**WEBCHART**

**Services License Agreement**

This Services License Agreement (the “Agreement”) is by and between Medical Informatics Engineering, Inc. (“MIE”) whose principal place of business is at 6302 Constitution Drive, Fort Wayne, Indiana 46804, USA, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Customer”) whose principal place of business is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

1. **DEFINITIONS**.

“Authorized User” means a person who is not a Provider or Patient, but whose employment or relationship with Customer necessitates that person’s access or use of a Service.

“Business Associate Agreement” means the Business Associate Agreement incorporated into this Agreement as Addendum 1 and agreed to by Customer.

“Effective Date” means the date that the Customer agrees to the terms of this Agreement by clicking the “I AGREE” button or, if executed, the date that the Agreement is fully executed by MIE and Customer.

“Fees” means any amount payable by Customer to MIE for the provision of Services pursuant to this Agreement as is listed in the WebChart App Store, <https://store.webchart.app/>, or otherwise agreed to by Customer and MIE and set forth on Exhibit A.

“License” means the license granted to Customer pursuant to Section 2 of this Agreement.

“Patient” many any patient of Customer or any individual that utilizes the Services, including portals offered through the Services, through the Customer other than Authorized Users or Providers.

“Provider” means a person who provides medical or other healthcare services on behalf of the Customer. A “Provider” includes, but is not limited to, Physicians, Dentists and Hygienist, Optometrist, Podiatrists, Psychologists, Speech/Language Pathologists, Audiologists, Pharmacists, Social Workers, Therapists, Dieticians, Mid-Level Providers (including Nurse Practitioners, Nurse Midwives, Physician Assistants, Nurse Anesthetists), Athletic Trainers, and other individuals providing healthcare services. Providers may also be defined as those who independently write prescriptions, create orders, or bill for patient encounters.

“Services” means the services: (a) chosen by Customer at the WebChart App Store: <https://store.webchart.app/>; and, (b) any and all other services, products or software provided by MIE to Customer including, but not limited to, those listed on Exhibit A.

“Territory” means the United States of America.

1. **LICENSE**.
   1. Grant of License.Subject to the terms and conditions herein, MIE grants Customer a nonexclusive, nontransferable license to use the Services solely within the Territory during the Term. Customer acknowledges that it is not being sold any product or Service and that Customer’s use of the Services is in the nature of a license only.
   2. Application of Use.Customer shall under no circumstances assign, transfer, disclose, sub-license, or allow or permit any other person within its control (including without limitation, any employee or agent) to assign, transfer, disclose, or sub-license the Services (in any format) or the License to any other person or entity, and any purported attempt to do so shall be deemed to be a material breach of this Agreement. Further, if Customer obtains knowledge of such prohibited assignment, transfer, disclosure, or sub-license to any person (whether by knowledge of such person’s activities or by notice from MIE), Customer shall immediately notify MIE and take all necessary actions to prevent or remedy such prohibited activity.
   3. Use by Providers and by Authorized Users. The Fees paid by Customer shall be based upon the number of Providers and Authorized Users using the Services upon the Effective Date of this Agreement and continuing through the Term unless otherwise set forth in the WebChart App Store, and as may be updated by Customer or MIE pursuant to the terms of this Agreement. Each Provider and Authorized User shall have separate credentials for accessing and using the Services, which may not be utilized by any other Provider, Authorized User, Patient, or individual. Customer shall provide notice to MIE of additional Providers and Authorized Users that use the Services that were not identified to MIE as of the Effective Date and shall continue to update that list quarterly or as requested by MIE. If Customer allows more Providers and Authorized Users to utilize the Services than what is identified, MIE reserves the right to charge additional Fees for the Providers and Authorized Users.
   4. Prohibition on Third Party Access.Under no circumstances shall Customer allow any person or entity that is not a Provider or Authorized User to access or use the Services except for Patients. Customer shall be solely responsible for each Provider’s and Authorized User’s compliance with this Section 2.4 and shall provide the appropriate training to and monitoring of each Provider and Authorized User to ensure compliance with this Agreement.
   5. Additional Fees. Customer shall pay any implementation, project management, license and other applicable one-time fees, and shall pay the monthly, annual, or other applicable Fees for the Services upon adding a Provider or Authorized User, as applicable.
   6. Limitations and Restrictions on Use of the Services. Customer hereby acknowledges that it will obtain the Services by accessing a website. Customer shall not access, or attempt to access, the Services through any other method. Customer shall not:
      1. copy, decompile, reverse, engineer, disassemble, modify or create derivative works from the Services, or any part thereof, or attempt to do any of the preceding actions;
      2. use the Services for any purpose other than the purpose for which they are provided;
      3. use the Services or allow any Provider or Authorized User to use the Services for any illegal, indecent, obscene, threatening, harassing, defamatory, malicious, fraudulent or inappropriate reasons; or
      4. allow Providers or Authorized Users that have been terminated by Customer or are no longer contracted or employed by Customer to access the Services.

Notwithstanding the foregoing, nothing in this Section 2.6 shall prohibit any communications allowed under 45 C.F.R. 170.403, Communications Condition of Certification Requirements (the “Communication Conditions”).

