

## CLOUD SERVICES AGREEMENT

InterOperability Bidco, Inc. ("**Rhapsody**") has developed offerings under which Rhapsody makes Rhapsody's proprietary software available remotely as an online, hosted solution. You ("**Customer**") wishes to receive access, and allow access to its Affiliates and Subsidiaries, to the solution.

This Cloud Services Agreement ("**Agreement**") sets forth the terms and conditions under which Rhapsody will make the Rhapsody software available to Customer as a hosted solution through the AWS Marketplace as a Public Offering. If the Customer chooses to go through a private offering to license Rhapsody's Cloud Services, that agreement, including any commercial details within, will supersede and replace entirely the terms of this Agreement.

This Agreement, including the Base Terms and Conditions, the initial Schedule attached hereto and additional Schedules entered into from time to time after that, Exhibits (whether referenced or attached to the Base Terms and Conditions or a Schedule), and applicable Transaction Documents, constitutes the complete agreement between Customer and Rhapsody with respect to these transactions. It replaces any prior proposals, agreements, negotiations, correspondence, and all other communications, whether written or oral, between the parties.

Except as otherwise expressly stated in this Agreement, all notices required to be given under this Agreement will be given in writing, and sent to the recipient party's address stated above, unless otherwise changed in writing. All notices will be given by certified (or registered) mail or overnight carrier. Such notices will be deemed given on the date of receipt of delivery of said notice.

By clicking on the appropriate acceptance button in the AWS Marketplace, Customer and Rhapsody agree to the terms of this Agreement.

## Base Terms and Conditions

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### 1. Definitions.

**"Affiliate"** means an entity that controls, is controlled by or is under common control with Rhapsody or Customer. Customer's rights in this Agreement related to an Affiliate will continue only for so long as such affiliation continues to exist.

**"Cloud Service"** means the technology solution described in the applicable Schedule which is provided by Rhapsody as an online, internet-based service and may include Rhapsody Software Components for on-premises deployment.

**"Cloud Service Commencement Date"** means the date that the Cloud Service is first made available to Customer under the applicable Schedule.

**"Current Integration Network"** refers to the entity of the Customer who accepts the terms of this Agreement on the AWS Marketplace. The Customer who accepts these Agreement terms is permitted to use the Cloud Service as set forth herein and as further defined in the Initial Schedule.

**"Customer Data"** means data, including any personally identifiable information or health information, that Customer or its Authorized Users transmit or otherwise supply to the Cloud Service under Customer's account.

**"Deliverable"** means a deliverable to be provided by Rhapsody as described in the relevant Statement of Work.

**"Documentation"** means the published manuals and operating guides for the Cloud Service, whether in printed or electronic form, made available by Rhapsody in electronic or other form, as updated from time to time.

**"End User"** means, to the extent specifically permitted under the Use Restrictions, either any individual or entity authorized by Customer to access the Cloud Service pursuant to a participation agreement with the Customer, and which may include but not be limited to (i) any healthcare entity such as a hospital, clinic, clinical laboratory, imaging center, ambulatory surgery center, physical therapy center, pharmacy, home health care agency, a nursing home, a clearinghouse or an individual healthcare clinician including a healthcare provider or any employee or authorized agent of the foregoing; or (ii) health insurers, self-insured health insurance plans, schools, prisons and/or camps (to the extent they may provide health care services to students, inmates or participants or otherwise need access to health records), third party administrators of health insurance plans and billing companies and other entities that are directly or indirectly involved with providing, administering, insuring or paying for health care or reviewing the quality of health care.

**"Internal Use Only"** means use by employees and contractors of Permitted Customer Entities (or, if granted in the Initial Schedule, the End User) under the direction of and for the benefit of Permitted Customer Entities (or the applicable End User).

**"Rhapsody Software Components"** means the object code version of Rhapsody's software products, including Documentation and bug fixes, enhancements, and upgrades, if and when made generally available by Rhapsody.

**"Number of Units"** means the entitlement as designated or defined in the applicable Schedule.

**"Optional Feature"** refers to a feature to the Cloud Service, whether existing or newly added, which is offered by Rhapsody for an additional charge.

**"Order"** means any written purchase order, whether in physical or electronic form, for Services delivered or otherwise transmitted to Rhapsody by Customer.

**"Professional Services"** refers to services to implement the Cloud Service for use by Customer, to integrate Users and enable their use of the Cloud Service, to train Users on the Cloud Service, and any additional consulting or other professional services related to the Cloud Service as specified in a Schedule or Statement of Work.

