

TABULERA, INC.

CLIENT SERVICES AGREEMENT

This Client Services Agreement (“*Agreement*”), as signed and dated on the preceding Order Form (the “*Order Form*”), by and between Tabulera, Inc., a Delaware corporation, dba Tabulera, Inc. Administrator, a California Department of Insurance Registered Administrator (License # 0M90032), with its principal office at 5994 W. Las Positas Blvd., Suite 117, Pleasanton, CA 94588 (“*Tabulera*”), is entered into for the Services (as defined herein) and subscription to the Tabulera Portal (as defined herein).

This Agreement includes the Terms and Conditions set forth below and in any addendums and will continue until terminated under the terms hereunder.

NOW THEREFORE, upon the terms and subject to the conditions set forth in this Agreement and intending to be legally bound, the parties hereto agree as follows:

Tabulera shall provide to Client, and Client shall receive from Tabulera the Services and the use of the Tabulera Portal (as defined herein) on the terms specified in this Agreement.

Schedule A: Terms and Conditions and Tabulera Services & Tabulera Application Features

Schedule B: Business Associate Agreement

[Schedules Follow]

**SCHEDULE A
TERMS AND CONDITIONS AND
TABULERA SERVICES & TABULERA APPLICATION FEATURES**

1. Certain Definitions

Unless otherwise specified, any reference in this Schedule A to a section or subdivision is a reference to a section or subdivision of this Schedule A. Capitalized words used in this Agreement but not otherwise defined herein shall have the meanings set forth below.

- A. “**Add-On Schedule**” shall have the meaning as defined in Section 3Hi hereof.
- B. “**Add-On Services**” shall have the meaning as defined in Section 4A hereof.
- C. “**Approved Insurance Carrier**” means an entity that administers claims and has passed the Tabulera implementation process and acceptance testing for billing algorithm and file transmission of enrollment data.
- D. “**Benefits Administration Services**” means the Services described in Section 3 and as referenced in the Order Form attached.
- E. “**Client**” includes Client’s Service Providers to the extent Client has designated to them certain responsibilities and authority.
- F. “**Client Content**” includes:
 - i. benefits plan eligibility information and similar information provided by Client or its employees or plan participants, including transactional information, and
 - ii. Client’s trademarks, trade names, service marks, logos and designs provided by Client (the “**Authorized Marks**”) which Tabulera includes, either directly as part of its set-up services or through Client or any of its employees or plan participants, in a version of Tabulera Portal that is customized for Client.
- G. “**Confidential Information**” means all information of a confidential or proprietary nature, including pricing and related information and all personally identifiable payroll and employee-level benefit plan data, provided by the disclosing party to the receiving party for use in connection with the Tabulera Portal or Services, or both, but does not include:
 - i. information that is already known by the receiving party;
 - ii. information that becomes generally available to the public other than as a result of disclosure by the receiving party in violation of this Agreement;
 - iii. information that becomes known to the receiving party from a source other than the disclosing party on a non-confidential basis; and
 - iv. information that is independently developed by the receiving party without the use or reference to information provided by the disclosing party.
- H. “**Effective Date**” is the date when the authorized party for Client’s signs this agreement.

I. “**Employee Welfare Benefit Plan**” is defined consistent with 29 U.S.C. § 1002(1) and means an arrangement sponsored by an employer or an employee association or both to provide the benefits identified in ERISA, 29 U.S.C. §1002(1), which include medical, vision, dental and life benefits.

J. “**Employer**” is defined consistent with ERISA, 29 U.S.C. §1002(5), which includes an association of employers acting for an employer in relation to a benefit plan.

K. “**ERISA**” means the Employee Retirement Income Act of 1974, 29 U.S.C 1001, et seq., as amended.

L. “**Fiduciary**” as used herein means a person performing any activity within the meaning of 29 U.S.C. § 1002(21)(A).

M. “**Indemnified Party**” shall have the meaning as defined in Section 3L hereof.

N. “**Initial Term**” means the period beginning on the Effective Date and ending such number of year(s) after the Service Commencement Date as specified on the preceding Order Form.

O. “**Losses**” shall have the meaning as defined in Section 3L hereof.

P. “**Payment Services**” means Client or Tabulera using Tabulera Portal to generate Federal Wire(s) or Automated Clearing House (ACH) transactions through Client’s bank account or on Tabulera’s Bank Account to pay Client’s third-party payment obligations (e.g., benefit premium payments, commissions, premium taxes, COBRA payments or other Plan expenses) and other related electronic banking transactions.

Q. “**Plan**” or “**Plans**” shall have the meaning as defined in Section 3Ki hereof.

R. “**Plan Year**” means a 12-month period of benefits or welfare coverage under the Plan or Plans, as designated on the Order Form.

S. “**Payor**” means the broker of record (“**BOR**”) or Client as designated on the Order Form.

T. “**Payor Agreement**” means a Master Services Agreement (“MSA”) and Statement of Work (“SOW”) between Client and Payor, if any, any successor agreement with Payor or any replacement agreement with a successor BOR.

U. “**Renewal Notice**” shall have the meaning as defined in Section 2B hereof.

V. “**Sponsoring Employer**” means the Employer that establishes a health and welfare benefit plan on behalf of its employees.

W. “**Service Commencement Date**” means the date the first premium is invoiced to Client.

X. “**Service Provider**” means Managing General Agent, payees, advisors, insurance brokers, sub-brokers, agents, sub-agents and other third party designees of Client’s Employee Welfare Benefit Plans that provides information or has access to Tabulera Portal on behalf of Client’s Employee Welfare Benefit Plans or on behalf of Client.

Y. “**Services**” means any services as provided under an Order Form, Schedule A and B or an addendum to this Agreement or any other services as described that are selected by Client (including, without

limitation, the Add-On Services). “**Services**” shall include the provision of the Tabulera Portal and any other software or services provided by Tabulera in connection with this Agreement.

Z. “**Tabulera Portal**” means Tabulera’s web-based administration portal, providing access to Tabulera online solutions and employer-facing resources related to enrollment administration, employer billing, insurance carrier payments and benefits administration and processing.

AA. “**Term**” means, either individually or collectively, the Initial Term and each Renewal Term of this Agreement.

BB. “**Third Party Offerings**” means software or services delivered or performed by third parties that are required for the operation of the Services or Tabulera Portal.

2. Term

A. Term. This Agreement shall commence on the Effective Date and, unless terminated earlier or renewed in accordance with the terms of this Agreement, expires at the end of the Initial Term.

B. Renewal. After the Initial Term, Client may renew this Agreement pursuant to the provisions of this Section 2.B. On or about the eighth (8th) month of the final Plan Year of the then-current Term, Tabulera shall send Client a written notice setting forth the terms on which Client may renew the Agreement (the “**Renewal Notice**”). Client shall have thirty (30) days from the date of the Renewal Notice to accept or decline the terms in the Renewal Notice electronically and specify the length of the renewal term (“**Renewal Term**”). Notwithstanding anything set forth herein, in no event shall the Renewal Notice be sent to Client later than thirty (30) days prior to the end of Client’s open enrollment period of the final Plan Year of the then-current Term. If Client accepts the terms of the Renewal Notice, the terms and conditions of this Agreement shall continue in full force and effect, subject to any changes set forth in the Renewal Notice. If Client fails to timely and properly sign and return the Renewal Notice, then this Agreement shall terminate upon the Termination Date of the then-current Term, unless terminated earlier as provided in this Agreement.

