

## **SRS Software Master Software License Agreement**

### **1.0 Introduction**

1.1 **Parties**: This SRS Software Master Software License Agreement (“Master License Agreement”) is entered into between SRS Software, LLC, d/b/a “SRS Health”, located at 155 Chestnut Ridge Road, Montvale, NJ 07645 (“SRS”) and the customer of SRS identified in the applicable Supplemental Schedule (the “Customer”) (each a “Party” and collectively the “Parties”).

1.2 **Agreement**: This Master License Agreement, together with each Supplemental Schedule, the Support Terms and/or any other policy, exhibit, appendix, schedule, annex or amendment that is attached to, referenced in or made a part hereto, all of which together constitute the “Agreement”. The Agreement contains the terms and conditions under which SRS grants Customer the right to use the Software. In the event of a conflict among a term set forth in the Master License Agreement, a Supplemental Schedule, and a term set forth in an attached or incorporated policy, exhibit, appendix, schedule, annex or amendment, the conflict shall be resolved in the following order: (i) the Supplemental Schedule or Purchase Agreement; (ii) the Master License Agreement; and (iii) a term set forth in an attached or incorporated policy, exhibit, appendix, schedule, annex or amendment, unless the conflicting term specifically references the inconsistent term in the other document, in which case the conflicting term will control only for the limited purposes set forth in the document containing such term.

**2.0 Definitions**: The terms listed below have the following meanings:

2.1 **“Client Server License”** means that the Software identified in the Supplemental Schedule is licensed to Customer under this Agreement for installation and use on Customer’s own computer network.

2.2 **“Confidential Materials”** means (i) with regards to SRS, (a) this Agreement, each Supplemental Schedule, all price proposals, order forms, estimates and invoices sent to Customer by SRS, and the Software and any other Software products, Support, Upgrades, the method of access to the Software and other services made available by SRS, any Intellectual Property related to the Software, know-how, show how, technical data, specifications, product capabilities, instructions, manuals, guides, systems, processes, designs, methods, practices, trade secrets, software, firmware, devices, diagrams, drawings, notes, sketches, videos, sales and technical bulletins, and all copies and electronic files thereof, and (b) all other information, whether or not reduced to writing, relating to the design, creation, use, marketing, license, support and service related to the Software and the method of access to the Software, as well as any other information relating to the business of SRS that may be divulged to the Customer that is not generally known in the trade and is confidential and/or proprietary to SRS; and (ii) with regards to Customer, patient information, customer lists, details of agreements with patients, customers or other vendors, acquisition, expansion, marketing, financial and other business information and plans, information concerning sources of supply, purchasing, operating and other cost data, special customer needs, cost and pricing data; and employee information (including, but not limited to, personnel, payroll, compensation and benefit data and plans). No information or materials shall qualify as Confidential Materials if they (x) are or become, through no fault of the Receiving Party (as defined in Section 8.1 below), available to the public, (y) are obtained by the Receiving Party from a third party without breach of any agreement with, or obligation of confidentiality to, the Disclosing Party (as defined in Section 8.1 below), or (z) are required by Law or a Governmental Authority to be disclosed.

2.3 **“Documentation”** means the SRS EHR User Manual, and any relevant user guides, operational procedures, training materials, specifications and instruction material relating to the Software, including any copies thereof, in any form, as generally available from time to time to Customer in the ordinary course of SRS’s business.

2.4 **“Electronic Data”** means all information regardless of form that the Customer has entered or transferred through the Software. Electronic Data shall include, but is not limited to, digital information regarding client data, PHI, and other information howsoever designated.

2.5 **“Governmental Authority”** means any U.S. or non-U.S. federal, state, provincial, municipal, local, territorial or other governmental department, regulatory authority, self-regulatory organization or legislative, judicial or administrative body.

2.6 **“Hosted Services License”** means that the Software identified in the Supplemental Schedule is licensed to Customer under this Agreement on a “software-as-a-service” model where the Software resides on SRS’s (or SRS’s service provider’s) networks and the Customer accesses the Software through the internet.

2.7 **“Intellectual Property”** means all (i) patents, (ii) trademarks, service marks, trade dress, trade names, slogans, logos, internet domain names, and corporate names (and all translations, adaptations, derivations, and combinations of the foregoing), together with all of the goodwill associated therewith, (iii) copyrights and copyrightable works (including mask works), (iv) registrations, applications and renewals for any of the foregoing, (v) computer software (including source code and object code), data, data bases and documentation thereof, and (vi) trade secrets and other Confidential Materials, including ideas, formulas, compositions, inventions (whether patentable or unpatentable and whether or not reduced to practice), know-how, manufacturing and production

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processes and techniques, research and development information, drawings, specifications, designs, plans, proposals, technical data, business and marketing plans and customer and supplier lists and related information.

2.8 “Law(s)” means all U.S. and non-US. Laws, ordinances, rules, regulations, declarations, decrees, directives, legislative enactments and Governmental Authority orders and subpoenas.

2.9 “License Term” means that period of time, as set forth in the applicable Supplemental Schedule, for which a license for the Software is effective. In the event that a Supplemental Schedule does not identify a specific License Term: (i) the License Term shall be two (2) years for Software licensed under either a Hosted Services License or a Subscription License; and (ii) perpetual for Software licensed under a Client Server License. The initial License Term shall commence upon the Schedule Effective Date (as defined in Section 4.2 below) unless otherwise stated in the Supplemental Schedule.

2.9 “Object Code” means the machine-readable form of the Software.

2.10 “PHI” means “protected health information” as defined by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Clinical and Economic Health Act of 2009 (“HITECH”) and the HIPAA Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164 (“HIPAA Rules”).

2.11 “Representatives” means, as applicable to either Party, any and all directors, officers, managers, employees, consultants, financial advisors, counsel, accountants and other agents of such Party.

2.12 “Software” means (i) the practice management, electronic medical records, and/or any other software product owned by SRS as set forth in the Supplemental Schedule; (ii) the related Documentation; (iii) related Upgrades to the software and Documentation as provided hereunder; (iv) all modifications, improvement, translations, adaptations or derivations of such software, Documentation, and Upgrades as may be provided to Customer hereunder; and (v) all copies of each of the foregoing. For the avoidance of doubt, the term Software shall be deemed to include any subsequent version of the Software made available to the Customer in accordance with the terms of this Agreement.