**"Protected Data"** means individual personal data to which Rhapsody is exposed during the provision of the Cloud Services or Professional Services that is protected by various acts, legislation and directives relating to privacy and security requirements for its protection and processing, in the applicable Jurisdiction.

**"Schedule"** refers to the document issued by Rhapsody which details the scope of use, pricing, Cloud Service Commencement Date, Subscription Term, and other details applicable to Rhapsody's provision of the Services to Customer. The initial Schedule entered into by the parties is attached to this Agreement.

**"Services"** refers to the Cloud Service and Professional Services, collectively.

**"Specifications"** means the functional and technical portions of the Documentation that provide information specific to the Software.

**"Subscription Term"** means the duration of the subscription to the Cloud Service as set forth in the Schedule, including renewal terms, if any.

- The **"Initial Subscription Term"** applicable to a Schedule means the period which commences on the Schedule Effective Date specified in the relevant Schedule and continues for the initial term specified in that Schedule.

- An “**Extension Subscription Term**” is the twelve month period which commences upon the expiration of the Initial Subscription Term and each successive twelve month periods thereafter.

“**Updates**” are corrected or modified versions of the Cloud Service, including enhancements, modifications, error corrections, fixes, patches, and new releases if and when made available by Rhapsody as part of the Cloud Service.

“**Use Restrictions**” means any specific User or configuration restrictions applicable to Customer’s use of the Cloud Service, as specified in this Agreement including in the applicable Schedule.

“**Users**” means individuals authorized to use the Cloud Service in accordance with this Agreement (including the Use Restrictions) who have been supplied user identifications and passwords by Customer or, if applicable, an End User.

## **2. Agreement Structure and Ordering Process.**

a. **Structure of the Agreement.** This Agreement sets forth the terms and conditions which apply to any procurement by Customer of Services from Rhapsody. The Agreement consists of the following:

i. **Base Terms and Conditions.** These **Base Terms and Conditions** define the basic terms and conditions which govern the relationship between Customer and Rhapsody.

ii. **Transaction Documents.** **Transaction Documents** consist of Schedules, Statements of Work and Supplemental Documents.

A. A **Schedule** describes the Services to be purchased by Customer, applicable pricing, and other terms. The initial Schedule is attached to this Agreement. Customer and Rhapsody agree to each additional Schedule by signing it, or by issuance of a purchase order.

B. **Statements of Work** describe the Professional Services to be provided by Rhapsody to Customer (for example, the scope of the Professional Services and Deliverables, if any), the term (including the start and end date) during which the Professional Services will be provided, responsibilities of each party, the estimated schedule, fees due, and other relevant terms. Customer and Rhapsody agree to a Statement of Work by signing it.

C. **Supplemental Documents** include Rhapsody’s confirmation (if any) of an Order by Customer of Services, Rhapsody’s invoices, and informational exhibits. Supplemental Documents do not need to be signed by either party.

b. **Order of Precedence.** If there is a conflict among the terms of the various documents, Supplemental Documents prevail over Schedules and the Base Terms and Conditions prevail over Transaction Documents and Schedules. Any purchase order submitted by Customer to Rhapsody will be used only for invoice processing purposes. Any terms on it are void and of no legal effect.

c. **Changes to the Agreement.** For a change to the Agreement to be valid, the change must be agreed to in a writing signed by both parties except as expressly set forth herein.

d. **Acceptance of an Order and of Additional Terms.**

i. **Rhapsody’s Acceptance of an Order for Services.** An Order for Services becomes subject to this Agreement when the Transaction Document reflecting the Order is signed by both Customer and Rhapsody or Rhapsody accepts the Order by making the Services ordered available or providing the Services to Customer.

ii. **Customer’s Acceptance of Additional Terms.** Customer accepts the additional Terms in a Transaction Document by (A) signing the Transaction Document, (B) using the Services (or allowing others to use the Services), or (C) making any payment for the Services.

