

## END USER LICENSE AGREEMENT (EULA) – DOC ID 04062020\_V1

This End-User License Agreement (the “Agreement”) is a legal agreement concerning the license and use of the SaaS, Software, Third Party Software and Services (as defined herein) between you, the end user, (“Client”), and Sunquest Information Systems, Inc. (“Sunquest”).

PLEASE READ THIS AGREEMENT CAREFULLY. BY USING ALL OR ANY PORTION OF THE SAAS, YOU ACCEPT ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING, IN PARTICULAR THE LIMITATIONS ON: USE, WARRANTY AND LIABILITY CONTAINED IN THE SECTIONS BELOW. BY SELECTING “I ACCEPT” BELOW AND USING ALL OR ANY PORTION OF THE SAAS, YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE. IF YOU DO NOT AGREE WITH ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT IMMEDIATELY UN-INSTALL THE SOFTWARE AND DESTROY ALL COPIES OF THE SOFTWARE IN YOUR POSSESSION OR UNDER YOUR CONTROL.

## TERMS AND CONDITIONS

1. **Definitions.**

- a. **“Annual Usage Fee”** means the fees assessed for Usage for a twelve (12) month period.
- b. **“Affiliate”** means an entity that controls, is controlled by, or is under common control with either Party. As used herein, “control” means possession, direct or indirect, at the relevant time, of the power to direct or cause the direction of the management or policies of either Party, whether through the ownership of voting securities, by contract or otherwise.
- c. **“Client Data”** means all data entered into, processed and resulting output data received through use of the SaaS by Client and its SaaS Authorized Users.
- d. **“Confidential Information”** means any information related to, disclosed by or on behalf of either Sunquest or Client, to the other which (i) if in written or other tangible form is marked as “confidential” or “proprietary” (ii) if disclosed orally, is identified at the time of the initial disclosure as confidential and is confirmed in writing to the receiving Party to be “confidential” or “proprietary” within thirty (30) days of such disclosure; (iii) is specifically deemed to be confidential by the terms of this Agreement; (iv) or reasonably appears to be confidential or proprietary because of the circumstances of the disclosure and the nature of the information itself. Confidential Information includes, but is not limited to: Trade Secrets (as defined by the Uniform Trade Secret Act), proprietary information; technical processes and formulas; source code and other Software, benchmark and performance test results; product designs; sales, cost, and other unpublished financial information; product and business plans; projections and marketing data; customer lists; the terms and conditions (but not the existence) of this Agreement, Client Data and any information that would reveal the identity, personal information, or protected health information (PHI) of any patient or employee of Client. Confidential Information does not include information (a) independently developed by the recipient without use or benefit of the discloser’s Confidential Information; (b) that is or becomes generally known to the public through no act or omission of recipient; and (c) obtained by recipient from any third party not owing any confidentiality obligation to the discloser.
- e. **“Documentation”** means the on-line help files in the form generally made available by Sunquest to its customers regarding the use of the applicable SaaS.
- f. **“Live Operation”** means the first productive use by Client of the SaaS in a production environment.
- g. **“Order Form”** means any document, including but not limited to a Quote Order Form, executed by both Parties specifying the products and services that Client licenses, sublicenses and/or purchases from Sunquest in accordance with this Agreement.
- h. **“Other Services”** mean all technical and non-technical services performed or delivered by Sunquest and/or a Sunquest Affiliate under this Agreement, including, without limitation, implementation services and other professional services, training and education services, but excluding the Support Services. Other Services will be as specified in an Order Form.
- i. **“SaaS”** means the specific Sunquest internet-accessible applications and services described in a Scope of Work and an Order Form which are made accessible from and maintained by Sunquest in a hosted, virtualized, single instance and/or multi-tenant environment. SaaS includes the associated Support Services described in this Agreement.
- j. **“SaaS Authorized User”** means Client, Client Affiliate, or employee(s), agent(s) or contractor(s) thereof authorized by Client and granted a right to access by Sunquest to use the SaaS.
- k. **“SaaS Subscription Term”** means the Initial SaaS Subscription Term (as hereinafter defined) and subsequent renewal term(s), if any, during which Client will have on-line access to and use of the SaaS.
- l. **“Support Services”** mean the support services described herein.

- m. "**Scope of Work**" means a document executed by the Parties which sets forth the description of Other Services, the SaaS, and related obligations to be performed by Sunquest under this Agreement.
- n. "**Software**" means the software proprietary to Sunquest and Sunquest's Affiliates used in conjunction with the SaaS hereunder, including all Updates and Documentation provided hereunder.
- o. "**Territory**" means the United States of America.
- p. "**Third Party EULA**" means the end user license agreement that is attached to the Order Form or accompanies the Third Party Software or is otherwise published by the third party.
- q. "**Third Party Software**" means the software owned by third parties which is sublicensed to Client by Sunquest and used in conjunction with the SaaS, including all updates, enhancements and related documentation as may be provided by the respective third parties under the terms of the Third Party EULA.
- r. "**Update(s)**" means error corrections, modifications, improvements, extensions, and any functional changes or enhancements to the Software developed after the Effective Date which Sunquest makes generally available to its customers under Support Services. Updates exclude new products for which Sunquest generally charges a separate license or subscription fee.
- s. "**Usage**" means Client's use of the SaaS for a maximum number of SaaS Authorized Users, patients, transactions, units, reports, records or other similar basis for a specified period, as designated in the applicable Order Form.