2.13 “Subscription License” means that the Software identified in the Supplemental Schedule is licensed to Customer under this Agreement for a specific period of time as set forth in the Supplemental Schedule. Software licensed under a Subscription License is installed and used on a Customer’s own computer network unless otherwise set forth in the Supplemental Schedule.

2.14 “Supplemental Schedule” means any additional document(s) that are entered into by the Parties containing additional terms and that (i) reference the terms of this Master Agreement, (ii) are attached to this Master Agreement, or (iii) are incorporated into this Master Agreement by reference. Examples of Supplemental Schedules include a “Purchase Agreement”, which may set forth which Software is being licensed by Customer (including, where applicable, the specific version of such Software), what type of license (e.g. Client Server License, Hosted Services License or Subscription License), and/or agreement to additional terms and conditions as may be entered into by the Parties (such as a BAA as set forth in Section 3.3(e) below).

2.15 “Support” means the provision of Upgrades together with the provision of bug/error fixes and technical advice and consulting by SRS regarding the Customer’s access to and use of the Software, to the extent subscribed to by Customer and set forth on a Supplemental Schedule, and in each instance subject to the SRS standard Support Terms (as defined below).

2.16 “Upgrades” means error corrections, maintenance releases and improvements made to the Software and as may be available from time to time in SRS’s discretion. Upgrades that include increased or additional functionality to the Software may be provided as a part of Support as further set forth in Section 3.7 below or, at SRS’s sole discretion, may only be available to Customer as a separately licensed product.

### **3.0 Software, Upgrades and Support**

#### **3.1 Grant of License:**

a. Software Licensed under a Client Server License: Subject to Customer’s compliance with the terms and conditions of this Agreement (including the timely payment of all fees), SRS hereby grants Customer a personal, limited, non-exclusive, non-sublicensable, non-transferable and perpetual right and license to install, execute and otherwise use the Software (in Object Code only), exclusively on the terms and conditions set forth in this Agreement and the associated Supplemental Schedule, including any Upgrades to such Software provided under Support, and to use any related Documentation solely for the internal purposes of Customer.

b. Software Licensed under a Subscription License: Subject to Customer’s compliance with the terms and conditions of this Agreement (including the timely payment of all fees), SRS hereby grants Customer a personal, limited, non-exclusive, non-sublicensable and non-transferable right and license to install, execute and otherwise use the Software (in Object Code only) during the License Term, exclusively on the terms and conditions set forth in this Agreement and the associated Supplemental Schedule,

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including any Upgrades to such Software provided under Support, and to use any related Documentation, solely for the internal purposes of Customer.

c. Software Licensed under a Hosted Services License: Subject to Customer's compliance with the terms and conditions of this Agreement (including the timely payment of all fees), SRS hereby grants Customer a personal, limited, non-exclusive, non-sublicensable and non-transferable right and license to access and use the Software (in Object Code only) during the License Term, exclusively on the terms and conditions set forth in this Agreement and the associated Supplemental Schedule, and to use any related Documentation, solely for the internal purposes of Customer.

d. Service Levels: SRS will provide the Software to Customer in accordance with the performance levels set forth in SRS's standard Service Level Agreement ("SLA") as such may be changed by SRS from time to time. SRS's SLA is available at <<https://www.nextech.com/legal/srs/serviceagreement>> or such other location as SRS shall make available to Customer.

e. Additional Services: SRS may also provide Customer with certain services also described and set forth in the Supplemental Schedule and this Agreement. These services include, without limitation, project management, configuration, training, implementation, forms creation, conversions, integration services and customization (collectively "Professional Services"). Customer may also purchase computer equipment used for operation of the Software from SRS ("Purchased Equipment"), which shall also be included in the Supplemental Schedule, if applicable. The parties acknowledge and agree that Customer's licensing of Software and purchasing of Professional Services and Purchased Equipment from SRS are upon the terms and conditions of this Agreement and any associated Supplemental Schedules incorporated in this Agreement. Each Supplemental Schedule shall (i) describe the software, Professional Services and Purchased Equipment licensed or purchased by Customer, (ii) reference this Agreement, and (iii) be subject to the terms and conditions of this Agreement and executed by the parties. Further, any additional terms and conditions in each Supplemental Schedule shall be incorporated in the Agreement with respect to the software, Professional Services, and Purchased Equipment contained in that Supplemental Schedule unless otherwise expressly stated therein.

### **3.2 Additional Restrictions and Metrics:**

a. Software Licensed under a Hosted Services License: For Software licensed under a Hosted Services License, the license granted under this Agreement is restricted to the number and type of licensed Users or Providers. "Users" are defined as all persons accessing the Software for clinical or administrative purposes, including Providers. "Providers" are defined as all healthcare professionals that bill under CPT codes for their services. Customer shall provide written notice to SRS within ten (10) days in the event of any change in the number or type of Users or Providers. Any use of the Software exceeding these restrictions will require payment of additional fees to SRS, which will be charged at SRS's then standard rates. Failure to notify SRS as recited above within the time period specified will be considered a material breach of this Agreement.

b. Software Licensed under a Client Server License or a Subscription License: For Software licensed under a Client Server License or a Subscription License, the license granted under this Agreement is restricted to the number and type of licensed providers (including without limitation, physicians, part time physicians, extenders, part time extenders, therapists, and part time therapists) listed in the Supplemental Schedule. Customer shall provide written notice to SRS within ten (10) days in the event of any change in the number or type of providers. Any use of the Software exceeding these restrictions, or any change from part time to full time providers, will require payment of additional fees to SRS, which will be charged at SRS's then standard rates. Further, upon Customer's written notification and request, SRS agrees to reduce Maintenance Fees for the Software in the event that the number of providers is reduced, effective on the next invoice cycle. If Customer requests reinstatement of a previously-licensed provider license for which Maintenance Fees were reduced, Customer shall be responsible for payment of all back Maintenance Fees for the lapsed period, plus fees required for reinstatement, if any, charged at SRS's then standard rate for Professional Services. Failure to notify SRS as recited above within the time period specified will be considered a material breach of this Agreement. Part time license categories represent Customer's providers that work fewer than twenty one (21) hours per week.