* 1. No Software License or Trademark Rights. Customer acknowledges that it is not being granted any license to any software pursuant to this Agreement. No license, right or interest in any MIE (or MIE’s licensors’) trademark, trade name, or service mark is granted. Any rights not explicitly granted to Customer are expressly reserved by and to MIE.
  2. Compliance with Law and Business Associate Agreement.
     1. Customer hereby agrees to use the Services only in compliance with applicable law, including, but not limited to, (a) the Health Insurance and Portability and Accountability Act (HIPAA), the Health Information Technology for Economic and Clinical Health Act (HITECH) as well as other international, federal and state laws governing the privacy and protection of protected health information and personally identifiable information (collectively, the “Privacy Laws”); (b) any federal or state laws or regulations governing the delivery of health care services or the billing of health care services, including the delivery and billing of telehealth services, including any federal or state laws or regulations from the U.S. Department of Health & Human Services, the Centers for Medicare and Medicaid Services and the U.S. Drug Enforcement Agency (collectively, the “Healthcare Laws”); and, (c) any recordkeeping or retention laws governing medical, health or other related records (the “Record Retention Laws”). The Healthcare Laws, the Privacy Laws and the Record Retention Laws are collectively referred to herein as the “Laws”. Customer shall be solely responsible for each Provider’s and Authorized User’s compliance with the Laws and shall immediately notify MIE in writing of any violation or suspected violation of the Laws as it relates to Customer’s, Provider’s, Authorized User’s, or a Patient’s use of or access to the Services or access to the Services by a user that is not authorized. Customer acknowledges that the Services and all related technical information and materials are subject to export controls under the U.S. Export Administration Regulations and the applicable export controls of the United State of America, including any changes to those regulations that take effect after your agreement to obtain the License. You agree to (a) comply strictly with all legal requirements established under these controls, (b) cooperate fully with MIE in any official or unofficial audit or inspection that relates to these controls and (c) not export, re-export, divert or transfer, directly or indirectly, any such item or direct products thereof to any country that is embargoed.
     2. Customer, its Authorized Users and Providers have obtained all necessary consents, authorizations or permissions required by the Laws to process any data, including PHI and PII, to the extent that such data is processed using the Services.
     3. Customer understands that the use of the Services is also governed by the Business Associate Agreement incorporated herein as Addendum 1 and agrees to all terms of the Business Associate Agreement.
  3. Title and Protection. In the event that Customer violates this Agreement and copies, translates, modifies, adapts or creates a derivative work from the Services, Customer agrees that MIE or its licensors will own all rights in any resulting work product. If, by operation of law, any person is deemed to possess any rights in such items (“Author”), Customer will cause the Author to assign such rights to MIE and its licensors. To the extent that such rights are inalienable under applicable law, Customer will cause the Author to waive and agree not to exercise such rights and, if such waiver and agreement are deemed invalid, to grant MIE, its licensors and their designees the exclusive, perpetual, irrevocable, worldwide and royalty-free right to use, market and modify such items without identifying the Author or seeking the Author's prior consent. Upon MIE’s request, Customer will cause the Author to execute any instrument that is appropriate to give full legal effect to the provisions of this Section. Customer further agrees not to remove from the Services any copyright and proprietary information notices.
  4. Reports and Audits. MIE or its designee may audit the computer equipment and records used by Customer in receiving the Services to determine whether Customer has complied with its obligations under this Agreement. In the event that such audit reveals use of the Services beyond the scope permitted by this Agreement, MIE may, at its option, either: (i) invoice Customer, and Customer will promptly pay MIE the additional Fees for the additional use and reimburse MIE for the costs of conducting the audit, or (ii) in the case of a violation of Section 2.7, pursue MIE’s remedies for a material breach of this Agreement and reimbursement for the costs of the audit. Further, if MIE’s audit reveals any material breaches of this Agreement, MIE may obtain any remedies available to it under this Agreement. MIE’s access and audit rights shall survive for a period of two (2) years after termination of this Agreement.
  5. Term of Agreement. The term of the Agreement shall be for a period of three (3) years from the Effective Date (the “Initial Term”). At the end of the Initial Term this Agreement shall automatically renew for individual terms of one (1) year (each, a “Renewal Term”). The Initial Term and the Renewal Terms are sometimes collectively referred to herein as the “Term.”
  6. Updates. Customer acknowledges that the Service may require the user to accept and allow installation of periodic updates to software controls needed to support the WebChart software application. Customer agrees that the installation process for updates will be accepted as a necessary component to enable proper performance of the Service.
  7. Terms of Use/Portal Terms. Customer acknowledges that it shall cause its Authorized Users, Providers, and Patients to agree to MIE’s standard Terms of Use, Portal Terms and/ or Telehealth Terms of Use (collectively, the “Terms of Use”).
  8. Support. All support and implementation for the Services shall be as set forth on the WebChart App Store or as determined by any agreement entered into by Customer and a MIE authorized reseller, as applicable.

