

## HOSTED SOFTWARE TERMS EXHIBIT

### 1 Purpose

This Exhibit sets forth the governing terms applicable to Products and Services containing any Hosted Software.

### 2 Definitions

Unless otherwise defined herein, capitalized terms shall have the meaning ascribed to them elsewhere in the Agreement.

**2.1 "Critical Vulnerability"** means a Vulnerability for which there is a publicly available mechanism to exploit the Vulnerability.

**2.2 "Severe Vulnerability"** means a Vulnerability for which there is not a publicly available mechanism to exploit the Vulnerability but which if exploited can typically lead to a complete system compromise.

**2.3 "Recovery Point Objective" or "RPO"** means the Supplier's representation of the maximum length of time prior to the point of outage arising from a Disaster event that activity recorded in the Products and Services may not be recoverable due to the Disaster.

**2.4 "Recovery Time Objective" or "RTO"** means the Supplier's representation of the length of time from the point of outage arising from a Disaster to the time at which Customers may make productive use of the Products and Services.

**2.5 "Update"** means any fix, enhancement, or upgrade to the Hosted Software or Documentation that: (i) Supplier provides to Customer as part of the subscription to the Hosted Software, or (ii) is provided by Supplier to other Supplier customers at no charge.

**2.6 "Vulnerability"** means a flaw or weakness in the Products or Services that exposes the Products and Services to security threats.

### 3 Acceptance

Products or Services containing Hosted Software shall be subject to the Acceptance Testing provisions set forth in the attached Acceptance Schedule and any acceptance criteria specified in a Customer Order.

### 4 Representations and Warranties

Supplier represents and warrants that the Products and Services shall:

**4.1** not degrade performance or remove functionality as a result of Updates, and be compatible with Supplier's technical environment recommendations, including hardware, operating systems, software applications, and networks specified by Supplier in the Agreement, or in the Documentation;

**4.2** If the Products or Services capture information for purposes of complying with the federal and state government programs further detailed herein, (i) not directly or indirectly prohibit or prevent Customer, including its Qualified Professionals or Partially Qualified Professionals, Eligible Providers, Eligible Hospitals, Eligible Clinicians or Eligible Professionals, from satisfying all requirements and performing a successful attestation for either (1) Meaningful Use as defined in and set forth by the Health Information Technology for Economic and Clinical Health Act located at Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (Feb. 17, 2009), and all regulations promulgated pursuant thereto ("**HITECH Act**"); (2) the Medicare Access &

CHIP Reauthorization Act of 2015 ("**MACRA**"), and all regulations promulgated pursuant thereto; or (3) such subsequent incentive system as may be developed and (ii) will align and comply with the HITECH Act, including all Promoting Interoperability (f/k/a Meaningful Use) objectives and measures, as well as MACRA, including the Merit-Based Incentive Payment System, Alternative Payment Models, Advanced Alternative Payment Models, and Qualifying Alternate Payment Models. Supplier shall provide all necessary assistance at no additional cost in the event that Customer is subject to any audit related to compliance with MACRA, the HITECH Act, or such incentive systems. Supplier agrees that in addition to any rights or remedies afforded to Customer pursuant to the Agreement or law, a breach of any warranty by Supplier set forth in this Section 4.2 will result in an immediate refund by Supplier of all fees paid by Customer hereunder. Supplier also expressly agrees that any direct or indirect damages resulting from a breach of any warranty set forth in this Section 4.2 by Supplier shall not be subject to any limitation of liability set forth in the Agreement.

## **5 Interfaces and Access Management**

**5.1 Interfaces.** Supplier shall provide interfaces to Customer that will: (i) provide Customer with read/write access to all Customer Data stored by the Software and (ii) allow Customer to leverage Customer's business logic as necessary to enable Customer's ability to read and write to all Customer Data stored by the Software. Supplier will aid in implementation and integration of these interfaces and provide continuous enhancements and support of the interfaces throughout the term of the applicable Customer Order. For systems of clinical record, the interfaces must comply with the warranty set forth in Section 5.2 of this Exhibit. If the interface will be used in connection with PHI, the interface must provide consistent access to Data, and return Data with a consistent schema as specified in the HL7 FHIR Argonaut Implementation Guide or successor standard. Additional interfaces to be provided as part of a Customer Order shall be described therein.