### **3.3 Other Obligations of Customer:**

a. Unless Customer purchases Purchased Equipment from SRS hereunder, Customer responsible for providing all hardware necessary in order to operate or access the Software. The Customer agrees that it will not itself or through any Representative or any other person: (i) copy (except for back-up or archival purposes), modify, adapt, translate, create derivative works, disassemble, decompile or otherwise reverse engineer the Software, related services, or SRS's Confidential Materials; (ii) provide access to SRS's proprietary database fields and the data contained in the Software to any third party for any purpose whatsoever, without the prior written consent of SRS; (iii) sell, lease, license, sublicense, or otherwise encumber any portion of the Software or Documentation; (iv) use the Software to provide processing services, commercial timesharing, rental or similar sharing arrangements, whether on a "service bureau" basis or otherwise to any third party; (v) otherwise use or allow any other person to use the Software for the benefit of any third party; (vi) provide, disclose, divulge or make available to, or permit use of the Software by persons other than Customer's Representatives who have signed a confidentiality agreement which agreement contains restrictions at least as strict as those contained herein; or (vii) use the Software, or allow the transfer, transmission, export, or re-export of the Software or portion thereof in violation of any export control Laws or regulations administered by the U.S. Commerce Department, OFAC, or any other Governmental Authority.

b. In addition, Customer agrees that it will not use the Software to take any action that: (i) intentionally or knowingly violates any applicable Law or is otherwise libelous, defamatory, indecent, obscene or pornographic in nature; (ii) violates or could reasonably be expected to violate the Intellectual Property rights of any third party; (iii) involves the addition, removal or modification of identifying network header information in an effort to deceive or otherwise gain an improper benefit; (iv) facilitates access to or is intended to facilitate access to, the accounts of any other person; (v) penetrates, attempts to penetrate, or otherwise enables any other person to penetrate or attempt to penetrate the security measures of SRS's or any other entity's computer software or hardware, electronic communications system, or telecommunications system, whether or not the intrusion results in access to or the corruption or loss of data; (vi) collects, attempts to collect, or otherwise facilitates the unauthorized collection of personal information about any person without their valid consent; (vii) interferes with or disrupts, or could reasonably be expected to interfere or disrupt the integrity or performance of the Software or the data contained therein; or (viii) harasses or interferes with the use of the Software by SRS or any other customers of SRS.

c. Customer is responsible for assigning account credentials (including login information and passwords) for each of its users. Customer will be responsible for ensuring that all users keep the account credentials confidential and secure and that Customer implements and maintains commercially reasonable administrative, physical and technical safeguards sufficient to meet industry standards in order to protect and prevent unauthorized access to, or the use or misuse of, the Software. Customer is solely responsible for any and all use of the Software by its Representatives, the use or misuse of account credentials by its Representatives or by unauthorized persons and all activities that occur under or in connection with the use or misuse of the Software. SRS will be entitled to rely on those account credentials and may assume that the access of the Software through the account credentials is by the authorized Customer Representative. Without limiting any rights which SRS may otherwise have, SRS reserves the right to take any and all actions that it deems appropriate to address account credential security issues, including terminating account credentials, changing a password, or requesting additional information to verify or otherwise validate the identity or activities of a user. In no event will SRS have any liability or be responsible for any damages arising from any such action. If Customer becomes aware that any account credentials have been, are being, or are likely to be used without authorization it will notify SRS promptly, but in any event within forty-eight (48) hours of becoming aware of such issue.

d. Customer is responsible for the uploading of data (including patient data) to the Software. In uploading data, Customer shall comply with the specifications set forth in the applicable Documentation. Customer will have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all data uploaded or otherwise made available by Customer and its users. Prior to uploading any data to the Software, Customer will ensure that all third party consents and/or permissions that are necessary or appropriate with respect to Customer's use of such data have been obtained. Customer represents and warrants that data made available to SRS through the Software will not be the primary source or repository of data uploaded by Customer and, notwithstanding anything contained herein to the contrary, SRS will not be liable for the loss of any such data, except that SRS may cover reasonable out-of-pocket costs actually incurred by Customer in connection with Customer's re-uploading into the Software data that was lost exclusively as a result of SRS's gross negligence.

e. This Agreement hereby incorporates the terms of the SRS Business Associate Agreement, or such other Business Associate Agreement as the parties may mutually agree to ("BAA"), as that term is defined in the HIPAA Privacy Rule, which shall apply only to PHI to which SRS has been granted access by the Customer. Such BAA shall be considered a Supplemental Schedule. SRS's BAA is available at < <https://www.nextech.com/legal/srs/baa>> or such other location as SRS shall make available to Customer.

**3.4 Verification and Audit:** For Software licensed under a Client Server License or a Subscription License, Customer shall keep and maintain full, accurate and detailed records regarding the license and the number of end users of the Software. Within thirty (30) days of SRS's written request, Customer shall furnish SRS with a certification signed by an officer of Customer verifying that the Software is being used in accordance with the terms of this Agreement and applicable Supplemental Schedules and stating the then current number of Users or Providers for each category. SRS may audit Customer's use of the Software to ensure that Customer is in compliance with the terms of this Agreement and applicable Supplemental Schedules. Any such audit shall be conducted during regular business hours at Customer's facilities and shall not unreasonably interfere with Customer's business activities; Customer shall provide SRS reasonable access to the relevant Customer records and facilities. If an audit reveals that Customer has underpaid fees to SRS, Customer shall be invoiced for such underpaid fees based on the SRS's price list in effect at the time the audit is completed. If the underpaid fees exceed five percent (5%) of the license fees previously paid by Customer, then Customer shall also pay all reasonable costs incurred by SRS in connection with the audit. \_

**3.5 Ownership and Intellectual Property:** The Customer acknowledges that the Software, Upgrades, and any derivative works of or modifications to such Software or Upgrades, and all Intellectual Property rights therein are the sole property of SRS. Neither Customer nor any Customer Representative shall gain any right, title or interest in or to the Software by virtue of this Agreement or any Supplemental Schedule other than the non-exclusive right of use and access granted herein. Without limiting the foregoing, Customer specifically acknowledges that SRS has exclusive ownership rights to the all Intellectual Property rights embodied in the Software and by operation of this Agreement, Customer automatically and irrevocably assigns to SRS any Customer suggestions and/or content developed by Customer that results in or could reasonably be expected to result in the modification, improvement, translation, adaptation or derivation of the Software. Customer agrees to take all reasonable steps to protect the Software in its possession from unauthorized copying, possession, access or use. Upon Customer becoming aware of any unauthorized copying, possession, access or use, of the Software or any Intellectual Property rights therein, Customer shall promptly notify SRS of the

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details of such issue and assist SRS in remediating such issue and preventing the recurrence thereof, including by cooperating with SRS in any litigation or proceedings reasonably necessary to protect the rights of SRS.