C. Termination Date. For the purposes of this Agreement, the date on which notice of termination of this Agreement is provided shall be referred to as the “**Termination Date**.” The termination or expiration of this Agreement for any reason shall not affect a party’s rights or obligations that expressly or by their nature continue and survive (including, without limitation, the provisions concerning ownership, confidentiality, limitation on liability, indemnity and warranty disclaimers).

3. Services

A. Use of Services. Client agrees to the following regarding its use of Services:

i. Client shall use Services in accordance with the instructions and reasonable policies established by Tabulera from time to time and provided to Client in writing;

ii. Client shall use Services only for the internal business purposes of Client;

iii. If Client elects to decline any Services, relies on its own provision of Services, or delegates the performance of any such Services to a third party, Tabulera will not be responsible for such Services and Client will be solely responsible and Tabulera is not responsible to develop additional processes or programming to accommodate Client;

iv. Client shall be responsible for ensuring that Client and its Service Providers that access Tabulera or use any Services to be provided hereunder comply with all the terms of this Agreement;

v. Client, and not Tabulera, will remain solely responsible for all decisions affecting Client and their employees.

vi. Tabulera is not and will not be considered for employee benefit or employment law purposes, or for any other purpose, the employer of Client employees;

vii. Client will remain responsible for the manner in which it uses Services, including the manner in which it interprets and acts upon any guidance or recommendation provided by Tabulera;

viii. Client will be responsible for the consequences of any instructions Client may give to Tabulera; and

ix. Tabulera may suspend access to Services by any employee or plan participant of Client if Tabulera has reason to believe that such employee or plan participant has violated the terms of service on the Tabulera Portal or is otherwise using any Service in an inappropriate manner. Services include the provision of Tabulera Portal, Client shall comply with the terms of this Agreement related to Tabulera Portal.

x. All Services provided hereunder may be modified from time to time at Tabulera's sole discretion; provided, however, that any such modifications will not have a material adverse impact on any of the Services Client is receiving.

B. ERISA. Client acknowledges that Tabulera's services as described in Schedule A are ministerial services with respect to the welfare arrangement Client sponsors and that nothing in this contract or any of the incorporated Schedules are intended to impose fiduciary obligations on Tabulera. Also,

i. Client acknowledges that it may be a fiduciary to the health and welfare arrangement to which Tabulera will provide ministerial services.

ii. Client is solely responsible for ensuring that it complies with all applicable federal and state law that may apply to Client's Benefit Plans.

iii. Tabulera has not expressed an opinion and will not express an opinion regarding whether Client's health arrangement complies with applicable laws.

iv. Tabulera is responsible for compliance with laws that relate to its responsibilities in this Agreement.

C. Input of Client Content and Data. Client agrees to use the Tabulera Portal to submit data to Tabulera for processing.

D. Accuracy of Client Information, Review of Data. All Services provided hereunder will be based upon information provided to Tabulera by Client (including Social Security Numbers provided for Employer's employees).

i. Upon receipt from Tabulera, whether electronically or otherwise, Client will promptly review all records and other reports prepared by Tabulera for validity and accuracy according to Client's records and Client agree that it will promptly notify Tabulera of any discrepancies.

ii. Client understands it is responsible for paying Tabulera directly for any premium charges resulting from delayed or incorrect reporting of information to Tabulera.

E. Compliance with Laws. Client acknowledges that the Services are designed to assist Client in complying with applicable laws and governmental regulations, and that Client, and not Tabulera, will be solely responsible for:

i. compliance with all federal, state, and local laws and governmental regulations affecting its business, including but not limited to, any laws governing employee eligibility, status, and classification of its employees; and

ii. any use Client may make of Services (including any reports and worksheets produced in connection therewith) to assist it in complying with such laws and governmental regulations.

iii. Client acknowledges and agrees that Services will be utilized by Client solely in the United States.

iv. Client will not rely solely on its use of the Services in complying with any laws or governmental regulations (including, but not limited to, any applicable Office of Foreign Assets Control (“*OFAC*”) screening requirement).

v. Each party will be responsible for complying with all requirements of applicable law or regulation regarding security breaches and suspected security breaches involving personal information that is stored on the computer systems of such party or its subcontractors.

vi. Payment Services are subject to the operating rules of NACHA – The Electronic Payments Association (“*NACHA*”). Tabulera and Client each agree to comply with the NACHA rules applicable to it with respect to Payment Services.

vii. Tabulera is responsible for compliance with laws that relate to its responsibilities in this Agreement.

F. Services Do Not Constitute Legal or Other Advice. Client acknowledges and agrees that the products and Services provided hereunder (including, but not limited to, any and all information, materials, forms and Tabulera Portal access) are not intended to be and will not be relied upon by Client as either legal, financial, insurance or tax advice. To the extent Client requires any such advice, Client represents that it will seek such advice from a qualified legal, financial, insurance, accounting, or other professionals. Client should review applicable law in all jurisdiction where Client operates and has employees and consult experienced counsel for legal advice.

G. Security. In the event of unauthorized access to or use of Confidential Information of Client (“*Security Incident*”), in Tabulera’s possession or control that is personally identifying (see Section 3Gi below), Tabulera agrees to comply with all applicable breach notification laws of the relevant states and to reasonably cooperate with Client in Client’s investigation of the Security Incident.

i. “*Personally Identifying*” means data that identifies an individual or that compromises the security, confidentiality, availability or integrity of such personally identifying Confidential Information and does or is reasonably likely to result in misuse of such personally identifying Confidential Information

H. Services Requested by Client. If Client requests services not included in this Agreement, and Tabulera agrees to provide such services, then

i. those services will be included in an Add-On Schedule (each an “*Add-On Schedule*”) to be signed and attached to and made part of this Agreement; and

ii. any Services provided to Client but not included in an Add-on Schedule will be subject to the applicable terms of this Agreement.

iii. Each Add-On Schedule is incorporated herein by reference as if set forth in this Agreement. Add-On Services are provided at additional fees as set forth in Order Form governing the Add-On Services.

I. Tabulera will make available to Client ministerial recordkeeping services as outlined in Order Form for Client sponsored benefit plans.