**5.2 Access Management.** Supplier shall support modern (i.e. SAML, OAuth or OIDC federation patterns) access authorization and authorization controls leveraging Customer's identities. Supplier shall update access authorization and authorization controls as necessary to remain current with then-current modern federation patterns utilized by Customer. Authorization controls shall include role and geographic-based controls. Supplier shall provide Customer with the ability to integrate security event logs associated with the Hosted Software into Customer's security information and event management (SIEM) system.

## **6 Supplier Responsibilities**

**6.1 Updates.** Supplier shall Update the Hosted Software as necessary for the Products to perform in accordance with the Documentation and to address Vulnerabilities. Supplier must have a process to discover Vulnerabilities and obtain, test and deploy Updates in a timely manner to remedy any Vulnerabilities that are discovered. When there is a Critical Vulnerability, an Update must be applied to remedy the Critical Vulnerability within 30 days of discovery. Similarly, if there is a Severe Vulnerability, an Update must be applied to remedy the Severe Vulnerability within 60 days of discovery.

**6.2 Data.** Supplier shall provide Data restoration services and support to Customer if a failure of the Hosted Software or Supplier's negligence results in any Data being lost, corrupted, or rendered inaccessible.

## **7 Hosting**

**7.1 Vulnerability/Penetration Testing.** On Customer's reasonable request (no more than twice per calendar year), Supplier shall provide a summary of penetration tests of Supplier's test servers used to provide the Products and Services. Such tests shall be performed: (i) at the sole expense of Supplier; (ii) by a third party secured by Supplier and; (iii) on an annual basis.

**7.2 Incident Management.** If Supplier discovers or is notified of a breach or potential breach of security relating to Confidential Information or Personal Data in Supplier's or its Subcontractor's possession or control, Supplier shall, within five (5) business days (i) notify Customer of such breach or potential breach, (ii) investigate (with Customer's participation upon Customer request) such breach or potential breach, (iii) perform a root cause analysis and prepare a corrective action plan, (iv) provide written reports of its findings and proposed actions to Customer for Customer's review and approval and (v) if such breach or potential breach is within Supplier's or its Subcontractor's or Affiliate's area of control, remediate such breach or potential breach of security and take commercially reasonable actions to prevent its recurrence. With regard to PHI, in the event of a conflict between this section and the Business Associate Agreement, the terms of the Business Associate Agreement will control.

**7.3 Audit Logs.** Until the applicable Customer Order Termination Date, Supplier shall record and retain all add/change/delete/inquiry activity to Data associated with such Customer Order, (the "**Audit Logs**") including, without limitation, the activity date, the identity of user or application initiating the change, and the before/after image of the affected Data. Supplier shall maintain Audit Logs for a minimum of twelve (12) months from the date of activity. Supplier shall promptly, at no additional cost to Customer, retrieve and summarize change activity as reasonably requested by Customer to satisfy legal, regulatory, security, or business needs. To the extent that applicable Laws require more stringent or extensive treatment of Audit Logs, the provisions of such Laws shall prevail.

**7.4 Business Continuity.** Supplier represents that it has a business continuity plan and that Supplier will update such plan no less frequently than annually. Supplier agrees to provide its then-current business continuity plan and results of the most recent test of such business continuity plan, upon request, to Customer (aisITBCMPinformation@ascension.org), no later than two (2) weeks after the receipt of the request.

## **7.5 Disaster Recovery**

**7.5.1 Plan.** Supplier represents that it has a Disaster recovery plan and that Supplier will update and test such plan no less frequently than annually. Supplier agrees to provide its then-current Disaster recovery plan and the results of the most recent test to Customer (aisITBCMPinformation@ascension.org), no later than two (2) weeks after the receipt of the request.

**7.5.2 RTO and RPO.** As supported by its Disaster recovery plan, Supplier represents the capability to restore the Products and Services in the event of a Disaster in compliance with the agreed upon values identified below:

1. The Recovery Time Objective ("RTO") is: 4 hours
2. The Recovery Point Objective ("RPO") is: 4 hours

**7.5.3 Disaster Recovery Testing.** A full Disaster recovery test shall be satisfactorily conducted each calendar year until the later of the Agreement Termination Date and the last Customer Order Termination Date at date(s) and time(s) mutually agreed upon by Supplier and Customer. Customer and Supplier will determine whether a Disaster recovery test was successful based on whether (i) the RTO and RPO have been met; (ii) Supplier's other Disaster recovery test objectives and criteria have been met; and (iii) any other Disaster recovery test objectives or criteria established by Customer have been met. If a Disaster recovery test suggests that the Supplier may not be able to meet the RPO or RTO in the event of a Disaster, Supplier shall promptly work to correct any such failure in order to successfully complete a Disaster recovery test. If the Disaster recovery test is unsuccessful, Supplier shall develop a remediation plan within thirty (30) days, provide such remediation plan to Customer and proceed promptly to execute such remediation plan. Customer have the right to request a follow-up Disaster recovery test to demonstrate that remediation was effective.

