and entered into effective upon the Licensee’s: (1) signing this EULA; (2) clicking the “I Agree” button; or (3) use or access of the Software.

<b>LICENSOR</b>
AUTONOTES AI, LLC 301 W Atlantic Ave STE 8 Delray Beach, Fl 3344
<b>NUMBER OF LICENSES*:</b>
If no designation is made, then the number of licenses is 1.*
*Enterprise Plan requests should be submitted to AutoNotes.

WHEREAS, Licensor licenses its proprietary software and related documentation for use in Licensee’s business; and

WHEREAS, Licensee wishes to obtain the right to use the Software, and Licensor wishes to grant Licensee a limited license for such use under the terms and conditions set forth in the EULA.

WHEREAS, Licensor strictly prohibits access and use by any individuals or entities who are or are seeking to be competitors of Licensor, in any manner or fashion. Licensor will strongly enforce its intellectual property rights, and any theft, misappropriation or trafficking in its trade secret information.

WHEREAS, the terms of this EULA are different from the terms of use set forth on any web page or online forum maintained by Licensor, unless otherwise specifically noted therein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the mutual promises set forth herein, Licensor and Licensee hereby agree as follows:

**1. Definitions.**

Whenever used in this EULA, the following terms shall have the meaning set forth below. The singular and plural shall each include the other, and this EULA shall be read accordingly when required by the facts. If there are two defined terms that mean the same thing, they may be used interchangeably throughout the EULA.

- a. “**Acceptance**” means the date Licensee accepts the Licensed Product as more specifically provided for in the “Acceptance” section of this EULA;
- b. “**Affiliate**” shall mean an entity that Controls, is Controlled by, or is under common Control with Customer;
- c. “**Application**” shall mean the application, if any, identified in an Order;
- d. “**Computer**” shall mean a desktop, laptop computer, or other similar processing Device identified in an Order on which the Software is authorized to be used;
- e. “**Confidential Information**” shall mean the information identified in the EULA, including the paragraph titled “Confidential Information”;

- f. **“Control”** shall mean the ownership of more than fifty percent (50%) of an entity’s stock or other voting interest;
- g. **“Customer”** or **“Licensee”** shall mean the person or entity that identified in this EULA that is authorized to use the Software, including during a Trial;
- h. **“Designated Location”** means the physical location at which Licensee may use the Software;
- i. **“Designated Machine(s)”** or **“Device(s)”** means any electronic device (i.e., computer, tablet, phone, or other electronic device) used by Customer to access or utilize the Software.
- j. **“Documentation”** shall mean the current technical and user documentation for the Software. The Documentation may be modified from time-to-time to incorporate Enhancements;
- k. **“Enhancement”** shall mean the updates, upgrades, versions, editions, modifications, new releases, and corrective programming to the Software and Subscription Data that are provided as part of Maintenance Services;
- l. **“Enterprise Licensee”** shall mean a business or entity providing Healthcare services, which employs multiple Healthcare Providers. An Enterprise Licensee can pay for the fees for each Licensee that they employ under an Enterprise Plan (described in the numbered Section titled “Grant of License”).
- m. **“Error Correction”** means a modification of the Licensed Product by Licensor which corrects Errors discovered in the Licensed Product and enables the Licensed Product to materially conform to the Product Specifications;
- n. **“Features”** shall mean any separate function or characteristic, or group of functions or characteristics, for use in the Software Product. Licensor may limit or restrict a Licensee’s access to Features as noted herein, including, but not limited to, a Features designation in a specific Plan.
- o. **“Healthcare Provider”** shall mean any person or entity, with or without a license, which provides or assists (directly or indirectly) in providing medical, health, clinical, care, treatment, or services, for profit or not for profit. This definition includes employees, contractors, volunteers, etc., who work for, volunteer for, or are contracted with a Healthcare Provider that is a business entity.
- p. **“Installation Site”** shall mean the location, including the site if identified by Customer in an Order, where the Software is authorized to be installed;
- q. **“Intellectual Property Rights”** means all proprietary information, patents, patent applications, trademarks, trade names, service marks, certification marks, collective marks, designs, processes, inventions, licenses, copyrights, know-how, and trade secrets relating to the origin, design, manufacture, programming, operations, function, configuration, or service of the Licensed Product;
- r. **“License”** shall mean the legal right granted by Licensor to a User, pursuant to a EULA, to use the Software.
- s. **“Licensed Product”** or **“Licensed Software”** shall both mean collectively the Software and Licensed Documentation. It is intended to delineate situations when the Software is being used by a Licensor and pursuant to a valid License;
- t. **“Licensor”** shall mean AutoNotes AI, LLC, the entity which is granting the License set out therein. Licensor may be amended in the future to include an entity owned or an Affiliate of AutoNotes that Controls, is controlled by or is under common Control with AutoNotes;
- u. **“Maintenance Services”** shall mean the services described in the Maintenance section, below;
- v. **“Object Code”** means machine-readable computer programs.
- w. **“Order”** shall mean the document pursuant to which a Licensee licenses the Licensed Products and obtains related services. The Order will be in a format as designated by the Licensor, including, but not limited to, in written form or electronic format (such as email), through the Licensor’s website, landing page, or through an authorized affiliate link;
- x. **“Person”** shall mean an actual person or an entity (such as a corporation, LLC, sole proprietorship, partnership, etc.);
- y. **“Plan”** shall mean the type of access and use of the Licensed Product paid for by the Licensee and granted by Licensor, and as defined herein.
- z. **“Protected Health Information”** shall mean any information, whether hardcopy or electronic, that is used or created by the Licensee in its business (it can include output as a result of using the Licensed Product) which contains information that is protected pursuant to a state or local law, such as the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and Gramm-Leach Bliley Act, etc.
- aa. **“Release”** or **“Version”** shall mean the edition(s) of the Software subsequent to the Original Licensed Product. A Release may include Licensed Documentation provided by Licensor for Error Correction or Enhancement;

- bb. **“Remote Access”** shall mean access to and use of the Licensed Products, including, without limitation, the submission and/or receipt of data, documents, or processing instructions, directly or indirectly via a server, Internet, independent software application, or otherwise, to the Computer, from locations other than the Installation Site;
- cc. **“Service Provider”** shall mean a Licensee that uses the Licensed Products to perform services, including, without limitation, to verify address information and/or provide postal-related services; develop, design, archive, process, and/or print bills, statements, or other business documents; merge or convert print stream data; append geographic coordinates to address records or other data and/or perform other data processing services, for entities other than Licensee, such as Affiliates or other third parties;
- dd. **“Software”** shall mean the Licensor’s Software, including all Enhancements, Updates, Features, and Subscription Data provided by Licensor in its current state and as updated and amended in the future. The Software currently is made available by Licensor for use by Licensee through internet access, and there is no desktop or downloadable version. Licensee is responsible for its own internet used to access the Software.
- ee. **“Source Code”** means the plain text, readable computer programming code, associated procedural code, and supporting documentation for the Original Licensed Product and any Releases, Error Corrections, or Enhancements pertaining thereto;
- ff. **“Subscription Data”** shall mean data files, including, but not limited to, postal, census, geographic, demographic, and other data, which are either identified in an Order or otherwise licensed with certain of the Licensed Products;
- gg. **“Support Guidelines”** shall mean the technical support guidelines for the Licensed Products. The Support Guidelines may be modified from time to time at Licensor’s sole discretion;
- hh. **“Third-Party Software”** means software and related materials that are furnished by a third party, including those that are subject to a separate license agreement between the Licensor of such software and the Licensee;
- ii. **“Transaction”** shall mean a record or user query that is submitted to the Licensed Products; provided, however, an Order may identify another unit of measurement;
- jj. **“Trial”** shall mean a limited and designated period of time where a Licensee can use the Software or Licensed Product for free or at a reduced price for purposes of evaluating and determining the Software. A person who uses the Licensed Product as a result of a Trial agrees to be subject to this EULA in the same manner and as

though they were a Licensee who submitted an Order and paid the Fee for use of the Software;

- kk. **“Update”** shall mean any change, version, or alteration of the Software deployed by Licensor;
- ll. **“User”** shall mean an individual authorized by Licensee to use the Licensed Products in accordance with an Order regardless of whether the individual is actively using the Licensed Products at any given time; and
- mm. **“Warranty Period”** shall mean the ninety (90) day period following initial delivery or use of the Software by Licensee.

## LICENSE, USE, AND FEES

### 2. Grant of License.

- a. Licensor hereby grants to Licensee a non-exclusive, non-assignable, non-transferable, limited license to use the Software and related documentation (the “Documentation”) solely for the intended purposes of the Software as set forth in the Documentation, according to the provisions contained herein and subject to payment of applicable license fees. Licensor reserves all rights in the Licensed Product.
- b. The License granted by Licensor herein is a single-user license for use by Licensee directly with patients in their own medical or clinical practice. Each Licensee must have their own account with Licensor. If an entity is the primary Licensee, it must have a separate License for each Healthcare Provider using the Software, and each Healthcare Provider must separately fill out the Licensor’s required credentials with Licensor and agree to be bound by this EULA.
- c. Credits. Software is used on a Credit based system as defined by Licensor.
- d. Plans. Subject to change by the Licensor at any time and at its sole discretion, at the time of this EULA there are five basic plans for Licensees. Licensor reserves the right to update, alter, suspend, remove, redesign, or make any other changes to its plans at any time. This includes, but is not limited to, the addition or removal of Features. Licensor may effectuate changes to plans as noted in this subparagraph without requiring any changes to this EULA. Changes may be made by posting on its website or by sending other notifications to Licensees. If a Licensee has signed up for a yearly plan, and changes are made, Licensor will make its best efforts to provide a plan or equivalent plan that meets the Licensee’s current plan, or refund a pro-rated portion of the Licensee’s unused yearly fee.

At the time of this EULA, the following plans are offered:

- i. **Basic.**
- ii. **Essential Plan.**

- iii. **Premium Plan.**
- iv. **Ultimate Plan and**
- v. **Enterprise Plan.**

- e. NO SHARING. Except as permitted within their Plan, all Licensees are expressly prohibited from sharing access to their Software with any third-party Persons. Likewise, Licensee is prohibited from using the Software Product in any manner, directly or indirectly, to provide or assist other Healthcare Providers (for example – a Licensee cannot use the Software to assist other Healthcare Providers, including checking other Healthcare Provider’s notes or billings).
- f. Licensee must use the Licensed Product: (i) in a manner and for the purposes for which the Licensed Product was designed in Licensee’s medical or clinical practice, and (ii) only on Licensee’s own data for its direct patients and customers for the purpose of clinical documentation and billing.
- g. Subject to the provisions of the Backup and Archiving Section of this EULA, Licensee may make copies of the Licensed Product output only for backup and archival purposes. Licensee shall provide Licensor a written description of the procedures under which it makes backup copies, including any that may involve backup of the Licensed Product, and Licensor shall promptly approve or disapprove those procedures, which approval shall be at Licensors’ sole discretion.
- h. Licensee may reproduce and provide one (1) copy of the Software and Documentation for each device, computer, or workstation on which the Software is installed. Otherwise, the Software and Documentation may be copied only as essential for backup or archive purposes.
- i. Licensee must reproduce and include all copyright notices and any other proprietary rights notices appearing on the Software and Documentation on any copies that Licensee makes.
- j. NO COMPETITORS. This offer of License by Licensor is not applicable and strictly prohibited from being accepted by any Person who is an owner, officer, director, employee, agent, contractor, of a company or Person, or is related or associated with a company or Person, that has a competing software solution to the Licensed Product, or is in the process of developing a competing software solution to the Licensed Product.

