
FUJIFILM Medical Systems U.S.A., Inc.
END USER PURCHASE LICENSE AND SERVICES AGREEMENT

Customer (entity legal name):			
Customer address:			
Customer Contact Name:	Customer Address:	Contact	E-Mail
Customer Contact Address:	Customer Contact Phone Number:		
Effective Date:			

This End User Purchase, License and Services Agreement (the "Agreement") is entered into as of the effective date specified above (the "Effective Date") by and between FUJIFILM Medical Systems U.S.A., Inc., a New York corporation having a principal office at 81 Hartwell Avenue, Suite 300, Lexington, MA 02421 ("FMSU"), and the Customer specified above ("Customer"). The Agreement shall include all schedules and other attachments hereto, which are hereby incorporated herein and made a part hereof.

WHEREAS, FMSU and Customer desire for FMSU to provide Customer certain proprietary software, hardware and services under the terms of this Agreement; and

WHEREAS, Customer has agreed to purchase or license such products and services from FMSU, as set forth on each Configuration Quote incorporated or to be incorporated herein, under the terms and conditions set forth in this Agreement, including without limitation certain specifications of such products and services set forth on the schedules attached hereto.

NOW THEREFORE, in consideration of the foregoing, the mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each of the parties hereto, such parties agree as follows:

1. DEFINITIONS:

- (a) "Configuration Quote" means each FMSU approved quote for ordering products and services during the term of this Agreement, or such other document containing substantially the same information in a form acceptable to FMSU.
- (b) "Documentation" means, collectively, the operating instructions, user manuals, installation checklist, help files and other technical information for the System, in written or electronic form, delivered by FMSU to Customer with the System.
- (c) "First Clinical Use" means the point in time at which a product is being used routinely or on a daily basis for patient care processes.
- (d) "Hardware" means the equipment identified in the Configuration Quote that is manufactured by FMSU.

- (e) "Pass-Thru Product" means any software or hardware manufactured or supplied by third parties, which products are so identified in the Configuration Quote as being purchased or licensed by FMSU on Customer's behalf and for which FMSU will not provide any services, including without limitation installation, maintenance or training.
- (f) A "RIS Study" is defined as an "accession number" that has been assigned in the Software.
- (g) "Software" means the proprietary software of FMSU and/or its affiliates and/or any third-party embedded software in object code format licensed by Customer pursuant to this Agreement and as set forth on the Configuration Quote, including any Updates, modified versions, additions and copies thereof as provided hereunder. Software does not include any software not set forth in the Configuration Quote, including without limitation any proprietary FMSU software not licensed to Customer hereunder, any other software licensed to FMSU by a third party or any Pass-Thru Product.
- (h) "Study" means a radiological study or entry in the Software "All Studies" folder with an image count greater than zero that has not been entered into the System by use of migration, digitization or imported from another electronic media.
- (i) "Study Size" means the total amount of storage required to store the original and clinical versions of a Study.
- (j) "System" means all Software licensed, and Hardware, Third Party Products and Pass-Thru Products purchased, as the case may be, by Customer hereunder as set forth in the Configuration Quote.
- (k) "Third Party Product" means any hardware, software and service offered by a third party vendor identified as such in the Configuration Quote.
- (l) "Update" means any subsequent release of the Software that FMSU makes available generally from time to time to its maintenance customers. Updates do not include any enhancements, releases or future software FMSU may license to customers separately.

2. GRANT OF END-USER LICENSE; PERMITTED USE:

- (a) Subject to the terms and conditions of this Agreement, FMSU hereby grants Customer a non-exclusive, non-transferable, non-sublicensable, perpetual license (the "License") to use the Software solely in connection with Customer's internal use of the System, until such use is terminated as provided in this Agreement.
- (b) Notwithstanding the foregoing, Customer may permit its agents or contractors to use the System on Customer's behalf subject to full compliance by Customer and such agents or contractors with the terms and conditions set forth in this Agreement. Customer agrees that neither Customer nor FMSU grants any other rights or license with respect to the System, or any component thereof, to such agent or contractor and in no event will such agent or contractor use the System for its internal business operations or for any other purpose other than on Customer's behalf pursuant to this Agreement. Customer shall indemnify and hold FMSU harmless from any claim, loss, damage or expense (including reasonable attorneys' fees) arising out of the use of the System, or any component thereof, by any such contractor or agent.
- (c) FMSU and its licensors retain all right, title and interest in and to the Software and all copies thereof, including without limitation any and all copyrights, patents, trade secrets, trademarks and proprietary and confidential information rights in or associated with the Software. The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. No right, title or interest in and to the Software is transferred or licensed to Customer except as expressly set forth herein.

3. COPY & USE RESTRICTIONS:

- (a) Customer may not make or retain any copies of the Software. Customer may copy the Documentation only as reasonably necessary for user reference and backup purposes. Each copy of the Documentation made by Customer shall contain the same proprietary notices, labels and marks as the original thereof without any alteration.
- (b) Customer shall not: (i) sell, sublicense, assign, lease, encumber, grant a security interest in or otherwise transfer the System or the rights granted hereunder to any third party (and if Customer grants a security interest in, or otherwise transfers, the System in violation hereof, the secured party shall have no right to use or transfer the System); (ii) permit any timesharing, service bureau, subscription service or rental use of the System; (iii) reverse engineer, decompile, disassemble or create derivative works of any software component of the System, including without limitation the Software; (iv) remove or alter any proprietary notices, labels or marks on or contained in any part of the System; (v) install



the Software on any hardware other than as permitted by this Agreement; or (vi) publish or otherwise release the results of any benchmark test of any software component of the System. As a condition of the use of the System by Customer, Customer hereby represents and warrants that it shall not use the System for any purpose that is unlawful or otherwise prohibited by this Agreement and shall abide by all applicable laws and regulations in Customer's use of the Software.

4. TERM AND TERMINATION:

(a) This Agreement shall commence on the Effective Date and shall continue in full force and effect until terminated pursuant to the terms hereof.

(b) Either party may terminate this Agreement at any time if the other party is in default of any material provision of this Agreement and fails to cure such default within 30 days after being notified of such default in writing. Upon termination, all of Customer's rights to use the System, including the Software, Documentation and any hardware for which Customer has not paid in full, shall cease, and Customer shall destroy or return to FMSU, at FMSU's election, all copies of the Software and Documentation in Customer's possession, including any and all archival copies. Upon any such termination, Customer shall have the option to pay in full any outstanding amounts owed to FMSU with respect to any hardware (whether Hardware, Third Party Products or Pass-Thru Products) purchased pursuant to the Configuration Quote, at which time title to such hardware shall pass to Customer free and clear of any security interest.