J. Tabulera will act as the Administrative Manager of Client’s Sponsored Benefit Plans in a ministerial capacity.

K. Client expressly acknowledges and agrees that Tabulera is not a “Plan Sponsor,” or a “Plan Administrator” as defined by Section 3(16) (A) of ERISA, and Section 414(g) of the Internal Revenue Code of 1986, as amended (the “*Code*”), respectively, nor is Tabulera a “fiduciary” within the meaning of ERISA Section 3(21), and Client shall not request or otherwise require Tabulera to act as such.

i. Tabulera shall not exercise any discretionary authority or control respecting management of any of Client’s benefit or welfare plans (“*Plan*” or “*Plans*”) or management or disposition of any of Client’s benefit or welfare Plan assets.

ii. Tabulera shall not render investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of any Plan, nor does Tabulera have any authority or responsibility to do so.

iii. Tabulera has no discretionary authority or discretionary responsibility in the administration of the Plan(s).

L. Indemnification. With respect to Tabulera’s provision of Services, Client agrees to defend, indemnify and hold harmless Tabulera, its affiliates and their directors, officers, employees, legal representatives, agents, successors, and assigns (each an “*Indemnified Party*”) from and against all claims, losses, liabilities, damages, demands, causes of action, costs and expenses (including reasonable attorneys’ fees and costs of litigation) (collectively “*Losses*”) incurred as result of entering into and performing services under this Agreement or any other causes arising out of this Agreement or the Plan(s), except to the extent those Losses resulted from the gross negligence, willful misconduct or willful breach of this Agreement by Tabulera in the performance of Benefits Administration Services.

i. Tabulera agrees to perform the Services with respect to the Plan(s) in accordance with a reasonable and good faith interpretation of the federal law requirements, to the extent that Services are included.

ii. Except for such responsibilities assumed by Tabulera in this Agreement, Client shall be responsible for (a) compliance with laws and governmental regulations (including state and local health care continuation laws) affecting the Plans and Client’s business and (b) any use it may make of the Services to assist it in complying with such laws and governmental regulations.

M. Client or the Plan Administrator must obtain the prior written consent of Tabulera to insert any references to Tabulera or its affiliates, or to their products or services, with respect to any communication or document pertaining to a Plan prepared by Client, or on behalf of Client (other than documents prepared by

Tabulera), unless the reference only identifies Tabulera as a Service Provider or the reference is required in an IRS Form 5500 or similar filing or document required by ERISA or any other applicable law.

i. Without limiting the foregoing, in no event may Client or the Plan Administrator identify or refer to Tabulera as “plan administrator”, “plan sponsor”, “fiduciary”, “plan fiduciary” or similar title.

ii. Tabulera is the “Administrative Manager.”

N. Business Associate Agreement. Tabulera will enter into a Business Associate Agreement, in substantially the form attached hereto as Schedule B, with Client as necessary to ensure compliance with HIPAA and warrants that its systems and personnel, as applicable, are HIPAA compliant.

O. Approved Insurance Carrier Premium Billing Algorithms. Client or its agents agree to review and approve insurance premium billing algorithms during acceptance testing of Tabulera. Changes to Approved Insurance Carrier premium billing algorithms will be billed at the then current hourly software development fee rate.

4. Fees & Payments

A. Fees; Terms. Client shall be responsible for payments due to Tabulera (“*Fees*”) for the Services set forth in Order Form. If Client has engaged the services of a Payor, Fees shall be paid to Tabulera by Payor pursuant to the terms of Section 4G hereof. Client agrees to the terms set forth in the Order Form, including but not limited to the due dates set forth therein. Client further agrees to pay Tabulera the Fees for any Services added by Client after the Effective Date (“*Add-On Services*”), at Tabulera’s then prevailing prices for such Add-On Services. Payments of fees for Add-On Services shall be made (i) by Payor under Section 4G hereof, with Payor’s prior written approval pursuant to a separate Order Form signed by Payor, Client and Tabulera; or (ii) by Client directly to Tabulera.

B. Annual Fee Increases. Tabulera and Client agree that the fees for Services (except for the Add-On Services) will increase each Plan Year within each Term by five percent (5%) or such other fee increase as may be set forth in the Order Form or any Renewal Notice.

C. Multi-Year Commitment Discount. If any Initial Term or Renewal Term exceeds one (1) year (“*Multi-Year Commitment*”), Client shall be entitled to a multi-year discount on Fees as specified in the applicable Order Form or Renewal Notice.

D. Implementation & Software Development Fees. Client shall be responsible for payments due to Tabulera for any Implementation fees and Software Development fees for the Services set forth in Order Form, assuming no changes to the requirements or specifications are indicated in Order Form. Tabulera shall ACH debit Payor or Client, as the case may be, for Implementation and Software Development fees within thirty (30) days of the Effective Date of this Agreement.

E. Tabulera Invoice Payment. Client and Payor will be invoiced by ACH for fees concurrent with the transmission of premiums remitted to Approved Insurance Carrier each month.

i. Fees will be based on the pricing in the applicable Order Form or Renewal Notice.

ii. If Client or Payor fails to pay any amount due hereunder (whether by acceleration or otherwise) not under good faith dispute, Client, after prior written notice to Client, shall owe Tabulera interest at the rate of 1.5% per month (or the maximum allowed by law if less) on such past due amount from the due date thereof until the payment date.

iii. Fees will be collected through ACH debit presentment directly to a bank account established by Client or by Payor on Client's behalf on a monthly basis using the Electronic Payment Approval Process.

iv. Client shall reimburse Tabulera for any expenses incurred, including interest and reasonable attorney fees, in collecting amounts due Tabulera hereunder that are not under good faith dispute by Client.

F. Approved Insurance Carrier Invoice and Other Accounts Payable Payments. For the purposes of Approved Insurance Carrier Invoice and accounts payable payments, Client and Tabulera agree to use the Electronic Payment Approval Process.

G. Payments by Broker of Record. While a Payor Agreement remains in effect with a BOR, pursuant to the terms of any such Agreement, fees due to Tabulera for Services and approved Add-On Services provided under this Agreement and related Order Forms shall be paid by the Payor named in such Payor Agreement. Client shall make premium payments and/or other funds available to Payor on a timely basis to enable Payor to pay Tabulera fees for Services and any Add-On Services when due. Upon termination of the Payor Agreement and/or the SOW thereunder, Client shall become responsible for paying Tabulera fees due for Services and any Add-On Services directly.

H. Taxes. Client shall be responsible for payment of all tax liabilities relating to the provision of Services, including, but not limited to premium taxes, sales, use, excise, value-added, business, goods and services, consumption, withholding and other similar taxes or duties.

5. **Online Access**

A. Access, Privacy, Transmissions, and Security Breaches. Certain Services may be accessed by Client through the Internet on the Tabulera Portal. In addition, Client acknowledges that security of transmissions over the Internet cannot be guaranteed. Tabulera is not responsible for:

- i. Client's access to the Internet;
- ii. interception or interruptions of communications through the Internet;
- iii. changes or losses of data through the Internet;
- iv. any third-party software that may be accessed by the Services; and

v. in order to protect Client's data, if a breach of security is suspected, Tabulera may suspend Client's or Client's employee's use of the Tabulera Portal or Services via the Internet immediately, without prior notice pending a prompt investigation, provided that Tabulera shall take all necessary steps to restore Client's or Client's employee's, use of the Tabulera Portal or Services via the Internet as soon as reasonably possible.