3.6 **Compliance:** SRS shall use commercially reasonable efforts to maintain compliance with all applicable federal Laws for software used by medical practices, including HIPAA, the International Classification of Diseases and Meaningful Use (as defined in the relevant Medicare and Medicaid regulations). SRS meets the standards of Meaningful Use certification for Stage I and Stage II and Stage III (2015 Complete Electronic Healthcare Records Standards). In the event the Federal Government issues standards for Stage and IV, SRS shall make all commercially reasonable efforts to ensure the SRS product is eligible to meet and maintain all of the required certifications.

3.7 **Support:** If the Customer has acquired Support and is current on its payment obligations (which for Software licensed under a Hosted Services License is included in the fees paid for such Hosted Services License), SRS shall, unless specified otherwise in the Supplemental Schedule, make available remote technical support for the Software as set forth in SRS's standard support terms, ("Support Terms") as such may be changed by SRS from time to time. The Support Terms are available at <<https://www.nextech.com/legal/srs/supportagreement>> or such other location as SRS shall make available to Customer.

3.8 **Integration of Third Party Intellectual Property:** The Software may include functionality, software code, data or other information obtained from third party providers ("Third Party Providers") and therefore may be subject to additional third party terms, conditions, warranties, responsibilities, disclaimers and requirements ("Third Party Terms"). The applicable Third Party Terms are available at <<https://www.nextech.com/legal/srs/thirdpartyagreement>> or such other location as SRS shall make available to Customer. By using the Software, Customer agrees to the applicable Third Party Terms, as such terms may be amended by SRS from time to time. SRS shall use commercially reasonable efforts to provide notice to Customer in the event of any change to the Third Party Terms by the applicable Third Party Provider. Customer acknowledges and agrees that the Third Party Terms may include integration fees or other charges and, to the extent such fees are imposed on SRS, SRS may, in its sole discretion, pass such fees on to Customer.

3.9 **Professional Services:** "Professional Services" include, without limitation, project management, configuration, training, implementation, forms creation, conversions, update installation or training, integration services, and customization services. SRS shall provide the Professional Services described in the Supplemental Schedule or a Statement of Work executed by the parties. SRS shall control the manner by which the Services are performed and may use subcontractors in the performance of the Professional Services. SRS reserves the right to make all staffing decisions in its sole discretion. All derivative works, source and object code, specification, designs, processes, techniques, concepts, discoveries and inventions made or developed in connection with the Professional Services (collectively, "Works") shall be the sole and exclusive property of SRS. Unless otherwise set forth in the Statement of Work, Customer is hereby granted a license to use the Works solely in connection with, and under the same provisions as, its use of the Software. Customer shall make available in a timely manner at no charge to SRS all technical data, computer facilities, programs, files, documentation, test data, sample output, office space, services, equipment or other resources reasonably required by SRS to perform the Services. Customer assumes any risk resulting from the content, accuracy, completeness and consistency of any data, materials and information supplied by Customer. Unless otherwise stated in an applicable Statement of Work, Customer shall pay SRS on a time and materials basis for the Services in accordance with the fees set forth in the Statement of Work. Customer shall reimburse all reasonable travel and other expenses incurred by SRS in performance of the Services. SRS shall invoice Customer on a monthly basis as Services are performed and as expenses are incurred.

## **4.0 Term and Termination**

4.1 **Term of Agreement:** The term of this Agreement shall be deemed effective on the date of signed acceptance by SRS (the "Effective Date") and shall continue in effect until terminated in accordance with the terms below.

4.2 **Term of Supplemental Schedules:** The term of each Supplemental Schedule shall be deemed effective on the date of signed acceptance by SRS (the "Schedule Effective Date") and shall continue in effect for the term set forth in the Supplemental Schedule or, if no term is stated in the Supplemental Schedule, then for the License Term.

4.3 **Renewal of License Terms:** Subject to Section 2.9, the initial License Term shall commence upon the Schedule Effective Date unless otherwise stated in the Supplemental Schedule. For Software licensed under a Hosted Services License or a Subscription License, the License Term shall automatically renew for additional one (1) year periods, unless either Party provides notice to the other Party no less than sixty (60) days prior to the end of the then current License Term of that Party's intention to not renew the License Term, in which case the License Term shall expire at the end of the then current License Term.

### **4.4 Termination:**

a. **For Cause:** Either Party may terminate this Agreement or an applicable Supplemental Schedule for cause: (i) upon thirty (30) days written notice if the other Party breaches any of its material obligations under this Agreement or the applicable Supplemental Schedule and thereafter fails to cure such breach, if curable, to the non-defaulting Party's reasonable satisfaction within the thirty (30) days following the Customer's receipt of such notice of termination, or (ii) immediately upon notice in the event that the other

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Party becomes subject to a regulatory prohibition that would prevent that Party from continuing to operate lawfully under this agreement or a principal member of either Party is excluded from federal health care programs under federal regulations. The termination of a particular Supplemental Schedule for cause shall not affect separate, unrelated Supplemental Schedules, which shall continue in full force and effect, unless otherwise terminated hereunder. The termination of the Agreement for cause shall automatically terminate all outstanding Supplemental Schedules.

b. By Either Party: Either Party may terminate this Agreement upon thirty (30) days prior written notice to the other Party in the event that there are no active Supplemental Schedules.