(c) Any obligation to pay fees incurred under Section 7 prior to such termination, and the provisions of Section 2 (except in the case of Customer's default) and Sections 9, 10, 11, 12, 17 and 20, and any other provision of this Agreement that by its terms shall be deemed to so survive, shall survive termination of the Agreement for any reason.

5. ACCEPTANCE:

Beginning immediately following FMSU's notification to Customer that the System or components thereof are installed and available for testing, Customer shall conduct acceptance testing to confirm that the System or such components perform in material and substantial compliance with the Documentation. Such acceptance testing will be conducted over a period not to exceed 30 days. If Customer's tests indicate that the System or such components do not operate in material and substantial accordance with the Documentation, Customer will promptly notify FMSU in writing, setting forth in sufficient detail such non-conformity ("Non-Conformity"). Customer shall immediately provide FMSU unencumbered access to the System or components (on a 24-hour per day basis) and a reasonable time to bring the System or such components into compliance. Immediately following FMSU's completion of any necessary corrections, the remainder (or three days, whichever is greater) of the acceptance testing period will commence as provided above.

The System or such components will be deemed accepted by Customer ("Acceptance") upon the occurrence of the first of the following: (i) the expiration of the acceptance testing period set forth above without an uncured notice of Non-Conformity; or (ii) First Clinical Use.

Upon Acceptance, all remaining payments for the System or components thereof will become due as set forth in the Configuration Quote, or as otherwise provided therein.

Customer shall be responsible for any equipment performance evaluations, testing or certifications of the Hardware or other equipment (collectively, "Certifications") that may be required or directed by any governmental authority. In the event that FMSU is required to perform or obtain such Certification, Customer agrees to reimburse FMSU's reasonable costs with respect thereto, including travel, employee costs, and third-party (e.g., licensed medical physicist) costs.

6. FORCE MAJEURE:

Except for Customer's payment obligations hereunder, the performance by either party of its obligations under this Agreement shall be suspended for a period that is reasonable under the circumstances if such failure or delay is caused by circumstances beyond its reasonable control including, but not limited to, acts of God, acts of terrorism, acts of civil or military authority, fires, strikes, floods, quarantine restrictions, war, riot or delays in transportation (each such event, a "Force Majeure"). The party wishing to claim relief by reason of Force Majeure shall promptly notify the other party in writing of such event and the cessation thereof. In the event of Force Majeure, the parties shall continue to perform all obligations not affected by such Force Majeure.

7. PAYMENT; INCREMENTAL LICENSE AND MAINTENANCE FEES:

(a) All payment obligations are due and payable within 15 days of the date of invoice and are due in United States dollars. Late payments will bear interest at the lower of 1.5% per month or the maximum rate allowed by law, except as otherwise provided in the Configuration Quote. FMSU may suspend Maintenance Services and/or Services (as defined in Schedule A) if payments for the same are overdue. Customer agrees to pay, in addition to hourly fees, reasonable expenses (including travel and lodging), and sales, use or similar taxes, including without limitation value added or goods and services taxes. No receipts will be provided for expenses under \$25.

(b) FMSU's Synapse PACS, RIS and VNA Systems are licensed on a volume basis based on annual Study volume. If Customer is a Synapse PACS, RIS or VNA customer, whenever Customer's annual Study volume exceeds the number of licensed Studies paid for by Customer by 1,000 Studies or more, FMSU shall invoice Customer, and Customer agrees to pay, incremental annual license fees per 1,000 additional studies, and incremental annual Maintenance Services fees per 1,000 additional studies, in the amounts set forth on the most recent Configuration Quote that is not more than five years old (or if more than five years old, or if no amount is stated thereon, in the amounts set forth on FMSU's price lists as the same may be updated from time to time).

(c) FMSU's Synapse CV and 3D Systems are licensed on a concurrent user basis based on a maximum number of concurrent users. If Customer is a Synapse CV and/or 3D customer, whenever Customer's total of concurrent users exceeds the number of licensed concurrent users paid for by Customer by more than 10% three or more times in a calendar quarter, FMSU shall have the right to invoice Customer, and Customer agrees to pay, incremental license fees and incremental annual Maintenance Services fees, in the amounts set forth on the most recent Configuration Quote that is not more than five years old (or if more than five years old, or if no amount is stated thereon, in the amounts set forth on FMSU's price lists as the same may be updated from time to time).

8. DELIVERY OF TITLE; RISK OF LOSS:

(a) In the event the System, or any component thereof, is held in storage for Customer by FMSU due to Customer's delay, Customer shall assume all risk and expense of such storage and shall accept delivery of such System, when shipped, in the same configuration as stored.

(b) FMSU shall retain title and purchase money security interest in, and the right to possession of, the System until all payments due pursuant to the Configuration Quote shall have been made in full in United States dollars. Customer agrees to do all acts necessary to perfect and maintain such purchase money security interest and right by FMSU, and hereby authorizes FMSU to execute any necessary Uniform Commercial Code filings on its behalf until all payments for the System have been paid in full.

9. CLINICAL USE OF THE PRODUCTS:

Customer acknowledges and agrees that FMSU is not engaged in the practice of medicine, and is not determining appropriate medical use of the Software or other components comprising the System. All patient care decisions, including those arising from the analysis of images, are the responsibility of Customer. Customer shall defend, indemnify and hold harmless FMSU, its officers, directors, agents and employees, from and against all claims, actions, proceedings, damages, losses, liabilities and expenses, including reasonable attorneys' fees, arising from any claim of malpractice, misdiagnosis or any other medical treatment matter in connection with the use of the System or any components thereof by Customer or Customer's users, agents or contractors.

10. LIMITED WARRANTIES AND DISCLAIMERS:

(a) FMSU warrants that the Software or components thereof (excluding Updates for purposes of this Section 10) will perform substantially in accordance with the Documentation for a period of 90 days from the date that installation is completed, and the Hardware will perform substantially in accordance with the Documentation for a period of one year from the date that installation is completed. Should any failure to conform to these warranties occur during such respective periods, upon prompt written notice of the specific non-conformity from Customer, FMSU shall take one of the following actions, in its sole discretion and without cost to Customer: (i) repair such defective product; (ii) replace the defective product with a product of similar kind and quantity; or (iii) refund the purchase price of the defective product. FMSU does not warrant that: (w) the System will meet Customer's requirements; (x) the Software or the Hardware will operate in combination with any Third Party Product or Pass Thru Product or other hardware, software, systems or data not provided by FMSU, except as expressly set forth in the Documentation; (y) the operation of the Software will be uninterrupted or error-free; or (z) all



Software errors are correctable. If delivery or installation of the System or components thereof is delayed due to the fault of Customer, the warranty set forth in this Section 10(a) shall commence upon the originally scheduled installation date.