B. Administration User Access. Client may provide access to the Tabulera Portal to those Client employees, Service Providers and users it deems necessary to perform Client's administration. Tabulera may discontinue or suspend user access to the Tabulera Portal for any user if Tabulera reasonably believes that such user has violated the terms of this Agreement or is otherwise using Tabulera in an inappropriate manner. Except for scheduled maintenance periods, Tabulera will use commercially reasonable efforts to provide access to the Tabulera Portal.

C. Client Content. Client shall be solely responsible for obtaining all required rights and licenses to use and display Client Content and for updating and maintaining the completeness and accuracy of all Client Content. Client grants Tabulera a right to use Client Content for the sole purpose of performing the Services for Client. In the event that Tabulera makes available branding of any materials or applications associated with the Tabulera Portal or Services and Client requests such branding, Client grants Tabulera and any Service Provider designated by Client or Tabulera the right to display Authorized Marks, subject to Client's right to review and approve the copy prior to the use of such Authorized Marks.

D. Password Protection. Client and Service Providers agree to maintain the privacy of usernames and passwords associated with any Services. Client is fully responsible for all activities that occur under Client's password or Internet account. Client and Service Providers agrees to (a) immediately notify Tabulera of any unauthorized use of Client's password or Internet account or any other breach of security, and (b) ensure that Client and Service Providers exits from their Internet account at the end of each session. Tabulera shall not be liable for any damages incurred by Client, Service Providers or any third party arising from Client's or Service Provider's failure to comply with this section.

E. Certain Restrictions. Tabulera retains the right to include its trademarks, logos and Tabulera logo as part of the Tabulera Portal's login and displayed no more prominently than client's logo on transactional pages.

i. Client or Service Providers will not assign, loan, lease, rent, sublicense, alter, modify, adapt (or cause to be altered, modified or adapted), reproduce, duplicate, copy, sell, trade, resell, distribute, transfer, publicly perform, publicly display or exploit for any commercial purposes, all or any portion of the Tabulera Portal or any access or use thereof.

ii. Client will not write or modify interfaces or reports to Tabulera except as expressly authorized by Tabulera.

iii. Client or Service Providers may not: (a) modify, disassemble, decompile or reverse engineer the Tabulera Portal, except to the extent that such restriction is expressly prohibited by law; (b) make any copies of the Tabulera Portal; (c) remove, circumvent, disable, damage or other interfere with security-related features of the Tabulera Portal, features that prevent or restrict use or copying of any content accessible through Tabulera Portal, or features that enforce limitations on use of the Tabulera Portal; or (d) delete the copyright and other proprietary rights notices on the Tabulera Portal.

F. Tabulera Not Fiduciary Advisor. Tabulera is not acting as an investment advisor, broker-dealer, insurance agent or intermediary or a financial or benefit planner, plan fiduciary or plan administrator.

G. Links to Third-Party Sites. The Tabulera Portal may contain links to other Internet sites. Links to and from the Tabulera Portal to other third-party sites do not constitute an endorsement by Tabulera or any of its subsidiaries or affiliates of such third-party sites or the acceptance of responsibility for the content on such sites.

6. Disclaimer of Warranties. The Tabulera Portal and the Services provided by Tabulera and/or its suppliers are provided "As Is" and Tabulera and its licensors expressly disclaim any warranty, either express or implied, including without limitation, any implied warranties of merchantability, fitness for a particular purpose, non-infringement under the UCC, non-interruption of use, or freedom from program errors, viruses or any other malicious code. Tabulera and its licensors further disclaim any warranty that results obtained through the use of the Services or Tabulera Portal will meet the Client's needs.

7. Intellectual Property

A. Ownership and Proprietary Rights. The right to use the Tabulera Portal is granted to Client and Service Providers for the sole purpose of utilizing the Tabulera Portal and Services as provided in this Agreement. The Tabulera Portal is licensed to Client hereunder and are the licensed and/or owned property of and embody the proprietary trade secret technology of Tabulera and/or its licensor(s) and are protected by copyright laws, international copyright treaties, as well as other intellectual property laws, that among other things, prohibit the unauthorized use and copying of Tabulera Portal. Client receives no rights to the Tabulera Portal or any intellectual property of Tabulera or its licensors, except as expressly stated herein.

B. Indemnity. Subject to the remainder of this Section 7B, Tabulera shall defend Client in any lawsuit, legal proceeding or other cause of action, and indemnify and hold Client harmless against any damages payable to any third party in any such suit or other legal proceedings, alleging Tabulera Portal, as used in accordance with this Agreement, infringes any U.S. patent, copyright, trade secret or other proprietary right of any third party.

i. The foregoing obligations of Tabulera are subject to the following requirements: Client shall take all reasonable steps to mitigate any potential damages which may result; Client shall promptly notify Tabulera of any and all such suits and other legal proceedings; Tabulera controls any negotiations or defense of such suits and other legal proceedings; and Client assists as reasonably required by Tabulera.

iv. The foregoing obligations of Tabulera do not apply to the extent that the infringing Tabulera Portal or portions or components thereof or modifications thereto were not supplied or directed by Tabulera, or were combined with other products, processes or materials not supplied or directed by Tabulera (where the alleged infringements relate to such combination).

v. This Section 7B states Tabulera's sole liability to, and Client's exclusive remedy against, Tabulera for any type of claim described in this Section.

8. Nondisclosure and Privacy

A. Confidentiality. All Confidential Information disclosed hereunder will remain the exclusive and confidential property of the disclosing party. The receiving party will not disclose the Confidential Information of the disclosing party and will use at least the same degree of care, discretion and diligence in protecting the Confidential Information of the disclosing party as it uses with respect to its own Confidential Information. The receiving party will limit access to Confidential Information to its affiliates, employees and authorized representatives with a need to know and will instruct them to keep such information confidential.

i. Notwithstanding the foregoing, the receiving party may disclose Confidential Information of the disclosing party (a) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it, (b) as appropriate and with prior notice where practicable, to respond to any summons or subpoena or in connection with any litigation, and (c) relating to a specific employee, to the extent such employee has consented to its release.

ii. Upon the request of the disclosing party, the receiving party will return or destroy all Confidential Information of the disclosing party that is in its possession.

iii. Notwithstanding the foregoing, Tabulera may retain information as may be required by applicable law for regulatory purposes or in back-up files, provided that Tabulera's confidentiality obligations hereunder continue to apply.

iv. The obligations of Tabulera set forth in this Section shall not apply to any suggestions and feedback for product or service improvement, correction, or modification provided by Client in connection with

any present or future Tabulera product or service (“*Feedback*”), and, accordingly, neither Tabulera nor any of its clients or business partners shall have any obligation or liability to Client with respect to any use or disclosure of such information.

v. Client irrevocably assigns to Tabulera all right, title, and interest in and to the Feedback, including all related intellectual property rights.

