

MASTER SUBSCRIPTION AGREEMENT

This Master Subscription Agreement (this “Agreement”) is entered into as the effective date on the Order Form (the “Effective Date”) between Health iPASS Inc., (“Health iPASS”) and the client named on the Order Form (“Client”).

In consideration of the promises and obligations made herein, the parties agree as follows:

1. Definitions. As used in this Agreement, the terms set forth below shall have the following meanings:

“Affiliated Entities” means any entity controlled by or controlling Health iPASS or under common control or ownership with Health iPASS.

“Business Hours” means 8:00am – 6:00pm CST, Monday through Friday, exclusive of national holidays.

“Billing Commencement Date” shall be the sooner of 90 days following the Effective Date or Client’s utilization of any of the Products or Software listed on the Order Form.

“Client Confidential Information” means, in its most expansive interpretation and usage, all proprietary, non-public or confidential information and data that concerns Client’s business, systems, finances, personnel, operations, or other assets and activities of Client, including ideas, processes, formulas, systems, original works of authorship, know-how, improvements, discoveries, developments, designs, inventions, techniques, marketing plans, rates, prices, costs and patient lists not available to the public.

“Designated Location” means Client’s address set forth in the Order Form, or such other address identified by Client in writing.

“Fees” means all of the costs and fees specified in the Order Form.

“Hardware” means collectively, the kiosk/tablet based solution, card reader or credit card terminal, and stand used to access the Software set forth in the Order Form and any other hardware subsequently provided to Client by Health iPASS.

“Hardware Maintenance Services” is defined in Section 11(c).

“Health iPASS Confidential Information” means, in its most expansive interpretation and usage, all proprietary, non-public or confidential information and data that concerns Health iPASS’s and its Affiliated Entities’ business, the Software, the User Materials, technology, systems, finances, personnel, operations, or other assets and activities of Health iPASS and its Affiliated Entities, including the contents of this Agreement, trade secrets, ideas, processes, formulas, systems, source codes, data programs, other original works of authorship, know-how, improvements, discoveries, developments, designs, inventions, techniques, marketing plans, training and education materials and

sessions, new products, licenses, rates, prices, costs and customer lists not available to the public.

“Implementation” means the process by which the Software and Hardware is made ready for use by Client, including any customized configuration and other development done by Health iPASS.

“Interface” means software designed to exchange data between the Software and a third party’s software or hardware licensed or maintained by Client, including any practice management (PM), electronic medical records (EMR) or electronic health records (EHR) software maintained by Client.

"Location" means any physical premises with a unique physical address that will be utilizing the Health iPASS products and/or services.

“Losses” is defined in Section 20(a).

“Order Form” means the document that accompanies this Agreement detailing the Products, Software and Hardware to be provided by Health iPASS to Client and specifies the Fees to be paid by Client.

“Practice Management Instance” means any scenario where client requires Health iPASS to setup additional Client IDs within Health iPASS platform to manage multiple instances of Practice Management System.

“Provider” and “health care provider” includes a hospital, skilled nursing facility, nursing facility, home health entity or other long term care facility, health care clinic, community mental health center, renal dialysis facility, blood center, ambulatory surgical center described, emergency medical services provider, federally qualified health center, group practice, a pharmacist, a pharmacy, a laboratory, a physician, a practitioner, a rural health clinic, an ambulatory surgical center, a therapist and any other category of health care facility, entity, practitioner, or clinician, or any physical resource, such as an exam-room, x-ray room or physical therapy equipment, where appointments are scheduled in lieu of a human resource.

"Products" means those products listed on Exhibit A attached hereto selected by Client on the Order Form.

“Software” means that software which accessed through the kiosk to enable Client’s patients to utilize the Hardware for insurance, scheduling and payment information assistance, plus the Interfaces to provide Client and Health iPASS with the ability to access this data, and process patient and third party payments, and third-party software licensed by Health iPASS and that is part of the Software. Software is listed in the Order Form.

“Software Maintenance Services” is defined in Section 11(a).

“System” means collectively, the Hardware and Software.

“Term” is defined in Section 4(a).

“Third Party Software” means the any software utilized by Client in connection with Client’s use of the Software or Hardware.

“Update” means any improvement (i.e. enhancement) or changes to the Software offered by Health iPASS. Updates do not include additional modules or capabilities for which Health iPASS charges a separate fee to its customers.

“Uptime” is defined in Section 12.

“User Materials” means any documentation provided and licensed by Health iPASS to Client or other organizations using the Software to, among other things, describe (a) the Software and/or Hardware functionality, capabilities, procedures, Updates, customizations, screens, data model and fields, or (b) how to train, install or implement the Software. User Materials may be provided in various forms, including paper, electronic media or in automated format (via the Internet or other media.) User Materials are Health iPASS Confidential Information.

2. Access Rights. Health iPASS hereby grants solely to Client a non-exclusive, non-transferable, limited use right to access the Products and Software, without any further right to sublicense, distribute, transfer or transmit the Products or Software, for the Term set forth below. Other than Client’s patients and except as may otherwise be provided by this Agreement, Client shall not provide third parties access to or use of the Products or Software without Health iPASS’s prior written consent, which Health iPASS may withhold or condition in its sole discretion.

3. User Materials. Health iPASS shall provide Client with the User Materials. Client may make as many copies of the User Materials as is reasonably needed by Client to utilize the Products, Software and Hardware. Under no circumstances may Client provide or distribute the User Materials to anyone other than Client personnel, without Health iPASS’s prior written consent.

4. Term and Termination.

(a) Unless stated otherwise in the Order Form, this Agreement, and the right to access the Products and Software set forth in Section 2, shall be for an initial term of three years from the Billing Commencement Date, unless otherwise terminated in accordance with the provisions of this Agreement (the “Initial Term”). After the Initial Term, this Agreement shall automatically renew for successive one year terms (each, a “Renewal Term”, and collectively with the Initial Term, “Term”) from the expiration date of the Initial Term or the prior Renewal Term on the terms and conditions set forth in this Agreement unless either party notifies the other in writing not less than 90 days prior to the expiration of the Initial Term or the then-current Renewal Term, as applicable. Health iPASS is not responsible for obsolescence of the Products, Software or Hardware that results from changes in Client’s requirements or from material changes in the software technology industry.

(b) Health iPASS may terminate this Agreement or execute a full or partial credit hold or disable the Products or Software if Client fails to cure a material breach of

this Agreement within 10 days after receipt of written notice from Health iPASS of such breach; provided, however, that Health iPASS may act without prior notice or provision of a cure period following any payment default by Client. For the purposes of this section a “credit hold” means the discontinuance of any or all services (e.g. insurance eligibility, Maintenance Services, development, and training) and the prohibition on Client’s purchasing additional products until Client’s breach is cured. Any termination of this Agreement does not entitle Client to a refund.

(c) Termination of this Agreement also terminates Client’s right to access the Products, Software, Hardware and User Materials. Upon termination of this Agreement for any reason, Client shall: (i) return all Hardware, and (ii) return or destroy, as requested by Health iPASS, all other materials (including but not limited to User Materials) and Health iPASS Confidential Information, including all copies thereof. Client shall certify, in writing, its compliance with such requirements upon request by Health iPASS. The Hardware must be returned in reasonable working order, reasonable wear and tear excepted within 15 days following termination. If the Hardware is not returned to Health iPASS, at Client’s expense, in such condition, Client shall be responsible for Health iPASS’s costs incurred in repairing or replacing the Hardware.

(d) If Client terminates this Agreement prior to the end of the Initial Term, Client shall pay a termination fee equal to the average monthly fees billed to Client by Health iPASS in the preceding 6 months multiplied by the number of months remaining from the date of termination to the end of the current Term.

(e) The Master Subscription Agreement terms located at healthipass.com/MSA on the date of the start of any Renewal Term shall be the applicable agreement for Client and Health iPASS for that Renewal Term.

5. Interfaces. Client acknowledges that development of a working Interface between Client’s Third Party Software and the Software or Hardware may require programming, equipment or software to be provided by a third party vendor, who may also impose additional fees upon Client. If Client or the third party vendor fails to cooperate with Health iPASS in its development of the Interfaces, such failure shall not release Client from making any payments due to Health iPASS. Health iPASS shall not perform any modifications to the third party vendor’s software or equipment.

6. Implementation. Both parties shall reasonably cooperate to create a mutually acceptable implementation plan and to use reasonable efforts to implement the Products, Software and install the Hardware, if any, in accordance with such plan. Unless the agreed implementation plan states otherwise, Client shall allow Health iPASS to begin implementation of the Products, Software and Hardware within 45 days of the Effective Date. Prior to the arrival of Health iPASS’s personnel to commence installation of the Software (or prior to telephoning by Health iPASS personnel if Software installation is to be accomplished via telephone), Client shall have the Designated Location and all other things related to installation ready for installation, including any hardware or third-party software supplied by Client, and internet connections. If Client fails to: (a) have the Designated Location and all other things related to installation of the Products and Software in readiness for installation at the time installation is scheduled to be performed and has not notified Health iPASS, in writing, of such failure at least five business days prior to the scheduled Software Installation date, or (b) cancel any scheduled training session more than three weeks before its

scheduled occurrence, then in each case, Client shall reimburse Health iPASS for any direct expenses caused by such failure or cancellation.

7. Use of Personnel. Subject to the remaining provisions of this Agreement, each party is solely responsible for determining which of its personnel will perform its obligations under this Agreement. Additionally, Health iPASS, in its sole discretion, reserves the right to subcontract the performance of its obligations to a third party.

8. Fees. Payment of Fees shall begin on the Billing Commencement Date unless otherwise agreed to in writing by the Parties. The manner of payment shall be as follows:

(a) Client shall complete the ACH Authorization portion of the Order Form.

(b) Health iPASS shall provide Client with an invoice on or by the fifth business day of the month following the month in which the Fees were incurred. Health iPASS will automatically withdraw the amount due from Client's bank account on or about the tenth business day of the month pursuant to the authorization set forth in the Order Form.