(b) The warranty set forth in Section 10(a) will not apply if: (i) either the Software or the Hardware is not used in accordance with this Agreement or the Documentation; (ii) either the Software or the Hardware, or any part thereof, has been modified by any entity other than FMSU; or (iii) a malfunction in the Software or the Hardware has been caused by any of Customer's equipment or any products not acquired by Customer under the Configuration Quote.

(c) FMSU warrants that Maintenance Services and Services, as defined in Schedule A, shall be performed in a professional and workmanlike manner. For any breach of this service warranty, Customer's sole and exclusive remedy, and FMSU's entire liability therefor, shall be the re-performance of the non-conforming service. FMSU shall not be liable for any such breach of warranty unless Customer provides written notice of such breach to FMSU within 30 days of the performance of the services giving rise to such claim.

(d) With respect to Third Party Products and Pass-Thru Products, Customer shall have the benefit of any third party warranties, service agreements and indemnities available to users of a System that includes such Third Party Products or Pass-Thru Products, as the case may be; provided, however, that Customer's sole remedy for breach of any such warranty, indemnification, service agreement or other rights shall be against the third party offering such rights and not against FMSU.

(e) PARAGRAPHS A, C and D ABOVE COMPRISE THE SOLE AND EXCLUSIVE REMEDIES TO WHICH CUSTOMER IS ENTITLED FOR BREACH OF WARRANTY. EXCEPT FOR WARRANTIES, IF ANY, CONTAINED IN THE DOCUMENTATION RELATING TO THE PERFORMANCE OF THE SYSTEM, THE SYSTEM AND SERVICES ARE PROVIDED WITHOUT ANY OTHER WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, SECURITY, SYSTEM INTEGRATION OR ACCURACY, OR INFORMATIONAL CONTENT AND NONINFRINGEMENT. FMSU's WARRANTY DOES NOT APPLY TO THIRD PARTY PRODUCTS OR PASS-THRU PRODUCTS, IF ANY, INCLUDED IN ANY CONFIGURATION QUOTE, INVOICE OR OTHER AUTHORIZED FMSU PURCHASE ORDER AND FMSU SHALL HAVE NO OBLIGATION OR LIABILITY WHATSOEVER TO CUSTOMER WITH RESPECT TO SUCH THIRD PARTY PRODUCTS OR PASS-THRU PRODUCTS.

(f) FMSU acknowledges and warrants that, as of the Effective Date, FMSU is not currently, and has not been in the past, excluded, suspended or debarred from participating in any government contracting program, including without limitation the Medicare and Medicaid programs. Customer shall have the right to cancel this Agreement immediately and without opportunity to cure upon notification from FMSU that it is excluded, suspended or debarred from participating in any material government contracting program, including without limitation the Medicare and Medicaid programs. This Section 10(f) states the entire liability of FMSU and Customer's exclusive remedy in the event FMSU is excluded, suspended or debarred from participating in a material government program, including without limitation the Medicare and Medicaid programs.

11. LIMITATION OF LIABILITY; INSURANCE:

(a) WAIVER AND DISCLAIMER OF CONSEQUENTIAL DAMAGES. FMSU AND ITS LICENSORS SHALL NOT BE LIABLE TO CUSTOMER FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, LOSS OF OR DAMAGE TO DATA, RECORDS OR PROGRAMMING, AND CLAIMS AGAINST CUSTOMER BY THIRD PERSONS) ARISING FROM OR RELATING TO THIS AGREEMENT OR A BREACH THEREOF OR ANY ORDER PLACED HEREUNDER, WHETHER BASED IN CONTRACT, TORT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, BREACH OF STATUTORY DUTY OR OTHER THEORY, EVEN IF FMSU OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) MAXIMUM DAMAGES. Except with respect to the indemnity provided in Section 12, the liability of FMSU and its licensors, if any, and Customer's sole and exclusive remedy for damages for any claim of any kind whatsoever with respect to this Agreement shall not be greater than the purchase price paid by Customer for the components of the System with respect to which such claim is made or, in the event of a claim made with respect to any obligation, service or otherwise, of FMSU pursuant to this Agreement, shall not be greater than the amount paid by Customer for the applicable annual fee for such obligation giving rise to such claim.

(c) FMSU shall not be responsible for any costs, expenses or damages suffered or incurred by Customer, or for any claim, judgment or award against such Customer, or the defense thereof, arising out of any actions, assistance or services of FMSU, its agents, employees, consultants or contractors hereunder, unless resulting from the willful misconduct or grossly negligent act of FMSU or such agents, employees, consultants or contractors.



(d) Essential Purpose. The limitation of liability and exclusion of certain damages stated herein shall apply regardless of the failure of the essential purpose of any remedy. The parties specifically acknowledge that these limitations of liability are reflected in the pricing.

(e) All claims against FMSU or its licensors must be brought within one year after the cause of action arises.

(f) Customer agrees to maintain general comprehensive liability and property damage insurance, including contractual liability insurance, in reasonable amounts, not less than the purchase price of the System and, upon request of FMSU, Customer will provide FMSU with a certificate of insurance demonstrating such coverage.

12. INDEMNIFICATION:

(a) BY FMSU. FMSU shall indemnify and hold Customer harmless solely from any claim by a third party alleging that the use of the Software in accordance with this Agreement infringes any United States patent, copyright or trade secret of that third party, provided: (i) FMSU is promptly notified in writing of the claim; (ii) FMSU receives reasonable cooperation from Customer necessary to perform FMSU's obligations hereunder; and (iii) FMSU has sole control over the defense and all negotiations for a settlement or compromise. The foregoing obligation of FMSU is contingent upon proper use of the Software and adherence to the Documentation, and does not apply with respect to any Software or portions or components thereof: (A) not supplied by FMSU; (B) used in a manner not expressly authorized by this Agreement or the Documentation; (C) made in accordance with Customer's specifications; (D) modified by Customer, if the alleged infringement relates either to such modification or to the combination of the modification with the Software or portions or components thereof; (E) combined with any other products (hardware or software), processes or materials not provided by FMSU where the alleged infringement would not exist but for such combination; or (F) where Customer continues the allegedly infringing activity after being notified thereof and provided modifications that would have avoided the alleged infringement. FMSU makes no representation or warranty as to any copyrights or patents or other intellectual property rights that may be embodied in any third party software or hardware or involved in the services performed by FMSU.

(b) In the event the Software is finally determined by a court of competent jurisdiction to constitute an infringement or use of the Software is enjoined, FMSU shall, at its sole option, do one of the following: (i) procure for Customer the right to continue use of the Software; (ii) provide a modification to the Software so that its use becomes non-infringing; (iii) replace the Software with software that is substantially similar in functionality and performance; or (iv) if none of the foregoing alternatives is reasonably available to FMSU, FMSU shall remove the Software and refund the residual value of the license fee paid for such infringing Software, depreciated using a straight-line method of depreciation over a three-year period from the date of Acceptance. This Section 12 states FMSU's sole liability and Customer's exclusive remedy for infringement claims.