## 2. **License Grant.**

- a. **SaaS; Software:** Subject to this Agreement and the applicable Order Form, Sunquest hereby grants to Client a nonexclusive, non-assignable, non-transferable, and limited right and license during the SaaS Subscription Term to access and use the SaaS and use the Software and related Documentation in conjunction with the SaaS, as specified in an Order Form and/or Scope of Work, within the Territory, and solely for Client's and its SaaS Authorized Users' internal business purposes.
- b. **Third Party Software:** Third Party Software as may be specified in an Order Form shall be sublicensed to Client by Sunquest solely for Client's and its SaaS Authorized Users' internal business purposes in conjunction with the SaaS under the terms and conditions of the respective Third Party EULA.

## 3. **Support Services:** During the SaaS Subscription Term and provided Client is current on its subscription fees, Sunquest will provide Support Services as follows:

- a. Provide help desk support for the SaaS, Software and any applicable Third Party Software on a twenty-four (24) hour per day, 365 days per year basis. Sunquest help desk support shall respond to any request for support services within one (1) hour for Critical Problems, within one and a half (1.5) hours for Urgent Problems and no later than the next business day for Routine Problems (all as hereinafter defined). Requests for support services may be made via phone, e-mail, live chat or a web portal. Sunquest and Client shall jointly determine the category of problem based on their professional discretion and the facts available.
  - i. "Critical Problems" mean problems that completely prevent use of the SaaS or Software (i.e. the SaaS or Software is down or unavailable for use, or the problem poses a risk to patient care);
  - ii. "Urgent Problems" mean problems that severely limit normal use of the SaaS or Software (i.e. inability to print reports); and
  - iii. "Routine Problems" mean any problem not defined as a Critical Problem or Urgent Problem.
- b. Sunquest's or its licensor's response to Critical Problems, Urgent Problems or Routine Problems may be in person, via telephone conversation, via email through the support portal, or by communication with the Software. All requests for support services hereunder shall be documented by Sunquest with the time and date of the request for support services, the reason for the support services request, and an explanation of services performed by Sunquest or a Sunquest licensor to remedy a problem.
- c. Software Updates. Sunquest will provide to Client all Updates made by Sunquest or its licensor to the Software. If produced, updated Documentation will be made available to the Client before any changes to the Software are made.
- d. Third Party Software Updates. Sunquest will provide to Client Third Party Software updates as may be made available to Sunquest by the respective Third Party Software vendor for provision to Client.
- e. In the event any Third Party Software vendor discontinues its support to Sunquest for any of the Third Party Software for any reason whatsoever, Client acknowledges and agrees that Sunquest shall have no further obligation to provide support to Client for such discontinued Third Party Software ("Discontinued Support") and

any such Discontinued Support shall not be deemed a breach of this Agreement by Sunquest; provided, however, that (i) Sunquest shall notify Client in writing as soon as reasonably possible of Discontinued Support, (ii) Sunquest shall use reasonable efforts to continue to assist Client with respect to such Discontinued Support, and (iii) Sunquest shall use reasonable efforts to assist Client in obtaining an alternative product or means of support for any affected Third Party Software.

- f. **Client Responsibilities.** In connection with Sunquest's performance of Support Services, Client will:
- i. Cooperate with Sunquest in loading Updates or any Third Party Software updates and using the same on Client's servers. Failure or refusal of Client to accept such Updates or Third Party Software updates and load them onto Client's servers shall be a material breach of the Agreement.
  - ii. Ensure that SaaS Authorized Users are provided training and are familiar with the SaaS and Software prior to first use. Except as otherwise set forth in an Order Form, Sunquest has no obligation to provide training services.
  - iii. Ensure Sunquest has access to the Software and Third Party Software twenty-four (24) hours a day seven (7) days a week in order to perform its obligations. Client understands and agrees that Sunquest shall not be held liable for failing to provide Support Services or be deemed in breach of this Agreement in the event Client fails to meet its obligations described in this Section 3 (f).

4. **SaaS and Software Use Restrictions.** Except as otherwise expressly permitted in this Agreement, Client and/or its SaaS Authorized Users may not, and may not allow any other person to, directly or indirectly:

- a. Copy or republish the SaaS or Software;
- b. Make the SaaS available to any person other than a SaaS Authorized User;
- c. Use or access the SaaS to provide service bureau, time-sharing or other computer hosting services to third parties;
- d. Modify or create derivative works based on the SaaS, Software or Documentation;
- e. Remove, modify or obscure any copyright, trademark or other proprietary notices contained in: (i) the software used to provide the SaaS; (ii) the Software; (iii) and/or Documentation.
- f. Reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of the Software or the software used to provide the SaaS;
- g. Use any of Sunquest's Confidential Information, Software or Documentation or access to the SaaS in order to create any product or service that is similar to or competitive with SaaS or Software;
- h. Alter in any way any source code and/or any controls that would enable or restrict access to the Software or Third Party Software;
- i. Export or transmit any of Sunquest's Confidential Information (as hereinafter defined) to any country to which such transmission is restricted by applicable regulations or statutes;
- j. Use the SaaS without healthcare practitioner or medical care provider intervention; and/or