B. Protection of Client Files and Transmission of Data. Tabulera will maintain appropriate security measures to protect the personal information of Client’s employees and payees consistent with applicable state and federal laws. Additionally,

i. Tabulera will employ commercially reasonable storage (including backup, archive and redundant data storage, on-site and off-site) and reasonable precautions to prevent the loss of or alteration to Client’s data files and/or Client Content in Tabulera’s possession, but Tabulera does not undertake to guarantee against any such loss or alteration.

ii. In the event that Client requests that Tabulera provide any Client Content or employee or plan participant information to any third party or to any non-U.S. Client location, Client represents and warrants that it has acquired any and all applicable consents or provided any and all notices required to transfer such content or information and that such transfer does not violate any applicable international, federal, state or local laws and/or regulations.

9. Limitation of Liability

A. Errors, Omissions and Willful Acts. Tabulera shall correct any Client report or data, as the case may be, produced incorrectly as a result of a Tabulera or Tabulera Portal error, at no charge to Client. Additionally, Tabulera shall reimburse Client for actual damages incurred by Client as a direct result of the criminal or fraudulent acts or willful misconduct of Tabulera or any of its employees or agents.

B. Limit on Monetary Damages. Notwithstanding anything to the contrary contain in this Agreement, Tabulera’s aggregate liability under this Agreement during any calendar year for damages (monetary or otherwise) under any circumstances for claims of any type or character made by Client or any third party arising from or related to Tabulera or the Services, will be limited to the lesser of: (i) the amount of actual damages incurred by Client, or (ii) the average monthly charges for the six (6) months for the services during such calendar year. Tabulera will issue client credit(s) equal to the applicable amount and any such credit(s) will be applied against future Services.

C. No Consequential Damages. Notwithstanding anything to the contrary contained in this Agreement, Tabulera shall not be responsible for special, indirect, incidental, consequential or other similar damages (including, without limitation, any lost profits or damages for business interruption or loss of information) that Client may incur or experience in connection with this Agreement or the Services or Tabulera, however caused and under the whatever theory of liability (whether in contract, tort (including negligence) or under any other theory of liability), even if Tabulera has been advised of the possibility of such damages.

10. Termination; Default; Remedies Upon Default

A. Termination Event. Either party may terminate this Agreement without prejudice to enforce any legal right or remedy upon giving written notice, if

i. the other party is in material breach of any material warranty, term, condition or covenant of this Agreement, provided that the breaching party shall have thirty (30) business days after receipt of a notice of intent to terminate to cure any such breach, unless such breach is due to Client’s failure to pay amounts due

hereunder, then the time to cure such breach shall be ten (10) days. Termination shall be effective upon expiration of the applicable cure period (30 or 10 business days after notice of the breach, the “*Cure Period*”) if cure has not been made;

ii. the other party ceases business operations, or

iii. the other party becomes insolvent, generally stops paying its debts as they become due or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against the other (and not dismissed within ninety (90) days after commencement of one of the foregoing events).

B. Termination by Tabulera. Tabulera may terminate this Agreement by further written notice to Client, if Client fails to fulfill its obligations in connection with the implementation services such that Tabulera is unable to complete the implementation services and commence Services.

i. Tabulera may also suspend performance and/or terminate this Agreement immediately without prior notice in the event Client, its employee(s) or any other third party (a) includes in any Services any Client Content which is obscene, offensive, inappropriate, threatening, malicious, which violates any applicable law or regulation or any contract, privacy or other third-party right or which otherwise exposes Tabulera to civil or criminal liability or (b) wrongfully uses or accesses Tabulera Portal or any other Tabulera systems used in the performance of its obligations under this Agreement.

ii. Notwithstanding anything herein to the contrary, Payment Services may be immediately suspended or terminated by Tabulera without prior notice, if (a) Tabulera has not received timely funds from Client as required by this Agreement; (b) a bank notifies Tabulera that it is no longer willing to originate debits and credits for any reason; (c) the authorization to debit Client’s account is terminated or Tabulera reasonably believes that there is or has been fraudulent activity on the account; (d) Tabulera reasonably determines that Client no longer meets Tabulera’s credit/financial eligibility requirements for such Services; or (e) Client has any material adverse change in its financial condition.

C. Termination for Convenience. Tabulera and Client may each terminate this Agreement for any reason with ninety (90) days’ written notice to the other party.

D. Buy Out Fee; Early Termination. Client shall be responsible for a payment to Tabulera, within fifteen (15) days after a termination effected during the Initial Term, a fee equal to the aggregate subscription fees due for the remainder of the Initial Term, if:

i. Client terminates this Agreement for any reason, except for those reasons set forth in Section 10A; or

ii. Tabulera terminates this Agreement pursuant to Section 10A or Section 10B.

iii. Lower Later. After the Initial Term, during later Renewal Terms, the Client shall, within fifteen (15) days from the effective date of the termination, pay a fee equal to fifty percent (50%) of the aggregate subscription fees for the remainder of the then-current Renewal Term.

iv. Payment of fees due under this subsection D shall be made by Client directly to Tabulera.

E. Post-Termination. If use of Tabulera Portal or Services are or may be terminated by Tabulera, Tabulera shall be entitled to allocate any funds remitted or otherwise made available by Client to Tabulera in such priorities as Tabulera (in its sole discretion) may determine appropriate (including reimbursing Tabulera for

payments made by Tabulera hereunder on Client's behalf to a third party). If the subscription to the Tabulera Platform or the Services are terminated, Client will immediately:

- i. become solely responsible for all of its third-party payment obligations covered by Tabulera or Services then or thereafter due;
- ii. reimburse Tabulera for all payments made by Tabulera hereunder on Client's behalf to any third party; and
- iii. pay any and all fees and charges invoiced by Tabulera to Client relating to Tabulera Portal or Services rendered prior to termination.
- iv. Client may continue to access Tabulera Portal for a period of thirty (30) days after the expiration of the Cure Period for the sole purpose of retrieving already processed transactions.

11. Other Terms

A. Non-Solicit. Except as prohibited by applicable law, during the term of this Agreement and for the twelve (12) months thereafter, neither Client nor Tabulera shall knowingly solicit, directly or indirectly, for employment, or as a consultant, any employee or former employee of the other party who has been actively involved in the subject matter of this Agreement.

B. Publicity. Upon execution of this Agreement, Tabulera may publish a press release or tombstone acknowledging Client relationship with Tabulera and use Client's logo on the Tabulera website client page.

C. Assignment. Tabulera or Client may not assign this Agreement without the prior written consent of the other party, except in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Any assignment permitted hereunder will be subject to the written consent of the assignee to all of the terms and provisions of this Agreement. Any attempted assignment in derogation of this section will be null and void.

D. Waiver. The failure of either party at any time to enforce any right or remedy available to it under this Agreement or otherwise with respect to any breach or failure by the other party shall not be construed to be a waiver of such right or remedy with respect to any other breach or failure by the other party.

E. Severability. If any of the provisions of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of Client and Tabulera shall be construed and enforced accordingly.