(c) Health iPASS shall be entitled to presume that any amounts Client pays to or Health iPASS debits from Client are correct unless Client disputes these by sending Health iPASS written notice within thirty days of the date of the applicable invoice containing any disputed amounts or debits. **HEALTH IPASS NOT BE RESPONSIBLE FOR ANY DISPUTED PAYMENTS OR DEBITS, INCLUDING ANY ALLEGEDLY IMPROPER FEE(S), UNDERPAYMENTS, OR BILLING ERRORS, WHICH ARE NOT REPORTED TO HEALTH IPASS IN WRITING WITHIN SUCH THIRTY-DAY PERIOD.**

(d) The Client acknowledges and agrees that Health iPASS reserves the right to adjust the pricing of its services in the event of an increase in costs imposed by the Client's practice management, Electronic Medical Records, or Electronic Health Records software provider to Health iPASS. Such price adjustments will be based solely on the increased costs incurred by Health iPASS. Health iPASS will provide the Client with at least thirty (30) days' written notice before any price increase becomes effective. By continuing to use Health iPASS services after such notice period, the Client accepts the adjusted pricing.

(e) The second and subsequent years of the Term will be subject to an annual Fee increase not to exceed 20% of the total Fees for the prior year. Any changes in Fees will be implemented on the first day of the twelve-month period following the conclusion of the first twelve months of the Term.

9. Late Payment Charge. If any undisputed payment owed to Health iPASS by Client under this Agreement is not paid within 30 days following its due date, Health iPASS may deem such non-payment as a material breach under this Agreement and, at its option, charge for its additional costs related to such delinquency at a rate of the lesser of 1% per month or the greatest amount permitted by applicable law, from the date such payment first became due or terminate the Agreement. Late payment of amounts disputed by Client in good faith shall not be deemed a material breach, and no late fees will accrue, provided that Client has provided timely notice of its dispute.

10. Taxes and Other Fees. The fees set forth in the Order Form do not include any sales tax, which, if applicable, will be separately billed to Client by Health iPASS. Client shall also be responsible for all other governmental taxes and fees associated with Client's possession or use of the Software or Hardware, including any use taxes, state or local property or excise taxes.

11. Maintenance Services.

(a) Software Maintenance Services. If Client is current in its payments required under this Agreement and otherwise in compliance with this and all other agreements with Health iPASS, then Health iPASS shall provide Client with the following, defined as "Software Maintenance Services":

(i) Updates. At no additional charge, all Updates to the Software, which shall include keeping the Software in compliance with federal and state regulated changes that are identified, in writing, by Client or of which Health iPASS has become aware.

(ii) Telephone & Internet Support. During Business Hours, Client may contact Health iPASS's customer support department to resolve issues arising from Client's internal use of the Products and Software. Upon request, and in Health iPASS's sole discretion, Health iPASS may make Software Maintenance Services available to Client during non-Business Hours. For Software Maintenance Services rendered during non-Business Hours, Client shall pay Health iPASS's then current hourly rate. Health iPASS shall advise Client prior to commencing any work that would result in such per hour charge.

(b) Exclusions to Software Maintenance Services. Software Maintenance Services do not include the following exclusions. All such excluded maintenance services performed by Health iPASS at Client's request shall be invoiced to Client on a time and materials basis, plus reasonable expenses associated therewith:

(i) support or support time due to a cause external to the Software adversely affecting its operability or serviceability, including issues due to water, fire, wind, lightning, other natural calamities, transportation, misuse, abuse or neglect;

(ii) repair of Software modified in any way other than modifications made by Health iPASS;

(iii) support of any other third-party vendors' software, such as operating system software, network software, database managers, word processors, except that Health iPASS shall provide reasonable assistance and coordination in handling issues that arise with that Third Party Software purchased by Client from Health iPASS, as set forth in the Appendix; provided, however, such assistance shall not include any updates to or new versions of the Third Party Software or correction of any program-errors within the third-party software;

(iv) support services that can be rendered telephonically either by Health iPASS or Client personnel (at Health iPASS's direction) but at Client's request are performed on-site by Health iPASS;

(v) on-site installation of the Updates or additional conversion services;

(vi) any additional hardware or Third Party Software that may be required to install and use any Updates; or

(vii) training.

(c) Hardware Maintenance Services. If Client is current in its payments required under this Agreement and otherwise in compliance with this and all other agreements with Health iPASS, except as identified in the Exclusions set forth in Section 11(d), Health iPASS shall provide Client its "Hardware Maintenance Services", which is labor and parts reasonably required to maintain the Hardware in proper operating condition. Health iPASS shall be allowed to make reasonable changes to or substitutions of the Hardware configuration due to product unavailability or delay, at its sole discretion.

(d) Exclusions to Hardware Maintenance Services. At all times while at Client's Designated Location, Client bears all risk of loss with respect to the Hardware, other than repairs necessitated by reasonable wear and tear. Repairs due to reasonable wear and tear will be provided at no cost to Client as described herein. All other repairs or replacement of the Hardware shall be at Client expense and Client will be charged Health iPASS' customary rates and charges for such repairs and/or replacements and fees. In addition, Health iPASS's performance of the following services are outside the scope of Hardware Maintenance Services, and shall be charged to Client by Health iPASS's on a time and material basis:

(i) support or increase in support time due to a cause external to the Hardware adversely affecting its operability or serviceability which includes water, fire, flood, wind, lightning, other natural calamities, transportation, failure or fluctuation in electrical power, humidity, misuse, abuse or neglect;

(ii) repair or correction to Hardware modified or altered in any way other than modifications made by Health iPASS;

(iii) routine cleaning, preventive maintenance, or "check outs";

(iv) repair, maintenance or replacement of expendable items such as ribbons, cartridges, batteries, or drums; or

(v) Client's requested changes to the Hardware.

12. Uptime Commitment. Health iPASS's goal is to maintain an uptime of 99% measured on a monthly basis, with respect to the availability of the Software during the Term. Should Health iPASS not be able to satisfy this goal, as Client's sole and exclusive remedy and Health iPASS's sole and exclusive liability for such occurrence, Health iPASS shall provide Client with a credit based

upon the fees paid by Client to Health iPASS in the month prior to the month in which the uptime goal was not met.

<u>Actual Uptime of the Software Services</u>	<u>Percentage of Prior Month's Fee Credited</u>
99%	0
97% to 98.9%	2%
96% to 96.9%	5%
95%	10%

Client will not be eligible to receive these credits if Health iPASS' failure to provide Client with the uptime set forth herein is due to the event described in Section 24(g), or due to the failure of either any Third Party Software or any equipment maintained by Client other than the Hardware. To receive a credit, Client must request the credit within 30 days' following Client's receipt of the Uptime report.

“Uptime” means the availability of the servers on which the Software maintained by Health iPASS are located as measured by Health iPASS's external monitoring service, minus all scheduled down time for maintenance. Uptime reports will be made available to Client on a quarterly basis upon request. The scheduled maintenance window is Sunday, noon to midnight. Health iPASS may change the scheduled maintenance window on reasonable notice to Client.

13. Health iPASS's Responsibilities. Health iPASS shall:

- (a) provide the Products, Software and Hardware in the manner set forth in this Agreement;
- (b) make available an online form to Client's patients for various patient engagement activities;
- (c) provide an e-mail contact address for Client's patients; and
- (d) maintain such commercial general liability and other insurance as is usual and customary in Health iPASS's business.

14. Client's Responsibilities. Client shall:

- (a) use the Products and Software only in compliance with all applicable laws and regulations of the United States and any foreign jurisdictions in which the Customer uses and accesses the Products and Software;
- (b) maintain the physical security of all equipment provided by Health iPASS for use with the Software;
- (c) provide a proper physical environment and utilities for the Products and Hardware, including an uninterrupted power supply;

- (d) select and train Client personnel so they can operate the Products, Software and Hardware and related systems and so they are familiar with the accounts and records that serve as input and output for the Software;
- (e) Maintain the security and confidentiality of all credentials that provide access to the Products, Hardware or Software provided by Health iPASS;
- (f) procure all communications and network services (including all cabling and cabling services) required to utilize the Products, Software and Hardware locally and, should Client so desire, in a remote environment consistent with this Agreement;
- (g) prepare the Designated Location for installation of the Software and Hardware, including compliance with special electrical, internet, communications or telephonic requirements (if applicable) and other tasks as may be necessary for the environment;
- (h) perform all data entry and loading, other than that which is to be undertaken by the patient using the kiosk in the manner described in the User Materials;
- (i) establish and maintain adequate operational back-up and disaster recovery provisions for Client data in the event of a defect or malfunction that renders the Products, Software or the Hardware on which it runs non - operational;
- (j) provide Health iPASS's personnel with the necessary physical access to the Designated Location, during normal working hours and as otherwise may be required by Health iPASS to allow Health iPASS to perform its obligations under this Agreement. Health iPASS shall use reasonable efforts to comply with all reasonable security and safety procedures of which Client have advised Health iPASS in writing;
- (k) provide Health iPASS with full-time, protected and secured high-speed internet access or other communications needs in regard to the Products, Software and Hardware. Client shall be responsible for all charges associated with providing such internet access. Health iPASS shall use reasonable efforts to comply with all of Client's reasonable security and safety procedures associated with Health iPASS's remote access of the Software and/or Hardware, provided Client have advised Health iPASS in writing of such procedures;
- (l) procure and maintain all third party operating systems and other products and services that may be required to interface with the Products, Hardware and the Software and that are licensed directly by Client from third parties;
- (m) resolve all payment disputes with Client's patients;
- (n) determine whether the Products, Software and Hardware provided to Client will achieve the results Client desires;
- (o) permit Health iPASS to utilize the data processed by the Hardware and Software: (i) to allow Health iPASS to perform its obligations under this Agreement; and

(ii) to allow Health iPASS to utilize the data collected by the kiosks in the manner described in this Agreement; and

(p) establish a merchant account with a processor that is compatible with the System. Client acknowledges that Health iPASS shall not be responsible for errors or defects in or with merchant account or processor described herein.

(q) obtain necessary consents of Client's patients for use of patients' information.

(r) If Client is utilizing Health iPASS's Advanced e-Billing tool ("AEB"), Client agrees:

(i) It will not be providing any balances that are in collections;

(ii) Health iPASS must be the only entity billing for the balance owed;

(iii) If Client determines to write off or send a balance to collections it must immediately cease using AEB for that balance.