5. **Client's Responsibilities.**

- a. **Assistance:** Client shall provide commercially reasonable information and assistance to Sunquest to enable Sunquest to deliver the SaaS, the Support Services, and Other Services.
- b. **Compliance With Laws:** Client shall comply with all applicable local, state, national and foreign laws in connection with its use of the SaaS, including laws related to privacy, international communications, export controls, and the transmission of Client Data and personal and technical data. Client acknowledges that Sunquest and its licensors exercise no control over the content of the information transmitted by Client and its SaaS Authorized Users. Client shall not and shall ensure that its SaaS Authorized Users shall not upload any Client Data or use the same for Sunquest's or its licensors' provision of the SaaS hereunder without first obtaining all necessary permission from the owners of such Client Data.
- c. Client is solely responsible for collecting, inputting and updating all Client Data stored and used on the SaaS system.
- d. **Unauthorized Use; False Information:** Client shall: (i) notify Sunquest immediately of any unauthorized use of any password or user ID or any other known or suspected breach of security; (ii) report to Sunquest immediately and use reasonable efforts to stop any unauthorized use of the SaaS that is known or suspected by Client or any SaaS Authorized User; and (iii) not provide false identity information to gain access to or use the SaaS.
- e. **Authorized Users:** Client shall be solely responsible for its SaaS Authorized Users' use of the SaaS pursuant to this Agreement and enforcement of such terms against such SaaS Authorized Users. Sunquest shall not be liable for any loss of Client Data or other data or functionality caused directly or indirectly by the Authorized Users.
- f. **License From Client:** Subject to the terms and conditions of this Agreement, Client shall grant to Sunquest, its

licensors and Affiliates a limited, non-exclusive and non-transferable license to copy, store, configure, implement, perform, display and transmit Client Data solely as necessary to provide the SaaS, the Support Services, and Other Services to Client and its SaaS Authorized Users.

- g. **Data Audit, Testing.** Prior to Live Operation, Client shall audit Client Data to ensure the integrity of Client Data, including the accuracy of Client's data entry into the SaaS. Sunquest shall not be responsible for, and Client shall have sole responsibility for, the accuracy and/or adequacy of information and data imported into the SaaS. Client will perform its own testing prior to Live Operation.

**6. Implementation.**

- a. Promptly following execution of this Agreement, Sunquest and Client shall develop an implementation plan for the implementation and delivery of products and services set forth in the Order Form and/or in a Scope of Work ("Implementation Schedule"). Sunquest and Client shall cooperate in the timely performance of their respective tasks in the Implementation Schedule.

**7. SaaS and ASP Services Subscription Term.**

The initial term of the SaaS Subscription Term will be as set forth in the Order Form ("Initial SaaS Subscription Term"). Following the Initial SaaS Subscription Term, the SaaS subscription will automatically renew as set forth in the Order Form at Sunquest's then-current pricing and terms for the SaaS.

**8. Order Forms; Fees and Payment.**

- a. Fees and applicable payment schedules for Client's purchase of SaaS, Software, Other Services or Third Party Software shall be set forth in an Order Form.
- b. In the event Client wishes to increase the number of named users and/or workflows during the SaaS Subscription Term, Client will incur additional fees.
- c. All fees shall be payable in U.S. dollars pursuant to the payment schedule set forth in an Order Form, shall be payable when invoiced and shall be due thirty (30) days from invoice date. For any on-site services provided by Sunquest, Client shall reimburse Sunquest for actual, reasonable travel, lodging and other incidental expenses incurred.
- d. If Client's account is in arrears for sixty (60) days, Sunquest may, without prior notice, and notwithstanding the termination provisions of Section 12 (b), place Client's account on hold until such time as Client's account is brought current ("Suspension"). During the Suspension, Client understands that no SaaS will be provided to Client, but that SaaS subscription fees shall continue to accrue.
- e. If Client disputes, in good faith, any invoiced charge ("Disputed Charge"), Client shall pay the undisputed amount and notify Sunquest of the Disputed Charge in writing within fifteen (15) business days of the invoice date. Client shall not be required to pay interest on any reasonable and documented Disputed Charge(s).
- f. All payments required by this Agreement are exclusive of federal, state, local and foreign taxes, duties, tariffs, levies and similar assessments.