**7.5.4 Restoration of Primary and Secondary Sites.** In the event of a Disaster requiring the failover of the Products or Services from the primary site to the secondary site, Supplier will designate a new primary site within ninety (90) days of the Disaster. If the secondary site becomes the primary site, Supplier will designate a new secondary site within ninety (90) days of the Disaster. If applicable, Customer and Supplier will mutually agree on a plan to failback.

## **Acceptance Schedule**

### **1. Initial Testing**

Upon completion of installation of the Products or Services, if applicable, or upon provision of access if not installed by Supplier, Customer shall conduct acceptance testing within sixty (60) days to determine whether the Products or Services, as applicable, perform in accordance with the Documentation and any additional acceptance criteria set forth in the applicable Customer Order ("**Acceptance Tests**"). If the Products or Services, as applicable, successfully complete the Acceptance Tests, Customer shall so notify Supplier in writing within five (5) business days and the Products or Services, as applicable, shall be deemed to be accepted ("**Acceptance**"). In such case, the acceptance date shall be the date that the Products or Services, as applicable, satisfactorily complete all of the Acceptance Tests ("**Acceptance Date**"). Products or Services which must be accepted in stages shall not be finally accepted until Customer notifies Supplier of final acceptance of the Products or Services as a whole.

### **2. Failure**

If the Products or Services fail any of the Acceptance Tests, Customer shall notify Supplier of such failure in writing and Supplier shall have fifteen (15) business days in which to correct, modify, or improve the Products or Services, as applicable, to cause them to meet each Acceptance Test. Thereafter, Customer shall have fifteen (15) additional business days in which to repeat all of the Acceptance Tests.

### **3. Testing Period Limited; Cancelation; Reimbursement**

The process of testing and repair shall be repeated as may be necessary until the Products or Services, as applicable, meet the Acceptance Tests; provided, however, that if the Products or Services, as applicable, do not achieve Acceptance hereunder within ninety (90) calendar days after completion of installation or provision of access, as applicable, of the Products or completion of provision of the Services, then Customer, shall have the right and option, in its sole discretion, to: (i) cancel the applicable Customer Order and receive a full reimbursement of all Charges paid by Customer under the applicable Customer Order, such reimbursement to be paid to Customer within thirty (30) business days; (ii) extend the Acceptance Testing subject to Customer's right to cancel and obtain reimbursements if the Products or Services, as applicable, are not repaired within such extension period; (iii) demand Supplier install a direct replacement of the Products or reperform the Services failing to meet the applicable phase of Acceptance Testing within an agreed upon time frame; and/or (iv) pursue any other remedies provided at Law.

## Service Level Agreement Schedule

### 1 Purpose

This Schedule describes the manner in which quantitative expectations of performance are to be computed, reported, and administered by Supplier in performance of its obligations as prescribed by Customer Orders under this Agreement.

### 2 Definitions

Unless otherwise defined herein, capitalized terms shall have the meaning ascribed to them in elsewhere in the Agreement.

**2.1** "Available" has the meaning given in Section 4.2.1.

**2.2** "Business Day" means Monday through Saturday, excluding Customer holidays.

**2.3** "Business Hours" means 5:00 AM to 9:00 PM Customer local time during a Business Day.

**2.4** "Closure" occurs (or a Ticket is "Closed") when Supplier confirms with the Customer Contact that the Ticket has been Resolved. If the Customer Contact indicates that the problem is not Resolved then the Ticket remains open and is not Resolved. If Supplier reasonably believes that the Ticket has been Resolved, and has made three (3) failed attempts to contact the Customer Contact to confirm, at least one of which is by email, then Supplier may deem the Ticket Closed as of the time Supplier believes the Error was Resolved, subject to such Ticket's being reopened if the Customer Contact subsequently notifies Supplier that the Error is not Resolved. The time spent by Supplier in confirming Closure after Resolution is not counted in determining compliance.

**2.5** "Customer Contact" shall mean the technical representative of Customer that reports an Error to Supplier.

**2.6** "Error" means an instance in which Customer detects that the Product(s): (i) is not accessible through customary means, (ii) does not operate in a manner consistent with prior use, or (iii) does not perform in accordance with the Documentation; provided such instance does not arise from issues described in Section 4.2.3.