15. Health iPASS's Confidential Information and Ownership.

(a) Health iPASS and/or its third party suppliers have sole and exclusive ownership of all rights, title, and interest in and to the Products, Software, Hardware, User Materials and all other Health iPASS Confidential Information, subject only to the limited internal business use license expressly granted to Client herein. This Agreement does not provide Client with title or ownership of the Products, Software, Hardware or User Materials, but only a license or right to access for limited, internal use.

(b) This Agreement does not provide Client with any title, interest or ownership in or any right to use Health iPASS's name, trademarks or logo, or any goodwill now or hereafter associated therewith, all of which title, interest, ownership and goodwill is the property of and shall inure exclusively to the benefit of Health iPASS. Client shall not use Health iPASS's name, trademark, logo and/or any part of the Software in any marketing or other materials that will be distributed by Client to third parties without Health iPASS's prior written consent.

(c) The parties shall enter into the Business Associate Agreement attached hereto as Exhibit B to ensure that each party complies with its obligations under HIPAA.

(d) Client grants to Health iPASS all right and license to use patient and administrative data collected by the System from patients (from kiosks, smartphone apps and web apps) or third-parties to: (i) enhance the patients' experiences and value to patients; (ii) provide benchmark analyses/reports in a non-patient identifiable manner; and (iii) any other lawful business purpose; provided that Health iPASS shall continue to comply with HIPAA.

(e) Nothing contained in this Agreement will prevent Health iPASS from providing any services to or performing custom software development or other services for its other clients, including all services that are similar or related to the services provided to Client under this Agreement. Client shall reproduce and include the copyright notice and any other notices that appear on the original copy of the Products, Software or User Materials on any copies made thereof by Client in any media. Client may not remove or alter any such notices on the original copy.

16. Client Confidential Information. Health iPASS acknowledges and agrees that Client is the owner of all data created by Client which is provided to Health iPASS such as, but not limited to, Client's schedule of appointments, coded encounters and similar information. Except to the extent such information has been licensed by Client under Section 15(d), Health iPASS agrees that it claims no ownership, right, title or interest in or to any of Client Confidential Information and understands that this Agreement does not provide Health iPASS with title to or ownership of any of Client's information as described herein. Client Confidential Information, and information regarding Client's patients' medical condition and treatment, shall remain confidential and shall not be released by Health iPASS.

17. Limitations on Use. Notwithstanding any other provision of this Agreement, Client shall not:

(a) reproduce, record, videotape, capture in electronic audio or video form, distribute, transmit, transfer, or disclose, directly or indirectly, in any form, by any means, or for any purpose, Health iPASS Confidential Information, except Client may disclose such Health iPASS Confidential Information to Client's employees who need to know such information in the performance of the job if they have been advised of the obligations of confidentiality set forth herein and have agreed to abide by same;

(b) disclose or disseminate Health iPASS Confidential Information to any third party;

(c) copy, modify, or distribute the Software (electronically or otherwise) or the User Materials, or any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized by Health iPASS in this Agreement, or in a separate written agreement signed by a duly authorized representative of Health iPASS;

(d) use the Products, Software or Hardware for any purposes in any manner not permitted under this Agreement;

(e) decompile, reverse assemble or otherwise reverse engineer the Software, or otherwise attempt to determine the Software's underlying source code;

(f) import, add, modify or delete data in the Software database by any method other than direct data entry through the application or through a Health iPASS -developed Interface, unless approved by Health iPASS in advance and in writing;

(g) use the Products or Software to process anything other than Client or Client's patients' data;

(h) sell, transfer, lease, assign, or sublicense Client's right to access the Software without Health iPASS' prior written consent;

(i) install the server-portion of the Software anywhere but the Designated Location without Health iPASS' prior written consent (which will not be unreasonably withheld);

(j) move any kiosk from the location where it was installed at Client's Designated Location;

(k) take any other action in derogation of Health iPASS' intellectual property rights in respect of the Software, User Materials or other Health iPASS Confidential Information, unless absolutely necessary due to then exigent circumstances. Client authorizes Health iPASS to enter Client's premises in order to inspect the Software at any time during regular business hours to verify compliance with the terms of this Agreement.

18. Warranties.

(a) Health iPASS hereby represents to Client the following: (i) Health iPASS has developed, owns, or possess all rights and interests in the Hardware, Products, and Software necessary to enter into this Agreement; (ii) Health iPASS has full authority to execute and perform this Agreement; (iii) Health iPASS' execution and performance of this Agreement will not materially violate any applicable law or materially breach any existing agreement to which Health iPASS is bound; and (iv) Health iPASS possesses the third party licenses for the third party software utilized by Health iPASS in connection with its obligations under this Agreement.

(b) Except as expressly set forth in this Agreement, the Products, Software and Hardware are provided "AS IS." For any breach of any warranty other than that relating to Uptime, Client's sole and exclusive remedy, and Health iPASS' entire liability and obligation, shall be, at Health iPASS' election, to: (i) correct the Software, provide Client with new Hardware, repair the Hardware or correct the User Materials, or (ii) provide Client with an Update to the Software, whichever is, in Health iPASS' sole determination, reasonably appropriate, provided that no change may be made hereunder to the Software which modifies or deletes any material function of the Software. Client's sole remedy for Health iPASS' failure to meet the Uptime goal is set forth in Section 12. IF ANY PROBLEM, OPERATIONAL FAILURE OR ERROR OF THE SOFTWARE OR HARDWARE HAS RESULTED FROM ANY ALTERATION OF THE SOFTWARE OR HARDWARE (EXCEPT IF DIRECTLY BY HEALTH IPASS UNDER ITS WRITTEN DIRECTION), ACCIDENT, ABUSE OR MISAPPLICATION, THEN, AT HEALTH IPASS' SOLE OPTION, THIS WARRANTY SHALL BE NULL AND VOID.

(c) Client hereby warrants to Health iPASS the following: (i) Client's execution of this Agreement will not violate the terms of any pre-existing agreement between Client and a third party, and (ii) Client has full power and authority and is duly authorized to execute and perform the obligations under this Agreement.

(d) OTHER THAN AS EXPRESSLY SET FORTH ABOVE, HEALTH IPASS DOES NOT MAKE OR PROVIDE ANY EXPRESS OR IMPLIED WARRANTIES, CONDITIONS, OR REPRESENTATIONS TO CLIENT OR ANY OTHER PERSON WITH RESPECT TO THE SOFTWARE, THE HARDWARE, THE USER MATERIALS, OR ANY UPDATES, INTERFACES, SERVICES OR WORKS OF AUTHORSHIP PROVIDED HEREUNDER, OR OTHERWISE REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED AND DISCLAIMED.

(e) HEALTH IPASS PROVIDES NO WARRANTY ON ANY THIRD PARTY SOFTWARE AND/OR HARDWARE NOT MANUFACTURED BY HEALTH IPASS. EXCEPT AS SET FORTH IN THIS AGREEMENT, HEALTH IPASS WILL NOT BE RESPONSIBLE FOR ANY THIRD PARTY SOFTWARE, THIRD PARTY SERVICES AND/OR HARDWARE NOT PROVIDED BY HEALTH IPASS.

19. Limitation of Liability; Exclusion of Consequential Damages.

(a) CLIENT ACKNOWLEDGES AND AGREES THAT IN NO EVENT SHALL HEALTH IPASS OR ANY OF HEALTH IPASS'S OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES BE LIABLE TO CLIENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF GOODWILL, LOST PROFITS, LOST DATA OR LOST OPPORTUNITIES, IN ANY WAY RELATING TO THIS AGREEMENT OR RESULTING FROM THE USE OF OR INABILITY TO USE THE SOFTWARE OR THE PERFORMANCE OR NON-PERFORMANCE OF ANY HARDWARE, THIRD-PARTY SOFTWARE AND/OR SERVICES, INCLUDING THE FAILURE OF ESSENTIAL PURPOSE, EVEN IF HEALTH IPASS HAS BEEN NOTIFIED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING, AND WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

(b) IF THE SOFTWARE OR ANY REPORT OR INFORMATION GENERATED BY THE SOFTWARE IS USED IN CONNECTION WITH ANY DIAGNOSIS OR TREATMENT BY CLIENT AND/OR ANY OF CLIENT'S EMPLOYEES, AGENTS, REPRESENTATIVES, AND THE LIKE, CLIENT SHALL ACCEPT ALL RESPONSIBILITY IN CONNECTION THEREWITH, INCLUDING RESPONSIBILITY FOR INJURY, DAMAGE AND/OR LOSS RELATED TO SUCH DIAGNOSIS OR TREATMENT, IRRESPECTIVE OF WHETHER SUCH INJURY, DAMAGE AND/OR LOSS RESULTS FROM CLIENT'S USE OF THE SOFTWARE.

(c) IN NO EVENT WILL HEALTH IPASS'S LIABILITY IN THE AGGREGATE FOR ANY DAMAGES FOR ANY MATTER ARISING UNDER THIS AGREEMENT EVER EXCEED THE FEES PAID BY CLIENT TO HEALTH IPASS HEREUNDER DURING THE PRIOR 12 CALENDAR MONTHS, REGARDLESS OF

THE FORM OF ACTION, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

(d) Client represents and warrants to Health iPASS that Client is a sophisticated purchaser and acknowledges and agrees that the allocation of risks in this Agreement is reflected in the Fees paid by Client to Health iPASS, that Health iPASS is unable to test the Products, Software and Hardware under all possible circumstances, that Health iPASS cannot control the manner in which Client uses the Software, and that the allocation of risks under this Agreement is reasonable and appropriate under the circumstances.

(e) IN NO EVENT SHALL HEALTH IPASS BE LIABLE FOR ANY CLAIM BROUGHT BY CLIENT MORE THAN 24 MONTHS AFTER CLIENT KNEW OR SHOULD HAVE KNOWN OF THE ISSUE GIVING RISE TO THE CLAIM.