F. Relationship of the Parties. The parties understand and agree that each party is an independent contractor in the performance of each and every part of this Agreement, is solely responsible for all of its employees and agents and its labor costs and expenses arising in connection therewith.

G. Governing Law. This Agreement is governed by the laws of the State of California without giving effect to its conflict of law provisions. The parties agree to waive all rights or claims to a trial by jury.

H. Headings. The headings used in this Agreement are for reference only and do not define, limit, or otherwise affect the meaning of any provisions hereof.

I. Limitation of Claims. No action arising under or in connection with this Agreement, regardless of the form, may be brought by Client more than two (2) years after Client becomes aware of or should reasonably have become aware of the occurrence of events giving rise to the cause of action.

J. Use of Tabulera Employees or Agents. Tabulera may designate any employee, agent or subcontractor, without notice to, or the consent of, Client, to perform such tasks and functions to complete any Services covered under this Agreement from within or outside of the United States. However, nothing in the preceding sentence shall relieve Tabulera from responsibility for performance of its duties under the terms of this Agreement.

K. Conflicts Clause. In the event of a conflict between the terms of this Agreement and such additional terms, the terms of this Agreement shall control, unless an addendum or amendment to this Agreement is executed simultaneously herewith or subsequently hereto, in which case the terms of such addendum and/or amendment shall control.

L. Notices. All notices, including any notices of termination in accordance with Section 10 herein, shall be in writing and shall be delivered or sent by recognized courier or registered or certified mail, return receipt requested, to the addresses indicated on the face hereof with an additional copy to Tabulera, Inc., 5994 W. Las Positas Blvd, Suite 117, Pleasanton, CA 94588. Attention: Douglas P. Devlin, Chief Executive Officer or to such other addresses as the parties shall specify by notice given pursuant hereto.

12. Administrative Responsibilities

The Administrative Manager will provide the following administrative services for the Plan:

A. Financial Transactions. Process accounts payable invoices and disbursements including Approved Insurance Carrier invoices.

B. Ownership of Documents. All records kept by the Administrative Manager, including financial records, employee records, records relating to employer contributions, the duplicate copies of premium statements and all records relating to claims filed, processed and paid, as well as all books, lists of names, forms, passbooks, journals, checkbooks and ledgers, shall at all times be considered to be the records and the property of Client and shall, in the event of termination of this Agreement, be available to Client for thirty (30) days. Notwithstanding the foregoing, information as to internal systems and procedures in Tabulera developed or maintained by the Administrative Manager are and shall remain the property of the Administrative Manager.

C. Errors and Omissions Insurance. The Administrative Manager shall provide and maintain at its own expense a policy of liability insurance insuring against claims based on alleged errors and omissions by the Administrative Manager in the performance of its responsibilities, in an amount not less than \$3,000,000. Said policy shall be maintained for the Term of this Agreement, *provided* that, if the policy is a “claims made” policy, the Administrative Manager shall maintain the policy for an additional two (2) years beyond the termination of this Agreement.

13. Tabulera Application Integration

A. Client or Client Service Providers will provide through Tabulera a single electronic file per month, by the transmission schedule mutually agreed by Client and Tabulera, containing a complete listing of the currently enrolled members, including employees, spouses and dependents with the fields minimally required by the Tabulera file format and each Approved Insurance Carrier.

B. Tabulera will format Client file into a standard file acceptable by each Approved Insurance Carrier.

- C. Approved Insurance Carrier(s) will provide Tabulera access to an electronic list bill.
- D. Tabulera will create and maintain self-bills for those Plans requiring this billing method.
- E. Tabulera will electronically consolidate Approved Insurance Carrier invoices and self bills and present a single consolidated bill monthly to Client. Client will provide Tabulera Portal login credentials to each Carrier in order for Tabulera to electronically acquire each Carrier which generates an invoice.
- F. The Tabulera Portal will publish to each consolidated bill in PDF and excel formats.
- G. If Tabulera is processing payments through Tabulera's bank account, the Tabulera Portal will create an ACH debit file to collect Client's consolidated bill through Client's bank account that will cause Client to be billed for its consolidated bill.
 - i. Client will be responsible for its use of ACH collection as the method to collect insurance premiums.
 - ii. Client is responsible to obtain ACH or Wire banking privileges and to comply with bank underwriting and credit policies.
- H. Tabulera will maintain a record of each employee Benefit Plan balance.

**SCHEDULE B
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (the “*Agreement*”) is entered into between Client (the “*Covered Entity*” or “*Client*”) and Tabulera, Inc. (the “*Business Associate*” or “*Tabulera*”) and is effective as of the Effective Date (as defined below).

Recitals

A. Covered Entity has engaged Business Associate to evaluate, perform, or assist in the performance of, a function or activity that may or will involve the use or disclosure of Protected Health Information and/or any other function or activity subject to the business associate agreement requirements of the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (“*HITECH*”), and all applicable implementing regulations, including, without limitation, the Standards for Privacy of Individually Identifiable Health Information (the “*Privacy Rule*”), Notification in the Case of Breach of Unsecured Protected Health Information (“*Breach Notification Rule*”), and the Security Standards for the Protection of Electronic Protected Health Information (the “*Security Rule*”) found at Title 45, Parts 160 and 164 of the Code of Federal Regulations, dealing with the security, confidentiality, integrity and availability of protected health or health-related information, as well as breach notifications (all such laws and regulations shall be collectively referred to herein as “*HIPAA*”).

B. Such services shall be performed pursuant to a separate agreement, whether written or oral (hereinafter, together with any successor such agreement(s), referred to collectively as the “*Client Services Agreement*”), and the parties have agreed to enter into this Agreement in order to satisfy the requirements of Sections 164.502(e) and 164.504(e) of the Privacy Rule and 164.308(b) and 164.314(a) of the Security Rule and to otherwise facilitate implementation of HIPAA by both parties, also all on the terms and conditions hereinafter set forth.

C. Unless otherwise defined in this Agreement, all capitalized terms used herein shall have the meanings ascribed in the HIPAA Regulations, provided, however, that “*PHI*” and “*ePHI*” shall mean Protected Health Information and Electronic Protected Health Information, respectively, as defined in 45 C.F.R. § 160.103, limited to the information Business Associate received from or created or received on behalf of Covered Entity. “*Administrative Safeguards*” shall have the same meaning as the term “administrative safeguards” in 45 C.F.R. § 164.304, with the exception that it shall apply to the management of the conduct of Business Associate’s workforce, not Covered Entity’s workforce, in relation to the protection of that information.

Agreement

1. Permitted Uses and Disclosures by Business Associate.

1.1 General. Except as otherwise specified in this Agreement, Business Associate may use or disclose PHI to evaluate or perform its proposed obligations or its obligations for, or on behalf of, Covered Entity as set forth in the Client Services Agreement, *provided* that Business Associate uses and discloses PHI in the following manner:

1.1.1. consistent with the minimum necessary policies and procedures of Covered Entity; and

1.1.2. would not violate 45 C.F.R. Subpart E if done by Covered Entity, except as specified in paragraphs 1.2.2 and 1.2.3 of this section.