13. ADDITIONAL TERMS AND CONDITIONS:

The maintenance, installation, training and on-site services purchased by Customer are described in the Configuration Quote. The terms and conditions of such services are set forth on Schedule A.

FMSU and Customer agree to be bound by the terms of the Business Associate Agreement set forth in Schedule C hereto, which is incorporated herein. Customer's use of the System also may be subject to additional terms and conditions as set forth in Schedule B to the extent applicable.

14. ADVERTISING; USE OF INTELLECTUAL PROPERTY:

Customer grants FMSU permission to make written or oral reference to the transactions contemplated by this Agreement in its public advertising, proposals and similar public forums and media. Such advertising shall reference only the occurrence of the transactions as well as general technical information related to implementation of the System. Any additional releases of partnership or case studies of usage of the System may be made only upon written agreement of Customer. The parties agree that specific contractual terms and prices will be treated as confidential information pursuant to Section 17. Customer shall have no right to make any public written or oral reference to the transactions contemplated hereunder unless otherwise agreed to in writing between the parties.

Customer shall not register or use the trademarks or trade name of FMSU or its affiliates without the prior written consent of FMSU or such affiliate, as the case may be, and shall not contest or otherwise bring into question FMSU's or such affiliate's ownership thereof.



Neither party shall gain any rights of ownership in copyrights, patents or other intellectual property of the other party. Exclusive of the intellectual property provided by Customer and any proprietary Customer data, FMSU shall own all title, right and interest (including any copyrights, patents, trade secrets or other intellectual property rights) in and to the Software, Hardware and all tangible materials delivered hereunder as well as all other results of any services, including without limitation installation, workflow prescriptions, maintenance and training. Upon full payment to FMSU of all sums due for any such services, Customer is granted a non-exclusive, non-transferable license to use, for internal purposes only, any tangible material delivered by FMSU or other result of such services provided to Customer hereunder. Customer shall retain ownership rights to all data entered into the System by Customer, or pre-existing data migrated into the System on behalf of Customer by FMSU.

15. SYSTEM NOT FOR EXPORT:

The System, and its technology, is subject to United States export control laws and regulations. Customer agrees to comply with all such applicable laws and regulations, and further agrees not to knowingly transfer, directly or indirectly, any software, source code, object code, technology, technical assistance or technical data received hereunder to any restricted end user or restricted country without export license, re-export license or other applicable authorization from the appropriate United States government agency or agencies.

16. ASSIGNABILITY:

Customer shall not transfer or assign this Agreement or any of its rights or obligations hereunder to any third party without FMSU's prior written consent. Any transfer, assignment or delegation in violation of the foregoing shall be void and may be treated as a material breach of this Agreement.

17. CONFIDENTIALITY:

Each party acknowledges that Confidential Information (as defined herein) constitutes a valuable asset of the other party and that the Confidential Information is the sole and exclusive property of such disclosing party. The receiving party agrees to maintain in confidence Confidential Information of the disclosing party with at least the same degree of care with which the receiving party holds its own confidential and proprietary information, but at all times with no less than reasonable care. Neither party will, at any time during the term of this Agreement and for a period of three years after termination thereof, disclose Confidential Information of the other party to any person (except for affiliates of either party on a need-to-know basis) other than as required to perform its obligations under this Agreement. For purposes hereof, Confidential Information means confidential or other proprietary information of the disclosing party (including any information deemed confidential pursuant to the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d – 1320d-8, as amended from time to time, or such other information protected by law), including without limitation business plans, customer lists, information on product pricing and other terms of sale, technical data, trade secrets or know-how, including but not limited to research, product plans and specifications, products, services, investors, partners, distributors, markets, market studies, computer software and programs (including object code and source code), data, databases and database technologies, developments, inventions, processes, compilations, flowcharts, formulae, technology, sketches, designs, drawings, diagrams, manuals, schematics, samples, engineering, hardware configuration information, or marketing, finance or other business information disclosed to the receiving party, directly or indirectly, by the disclosing party if: (a) such information is marked with an appropriate confidential or proprietary legend in case of disclosure in written form or in any tangible form; or (b) such information is identified as confidential at the time of disclosure in oral form or in any intangible form and thereafter is summarized in a written memorandum by the disclosing party, which memorandum shall be provided to the receiving party no later than 30 days after the initial disclosure. For purposes hereof, Confidential Information shall include the terms and conditions of this Agreement. Confidential Information shall not include any information that the receiving party can demonstrate was: (i) in the possession or control of the receiving party prior to the time of disclosure hereunder; (ii) at the time of disclosure or thereafter becomes public knowledge through no fault of the receiving party; (iii) lawfully obtained by the receiving party from a third party that, to the knowledge of the receiving party, is not under any obligation of confidentiality to the disclosing party; (iv) developed independently by personnel of the receiving party who have not had access to Confidential Information; (v) approved for release by written authorization of the disclosing party; or (vi) required to be disclosed pursuant to, or as required by, law or legal process, provided that the receiving party shall advise the disclosing party of such request in time for the disclosing party to apply for legal protection.



Except as otherwise provided in this Section 17, all proprietary rights (including without limitation patent rights, copyrights and trade secrets) in and to Confidential Information shall remain the disclosing party's property. The receiving party shall not cause or permit the reverse engineering, reverse assembly or reverse compilation of any Confidential Information or include any Confidential Information in any patent or patent application.

Upon termination of this Agreement or at any time upon the disclosing party's written request, the receiving party will, at the election of the disclosing party, either return promptly to the disclosing party or destroy, with such destruction certified in writing by an authorized officer of the receiving party, all of Confidential Information, including all copies thereof.

18. REGULATORY COMPLIANCE:

FMSU will maintain the Software and the Hardware in compliance with all applicable federal, state and local regulations, rules and guidelines, as the same may be amended from time to time, that are applicable to medical device manufacturers. Any applicable federal, state or local requirement affecting the Software or Hardware will be released to Customer through Updates in advance of the effective date of such requirement.

Discounted pricing, if any, for the System or any component thereof must shall be fully and accurately reported by Customer on all claims for payment filed with third party payors, including applicable Medicare, Medicaid and state agency cost reports, in accordance with all applicable federal and state laws and applicable agreements. Customer should also retain a copy of the Configuration Quote and these terms and conditions, and communications regarding the Configuration Quote and these terms and condition, together with the invoices for the purchase and permit agents of the U.S. Department of Health and Human Services ("HHS") or any state agency access to such records upon request.