**9. Warranty.**

- a. Sunquest warrants that the SaaS and Software will conform substantially in accordance with the Documentation during the SaaS Subscription Term. If the SaaS or Software does not perform as warranted, Sunquest shall, within thirty (30) days of receipt of Client's notice of a warranty claim, (i) correct the discrepancy; (ii) provide a plan for correcting the discrepancy; or (iii) if (i) or (ii) cannot be accomplished, either Party may terminate the SaaS subscription and Software license(s) and Client will be refunded the prepaid annual fees through the end of the applicable year of the SaaS Subscription Term. The preceding warranty cure shall constitute Sunquest's entire liability and Client's exclusive remedy for warranty claims. EXCEPT AS SET FORTH ABOVE, SUNQUEST MAKES NO WARRANTY, REPRESENTATION, OR AGREEMENT WITH RESPECT TO THE SAAS, OTHER SERVICES, SOFTWARE, OR ANY OTHER PRODUCTS OR SERVICES PURCHASED HEREUNDER AND EXPRESSLY DISCLAIMS AND EXCLUDES TO THE FULLEST EXTENT PERMITTED BY LAW ANY IMPLIED AND EXPRESS WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER SUNQUEST NOR ITS LICENSORS REPRESENT THAT THE OPERATION OF THE SAAS OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ALL ERRORS WILL BE CORRECTED. CLIENT ACKNOWLEDGES THAT SUNQUEST DOES NOT CONTROL THE TRANSFER OF CLIENT DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SAAS SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES.
- b. Client acknowledges and agrees that any warranties applying to the Third Party Software are limited to those, if

any, offered in the Third Party EULA. Sunquest makes no warranties of any kind with respect to Third Party Software.

#### **10. Rules-Based Services.**

Client agrees and acknowledges that the content of any algorithms, and any corresponding results and actions, shall be solely Client's responsibility. While Sunquest may offer consulting, training and/or predefined algorithms and rules to implement certain parameters for processing patient test results, Client agrees that the final identified parameters shall at all times be determined by, and be the sole responsibility of, Client.

#### **11. Indemnification.**

- a. **Indemnification by Sunquest.** If a third party(ies) makes a claim against Client that the SaaS or Software infringes any United States Patent, copyright or trademark, or misappropriates any trade secret, Sunquest shall defend Client and its employees, agents, contractors, and its licensors against such claim at Sunquest's expense and Sunquest shall pay all losses, damages, and expenses (including reasonable attorneys' fees) finally awarded to such party or agreed upon in a settlement agreement signed by Sunquest, to the extent arising from such claim. In such event, Sunquest may, at its sole option and expense and as Client's sole remedy in the event of a third party infringement claim hereunder, procure for Client the right to continue use of the SaaS and Software, modify the SaaS and Software in a manner that does not materially impair the functionality of the SaaS and Software, or terminate the SaaS Subscription Term and this Agreement and repay to Client any amount paid by Client with respect to the balance of the SaaS Subscription Term calculated from the date of termination through the end of the SaaS Subscription Term. Sunquest shall have no liability for any claim based on: (i) the Client Data; (ii) modification of the SaaS or Software not authorized by Sunquest; or (iii) use of the SaaS or Software other than in accordance with the Documentation and this Agreement.
- b. **Indemnification by Client.** If a third party(ies) makes a claim against Sunquest that: (i) use of the Client Data for provision of the SaaS as contemplated hereunder violates the laws of United States or other countries and/or infringes upon the rights of any individual thereunder; or (ii) Client and/or its SaaS Authorized Users have engaged in unauthorized use or allowed third parties unauthorized use of the SaaS, Software and Documentation hereunder, Client shall defend and indemnify Sunquest and its employees, agents, contractors, and its licensors against such claim at Client's expense and Client shall pay all losses, damages, and expenses (including reasonable attorneys' fees) finally awarded to such party or agreed upon in a settlement agreement signed by Client, to the extent arising from such claim.
- c. **Conditions for Indemnification.** A Party seeking indemnification under this Section (the "**Indemnitee**") shall: (i) promptly notify the other Party (the "**Indemnitor**") of the claim; and (ii) permit the Indemnitor to have sole control of the defense, compromise or settlement of the claim and give the Indemnitor information, reasonable assistance and authority to enable the Indemnitor to do so. An Indemnitee hereunder shall have the right to participate in the defense of any suit or proceeding through counsel at its own expense; however, such participation shall not include the right for Indemnitee to settle or compromise the claim or influence the Indemnitor's defense relating thereto.

#### **12. Agreement Term and Termination.**

- a. This Agreement shall be effective upon selecting "I Accept" below ("Effective Date").
- b. Either Party may terminate the SaaS subscription at the end of the Initial SaaS Subscription Term or any subsequent one-year renewal term by notifying the other Party at least sixty (60) days prior to the expiration of the SaaS Subscription Term. This Agreement may be terminated by either Party following termination of all SaaS subscriptions hereunder upon giving written notice of such termination to the other Party.
- c. Either Party may terminate the SaaS subscription and this Agreement in the event the other Party breaches a material provision of this Agreement and the breaching Party fails to cure such breach within sixty (60) days of the receipt of written notice of such breach from the non-breaching Party.
- d. Either Party may terminate the SaaS subscription and this Agreement, immediately in the event any assignment is made by the other Party for the benefit of creditors, or if a receiver, trustee in bankruptcy or similar officer shall be appointed to take charge of any or all of the other Party's property, or if the other Party files a voluntary petition under federal bankruptcy laws or similar state statutes or such a petition is filed against the other Party and is not dismissed within sixty (60) days.

#### **13. Effects of SaaS Subscription Termination.**

- a. Upon termination of this Agreement or expiration of a SaaS Subscription Term, Sunquest shall immediately cease providing the SaaS and all SaaS usage rights granted under this Agreement shall terminate. Further, Client shall have no further right to use any Software or Third Party Software used in conjunction with such SaaS as of the termination date, and Client shall return or certify destruction of all copies of such Software, Third Party Software, the Documentation relating to the terminated or expired SaaS and any Sunquest Confidential Information in Client's

possession or under its control.