**3. Limitations and Restrictions on Use.**

- a. Since the Software is accessible via internet access, except as provided herein, a Licensee may access the Software on any of its Devices or on a Designated Machine, without the prior written consent of Licensor.
- b. All uses not expressly permitted under Section 2, Grant of License, are prohibited. For purposes of clarification:

- i. Licensee may not make derivative works of the Licensed Products, reverse engineer, disassemble, decompile, or otherwise modify the Licensed Products or any portion thereof, attempt to unlock or bypass any initialization system, encryption methods or copy protection devices in the Licensed Products, modify, alter or change the Licensed Products, alter, remove or obscure any patent, trademark or copyright notice in the Licensed Products, or use components of a Licensed Product independent of the Licensed Products they comprise. Any modifications, alterations, or changes to the Licensed Products, unless authorized by Licensor, shall terminate the warranties provided herein, and Licensor may, at its sole discretion, terminate Maintenance Services for such Licensed Products;
- ii. Licensee may not: (a) make any modifications to or unauthorized copies or duplicates of the Software (c) examine the Licensed Product with debugging, memory inspection, or disk inspection tools; (d) rent or sublicense the Licensed Product; (e) permit use of or access to the License Product by a person who is not an Operator; (f) transmit an electronic copy of the Licensed Product by any means; or (g) use the Licensed Product in the operation of a service bureau or time-sharing arrangement, or to provide outsourcing services.
- iii. Licensee is not permitted to lease, rent, distribute, sell, or sublicense the Software or any rights therein. Licensee may not install the Software on a network server, use the Software in a time-sharing arrangement, or in any other unauthorized manner.
- c. No license is granted to Licensee in the human-readable code of the Software (source code). This EULA does not grant Licensee any rights whatsoever to Licensor’s patents, copyrights, trade secrets, trademarks, or any other rights in the Software and Documentation.

**4. Ownership.**

Licensor owns the media on which the Licensed Product is originally or subsequently recorded; provided, however, subject to the terms and conditions of this EULA, Licensee may use the Licensed Product on a Device or on a Designated Machine for use solely by Licensee. As between Licensor and Licensee, Licensor retains all rights and title to the Licensed Product (both as recorded on the original media and on any subsequent media), the Licensed Documentation, and any Copies thereof in any form. Any templates or customizations made by Licensor for Licensee in the Software, or for use in the Software, shall be owned solely by Licensor. Licensee’s use or access to such templates or customizations is strictly limited to its continued licensed use of the Software.

**5. EULA and Amendment**

This EULA is a license to use, and not a contract of sale for, the Licensed Product. All Intellectual Property Rights in and to the Licensed Product are retained by Licensor or the Licensor of Third-Party Software, as the case may be. Licensee shall not use either the name of Licensor, the Licensor of Third-Party Software, or the name of the Licensed Product or Third-Party Software licensed under this EULA for any commercial purpose or in any advertising, promotional, or public statement, without the prior, written consent of Licensor or the Licensor of Third-Party Software, which consent shall be at Licensor's or the Licensor of Third-Party Software's sole discretion. Licensee agrees not to remove, deface, or destroy any copyright, patent notice, trademark, service mark, other proprietary markings, or confidential legends placed on or within the Licensed Product, the Licensed Documentation, the Third-Party Software, and any Copies thereof in any form.

Licensor reserves the right to amend, alter, and update the terms and conditions of this EULA at any time and at its sole discretion ("Updated EULA"). Licensor will attempt to provide Licensee at least thirty (30) calendar days' notice of the Update EULA prior to the "effective date" of the Updated EULA. Licensee's continued use of the Licensed Software after the Updated EULA takes effect shall be conclusively deemed acceptance and approval of the new terms and conditions in the Updated EULA.

Should Licensee choose to decline an updated EULA and terminate its License, it must notify Licensor at least ten (10) calendar days prior to the Updated EULA effective date. The notice shall identify the Licensee and include a statement that the Licensee does not approve the Updated EULA's terms and conditions and chooses to terminate the EULA prior to the effective date of the updated EULA. When a Licensee who is on a yearly plan (not a month-to-month plan) timely and validly terminates pursuant to this section (due to an Updated EULA), Licensor shall reimburse Licensee in a pro-rata fashion any prepaid License Fees. Reimbursement will be made within a reasonable period of time after receipt of Licensee's timely notice.

#### **6. No Medical Advice**

The Service is not intended to provide medical advice or treatment to Licensee or its patients. Licensee's use of the Licensed Product does not create a physician/patient relationship or replace a qualified healthcare professional's independent medical judgment.

Licensor has advised Licensee that the Software Product should only be used by Licensees who are trained and educated Healthcare professionals and Healthcare Providers. The Software is a tool to assist these professionals, not substitute their medical decisions. Licensee agrees that the Software's effectiveness will vary depending on Licensee's experience, accuracy, and thoroughness in providing services, and with the input of data into the Software. These are all issues out of the control of Licensor.

As such, Licensor does not guarantee the accuracy, completeness, or usefulness of any information provided, generated, or otherwise produced by the Licensed Software when used by Licensee ("Software Generated Output"). The parties agree that Licensor has not made any guarantees or representations related to the Software Generated Output's compliance with any billing requirements, medical note required elements, and other

information required to document a medical visit and billing code performed by Licensee's healthcare professionals.

Licensee agrees that its healthcare professionals must use their own independent medical judgement regarding the information and document that they input about a patient's circumstances into the software.

#### **7. Fees; Payment Terms.**

##### **a. License Fee**

As compensation for the use of Licensed Product as provided in this EULA, for each Copy of the Licensed Product, including any backup or archival copy permitted under this EULA, Licensee shall pay Licensor the License Fees set by Licensor, and as amended from time to time. The fees are published on Licensor's website and are updated periodically. The license fees for this EULA will be set at the time Licensee approves the EULA.

Licensor reserves the right to change the published fees periodically at its own discretion, as well as offer time-sensitive or Licensee specific specials and discounts. Licensor is under no obligation to provide the lowest price license fees to Licensee. If Licensor increases the license fees or other fees (set forth herein), then Licensee has the right to terminate this EULA as noted in the termination section.

Licensor expressly prohibits any Licensee from combining or stacking of discounts, rebates, and promotions (a "Combined Discount"). If Licensee is able to process a Combined Discount, and it is found by the Licensor, then Licensee agrees to pay the Licensor the difference in fees for each Combined Discount above the first discount, times the number of months the Combined Discount was applied.

##### **b. Supplemental Service Fees.**

As compensation for any additional services requested by Licensee and provided by Licensor under this EULA, Licensee shall pay Licensor the Service Fees designated by Licensor. These fees are for any Supplemental Services, including but not limited to: technical assistance, support, training, customization, troubleshooting, setup, integration, build-outs, etc.

Licensor may provide Licensee with Supplemental Services for the Licensed Product as set forth in this EULA or as may be set forth in a separate statement of work made pursuant to this EULA. Licensor is only obligated to provide Supplemental Services via telephone during Licensor's designated hours of operation for Supplemental Services.

If Licensee requests and Licensor in its sole discretion agrees to provide Supplemental Services at a location other than via telephone as noted above, then Licensor may charge additional fees for travel, lodging, and delivery of Supplemental Services.

##### **c. Payments.**

Licensee shall pay to Licensor, or Licensor's authorized designee or agent, the License Fees prior to use of the Licensed Product. Failure to pay will result in an immediate suspension or termination of a Licensee's use or access to the

Software. Likewise, Licensor may designate the timing of payment for any Supplemental Services or any other fees. If no time is set for a Supplemental Service or any other fee, then payment is due immediately upon notice of the fee.

Except as explicitly stated herein, Licensor has a strict no-refund policy. All sales are final. Licensor hereby terminates prior refund policy established on the Software. With that said Licensor reserves the right to consider any form of refund to a Licensee on a case-by-case basis.

**d. Taxes and Other Charges.**

Licensee shall also pay to Licensor any applicable sales, use, value-added, personal property, Internet-related or other taxes, and government charges imposed on transactions hereunder, exclusive of Licensor's net income or corporate franchise taxes.

**e. Late Payments and Interest.**

All License Fees, Supplemental Service Fees, taxes, and other charges shall be due and payable in full in U.S. currency. All fees identified in an Order, or this EULA and any applicable taxes or charges are due and payable immediately upon receipt. Licensor may suspend or terminate Licensee's use or access to the Software or Licensed Product for failure to pay the License Fee or any other fees and charges due. Licensee shall pay a late charge of one and a half percent (0.5%) per day on any fees not paid by the due date. Unless identified in an Order, all fees are stated in and shall be paid in United States currency. Licensor may pass through the cost of any payment processing fees or bank fees, for any payments, including electronic payments, e-checks, credit or debit cards, wire payments, etc.

**8. Reporting and Audits.**

**a. Reporting.**

Licensee shall provide Licensor with a statement setting forth the number of Copies of the Licensed Product, or any component thereof, in existence. Licensee shall provide said statement within ten (10) days of Licensee's receipt of any reporting request from Licensor.

**b. Audit of Use.**

Licensor may upon reasonable notice of at least three (3) calendar days to Licensee, at its expense, audit Licensee's use of the Licensed Product. Licensor has the right to conduct an audit one (1) time per each twelve (12) calendar month period of time for each Licensed Product. Audits may be conducted remotely when possible, or in person. Audits done in person may be conducted during regular business hours at Licensee's place or places of business (or where a Computer or Device is stored). Licensee shall not unreasonably withhold access. Any such audit shall consist solely of a review of Licensee's compliance with the terms and conditions of this EULA and an Order, including, if necessary, an examination of any Computer or electronic Device. Licensee shall provide all reasonable assistance to Licensor during such review.

If, as a result of any such audit, Licensor identifies unauthorized use of the Licensed Product, Licensee shall pay, in addition to a full License Fee for each copy of the Licensed Product used or prepared for use by Licensee during the audit

period, the reasonable expenses of Licensor in conducting the audit.

**9. Licensee Support.**

During the term of this EULA, and provided Licensee has paid all ongoing License Fees and Supplemental Fees and costs that are due, Licensor will provide the following maintenance and support services to Licensee ("Support Services"). Licensor reserves the right to modify any Support Services in this EULA by providing notice to Licensor.