## **3. Provision of the Cloud Service.**

a. **Availability and Use of the Cloud Service.**

i. **By Customer.** Subject to timely payment of the applicable fees and compliance with the terms of the Agreement, Rhapsody grants to Customer for the limited, non-transferable, revocable, non-exclusive (i) access and use of the Cloud Service set forth in a Schedule; and (ii) the license to run and install those off-line Rhapsody Software Components provided by Rhapsody, if any, that are part of the Cloud Service solely as necessary and intended for use in conjunction with the Cloud Service. Use of the Cloud Service, including off-line Rhapsody Software Components, is solely for Customer’s internal business purposes by Users solely for the scope and use limitations specified in the applicable Schedule. Customer acknowledges that it is responsible for any User’s breach of this Agreement as if that breach were committed by Customer.

ii. **By End Users.** This Section 3.a.ii applies only where Customer is permitted by the Use Restrictions to grant access to the Cloud Service to End Users, as follows:

A. If specified on the applicable Schedule that Customer is permitted by the Use Restrictions to grant access to the Cloud Service to End Users, then such access is limited to End Users (and Users of End Users) for End Users’ internal business operations,

B. Customer acknowledges that it is responsible for any End User's or User's breach of this Agreement as if that breach were committed by Customer, and

C. Any access by a End Users is subject to Customer having a legally enforceable agreement with each End User that (I) includes equivalent restrictions and obligations to those contained in Section 4 ("Customer Responsibilities relating to Use of the Cloud Service") of this Agreement, and disclaimers at least as protective of Rhapsody and its suppliers as those contained in this Agreement, and (II) excludes all liability of Rhapsody to the End User and any User of the End User. Additional details regarding the Cloud Service including limits on aspects such as disk storage space, number of calls, number of users, and third party terms of use will be specified in the applicable Transaction Document, Documentation or website and may be subject to additional charges.

b. **Changes to the Cloud Service.** Rhapsody regularly updates the Cloud Service and reserves the right to discontinue, add and/or substitute functionally equivalent features in the event of product unavailability, end-of-life, or changes to software requirements provided that the proposed changes will not result in a material reduction in the level of performance or availability of the Cloud Service.

c. **Support for the Cloud Service.** Rhapsody will provide Customer with support for the Cloud Service as described in the applicable Schedule. Support to End Users, if applicable, is the sole obligation of Customer.

d. **Security Measures.** Rhapsody will implement reasonable and appropriate measures designed to secure Customer Data against accidental or unlawful loss, access or disclosure which equal or exceed industry standards. This includes, without limitation, using regularly updated anti-viral software to prevent viruses from reaching Customer systems through Rhapsody's systems and taking reasonable measures to secure and defend its location and equipment against "hackers" and others who may seek, without authorization, to modify or access Rhapsody systems or the information found on those systems. Rhapsody will periodically test its systems for potential areas where security could be breached.

e. **Intellectual Property Rights.** Rhapsody (and its licensors, where applicable) retains all ownership rights in the Cloud Service, including the graphics, data files, algorithms, user interfaces, software, hardware, know-how, techniques, designs, and other tangible or intangible technical material, information, and proprietary technology provided or utilized by Rhapsody to make the Cloud Service available for access and use as expressly permitted in this Agreement. Except for the limited rights and licenses expressly granted in this Agreement, no other rights or licenses are granted and no other use is permitted.

#### **4. Customer Responsibilities relating to Use of the Cloud Service.**

a. **Access and Delivery.** Rhapsody will provide Customer with online access to and use of the Cloud Service via the Internet by use of a Rhapsody-approved Customer-provided browser. The Cloud Service will be hosted on a platform that is maintained by Rhapsody's designated third party. Customer is solely responsible for obtaining and maintaining at its own expense, all equipment needed to access the Cloud Service, including but not limited to Customer's Internet access, encryption technology, and adequate bandwidth.

b. **Restrictions regarding Use of the Cloud Service.** Customer agrees to use the Cloud Service, including off-line Rhapsody Software Components, solely for internal business purposes including by or for those of End Users (if permitted in the applicable Schedule). Customer will not:

i. resell, sublicense, lease, time-share or otherwise use the Cloud Service or off-line Rhapsody Software Components for, or engage in service bureau work or make the Cloud Service or off-line Rhapsody Software Components otherwise available to, any third party (except as permitted by the Use Restrictions);

ii. attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Cloud Service or the data contained in the Cloud Service;

iii. modify, copy or create derivative works based on the Cloud Service or the off-line Rhapsody Software Components;

iv. reverse assemble, reverse compile, reverse engineer or otherwise attempt to derive the object or source code of the software used in the provision of the Cloud Service, or otherwise attempt to access or use the software other than through the Cloud Service or the off-line Software components; or

v. access the Cloud Service or the off-line Rhapsody Software Components for the purpose of building a competitive product or service or copying its features or user interface.