- c. If Sunquest terminates this Agreement due to a material breach by Client, then Client's liability for any fees, charges, payments or expenses due to Sunquest that accrued prior to the termination date and to become due during the remaining term of this Agreement, but for such termination, shall not be extinguished by termination, and such amounts shall be immediately due and payable on the termination date. If Client terminates this Agreement due to a material breach by Sunquest, then Sunquest shall immediately repay to Client all pre-paid amounts for any unperformed Other Services or SaaS scheduled to be delivered after the date of termination and Client shall not be obligated to make any further payments which would have come due hereunder following the date of termination.
- d. Sunquest shall return any Client Confidential Information in Sunquest's possession or under its control to Client upon termination of this Agreement. In the case of Client Data entered into, processed and resulting output data received through use of a SaaS which has expired or been terminated, Sunquest shall provide Client with written certification of destruction of the same. In the event that Client desires return of Client Data, Sunquest will use reasonable efforts to work with Client to extract such Client Data from a SaaS in accordance with Sunquest's then-current fees for the same.

#### **14. Limitation of Liability.**

- a. EXCEPT WHERE PROHIBITED BY LAW, THE CUMULATIVE, AGGREGATE LIABILITY OF SUNQUEST AND ITS LICENSORS (INCLUDING FOR ATTORNEYS' FEES AWARDED HEREUNDER) TO CLIENT OR CLIENT AFFILIATES FOR ALL CLAIMS, LIABILITIES AND DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ALL ORDER FORMS, ADDENDA OR AMENDMENTS HERETO, WHETHER IN CONTRACT OR TORT OR BY WAY OF INDEMNITY OR OTHERWISE, INCLUDING A BREACH THEREOF, SHALL NOT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY CLIENT TO SUNQUEST FOR THE FIRST YEAR OF SAAS SUBSCRIPTION FEES. EXCEPT AS PROHIBITED BY LAW, NEITHER PARTY SHALL IN ANY CASE BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES OR LIABILITIES FOR ANY CAUSE WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ALL ORDER FORMS, ADDENDA OR AMENDMENTS HERETO, WHETHER IN CONTRACT OR TORT OR BY WAY OF INDEMNITY OR OTHERWISE, INCLUDING A BREACH THEREOF OR INCLUDING WITHOUT LIMITATION, DAMAGES OR LIABILITIES FOR LOST PROFIT, LOST REVENUE, LOSS OF USE, LOSS OF DATA, COSTS OF RECREATING LOST DATA, THE COST OF ANY SUBSTITUTE PROGRAM, SAAS OR DATA, OR CLAIMS BY ANY THIRD PARTY REGARDLESS OF WHETHER EITHER PARTY HAS OR GAINS KNOWLEDGE OF THE EXISTENCE OF SUCH DAMAGES OR LIABILITIES. IN NO EVENT WILL SUNQUEST BE LIABLE TO CLIENT AND/OR ANY THIRD PARTIES WITH RESPECT TO CLAIMS OF ANY NATURE RELATED TO THIRD PARTY SOFTWARE, HARDWARE OR THIRD PARTY SERVICES.
- b. The SaaS or Software are not intended to provide medical advice, to determine or recommend an appropriate course of action for any individual patient, or to otherwise provide healthcare services. Only a licensed healthcare practitioner/medical care provider can make such determinations or recommendations or provide such advice or services. Client acknowledges and agrees that Sunquest is not a healthcare practitioner/medical care provider and that Sunquest does not assume any responsibility or liability for the consequences of any medical decision made by Client, its SaaS Authorized Users, Affiliates, or any other person with access to or use of information in or produced by the SaaS.

#### **15. Confidentiality.**

- a. By virtue of this Agreement, the Parties may be exposed to or provided with certain Confidential Information of the other Party. Each Party will protect the other Party's Confidential Information from unauthorized dissemination and use with the same degree of care that each such Party uses to protect its own Confidential Information, but in no event less than a reasonable degree of care. Except as required by law, neither Party will use the other Party's Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement and as may be required to report to its affiliates, legal, and financial advisors as long as any such persons are bound by confidentiality obligations no less strict than those provided in this Agreement. Except as otherwise expressly set forth in this Agreement, neither Party will disclose to third parties the other Party's Confidential Information without prior written consent of the other Party. Either Party may disclose the Confidential Information of the other Party to the extent required by law or order of a court or other governmental authority, provided that the recipient shall use reasonable efforts to promptly notify the discloser prior to such disclosure to enable the discloser to seek a protective order or otherwise prevent or restrict such disclosure.
- b. The Parties agree that monetary damages may not be an adequate remedy if this Section 15 is breached and, therefore, either Party shall, in addition to any other legal or equitable remedies, be entitled to seek an injunction or similar equitable relief against such breach or threatened breach.