**a. Support Service Requests.**

Support Service requests ("Support Requests") must be submitted to Licensor within the Software, via Licensor's third-party vendor (currently Intercom). Licensee should include contact information and a detailed description of the issue in its email. Submission of a Support Request opens a ticket in the Licensor system and directs the ticket to Licensor support personnel. Licensor has support representatives available during Support Service Hours designated below, however, a support service representative will respond with either a resolution or workaround, either by email or phone, as warranted by the ticket, within a 24-hour period. In the event that an issue is not resolved within the 24-hour period, Licensee should promptly contact Licensor.

**b. Support Services Hours.**

Normal Support Services for Licensees will be provided from 8 am to 8 pm ET, Mondays through Fridays (excluding all holidays, including Licensor-specified holidays).

**c. Defect Support.**

Licensor, at its sole discretion may provide telephone consulting services and/or written support services through fax, email, or other manner to Licensee's designated personnel to provide such personnel with Defect Support relative to the Software and Documentation, being the provision of assistance regarding suspected defects or errors in the Software or Documentation. Licensor will analyze the claim of Licensee and inform Licensee of the result of its analysis. If a defect in the Software is confirmed by Licensor, acting reasonably, Licensor will exercise commercially reasonable efforts to correct the defect as soon as possible.

**d. Remote Application Support.**

Licensor may provide telephone consulting services and/or written support services through fax, email, or other manner to Licensee's designated personnel to provide such personnel with application support relative to the Software and Documentation, being the assistance, beyond defect support. Licensor will analyze the claim of Licensee and inform Licensee of the result of its analysis. If further investigation is needed, Licensor will inform Licensee as soon as possible of the results thereof.

**e. Exceptions to Maintenance and Support Obligations.**

The following items are expressly excluded from the Maintenance and Support Services listed in this Section and shall, as such, be invoiced at then-current engineering fees:

- i. Maintenance and/or support of software not delivered by Licensor;

- ii. Maintenance and/or support of Software or a version of the Software that has been retired by Licensor;
- iii. Repairs caused by other than normal use or repairs caused by force majeure (such as, but not limited to, fire, flood, failure of electric power or air conditioning); and
- iv. Repairs required by the fact that maintenance has been done by a third party, not authorized by Licensor.

**f. Additional Support.**

If Licensor chooses to offer additional support for specific Licensees, then Licensee may purchase additional support and custom modifications to the Software (to the extent agreed to by Licensor) from Licensor by notifying Licensor (the "Additional Support"). If the Additional Support or modifications are agreed to by Licensor, then Licensor may provide Licensee with a written scope of work of the Additional Support along with any and all fees and costs. Additional Support may be billed on a project basis or an hourly basis, at the sole discretion of the Licensor. If no fee is specified then it shall be done on an hourly basis at \$200.00 per hour, plus any costs. If travel is required, then Licensor agrees to pay all reasonable travel fees.

Unless otherwise stated, payment for any Additional Support is due immediately and in advance of any work or efforts by Licensor. Unless costs are prepaid or are made part of the scope of Additional Support, they will be billed separately. Payment is due by Licensee upon receipt of any invoice.

**g. Scope of Maintenance and Support Services.**

- i. In no event shall any maintenance or support services under this EULA be provided for any application, device, hardware, or software other than the Software.
- ii. It is a condition precedent to the delivery of any maintenance and support under this EULA by Licensor that Licensee have personnel on site that possess the knowledge of a person of ordinary skill in the art of computer programming and that Licensor be able to interact with such personnel in providing maintenance and support services under this EULA.
- iii. The Maintenance and support services described in this EULA shall be provided to Licensee only. There is no obligation for Licensor to interact, train, or provide any maintenance or support services to any third party, person, or entity.

**h. Software Maintenance**

**i. Notification of Suspected Licensed Software Defects.**

If Licensee believes there is an Error in the Licensed Software, Licensee must notify Licensor of such Error in writing through the normal Support Request process. After Licensor's analysis of the reported Error, Licensor will: (i) notify Licensee whether Licensor has verified the Error; (ii) where an Error has been verified, advise Licensee of available remedies; and (iii) where a remedy

is not immediately available, notify Licensee of the need for further investigation. Licensor reserves the right to determine the disposition of any and all reported Errors.

**ii. Licensee's Remedies for Licensed Software Defects.**

In all situations involving nonperformance of the Licensed Software during the Warranty Period, Licensee's sole and exclusive remedy is:

- i. the correction or workaround of software Errors by Licensor; or
- ii. if, after three (3) repeated efforts, Licensor is unable to make the Licensed Software operate as warranted, Licensee shall be entitled to a refund of the pro-rated value of prepaid License Fees for the remaining Licensee's term.

**i. Error Correction and Enhancement Releases.**

Provided Licensee has paid the License Fees and all other charges, fees, and amounts due and owing Licensor under this EULA, Licensor shall provide, at its own discretion and timeframes, Error Correction Releases (which do not contain any Enhancements), if any, at no charge to Licensee.

**10. Updates.**

Licensor shall provide Licensee with such Updates as Licensor creates in its sole discretion in the ordinary course of its business.

**11. Limited Warranty.**

- a. Licensor warrants that the Software shall materially perform in accordance with any documentation in effect at the time. The Licensee understands that any Software and any Updates may contain minor errors and/or bugs. To the extent that these exist in the Software or in any Update, this does not violate the terms of this License or Licensor's obligations. Licensor will make reasonable efforts to identify and fix such minor errors and bugs within a reasonable time upon their discovery. The foregoing warranty does not cover damage or failure caused by Licensee's improper use or neglect, Licensee's failure to comply with the minimum operational requirements for the Software, any software delivered under this EULA, or Licensee's modification or use of the Software and any software delivered under this EULA contrary to the terms of this EULA or the documentation. Provided further, Licensor does not warrant the (i) speed of access to data via the Internet or via communication lines over which Licensee has no direct or immediate control; (ii) the Software or any software delivered under this EULA if Licensee does not maintain the minimum operational requirements; or (iii) any functionality that is available through links to third party sites.
- b. The Licensee's exclusive remedies for breach of this warranty is that Licensee may report it to Licensor, and Licensor shall (a) fix the nonperformance within a reasonable period of time or (b) refund a pro-rated

portion of any prepaid License Fees for the remaining Licensee's term and terminate this License.

- c. THE EXPRESS LIMITED WARRANTY IN THIS SECTION (SET FORTH ABOVE) IS IN LIEU OF (AND LICENSOR SPECIFICALLY DISCLAIMS) ALL OTHER WARRANTIES AND CONDITIONS EXPRESSED OR IMPLIED, CONTRACTUAL OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NOTWITHSTANDING ANY OTHER PROVISION IN THIS EULA, LICENSOR DOES NOT WARRANT THAT THE USE OF THE SERVICE SHALL BE UNINTERRUPTED OR ERROR FREE OR THAT ALL DEFICIENCIES OR ERRORS ARE CAPABLE OF BEING CORRECTED.
- d. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS EULA, THE LICENSED PRODUCTS ARE PROVIDED "AS IS" AND LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED PRODUCTS AND SERVICES FURNISHED UNDER THIS EULA, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE.
- e. LICENSOR SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES CAUSED BY THE UNAUTHORIZED USE OF THE LICENSED PRODUCTS OR ACTS OF ABUSE OR MISUSE BY LICENSEE. IN ADDITION, LICENSOR SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE IN CONNECTION WITH OR ARISING OUT OF THE INTERRUPTION OR LOSS OF USE OF THE LICENSED PRODUCTS OR THE LOSS OR CORRUPTION OF LICENSEE'S DATA OR FILES PROCESSED OR STORED BY THE LICENSED PRODUCTS.

#### 12. Limitations of Liability.

- a. AFTER THE PARTIES HAVE AGREED TO THIS EULA, LICENSEE'S EXCLUSIVE REMEDIES FOR ALL SERVICE-RELATED MATTERS SHALL BE AS DESCRIBED IN THIS EULA.
- b. LICENSOR SHALL NOT BE LIABLE FOR ANY EXPENSE OR DAMAGE ARISING OUT OF ANY ERASURE, DAMAGE OR DESTRUCTION OF FILES, DATA OR PROGRAMS. LICENSEE SHALL BE RESPONSIBLE FOR STORAGE OR MAKING BACKUP COPIES OF DATA.
- c. IN NO EVENT WILL LICENSOR'S LIABILITY OF ANY KIND INCLUDE ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, BUSINESS INTERRUPTION, LOSS OF USE, LOSS

OF DATA, OR EXEMPLARY LOSSES OR DAMAGES, INCLUDING LOST PROFITS OR BUSINESS OPPORTUNITIES, EVEN IF SUCH PARTY WILL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE, UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE.

- d. LICENSOR'S MAXIMUM AGGREGATE LIABILITY FOR DAMAGES TO LICENSEE SHALL BE LIMITED TO ACTUAL DIRECT MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE LESSER OF THE CURRENT TERM'S LICENSE FEES ACTUALLY PAID BY LICENSEE FOR THE SOFTWARE, OR THE PAST THREE (3) MONTHS LICENSEE FEES ACTUALLY PAID.
- e. THE PARTIES, ESPECIALLY LICENSEE, ACKNOWLEDGE THAT THE LIMITATIONS ON LIABILITY IN THIS SECTION ARE REASONABLE. THE REMEDIES PROVIDED IN THIS EULA ARE EXCLUSIVE.
- f. THE FOREGOING LIMITATIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF WHETHER LICENSEE OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

#### 13. Confidentiality.

- a. As used in this EULA, the term "Confidential Information" means all non-public information, including, but not limited to, the trade secrets and know-how of the respective Parties, this EULA, and all matters discussed relating to this EULA, any information marked "Confidential" or "Proprietary," any non-public information (even if not marked) that by its context or underlying circumstances a reasonable person would consider proprietary or confidential, and, in the case of Licensor, the Licensed Product; provided, however, Confidential Information shall not mean any information that:
  - i. is known to the Licensee at the time of disclosure by the Licensor;
  - ii. is developed independently by the Licensee without use of the Licensor's Confidential Information;
  - iii. is within, or later falls within, the public domain without breach of this EULA by the Licensee;
  - iv. is publicly disclosed with written approval of the Licensor; or
  - v. becomes lawfully known or available to the Licensee without restriction from a source having the lawful right to disclose the information without breach of this EULA by the Licensee.
- vi. The Licensee shall have the burden of proof as to establishing by competent evidence any of the exceptions set forth in (i) to (v) above.



b. In the event the Licensee is legally requested or compelled in any form to disclose any of the Licensor's Confidential Information pursuant to a Court Order or valid governmental request, the Licensee shall withhold disclosing any Confidential Information in order to provide the Licensor with immediate written notice of such request, so that the Licensor may seek a protective order or pursue other appropriate remedies to protect the confidentiality of its information. If the timeframe is too short to contact Licensor, then Licensee shall seek a protective order or extension in order to contact Licensor. Assuming Licensee has provided notice to Licensor and a protective order or other remedy is not obtained, the Licensee is limited to furnishing only that portion of the Confidential Information which the Licensee, upon the opinion of its counsel, is legally required or able to furnish. The Licensee will reasonably assist the Licensor in its efforts to obtain a protective order or other remedies to protect or limit the disclosure of the information subject to the request.

c. Each Party acknowledges that in the performance of this EULA, a Party may receive Confidential Information from a Licensor and that such Confidential Information is the exclusive property of the Licensor. The Licensee agrees to hold the Confidential Information of the Licensor in strict confidence in accordance with the provisions of this EULA. A Licensee;

- i. shall not permit or suffer its employees or agents to remove any proprietary or other legends or restrictive notices contained or included in any Confidential Information provided by the Licensor;
- ii. shall not permit or suffer its employees or agents to copy or modify any Confidential Information except as specifically authorized in this EULA;
- iii. shall not disclose any Confidential Information to a third party without the prior written consent of the Licensor;
- iv. shall only use the Licensor's Confidential information for purposes of performing its obligations under this EULA, and shall not otherwise use the information for its own benefit or for the benefit of any third party; and
- v. agrees to keep secure and maintain the Confidential Information of the Licensor in a manner no less protective than that used to maintain the confidentiality of the Licensee's own Confidential Information.