1. LIMITED WARRANTY, INDEMNIFICATION, DISCLAIMERS, LIMITATIONS.
   1. Limited Warranty. MIE warrants that it is the owner of, or otherwise has the right to license the Services to Customer. MIE further warrants that the Services will perform in accordance with MIE’s standard documentation during the Term. In the event that MIE breaches the preceding performance warranty, and such breach has not been cured within sixty (60) days, Customer’s only remedy is termination of this Agreement pursuant to Section 4. The limited warranty set forth in this Section will be null and void upon Customer’s material breach of this Agreement.
   2. Indemnity.
      1. MIE shall indemnify Customer against any final non-appealable judgment award issued from a court of competent jurisdiction against Customer that is caused by a direct violation of any valid third party United States copyright, patent rights, trade secrets, or trademark due to the use of the Services as contemplated herein (other than a liability caused by Customer or due to the use of any third party software or hardware). To obtain such indemnity, Customer must provide written notice to MIE within 10 days of becoming aware of any such claim or violation and fully cooperate with MIE in the defense of such claim or violation. MIE shall conduct the defense and any settlement negotiations in any such third-party action arising as described herein. MIE’s indemnification is limited to the Services in the form provided to Customer by MIE and does not cover any claims arising from modifications or use of the Services in combination with software or other items not provided by MIE. If a third party infringement claim causes Customer’s quiet enjoyment and use of any Service to be stopped, MIE shall be entitled, at MIE’s own expense and option, and as Customer’s sole remedy, to either (i) replace the Service at issue, or part thereof, with a functionally equivalent and non-infringing product; or (ii) modify the Service at issue so it becomes non-infringing and performs in a substantially similar manner; or (iii) obtain a license for Customer to continue use of the Service at issue; or (iv) refund to Customer any Fees paid by Customer for the License related to the Service at issue for only that time period in which Customer was not able to utilize the Service, which refund shall not equate to more than what was paid by Customer during the immediately preceding twelve (12) months prior to the date that Customer was not able to utilize the Services.
      2. Customer shall defend, indemnify and hold MIE harmless from any liability, claim, loss, expense or costs (including reasonable attorneys’ fees) relating to or arising out of: (i) any claim or allegation that any information, design, specification, instruction, data, modifications or enhancements to any Services, or other material furnished by Customer (collectively, the “Material”) infringes a valid copyright, patent or other intellectual property right of a third party in the United States; (ii) any claim or allegation that Customer, Authorized User, Providers, Patients, or any employee or agent of Customer breached this Agreement or violated the Laws; (iii) any claim or allegation that arises out of the use of the Services by Customer, an Authorized User, a Provider , or a Patient; (iv) any claim or allegation that arises out of any curative, therapeutic, clinical, diagnostic or medical advice, care or information provided by the Customer, Authorized Users or Providers through the Services, including through any telemedicine platform, messaging or other electronic exchange; (v) any failure by Customer, an Authorized User or Provider to obtain any and all necessary consents, authorizations or permissions required by applicable law, including the Laws, to process any data, including PHI and PII; and (vi) any failure by Customer, Authorized Users or Providers to maintain any records in compliance with the Laws. MIE will provide Customer with the assistance, information, and authority reasonably necessary to perform its defense of the claim should Customer retain control of the defense and Customer will reimburse MIE for reasonable out-of-pocket expenses incurred by it in providing such assistance. Customer shall receive the written permission of MIE prior to settling any claims, which permission shall not be unreasonably withheld. In the event that any Material is believed by Customer to infringe upon a third party’s intellectual property right, Customer will, at its option and expense, either (i) modify the Material to be non-infringing while providing functionally equivalent performance; (ii) obtain for MIE a license to continue using the Material; or (iii) require return of the infringing Material and all rights thereto from MIE.
      3. This Section 3.2 constitutes the entire liability and exclusive remedy of either party with respect to any infringement claim.
   3. Disclaimers and Limitations.
      1. MIE does not make any, and expressly disclaims all, warranties, conditions and representations other than the warranties, conditions and representations expressly made in this Agreement, whether oral or written, express or implied, or arising by usage of trade or course of dealing, including, without limitation, the warranties of merchantability, fitness for a particular purpose, satisfactory quality, title and non-infringement. The remedies set forth herein will be the sole and exclusive remedies of Customer.
      2. The parties understand that Customer may use certain third-party software or equipment in conjunction with the Services. MIE makes no warranties or representations, express or implied, as to the quality, capabilities, operations, performance or suitability of the third-party software or equipment, including the ability to integrate same with the Services. The quality, capabilities, operations, performance and suitability of the third-party software or equipment lie solely with Customer and the vendor or supplier of such third-party software or equipment.
      3. MIE shall not be liable for any losses or damages arising from the actions, omissions or negligence of any Provider, Authorized User, or Patient as it relates to their use of or access to the Service.
      4. MIE shall not be liable for any potential risks associated with the use of telemedicine services, including Customer’s, Provider’s or Authorized User’s failure to comply with the laws or any applicable standard of care. Further, MIE shall not be liable for any delay or inability to provide treatment via telemedicine due to a failure of electronic equipment or internet transmission or a lack of access to medical records or complete treatment information when providing telemedicine services.
      5. The Customer acknowledges that MIE is under no obligation to record any encounter conducted by the Customer, its Providers or Authorized Users via telemedicine and it is the responsibility of the Customer to ensure that any information obtained during the telemedicine encounter is properly documented.
      6. The Customer acknowledges that MIE is not responsible for compliance with the Retention Laws and that any retention of medical or other records is the sole obligation of the Customer.
      7. The amounts to be paid to MIE under this Agreement do not include any assumption of risk and MIE will not, under any circumstances, be liable for (i) consequential, indirect, special, punitive or exemplary damages or lost profits, whether foreseeable or unforeseeable, whether claimed under contract, tort, breach, failure of warranty or any other legal theory or (ii) loss of or damage to hardware or software computer systems, Customer data or programming.
      8. The maximum aggregate liability of MIE for all claims under this Agreement, whether in contract, tort, or otherwise, regardless of the basis on which Customer is entitled to claim damages, will be limited in the aggregate for all claims and causes of action to an amount equal to the amount that is paid, or is payable, by Customer to MIE under this Agreement during the twelve (12) months prior to the occurrence of the first claim or cause of action. With respect to the foregoing, if such an event occurs during the first twelve (12) months after the Effective Date, liability shall be limited to an amount equal to the total charges payable to MIE by Customer pursuant to this Agreement during such twelve (12) month period, as applicable. The Customer specifically waives its right to participate in any class action or class-wide arbitration brought against MIE related to or arising from this Agreement.
      9. The limited warranties provided in this Agreement extend only to Customer.
      10. Any action permitted under this Agreement and not brought within 12 months after a party knew or should have known of the occurrence of the act or event giving rise to the liability is barred.
      11. Any Services (including modifications to the Services) provided by MIE to Customer, in addition to the products or Services that MIE has specifically agreed to provide in this Agreement, will be provided subject to this Section 3.3.
      12. The Services provided to Customer are not guaranteed to meet all of Customer’s actual or stated requirements. The Services may require changes, including modifications (including changes and modifications at an additional cost) in order to function in Customer’s unique environment. MIE does not represent and disclaims any warranty that the functioning of the Services will be uninterrupted or error free, or that the Services will meet all of Customer’s requirements.
   4. The parties agree that in the event that any remedy under this Agreement is determined to have failed of its essential purpose, all limitations of liability and exclusions of damages shall be unaffected by such a determination.
2. **BREACH, TERMINATION, SURVIVAL**.
   1. Breach. Upon any failure by either party to perform or comply with any of its material obligations under this Agreement, including the obligation to make payments under this Agreement or any other agreement between MIE and Customer when due, which breach is not cured within 30 days of receipt of written notice, the non-breaching party will have the right, without waiving any right or remedy otherwise available, to cease performance until such failure is remedied or terminate the Agreement.
   2. Termination.
      1. Either party may terminate this Agreement at any time by providing the other party written notice of termination sixty (60) days prior to such termination. If Customer terminates this Agreement at any time pursuant to this Section 4.2.1, any prepayment of Fees made by Customer shall be nonrefundable to Customer.
      2. Upon the termination of this Agreement, MIE has the right to discontinue providing the Services to Customer. At or prior to termination and at no charge to Customer, Customer may obtain its electronic health information (“EHI”) by utilizing the EHI export required by 45 C.F.R. 170.315, the Health IT Certification Criteria, as may be amended from time to time. To the extent allowed by applicable law, MIE may (a) charge Customer its then-current rates for professional services for any export of data that is beyond what is required by applicable law; and, (b) initiate deletion of any of Customer’s EHI or other data that Customer does not export at or prior to termination.
      3. Termination of this Agreement is without prejudice to any rights of either party against the other and termination will not relieve either party of any of its obligations to the other existing at the time of termination. In the event that this Agreement is terminated by either Customer or MIE, Customer shall pay all Fees due and owing through the date of termination.
   3. Survival. Provisions concerning the parties’ rights and obligations which by the content of the provision operate after termination or which are necessary to enforce any right will survive termination of this Agreement.
3. **PAYMENT AND TAXES**.