## **16. Ownership.**

- a. **Sunquest.** Ownership of, and title to, the SaaS, Software, and any deliverables developed or provided pursuant to Other Services and to Sunquest's Confidential Information, and all intellectual property rights embodied therein, are vested in Sunquest, its Affiliates and/or its licensors respectively. Copies of Software, any deliverables developed or provided pursuant to Other Services and of Sunquest's Confidential Information are provided to Client only to allow Client to exercise Client's rights hereunder. Client shall not take any action inconsistent with such title and ownership.
- b. **Client.** Ownership of, and title to, the Client's Confidential Information and Client Data are vested in Client. Any Client Data provided to Sunquest will be used only to allow Sunquest to provide SaaS and Other Services under this Agreement. Sunquest shall not take any action inconsistent with such title and ownership.

## **17. General Terms.**

- a. **Entire Agreement.** This Agreement and any Order Form constitute the entire agreement between the Parties regarding the subject matter hereof and supersedes all previous communications of the Parties. The Agreement may be amended solely in a writing signed by both Parties. Terms contained in any purchase order are deemed rejected and shall be void unless specifically accepted in writing by the Parties. In the event of a conflict between the terms of an Order Form and this Agreement, the terms of the Order Form shall take precedence.
- b. **Disputes and Governing Law.** The Parties shall attempt in good faith to informally resolve any disputes arising out of this Agreement. The laws of the State of Arizona apply to this Agreement without regard to the conflict of laws principles and the Parties agree that any unresolved disputes will be heard in the courts in Pima County, AZ.
- c. **Waiver and Severability.** The failure of either Party to enforce any breach or default under this Agreement does not constitute a waiver of that or any subsequent breach or default. Any provision in this Agreement deemed invalid or unenforceable will be limited to the extent necessary, and the other provisions of this Agreement will remain in full force and effect.
- d. **Assignment.** Client may not assign this Agreement to any entity without Sunquest's prior written permission, which will not be unreasonably denied. Sunquest may assign this Agreement to its Affiliates or to any entity that acquires substantially all of its assets. Sunquest may employ subcontractors to perform services on behalf of Sunquest under this Agreement, provided that any such subcontractors shall be bound by the limitations and restrictions of this Agreement.
- e. **Force Majeure.** If either Party cannot perform any obligation under this Agreement (other than the obligation to make payment) due to any cause beyond such Party's reasonable control, the Parties agree to give the affected Party additional time to perform, equal to the time of the delay.
- f. **Non-Exclusive Service.** Client acknowledges that the SaaS is provided on a non-exclusive basis. Nothing shall be deemed to prevent or restrict Sunquest's ability to provide the SaaS or other technology, including any features or functionality first developed for Client, to other parties.
- g. **Relationship.** The Parties agree that neither Party is the agent or representative of the other Party or that they are joint venturers or partners for any purpose. Except as provided in this Agreement, neither Party shall be responsible for the acts or omissions of the other Party or the other Party's personnel.
- h. **Third Party Beneficiaries.** As applicable, the licensor of the Third Party Software is an intended third party beneficiary of this Agreement with respect to such Third Party Software.
- i. **Compliance, Audits and Required Reporting.** During the term of this Agreement and for a period of up to four (4) years following termination, Sunquest or an independent auditor may audit the SaaS provided under this Agreement and/or request records to verify Client's compliance with the terms of this Agreement or with applicable regulations. Client agrees that if the audit reveals any noncompliance, Client will reimburse Sunquest for Sunquest's reasonable costs and expenses incurred, and Client will promptly cure any noted noncompliance, subject to then-current fees payable from the first date of noncompliance. In the event that any of the prices set forth herein reflect discounts, to the extent required by 42 C.F.R. § 1001.952(h) (the Anti-Kickback Statute discount safe harbor regulations) or other applicable laws and regulations, Client must fully and accurately reflect in cost reports or other submissions to federal healthcare programs all such discounts and, upon request by the Secretary of the U.S. Department of Health and Human Services or a state agency, must make available information provided to Client by Sunquest concerning the discounts.
- j. **Notices.** Communications between the Parties must be in writing and either personally delivered or sent via a

tracked delivery service addressed to the attention of the Legal Department at the addresses specified in the applicable Order Form and are effective upon receipt.

- k. **Statistical Information.** Sunquest may anonymously compile statistical information related to the performance of the SaaS for purposes of improving the SaaS, provided that such information does not identify Client Data, SaaS Authorized Users or the Client's name.
- l. **HHS Audit Right.** Until the expiration of four (4) years after the furnishing of services under this Agreement, Sunquest shall make available, upon written request of the Secretary (as defined in Schedule A), or upon request of the Comptroller General, or any of their duly authorized representatives, this Agreement and the books, documents and records of Sunquest that are necessary to certify the nature and extent of the costs for which Client seeks reimbursement. Sunquest further agrees that if Sunquest carries out any of the duties of this Agreement through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after furnishing services pursuant to such subcontract, the related organization shall make available to the Secretary or the Comptroller General, as the case may be, or any of their duly authorized representatives, the subcontract, and such books and documents and records of such organization that are necessary to verify the nature and extent of such costs.
- m. **Survival.** The provisions of Sections 1, 4, 5(b), 8, 11, and 13 - 17, and any other provisions that by their nature should survive, shall survive any termination of this Agreement.