20. Indemnification.

(a) By Client. Client shall defend and indemnify Health iPASS and its licensors from and against any and all losses, damages, liabilities and costs, including reasonable legal fees (collectively, “Losses”) incurred in connection with any allegation, claim, action, suit, or proceeding made or brought against Health iPASS or its licensors arising out of or related to any of the following: (a) Client’s use of the System or the results obtained therefrom; (b) Client’s breach of this Agreement or violation of applicable law; (c) any content or data of Client provided or otherwise made available to Health iPASS or its licensors, or its or their use, storage, or transmission thereof; (d) any claim brought by Client’s patients against Health iPASS; (e) Health iPASS’ breach of any agreement with a third party (including any of its licensors), to the extent due to the acts or omissions of Client, (f) any unauthorized use of the Software or Hardware by Client, any employee, contractor, agent, representative or any other person, firm or entity accessing or using the Software or Hardware through Client; (g) any unauthorized use of any Health iPASS Confidential Information; or (g) Client’s gross negligence or willful misconduct.

(b) By Health iPASS. Health iPASS shall indemnify and defend Client, its affiliates, and the officers, directors, employees, agents and representatives thereof, from and against Losses suffered or incurred by any of the foregoing arising out of, or in connection with, any third party claim, demand, cause or causes of action based upon or arising out of: (i) any unauthorized use of any of Client Confidential Information by Health iPASS; (ii) Health iPASS’ breach of any of Health iPASS’ obligations, representations, warranties or covenants under this Agreement; (iii) Health iPASS’ gross negligence or willful misconduct; or (iv) any claim against Client by a third party that alleges that Health iPASS’ Software or any Update infringes such third party’s patent or copyright rights. If Health iPASS believes that its Software may have violated a third party’s intellectual property rights, Health iPASS shall choose to either modify the applicable Software or obtain a license to allow for Client’s continued use. Health iPASS shall not indemnify Client if Client alters the Products or Software or if Client use a Product or Software version that has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Software that was provided by Health iPASS to users or if

the Software is used other than in accordance with the terms of use or the User Materials. This section provides Client's exclusive remedy for any infringement claims or damages.

(c) Procedures. With respect to any such Losses, the indemnified party shall (i) promptly give written notice thereof to the indemnifying party, (ii) give the indemnifying party sole control of the defense and settlement of the applicable claim (provided that the indemnifying party shall not settle any claim unless it unconditionally releases indemnified party of all liability), and (iii) provide to indemnifying party, at indemnifying party's expense, reasonable assistance. The indemnified party's failure to comply with any of the proceeding terms shall reduce or limit indemnifying party's obligations, responsibilities or liabilities to defend and indemnify only to the extent that indemnifying party's interests are prejudiced thereby.

21. Rights to Injunctive Relief. Recognizing and acknowledging that any use or disclosure of the Software or Health iPASS Confidential Information by Client in a manner inconsistent with the provisions of this Agreement may cause Health iPASS irreparable harm for which other remedies may be inadequate, Client acknowledges that Health iPASS shall have, in addition to all other rights and remedies Health iPASS may have hereunder or under applicable law, the right to seek immediate injunctive or other equitable relief from a court of competent jurisdiction as may be necessary and appropriate to prevent any unauthorized use or disclosure of any such Software or other Health iPASS Confidential Information (without bond or requirement for proof of actual or likely damages) and that, in connection therewith, Client shall not oppose such injunction on the grounds that an adequate remedy is available at law.

22. Publicity. Client consents to the public use by Health iPASS of Client's name and logo as a customer of Health iPASS, including on Health iPASS' website and in Health iPASS' marketing materials.

23. Covenant Not to Solicit or Hire. Each party recognizes the expense and time associated with training its employees and contractors so as to be a productive asset. As such, efforts by a party, whether for its own account or for the account of any other person or other business entity, to interfere with the other party's relationship with or endeavor to entice away from, solicit or deal with any person or other business entity who or which at any time during the term of this Agreement was an employee, contractor, consultant or agent of the other party's will negatively impact a party's business as well as cause such party substantial expense to re-hire, re-train and/or re-acquire a replacement employee, contractor, and/or business entity. Accordingly, except with the other party's prior written permission, each party agrees that during the term of this Agreement, and for one year thereafter, it shall not hire any of the other party's employees, contractors, consultants or agents. If a party violates this provision, then such hiring party will pay the other party the annual salary (or in the case of a business entity, contractor, consultant or agent, fee) previously paid to that departing individual or the new salary to be paid to such departing employee/ business entity, whichever is greater. The parties agree that such amounts shall not be and are not penalties but rather liquidated damages associated with the costs involved in recruiting, re-training and/or re-establishing a replacement personnel/business entity. Each party shall give notice of its intention to solicit or hire and seek permission to hire an employee of the other no later than 30 days prior to making an offer to any such individual.

24. General Provisions.

(a) Notices/Shipment. Any notice required to be given or made herein shall be given or made in writing to the parties at the addresses provided (or such other address as the parties may hereafter designate in writing), and shall be hand delivered, sent by certified mail, or sent by national overnight courier (e.g., FedEx) to the address set forth below (or to an updated address). If to Client, notice shall be delivered to the address provided in the Order Form. If to Health iPASS, notice shall be provided to the address noted below. Notices delivered personally or via overnight mail shall be effective upon delivery, and notices delivered by regular U.S. shall be deemed effective five business days after deposited in an official U.S. Postal Service mailbox. Prices are FOB Origin, Freight collected and title and risk of loss shall pass to Client upon shipment by Health iPASS and/or its agents or suppliers/vendors.

If to Health iPASS:

501 Union St
Ste 545 PMB 49274
Nashville, TN, 37219-1876
Attn: Curtis Bauer, CEO

With a copy to:

SphereCommerce, LLC
Attn: General Counsel
legal@spherecommerce.com

(b) Governing Law, Jurisdiction and Venue. This Agreement, and all actions, causes of action, or claims of any kind (whether at law, in equity, in contract, in tort, or otherwise) that may be based upon, arise out of, or relate to this Agreement, or the negotiation, execution, or performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, including without limitation Texas laws relating to applicable statutes of limitation, without regard to applicable conflicts of laws provisions or principles of comity which would cause this Agreement to be interpreted or governed by the applicable law of any state other than the State of Texas. Any such litigation shall be subject to the exclusive jurisdiction of courts in Dallas, Texas.

(c) Jury Trial Waiver. THE PARTIES HERETO AGREE THAT NO PARTY SHALL REQUEST A TRIAL BY JURY IN THE EVENT OF ANY DISPUTE BETWEEN THEM CONCERNING THIS AGREEMENT OR ANY CLAIMS OR TRANSACTIONS IN CONNECTION HERewith, IN EITHER A STATE OR FEDERAL COURT, THE RIGHT TO TRIAL BY JURY BEING EXPRESSLY WAIVED BY HEALTH IPASS AND CLIENT. EACH OF HEALTH IPASS AND CLIENT ACKNOWLEDGES THAT SUCH WAIVER IS MADE WITH FULL KNOWLEDGE AND UNDERSTANDING OF THE NATURE OF THE RIGHTS AND BENEFITS

WAIVED HEREBY, AND WITH THE BENEFIT OF ADVICE OF COUNSEL OF ITS CHOOSING.

(d) Modifications and Waivers. This Agreement may not be modified except by a writing signed by authorized representatives of both parties. A waiver by either party of its rights hereunder shall not be binding unless contained in a writing signed by an authorized representative of the party waiving its rights. The non-enforcement or waiver of any provision or right under this Agreement shall not constitute or imply a waiver of such provision or right on any other occasions unless expressly so agreed in writing. No custom, usage, or other regular practice or method of dealing between the parties hereto shall be used to modify, supplement, or alter in any manner the terms of this Agreement.

(e) Relationship of Parties. This Agreement shall not be construed to create any employment, partnership, joint venture or agency relationship between the parties hereto, or to authorize either party to enter into any commitment or agreement with any third party that is binding on the other.

(f) No Assignment. Client may not assign or otherwise transfer this Agreement or any of its rights or obligations hereunder whether by operation of law or otherwise, without first obtaining the written consent of Health iPASS, to be granted or withheld in Health iPASS' sole discretion.

(g) Force Majeure and Other Performance Delays. Health iPASS shall not be liable for failure to perform any of its obligations hereunder if such failure is caused by an event outside its reasonable control, including but not limited to, an act of God, act or threat of terrorism, shortage of materials and/or supplies, strike or labor action, war or threat of military or significant police action, natural disaster, pandemic, or other cause beyond its reasonable control. Client's delays or non-performance shall not excuse or relieve Client's obligation to make any payment to Health iPASS that may be due under this Agreement, regardless of whether the Installation has occurred or whether Client is using the Software and the Hardware.

(h) Severability. If any provision of this Agreement is declared invalid, illegal or unenforceable by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability, so that the remainder of that provision and all remaining provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable law.

(i) Survival. The following Sections of this Agreement survive the termination of this Agreement: 1, 4, 15, 16, 17, 18, 19, 20, 21, 23, and 24.

(j) Uniform Commercial Code. To the extent the Uniform Commercial Code of any jurisdiction applies to this Agreement or any order, this Agreement and the particular order shall control where there is a conflict between the Uniform Commercial Code and such order or this Agreement.

(k) Ambiguities. Each party and its counsel have materially participated in the drafting of this Agreement, and consequently any rule of contract interpretation that ambiguities, if any, in the writing be construed against the drafter shall not apply.

(l) Term of Use; Privacy Policy. The Terms of Use and Privacy Policy set forth on Health iPASS website are hereby incorporated into this Agreement by their reference.

(m) Legal Fees. In any action between the parties to enforce any term of this Agreement, the prevailing party shall be entitled to recover reasonable expenses, including reasonable legal fees.

(n) Entire Agreement. This Agreement and the Order Form hereto is the complete and exclusive agreement of the parties with respect to the Software and Hardware. This Agreement and the Order Form, together with any Addenda: (i) contain the entire understanding between the parties with respect to the subject matter set forth herein, and neither party is relying on any representations or warranties other than those found in this Agreement, (ii) supersedes all prior and contemporaneous negotiations, agreements, contracts, commitments and understandings, both verbal and written, between Client and Health iPASS, and (iii) does not operate as an acceptance of any conflicting terms or conditions and shall prevail over any conflicting provisions of any purchase order, request for proposal, request for information or any other Client document.