4.5 Effects of Termination: Upon termination of this Agreement or a Supplemental Schedule, the Customer shall, no later than the effective date of such termination: (i) discontinue the use of and purge all Software from all computer systems, terminals, personal computers, storage media, and any and all other devices and files with which the Software is used; (ii) if applicable, return to SRS all copies (including partial copies) of the Software (and all other Confidential Materials) in Customer's possession; and (iii) certify to SRS in writing that it has complied with the foregoing obligations.

4.6 Return of Electronic Data: In the event of the termination or expiration of a Hosted Service License, SRS shall keep all Electronic Data available to Customer for a period of sixty (60) days after such termination or expiration, after which, SRS may destroy or delete such Electronic Data with no liability to Customer. During such sixty (60) day period, upon written request by Customer, SRS shall provide Customer with electronic files containing all available Electronic Data. SRS will deliver the data files in accordance with industry standards. Notwithstanding anything contained herein to the contrary, if a Customer using the Software under a Customer Server License or Subscription License decides to discontinue using the Software then SRS will have no obligation to Customer under this Section 4.6 and Customer will be extract the needed data from the Software on its own prior to the effective date of such discontinuance or termination of this Agreement. Provided that a Customer is in compliance with the terms and conditions of this Agreement, Customer may, at any time, request a backup copy of the Patient Demographics and Patient Charts and SRS shall use commercially reasonable efforts to provide such services at its then current rates.

4.7 Suspension of Hosted Services License and Subscription Licenses: SRS reserves the right to suspend access to Hosted Services License or Subscription Licenses if Customer has undisputed amounts more than ten (10) days past due, until all such undisputed amounts are paid in full. SRS also reserves the right to suspend Customer's access to the Software if SRS is required by Law to suspend access to the Software or SRS reasonably determines that Customer or any of its Representatives: (i) are using the Software in a way that disrupts or poses a security risk to the Software, may harm SRS's systems or may subject SRS or any third party to liability; (ii) are using the Software for fraudulent or illegal activities; or (iii) are using the Software in breach of this Agreement.

## **5.0 Limited Warranties, Disclaimers and Remedies, Indemnification**

5.1 Intellectual Property Rights: SRS warrants to the Customer that to its knowledge the Software does not violate any United States patent, or copyright of any third party. In connection with any breach (or in the case of a claim by a third party, an alleged breach) of this warranty, and in conjunction with the remedies set forth in Section 5.5, SRS shall either, at SRS's sole option: (a) obtain for the Customer the right to continue using the affected Software or (b) modify or replace such Software so as to eliminate the alleged infringement. SRS shall not have any liability hereunder if any claim of infringement: (i) is asserted by a subsidiary or affiliate of the Customer or any of their respective Representatives; (ii) results from the Customer's alteration of the Software; (iii) relates to a third party software or other product not owned by SRS; or (iv) results from use of any Software in combination with any non-SRS software or product. This Section 5.1, along with the provisions of Section 5.5, state the entire liability of SRS and the Customer's sole and exclusive remedies with regards to the infringement of the Intellectual Property rights by SRS of any third party.

### 5.2 Limited Warranty/Exclusions:

a. For Customer Server Licenses, SRS warrants for a period of ninety (90) days from the Schedule Effective Date (the "Warranty Period") that the Software will materially comply with the specifications for the Software set forth in the Documentation. Any warranty claim must be initiated by Customer, in writing, during the Warranty Period. Provided that the warranty issue is reproducible by SRS, SRS shall, within thirty (30) days of its receipt of Customer's written notice: (i) correct such error; (ii) provide Customer with a plan for correcting the error; or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from SRS, then SRS may terminate the license and refund the amounts paid for such Software to Customer.

b. For Hosted Services Licenses and Subscription Licenses, SRS warrants that, at all times during the License Term, the Software will materially comply with the specifications for the Software set forth in the Documentation and any other specifications mutually agreed by the parties in writing. Any warranty claim must be initiated by Customer, in writing, and shall be addressed by SRS through Support.

c. The warranties set forth in this Section 5.2 shall not apply to the extent that any breach or defect derives from: (i) a combination of the Software with any program, equipment or device not supplied by SRS; (ii) any modification or customization of the Software by or on behalf of the Customer; or (iii) the Customer's failure to properly use or access (or monitor the use or access of by its

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Representatives) of the Software, or install any Upgrades. No Representative of SRS is authorized to give a greater or different warranty than as expressly provided for herein.

d. To the extent SRS is able, SRS hereby assigns to Customer all warranties, if any, provided by Third Party Providers for the third party software and hardware monitoring services provided to Customer hereunder, but shall not be responsible in any respects for the operation or failure thereof and hereby disclaims any responsibility therefor. Notwithstanding anything to the contrary contained in this Agreement, SRS makes no warranty or representation regarding, and shall have no liability whatsoever to Customer for, hardware monitoring services or third party software or the performance thereof.

**5.3 Disclaimer of Other Warranties:** EXCEPT AS PROVIDED IN THIS SECTION 5, ALL OTHER WARRANTIES, CONDITIONS, REPRESENTATIONS, INDEMNITIES AND GUARANTEES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, ORAL OR WRITTEN STATEMENTS OF SRS OR ANY OF ITS REPRESENTATIVES (INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OF ERROR-FREE AND UNINTERRUPTED USE) RELATING TO THE SOFTWARE, THE UPDATES, THE DOCUMENTATION, THE SUPPORT SERVICES, OR ANY OTHER PRODUCT OR SERVICE PROVIDED BY SRS OR ITS AFFILIATES IN CONNECTION WITH THIS AGREEMENT ARE HEREBY SUPERSEDED, EXCLUDED AND DISCLAIMED BY SRS. NEITHER THIS AGREEMENT, ANY SUPPLEMENTAL SCHEDULE, THE DOCUMENTATION, NOR ANY OTHER DOCUMENTATION FURNISHED IN RELATION TO THIS AGREEMENT IS INTENDED TO PROVIDE, EITHER EXPRESS OR IMPLIED, ANY WARRANTY THAT THE SOFTWARE, SUPPORT AND/OR ANY OTHER SERVICES PROVIDED BY SRS WILL BE UNINTERRUPTED, TIMELY OR ERROR FREE.