**2.7** "Expected Resolution Time" means the Resolution Time based on Severity Level as set forth in Table 1 in Section 3.3 below for Supplier's process to Resolve a Ticket.

**2.8** "Measured Availability" has the meaning given in Section 4.2.4.

**2.9** "Planned Availability" has the meaning given in Section 4.2.2.

**2.10** "Resolution" or "Resolve" means an agreement between the Customer and Supplier that no further activity on a Ticket is required for reasons including: (i) the complete functional restoration of the Products, (ii) the implementation of a functionally and operationally satisfactory work around, or (iii) the acceptance on the part of the Customer that the issue is not technically resolvable for a commercially reasonable cost or in a timely manner. To avoid doubt, a Ticket may be Resolved in favor of a newly-created Ticket of lower priority for the same or similar issue if actions by Supplier or other events cause the urgency of the Error to diminish.

**2.11** "Resolution Time" means the period of time which elapses between: (i) the time when a Ticket is opened pursuant to the procedures mutually agreed to between Customer and Supplier, (ii) the time when

the Error is Resolved, and (iii) less time during which progress on the Ticket is solely under the control and responsibility of the Customer. For the avoidance of doubt, Resolution Time shall be measured to the time of Resolution and not the time of Closure, notwithstanding the need for Closure for each Ticket.

**2.12 "Severity"** means the numeric indication (1-4) established by the Customer consistent with the need to correct the Error. Further definition is given in Table 1 in Section 3.3.

**2.13 "Success Ratio"** has the meaning given in Section 3.2.

**2.14 "Ticket"** means the tracking file created by the Supplier at the first report of an Error and updated until Closure.

### 3 Resolution of Issues

**3.1 Ability to Measure.** Supplier acknowledges that Customer depends on Supplier for timely Resolution of Errors arising from Customer's use of Supplier Products or Services, and that Supplier's failure to provide such timely Resolutions may result in direct costs to Customer. Further, Supplier represents and warrants that Supplier has the means and mechanisms to determine and report the timeliness for Resolution as defined in Section 3.3.

**3.2 Metric Definition.** The metric for Resolution of issues for a given month is the number of Tickets Resolved within the Expected Resolution Time given in Table 1 divided by the total number of Tickets Resolved in the month (the "**Success Ratio**"). For clarity, any Tickets not Resolved at the end of a month for which the Ticket duration is already in excess of the Expected Resolution Time will be added to the denominator of the above calculation.

**3.3 Reporting.** The Success Ratio shall be reported monthly by Supplier to Customer no later than ten (10) business days after the end of the reporting month.

| Severity | Description  | Expected Resolution Time       |
|----------|--|--------------------------------|
| 1        | Urgent: User cannot perform basic functions, financial or patient care are negatively impacted; no workaround is available   | 2 hours                        |
| 2        | Critical: User's ability to perform basic functions is impaired; workarounds are unavailable, inefficient, or only partially effective                             | 4 hours                        |
| 3        | Important: User can perform basic functions; some features are unavailable or loss of efficiency and effectiveness is evident; temporary workarounds are available | 24 hours                       |
| 4        | Routine: User can perform materially all functions; minor inefficiencies, loss of effectiveness, or opportunity for improvement is evident.                        | 72 hours or as mutually agreed |

*Table 1*

**3.4 Service Level Commitment.** The Service Level Commitment for Resolution of Issues is 95%.

**3.5 Service Level Credit.** The credit percentage attributable to a failure to achieve the Resolution of Issues Service Level Commitment is 5%. A reduction to Supplier's monthly invoice for the month following the failure shall be calculated by multiplying 5% by the amount otherwise due and payable to Supplier for the Products subject to the Resolution of Issues Service Level as set forth in the applicable Customer Order. The Service Level Credit shall be clearly identified on Supplier's invoice.

### 4 Measured Availability.

**4.1 Ability to Measure.** Supplier acknowledges that Customer derives value from the Products only to the extent that the Products are accessible and functionally usable by Customer, and that if the Products are not Available Customer may incur direct costs as a result. Further, Supplier represents and warrants that Supplier has the means and mechanisms to determine and report the percentage of time the Products are Available as defined in Section 4.2.

**4.2 Metric Definition**

**4.2.1 Available.** The Products is considered to be “**Available**” if: (i) the intended users of the Products can access the Products using customary means and practices, (ii) the Products perform in a manner in material compliance with the Documentation, and (iii) all Updates and data interchanges perform in material compliance with the Documentation.