19. ACCESS TO BOOKS AND RECORDS:

To the extent Section 952 of the Omnibus Reconciliation Act of 1980 (Public Law 96-499), as the same may be amended, is found applicable to this Agreement and the value or cost of services rendered hereunder exceeds \$10,000 or more over a 12-month period, then until the expiration of four years after furnishing of services pursuant to this Agreement, FMSU agrees to make available upon written request by the Secretary of HHS (the "Secretary"), or upon request by the Comptroller General of the United States (the "Comptroller"), or to any of their duly authorized representatives, this Agreement and books and records of FMSU that are necessary to certify the extent of any costs of Customer arising from the Agreement, or such other information as otherwise required by law. Further, if FMSU performs any of its duties under this Agreement through a subcontract with a related organization, the value or cost of which is \$10,000 or more over a 12-month period, such subcontract shall provide that until the expiration of four years after furnishing such service pursuant to such subcontract, the related organization shall likewise make available upon written request by the Secretary or the Comptroller or their duly authorized representatives, subcontracts and the books, records and other information described in the preceding sentence.

20. GENERAL:

(a) Taxes:

Customer is responsible for the payment of all sales, use, excise and similar taxes. The amount of any applicable sales, excise and other similar taxes shall be added to the price and shall be paid by Customer, whether or not invoiced. Customer will provide FMSU with such evidence as FMSU may reasonably request to establish that such taxes have been paid. If applicable, Customer may provide FMSU with an exemption certificate acceptable to the relevant taxing authorities.

Any taxes (other than income taxes) that FMSU may be required to pay to, or collect and remit to, any governmental unit under any existing or future law upon or with respect to the sale, delivery, installation, storage, use or consumption of the System, any component thereof or any services provided hereunder by FMSU are payable by Customer. If FMSU is or becomes liable for or pays any such taxes or any related interest or penalty charges, Customer agrees to pay same to FMSU upon demand.

(b) Interpretation; Jurisdiction:

This Agreement (and any claims arising under or relating in any way thereto), shall be governed in all respects, including without limitation as to validity, interpretation and effect, by the laws of the state of New York, without regard to its conflict of laws principles. The parties irrevocably submit to the exclusive jurisdiction and venue of the state and federal district courts located in New York, New York for the resolution of any disputes relating to or arising under this Agreement. The United Nations Convention on Contracts for the International Sale of Goods, Sections 2-711 through 2-717 of the Uniform Commercial Code and the Uniform Computer Information Transactions Act are specifically excluded from application to this Agreement.



(c) **Waiver of Jury Trial:**

Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding arising out of or relating to this Agreement or the transaction(s) contemplated hereby. Each party (i) certifies that no representative, agent or attorney of either party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that the parties have been induced to enter into this transaction by, among other things, the mutual waiver and certification set forth in this section.

(d) **Severability:**

In the event any provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unimpaired and such invalid, illegal or unenforceable provision shall be replaced by a provision that, being valid, legal and enforceable, comes closest to the original intention of the parties.

(e) **Waiver:**

Any forbearance, failure or delay by FMSU in exercising any right, power or remedy hereunder shall not preclude the further exercise thereof. Every right, power and remedy of FMSU shall continue in full force and effect until an instrument in writing executed by FMSU specifically waives such right, power or remedy.

(f) **Notice:**

Any notice required or permitted to be given under this Agreement shall be in writing and sent by hand delivery, by a recognized national or regional overnight courier service with all charges prepaid, by facsimile (with acknowledgement of complete transmission by courier) or by United States certified mail (return receipt requested), postage prepaid, to Customer at the address set forth on the cover page of this Agreement and to FMSU as stated below. Any notice given by mail as provided herein shall be conclusively deemed to have been received by a party hereto and be effective on the fifth business day after the day on which mailed. Any other notice given hereunder shall be effective upon receipt. The parties may from time to time designate in writing other addresses expressly for the purpose of receipt of notice hereunder.

In the case of FMSU to:

FUJIFILM Medical Systems U.S.A., Inc.
Mr. Jun Higuchi
President and Chief Executive Officer
81 Hartwell Avenue, Suite 300
Lexington, MA 02421

with a copy to:

FUJIFILM Holdings America Corporation
200 Summit Lake Drive
Valhalla, NY 10595-1356
Attn: Legal Department
Facsimile: 914-789-8514

(g) **Independent Contractors:**

The parties are entering into this Agreement as independent contractors and nothing herein shall be deemed to constitute either party an agent, franchisee or partner of, or joint venturer with, the other party for any purpose whatsoever. Neither party shall hold itself out as, or take any action (including without limitation making any statements or representations) giving rise to the impression, or by its silence or failure to act contribute to the impression, that either party is, an agent of the other. Neither party is granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of the other party, or to bind such other party in any manner whatsoever.

(h) **Audit Rights:**

FMSU or its designee may audit Customer with respect to Customer's compliance with the terms of this Agreement at FMSU's expense and upon reasonable notice to Customer; provided, however, that any such audit shall occur not more than once in any 12 month period. In addition, FMSU may audit Customer's usage of the System, for purposes of determining incremental license and maintenance fees (if any) as specified in Sections 7(b) and 7(c) above, on a quarterly basis.



(i) Entire Agreement:

This Agreement constitutes the entire and only agreement between the parties hereto and expressly supersedes and cancels any other agreements, whether oral or written, relating to the subject matter hereof. Any representation, affirmation of fact, and course of prior dealing, promise or condition in connection therewith, or usage of the trade not incorporated herein, shall not be binding on either party. If there is any conflict or inconsistency between the terms of this Agreement and any schedules hereto, the terms of this Agreement shall control; notwithstanding the foregoing, in the event of any conflict between the terms of the Configuration Quote and the terms of this Agreement or any schedules hereto, the terms of the Configuration Quote shall control. No waiver, alteration or modification of any of the provisions hereof shall be binding unless in writing and signed by the specifically authorized representatives of FMSU and Customer. No additional or conflicting term in a purchase order or other document shall have any effect.

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Agreement as of the Effective Date.

FUJIFILM Medical Systems U.S.A., Inc.

Customer:

By: _____
signature of authorized representative

By: _____
signature of authorized representative

Print name

Print name

Title

Title

Date

Date

SCHEDULE A
FUJIFILM Medical Systems U.S.A., Inc.
MAINTENANCE AND ON-SITE SERVICES TERMS AND CONDITIONS

1. MAINTENANCE SERVICES:

(a) In consideration for the fees invoiced by FMSU and paid by Customer, FMSU shall provide the services set forth in this Schedule A ("Maintenance Services") for a term of one year from the original date of installation of the System or components thereof. Thereafter, Maintenance Services are invoiced annually on each anniversary of the date of installation. Upon payment by Customer of the annual Maintenance Services fee, such Maintenance Services are renewed for one year. FMSU may change the Maintenance Services offered at any time, effective as of the commencement of any renewal period. Customer acknowledges and agrees that should Customer terminate or decline to renew Maintenance Services and continue to use the Software component of the System, such continued use of the Software component of the System after the termination or non-renewal of the Maintenance Services shall be at Customer's sole and exclusive risk.