**5.4 Customer Undertakings:** The Customer assumes all rights and liabilities for results obtained by its use, access and/or implementation of the Software, whether such results are used singly or in combination with other hardware, software or products. Customer shall ensure that its users are, at all times, educated and properly trained in the proper use, access and operation of the Software and that the Software are used in accordance with any and all applicable manuals, documentation and instructions. For Software licensed under a Customer Server License or a Subscription License, the Customer will be responsible for: (i) acquiring and using all hardware necessary to install and operate the Software, (ii) preparing and following all Customer's operating procedures, audit controls, restart and recovery routines and other procedures necessary for the Customer's intended use of the Software; (iii) the accuracy and security of input or output data, (iv) maintaining applicable back-up processes and procedures and for backing up Electronic Data in order to replace critical Electronic Data in the event of loss or damage to such Electronic Data regardless of the cause of such loss or damage;

**5.5 SRS Indemnification:** SRS shall indemnify, defend and hold Customer harmless from and against any third party claims, liabilities, obligations, judgments, and causes of actions and associated costs and expenses (including reasonable attorneys' fees) that Customer actually incurs to the extent arising out of a breach of the warranty set forth in Section 5.1. SRS's obligations under this indemnification are expressly conditioned on the following: (i) Customer must promptly notify SRS of any such claim; (ii) Customer must, in writing, grant SRS sole control of the defense of any such claim and of all negotiations for its settlement or compromise so long as such settlement or compromise does not result in payment of money by Customer or an admission of guilt by Customer (if Customer chooses to represent its own interests in any such action, Customer may do so at its own expense, but such representation must not prejudice SRS's right to control the defense of the claim and negotiate its settlement or compromise); (iii) Customer must reasonably cooperate with SRS to facilitate the settlement or defense of the claim.

**5.6 Customer Indemnity:** Customer will indemnify, defend, and hold SRS, its individual directors, officers, employees and agents, harmless from and against any third party claims, liabilities, obligations, judgments, and causes of actions and associated costs and expenses (including reasonable attorneys' fees) that SRS actually incurs to the extent arising out of: (i) Customer's reliance on results obtained through the use of the content or information provided by the Software; (ii) that the Electronic Data itself, as provided by Customer, infringes or violates the rights of a third party or violates an applicable Law; and (iii) that Customer did not have the authority to allow SRS to transmit, process, store or host the Electronic Data.

**6.0 Limitation of Liability:** IN NO EVENT SHALL SRS OR ANY OF ITS AFFILIATES OR THEIR RESPECTIVE REPRESENTATIVES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, THIRD PARTY COSTS, PRACTICE STAFF TIME COSTS (INCLUDING BUT NOT LIMITED TO THOSE COSTS RELATED TO ADAPTING THE SOFTWARE TO CUSTOMER'S HARDWARE AND NETWORK SYSTEM), LOSS OF DATA OR ANY OTHER PECUNIARY LOSS, WHETHER FORESEEABLE OR NOT FORESEEABLE AND WHETHER ARISING OUT OF BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, MISREPRESENTATION, STRICT LIABILITY IN TORT OR OTHERWISE. UNDER NO CIRCUMSTANCES WILL SRS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY DAMAGES RESULTING FROM THE CUSTOMER'S INABILITY TO USE OR GAIN ACCESS TO THE SOFTWARE, OR THAT RESULT FROM THE USE BY THE CUSTOMER AND THE CUSTOMER'S PRACTICE OF ANY DOCUMENTS, DOCUMENT TEMPLATES AND/OR PROCEDURE SPECIFIC CONTENT PROVIDING PATIENT EDUCATION AND/OR INFORMED CONSENT INFORMATION EITHER PROVIDED BY SRS IN ITS ORIGINAL FORM

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OR AS MODIFIED BY THE CUSTOMER. SRS'S TOTAL LIABILITY TO THE CUSTOMER OR ANY THIRD PARTY FOR DAMAGES, REGARDLESS OF THE FORM OF ACTION, SHALL, IN ANY EVENT, NOT EXCEED ONE YEAR'S ONGOING FEES FOR USE OF THE SOFTWARE.

### **7.0 Electronic Data**

7.1 **Ownership of Electronic Data:** Customer is the sole and exclusive owner of all Electronic Data, whether or not provided to any other Party under this Agreement. SRS will not use Electronic Data for any purpose other than that of providing the Software or rendering the Services under this Agreement, nor sell, assign, lease, or dispose of Electronic Data except as provided for herein. Customer assumes full responsibility with respect to the Electronic Data while such Electronic Data is being transmitted or transferred to SRS. Customer shall provide appropriate protection, and shall provide safeguards to prevent unauthorized access, to the Electronic Data prior to and during the transmission or transfer of such Electronic Data to SRS, including the use of either an encryption process or a secure transport mechanism. Customer and SRS acknowledge that the accuracy of delivering the results from the Software depends upon the accuracy and completeness of the Electronic Data. Customer accepts sole responsibility for errors in the Software to the extent resulting from inaccurate or incomplete Electronic Data supplied to SRS by Customer or its Representatives. Notwithstanding the foregoing, SRS has the right to use: (i) the Electronic Data for benchmarking purposes provided that SRS completely de-identifies all such Electronic Data; and (ii) anonymous aggregated patient-level data which may be used by SRS for any reason; either of which may be accessed and used by SRS without notice to Customer. Aggregated patient-level data is consolidated data relating to multiple patients, and therefore cannot be traced back to a specific patient, practice or any level not permitted by the HIPAA Omnibus Rules, (such as incidences of diseases). Aggregated patient-level data is typically used for the generation of routine reports and indicators, and most importantly, strategic planning within the health system.