**d. Limitation on Disclosure.**

A Licensee may disclose Confidential Information to its employees or agents under the control and direction of the Licensee only in the normal course of business and on a need-to-know basis within the scope and purpose of this EULA. Provided, however, prior to any disclosure, all such employees and agents shall have entered into written agreements with the Licensee requiring such employees and agents to treat and use all such Confidential Information in a manner consistent with the terms and conditions of this EULA. Except as expressly set forth herein, no licenses under any patent, copyright,

or other intellectual property rights of either Party are granted. For the avoidance of doubt, in all events, the Licensee shall be responsible to Licensor for any action or inaction of Licensee's employees and agents that violates this EULA.

**e. Return of Confidential Information.**

Upon any termination, expiration, or rescission of this EULA, a Licensee shall, at the option of the Licensor: (i) surrender and deliver all Confidential Information of the Licensor to the Licensor, including all copies thereof; or (ii) destroy the Confidential Information and all copies thereof of the Licensor's Confidential Information and, upon written notice, provide evidence of such destruction to the Licensor within one (1) month following such written notice. Notwithstanding the foregoing, each Party's legal counsel may retain one copy of the Licensor's Confidential Information for its files solely to provide a record of such Confidential Information for archival purposes.

**f. Disclosure of Software Constitutes Incurable Material Breach.**

Licensee acknowledges and agrees that any disclosure of the Licensed Product to a third party in violation of the terms of this EULA constitutes a material, incurable breach of this EULA and shall result in the automatic termination of this EULA and the immediate termination of all licenses granted to Licensee by this EULA. Licensee further agrees that it shall be strictly liable for all damages to Licensor that result from any disclosure of the Licensed Product to any third party.

**14. SMS/TEXT Contact**

- a. In keeping with the provisions of the Telephone Consumer Protection Act (TCPA), 47 U.S.C. §227, AutoNotes requires express written consent prior to contacting you by telephone, facsimile, or text message for any non-emergency purpose using any automated telephone dialing system (ATDS) or artificial or prerecorded voice ("Automated Method"). AutoNotes gives our customers the opportunity to "OPT IN" and agree to communicate with us through SMS messaging. If you opt in, we may send you text messages that include information such as platform updates, new features, special offers and promotions, technical issues & outages, billing and payment reminders, and customer support matters. If you OPT IN to SMS messaging
- b. You can cancel the SMS service at any time. Just text "STOP" to the short code. After you send the SMS message "STOP" to us, we will send you an SMS message to confirm that you have been unsubscribed. After this, you will no longer receive SMS messages from us. If you want to join again, just sign up as you did the first time and we will start sending SMS messages to you again. Note that opting out of certain messages may affect your ability to use our services effectively. Transactional, security-related, and service-related messages may still be sent where legally required or necessary.

- c. If you are experiencing issues with the messaging program you can reply with the keyword HELP for more assistance, or you can get help directly by contacting us.
- d. We do not guarantee that SMS messages will be delivered or received and disclaim any liability for failed message delivery, transmission delays, or message content errors. Carriers are not liable for delayed or undelivered messages.
- e. As always, message and data rates may apply for any messages sent to you from us and to us from you. You may receive SMS messages periodically. If you have any questions about your text plan or data plan, **it is best to contact your wireless provider.**

#### 15. Infringement.

- a. If a claim is made that the Licensed Product, or any portion thereof, infringes any United States patent, copyright, trade secret, or other proprietary right, Licensor, at its sole expense and option, shall either: (i) procure for Licensee the right to exercise the rights and licenses granted hereunder with respect to the Licensed Product; (ii) modify the Licensed Product to make it non-infringing but continue to meet the Product Specifications; (iii) replace the Licensed Product with equivalent but non-infringing software of like functionality that meets the Product Specifications; or (iv) terminate this EULA and provide a pro-rated refund of the License Fees to Licensee upon the return to Licensor of the infringing Licensed Product; provided, however, that the liability of Licensor pursuant to this Section shall be subject to the "limitations of liability" section of this EULA, and Licensor shall have no liability for any claim of infringement based on use of a superseded or altered Release of the Licensed Product if the infringement would have been avoided by the use of the most current, unaltered Release of the Licensed Product which is available to Licensee for any reason.
- b. If Licensor directs Licensee to terminate use of such Licensed Products (or a permanent injunction is issued against such use), Licensee shall immediately terminate such use.
- c. Licensor shall have no indemnification obligations for claimed infringement under this EULA to Licensee if the infringement or misappropriation results from Licensee's: (i) unauthorized modification of the Licensed Products; (ii) combination, operation or use of the Licensed Products with non-Licensor software products if such claim of infringement or misappropriation would have been avoided had such combination, operation or use not occurred; (iii) use of the Licensed Products in breach of this EULA or an Order; or (iv) use of other than the most current release of the Licensed Products if such claim of infringement or misappropriation could have been avoided by Licensee's use of such current release of the Licensed Products, provided Licensor delivered such superseding version to Licensee and notified Licensee of the need to use such version.

#### 16. Indemnity.

##### a. Indemnity by Licensee.

Licensee shall be solely responsible for and shall indemnify, defend, and hold Licensor free and harmless from all damages, liabilities, charges, and expenses (including reasonable attorneys' fees) from all claims, lawsuits, or other proceedings arising out of or relating to (i) Licensee's use of the Licensed Product in a manner not permitted by this EULA, not permitted by Licensor, or not in conformance with Licensor written requirements, (ii) the acts or omissions of Licensee, its employees, and agents and all persons or entities who have access through Licensee to the Licensed Product, (iii) any breach or claimed breach by Licensee of its representations, warranties, and/or obligations under this EULA, or (iv) relating to an infringement of any right resulting in any way from the use of the Licensed Product with other software or materials not licensed to Licensee by Licensor.

##### b. Indemnity of Right of Use.

Licensor shall defend or settle, at its own expense, any third-party claim made against Licensee to the extent that the Licensed Product, in whole or in part, infringes any United States patent, published patent application, copyright, trade secret, or other proprietary right, and Licensor shall indemnify and hold harmless Licensee against any final judgment, including an award of attorneys' fees, that may be awarded by a court against Licensee as a result of the foregoing; provided, however, Licensee shall (a) give Licensor written notice of such claim within thirty (30) days of the date Licensee first knows or should have known of the claim and (b) provides Licensor with reasonable cooperation and all information in Licensee's possession related to said claim. Licensor shall have sole control of the defense of such claims and all related settlement negotiations. Reasonable out-of-pocket expenses incurred by Licensee in assisting Licensor in defense of such a claim shall be reimbursed by Licensor.

##### c. Limitation of Indemnity.

Licensor shall have no liability to Licensee or any assignee, transferee, or sublicensee of Licensee for any claim of infringement that is based upon any combination of the Licensed Product with software or materials not supplied by Licensor if such claim would have been avoided but for such combination; or any modifications to the Licensed Product other than Releases provided by Licensor or otherwise approved by Licensor in advance and in writing.

#### 17. Patient Records and Disclosure Information.

##### a. Protected Health Information.

Licensee and Licensor both understand that the Software is for use in the provision of medical and clinical services, and such services and activities will result in records created by Licensee that might constitute Protected Health Information. The Parties understand and agree that use of the Licensed Product by Licensee may result in Licensor coming into contact or possession of any of Licensee's

Protected Health Information. However, Licensee agrees to be the party responsible for maintaining compliance with its Protected Health Information.

Licensee shall maintain appropriate documentation in completion of all medical records in compliance with all rules, regulations and guidelines established by state or federal governmental authorities, including, but not limited to, HCFA and HIPAA. Licensee and LICENSOR recognize that while it is unlikely, during the course of this EULA LICENSOR may, from time to time, as necessary to provide support or maintenance, or provide Licensee with access to certain Licensed Product features, have access to Protected Health Information from Licensee.

In addition to the foregoing, the Parties shall only use or disclose patient information, including Protected Health Information (as such term is defined by the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Subparts A and E of Part 164, as promulgated from time to time by the Department of Health and Human Services (the "Privacy Standards")), in compliance with the Privacy Standards and other applicable law. The Parties shall further reasonably safeguard the confidentiality, integrity, and availability of patient information, including Protected Health Information, as required by applicable law, including the Privacy Standards and the Security Standards (45 C.F.R. Part 160 and Subparts A and E of Part 164).

**b. Business Associate Agreement.**

Licensee agrees that its acceptance of this EULA includes acceptance of the Business Associate Agreement ("BAA") attached as an exhibit to this Agreement. Notwithstanding the foregoing, for any Licensees who agrees not to send any Protected Health Information to Licensor or use the Licensed Product without first entering into the attached Business Associate Agreement to authorize Licensor the authority to access the Protected Health Information of Licensee. The Parties agree to work cooperatively and expeditiously to update this BAA as needed, or enter into other agreements that satisfy the confidentiality provisions applicable to the Protected Health Information. Licensor may require Licensee to execute an updated BAA at any time and at its sole discretion.

Licensor may hire and utilize third-party entities or people to provide Features or other services related to the Software. In certain situations, Licensor may enter into a Business Associate Subcontractor Agreement with these third-party entities or people, in a form and containing terms which are agreeable to Licensor, to protect Protected Health Information.

In utilizing the Software for the provision of medical and clinical services, a Licensor may be required to disclose information to, and/or obtain consent, of its client/patient. Licensee is responsible for maintaining compliance with any local, state or federal laws related to the disclosure or consent requirements to its clients/patients. Licensee shall indemnify and hold harmless Licensor from any third-party actions maintained related to these and other disclosure and consent obligations, utilizing the process and structure set forth in the "indemnification section" of this EULA.