All Fees are payable one month in advance, and MIE shall be entitled to retain those Fees whether or not Customer uses the License or the Services. The Fees charged by MIE are subject to change during the Term but shall not increase by more than ten percent (10%) in any calendar year. Any payments due to MIE that remain unpaid 30 days after the due date will be considered delinquent and subject to late penalty Fees of the lesser of 18% per year or the highest rate permitted in any State within the United States from the due date until the amount is paid. To the extent allowed by law, MIE reserves the right to suspend or change access to any Services, including altering the access so that it is “read only”, if any payment is not received when due. All amounts payable by Customer to MIE under this Agreement are exclusive of any tax or similar governmental charge that may be assessed by any jurisdiction on the License or performance of Services. Customer is responsible for paying all such taxes, except for any tax on the net income or net worth of MIE.

1. **MISCELLANEOUS**.
   1. Governing Law, Etc. This Agreement will be governed by the internal laws of the State of Indiana, without reference to its choice of law rules, and may be executed in counterparts. If a provision of this Agreement is held invalid under any applicable law, such invalidity will not affect any other provision of this Agreement and such invalid provision shall be deemed modified to the extent necessary to make it valid and enforceable or, if such provision cannot be so modified, it shall be deemed deleted from this Agreement. The venue for litigation regarding any aspect of this Agreement will be in the state courts of the State of Indiana located in Allen County, Indiana or the United States Federal Courts for the Northern District of Indiana, and the parties consent to such jurisdiction.
   2. Attorneys’ Fees and Costs. In the event that MIE institutes, or is made a party to, litigation with Customer or one of Customer’s Providers, Authorized Users, patients or clients regarding the rights and obligations created under this Agreement or the Services, MIE shall be entitled to recover its attorneys’ fees, costs, and expenses incurred in that litigation.
   3. Non-waiver. The failure of either party to enforce any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision.
   4. Force Majeure. If the performance of either party is delayed or prevented at any time due to extraordinary circumstances beyond its reasonable control, performance will be excused until such condition no longer exists, except that this Section 6.4 does not excuse the obligation of either party to make payments to the other party when due, nor does it excuse either party from its obligations under Section 6.9 (Nondisclosure Obligations) of this Agreement.
   5. Notices. All notices will be in writing and sent by certified mail or express courier to the address indicated below for MIE or such other address as MIE may indicate by prior written notice to Customer. In addition to providing written notice to MIE via certified mail or express couriers, a copy of all such notices shall be sent to the following email address: [legal@mieweb.com](mailto:legal@mieweb.com).