c. **Acceptable Use of the Cloud Service.** Customer will at all times during the Term:

i. ensure that the Cloud Service is used only in accordance with the Documentation, and in compliance with the terms of the Agreement, and all applicable laws and regulations;

ii. use commercially reasonable efforts to prevent unauthorized access to or use of the Cloud Service and any off-line Rhapsody Software Components, and notify Rhapsody promptly of any such unauthorized access or use;

iii. where applicable, ensure that the maximum number of Users is not exceeded and/or that other parameters in respect of which the fees are determined are not exceeded;

iv. not request, permit or authorize anyone other than Rhapsody or an entity that Rhapsody has approved for Customer, to provide any services in respect of the Cloud Service;

v. permit Rhapsody, at its expense, upon reasonable notice, and not more frequently than once per calendar year, verify Customer's compliance with this Agreement, and Customer agrees to reasonably cooperate with Rhapsody. The verification will take place during Customer's normal business hours and will be conducted in a manner that minimizes disruption to Customer's business operations. Rhapsody may use an independent auditor to assist with such verification, provided Rhapsody has a written confidentiality agreement in place with such auditor. If the audit reveals any noncompliance, Customer will reimburse Rhapsody for the reasonable costs and expenses of the audit (including but not limited to reasonable attorneys' fees), and Customer will promptly cure the noncompliance. In addition, if an audit shows an underpayment of monies owed to Rhapsody, Customer agrees to pay the shortage promptly together with interest calculated at the lesser of 1½% per month or the maximum rate allowed by applicable law. Notwithstanding the foregoing, the obligations under this Section do not constitute a waiver of Rhapsody's termination rights;

vi. not breach or attempt to breach the security of the Cloud Service or any network, servers, data, computers or other hardware relating to or used in connection with the Cloud Service, or any third party that is hosting or interfacing with any part of the Cloud Service;

vii. not use or distribute through the Cloud Service any software, files or other tools or devices designed to interfere with or compromise the privacy, security or use of the Cloud Service or the operations or assets of any other customer of Rhapsody or any third party;

viii. not otherwise interfere with or disrupt the integrity or performance of Cloud Service; and

ix. Remain solely liable for any liability that results from Customer Data provided by Customer or Users in connection with use of the Cloud Service containing any malicious or hidden mechanism, viruses or code for the purpose of damaging or corrupting the Cloud Service. Customer acknowledges that the Cloud Service is not a security software product and does not offer protection against the transmission of viruses, hacking or other attempts to gain unauthorized access to the Customer's network or the Interfaced Applications. Customer will use regularly updated anti-virus software, firewalls, and other industry standard processes and procedures (for example, conducting screening and background checks of personnel, avoiding unknown email attachments, and training personnel regarding best practices on computer security) in connection with its use of and access to the Cloud Service, including to avoid unauthorized access to its network. Customer is solely responsible for monitoring access to and use of the Cloud Service by Users including ensuring that each User has access restrictions appropriate to that User's position. Rhapsody may, without liability to Customer, disable Customer's access to the Cloud Service if Customer is in breach of this clause or in the event of a denial of service attack or other malicious attempt emanating from the Customer's or a User's connection point the effect of which is prevent legitimate users of the Cloud Service from using the Service.

Any failure by any User to comply with the Agreement will be deemed to be a material breach by Customer, and Rhapsody will not be liable for any damages incurred by Customer or any third party resulting from such breach. Customer must immediately take all necessary steps, including providing notice to Rhapsody, to effect the termination of an access ID for any User if there is any compromise in the security of that access ID or if unauthorized use is suspected or has occurred. Rhapsody may remove any violating content posted or transmitted through the Cloud Service, without notice to Customer. Rhapsody may suspend or terminate any user's access to the Cloud Service upon notice in the event that Rhapsody reasonably determines that there has been a violation of the terms and conditions of this Section.

**d. Customer Data in the Cloud Service.**

i. Intellectual Property Rights in and Obligations regarding Customer Data. Customer retains all ownership rights, including all intellectual property rights, in the Customer Data. Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of, and right to use, the Customer Data.

ii. Rights of Use.

A. Submission of Customer Data. Customer represents and warrants that it has the right to submit the Customer Data to the Cloud Service. Customer acknowledges that, as part of its obligations to comply with applicable law, it is responsible for obtaining the requisite consents and preferences for the use of the Customer Data, including the use of the Protected Data contained in Customer Data.