**18. Fraud and Abuse Compliance.**

**a. Parties Intend to Maintain Fraud and Abuse Compliance.**

It is not the intent of either Party to this EULA that any remuneration, benefit, or privilege provided for under this EULA shall influence or in any way be based on the referral or recommended referral by either Party of patients to the other Party or its affiliated providers, if any, or the purchasing, leasing or ordering of any services other than the specific Billing Services described in this EULA. By entering into this EULA, the Parties specifically intend to comply with all applicable laws, rules, and regulations, including (i) the federal anti-kickback statute (42 U.S.C. 1320a-7(b)) and the related safe harbor regulations; and (ii) the Limitation on Certain Physician Referrals, also referred to as the "Stark Law" (42 U.S.C. 1395nn). Accordingly, no part of any consideration paid hereunder is a prohibited payment for the recommending or arranging for the referral of business or the ordering of items or services; nor are the payments intended to induce illegal referrals of business. In the event that any part of this EULA is determined to violate federal, state, or local laws, rules, or regulations, the Parties agree to negotiate in good faith revisions to the provision or provisions which are in violation. In the event the Parties are unable to agree to new or modified terms as required to bring the entire EULA into compliance, either Party may terminate this EULA on thirty (30) days' written notice to the other Party.

**b. Compliance Plan and Anti-Fraud Program.**

Licensee has and will maintain, throughout the Term of this EULA, a compliance and anti-fraud program to detect and prevent the incidence of fraud and abuse relating to its business. Such program must require that Licensee, (i) its officers, directors, employees, and agents, at minimum, comply with all state and federal, laws, rules, and requirements, (ii) designate a compliance officer; (iii) maintain and comply with internal controls and policies and procedures designed to prevent, detect and report known or suspected fraud and abuse activities; and (iii) institute specific controls for reviewing claims.

**19. Termination.**

**a. Termination by Licensor.**

Licensor may terminate this EULA, and the licenses granted to Licensee under this EULA upon the occurrence of any of the following events or learning of the following:

- i. Licensee fails to pay Licensor any fee, charge, tax, or other reimbursement when due, and the failure to pay is not cured within ten (10) days of Licensee's receipt of Licensor's written notice thereof;
- ii. Licensee transfers title to or possession of the Licensed Product without Licensor's prior written consent;
- iii. Licensee breaches any material obligation of Licensee under this EULA;
- iv. Licensee is a competitor to Licensor, or the EULA is approved or signed by a Person who is an owner, director, officer, employee, agent, contractor of, or is otherwise associated with a Company that has software or is developing software, which Licensor, in its sole discretion, believes is or could be a competitor of Licensor;

- v. Licensee attempts to set up multiple Trial accounts or otherwise exploit the Software.
- vi. Licensee becomes insolvent, or is adjudicated a bankrupt, or voluntarily seeks protection under any bankruptcy or insolvency law; or
- vii. Licensee assigns its assets for the benefit of creditors or any arrangement with its creditors.

**b. Termination by Licensee.**

Provided Licensee is not in default under this EULA, the EULA may be terminated by Licensee by giving Licensor ten (10) calendar days prior written notice of termination prior to the end of the current term. Any such termination by Licensee shall be without refund of any License Fees, Service Fees, or any other amounts paid or payable to Licensor through the effective date of termination.

**c. Licensor Remedies Upon Termination. In the event of any termination of this EULA:**

- i. Licensee shall cease all further use of the Licensed Product, or any portion thereof, in all forms and on all media and computer memory, and Licensee shall immediately, at Licensor's sole discretion: (a) surrender and deliver the Licensed Product and all Copies thereof to Licensor; or (b) destroy all copies of Licensed Product, including backup and archival copies, and provide satisfactory evidence of such destruction to Licensor within one (1) month following termination. Regardless of the election made by Licensor under this Section, Licensee shall provide a written certification to Licensor by an officer of the Licensee that such return or destruction has occurred in accordance with this Section;
- ii. Licensee shall pay all outstanding fees and amounts due and payable to Licensor as of the date of termination;
- iii. Licensor may cease performance of any or all of Licensor's obligations under this EULA, without liability to Licensee;
- iv. Where such termination is the result of a breach or threatened breach of this EULA by Licensee, Licensor may apply for and obtain injunctive relief against the breach or threatened breach; and
- v. Licensee shall promptly return to Licensor all of Licensor's Confidential Information.

**d. Liquidated Damages.**

If Licensee is found to be violating this EULA by either using the Software to aid other healthcare professionals, or allowing other non-Licensee healthcare professionals access to the Software Product ("Unauthorized Sharing"), then the following applies. The Parties agree that it would be difficult to near impossible to ascertain the damages due to Licensee's Unauthorized Sharing, including the lost revenue, damage to Licensor's reputation, and risk of disclosure of Licensor's confidential and proprietary information and processes. For these reasons, the Parties agree to a set liquidated damages of \$2,500 for each and every incident of Unauthorized Sharing done by the Licensee, directly or indirectly. An "incident" for purposes of this subsection, includes an individual entry or use by Licensee. The sharing actions to which liquidated

damages apply, include those done directly or indirectly by a Licensee. This section does not include illegal misappropriation, misuse, or trafficking in Licensor's confidential and trade secret information.

**e. Equitable Relief.**

The Parties acknowledge and agree that there may be no adequate remedy at law for the failure of the other Party to comply with any of the material terms and conditions of this EULA, including, without limitation, a failure to cease the use of the Licensed Product upon termination of the License or a breach of the confidentiality provisions herein, and the Parties agree that, in the event of any such failure, the non-breaching Party may be entitled to equitable relief by way of temporary restraining order, temporary injunction and permanent injunction and such other and further relief as any court of competent jurisdiction may deem proper.

**f. Remedies Cumulative.**

The rights and remedies of Licensor and Licensee in this Section shall be cumulative and in addition to all other rights and remedies available at law and in equity.

**g. Survival.**

The provisions of this EULA, which by their sense and context should survive any termination or expiration of this EULA, including without limitation Sections 2, 3, 4, 5, 7, and 10 through 16 of this EULA, shall survive termination of this EULA and shall remain binding on the Parties.

**GENERAL PROVISIONS**

**20. Relationship of the Parties.**

The Parties hereto are and shall remain independent and not associated in any manner. Nothing herein shall be deemed to establish a partnership, joint venture, or agency relationship between the Parties. Neither Party shall have the right to obligate or bind the other Party in any manner to any third party.

**21. Assignment/Sublicense.**

Licensee shall not, directly, or indirectly, by operation of law or otherwise, transfer or assign the Licensed Product or this EULA, or transfer, assign, or sublicense any license rights granted hereunder, in whole or in part, without having secured the prior written consent of Licensor, which consent shall be at Licensor's sole discretion. Any attempted assignment violating this Section shall be automatically void without any further action by Licensor.

**22. Notices.**

All notices required to be given pursuant to this EULA shall be transmitted either by (i) electronic mail; (ii) delivery in person, (iii) registered mail, (iv) certified mail, return receipt requested, or (v) overnight mail, addressed to the Party to be notified at the following address or to such other address (or person) as such Party shall specify by like notice hereunder:

**TO LICENSOR:**

Attn: Contract Manager  
 301 W Atlantic Ave STE 8  
 Delray Beach, FL 33444  
 Email: [support@autonotes.ai](mailto:support@autonotes.ai)

**TO LICENSEE:**

Notice shall be addressed to the contact person, email address, or mailing address information provided by Licensee as part of the onboarding or application process.

**23. Export Controls.**

Each Party to this EULA acknowledges its obligations to control access to Technical Data (as defined by the U.S. Department of Commerce, Office of Export Administration) under the U.S. Export Control Laws and Regulations and agrees to adhere to all applicable U.S. Export Control Laws and Regulations with regard to any Technical Data received under this EULA.

**24. Compliance with Laws.**

Each Party shall comply with all applicable state, federal, and local laws, executive orders, and regulations in performing its obligations under this EULA.

**25. Headings.**

The headings and captions appearing in this EULA have been inserted for the purposes of convenience and ready reference only, and do not purport to and shall not be deemed to define, limit, or extend the scope or intent of the provisions to which they appertain.

**26. Form.**

Where the context so admits, words and expressions appearing in the singular in this EULA may be interpreted in the plural, and vice versa.

**27. Integration.**

This EULA, including the Schedules attached hereto and incorporated herein, constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings between them, whether written or oral, relating to the subject matter of this EULA. This EULA may not be supplemented, explained, or interpreted by any evidence of trade usage or course of dealing.

**28. Modification or Amendment By Licensee.**

Licensee shall not modify, amend, or otherwise change this EULA unless such change is in writing and signed by authorized representatives of both Parties.

**29. Waiver.**

No waiver of any provision of this EULA shall be effective unless made in writing and signed by the waiving Party, nor shall any such waiver, if made, constitute a waiver of any subsequent breach of the same or of any other provision of this EULA.

**30. Force Majeure.**

Neither Party shall be liable to the other by reason of any failure of performance hereunder (except obligations to pay) if such failure arises out of causes beyond such Party's reasonable control, despite the reasonable efforts, and without the fault or negligence of such Party. A Party experiencing such an event shall give as prompt notice as possible under the circumstances.

**31. Attorney's Fees and Expenses.**

In the event any suit or legal action is brought by any Party pursuant to EULA or to enforce any of its provisions, terms, conditions, or obligations, including any appeal therefrom, it is agreed that the prevailing Party shall be entitled to recover all of its' reasonable attorneys' fees and costs. This provision shall not apply to any declaratory cause of actions, whereby a party merely seeks judicial interpretation of a term or condition of EULA.

**32. Counterparts, Licensor's Offer, and Acceptance by Licensee.**

This EULA may be executed in multiple counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute but one instrument.

This EULA may also be accepted as follows. The Licensor has offered the use of the Licensed Product to prospective licensees, specifically subject to these terms and conditions. Licensor has made the EULA acceptable as set forth in the EULA, with or without further signature by Licensor and Licensee. Regardless of whether this is a Trial, or a purchase is made by Licensee, a Licensee may validly accept this EULA by either: (1) signing this EULA; (2) clicking the "I Agree" button; or (3) using the Software.

**33. Jurisdiction and Venue.**

This EULA shall be deemed drafted and accepted in the State of Florida, Palm Beach County. As such, this EULA and any claim, controversy or dispute arising out of or related to this EULA, any of the transactions contemplated hereby, the relationship of the parties, and/or the interpretation and enforcement of the rights and duties of the parties ("Dispute"), whether arising in contract, tort, equity or otherwise, shall be governed by and construed in accordance with the Laws of the State of Florida (including in respect of the statute of limitations or other limitations period applicable to any such claim, controversy or dispute), without giving effect to any choice or conflict of Law provision or rule of any other state or jurisdiction that would cause the application of the Laws of any jurisdiction other than the State of Florida, and shall be binding upon the Parties hereto in the United States and Worldwide. Any claims or legal actions by one Party against the other arising under this EULA or concerning any rights under this EULA shall be commenced and maintained only in the State of Florida, and both parties hereby submit to the jurisdiction and venue of the Courts in Palm Beach County, Florida.

THE PARTIES FURTHER AGREE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTERCLAIM, OR ACTION ARISING FROM THE TERMS OF THIS EULA.