Maintenance Services shall not include: (i) services with respect to any modification made to a System other than by FMSU; (ii) necessary repairs caused by Customer's use of the System other than in accordance with the terms of this Agreement and the Documentation; (iii) normal deterioration of monitor luminance; (iv) damage caused by the negligence or willful misconduct of Customer's employees, agents, contractors or invitees or (v) service for Third Party or Pass Thru Products; (vi) remediation of a System infected by viruses or malware not caused by the Software (which remediation service may be provided by FMSU as an additional service only, at fees to be mutually agreed upon in writing and billed by FMSU as an additional charge); or (vii) On Site Service described in this Schedule A, Section 6.

(b) Maintenance Fees and Payment:

FMSU shall have the right to increase the fees for Maintenance Services set forth in the Configuration Quote starting with the second year of service. When ordered, Maintenance Services must be ordered for all Software and Hardware. In the event that coverage for Maintenance Services lapses as a result of either termination by Customer for any reason or by FMSU for Customer's non-payment, renewal of such service will require payment by Customer of a reinstatement fee to FMSU equal to one hundred twenty-five percent (125%) of the sum of the fees for any previously unpaid maintenance period(s) plus full payment for the subsequent annual period. Maintenance Services fees will be billed on an annual basis and are payable in advance.

2. 24x7x365 STANDARD TELEPHONE SUPPORT:

FMSU shall provide Customer with technical assistance by telephone upon installation and use of the Software and the Hardware. Telephone support is maintained through a centralized Technical Assistance Center ("TAC"), which is available 24 hours a day at 888-FUJI-MED (888) 385-4633, including weekends and holidays. Customer agrees to use commercially reasonable efforts to determine whether an issue with the System pertains to infrastructure, applications, or modality training prior to contacting FMSU.

3. REMOTE ACCESS AND MONITORING; BACK UP OF DATA:

Commencing upon installation and continuing through the term of the Agreement, FMSU shall have the right to access the System in order to perform Maintenance Services and monitor the System for audit purposes. Customer shall maintain a remote access method to the System in a manner mutually acceptable to the parties which shall be available at all times to FMSU. Any information disclosed to FMSU pursuant to such remote access shall be considered Confidential Information pursuant to Section 17 of the Agreement.

Throughout the term of this Agreement, Customer acknowledges and agrees that it will regularly back up all data and programs maintained on or used in conjunction with the System. FMSU shall have no liability for data loss, regardless of the cause.

4. FMSU MAINTENANCE OBLIGATIONS:

If FMSU is unable to resolve Customer's problem remotely or through the TAC, as set forth herein, FMSU shall dispatch an FMSU technician to provide remedial and preventive Maintenance Services at Customer's location set forth in the Configuration Quote.

(a) Scheduled Preventive Maintenance Services:

FMSU shall provide preventive maintenance for the System during the hours of 8:30 a.m. to 5:00 p.m. local time, Monday through Friday, excluding FMSU-recognized holidays ("Normal Business Hours"). Such maintenance shall include without limitation annual calibration and other actions that FMSU considers necessary to ensure proper operation of the System. Preventive maintenance may be performed concurrently during remedial maintenance service at FMSU's discretion.

(b) Remedial Maintenance:

FMSU will provide remedial maintenance during Normal Business Hours, in accordance with the level of coverage selected, necessary to repair the System upon Customer's request for service in the event such problem cannot be resolved through the TAC. FMSU shall make available remedial maintenance outside Normal Business Hours at FMSU's then current price for labor associated with such services.

(c) Replacement Parts:

When specified in the applicable Configuration Quote, FMSU shall provide all necessary replacement parts for Hardware in order to maintain the System at no additional cost to Customer; provided, however, that all glassware shall be charged at FMSU's then-current list price for such parts. All replaced parts shall be returned to FMSU and shall become the property of FMSU.

(d) Enhancements and Upgrades:

Provided enhancements do not require new or upgraded hardware or are listed as optional features in FMSU's price list, enhancements and upgrades provided by Third Party Product and Pass-Thru Product vendors are passed to FMSU's Maintenance Services customers. For purposes hereof, "enhancements" shall mean any additions to third-party software that allow for additional functionality. In the event of any enhancements that require new or upgraded hardware, the pricing and discounts for such hardware will be covered under a separate agreement.

(e) Retirement of Releases:

Maintenance Services are provided for each version of the Software commencing the date the version becomes generally available and continuing for a period of two years after such version is retired.

(f) Termination:

Customer may terminate Maintenance Service at the end of the term by giving written notice to FMSU at least thirty (30) days prior to the end of any annual term. FMSU may suspend or cancel Maintenance Service if Customer fails to make payment.

5. DOWNTIME:

(a) During each annual term of Maintenance Services, FMSU will track Downtime (as defined below) to assist in its diagnosis and maintenance of the System.

(b) "Downtime" shall mean each such period during which, due solely to the Software, Studies cannot be received from modalities or viewed on diagnostic workstations comprising the System. The calculation of Downtime begins when the TAC logs Customer's report of a System failure, provided that such calculation shall only be finalized to the extent that FMSU determines, in its sole discretion, that such Downtime was caused by the Software. Downtime will end when FMSU notifies Customer that the System is available to return to service.

(c) Notwithstanding the foregoing, Downtime shall not include System failure or unavailability determined by FMSU to be due to:

- Any Pass-Thru Product or other software or hardware installed or used by Customer in connection with the System;
- Failure of any Third Party Product that does not directly affect the Software;
- Errors, willful misconduct or negligence, or other unauthorized actions of Customer's employees, agents or invitees;
- Any repairs, replacement of parts or components, or other maintenance of the System performed by any party other than FMSU;
- Use by Customer of interfaces or devices not provided by FMSU in conjunction with the System;
- Misuse of the System, including without limitation any application or function of the System not contemplated by this Agreement or the Documentation;
- Any electrical failure external to the System that affects performance of the System;
- Any network failure external to the System that affects performance of the System;



- Damage caused by transport of the System by Customer or Customer's agents, other than in connection with ordinary use;
- Any event of Force Majeure;
- Viruses introduced into the System from a source other than the Software; or
- Unavailability to FMSU of remote access to the System, whether or not caused by Customer.

6. ON SITE SERVICE PROGRAM:

FMSU provides installation, implementation, project management and application training for FMSU products ("Services") at FMSU's then-current list price. Each request from Customer for Services to be provided by FMSU, and the obligations of each party with respect thereto, shall be detailed in a statement of work or such other mutually agreed-to document, including but not limited to FMSU's installation checklist (each, a "SOW"). Each such SOW shall be incorporated by reference into this Agreement.