B. Limited License Grant. Customer hereby grants, and ensures that End Users hereby grant, Rhapsody the nonexclusive, paid-up right to use the Customer Data to perform its obligations under this Agreement, including to provide the Services, and prevent or address service, support or technical problems, as well as for data analytics and modeling on an anonymized basis, aggregate reporting with respect to industry metrics and trends, and general product improvement purposes. Customer represents and warrants that Customer has all rights in the Customer Data necessary to grant these rights

of use, and that such use does not violate any law or this Agreement. No title to or ownership of any proprietary rights related to the Customer Data is transferred to Rhapsody pursuant to this Agreement. Customer reserves all rights not expressly granted to Rhapsody.

C. Use of Customer Data. Rhapsody will use Customer Data in compliance with (I) this Agreement, (II) all applicable laws pertaining to the privacy and security of individual information, and (iii) any specific requirements specified in the applicable Schedule or Exhibit.

iii. Indemnity. Customer hereby agrees to indemnify and hold Rhapsody harmless against damages, losses, liabilities, settlements and expenses in connection with any claim or action that arises from an alleged violation of this Section. Rhapsody shall have no liability for any collection, use, disclosure of or failure to allow access to Customer Data, or failure to correct or delete Customer Data, to the extent caused by an act, omission or direction of Customer, including (without limitation) provision of Customer Data to Rhapsody without consent in accordance with applicable law or failure to communicate to Rhapsody any relevant preferences or requests with regard to the Customer Data made to Customer.

## **5. Interfaced Applications.**

a. Use with Third Party Products. Customer acknowledges and agrees that the Cloud Service is intended to be used with software products that are proprietary to third parties not provided by Rhapsody ("Interfaced Applications"). Customer acknowledges that it is Customer's sole responsibility to ensure that it has valid license agreements for all Interfaced Applications and permission to develop interfaces thereto. Customer agrees that Rhapsody is not responsible for the operation or performance of any Interfaced Applications, or for costs associated with the development of interfaces to such Interfaced Applications (unless the development of such interfaces is provided by Rhapsody as part of the Professional Services).

b. Access by Providers of Third Party Products to Customer Data. If Customer installs or enables Interfaced Applications for use with the Cloud Service, Customer hereby acknowledges that Rhapsody may allow providers of those Interfaced Applications to access the Customer Data as required for the interoperability of the Interfaced Applications with the Cloud Service. Rhapsody has no liability for any disclosure, modification or deletion of Customer Data resulting from any such access by third party providers.

c. Issues with respect to the Functionality of Third Party Products. To the extent that Customer advises Rhapsody that an Interfaced Application is not functioning as intended with the Cloud Service, Rhapsody will use commercially reasonable efforts to identify whether the failure was caused by the Cloud Service or the Interfaced Application. Where the failure is not caused by Rhapsody's failure to provide the Cloud Service as warranted, Rhapsody will use commercially reasonable efforts to assist Customer and the third party licensor, if applicable, to resolve the failure at Rhapsody's then current time-and-materials rates. In addition, if Customer upgrades or otherwise modifies the Interfaced Applications, Customer may be required to reconfigure the interfaces to the Software, which will require a suitably qualified and trained resource. If Customer does not have appropriately qualified personnel, Customer may engage Rhapsody to provide such services on a time and materials basis.

## **6. Provision of Professional Services.**

a. Description of Professional Services. Rhapsody makes Professional Services available on demand or as specified in the applicable Schedule or Statement of Work, as follows:

### **i. Professional Services Performed pursuant to a Schedule or Statement of Work.**

A. Statements of Work Generally. Except with respect to On-Demand Professional Services described in Section 6.a.ii ("On-Demand Hourly Professional Services Option"), each time Customer requests that Rhapsody provide Customer with Professional Services, Rhapsody will provide Customer with a proposed Statement of Work which describes the Professional Services to be supplied by Rhapsody. Each Statement of Work must be signed by both parties and will also include the obligations of each party, fees for the Professional Services, the start and end dates of the Statement of Work, and other applicable terms. If a Statement of Work contains an estimated schedule, each party agrees to make reasonable efforts to carry out its responsibilities according to that schedule. Rhapsody provides Professional Services at its facilities, unless otherwise agreed to in the applicable Statement of Work.