7.2 **Liability:** For Software licensed under a Customer Server License or a Subscription License, SRS shall not be liable to Customer for any loss of any Electronic Data unless such loss is caused by SRS willful misconduct or gross negligence. For Software licensed under a Hosted Services Licenses, SRS shall implement reasonable and appropriate security procedures as set forth below to protect Electronic Data from unauthorized access by physical and electronic intrusion. Unless SRS fails to perform the foregoing obligations, the Parties agree that SRS shall not, under any circumstances, be held responsible or liable for situations (1) where Electronic Data or the transmission of Electronic Data are accessed by third parties through illegal or illicit means or (2) where the Electronic Data or the transmissions of Electronic Data are accessed through the exploitation of security gaps, weaknesses or flaws unknown to SRS at the time. SRS will promptly report to Customer any unauthorized access to Electronic Data promptly upon discovery by SRS in accordance with applicable Law or as set forth in the BAA.

7.3 **Security Generally:** SRS represents and warrants that SRS will maintain the Electronic Data in a manner that conforms to applicable Laws, utilizing generally accepted industry standard data management practices and no less than reasonable measures in the circumstances as it concerns environmental stability, data backup, backup frequency, media retention, data loss prevention, data/system security, data encryption, firewalls, virus scanning, security auditing and monitoring, and contingency plans/disaster recovery. Access to Electronic Data will be restricted to those who have been properly trained and instructed as to security and privacy policies, controls and procedures.

7.4 **Access to Electronic Data:** SRS may access Electronic Data as necessary to identify or resolve technical problems or respond to problems with the Software or any services. Notwithstanding any other provision, SRS may disclose Electronic Data if SRS determines that such action is reasonably necessary: (i) to comply with applicable Law, regulatory requirements, or legal or regulatory process; (ii) to enforce this Agreement; or (iii) to respond to claims that Customer is using the Software or any services to perform or support activities that violate the Law or the rights of others. Unless prohibited by Law or legal process, SRS will use commercially reasonable efforts to provide Customer with prior notice of the request for such disclosure and a reasonable period of time to respond to such request, prior to disclosing such Electronic Data.

### **8.0 Confidentiality**

8.1 **Confidentiality:** Under this Agreement, either Party (the "Disclosing Party") may disclose Confidential Material of the Disclosing Party to the other Party (the "Receiving Party"). Each Party understands that the Confidential Material of the other Party is valuable and proprietary to such Party and/or its affiliates (and/or to third parties that have entrusted the Confidential Material to such Party and/or its affiliates). As such, the Receiving Party agrees to protect the Confidential Material of the Disclosing Party with the same degree of care that it uses to protect its own information of a similar nature, but in no event less than a reasonable standard of care and, except as required under this Agreement, the Receiving Party will not at any time directly or indirectly, use, publish, disseminate, describe or otherwise disclose Confidential Material in any form to any person or entity without the Disclosing Party's express prior written consent or except as required by applicable Law.

8.2 **Confidentiality of the Software:** Customer acknowledges that the information and the Intellectual Property rights contained in the Software and content are confidential and contain trade secrets and proprietary data of SRS. With respect to the Software, Customer: (i) may allow, only to the extent otherwise authorized under this Agreement, its Representatives to access to the Software only to the extent necessary to permit the performance of their ordinary services to the Customer and to require, as a condition to

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such access, that such persons comply with the provisions of this Section 8; (ii) shall cooperate with SRS in the enforcement of such compliance by the Customer's Representatives; (iii) prohibit the removal or alteration of any copyright or confidentiality labels or notices contained in the Software; (iv) prohibit the copying and use of the Software except as permitted in this Agreement and (v) refrain from building a competitive product or service or otherwise copying any ideas, features, functions or graphics of the Software.

**8.3 Remedies:** The Receiving Party will immediately notify the Disclosing Party, in writing in the event of any loss, unauthorized access to, disclosure or use in violation of the Agreement of a Disclosing Party's Confidential Materials known to the Receiving Party. The Receiving Party shall cooperate with the Disclosing Party to remedy such loss and/or unauthorized access to, disclosure or use of such Confidential Materials. Each Party acknowledges that use or disclosure of the Confidential Materials in violation of this Agreement may cause irreparable harm to the other Party. The Parties agree therefore, that without limiting any other rights and remedies, including collection of monetary damages, in the event of a perceived breach by one Party of this Section 8, the other Party shall be entitled to seek immediate injunctive relief without posting of a bond.

### **9.0 Payment of Fees:**

**9.1 Fees.** Customer shall pay annually to SRS (or such other party if specified in the Supplemental Schedule) the subscription fees for subscription software and services set forth in the Supplemental Schedule, starting upon Commencement of Service and throughout the period in which the License (as defined below) is in effect, in accordance with the terms also set forth therein ("Subscription Fees"). "Commencement of Service" is deemed to occur when the Software in a hosted environment is made accessible to Customer. Customer shall pay to SRS the fees for Professional Services as set forth in the Supplemental Schedule in accordance with the terms also set forth therein ("Professional Services Fees"). Customer shall pay to SRS the fees for Purchased Equipment, if any, as set forth in the Supplemental Schedule in accordance with the terms and milestones also set forth therein ("Equipment Fees"). Customer shall pay to SRS any other fees set forth in the Supplemental Schedule in accordance with the terms also set forth therein. Customer shall reimburse SRS for all travel and out-of-pocket expenses incurred by SRS personnel when traveling to Customer's facility as set forth in the Supplemental Schedule ("Travel Expenses").

**9.2 Payments.** All fees shall be paid by Customer without regard to any equity, set-off or counterclaim. All fees are exclusive of taxes and other duties and charges howsoever designated, which, to the extent applicable, shall be borne exclusively by the Customer and, to the extent required by law, collected by SRS from the Customer. If the Customer fails to pay any amount payable by it, SRS shall be entitled to: (i) charge the Customer interest on the overdue amount, from the due date up to the date of actual payment, after as well as before judgment, at the rate of one percent (1%) per month and/or (ii) suspend all further service under this Agreement and/or any Supplemental Schedule, including Support, until payment has been made in full. The fees paid by the Customer are non-refundable and the Customer understands and acknowledges that SRS has a "no return" and "no refund" policy.

### **10.0 Other Provisions**

**10.1 Software and Documents Do Not Constitute Medical or Legal Advice:** The Customer acknowledges and agrees that nothing contained in the Software, Support and any other services made available by SRS or in any of the documents, document templates or procedure-specific content provided in the Software database or which is merged with any document templates, is to be construed as medical and/or legal advice, and the Customer shall, with the Customer's specialized professional judgment and with competent legal counsel where appropriate, review such documents, document templates or procedure-specific content provided in the Software database before providing the output to any patient of the Customer or any third party.