**36. Consent To Jurisdiction**

In addition to the provisions in the prior paragraph on Governing Law and Venue, each Party hereby: (a) agrees to the exclusive jurisdiction of the state courts in Palm Beach County, Florida, with respect to any claim or cause of action arising under or relating to this EULA, and (b) waives any objection based on forum non-conveniens and waives any objection to venue of any such suit, action or proceeding.

**34. Severability.**

If any court of competent jurisdiction holds any provision of this EULA invalid or unenforceable, then the other provisions of this

EULA will remain in full force and effect. Any provision of this EULA held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable, and upon a determination that any provision of this EULA is invalid or unenforceable, such provision shall be replaced, to the extent legally possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision.

**35. Authority.**

By signing below, by accepting the terms of this EULA as stated herein, Licensee's authorized representative warrants and represents that the person signing or accepting this EULA on its behalf has full actual authority to bind Licensee, and that the Party's execution or acceptance of this EULA is not in violation of any by-law, covenants and/or other restrictions placed upon them by their respective entities. This EULA can be used to conclusively estop the other Party from asserting any claim or action that the representative signing this EULA does not have full actual authority to bind that Party.

By submitting information to AutoNotes, Licensee hereby agrees and consents to be bound by the terms and conditions of this EULA. If Licensee is a business entity or works for a business entity utilizing the Services as part of this EULA, then Licensee agrees its submission is an agreement to bind both itself and the business entity. Licensee authorizes AutoNotes to automatically populate its information and acceptance below, and to the attached BAA.

**LICENSEE:** \_\_\_\_\_

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

Date: \_\_\_\_\_

No signature is required by the Licensee to accept this EULA. The EULA is deemed an offer by Licensor, and Licensee can accept by either: (1) signing this EULA; (2) clicking the "I Agree" or other button signaling Licensee's acceptance or agreement; or (3) Using the Software.

**36. No Third-Party Beneficiaries.**

This EULA shall be binding upon and inure solely to the benefit of each party hereto and their respective successors and assigns. Nothing in this EULA or any Purchase Order hereunder, express or implied, is intended to or shall confer upon any other person or entity, any right, benefit, or remedy of any nature whatsoever. For the sake of clarity, there are NO third-party beneficiaries to this EULA.

# AUTONOTES AI LLC

## SOFTWARE FEE SCHEDULE

### (Summary)

### AS OF NOVEMBER 2024\*

### MONTHLY OR YEARLY PRICING

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- **BASIC PLAN**
  - Trial plan for Therapists and other healthcare professionals signing up to test out how our service works.
  - 20 free credits for use by a new licensee.
  - Up to 1 Transcription or 7 Text Templates.
  - Standard Support.
- **ESSENTIAL PLAN**
  - Single Licensee.
  - 250 credits available for use per month (no rollovers).
  - Advance Features and tools for better note management.
  - Up to 25 Transcriptions or 125 Text Templates.
  - Standard Support.
- **PREMIUM PLAN**
  - All features from the Essential Plan.
  - 600 credits available for use per month (no roll overs).
  - Up to 60 Transcriptions or 300 Text Templates.
  - Additional credits available to each Licensee user for additional fee.
  - Priority Support.
- **ULTIMATE PLAN**
  - All features from Premium Plan.
  - 20% off if Licensee maintains 5 or more authorized Users.
  - 1300 credits per Licensee per month (no roll overs).
  - Up to 130 Transcriptions or 650 Text Templates.
  - Additional credits available to each Licensed user for additional fee.
  - Dedicated Account Manager.
  - Additional credits available to each Licensee User.
- **ENTERPRISE/GROUP PLAN**
  - Pricing quote available upon request.

\*AS SET FORTH IN THE EULA, AUTONOTES RESERVES THE RIGHT TO CHANGE ITS PLANS AT ANY TIME AND AT ITS SOLE DISCRETION.

**EXHIBIT “2”**

**BUSINESS ASSOCIATES AGREEMENT**

**BETWEEN**

**AUTONOTES AI LLC**

**AND LICENSOR**



# **BUSINESS ASSOCIATE AGREEMENT AND QUALIFIED SERVICE ORGANIZATION AGREEMENT**

This **BUSINESS ASSOCIATE AGREEMENT AND QUALIFIED SERVICE ORGANIZATION AGREEMENT** (“Business Associate Agreement”) is made by and between **AUTONOTES AI, LLC** (“Business Associate”), and

**COVERED ENTITY** (listed below or as noted during the installation or licensing onboarding process):

LEGAL NAME (BUSINESS OR PERSON)	
MAILING ADDRESS	
CITY, STATE ZIP	
EMAIL ADDRESS	

Covered Entity and Business Associate may each be referred to in this Business Associate Agreement as a “Party” individually and as “Parties” collectively.

**EFFECTIVE DATE:** This Business Associate Agreement shall be deemed effective as of the date Covered Entity’s acceptance as noted in Section 10 (the “Effective Date”).

## **RECITALS**

**WHEREAS**, Business Associate and Covered Entity have entered into one or more agreements or arrangements whereby Business Associate provides services for and on behalf of Covered Entity (the “Service Agreement(s)”) that may involve the use or disclosure of Protected Health Information (“PHI”) (defined below) (the “Services”), which is protected by state and federal law.

**WHEREAS**, both Parties desire to safeguard PHI consistent the applicable requirements of: (i) the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the final regulations promulgated pursuant to the Health Information Technology for Economic and Clinical Health Act (“HITECH”), as part of the American Recovery and Reinvestment Act of 2009, and the Privacy Rule, Security Rule and Breach Notification Rule (each defined below) promulgated thereunder (collectively “HIPAA Rules”); and (ii) the Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2 (collectively, “Part 2”).

**WHEREAS**, Business Associate is also a Qualified Service Organization (“QSO”) under Part 2 and must agree to certain mandatory provisions regarding the use and disclosure of substance abuse treatment information.

**NOW THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### **1. Definitions.**

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Breach Notification, Data Aggregation, Designated Record Set, De-Identified Information, Disclosure (Disclose), Electronic Protected Health Information, Electronic Transactions Rule, Enforcement Rule, Genetic Information, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Sale, Secretary, Security Incident, Security Rule, Subcontractor, Transaction, Unsecured Protected Health Information, and Use.

Specific Definitions:

- 1.1 “Breach” shall have the same meaning given to such term in 45 C.F.R. § 164.402 and applicable State breach notification laws.
- 1.2 “Breach Notification Rule” shall mean the rule related to breach notification for Unsecured Protected Health Information codified at 45 C.F.R. Parts 160 and 164, subpart D.
- 1.3 “Business Associate” shall generally have the same meaning as the term “Business Associate” at 45 C.F.R. § 160.103, and shall be specifically referenced as such in this Business Associate Agreement.
- 1.4 “Covered Entity” shall generally have the same meaning as the term “Covered Entity” at 45 C.F.R. § 160.103, and shall be specifically referenced as such in this Business Associate Agreement.
- 1.5 “Designated Record Set” shall have the same meaning given to such term in 45 C.F.R. § 164.501.
- 1.6 “Electronic Protected Health Information” or (“EPHI”) shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. § 160.103, as applied to the information that Business Associate creates, receives, maintains or transmits from or on behalf of Covered Entity.
- 1.7 “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
- 1.8 “HITECH ACT” shall mean the Health Information Technology for Economic and Clinical Health Act.
- 1.9 “Individual” shall have the same meaning given to such term in 45 C.F.R. § 160.103 and shall include a person who qualifies as a Personal Representative in accordance with 45 C.F.R. § 164.502(g).
- 1.10 “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information, codified at 45 C.F.R. Parts 160 and 164, subparts A and E.
- 1.11 “Protected Health Information” or (“PHI”) shall have the meaning given to such term in 45 C.F.R. § 160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.
- 1.12 “Required By Law” shall have the same meaning given to such term in 45 C.F.R. § 164.103.
- 1.13 “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.
- 1.14 “Security Incident” shall have the same meaning given to such term in 45 C.F.R. § 164.304.
- 1.15 “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information, codified at 45 C.F.R. Parts 160 and 164, subparts A and C.
- 1.16 “Unsecured PHI” shall have the same meaning given to such term in 45 C.F.R. § 164.402.

Unless otherwise specified in this Business Associate Agreement, all terms used but not otherwise defined in this Business Associate Agreement shall have the meaning as those terms in the HIPAA Rules or Part 2. If more than one BayMark-affiliated entity is a party to this Business Associate Agreement, Covered Entity, as used in this Business Associate Agreement, shall collectively refer to each such entity.

## **2. Permitted Uses and Disclosures of Business Associate.**

- 2.1 Permitted Uses and Disclosures of PHI. Business Associate may use and disclose PHI only for the following purposes:
- (a) Business Associate may only use and disclose PHI necessary to perform functions, activities or services for, or on behalf of Covered Entity, as specified in the Service Agreement(s), except as provided in Sections 2.1(b)-(f) below.
  - (b) Except as otherwise limited in this Business Associate Agreement, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate. The Business Associate may engage subcontractors to perform services under this Agreement, provided that such subcontractors agree to comply with the same restrictions and conditions that apply to the Business Associate with respect to PHI.
  - (c) *Reporting Violations.* Business Associate may use and disclose PHI as Required By Law, including using PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).
  - (d) *Use and Disclosure for Management and Administration.* Business Associate may use and disclose PHI for the proper management and administration of its business, the Agreement, and to carry out the legal responsibilities of Business Associate; however, Business Associate may only disclose PHI for such purposes if the disclosure is (i) Required By Law or (ii) Business Associate obtains reasonable assurances from any recipient of such PHI that (a) the PHI will remain confidential and be used or further disclosed only as Required By Law or for the purposes for which it was disclosed to the recipient, and (b) the recipient will notify Business Associate of any instances of which it is aware in which confidentiality of the PHI was breached.
  - (e) *Data Aggregation.* Pursuant to a Service Agreement or at the written direction of Covered Entity only, Business Associate may provide data aggregation services relating to the health care operations of Covered Entity as permitted by 45 C.F.R. §164.504(e)(2)(i)(B).
  - (f) *De-identification.* Pursuant to a Service Agreement or at the written direction of Covered Entity only, Business Associate may de-identify PHI in accordance with 45 C.F.R. § 164.514 and may use and disclose de-identified information, provided that any such use or disclosure is consistent with applicable law.