**4.2.2 Planned Availability.** Customer acknowledges that in the course of Supplier’s obligations under this Agreement or in Supplier’s normal course of business as a commercial provider of the Products, Supplier may make the Products not Available, provided Supplier: (i) has pre-notified Customer no less than forty-eight (48) hours prior to date/time on which the Products are planned to be not Available, and (ii) unless otherwise agreed in writing by Customer, the total time during which the Products are planned not to be Available is less than four (4) hours during a month (none of which will be during Business Hours). The total hours less the periods in with the Products are not Available due to Supplier’s plans as provided in this paragraph is the “**Planned Availability.**” For clarity, any maintenance performed on less than forty-eight (48) hours advance notice and/or in excess of four (4) hours per month will not be excluded from the Planned Availability.

**4.2.3 Not Available Due to Customer.** Customer further acknowledges that the Products shall be considered Available during periods of time during which Customer’s inability to access or use the Products is due to computing or networking failures solely under the responsibility of Customer.

**4.2.4 Definition.** “**Measured Availability**” is the Availability during periods of Planned Availability divided by the Planned Availability as measured each month.

**4.2.5 Reporting.** Measured Availability shall be reported monthly by Supplier to Customer no later than ten (10) business days after the end of the reporting month.

**4.3 Service Level Commitment.** The Service Level Commitment for Measured Availability is 99.9%.

**4.4 Service Level Credits.** The percentage that Supplier’s fees shall be discounted for failure to achieve Measured Availability is given in Table 2. A reduction to Supplier’s monthly invoice for the month following the failure shall be calculated by multiplying the sum of the credit percentages in Table 2 by the amount otherwise due and payable to Supplier for the Products subject to the Service Level Credit as set forth in the applicable Customer Order. The Service Level Credit shall be clearly identified on Supplier’s invoice.

| Measured Availability |      |
|-----------------------|------|
| Below 99.9% to 99.5%  | 5%   |
| Below 99.5% to 99%    | 10%  |
| Below 99% to 97%      | 15%  |
| Below 97% to 95%      | 20%  |
| Below 95% to 90%      | 50%  |
| Below 90%             | 100% |

*Table 2*

**4.5 Termination Right.** In addition to the Service Level Credits provided herein, failure to achieve the commitments in Section 3.4 or 4.3 shall be considered a material breach.



## **Third Party Dependent Applications Schedule**

- 1. Third Party Dependent Applications. "Third-Party Dependent Application" or "TPDA"** means an application, other than a Supplier Product, that is required to be present, accessible and functional for the Supplier Product to perform according to the Agreement and applicable Documentation. To avoid doubt, Microsoft and Google products are TPDA.
- 2. Support for TPDA Critical Patches.** If the manufacturer of the TPDA releases a Critical Patch that is applicable to the TPDA, Supplier shall develop an Update to any Supplier Products dependent on such TPDA within thirty (30) days of the release of the Critical Patch to ensure such Supplier Products continue to operate in compliance with the terms of the Agreement (including any applicable warranties) after application of the Critical Patch, and at no cost to the Customer: (i) provide the Update to Customer, if the Products are hosted by Customer, or (ii) apply the Update to the Products if the Products are hosted by Supplier. For the avoidance of doubt, the Agreement, including the warranties therein, shall apply to such Updates. **"Critical Patch"** means a patch for a TPDA that is released and classified by the TPDA provider as "critical" or "high" due to security or operational concerns.
- 3. Support for TPDA Versions.** If the manufacturer of a TPDA releases a new version of the TPDA, Supplier shall develop an Update to any Supplier Products dependent on such TPDA within six (6) months of the general production release of such new version to ensure such Supplier Products continue to operate in compliance with the terms of the Agreement (including any applicable warranties) after upgrade to the new version and at no cost to Customer: (i) provide the Update to Customer, if the Products are hosted by Customer, or (ii) apply the Update to the Products if the Products are hosted by Supplier. For the avoidances of doubt, the Agreement, including the warranties therein, shall apply to such Updates.
- 4. Hosted Applications – Browser/Mobile Support.** To the extent Supplier Products depend upon on a browser or a smart phone / mobile device application, Supplier represents and warrants that the Supplier Products shall perform in conformance with the Agreement, including the warranties therein, and the Documentation when used with any type and version of browser and smart phone / mobile device operating system that is currently supported by the browser / operating system provider.