| If to MIE: | MIE, Inc.  Attn: CEO  6302 Constitution Drive  Fort Wayne, IN 46804 |
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MIE may send notice to Customer via email to the email address given at registration by Customer.

* 1. Integration, Purchase Order, Invalidity. This Agreement constitutes the true will of the parties and the entire agreement between them with respect to the Services and the license to use the Services, and this Agreement supersedes all previous communications between the parties. This Agreement may only be altered or modified by written instrument duly executed by both parties or as otherwise set forth herein. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of any other agreement, purchase order or SOW entered into by the Customer and MIE, the terms and conditions of this Agreement will control. In the event that any portion of this Agreement is found to be invalid or unenforceable, the parties agree that such a finding shall have no effect on the remaining portions of the Agreement.
  2. Cooperation. Both parties will reasonably cooperate with the other in connection with each other’s performance. Customer acknowledges that the timely provision of and access to office accommodations, facilities, equipment, assistance, cooperation, complete and accurate information and data from its officers, agents, and employees, and suitably configured computer products are essential to performance of any Services and Support Services. If the relevant project or any project assumptions are changed by Customer or any other person, MIE will not be responsible for any Services arising from the change unless Customer and MIE specifically consent to the change, scheduling, and additional charges, if any, in a written document signed by both of them.
  3. Assignment. The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Customer will not assign or sublicense, in whole or in part, by way of a stock or asset sale or otherwise, any of its rights or obligations under this Agreement without the prior written consent of MIE, which consent will not be unreasonably withheld or delayed. Any prohibited assignment or sublicense of this Agreement is void.
  4. Nondisclosure Obligation.
     1. To the extent applicable, MIE shall comply with Communication Conditions and not restrict or prohibit Customer from making written, oral, or electronic communications that would otherwise be allowed by the Communication Conditions. Notwithstanding the foregoing and to the extent permitted by the Communication Conditions, any information provided by MIE to Customer marked “confidential” under this Agreement (“Confidential Information”) is confidential and will not be disclosed, orally or in writing by Customer to any third party without MIE’s prior written consent.
     2. MIE will keep confidential and not disclose any proprietary information or Confidential Information of Customer to which MIE is permitted access or which is disclosed to MIE by Customer without Customer’s express written consent, except in connection with providing Services to Customer. The Customer’s Confidential Information will include all patient data, to which MIE make no claim of ownership.
     3. Neither party will have any obligation of confidentiality with regard to information which (i) is or becomes a part of the public domain through no act or omission of such party, (ii) was in such party's lawful possession prior to the disclosure thereto and had not been obtained by such party either directly or indirectly from the disclosing party, (iii) is lawfully disclosed to such party by a third party without restriction on disclosure, (iv) is independently developed by such party, (v) is required to be disclosed by law, or (vi) is permitted to be disclosed by the Communication Conditions.
     4. Customer agrees that if Customer breaches any of its obligations of confidentiality, MIE will be irreparably harmed and in addition to all other remedies, MIE is entitled to relief in equity, including an injunction, without the necessity of proof of actual damage.
     5. If Customer supplies MIE with personal data, including protected health information, or otherwise gives MIE access to personal data, Customer represents that it has permission from the owner of the information to grant such access or that Customer is otherwise allowed by applicable law to grant such access.
  5. Relationship of Parties. The relationship of the parties is that of independent contractors dealing at arms-length and nothing in this Agreement will be construed so as to constitute the parties as partners, joint ventures or co-owners or empower either party to act for, bind or otherwise create or assume any obligation on behalf of the other and neither party will hold itself out as entitled to do the same.
  6. Interpretation. In the event of a dispute between the parties, this Agreement will not be construed for or against either party but will be interpreted in a manner consistent with the intent of the parties as evidenced by the terms of this Agreement. Unless otherwise specified, “days” means calendar days.

[signature page following]

MIE and Customer, by their duly authorized representatives, do hereby execute this WebChart Services License Agreement as of the dates set forth below:

| **“MIE”**  **Medical Informatics Engineering, Inc.**  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **“Customer”**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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**Exhibit A**

**Fees and Services**

**Addendum 1**

**Business Associate Agreement**

See attached.

**HIPAA BUSINESS ASSOCIATE AGREEMENT**

This HIPAA Business Associate Agreement (the "**Agreement**") is entered into by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("**Covered Entity**" or "**CE**"), and Medical Informatics Engineering, Inc., an Indiana corporation, with offices at6302 Constitution Drive, Fort Wayne, IN 46804 ("**Business Associate**" or "**BA**"). The “**Effective Date**” of this Agreement shall be the date upon which the Covered Entity and Business Associate fully execute this Agreement.