(a) Any changes to a SOW must be reflected in writing in a new or amended SOW. Each revised SOW shall be incorporated by reference into this Agreement. FMSU is not obligated to do any work not specified in a SOW signed as set forth herein. Either party may terminate a SOW with or without cause at any time by giving the other party 30 days' prior written notice. Upon termination of the SOW, fees for the Services provided under it shall become due and payable.

(b) Customer agrees to provide all resources reasonably required by FMSU in order to implement the Services, including without limitation personnel, information and software and hardware computing and other facilities.

(c) Unless otherwise specified in writing, FMSU will install the System covered herein at the site set forth in the Configuration Quote after receipt of payment from Customer. Prior to installation of the System by FMSU, Customer shall prepare the installation site in an appropriate manner and shall cause such installation site to conform to any utility, climate control and communication interface specifications that FMSU and the manufacturer of the System and the components thereof may supply. Customer shall not remove the System from the installation site without the prior written consent of FMSU.

(d) Services include data migration services, at FMSU's then current list price. FMSU will provide data migration services to migrate the number of Studies from Customer's existing archive system to FMSU's System as detailed in the applicable SOW or other mutually agreed document. Customer is responsible for all fees that may be owed to third parties in connection with such migration. Customer acknowledges that there may be limitations on the quality of the migrated data due to problems with the content, information or data or with the archive upon which the data originally resided. The parties agree that First Clinical Use of the System shall not be contingent upon the performance or completion of data migration services referenced herein.

(e) If on-site training days are included in the Configuration Quote, such training days may be utilized by Customer during the one-year period following equipment installation. After one-year from the date of installation, any remaining unused training days will be automatically converted into a one-year, fully-paid subscription to FMSU's virtual classroom.

SCHEDULE B
FUJIFILM Medical Systems U.S.A., Inc.
PRODUCT SPECIFIC CONDITIONS: FMSU

Customer's use of the products described below is subject to the terms set forth herein. Such terms are in addition to the terms set forth in the Agreement; notwithstanding the foregoing, if there is any conflict or inconsistency between the terms of this Schedule B and the Agreement solely with respect to the products set forth herein, the terms of this Schedule B shall control.

A. THIRD PARTY SOFTWARE:

Oracle USA, Inc. Software:

License of the Oracle USA, Inc. Software: Customer is hereby granted a restricted license to use certain software of the Oracle USA, Inc. ("Oracle") that is embedded in the Software including programs that may include source code provided by Oracle as a part of its standard shipment of such programs (collectively, the "Oracle Software"). The Oracle Software shall be included in the definition of Software as set forth in the Agreement and all of the Agreement's terms and conditions with respect to the Software shall apply equally to the Oracle Software. Customer agrees that: (i) Oracle is an intended third-party beneficiary of the Agreement; and (ii) FMSU may assign to Oracle FMSU's right to audit Customer's use of the Oracle Software.

GEAR Software, Inc.:

Synapse Cardiovascular makes use of a certain development toolkit licensed from GEAR Software, Inc. ("GEAR") known as the GEAR.works Toolkit to permit the integration of certain elements of GEAR's recording functionality into the Software to enable the ability to record content to CD and DVD. FMSU does not grant Customer any rights to use GEAR.works Toolkit other than in connection with the use of the Software. GEAR shall retain all proprietary rights in the GEAR.works Toolkit and FMSU makes no representations or warranties on behalf of GEAR. Customer's sole remedy for breach of any warranty, representation or other rights with respect to GEAR.works Toolkit shall be against GEAR and not FMSU.

INVIA, LLC:

Customer is granted a restricted license to use a third party software product from INVIA, LLC ("INVIA") described as Nuclear Cardiology Advance Quantification (Corridor4DM Imaging Software) ("Corridor4DM"). FMSU does not grant Customer any rights to use Corridor4DM other than in connection with the use of the Software. Corridor4DM IS PROVIDED ON AS-IS BASIS FOR CUSTOMER'S CONVENIENCE AND NEITHER FMSU NOR INVIA ASSUMES ANY RESPONSIBILITIES WHATSOEVER WITH RESPECT TO DESIGN, DEVELOPMENT, REPRODUCTION, USE, PERFORMANCE, DISPLAY OR OTHER DISPOSITION BY CUSTOMER OR ANY OTHER PERSON OR ENTITY, OF CORRIDOR4DM, AND FMSU AND INVIA SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES WITH REGARD TO CORRIDOR4DM, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Customer acknowledges and agrees that: (i) all of the restrictions on use of the Software contained in the Agreement shall apply with equal force to Customer's use of Corridor 4DM;; (ii) INVIA is an intended third-party beneficiary of the Agreement and all of the limitation of liability provisions of the Agreement in favor of FMSU, and all other provisions of the Agreement affording rights to FMSU or imposing obligation upon Customer, shall apply with equal force to and for the benefit of INVIA.

OTHER THIRD PARTY PRODUCTS:

With respect to any other Third Party Products purchased by Customer (as set forth on the applicable Configuration Quote), Customer acknowledges and agrees that: (i) all of the terms, conditions and restrictions on use of the Software contained in this Agreement shall also apply to such Third Party Products; and (ii) the licensors of such Third Party Products are intended third-party beneficiaries of this Agreement and all of the limitation of liability provisions of this Agreement in favor of FMSU, and all other provisions of this Agreement affording rights to FMSU or imposing obligations or restrictions on Customer, shall apply with equal force to and for the benefit of such licensors of Third Party Products.

SCHEDULE C
BUSINESS ASSOCIATE AGREEMENT

This BUSINESS ASSOCIATE AGREEMENT ("Agreement") effective as of the later-dated signature hereto ("Effective Date"), identifies and clarifies the relationship and responsibilities of FUJIFILM Medical Systems U.S.A., Inc. a New York corporation having its principal offices at 81 Hartwell Avenue, Suite 300, Lexington, MA 02421 ("FMSU"), hereby acting as the business associate and _____, a _____ having its principal offices at _____ (the "Covered Entity"), hereby acting as the covered entity.

WHEREAS, the Covered Entity is subject to the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d – 1320d-8 ("HIPAA"), as amended from time to time, and is required to safeguard individually identifiable health information the Covered Entity uses, discloses, maintains, or otherwise accesses (hereinafter "protected health information" or "PHI") in accordance with the requirements HIPAA establishes and also the requirements set forth in the Health Information Technology Act for Economic and Clinical Health Act and any regulations promulgated thereunder (the "HITECH Act"); and

WHEREAS, the Covered Entity and FMSU have entered into one or more agreements ("Underlying Agreement(s)") under which FMSU receives, accesses, uses or in some way obtains PHI.