**10.2 Identification of SRS:** The Customer may not display the name, trademark, logo or other identifying mark of SRS on any output to any patient of the Customer or any third party.

**10.3 Transferability:** This Agreement (including each Supplemental Schedule), any rights under it, including without limitation the Software, Support and any other services provided by SRS, may be assigned by SRS without notice to the Customer. This Agreement (including each Supplemental Schedule), any rights under it, including without limitation the Software, Support and any other services made available by SRS, may not be assigned, granted, sublicensed, or transferred by the Customer without prior written consent from SRS, which consent shall not be unreasonably withheld. SRS agrees that upon request of the Customer providing full details of the contemplated transaction, and after SRS's determination in its reasonable discretion that the contemplated transaction will not jeopardize SRS's Intellectual Property rights, ownership of any licenses by the Customer may be transferred or assigned in cases such as purchase, merger, acquisition, buy-out, name change, corporate reorganization, and successor organization. Customer may also transfer the licenses from an out-going Physician/Provider to an incoming Physician/Provider. SRS's consent shall be contingent upon (i) the Customer being in good financial standing with the SRS and (ii) payment by Customer of a SRS's standard transfer fee.

**10.4 Governing Laws:** This Agreement and each Supplemental Schedule will be considered as having been entered into in the State of Florida and will be interpreted exclusively in accordance with the Laws of the State of Florida without regards to its conflict of law provisions. The Parties to this Agreement irrevocably and unconditionally consent to the exclusive jurisdiction and venue

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of the state and Federal courts located in Hillsborough County, Florida in connection with any action related to this Agreement. Acknowledging that the damages sustained by SRS as a consequence of any material breach by the Customer of any of its obligations under this Agreement, including each Supplemental Schedule, may be difficult or impossible to measure in monetary terms, the Customer hereby agrees that SRS shall be entitled to an injunction temporarily and/or permanently restraining the commission or continuation of any such breach without any requirement to give an undertaking as to damages or in any way providing a bond or security for costs. Except as otherwise set forth herein, all remedies under this Agreement are cumulative.

10.5 **Notice and Delivery**: Notice under this Agreement and each Supplemental Schedule shall be in writing and addressed to the Parties as indicated below, or as appropriately updated. Delivery under this Agreement occurs upon actual delivery or three (3) days after deposit with the U.S. Postal Service as Certified Mail, whichever is earlier.

10.6 **Force Majeure**: Except for the Customer's payment obligations, a Party shall not be liable for any delay or failure to perform its obligations in this Agreement and each Supplemental Schedule if such delay or failure to perform is due to any cause or condition reasonably beyond that Party's control.

10.7 **Headings**: The headings for the various Sections and sub-Sections shall not be considered part of this Agreement (or a Supplemental Schedule) and shall not be used in interpreting this Agreement (or a Supplemental Schedule).

10.8 **Unenforceability**: It is intended that this Agreement and each Supplemental Schedule shall not violate any applicable Law. If, at any time or for any reason, any provision becomes unenforceable or invalid, the remaining provisions shall remain unaffected and continue with the same effect as if such unenforceable or invalid provision had not have been inserted herein.

10.9 **Compliance With Laws**: The Customer shall, at its own expense, use the Software in a careful and proper manner and both Parties shall comply with and conform to all Laws, ordinances and regulations in any way relating to the possession, use and/or maintenance of the Software and Electronic Data, including but not limited to the applicable standards of HIPAA, HITECH and the HIPAA Rules as amended and as published by the United States Department of Health and Human Services and those related to data privacy, international communications, consumer transactions and communications decency. If applicable, each Party shall comply in all respects with the General Data Protection Regulation (EU) 2016/679 (the "GDPR"), and all subordinate legislation made pursuant thereto including all applicable amendments, revisions and re-enactments when processing all personal data (as defined in the GDPR). Use of the Software is unauthorized in any jurisdiction that does not give effect to all provisions of these terms and conditions, including without limitation this Section 10.9.

10.10 **Survival**: Sections 2.0, 3.2, 5, 6, 8 and 10 shall survive the expiration or termination of this Agreement and each Supplemental Schedule for any reason.

10.11 **Disclosure of Agreement**: The Customer shall not disclose the terms and conditions of this Agreement, all price proposals, estimates and invoices sent to Customer by SRS, or any Supplemental Schedule to third parties (except the Customer's Representatives) without the prior written authorization of SRS. SRS may announce the entering into of this Agreement or any Supplemental Schedule with the Customer in a press release and at any time after its Effective Date and may refer to the Customer in marketing materials.

10.12 **Performance**: SRS shall use its reasonable endeavors to perform its obligations within any time stated in this Agreement and/or each Supplemental Schedule. Any such time is, however, approximate only and time for such performance shall not be of the essence.

10.13 **Construction**: The Parties agree that "including" and other words or phrases of inclusion, if any, shall not be construed as terms of limitation, so that references to "included" matters shall be regarded as nonexclusive, non-characterizing illustrations and equivalent to the terms "including, but not limited to," or "including, without limitation." Each Party acknowledges that it has had the opportunity to be advised and represented by legal counsel in the negotiation, execution and delivery of this Agreement, and accordingly agrees that if any ambiguity exists with respect to any provision of this Agreement, such provision shall not be construed against any Party solely because such Party or its Representatives were the drafters of any such provision. Whenever the context requires, defined terms used in the singular shall include the plural and the plural shall include the singular.

10.14 **Entire Agreement**: This Agreement and each Supplemental Schedule is the complete and exclusive agreement between the Customer and SRS relating to the Software, services, warranty, Support, and other subject matter as provided for herein, and supersedes any proposal or prior agreement, oral or written, and any other communications relating to the subject matter of this Agreement. No variation of the terms of this Agreement or any different terms will be enforceable against the Parties unless both Parties give their express consent, including an express waiver of the terms of this Agreement, in writing signed by an authorized representative of each Party.