(o) Headings. The headings used in the Agreement are solely for convenience of reference and shall not be used in interpreting this Agreement.

(p) Effectiveness. Each party's signature on the Order Form constitutes such party's signature to this Agreement.

EXHIBIT A

Advanced eBilling (AEB)	Post Visit Billing via Text/Email to Pay with client facing dashboard and analytics reporting; Real time payment posting to integrated PMs on supported practice management systems
RCM Complete	Pre Visit Digital Check In and Post Visit Billing <i>(combo of line item above and line item below)</i>
Express Check-in (was Intake)	Pre visit digital check in to collect demographics/payments/forms via configurable rules based cadence; Real time client dashboard with time of service check in tools, reporting, and analytics; Real time data writeback to integrated PM's on supported practice management systems
Cost Estimator Only	Estimate cost of service pre/post visit or time of service based on clinic rate card and patient's insurance
OPTIONAL PRODUCTS:	
2 Way Text Messaging	Two way SMS with client facing patient inbox Patient bulk/batch text messaging outside of general appointment/payment notifications and reminders, will be billed at a \$0.02 per message
Bulk Messaging	One way SMS to send patients messages (real time or pre-scheduled)
Book my Doc	Patient facing Self Scheduling tool with clinic facing scheduling queue
Eligibility (roadmap item)	On demand eligibility checks with real time integration to clearing house Any eligibility verification requests outside of systematically controlled inquiries (i.e. manual inquiries), will be billed at a \$0.03 per inquiry rate
Full Payment Processing (HIP Pay)	Merchant Processing and Gateway services
Gateway Only	TrustCommerce Gateway to Merchant Vendor service
Foreign Gateway Only	Direct Integration from Health iPASS to Gateway Vendor service <i>(Instamed, WorldPay, CardConnect, Nextech Pay)</i>
Online BillPay	Patient facing bill pay link with real time balance checks (website embed available)
In-Clinic Payment	In Clinic or over the phone one-time payments (hardware optional)
Paper Statement	Post Visit Billing paper statements and suppression via configurable rules based dunning cycling [Additional fees for paper statement services may apply. Third party price increases related to paper statement services will be passed to Client. Statement design services and mapping and custom programing are additional service fees. Client may be required to submit a postage deposit for paper statement services.]
Custom Work	Client requested custom products, services or integrations may be agreed upon in writing in a Statement of Work that will detail the services and fees for such customization.

EXHIBIT B

HEALTHIPASS BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Business Associate Agreement” or the “BAA”) is effective as of the date of the Effective Date on the Order Form (the “BAA Effective Date”) by and between Client (the “Covered Entity” or “CE”), and Health iPASS, Inc. (the “Business Associate” or “BA”).

WHEREAS, CE has engaged BA to perform services or provide goods, or both; and

WHEREAS, CE possesses Individually Identifiable Health Information (“Protected Health Information” or “PHI”) that is defined and protected under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the regulations promulgated thereunder, as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH), and is permitted to use or disclose such information only in accordance with such laws and regulations; and

WHEREAS, BA may receive PHI from CE, or create, receive, maintain or transmit such information on behalf of CE, in order to perform certain services or provide certain goods, or both;

NOW, THEREFORE, CE and BA agree as follows:

- Permitted Uses and Disclosures. BA may use and disclose PHI only: as required by law; in connection with the contracted services in its underlying agreement(s) or other transactions with CE; and for the management and administration of BA in connection with such services, provided that (1) BA’s use or disclosure of PHI is the minimum necessary to complete the contracted services on behalf of CE; and (2) BA’s use or disclosure of PHI does not violate HIPAA or HITECH. If applicable, BA may use and disclose PHI to provide Data Aggregation Services relating to the health care operations of CE.
- Safeguards. BA shall use all appropriate safeguards, such as encryption, to prevent the unauthorized access, acquisition, use, or disclosure of PHI, whether the PHI is electronic or otherwise. With respect to electronic PHI, BA shall also comply with Subpart C of 45 CFR Part 164 (the “Security Rule”). BA also agrees to comply with requests from CE with respect to CE’s information security assessment process.
- Restrictions on Agents. Except as required by law or as permitted by this agreement, BA shall not disclose PHI to its agents, including but not limited to contractors, subcontractors, assignees, or any other third party (“subcontractors”). BA shall ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of BA in connection with the contracted services for CE agree to terms and conditions at least as stringent as those that apply to BA with respect to that information, in accordance with HIPAA and HITECH. BA agrees that, upon request of CE, BA will obtain information from all subcontractors sufficient to demonstrate subcontractors’ compliance with the security requirements of HIPAA, HITECH and this BAA.
- Documentation of Disclosures. BA shall document disclosures of PHI and related information required for CE to respond to an individual who requests an accounting of such disclosures pursuant to 45 CFR 164.528. Such documentation shall include the date of disclosure, the name of the recipient,

recipient's address if known, a brief description of the PHI disclosed, and a brief statement of the purpose and basis of the disclosure. BA shall provide such documentation to CE in the time and manner requested by CE. If BA receives a request for an accounting from an individual, BA shall immediately notify CE of the request to allow CE to provide the accounting to the individual in a timely manner.

6. Access to PHI. BA shall make available to CE PHI in a Designated Record Set in the time and manner requested by CE, but in any event within ten (10) days, so CE may comply with its obligations under 45 CFR 164.524 and applicable state law regarding an individual's right of access to the individual's PHI. If BA receives a request for access from an individual, BA shall notify the CE of the request as soon as possible.

7. Access to Books and Records. BA shall make available to CE, upon reasonable notice, its internal practices, books and records, including its policies and procedures, related to the use and disclosure of PHI, that relate to services provided to CE, or, upon request, to the Secretary of Health and Human Services or the Secretary's designated representative, for determination of CE's compliance with applicable law.

8. Amendments to PHI. BA shall provide CE access to CE's PHI in the time and manner requested by CE for the purposes of amending the PHI. BA shall incorporate any amendments to PHI as directed by CE.

9. Compliance with Privacy Rule. To the extent BA is to carry out any obligation of the CE under the Privacy Rule (Subpart E of 45 CFR Part 164), BA shall comply with the requirements of Subpart E that apply to the CE in the performance of such obligations.

10. Unauthorized Access, Acquisition, Use or Disclosure of PHI. BA shall immediately report to CE any known or reasonable belief of access, acquisition, use or disclosure of PHI in violation of this BAA or applicable law and any security incident of which it becomes aware. Any report to CE pursuant to this provision shall include all information that the Covered Entity would be required to include in notification to the individual under 45 CFR §164.404(c), including but not limited to the identities of the individuals affected. BA shall also maintain a record of any such violations and shall provide such record to CE upon CE's request.

11. Mitigation. BA shall mitigate to the extent practicable any harmful effect from any access, acquisition use or disclosure of PHI in violation of this BAA or applicable law.

12. Term. This BAA shall remain in force and effect so long as BA provides any services to CE unless terminated pursuant to the terms of this BAA.

13. Termination. CE may terminate this BAA and/or any underlying agreements immediately and without notice if: 1) BA breaches its privacy obligations under, or any material term of, this BAA; 2) BA is named as a defendant in a criminal proceeding for the violation of HIPAA, HITECH, or any regulation promulgated thereunder; or 3) BA is found or stipulated in a civil or administrative proceeding to have violated HIPAA, HITECH, or any regulation promulgated thereunder.

14. Survival of Privacy Obligations. BA's privacy obligations under applicable laws and regulations shall survive the end or termination of this BAA.

15. Return or Destruction of Records. Upon expiration or termination of this BAA, BA shall, as specified by CE, return or destroy all PHI that is received from CE or created, received, maintained or transmitted on behalf of CE and maintained by BA in any form. BA shall not retain copies of such PHI. To the extent that CE determines it is not feasible for BA to return or destroy such PHI, BA's obligations to safeguard the PHI shall survive the termination of this BAA.
16. Reporting. Both parties shall comply with reporting requirements as set forth in HIPAA, HITECH, and any regulations promulgated thereunder.
17. Amendment. CE and BA shall promptly amend this BAA as necessary to maintain compliance with HIPAA, HITECH, and any other privacy, security, or other applicable legal requirements. Amendments shall be written and signed by authorized representatives of both parties.
18. Legal Notices and Contact. All notices related to this BAA made to Business Associate will be addressed to contact listed in the MSA.
19. Regulatory Reference. Any reference in this Agreement to a section of HIPAA, HITECH, or any regulations promulgated thereunder, means the section as in effect or as amended.
20. Definitions. Unless otherwise specified, all terms used in this Agreement shall have the same meaning as those terms in the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
21. Construction. The Business Associate Agreement title and section titles are for descriptive purposes only and shall not control or alter the meaning of this BAA as set forth in the text. In this BAA, the singular shall include the plural and the neutral gender shall include the masculine and feminine genders, and vice versa, unless the context otherwise requires. Unless otherwise specified, references to sections in this BAA are to the sections of this BAA. This BAA shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. For purposes of this BAA, (a) any list or examples following the words "include," "includes," and "including" shall be interpreted without limitation to the generality of the preceding words; and (b) the word "or" is not exclusive.
22. Validity and Severability. If any one or more of the provisions contained in this BAA is found, for any reason, to be invalid, illegal, or unenforceable in any jurisdiction in any respect, then and in any such event, such invalidity, illegality or unenforceability will not affect any other provisions of this BAA or invalidate or render unenforceable such term or provision in any other jurisdiction. The Parties shall use good faith efforts to restate the invalid, illegal or unenforceable provision(s) to reflect the original intentions of the Parties as nearly as possible in a mutually acceptable manner in accordance with applicable laws.
23. No Assignments. Neither Party shall assign, transfer, convey, or otherwise dispose of this BAA or their right or obligation under this BAA to any third party without the prior written approval of the other Party. Any purported assignment in violation of this Section shall be null and void, and the non-assigning Party shall be entitled to terminate this BAA and the underlying Agreement(s) immediately, with the effective date of such termination being the date of such purported assignment. No assignment shall relieve the assigning Party of any of its obligations hereunder unless the non-assigning Party enters into a novation releasing the assigning Party of its obligation under the Agreement. Any termination pursuant to this Section is without prejudice to the non-assigning Party's claim for damages.

24. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

25. No Third Party Beneficiaries. Except as otherwise specifically set forth, this BAA is not intended to benefit or be enforceable by any individual or entity other than the Parties and their respective successors and permitted assigns. No third party shall obtain any right under this BAA, or shall by reason of any provisions herein, make any claim against any of the Parties.

26. No Waiver. No action or inaction by either Party shall be construed as a waiver of such Party's rights under this BAA or as provided by applicable law. No term of this BAA may be waived except by an express agreement in writing, identified as a waiver to this BAA, signed by the waiving Party. The failure or delay of a Party in enforcing any of its rights under this BAA shall not be deemed a continuing waiver of such right. The waiver of one breach hereunder shall not constitute the waiver of any other or subsequent breach.

27. Original Agreement/Counterparts. This BAA may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the New York Electronic Signatures and Records Act and the U.S. federal E-SIGN Act of 2000) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

IN WITNESS WHEREOF, the parties hereto have duly executed this BAA as of the BAA Effective Date.

Covered Entity

HEALTH IPASS, INC.
Business Associate

Signature of Authorized Representative

Signature of Authorized Representative

Name of Authorized Representative

Name of Authorized Representative

Title of Authorized Representative

Title of Authorized Representative

TRUSTCOMMERCE SERVICES PARTICIPATION ADDENDUM

If Client elects to utilize the gateway services provided by TrustCommerce, then this Addendum shall apply. TrustCommerce and Health iPASS are fully owned subsidiaries of SphereCommerce, LLC. This TrustCommerce Services Participation Addendum (this “Addendum”) supplements, and is hereby made a part of, the Master Subscription Agreement between Client and Health iPASS (“Agreement”). This Addendum governs the provision of the products and services provided to Client by TCPP, LLC dba TrustCommerce (“TrustCommerce”). By using or accessing the TrustCommerce products or services, Client agrees to the applicable terms and conditions set forth in this Addendum. The TrustCommerce products and services are provided to Client by TrustCommerce, and not Health iPASS and Client acknowledges that Health iPASS is not liable to Client in any way with respect to such products or services.

The TrustCommerce products and services, transactions processed, and the other matters contemplated under this Addendum are subject to the terms and conditions of the Agreement, as applicable, except to the extent the terms of this Addendum directly conflict with another provision of the Agreement, in which case the terms of this Addendum will control.

1. Definitions. Capitalized terms used herein shall have the meanings given to such terms as set forth in this Addendum or as defined elsewhere in the Agreement.

1.1 “Affiliate” means a Person that, directly or indirectly, (i) owns or controls such Person, or (ii) is under common ownership or control with such Person.

1.2 “Control Panel” means an interface provided by TrustCommerce to Client that enables Client to access and manage transactions displayed on a website via a web browser.

1.3 “Customer” means a person or entity that makes a purchase of goods or services from Client, the transaction for which utilizes the TC Services.

1.4 “Client’s Systems” means Client’s point of sale systems or any facility where Client processes and/or stores transaction data.

1.5 “Payment Messages” means messages that relate to Card transactions, including, but not limited to, the terms “authorization,” “capture,” “void,” “credit,” “decline,” “failed,” “did not respond,” “reversal,” “post-authorization capture,” and “successful settlement request”.

1.6 “Person” means a person or entity other than Client, Health iPASS or TrustCommerce.

1.7 “TC Communicator” means the software, rules and methodology developed by TrustCommerce to be used by Client to connect

Client’s website to the TC Server to enable transmission of transaction data between Client and the TC Server.

1.8 “TC Marks” means the names, logos, emblems, brands, service marks, trademarks, trade names, tag lines or other proprietary designations of TrustCommerce.

1.9 “TC Server” means the servers operated by or for TrustCommerce that communicate with Client’s servers to permit access to the TC Services.

1.10 “TC Services” means those services described in Section 6 below, the object code version of the TrustCommerce software related to such services, including the TC Communicator, and any related updates (including software maintenance or bug fixes) and any materials, documentation and derivative works released by TrustCommerce from time to time. For the avoidance of doubt, the term software in the preceding sentence does not include any software that may be obtained by Client separately from the TC Services.

1.11 “Third Party Services” are the services, products, promotions or applications provided by someone other than TrustCommerce.

2. Term and Termination. The terms and conditions of this Addendum shall become effective on the day TrustCommerce begins providing the TC Services to Client and shall terminate upon termination of the Agreement unless otherwise terminated as set forth herein. This Addendum shall automatically renew concurrently with the Agreement unless either party gives the other party written notice of its intention not to renew this Addendum at least ninety (90) days prior to the end of the current term. The TC Services may be

terminated for convenience at any time by TrustCommerce upon at least thirty (30) days' written notice to Client. In addition, TrustCommerce may suspend the TC Services, in whole or in part, or terminate this Addendum if (i) TrustCommerce determines that Client is using the TC Services for any fraudulent, illegal, or unauthorized purpose, (ii) TrustCommerce terminates its agreement with any third parties that are involved in providing the TC Services, or (iii) TrustCommerce otherwise decides to discontinue providing any part of the TC Services.

3. Default. If either party defaults in the performance of any of its obligations hereunder, and if any such default is not corrected within thirty (30) days after notice in writing, the non-defaulting party may terminate this Addendum and the TC Services upon written notice. This Addendum and the TC Services may be terminated by either party, upon written notice: (i) upon the institution by the other party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of its debts, which are not dismissed or otherwise resolved in its favor within sixty (60) days thereafter; (ii) upon the other party's making a general assignment for the benefit of creditors; or (iii) upon the other party's dissolution or ceasing to conduct business in the ordinary course.

4. Fees. Client shall pay the fees for the TC Services as set forth in the Order Form of the Agreement. All sums due, payable and unpaid for over thirty (30) days shall incur a late fee of 1.5% per month or the maximum amount allowed by law, whichever is less.

5. License Grant. During the term of this Addendum, TrustCommerce grants to Client a personal, limited, non-exclusive, revocable, non-transferable license, without the right to sublicense or assign in any way, to electronically access and use the TC Services for Client's internal business use solely in the United States to manage Client's establishment and conduct associated point of sale activities within the United States in accordance with this Addendum. For purposes of this Addendum, "United States" does not include U.S. territories or possessions. The TC Services are for Client's internal business use only. This Addendum does not grant to Client any rights to the TC Marks. All intellectual property and proprietary rights in or related to the TC Services and the TC Marks are and will remain the sole and exclusive property of TrustCommerce, and any and all right, title and interest associated with the TC Services not expressly granted by TrustCommerce in this Addendum are deemed withheld.

6. TC Services. The TC Services applies only to Card transactions sent from Client to its payment processor for authorization and settlement pursuant to the Agreement, and specifically excludes electronic check transactions. TrustCommerce will transport data submitted by Client for authorization request from Client's Systems to such payment processor's systems. During the period when the transaction is being transmitted to the payment processor for authorization processing, all historical transaction data, including Card number and full magnetic stripe data (track data and expiration date), will be encrypted. Based on the submitted data, TrustCommerce will receive and transport the payment processor's responses to Client. TrustCommerce will provide Client access to the Control Panel via a web browser for the purposes of reporting, managing and reconciling Card transactions. TrustCommerce will also provide Client with the TC Communicator, which includes documentation and sample scripts necessary for Client to develop and test the necessary communications module. This module will enable Client's website and other systems to communicate with the TC Server.

7. Retention of Client Data. TrustCommerce will retain transaction detail concerning Client's Card transactions on the Control Panel for at least eighteen (18) months following the date on which the data relating to such transactions was first received by TrustCommerce in accordance with the TrustCommerce's data retention policy (available on TrustCommerce's TC Vault website at <https://vault.trustcommerce.com>>Account Information>Terms and Policies>Policies)

8. Responsibilities of Client. Client is responsible to comply with the following regarding its use of the TC Services:

8.1 Client is required to comply with all federal and state laws, rules and regulations applicable to it, including the Network Rules and including taking all steps required to comply with the Payment Card Industry Data Security Standards (PCI DSS). Client must ensure that all third parties and software use by Client in connection with its payment processing are compliant with PCI DSS. Use of the TC Services will not, on its own, cause Client to be compliant or eliminate Client's obligations to comply with PCI DSS or any other Network Rule.

8.2 Use of the TC Services is not a guarantee against an unauthorized breach of Client's Systems.

8.3 Client must deploy the TC Services (including implementing any upgrades to such service within a commercially reasonable period of time after receipt of such upgrades) throughout Client's Systems.

8.4 Client must establish, maintain and provide the necessary security over Client's Systems that integrate or communicate with TrustCommerce's systems, including but not limited to website(s), retail stores and call centers. Client is fully responsible for all goods or services offered for sale by it and for anyone to whom it provides access to the TC Services including any advertising for such goods or services regardless of the medium. Client is also fully liable for any promotions, whether appearing on Client's website or otherwise, proffered or offered by Client directly or indirectly in reference to any of Client's offerings. Client hereby certifies to TrustCommerce that Client is the owner of and/or has the legal right and authority to use, utilize and/or disseminate all information, data, graphics, text, video, music or intellectual property which either form a part of Client's website, are in any way or manner incorporated into Client's website, are provided by Client to its Customers or those accessing Client's website or are otherwise used or utilized by Client in its advertising or promotion through any medium available.

8.5 Client must establish and maintain appropriate and necessary integration between Client's Systems and TC Services including, but not limited to, delivering the required data to TrustCommerce's server(s) and ensuring that the data to be transmitted in conjunction with the TC Services is accurate and in the format required by TrustCommerce.

8.6 Client acknowledges that the integration and development described in this Section may require Client or Client's Internet service provider ("ISP") to use the services of a third party such as a web developer. Client hereby authorizes TrustCommerce to work with Client's designated third party to implement the TC Services contracted for under this Addendum.

8.7 Client must establish and implement a connection to the TC Server. Client is solely responsible for testing this connection and ensuring that Client's Systems are generating correct Payment Messages and receiving correct responses. When Client is satisfied that its testing is complete and successful, it must notify TrustCommerce in writing or by email of its request to initiate the TC Services.