NOW THEREFORE, for and in consideration of the mutual premises, conditions and covenants herein contained, the parties hereto agree as follows:

1. DEFINITIONS. Terms used, but not otherwise defined, in the Agreement shall have the same meaning as those terms in the federal Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164 (the "Privacy Rule"); the Breach Notification Rule, 45 C.F.R. 164 Subpart D ("Breach Notification Rule") and the federal Security Standards, 45 C.F.R. Parts 160, 162 and 164 (the "Security Standards"), as they may be amended from time to time.

2. OBLIGATIONS AND ACTIVITIES OF FMSU WITH RESPECT TO PROTECTED HEALTH INFORMATION

2.1 Obligations Regarding Uses and Disclosures of PHI.

- (a) FMSU agrees to not use or disclose PHI other than as permitted or required by this Agreement, including without limitation, Section 2.2, or as Required By Law.
- (b) FMSU agrees to use appropriate safeguards and comply with Subpart C of 45 C.F.R. 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement.
- (c) FMSU agrees to timely report to the Covered Entity, any use or disclosure of PHI not provided for by this Agreement of which it becomes aware.
- (d) FMSU agrees to ensure that any subcontractor to whom it provides PHI received from, or created or received by FMSU on behalf of the Covered Entity, agrees to restrictions and conditions at least as protective of the PHI as the terms of this Agreement.
- (e) FMSU agrees to provide timely access to PHI in a Designated Record Set to the Covered Entity upon the written request of the Covered Entity in order to meet the requirements under 45 C.F.R. 164.524. In the event FMSU receives a request directly from an Individual for access to PHI in a Designated Record Set, FMSU will provide timely written notice to the Covered Entity of such request.
- (f) FMSU agrees to make timely amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity. In the event FMSU receives a request directly from an Individual for an amendment to PHI in a Designated Record Set, FMSU agrees to provide timely written notice to the Covered Entity of such request.

- (g) FMSU agrees to make internal practices, books, and records which relate to the use and disclosure of PHI received from, or created or received by FMSU on behalf of, the Covered Entity available to the Secretary of the Department of Health and Human Services, in a reasonable time and manner or as designated by the Secretary, for purposes of the Secretary determining compliance with the Privacy Rule.
 - (h) FMSU agrees to document such disclosures of PHI and information related to such disclosures as would be required for the 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.
 - (i) FMSU agrees to timely provide the Covered Entity information collected in accordance with 2.1(h) above of this Agreement, to permit the 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. In the event FMSU receives a request directly from an Individual for an accounting of disclosure(s) of PHI by FMSU, FMSU agrees to provide timely written notice of such request to the Covered Entity.
 - (j) To the extent FMSU agrees explicitly in writing to carry out any of the Covered Entity's obligation(s) under Subpart (E) of 45 C.F.R. 164, FMSU agrees to comply with the requirements of such Subpart (E) that apply to the Covered Entity in the performance of such obligation(s).
- 2.2 Permitted General Uses and Disclosures by FMSU. FMSU may use or disclose PHI on behalf of, or to provide services to, the Covered Entity (i) for the purposes of the Underlying Agreement; (ii) for the proper management and administration of FMSU; (iii) to carry out the legal responsibilities of FMSU; and (iv) as Required By Law, if such use or disclosure of PHI would not violate HIPAA, the Privacy Rule or the Security Standards if done by the Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
- 2.3 Notification Obligations Regarding Breaches of Unsecured PHI. FMSU agrees to report to the Covered Entity any Breach of Unsecured Protected Health Information without unreasonable delay and in no case later than 60 calendar days after the Discovery of such a Breach of Unsecured Protected Health Information, as those terms are defined in the Breach Notification Rule. FMSU's notice to the Covered Entity shall include the applicable elements as set forth at 45 C.F.R. 164.410(c).

3. OBLIGATIONS OF THE COVERED ENTITY

- 3.1 Notification of Privacy Practices and Restrictions.
- (a) The Covered Entity shall notify FMSU of any limitation(s) in the Covered Entity's Notice of Privacy Practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect FMSU's use or disclosure of PHI.
 - (b) The Covered Entity shall notify FMSU of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect FMSU's use or disclosure of PHI.
 - (c) The Covered Entity shall notify FMSU of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 C.F.R. 164.522, or as mandated pursuant to Section 13405(c) of the HITECH Act, to the extent that such restriction may affect FMSU's use or disclosure of PHI.
- 3.2 Permissible Request by the Covered Entity. The Covered Entity shall not request FMSU to use or disclose PHI in any manner that would not be permissible under the Privacy Rule or Security Standards if done by the Covered Entity; except for the management and administrative and legal responsibilities of FMSU under this Agreement.
- 3.3 Minimum Necessary Disclosure. The Covered Entity shall provide to FMSU only the "minimum necessary" PHI (as described in 45 C.F.R. 164.502(b)) required for FMSU to perform its obligations under the Underlying Agreement(s).



4. TERM AND TERMINATION

- 4.1 Term. This Agreement shall be effective as of the Effective Date and shall terminate upon the termination of the Underlying Agreement(s).
- 4.2 Termination for Cause. Upon the Covered Entity's knowledge of a material breach of this Agreement by FMSU, the Covered Entity shall either:
- (a) Provide an opportunity for FMSU to cure the breach or end the violation and terminate this Agreement if FMSU does not cure the breach or end the violation within the time specified by the Covered Entity; or
 - (b) Immediately terminate this Agreement if FMSU has breached a material term of this Agreement and cure is not possible.
- 4.3 Effect of Termination.
- (a) Except as provided in paragraph 4.3(b) below, upon termination of this Agreement for any reason, FMSU shall return or destroy all PHI received from the Covered Entity or created or received by FMSU on behalf of or at the direction of the Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors of FMSU. FMSU shall retain no copies of the PHI.
 - (b) In the event that FMSU determines that returning or destroying the PHI is infeasible, FMSU shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. When return or destruction of PHI is infeasible, FMSU 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 destructions infeasible, for as long as FMSU maintains such PHI.

5. MISCELLANEOUS

- 5.1 Regulatory References. A reference in this Agreement to a section in the Privacy Rule, the Security Standards or the Breach Notification Rule means the section as in effect or as amended.
- 5.2 Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Covered Entity to comply with the requirements of HIPAA.
- 5.3 Survival. The respective rights and obligations of FMSU under Paragraphs 4.3 of this Agreement shall survive the termination of this Agreement.
- 5.4 Interpretation. Any ambiguity in this Agreement shall be resolved to permit the Covered Entity to comply with HIPAA and the implementing regulations, as they may be amended from time to time.
- 5.5 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 the parties and the respective successors and assigns of the parties, any rights, remedies, obligations or liabilities whatsoever.
- 5.6 Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.