## SCHEDULE A - HIPAA Business Associate Agreement

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT ("BAA") IS ATTACHED TO AND MADE PART OF THE AGREEMENT BETWEEN SUNQUEST (the "Business Associate" within this BAA) AND CLIENT (the "Covered Entity" within this BAA). "Covered Entity" and "Business Associate" are individually a "Party" and jointly the "Parties."

### RECITALS

- A. Covered Entity and Business Associate have entered into the **Agreement** pursuant to which Covered Entity may disclose to Business Associate certain information which may constitute Protected Health Information ("PHI") (defined below).
- B. Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Agreement in compliance with (i) the Health Insurance Portability and Accountability Act of 1996, Public Law No. 104-191 ("HIPAA"); (ii) Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act");; and (iii) regulations promulgated thereunder by the U.S. Department of Health and Human Services, including the HIPAA Omnibus Final Rule (the "HIPAA Final Rule").
- C. The purpose of this BAA is to satisfy certain standards and requirements of HIPAA, the Privacy Rule and the Security Rule and the HITECH Act.

SECTION 1: DEFINITIONS. Capitalized terms used in this BAA and not otherwise defined herein will have the meaning set forth in the Privacy Rule, the Security Rule, and the HIPAA Final Rule, which definitions are incorporated in this Addendum by reference.

**"Electronic Protected Health Information"** or **"Electronic PHI"** will have the meaning given to such term under the Privacy Rule and Security Rule, including, but not limited to, 45 C.F.R. § 160.103, as applied to the information that Business Associate creates, receives, maintains or transmits from or on behalf of Covered Entity.

**"Individual"** will have the same meaning as the term **"individual"** in 45 C.F.R. § 160.103 and will include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g)

**"Privacy Rule"** will mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

**"Protected Health Information"** or **"PHI"** will have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, as applied to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.

**"Secretary"** will mean the Secretary of the Department of Health and Human Services or his or her designee.

**"Security Rule"** will mean the Security Standards at 45 C.F.R. Part 160 and Part 164, Subparts A and C.

## SECTION 2: PERMITTED USES AND DISCLOSURES OF PHI

2.1 Uses and Disclosures of PHI Pursuant to the Underlying Agreement. Except as otherwise limited in this BAA, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

2.2 Permitted Uses of PHI by Business Associate. Except as otherwise limited in this BAA, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out its legal responsibilities.

2.3 Permitted Disclosures of PHI by Business Associate. Except as otherwise limited in this BAA, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that the disclosures are Required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and that the person agrees to notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

2.4 Data Aggregation. Except as otherwise limited in this BAA, Business Associate may use PHI to provide Data Aggregation services for Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

2.5 De-identified Data. Business Associate may de-identify PHI in accordance with the standards set forth in 45 C.F.R. § 164.514(b) and may use or disclose such de-identified data unless prohibited by applicable law.

## SECTION 3: OBLIGATIONS OF BUSINESS ASSOCIATE

3.1 Appropriate Safeguards. Business Associate will use appropriate safeguards suitable to Business Associate's size, the complexity of its operations and the nature and scope of its activities, to protect against reasonably foreseeable risks to the security, confidentiality and integrity of PHI and will, after the compliance date of the HIPAA Final Rule, comply with the Security Rule with respect to Electronic PHI, to prevent use or disclosure of such information other than as provided for by the Underlying

Agreement and this BAA. Except as expressly provided in the Underlying Agreement or this BAA, Business Associate will not assume any obligations of Covered Entity under the Privacy Rule. To the extent that Business Associate is to carry out any of Covered Entity's obligations under the Privacy Rule as expressly provided in the Underlying Agreement or this BAA, Business Associate will comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations.

**3.2 Reporting of Improper Use or Disclosure, Security Incident or Breach.** Business Associate will report to Covered Entity any use or disclosure of PHI not permitted under this BAA, Breach of Unsecured PHI or any Security Incident, without unreasonable delay, and in any event no more than ten (10) days following discovery; provided, however, that the Parties acknowledge and agree that this Section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents. "Unsuccessful Security Incidents" include, but are not limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI. Business Associate's notification to Covered Entity of a Breach will include all information required in 45 C.F.R. § 164.404.

**3.3 Business Associate's Agents.** Business Associate will enter into a written agreement with any agent or subcontractor that creates, receives, maintains or transmits PHI on behalf of Business Associate for services provided to Covered Entity upon restrictions and conditions that are substantially similar to those that apply through this BAA to Business Associate with respect to such PHI.

**3.4 Access to PHI.** To the extent Business Associate possesses PHI in a Designated Record Set, Business Associate agrees to make such information available to Covered Entity pursuant to 45 C.F.R. § 164.524, within ten (10) business days of Business Associate's receipt of a written request from Covered Entity; provided, however, that Business Associate is not required to provide such access where the PHI contained in a Designated Record Set is duplicative of the PHI contained in a Designated Record Set possessed by Covered Entity.

**3.5 Amendment of PHI.** To the extent Business Associate possesses PHI in a Designated Record Set, Business Associate agrees to make such information available to Covered Entity for amendment pursuant to 45 C.F.R. § 164.526 within twenty (20) business days of Business Associate's receipt of a written request from Covered Entity.