## **3. Privacy Rule Obligations and Activities of Business Associate.** Business Associate agrees to:

- 3.1 Limitation on Disclosure. Not use or disclose PHI other than as permitted or required by this Business Associate Agreement, the Service Agreement(s), or as Required By Law, including if done by Covered Entity. Business Associate shall not use or disclose PHI in a manner that would violate the Privacy Rule or Subpart E of 45 C.F.R. Part 164, if done by Covered Entity, unless expressly permitted to do so pursuant to the Privacy Rule and this Business Associate Agreement.
- 3.2 Third Party Requests. If Business Associate receives a court order, subpoena or other request for information related to Covered Entity (the "Request"), Business Associate will immediately notify Covered Entity unless prohibited by the Request. In addition, Business Associate will not release any information pursuant to the Request until Business Associate first gives Covered Entity the opportunity to object. If Covered Entity lodges an objection to the Request, Business Associate will not release any of the requested information until the objection is resolved by agreement between Covered Entity and the requesting party or final court order.
- 3.3 Minimum Necessary. In accordance with HIPAA's Minimum Necessary standard, Business Associate shall make reasonable efforts to ensure that its access to PHI in connection with its services for the Covered Entity shall be limited to the minimum necessary information to accomplish the intended purpose of any particular

use, disclosure, or request. Further, Business Associate shall support any determinations it makes with respect to the Minimum Necessary standard with a rational justification that, as applicable, (i) reflects the technical capabilities of the Business Associate and (ii) factors in relevant privacy and security risks. Business Associate shall record and maintain documentation of all such determinations consistent with reasonable recordkeeping practices and the HIPAA Rules.

- 3.4 Compliance Program. Develop and maintain a comprehensive written health information privacy and security program that implements: (i) appropriate policies, procedures, and protections as required by the Privacy Rule; (ii) appropriate Administrative (45 C.F.R. § 164.308), Physical (45 C.F.R. § 164.310), and Technical (45 C.F.R. § 164.312) Safeguards (collectively, the “Safeguards”) as required by the Security Rule; (iii) appropriate policies, procedures, and protections to implement and document such Safeguards as required by 45 C.F.R. § 164.316; and (iv) appropriate policies, procedures, and protections to protect substance abuse treatment information as required by 42 C.F.R. Part 2.
- 3.5 Appropriate Safeguards. Use appropriate Safeguards to prevent use or disclosure of PHI other than as permitted by this Business Associate Agreement, the Service Agreement(s), and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic Protected Health Information, to prevent Use or Disclosure of Protected Health Information other than as provided for by the Agreement.
- 3.6 Obligations on Behalf of Covered Entity. To the extent Business Associate carries out an obligation for which Covered Entity is responsible under the Privacy Rule, Business Associate must comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligation.
- 3.7 Reporting of Improper Use or Disclosure. Report to the designated Privacy Officer of Covered Entity, in writing, any use or disclosure of PHI that is not permitted this Business Associate Agreement of which Business Associate becomes aware within a reasonable time, not exceeding fifteen (15) business days of Business Associate’s actual discovery of such use or disclosure.
- 3.8 Mitigation. Promptly mitigate, to the greatest extent practicable, any harmful effects known to Business Associate of any use or disclosure of PHI by Business Associate, or Business Associate employees, agents or subcontractors, in violation of the requirements of the HIPAA Rules, the Service Agreement(s), or this Business Associate Agreement. Business Associate shall promptly thereafter provide Covered Entity with a written report of the issues and corresponding actions taken by Business Associate.
- 3.9 Business Associate’s Subcontractors. Require, consistent with 45 C.F.R. § 164.502(e)(1)(ii), and 164.308(b)(2), that any Subcontractor that creates, receives, maintains, or transmits PHI on behalf of Business Associate, to sign a written agreement that (i) binds such Subcontractors to substantially similar restrictions and conditions that apply to Business Associate pursuant to this Business Associate Agreement with respect to such PHI, and (ii) requires Subcontract to comply with the Security Rule with respect to EPHI. If Business Associate becomes aware of a pattern of activity or practice of a Subcontractor that constitutes a material violation of the Subcontractor’s obligations under the written agreement between the parties, Business Associate agrees to take reasonable steps to cure or end the violation, and if such steps are unsuccessful, terminate the agreement, if feasible, in accordance with the requirements of HIPAA. Business Associate agrees that it is responsible for the acts and omissions of its agents and Subcontractors as if they were Business Associate’s own acts and omissions.
- 3.10 Government Access to Records. Make available all internal records, books, agreements, policies, and procedures relating to the use or disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, to the Secretary and Covered Entity for purposes of determining Business Associate’s or Covered Entity’s compliance with the HIPAA Rules and 42 C.F.R. Part 2, as applicable.
- 3.11 Access and Amendment to PHI. Only to the extent Business Associate agrees to maintain PHI in a Designated Record Set on behalf of Covered Entity, provide access to such PHI to Covered Entity, and in the time and manner reasonably designated by Covered Entity, in order for Covered Entity to meet its obligations under the Privacy Rule at 45 C.F.R. § 164.524.

- (a) In addition to the above, a Covered Entity may request to conduct a limited audit of its PHI stored with the Business Associate when it reasonably believes stored with Business Associate has been disclosed in violation of this Business Associate Agreement. Covered Entity must first provide Business Associate with at least 20 days' prior written notice to Business Associate, which specifies exactly which of its PHI have been disclosed. To the extent possible, the audit will be conducted remotely to diminish the possibility of business disruption and access to other confidential information.
  - (b) If an Individual submits a request for access directly to Business Associate, Business Associate shall notify Covered Entity in writing within five (5) business days of receiving such request. The information shall be provided to Covered Entity in the form or format requested if it is readily producible in such form or format; or in summary, if the Individual has agreed in advance to accept the information in summary form.
  - (c) Within a reasonable period of time after its receipt of written notice from Covered Entity, Business Associate shall also make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to the Privacy Rule, at the request of Covered Entity, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526.
  - (d) If an Individual requests an amendment of PHI directly from Business Associate or its Subcontractors, Business Associate shall notify Covered Entity in writing within five (5) business days of receiving such request. Any denial of amendment of PHI maintained by Business Associate or its Subcontractors shall be the responsibility of Covered Entity.
  - (e) If Business Associate maintains a record in a Designated Record Set that is not also maintained by Covered Entity, Business Associate agrees that it will accommodate an Individual's request to amend PHI only in conjunction with a determination by Covered Entity that the amendment is appropriate according to 45 C.F.R. § 164.526.
- 3.12 Documentation Disclosures. Maintain and make available the information required to document disclosures of PHI 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 PHI in accordance with 45 C.F.R. § 164.528.
- 3.13 Accounting of Disclosures. Upon written request, make available within ten (10) business days information collected in accordance with Section 3.12 of this Business Associate Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. If an Individual submits a request for an accounting of disclosures of PHI directly to Business Associate or its Subcontractors, Business Associate shall provide a copy of such request to Covered Entity, in writing, within five (5) business days of Business Associate's receipt of such request.
- 3.14 Prohibition on the Sale of PHI. Except as permitted under 45 C.F.R. § 164.502(a)(5)(ii), Business Associate agrees that it shall not directly or indirectly receive remuneration in exchange for PHI from or on behalf of the recipient of such PHI.
- 3.15 Prohibition on Marketing. Business Associate is prohibited from using or disclosing PHI in violation of the marketing prohibitions set forth under HIPAA.
- 3.16 Prohibition on Fundraising. Business Associate shall not use or disclose PHI for fundraising in violation of the fundraising prohibitions set forth under HIPAA.
- 3.17 Prohibition on Genetic Information. Not Use or Disclose Genetic Information for underwriting purposes in violation of the HIPAA Rules.
- 3.18 Electronic Transaction Rule. Comply with the Electronic Transaction Rule and any applicable corresponding requirements adopted by HHS with respect to any Electronic Transactions conducted by Business Associate on behalf of Covered Entity in connection with the services provided under this Business Associate Agreement.

- 3.19 Notice of Privacy Practices. Abide by the limitations of Covered Entity's Notice of Privacy Practices. Any use or disclosure permitted by this Business Associate Agreement may be amended by changes to Covered Entity's Notice of Privacy Practices.

**4. Security Rule Obligations of Business Associate.** Business Associate shall:

- 4.1 Compliance with the Security Rule. Comply with the Security Rule with respect to EPHI, and have in place reasonable and appropriate Administrative, Physical, and Technical Safeguards to protect the Confidentiality, Integrity, and Availability of EPHI and to prevent use or disclosure of EPHI other than as permitted by this Business Associate Agreement, the Service Agreement(s), or as Required By Law. To the extent feasible, Business Associate shall also use commercially reasonable efforts to secure PHI through technology standards that render such PHI unusable, unreadable, and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI in accordance with guidance established by DHHS at 74 Federal Register 19006 (April 17, 2009), or such later regulations or guidance promulgated by DHHS or issued by the National Institute for Standards and Technology ("NIST") concerning the protection or encryption of identifiable data such as PHI.
- 4.2 Security Incident. Report any Security Incident within three (3) business days of becoming aware of such incident. Separate from the requirements related to Security Incident reporting, Business Associate shall also make the reports set forth below in Section 6, Breach Notification.

**5. Covered Entity's Obligations**

- 5.1 Covered Entity shall notify Business Associate of any restriction on the Use or Disclosure of Protected Health Information that Covered Entity has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of Protected Health Information.

**6. Breach Notification (Federal and State) Rule Obligations of Business Associate.**

- 6.1 If Business Associate discovers a Breach of PHI, the Business Associate shall, following the discovery of the Breach of Unsecured PHI, notify the Covered Entity of such breach in accordance with this Section. In complying with the Section, and notwithstanding Business Associate's obligations pursuant to the applicable sections in Section 3 and Section 4.2 of this Business Associate Agreement, the following shall apply:
- (a) *System for Discovery and Reporting of Breach.* Business Associate shall implement reasonable systems for the discovery and immediate reporting to Covered Entity of any Breach of Unsecured PHI.
- (b) *Notification Requirement.* To the extent Business Associate accesses, retains, modifies records, stores, destroys or otherwise holds, uses or discloses Unsecured PHI, Business Associate shall, following the discovery of a Breach of Unsecured PHI, immediately, but no later than five (5) business days, notify Covered Entity in writing of any such Breach.
- (c) *Discovery of Breach.* For purposes of reporting a Breach to Covered Entity, the discovery of a Breach will be deemed to occur as of the first day on which such Breach is known to Business Associate or, by exercising reasonable diligence, would have been known to any person (other than the person committing the Breach) who is an employee, director, officer, or other agent of Business Associate.
- (d) *Contents of Notification.* Any notice referenced above in Section 6.1(b) of this Business Associate Agreement will include, to the extent known to the Business Associate, the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, used, or disclosed during such Breach, as well as the information, to the extent known by Business Associate, that Covered Entity is required to include in its notification to the individual pursuant to the Breach Notification Rule or applicable State data breach notification laws. Business

Associate will also provide (on a continuing basis as information is discovered) to Covered Entity other available information that the Covered Entity is required to include in its notification to the individual pursuant to the Breach Notification Rule or applicable State data breach notification laws, or information that Covered Entity otherwise reasonably requests.

After the initial disclosure, Business Associate shall provide the Covered Entity with updates on the disclosure regarding any other available information that the Covered Entity is required to include in notification to the individual under 45 C.F.R. § 164.404(c) at the time of the subsequent notification by Business Associate, and any information that is not then available promptly after such information becomes available. Information to be provided includes, to the extent possible:

- i. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
- ii. A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved); and
- iii. A brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches.