CE has entered or may enter into a Services License Agreement with BA (the "**Services Agreement**") pursuant to which BA will render services to, for, or on behalf of CE. CE may Disclose certain information to BA pursuant to the terms of this Agreement, some of which may constitute Protected Health Information (as defined herein). CE and BA intend to protect the privacy and security of PHI Disclosed to BA pursuant to this Agreement in compliance with applicable provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("**HIPAA**") and the HIPAA administrative simplification regulations, 45 C.F.R. Parts 160 and Part 164, Subparts A, C and E (Subpart E, together with the definitions in Subpart A is known as the "Standards for Privacy of Individually Identifiable Health Information" (the "**Privacy Rule**") and Subpart C, together with the definitions in Subpart A, is known as the "Security Standards for the Protection of Electronic Protected Health Information" (the "**Security Rule**")) as amended by the Health Information Technology for Economic and Clinical Health Act ("**HITECH**"), set forth in Division A, Title XIII, of the American Recovery and Reinvestment Act of 2009 ("**ARRA**") and its promulgating regulations, including 45 C.F.R. Part 164, Subpart D ("**HITECH/ARRA**"). The purpose of this Agreement is to comply with the requirements of the Privacy and Security Rules, including, but not limited to, the Business Associate Agreement requirements at 45 C.F.R. §§ 164.314(a) and 164.504(e), and as amended by HITECH/ARRA which extends direct application of certain Privacy and Security Rule standards to Business Associates.

IN CONSIDERATION of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

1. DEFINITIONS

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms set forth in HIPAA. In the event of a conflict between the definitions in this Agreement and the definitions in HIPAA, the definitions in HIPAA shall be applied.

* 1. Disclose. "Disclose" or "Disclosure" means the release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information.
  2. Electronic Protected Health Information. "Electronic Health Information" or "ePHI" means individually identifiable health information that is transmitted or maintained in Electronic Media. For the purposes of this Agreement, PHI includes ePHI where applicable.
  3. Protected Health Information. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium that:
     1. Relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual;
     2. Identifies the individual or with respect to which there is a reasonable basis to believe this information can be used to identify the individual; and
     3. Is limited to the information created or received by BA from or on behalf of CE or from or behalf of another person or entity in connection with the Services Agreement.
  4. Required by Law. "Required by Law" means a mandate contained in law that compels a Covered Entity to make a Use or Disclosure of PHI and that is enforceable in a court of law.
  5. Use. "Use" means the sharing, employment, application, utilization, examination, or analysis of PHI within the BA's organization.

1. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE
   1. Stated Purposes for Which Business Associate May Use or Disclose PHI. Business Associate is permitted to Use and Disclose PHI it creates or receives for or from Covered Entity for the purposes as described in the Services Agreement. Business Associate may also Use or Disclose PHI for the purposes discussed in Sections 3.1 and 3.2 of this Agreement.
   2. Minimum Necessary. Business Associate agrees to not Use or further Disclose PHI, and to make reasonable efforts to assure that its officers, directors, employees and agents do not Use or further Disclose PHI, other than as permitted or required by this Agreement, as required by law, as minimally necessary to provide the services contemplated by the Services Agreement, or as otherwise authorized in writing by Covered Entity. Business Associate shall not Use or Disclose PHI in any manner that would violate HIPAA or other applicable law.
   3. Safeguards. Business Associate agrees to use appropriate safeguards to prevent Use or Disclosure of the PHI other than as provided for by this Agreement or the Services Agreement.
   4. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this Agreement or the Services Agreement.
   5. Reports of Non-Permitted Use or Disclosure. Business Associate agrees to promptly report to Covered Entity, without any unreasonable delay and in no case later than fifteen (15) days, any Use or Disclosure by BA of CE's PHI not provided for by this Agreement of which BA becomes aware.
   6. Agents. BA will obtain written agreements from any subcontractors and agents to whom BA provides PHI requiring those subcontractors and agents to agree in writing to the same restrictions and conditions that apply to BA, including but not limited to the implementation of reasonable and appropriate safeguards to protect PHI.
   7. Internal Practices. Business Associate agrees to 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 in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with HIPAA and other applicable laws, including HITECH/ARRA.
   8. Access to PHI. In the event that BA maintains PHI in a Designated Record Set, BA shall provide access to such PHI, within fifteen (15) days of a written request by CE, in order to meet the requirements under 45 CFR § 164.524. This provision will apply if BA or any subcontractors or agents of BA possess PHI in any form.
   9. Amendment of PHI. In the event that BA maintains PHI in a Designated Record Set, BA shall make any amendment(s) to PHI that the CE directs or agrees to pursuant to 45 CFR § 164.526 at the request of CE or an Individual within fifteen (15) days.
   10. No Remuneration in Exchange for PHI. BA shall not receive direct or indirect remuneration for any exchange of PHI not otherwise authorized under HITECH/ARRA or the Privacy Rule without Individual authorization, unless (i) specifically required for the provision of services under this Agreement; (ii) for providing the Individual with a copy of his or her PHI; or (iii) otherwise determined by the Secretary in regulations.
   11. Accounting of Disclosures. Business Associate agrees to document such Disclosures of PHI and information related to such Disclosures as would be required to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528. It shall be Covered Entity's responsibility to prepare and deliver any requested accounting of Disclosures to the Individual. BA shall provide to CE, within fifteen (15) days of a written request by CE, information required by CE to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.
2. OTHER PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE
   1. Permitted Uses and Disclosures. Except as otherwise limited in this Agreement, BA may Use or Disclose PHI to perform functions, activities, or services for, or on behalf of CE as specified in the Services Agreement, which is incorporated herein by reference, provided such Use or Disclosure does not violate the Privacy Rule if done by the CE or the Minimum Necessary policies and procedures of BA, as required by the Privacy Rule.
   2. Use or Disclosure for Management and Administration. To the extent permitted by this Agreement, the Services Agreement, or any other arrangement with the Covered Entity, Business Associate may Use or Disclose PHI received in its capacity as a Business Associate for the proper management and administration of the Business Associate, or as necessary to carry out the legal responsibilities of Business Associate if such Use or Disclosure is Required by Law, or Business Associate obtains, prior to making any such Disclosure, reasonable assurances from the person to whom the information is Disclosed: (a) that the PHI will remain confidential and be Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person; and (b) that the person to whom the information is Disclosed agrees to notify the BA, in writing, within fifteen (15) days becoming aware of any known breaches of the confidentiality or security of the PHI.
   3. Data Aggregation. Except as otherwise limited in this Agreement, Business Associate may Use PHI to provide Data Aggregation services to Covered Entity relating to the health care operations of CE.
   4. De-identify PHI. Business Associate may de-identify PHI provided by Covered Entity consistent with the provisions set forth in 45 CFR § 164.502(d).
   5. Report Violations of Law. Except as otherwise limited in this Agreement, Business Associate may Use PHI to report violations of law to appropriate state and federal authorities, consistent with applicable laws and regulations.
3. OBLIGATIONS OF COVERED ENTITY
   1. Notice of Privacy Practices. CE shall provide BA with the notice of privacy practices that CE produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.
   2. Changes in Permission. CE shall notify BA of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI, to the extent that such changes may affect BA's Use or Disclosure of PHI.
   3. Notification of Restrictions. CE shall notify BA of any restriction to the Use or Disclosure of PHI that CE has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect BA's Use or Disclosure of PHI.
4. TERM AND TERMINATION
   1. Term. The Term of this Agreement shall be effective as of the Effective Date and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
   2. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate of this Agreement, Covered Entity shall (a) notify Business Associate of such material breach in writing and provide thirty (30) days from the date of such notice for Business Associate to cure the breach or, if such material breach is not cured within thirty (30) days terminate this Agreement and the Services Agreement; or, (b) immediately terminate this Agreement and the Services Agreement if Business Associate has breached a material term of this Agreement and Covered Entity has determined that a cure is not possible; and/or (c) report the violation to the Secretary.
   3. Effect of Termination.
      1. Except as provided in this Section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI. Any return or destruction of PHI by Business Associate, including costs associated therewith, is governed by the Services Agreement.
      2. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. Upon notice from Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and 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.
5. SECURITY RULE COMPLIANCE
   1. Compliance with Safeguards. BA shall use reasonable and appropriate safeguards to prevent the Use or Disclosure of the PHI, other than as provided by the Services Agreement, this Agreement, or as Required By Law. BA shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI pursuant to 45 C.F.R. § 164, Subpart C. In addition, BA shall comply with all applicable requirements of the Security Rule.
   2. Subcontractors and Agents. BA shall ensure that any agent, including any subcontractor, to whom BA provides ePHI agrees, in writing, to comply with the applicable administrative, physical, and technical safeguards, as well as the applicable policies, procedures, and documentation requirements contained within the Security Rule.