**3.6 Documentation of Disclosures.** Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

**3.7 Accounting of Disclosures.** Business Associate agrees to provide to Covered Entity, within twenty (20) business days of Business Associate's receipt of a written request from Covered Entity, information collected in accordance with Section 3.6 of this BAA, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

**3.8** If an Individual submits a written request for amendment pursuant to 45 C.F.R. § 164.526, for access pursuant to 45 C.F.R. § 164.524 or for an accounting pursuant to 45 C.F.R. § 164.528, Business Associate will forward such request to Covered Entity within ten (10) days.

**3.9 Government Access to Records.** Business Associate will make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule and the Security Rule.

**3.10 Mitigation.** To the extent practicable, Business Associate shall mitigate a harmful effect that is known to Business Associate of a use of disclosure of PHI by Business Associate that is not permitted by this BAA.

**3.11 Minimum Necessary.** Business Associate will request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure, in accordance with 45 C.F.R. § 164.514(d).

**3.12 Prohibited Conduct.** Except as permitted by the Privacy Rule, Business Associate will not receive, directly or indirectly, any remuneration in exchange for any individual's PHI and will not use any individual's PHI for marketing or research purposes.

#### SECTIONS 4: OBLIGATIONS OF COVERED ENTITY

**4.1 Notice of Privacy Practices.** Covered Entity will notify Business Associate of any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

**4.2 Notification of Changes Regarding Individual Permission.** Covered Entity will obtain any consent or authorization that may be required by the Privacy Rule, or applicable state law, prior to furnishing Business Associate with PHI. Covered Entity

will notify Business Associate of any changes in, restrictions on, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

**4.3 Minimum Necessary Disclosure.** Covered Entity shall provide to Business Associate only the "minimum necessary" PHI (as described in 45 C.F.R. 164.502(b)) required for Business Associate to perform its obligations under the Underlying Agreement(s).

## SECTIONS 5 TERM AND TERMINATION

**5.1 Term.** The term of this BAA will commence as of the Effective Date and will terminate when all PHI is destroyed or returned to Covered Entity. If it is infeasible to return or destroy PHI, Business Associate will extend the protections to such information, in accordance with Section 5.3.

**5.2 Termination for Cause.** Upon either Party's knowledge of a material breach by the other Party of this BAA, such Party may terminate this BAA immediately if cure is not possible. Otherwise, the non-breaching party will provide written notice to the breaching Party detailing the nature of the breach and providing an opportunity to cure the breach with thirty (30) business days. Upon the expiration of such thirty (30) day cure period, the non-breaching Party may terminate this BAA if the breaching party does not cure the breach or if cure is not possible. If termination is not feasible, the non-breaching party may report the breach or violation to the Secretary.

### 5.3 Effect of Termination

**5.3.1** Except as provided in Section 5.3.2, upon termination of the Underlying Agreement or this BAA, Business Associate will return or destroy all PHI and will retain no copies of the PHI. This provision will apply to PHI that is in the possession of subcontractors or agents of Business Associate.

**5.3.2** If it is infeasible for Business Associate to return or destroy the PHI, Business Associate will: (a) extend the protections of this BAA to such PHI and (b) limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

## SECTION 6: INDEMNIFICATION

Business Associate shall defend and indemnify Covered Entity, and its officers, directors, employees and agents from all claims, suits, actions and direct and actual costs (including reasonable attorneys' fees), monetary penalties, and damages incurred by them as a result of any breach of this BAA caused by Business Associate or its agents or subcontractors.

## SECTION 7: SURVIVAL

The respective rights and obligation of Business Associate under Section 5.3 of this BAA will survive the termination of this BAA and the Underlying Agreement.

## SECTIONS 8: AMENDMENT

This BAA may be modified, or any rights hereunder waived, only by a written document executed by the authorized representatives of both Parties. If any provision of the Privacy Rule, the Security Rule or the HIPAA Final Rule is amended affecting the obligations of Business Associate or Covered Entity contained herein, the Parties agree to negotiate in good faith appropriate non-financial amendments to this BAA to give effect to such revised obligations.

## SECTION 9: EFFECT OF BAA

In the event of conflict between this BAA and the Underlying Agreement, this BAA will control with respect to the subject matter hereof. This BAA shall be interpreted to permit the Parties to comply with HIPAA and the HIPAA Final Rule.

## SECTION 10: INDEPENDENT CONTRACTOR STATUS

Business Associate will be considered an independent contractor. Nothing in this BAA shall be deemed to create an employment, principal-agent, or partner relationship between the parties. Business Associate shall retain sole and absolute discretion in the manner and means of carrying out its activities and responsibilities under this BAA.

## SECTION 11: GENERAL

This BAA is governed by, and will be construed in accordance with, the laws of the State that govern the Underlying Agreement. Any action relating to this BAA must be commenced within one year after the date upon which the cause of action accrued. Neither Party will assign this BAA without the prior written consent of the other Party, which will not be unreasonably withheld. If any part of a provision of this BAA is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the remainder of that provision and all other provision of this BAA will not be affected. Nothing in this BAA will confer any right, remedy, or obligation upon anyone other than Covered Entity and Business Associate. This BAA is the complete and exclusive agreement between the Parties with respect to the subject matter hereof, superseding and replacing all prior agreements, communications, and understandings (written and oral) regarding its subject matter.