**6.2 Cooperation with Covered Entity.** Business Associate shall:

- (a) Cooperate and assist Covered Entity with any investigation into any Breach or alleged Breach, including those conducted by any Federal agency, State Attorney General, State agency (or their respective agents);
- (b) Comply with Covered Entity's determinations regarding Covered Entity's and Business Associate's obligations to mitigate to the extent practicable any potential harm to the individuals impacted by the Breach; and
- (c) As directed by the Covered Entity, assist with the implementation of any decision by Covered Entity or any Federal agency, State agency, including any State Attorney General, or their respective agents, to notify and provide mitigation to individuals impacted or potentially impacted by a Breach.

The terms and obligations in this Section 6 shall survive termination of this Business Associate Agreement for any reason.

**7. QSO Agreement Responsibilities.**

- 7.1 To the extent that in performing its services for or on behalf of Covered Entity, Business Associate uses, discloses, maintains, or transmits PHI that is protected by Part 2, Business Associate acknowledges and agrees that it is a QSO for the purpose of such federal law; acknowledges and agrees that in receiving, storing, processing or otherwise dealing with any such information, it is fully bound by the Part 2 regulations; and, if necessary will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the Part 2 regulations.
- 7.2 Notwithstanding any other language in this Business Associate Agreement, Business Associate acknowledges and agrees that any information it receives from Covered Entity that is protected by Part 2 is subject to protections that prohibit Business Associate from disclosing such information to agents or subcontractors without the specific written consent of the subject individual.
- 7.3 Business Associate acknowledges that any unauthorized disclosure of information under this section is a federal criminal offense.

**8. Representations and Warranties of the Parties.** Each Party represents and warrants to the other Party:

- 8.1 Workforce Informed of Business Associate Agreement Terms. All of the Parties employees, agents, representatives, and members of its respective workforce, whose services may be used to fulfill obligations under this Business Associate Agreement are or shall be appropriately informed of the applicable terms of this Business Associate Agreement and are under legal obligation to each Party, respectively, by contract or otherwise, sufficient to enable each Party to fully comply with all applicable provisions of this Business Associate Agreement.
- 8.2 Reasonable Cooperation among Parties. Each Party will reasonably cooperate with the other Party in the performance of the mutual obligations under this Business Associate Agreement.
- 8.3 Liability under HIPPA and HITECH Act. Business Associate agrees that it is directly liable under the HIPAA Rules and the HITECH Act and is subject to civil and, in some cases, criminal penalties for making Uses and Disclosures of Protected Health Information that are not authorized by this Agreement or Required by Law. Business Associate also acknowledges that it is liable and subject to civil penalties for failing to safeguard Electronic Protected Health Information in accordance with the HIPAA Security Rule.

## **9. Term and Termination.**

- 9.1 Term. This Business Associate Agreement shall become effective on the Effective Date and shall terminate in accordance with Section 9.2 below, when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the provisions of this Section 9.
- 9.2 Termination for Cause. Upon Covered Entity's knowledge of a material breach of the terms of this Business Associate Agreement by Business Associate, Covered Entity shall:
- (a) Immediately terminate this Business Associate Agreement and any related Service Agreement(s) if Covered Entity makes the determination that the Business Associate has breached a material term of this Business Associate Agreement and cure is not possible;
  - (b) Provide the Business Associate with written notice of the existence of an alleged material breach and afford the Business Associate an opportunity to cure said alleged material breach upon mutually agreeable terms within thirty (30) days. Failure to cure in the manner set forth in this Section 9.2 shall be grounds for the immediate termination of this Business Associate Agreement and any related Service Agreement(s); or
  - (c) Immediately terminate this Business Associate Agreement if the Service Agreement(s) has been terminated.
- 9.3 Automatic Termination. This Business Associate Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of all Service Agreement(s) between Covered Entity and Business Associate for whatever reason.
- 9.4 Effect of Termination. Upon the termination of this Business Associate Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, including PHI that is in possession of Business Associate's Subcontractors, shall return or destroy all such PHI that Business Associate or Subcontractors still maintains in any form, and shall retain no copies of such PHI. If so, directed by Covered Entity, Business Associate will transmit any Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, to another Business Associate of Covered Entity at termination.

If return or destruction of PHI is not feasible, the Business Associate shall notify the Covered Entity in writing. Said notification shall include: (i) a statement that Business Associate has determined that it is not feasible to return or destroy the PHI in its possession; and (ii) the specific reasons for such determination. Upon mutual agreement of the Parties that the return or destruction of PHI is not feasible, Business Associate shall (i) continue to extend the protections of this Business Associate Agreement to such PHI as required by



the HIPAA Rules and Part 2, and (ii) limit any further use and disclosure of such PHI to those purposes that make the return or destruction of the PHI infeasible, for so long as Business Associate retains such PHI.

The obligations of this Section shall survive the termination of this Business Associate Agreement for any reason.

## **10. Miscellaneous.**

- 10.1 Rights of Proprietary Information. Covered Entity retains any and all rights to the proprietary information, confidential information, and PHI that Business Associate may create, receive, maintain or transmit on behalf of Covered Entity.
- 10.2 Nature of Agreement; Independent Contractors. Nothing in this Business Associate Agreement shall be construed to create an employer-employee relationship or partnership, joint venture, or other joint business relationship between the Parties or any of their affiliates. Business Associate is an independent contractor, and not an agent, of Covered Entity. This Business Associate Agreement does not express or imply any commitment to purchase or sell goods or services.
- 10.3 Entire Agreement. This Business Associate Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous written or oral memoranda, arrangements, contracts, or understandings between the Parties relating to the subject matter hereof.
- 10.4 Change of Law. Covered Entity shall notify Business Associate within ninety (90) days of any amendment to any provision of the HIPAA Rules which materially alters either Party's or both Parties' obligations under this Business Associate Agreement. Upon provision of such notice by Covered Entity to Business Associate, the Parties shall negotiate in good faith mutually acceptable and appropriate amendment(s) to this Business Associate Agreement to give effect to such revised obligations; provided, however, that if the Parties are unable to agree on mutually acceptable amendment(s) within ninety (90) days of the relevant change of law, either Party may terminate this Business Associate Agreement consistent with Section 8 of this Business Associate Agreement.
- 10.5 Interpretation. The Parties agree that in the event of any conflict, inconsistency, or discrepancy between the Service Agreement(s) and this Business Associate Agreement relating to any subject matter herein, the terms of this Business Associate Agreement shall prevail. Furthermore, any ambiguity in this Business Associate Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules and Part 2.
- 10.6 Governing Law. This Business Associate Agreement shall be governed and construed in accordance with the laws of the State of Florida, except to the extent preempted by federal law.
- 10.7 Survival. This Section 10.7 shall survive termination of this Business Associate Agreement for any reason. Further, the respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 5, 9.4 and 10.11 of this Business Associate Agreement shall survive the expiration or termination of this Business Associate Agreement for so long as PHI is retained by Business Associate.
- 10.8 Amendment; Waiver. This Business Associate Agreement may not be modified, nor shall any provision of this Business Associate Agreement be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to subsequent events. Amendment.  
  
Notwithstanding the above, the parties agree to take such action to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law(s).
- 10.9 Assignment of Rights and Delegation of Duties. This Business Associate Agreement is binding upon and inures to the benefit of the Parties and their respective successors and permitted assigns. However, neither Party may assign any of its rights or delegate any of its obligations under this Business Associate Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding any provisions herein to the contrary, Covered Entity retains the right to assign or delegate any of its rights or obligations in this Business Associate Agreement to any of its wholly owned

subsidiaries, affiliates, or successor companies. Assignments made in violation of this Section 10.9 shall be null and void.

- 10.10 Indemnification. Business Associate and Covered Entity agree that all indemnification obligations shall be governed by any primary service agreement or end user license agreement between Business Associate and Covered Entity. Notwithstanding the foregoing, Covered entity must maintain a general liability insurance with coverages sufficient to cover both it, Business Associate and any of Business Associate's subcontractors, for any of Covered Entity's breaches or violations of this Business Associate Agreement or applicable HIPAA Rules and other laws. This provision shall survive termination of this Business Associate Agreement indefinitely.
- 10.11 Severability. The provisions of this Business Associate Agreement are severable, and if any provision of this Business Associate Agreement shall be held or declared to be illegal, invalid, or unenforceable, the remainder of this Business Associate Agreement shall continue in full force and effect as though such illegal, invalid, or unenforceable provision had not been contained in this Business Associate Agreement.
- 10.12 No Third-Party Beneficiaries. Except as set forth in Section 1.14 of this Business Associate Agreement, nothing in this Business Associate Agreement is intended to confer on any person other than the Parties, or their respective successors and assigns, any rights, remedies, obligations, or liabilities under or by reason of this Business Associate Agreement. Nothing in this Business Associate Agreement shall be considered or construed as conferring any right or benefit on a person not party to this Business Associate Agreement nor imposing any obligations on either Party hereto to persons not a party to this Business Associate Agreement.
- 10.13 Notices. Any notice required under this Agreement shall be in writing and shall be given by (i) delivery in person, (ii) by a nationally recognized next day courier service, (iii) by first class, registered or certified mail, postage prepaid, (iv) by electronic mail to the address of the party specified in this Agreement or such other address as either party may specify in writing. Each Party may change its address and that of its representative for notice by the giving of notice thereof in the manner herein provided.
- 10.14 Counterparts. This Business Associate Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.
- 10.15 Disputes. If any controversy, dispute, or claim arises between the Parties with respect to this Business Associate Agreement, the Parties shall make good faith efforts to resolve such matters informally.
- 10.16 Acceptance by Covered Entity. This Business Associated Agreement may be accepted and agreed to by the Covered Entity through any of the following methods: (a) by actual physical signature; (b) by electronically signature; (c) by checking a box or clicking a button indicating acceptance during the installation or licensing onboarding process; or (d) by any other means that clearly indicate Covered Entity's intent to be bound by the terms of this Business Associate Agreement. Any of methods of acceptance stated above shall be deemed valid and binding as if the Agreement were executed in writing and signed by both parties.

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**USE NEXT PAGE ONLY IF ACCEPTANCE IS DONE BY  
PHYSICAL OR ELECTRONIC SIGNATURE**

\*\*\*\*\*

**IN WITNESS WHEREOF**, each of the undersigned has caused this Business Associate Agreement to be duly executed in its name and on its behalf effective as of the Effective Date.

By submitting information to AutoNotes, Covered Entity hereby agrees and consents to be bound by the terms and conditions of this BAA. If Covered Entity is a business entity or is an individual who works for a business entity utilizing the Services, then their submission is an agreement to bind both itself individually and the business entity. Licensee authorizes AutoNotes to automatically populate its information and acceptance below.

**COVERED ENTITY:**

\_\_\_\_\_  
Signature

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_

**BUSINESS ASSOCIATE:**

**AUTONOTES AI, LLC**

\_\_\_\_\_  
Signature

BY: \_\_\_\_\_

ITS: \_\_\_\_\_