   3. Notice of Security Incident or Breach. BA shall provide notice to CE of any Security Incident or actual or suspected Breach of Unsecured PHI of which BA becomes aware as required by the Security Rule. Such notice, with respect to a Breach of Unsecured PHI, shall be provided no later than fifteen (15) days after BA becomes aware of the Breach. BA shall cooperate as reasonably necessary with CE in identifying each Individual whose Unsecured PHI has been, or is reasonably believed to have been accessed, acquired, Used or Disclosed during the Breach. The Parties agree that this Section constitutes notice by Business Associate to CE of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no other additional notice to Customer shall be required. **“Unsuccessful Security Incidents**” shall include pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denials of service attacks that do not result in a server being taken offline, and any combination of the above, so long as no such incident results in any of the following: (i) unauthorized access, Use, Disclosure, modification, or destruction of Protected Health Information; (ii) modifications to Business Associate’s security policies or procedures; (iii) modifications to Business Associate’s safeguarding measures; (iv) interference with Business Associate’s operations; or (v) interference with Business Associate’s information systems. Covered Entity acknowledges and agrees that (i) Business Associate is not responsible for and shall have no liability for any Breach that arises from the Covered Entity’s own or that of the Covered Entity’s employees, officers, directors, contractor or agents own negligence, willful misconduct, violation of law, including HIPAA, or violation of this Agreement; and (ii) under no circumstances shall Business Associate be responsible or liable for any Breach or damages resulting from any other Security Incident or unauthorized access due to the actions or omissions of Covered Entity, or its officers, directors, employees, contractors, agents or the actions or omissions of any third party.
6. MISCELLANEOUS
   1. Regulatory References. A reference in this Agreement to a section in the HIPAA implementing regulations means the section as in effect, or as amended or superseded, and for which compliance is required.
   2. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of the Privacy and Security Rules.
   3. Survival. The respective rights and obligations under Sections 5.3, 6.3, 7.11 and 7.12 of this Agreement shall survive the termination of this Agreement.
   4. Interpretation. Agreement shall be interpreted as broadly as necessary to implement and comply with the Privacy and Security Rules and applicable state laws. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with the Privacy and Security Rules and applicable state laws.
   5. Relationship to Other Agreement Provisions. In the event that a provision of this Agreement is contrary to a provision of the Services Agreement or any other underlying agreement or agreements under which Business Associate has access to, Uses or Discloses PHI on behalf of Covered Entity, the provisions of this Agreement shall control.
   6. Modification of Agreement. No alteration, amendment or modification of the terms of this Agreement shall be valid or effective unless in writing and signed by Business Associate and Covered Entity. Notwithstanding the foregoing, either party may amend this Agreement upon written notice to the other party to the extent necessary or appropriate to assure compliance with applicable laws and regulations as adopted, modified or superseded from time to time.
   7. Notices. Any notices required or permitted to be given under this Agreement by either party shall be given in writing: (a) by personal delivery; (b) by electronic mail to the contact person designated in the Service Agreement between the Business Associate and the Covered Entity; (c) electronic facsimile with confirmation sent by United States first class mail; (d) by bonded courier or nationally recognized overnight delivery service; or (e) by United States first class registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at the addresses set forth on the first page of this Agreement or to such other addresses as the parties may request in writing by notice pursuant to this Section 7.7. Notices shall be deemed received on the earliest of: (a) personal delivery; (b) the date a notice is sent via electronic mail unless a delivery failure notice is received; (c) upon the next business day after delivery by electronic facsimile with confirmation that the transmission was completed; or (d) upon receipt by any other method of delivery.
   8. Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Indiana without regard to principles of conflicts and law. The venue for any actions or proceedings arising under or in connection with this Agreement shall be exclusively the state or federal courts located in Allen County, Indiana.
   9. Assistance in Litigation or Administrative Proceedings. Either party shall make itself, and any subcontractors, employees or agents assisting the party in the performance of its obligations under this Agreement, available to the other party, at no cost to the other party, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the party, its directors, officers or employees based upon a claimed violation of the Privacy Rule, Security Rule or HITECH/ARRA, except where the party or its subcontractor, employee or agent is a named adverse party.
   10. Insurance. Business Associate represents and warrants that during the term of this Agreement, it shall maintain commercially reasonable and sufficient insurance to adequately underwrite the potential risks, including cyber liability insurance with minimum limits of $5 million per occurrence. Upon request, Business Associate shall provide evidence of continuous coverage to Covered Entity.
   11. Data Ownership. Unless otherwise specifically set forth in the Services Agreement, Covered Entity owns or controls, and shall continue to own or control, any and all PHI shared with Business Associate in order to allow Business Associate to perform its services under the Service Agreement.
   12. Each Party Responsible for Own Acts. Each party shall be legally and financially responsible for the acts and omissions of itself and its employees, directors, officers, representatives and agents and will pay all losses and damages attributable to such acts or omissions for which it is legally liable. This Agreement shall not be construed to create a contractual obligation for one party to indemnify the other party for loss or damage resulting from any act or omission of such other party or its employees, directors, officers, representatives or agents, nor to constitute a waiver by either party of any rights to indemnification, contribution or subrogation that the party may have by operation of law.
   13. Limitation of Liability. FOR ALL EVENTS GIVING RISE TO LIABILITY HEREUNDER, IN NO EVENT, WHETHER IN CONTRACT OR IN TORT (INCLUDING BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY IN TORT) OR OTHERWISE, SHALL BUSINESS ASSOCIATE BE LIABLE FOR ANY DIRECT OR INDIRECT DAMAGES OR LIABLIITY INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUE, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGESE, EVEN IF COVERED ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.
   14. Independent Contractors. For purposes of this Agreement, CE and BA are and will act at all times as independent contractors. None of the provisions of this Agreement are intended to create, nor shall be deemed or construed to create, any relationship other than that of independent entities contracting with each other for the purpose of effecting this Agreement. None of the provisions of this Agreement shall establish or be deemed or construed to establish any partnership, agency, employment agreement or joint venture between the parties.
   15. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CE or BA any rights, remedies, obligations, or liabilities whatsoever.
   16. Severability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term hereof, then the remainder of this Agreement shall not be affected thereby. In lieu of each clause or provision of this Agreement which is deemed to be illegal, invalid or unenforceable, there shall be added, as part of this Agreement, a clause or provision as similar in terms to the unenforceable term as may be possible and as may be legal, valid and enforceable.

Covered Entity and Business Associate, by their duly authorized representatives, do hereby execute this Business Associate Agreement as of the dates set forth below:

| **“Business Associate”**  **Medical Informatics Engineering, Inc.**  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **“Covered Entity”**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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