8.8 Client will manage its business and the transactions resulting from that business including, but not limited to, all business involving its Client account, customer support, reconciliation of its Client account, and processing of its charge backs, returns and all other transaction types. Client is required to comply with the terms and conditions of the Agreement.

8.9 Client acknowledges that it is solely responsible for the maintenance and security over Client's Systems including any PCI data maintained or passed by Client's Systems to TrustCommerce's systems.

8.10 If Client is provided an encryption key, Client acknowledges and agrees that the key is to be treated as TrustCommerce's confidential information and that TrustCommerce is the sole owner of the encryption key. Passing the encryption key on to third parties is strictly prohibited. Client agrees to be in compliance with the audit specifications established by the American National Standards Institute's (ANSI) Technical Report 39 (TR-39) and PCI PIN Transaction Security (PTS) standards to protect the encryption key, and will not use the encryption key unless such standards are in place. Client is not permitted in any way to decompile, reverse engineer, or segregate out any component of the encryption key, nor make such encryption key accessible to third parties other than as provided for herein. Client is not allowed to install by way of injection the encryption key to any POS device without TrustCommerce's express prior written consent.

8.11 Client will only provide the following data to TrustCommerce: payor/cardholder name; transaction (order) ID; Card number; Card expiration date; checking account number (if applicable) and transaction dollar amount. TrustCommerce does not require any additional data to process a payment transaction.

8.12 Client will only enter and/or transmit Primary Account Number (PAN) data to the appropriate fields as represented within the TC Ops Guide. TrustCommerce expressly precludes the entry and/or transmission of any PAN data, encrypted or not, in any field not designated for such information by Client.

8.13 Client is solely responsible for ensuring that its account numbers, passwords, security questions and answers, login credentials and any other security or access information used by Client to use or access the TC Services are kept safe and confidential. Client must prevent unauthorized access to and use of any Account Data controlled by Client. Client will: (a) implement appropriate measures designed to: (1) ensure the security and confidentiality of Account Data; (2) protect against any anticipated threats or hazards to the security or integrity of Account Data; (3) protect against unauthorized access to or use of Account Data that

could result in substantial harm or inconvenience to any customer and (4) ensure the proper disposal of Account Data; and (b) take appropriate actions to address incidents of loss, theft or unauthorized access to or use of Account Data. The Control Panel contains confidential information of both TrustCommerce and Client including but not limited to: cardholder billing information; Client billing information; custom fields; TrustCommerce developer guides; TrustCommerce training videos; TrustCommerce terms and policies; billing and invoice information; and reporting data. This data is considered “Confidential Information” pursuant to the Agreement. Client will advise third parties to whom they give access to the Control Panel of the confidential nature of the information contained therein and will enforce the terms and restrictions provided for in this Agreement related to confidentiality, and ensure that the third parties agree to abide by the same. Client agrees to be liable for any and all damages arising out of a breach of obligation of confidentiality and all use and misuse of the Confidential Information by Client or by the third parties to whom Client provides access.

8.14 Client will comply with all applicable Network Rules (including, without limitation, applicable data security rules). Client is responsible for all electronic communications sent to TrustCommerce or to any third-party containing Account Data and for all uses of the TC Services and any software. Client must immediately notify TrustCommerce if Client becomes aware of any loss, theft or unauthorized use of any Account Data. TrustCommerce reserves the right to deny Client access to the TC Services, in whole or in part, if TrustCommerce believes that any loss, theft or unauthorized use of any Account Data or access information has occurred. Client acknowledges that it is Client’s duty to notify TrustCommerce of any data security compromise and to cooperate and assist TrustCommerce in any subsequent investigation. TrustCommerce may in its sole discretion, suspend or terminate services under this Agreement for any data security compromise caused by the acts or omissions of Client or by those third parties to whom Client granted access to the Control Panel.

8.15 Client is responsible for implementing the appropriate industry standard fraud protection tools to minimize the risk of fraudulent activity including but not limited to AVS, CAPTCHA, ReCAPTCHA or similar technologies. TrustCommerce shall not be responsible for any fees and costs resulting from the use, unauthorized use, or misuse of Client’s software, website, point-of-sale equipment or Client processing account.

8.16 Client will only use the TC Services for Client’s internal business purposes in a manner consistent with this Addendum.

8.17 Client will use only unaltered version(s) of the TC Services and will not use, operate or combine the TC Services or any related software, materials or documentation, or any derivative works thereof with other products, materials or services in a manner inconsistent with the uses contemplated herein.

8.18 Client represents and warrants that Client and its affiliates, agents, contractors and/or employees must only use the following URL address to access and login to the TC Vault: <https://vault.trustcommerce.com/>. In the event that this URL is modified by TrustCommerce, TrustCommerce will provide Client with the updated URL address.

8.19 Client will promptly notify TrustCommerce of a breach of any terms of this Addendum.

9. Restrictions.

9.1 All right, title and interest in and to all confidential information and intellectual property related to the TC Services (including TC Marks, the TC Communicator, all software, the content of any materials, web screens, layouts, processing techniques, procedures, algorithms, and methods and any updates, changes, alterations, or modifications to or derivative works from such intellectual property), owned, developed or licensed by TrustCommerce at any time or employed by TrustCommerce in connection with the TC Services, shall be and will remain, as between TrustCommerce and Client, the sole and exclusive property of TrustCommerce or its licensors (as applicable), and all right, title and interest associated with the TC Services not expressly granted by TrustCommerce in this Addendum are deemed withheld. Client shall not use TC Marks in any manner, including in any advertisements, displays, or press releases, without the prior written consent of TrustCommerce.

9.2 If TrustCommerce provides Client with copies of or access to any software or documentation, including any encryption key, unless otherwise expressly stated in writing, that software and documentation is provided on a personal, non-exclusive, non-transferable, non-assignable, revocable limited license for the period of subscription to the TC Services and solely for Client to access and use the software and documentation to receive the TC Services for its intended purpose on systems owned or licensed by Client.

9.3 Client shall not and shall not permit any third party to do any of the following: (a) access or attempt to access the TC Services (or any part) that is not intended to be made available to Client or made available for public use; (b) decompile, disassemble, reverse engineer, or otherwise attempt to reconstruct or discover by any means any source code, underlying ideas or algorithms of the TC Services (or any part), except to the extent that such restriction is expressly prohibited by law; (c) modify, translate, or alter in any manner, the TC Services (or any part) or the TC Marks; (d) create derivative works of or based on the TC Services (or any part) or the TC Marks; (e) except for backup and archival purposes, directly or indirectly copy the TC Services (or any part); (f) republish, upload, post, transmit, disclose, or distribute (in any format) the TC Services (or any part) except as permitted herein; (g) access or use (in any format) the TC Service (or any part) through anytime-sharing service, service bureau, network, consortium, or other means; (h) rent, lease, sell, sublicense, assign, or otherwise transfer Client's license rights to any third party, whether by operation of law or otherwise; (i) use or ship the TC Services (or any part) outside of the United States, or access the TC Services (or any part) from outside the United States, without in any case obtaining the advance written consent of TrustCommerce; (j) remove, modify, relocate, or otherwise alter any proprietary rights notices from the TC Services (or any part) or the TC Marks; (k) perform or attempt to perform any actions that would interfere with the proper working of the TC Services, prevent access to or use of the TC Services by other users, or in TrustCommerce's reasonable judgment impose an unreasonable or disproportionately large load on TrustCommerce's infrastructure, network capability or bandwidth; or (l) use the TC Services (or any part) except as permitted herein. Client shall not take any action inconsistent with the stated title and ownership provided herein. Client will not file any action, in any forum that challenges the ownership of any part of the TC Services, any related software, materials or documentation. Failure to comply with this provision will constitute a material breach of this Addendum. TrustCommerce has the right to immediately terminate this Addendum and Client's access to and use of the TC Services in the event of a challenge by Client.

10. TC Services Limitations and Requirements.

10.1 TrustCommerce may perform maintenance on the TC Services from time to time which may result in service interruptions, delays, or errors. TrustCommerce will not be liable for any such interruptions, delays, errors, or bugs. Client agrees that TrustCommerce may contact Client in order to assist Client with the TC Services and obtain information needed to identify and fix any errors.

10.2 Client shall at all times comply with any operating procedures, requirements, or guidelines regarding Client's use of the TC Services that are posted on the TrustCommerce website or otherwise provided or made available to Client (collectively, the "TC Ops Guide"). TrustCommerce will provide Client with advance written notice of any changes to the TC Ops Guide.

11. Privacy and Data Use. All data collected from Client in connection with Client's use of the TC Services, including Customer information, transaction information and information about Client's business used with or stored in or by the TC Services (collectively, "Account Data"), is collected by TrustCommerce and not Health iPASS; therefore, the use and sharing of such Account Data is controlled by the TrustCommerce Privacy Policy (available at <http://www.trustcommerce.com/privacy-policy>). Client acknowledges and agrees that Health iPASS may access Client's Account Data upon Health iPASS's request to TrustCommerce, and Health iPASS's use of Client's Account Data is governed by the terms set forth in the Agreement.

12. Protecting Client's Information. Client is solely responsible for ensuring that its account numbers, passwords, security questions and answers, login details and any other security or access information used by Client to use or access the TC Services are kept safe and confidential. Client must prevent unauthorized access to and use of any Account Data. Client will: (a) implement appropriate measures designed to: (1) ensure the security and confidentiality of Account Data; (2) protect against any anticipated threats or hazards to the security or integrity of Account Data; (3) protect against unauthorized access to or use of Account Data that could result in substantial harm or inconvenience to any customer and (4) ensure the proper disposal of Account Data; and (b) take appropriate actions to address incidents of loss, theft or unauthorized access to or use of Account Data. Client will comply with all applicable Network Rules (including, without limitation, applicable data security rules). Client is responsible for all electronic communications sent to TrustCommerce, Health iPASS or to any third party containing Account Data and for all uses of the TC Services and any software. Client must immediately notify TrustCommerce if Client becomes aware of any loss, theft or unauthorized use of any Account Data. TrustCommerce reserves the right to deny Client access to the TC Services, in whole or in part, if TrustCommerce believes that any loss, theft or unauthorized use of

any Account Data or access information has occurred. TrustCommerce may in its sole discretion, suspend or terminate services under this Addendum for any data security compromise. Client also understands and acknowledges that Client is solely responsible for the compliance of any and all third parties that are granted access by Client to Account Data. Client also acknowledges that it is Client's duty to notify TrustCommerce of any data security compromise and to cooperate and assist TrustCommerce in any subsequent investigation.