1.2 Other Permitted Uses. Except as otherwise limited by this Agreement, Business Associate may use PHI it receives or creates in its capacity as a business associate of Covered Entity, if necessary:

1.2.1 for the evaluation, proper management and administration of Business Associate;

1.2.2 to carry out the legal responsibilities of Business Associate; or

1.2.3 to provide Data Aggregation services to Covered Entity which relate to the health care operations of Covered Entity in accordance with the HIPAA Privacy Regulations.

1.3 Other Permitted Disclosures. Except as otherwise limited by this Agreement, Business Associate may disclose to a third party PHI it receives or creates in its capacity as a business associate of Covered Entity for the evaluation, proper management and administration of Business Associate, provided that:

1.3.1 the disclosure is Required By Law; or

1.3.2 Business Associate obtains reasonable assurances from the third party to whom the information is disclosed that (i) the PHI will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the third party, and (ii) the third party notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

1.4 De-Identified Information. Health information that has been de-identified in accordance with the requirements of 45 C.F.R. §§ 164.514 and 164.502(d) and is therefore not Individually Identifiable Health Information (“*De-Identified Information*”) is not subject to the provisions of this Agreement. Covered Entity may disclose PHI to Business Associate to use for the purpose of creating De-Identified Information, whether or not the De-Identified Information is to be used by Covered Entity.

2. Obligations and Activities of Business Associate Regarding PHI.

2.1 Limitations on Uses and Disclosures. Business Associate will not use or further disclose PHI other than as permitted or required by this Agreement or as required by law.

2.2 Safeguards. Business Associate will use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to ePHI to prevent use or disclosure of the PHI other than as provided for by this Agreement

2.3 Mitigation. Business Associate will mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or subcontractor or agent of a Business Associate in violation of the requirements of this Agreement.

2.4 Reporting. Business Associate will report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware.

2.5 Agents and Subcontractors. Business Associate will ensure that any agent, including any subcontractor, to whom Business Associate provides PHI that was created for or received from or on behalf of Covered Entity, has executed an agreement containing the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Business Associate will ensure only those who reasonably need to know such information in order to perform Services receive such information and, in such case, only the minimum amount of such PHI is disclosed as is necessary for such performance.

2.6 Access. Where PHI held by Business Associate is contained in a Designated Record Set, within fifteen (15) days of receiving a written request from Covered Entity, Business Associate will make such PHI available to Covered Entity or, as directed by Covered Entity to an Individual, that is necessary for Covered Entity to respond to Individuals' requests for access to PHI in accordance with 45 C.F.R. § 164.524. Business Associate will provide such PHI in an electronic format upon request by Covered Entity unless it is not readily producible in such format in which case Business Associate will provide Covered Entity a readable electronic format as agreed to by Covered Entity and Individual.

2.7 Compliance with Requirements. To the extent Business Associate is to carry out Covered Entity's obligation under HIPAA, Business Associate will comply with the requirements applicable to such obligation.

2.8 Amendment of PHI. Where PHI held by Business Associate is contained in a Designated Record Set, within fifteen (15) days of receiving a written request from Covered Entity or an Individual, Business Associate will make any requested amendment(s) or correction(s) to PHI in accordance with 45 C.F.R. § 164.526.

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

2.10 Accounting of Disclosures. Within thirty (30) days of receiving a request from Covered Entity, Business Associate will provide to Covered Entity information collected in accordance with this Agreement, as necessary to permit Covered Entity to make an accounting of disclosures of PHI about an Individual in accordance with 45 C.F.R. § 164.528.

2.11 Access to Business Associate's Internal Practices. Except to the extent that it violates or interferes with attorney-client privilege, the duty of client confidentiality, or the applicable rules of professional responsibility, Business Associate will make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of (a) PHI, including ePHI, created, used, disclosed, received, maintained, or transmitted by Business Associate on behalf of Covered Entity, available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Business Associate or Covered Entity's compliance with the HIPAA Privacy Regulations and HIPAA Security Regulations.

2.12 Breach Notification. Business Associate, following the discovery of a Breach of Unsecured Protected Health Information, shall notify Covered Entity of such Breach. Except as otherwise required by law, Business Associate shall provide such notice without unreasonable delay, and in no case later than sixty (60) calendar days after discovery of the Breach.

2.12.1 Notice to Covered Entity required by this Section 2.12 shall include: (i) to the extent possible, the names of the individual(s) whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed during the Breach; (ii) a brief description of what happened including the date of the Breach and the date of the discovery of the Breach, if known; (iii) a description of the types of Unsecured Protected Health Information that were involved in the Breach; (iv) a brief description of what Business Associate is doing or will be doing to investigate the Breach to mitigate harm to the individual(s) and to protect against further Breaches; and (v) any other information required to be provided in accordance 45 C.F.R. § 164.404(c).

2.13 Remuneration in Exchange for PHI. Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI unless Covered Entity notifies Business Associate that it obtained a valid authorization from the Individual specifying that the Individual's PHI may be exchanged for remuneration by the entity receiving such Individual's PHI.

2.14 Marketing. Business Associate must obtain or confirm that Covered Entity has obtained an authorization for any use or disclosure of PHI for marketing, as defined in 45 C.F.R. § 164.501.

3. Obligations of Covered Entity.

3.1 Limited Disclosure Obligations. Covered Entity will limit the PHI provided to Business Associate to only that necessary to the representation of Covered Entity. Prior to the transmission of PHI to Business Associate, Covered Entity will notify Business Associate of the need to transmit PHI and will arrange with Business Associate for the proper and secure transmission of such PHI.

3.2 Requested Restrictions. Covered Entity shall notify Business Associate, in writing, of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, which permits an Individual to request certain restrictions of uses and disclosures, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

3.3 Changes in or Revocation of Permission. Covered Entity will notify Business Associate in writing of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes or revocation may affect Business Associate's use or disclosure of PHI.

3.4 Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Regulations and HIPAA Security Regulations if done by Covered Entity, except to the extent that Business Associate will use or disclose PHI for Data Aggregation or management and administrative activities and legal responsibilities of Business Associate.

3.5 Notice of Privacy Practices. Covered entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of covered entity under 45 CFR 164.520, to the extent that such limitation may affect business associate's use or disclosure of protected health information.

4. Security Restrictions on Business Associate.

4.1 General. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the ePHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Security Regulations.

4.2 Agents; Subcontractors. Business Associate will ensure that any agent, including a subcontractor, to whom Business Associate provides ePHI, agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of such ePHI.

4.3 Reporting of Security Incidents. Business Associate shall report to Covered Entity any Security Incident affecting ePHI created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity, of which Business Associate becomes aware. This Section constitutes notice to Covered Entity of routine and ongoing attempts to gain unauthorized access to Business Associate's information systems (each an "Unsuccessful Attack"), including but not limited to pings, port scans, and denial of service attacks, for which no additional notice shall be required provided that no such incident results in unauthorized access to ePHI.

4.4 HIPAA Security Regulations Compliance. Business Associate agrees to comply with Sections 164.306, 164.308, 164.310, 164.312, and 164.316 of Title 45, Code of Federal Regulations with respect to all ePHI.

5. Term and Termination.

5.1 Term. This Agreement shall take effect on the Effective Date (as defined below), and shall terminate when all of the PHI disclosed to Business Associate by Covered Entity or created, or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section 5.

5.2 Termination for Cause. If Covered Entity determines that Business Associate has breached a material term of this Agreement, Covered Entity will provide written notice to Business Associate which sets forth Covered Entity's determination that Business Associate breached a material term of this Agreement, and Covered Entity may:

5.2.1 Provide written notice to Business Associate which provides an opportunity for Business Associate to cure the breach or end the violation, as applicable. If Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, then Covered Entity may immediately thereafter terminate this Agreement; or

5.2.2 Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.

5.2.3 If neither termination nor cure is feasible as provided in Sections 5.2.1 and 5.2.2 of this Agreement, Covered Entity may report the violation to the Secretary.

5.3 Effect of Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to protected health information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

5.3.1 Retain only that protected health information which is necessary for business associate to continue its proper management and administration or to carry out its legal responsibilities;

5.3.2 Return to Covered Entity or destroy the remaining protected health information that the Business Associate still maintains in any form;

5.3.3 Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as Business Associate retains the protected health information;

5.3.4 Not use or disclose the protected health information retained by Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at Sections 1.2 and 1.3, above, which applied prior to termination; and

5.3.5 Return to Covered Entity or destroy the protected health information retained by Business Associate when it is no longer needed by business associate for its proper management and administration or to carry out its legal responsibilities.

6. Limitation of Liability.

6.1 Limit on Monetary Damages. Notwithstanding anything to the contrary contained in this Agreement, Business Associate's and Covered Entity's liability under this Agreement during any calendar year for damages (monetary or otherwise) under any circumstances for claims of any type or character made by Business

Associate and Covered Entity or any third party arising from or related to this Agreement, will be limited to the lesser of (I) the amount of actual damages of incurred by Business Associate and Covered Entity or, if existing (II) the average monthly charges for three (3) months for the services under the Client Services Agreement during such Calendar Year.

6.2 No Consequential Damages. Notwithstanding anything to the contrary contained in this Agreement, Business Associate and Covered Entity shall not be responsible for special, indirect, incidental, consequential or other similar damages (including, without limitation, any lost profits or damages for business interruption or loss of information) that the other party may incur or experience in connection with this Agreement, however caused and whatever theory of liability (whether in contract, tort (including negligence) or under any other theory of liability), even if Business Associate or Covered Entity has been advised of the possibility of such damages.

7. **Indemnification.** Covered Entity agrees to indemnify and hold Business Associate harmless from and against any and all losses and other expenses (including reasonable attorneys' fees) suffered or incurred by Business Associate by or as a result of any breach by Covered Entity and/or its agents of their respective obligations under this Agreement, the Privacy Rule and/or the Security Rule. This provision shall survive the termination of the Agreement.

8. **Miscellaneous.**

8.1 Regulatory References. A reference in this Agreement to a section in HIPAA means the section as in effect or as amended.

8.2 Amendment. If any new state or federal law, rule, regulation, or policy, or any judicial or administrative decision affecting the use or disclosure of PHI is enacted or issued, including but not limited to any law or regulation affecting compliance with the requirements of HIPAA, the parties agree to take such action in a timely manner and as is necessary for Covered Entity and Business Associate to comply with such law, rule, regulation, policy or decision. If the parties are not able to agree on the terms of such an amendment, either party may terminate this Agreement on at least thirty (30) days' prior written notice to the other party.

8.3 Survival. The respective rights and obligations of Business Associate under Section 5.3 of this Agreement ("**Effect of Termination**") shall survive the termination of this Agreement.

8.4 Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with HIPAA. The section and paragraph headings of this Agreement are for the convenience of the reader only, and are not intended to act as a limitation of the scope or meaning of the sections and paragraphs themselves.

8.5 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 Business Associate and Covered Entity and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

8.6 Assignment. Assignment. Business Associate and Covered Entity may assign this Agreement without the prior written consent of either party. Any assignment permitted hereunder will be subject to the written consent of the assignee to all of the terms and provisions of this Agreement. Any attempted assignment in derogation of this section will be null and void.

8.7 Entire Agreement. This Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes all prior communications, representations, and agreements, oral or written, of the parties with respect to its subject matter.

8.8 Applicability. Tabulera and Client acknowledge that this Agreement is applicable only to the extent Tabulera and Client constitute a Business Associate and Covered Entity, respectively, as those terms are defined under HIPAA, and that, to the extent Tabulera and Client do not constitute a Business Associate and Covered Entity, respectfully, as those terms are defined under HIPAA, this Agreement shall not apply, and the parties are governed solely by the terms and conditions of the Client Services Agreement.

8.9 Client Services Agreement. This Agreement is entered into and is governed by the Client Services Agreement, the terms and conditions of which are incorporated herein by reference and remain in effect. To the extent a term or condition in the Client Services Agreement is contrary to a term or condition in this Agreement and the term or condition in this Agreement is required to ensure compliance with HIPAA, the term or condition in this Agreement shall control.

8.10 Severability and Waiver. The invalidity of any term or provision of this Agreement will not affect the validity of any other provision. Waiver by any party of strict performance of any provision of this Agreement will not be a waiver of or prejudice any party's right to require strict performance of the same provision in the future or of any other provision of this Agreement.

8.11 Notices. Any notices permitted or required by this Agreement will be addressed as to the parties reflected on the Order Form.

8.12 Counterparts. This Agreement may be executed in multiple counterparts, all of which together will constitute one agreement, even though all parties do not sign the same counterpart. Electronic or facsimile transmission of any signed original document, and retransmission of any signed electronic or facsimile transmission, shall be the same as deliver of an original.

8.13 Effective Date. This Agreement is effective as of date as stated on the preceding Order Form or the first day upon which Business Associate received PHI from Covered Entity, whichever is earlier ("**Effective Date**").

8.14 Venue and Choice of Law.

8.14.1 This Agreement shall be governed by the laws of the State of California, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement.

8.14.2 Each of the parties submits to the jurisdiction of any state or federal court sitting in California, in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court.

9. Penalties.

9.1 Business Associate shall be responsible for the full cost of all civil and criminal penalties assessed upon Business Associate as a result of the failure of Business Associate, its officers, directors, employees, contractors or agents to comply with this Agreement. This obligation shall survive the expiration or termination of this Agreement.

9.2 Covered Entity shall be responsible for the full cost of all civil and criminal penalties assessed upon Covered Entity as a result of the failure of Covered Entity, its officers, directors, employees, contractors or agents to comply with this Agreement. This obligation shall survive the expiration or termination of this Agreement.

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