13. Confidentiality.

13.1 Client must not use, disclose, store, sell or disseminate any Account Data except as may be allowed under this Addendum. Client acknowledges that Client will not obtain ownership rights in any information relating to and derived from Account Data. No Account Data, including any databases containing such information, may not be sold or disclosed to a Person as an asset upon a bankruptcy, insolvency or failure of Client's business.

13.2 Client will treat information supplied or otherwise made accessible by TrustCommerce, its agents or Affiliates as confidential, including without limitation, (i) Account Data, information about TrustCommerce's or its Affiliate's products, services, operations, procedures and pricing; and (ii) all documentation, computer software, source code, object code, and databases. Client receives confidential information of TrustCommerce in confidence and shall not disclose the confidential information to any third party, except as may be agreed upon in writing by TrustCommerce. Client shall safeguard all of TrustCommerce's confidential information using a reasonable degree of care, but not less than that degree of care used by it in safeguarding its own similar information or material. Upon request by TrustCommerce or upon termination of this Addendum, Client shall return to TrustCommerce or destroy all of TrustCommerce's confidential information in its possession or control.

13.3 The obligations of confidentiality and restrictions on use in this Section shall not apply to any confidential information that: (i) was in the public domain prior to the date of the Agreement or subsequently came into the public domain through no fault of Client;

(ii) was received from a third party free of any obligation of confidence of Client to the third party and which third party, to Client's knowledge, was not under an obligation to keep the information confidential; (iii) was already in Client's possession prior to receipt from TrustCommerce; or (iv) is subsequently and independently developed by Client employees, consultants or agents without use of or reference to TrustCommerce's confidential information.

13.4 Except as specifically provided for herein, this Section does not confer any right, license, interest or title in, to or under TrustCommerce's confidential information to Client. Except as specifically provided for herein, no license is hereby granted to Client under any patent, trademark, copyright, trade secret or other proprietary rights of TrustCommerce.

13.5 Client acknowledges that breach of the restrictions on use or disclosure of any of TrustCommerce's confidential information would result in immediate and irreparable harm to TrustCommerce, and money damages would be inadequate to compensate for that harm. TrustCommerce shall be entitled to equitable relief, in addition to all other available remedies, to redress any breach.

14. Disclaimer. USE OF THE TC SERVICES IS AT CLIENT'S OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE TC SERVICES ARE PROVIDED "AS IS" AND TRUSTCOMMERCE MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND (EXPRESS OR IMPLIED) TO CLIENT OR ANY OTHER PERSON, INCLUDING, WITHOUT LIMITATION, WARRANTIES REGARDING QUALITY, SUITABILITY, ACCURACY, CLIENTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON- INFRINGEMENT, OR THAT THE TC SERVICES WILL FUNCTION OR OPERATE UNINTERRUPTED OR ERROR-FREE, OR THAT THE TC SERVICES ARE SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR DOES NOT INFRINGE ON THE RIGHTS OF ANY PERSON.

15. Audit of Use. TrustCommerce may at any time and from time to time audit Client's use of the TC Services. Audits shall be conducted during regular business hours at Client's place or places of business and shall not unreasonably interfere with Client's business activities. If, as a result of any such audit, TrustCommerce identifies unauthorized use of the TC Services, Client shall pay, in addition to any fees charged in conjunction with the TC Services, the reasonable expense of TrustCommerce in conducting the audit.

16. Indemnification. Client agrees to indemnify and hold TrustCommerce harmless from and against all losses, liabilities, damages, and expenses (including reasonable attorneys' fees) arising out of or relating to: (a) Client's failure to comply with or Client's breach of, any term or condition, representation or

warranty in this Addendum, including, but not limited to the TC Ops Guide, or the Agreement; (b) Client's use of the TC Services; or (c) any other party's access and/or use of the TC Services with Client's user names, password, other appropriate security code, or any other sign on credentials/access controls for the TC Services and any software.

17. Exclusions of Consequential Damages; Limitation on Liability.

17.1 NOTWITHSTANDING ANYTHING IN THIS ADDENDUM TO THE CONTRARY, IN NO EVENT SHALL TRUSTCOMMERCE OR ITS AFFILIATES BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

17.2 NOTWITHSTANDING ANYTHING IN THIS ADDENDUM TO THE CONTRARY, TRUSTCOMMERCE AND ITS AFFILIATES' CUMULATIVE LIABILITY, IN THE AGGREGATE (INCLUSIVE OF ANY AND ALL CLAIMS MADE BY CLIENT AGAINST TRUSTCOMMERCE AND/OR ITS AFFILIATES, WHETHER RELATED OR UNRELATED) FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, OR DAMAGES FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED THE LESSER OF, (I)

\$10,000; OR (II) THE AMOUNT OF FEES RECEIVED BY TRUSTCOMMERCE PURSUANT THIS ADDENDUM FOR TC SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING THREE (3) MONTHS.

18. Amendment. TrustCommerce has the right to change or add to the terms of this Addendum at any time, and to change, delete, discontinue, or impose conditions on any feature or aspect of the TC Services with notice provided to Client as set forth in the Notices section of this Addendum. Any use of the TC Services after TrustCommerce's publication of any such changes shall constitute Client's acceptance of this Addendum as modified.

19. Third Party Beneficiaries. TrustCommerce's Affiliates and any Persons TrustCommerce uses in providing the TC Services are intended third party beneficiaries of this Addendum, and each of them may enforce its provisions as if it was a party hereto. Except as expressly provided in this Addendum, nothing in this Addendum is intended to confer upon any Persons any rights or remedies, and the parties do not intend for any Persons to be third-party beneficiaries of this Addendum.

20. General.

20.1 Relationship of Parties. The parties hereto shall each be independent contractors in the performance of their obligations under this Addendum, and nothing contained herein shall be deemed to constitute either party as the agent, representative or franchisee of the other party, or both parties as joint venturers or partners for any purpose.

20.2 Assignment. Neither party may assign its rights or delegate its obligations under this Addendum without the other party's prior written consent, which will not be unreasonably withheld. However, TrustCommerce, may assign any or all of its rights or delegate any or all of its obligations to an Affiliate or an entity acquiring all or substantially all of the assets of TrustCommerce.

20.3 Governing Law. This Addendum shall be governed by and construed in accordance with the laws of the State of Texas (without regard to its choice of law provisions). The exclusive venue for any actions or claims arising under or related to this Addendum shall be in the appropriate state or federal court located in Dallas County, Texas.

20.4 Waiver of Jury Trial. THE PARTIES HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY CLAIM RELATING TO OR ARISING UNDER THIS ADDENDUM.

20.5 Notices. Except as otherwise specifically provided, all notices and other communications required or permitted hereunder shall be in writing, if to Client at the address set forth in the Agreement or by any electronic means, including but not limited to the e-mail address Client has provided. If to TrustCommerce, at 230 E Ohio Street, Suite 410 #10001, Chicago, IL 60611, Attention: Legal Department. Notices shall be deemed to have been given (i) if sent by mail or courier, upon the earlier of five (5) days after mailing or when actually received or, in the case of courier, when delivered. Notice given in any other manner shall be effective when confirmed by the receiving party. Failure to provide notice in the manner described in this Section will be deemed ineffective.

20.6 Entire Agreement; Waiver. This Addendum constitutes the entire agreement between Client

and TrustCommerce with respect to the subject matter thereof, and supersede any previous agreements and understandings. Except as provided herein, this Addendum can be changed only by a written agreement signed by Client and TrustCommerce. A party's waiver of a breach of any term or condition of this Addendum shall not be deemed a waiver of any subsequent breach of the same or another term or condition.

20.7 Force Majeure. TrustCommerce shall not be held responsible for any delays in or failure or suspension of service caused, directly or indirectly, by mechanical or power failure, computer malfunctions (including, without limitation, software, hardware and firmware malfunctions), the nonperformance, delay or error by a third party or in any other third party system for any similar cause beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunications, transmission links or other equipment; strikes, labor difficulties, fire, inability to operate or obtain service for its equipment, unusual delays in transportation, earthquake, fire, flood, elements of nature or other acts of God, any act or omission of Client or any government authority, or other causes reasonably beyond the control of TrustCommerce.

20.8 Headings. Headings are for convenience only and are not to be used in the interpretation of this Addendum.

20.9 Severability. Every provision of this Addendum is severable. If any provision of this Addendum is held to be invalid, illegal, void or unenforceable by reason of any judicial decision, then such provision will be interpreted, construed or reformed to the extent reasonably required to render the same valid, enforceable and consistent with the original intent underlying such provision, and all other provisions of this Addendum will nevertheless remain in full force and effect. In such case, the parties will in good faith modify or substitute a provision consistent with their original intent. If any remedy fails of its essential purpose, then all other provisions, including the limitations on liability and exclusion of damages, will remain fully effective.

20.10 Survival of Obligations. The rights and obligations of the parties that would be intended to survive by their nature or context will survive expiration or termination of this Addendum.

20.11 Hosted Omni-Channel Payment Solutions: The following terms and conditions apply to the use of the Hosted Omni-Channel Payment Solutions:

1) In regards to the Hosted Omni-Channel Payments for Ecommerce Solution, Client may display NACHA and credit/debit card terms to the end user, however, it is Client's responsibility to ensure their terms meet compliance requirements and to provide Processor with the terms they require to be displayed to the end user.

2) If Client allows for a payment method to be stored by end user, Client is responsible for following guidelines set forth in Processor Developer Guides to ensure that the appropriate BillingID token is associated with, and presented to, the applicable cardholder. Improper BillingID token management by the Client may result in unauthorized payments.

Client's use of Hosted Omni-Channel Payment Suite is conditioned upon Client's acceptance of these terms and conditions and its accurate provision of any and all information necessary for Company to provide the Services described in this Agreement.