B. Fees for Professional Services. Rhapsody ordinarily bases the fees charged for Professional Services under a Statement of Work on the hourly rates of the consultants performing the Services (referred to as "Time-and-Materials Services"). However, for certain matters, Rhapsody may charge a fixed fee for the Professional Services based on such factors as the results achieved, the novelty or difficulty of the Services to be performed, the amount at stake, or the time limitations under which Rhapsody is to perform (referred to as "Fixed-Fee Services"). All Professional Services provided by Rhapsody under this Agreement are Time-and-Materials Services unless the applicable Statement of Work specifies that Services are Fixed-Fee Services.

C. Acceptance of Professional Services. Acceptance of Professional Services will be deemed to occur unless Customer notifies Rhapsody in writing of any material nonconformities of the Services with the applicable Statement of Work within ten business days after Rhapsody has provided the Services to Customer ("Acceptance Period"). In that event, Customer will

provide sufficient documentation to enable Rhapsody to understand the reasons Customer believes the Professional Services are nonconforming and other pertinent details. Rhapsody will use commercially reasonable efforts to correct the nonconformities and make such correction available to Customer for acceptance testing as provided above. Acceptance will also be deemed to occur if the Professional Services or Deliverables are put to productive use on behalf of or by Customer.

D. **Modifications to a Statement of Work.** When the parties agree to change a Statement of Work, Rhapsody will prepare a written description of the agreed-upon change which must be signed by both parties. Any change in the Statement of Work may affect the charges, estimated schedule, or other terms.

E. **Termination of a Statement of Work.** Either party may terminate a Statement of Work for Professional Services on ten business days' written notice to the other. Upon termination, neither party will have any obligation to the other on account of such termination except that Customer will pay Rhapsody for Professional Services satisfactorily rendered and non-recoverable travel or travel-related expenses incurred through the date of termination.

ii. **On-Demand Hourly Professional Services Option.** Rhapsody's On-Demand Hourly Professional Services option provides Customer with the ability to receive assistance or consulting support on an ad hoc basis. On-Demand Hourly Professional Services are performed on a time-and-materials basis at Rhapsody's current rates (or as otherwise set forth in this Agreement) and are deemed accepted upon delivery. The charges for On-Demand Hourly Professional Services are calculated by multiplying actual hours by the rate per hour (plus expenses, if applicable).

b. **License to Use Deliverables.** Unless otherwise expressly specified in the applicable Statement of Work, all Deliverables are owned by and remain the Confidential Information of Rhapsody including any work product and intellectual property or other rights in the Deliverables. Subject to full payment by Customer of fees for the Professional Services, Rhapsody hereby grants Customer a non-exclusive license to use the Deliverables solely in connection with its use of the Cloud Service to the same extent and pursuant to the same terms and conditions as provided in this Agreement for the Cloud Service. Deliverables obtained during Customer's attendance at or participation in any Rhapsody training programs, unless otherwise agreed in a Statement of Work or Schedule, are limited to the one copy received by each registered attendee.

## **7. Fees and Payment Terms.**

a. **Orders.** The Schedule attached to this Agreement sets forth Customer's order of Cloud Service for the Initial Subscription Term. Customer may purchase an additional Number of Units and Optional Features to those initially ordered under the initial Schedule and any other Schedules entered into by the parties by issuing an order for the additional Number of Units. Rhapsody accepts Customer's order by providing the Schedule confirming the specific details of the order, enabling use of the additional Number of Units through the Cloud Service or issuing an invoice to Customer for the additional Number of Units.

b. **Fees.** Customer agrees to pay Rhapsody the fees specified in the applicable Schedule or Statement of Work in accordance with the payment terms or milestones specified in the Schedule or Statement of Work. Where no payment terms are specified, (i) fees will be invoiced in advance for the Cloud Service commencing on the date of the applicable Schedule, and (ii) fees for Professional Services will be payable on a time and materials basis at Rhapsody's then current time and materials rates (unless otherwise specified in the applicable Schedule or Statement of Work), and invoiced monthly in arrears. Any extension or increase in Customer's access to or use of the Cloud Service will require the payment of additional fees in accordance with the applicable Schedule (and, if none are specified, then in accordance with Rhapsody's then current terms and fees).

c. **Price Increase.** Rhapsody may increase its fees by notifying Customer in writing (which may be by email, in an invoice, or, for new purchases, in a quotation) of the change except that changes in existing, recurring fees will not apply until the next subsequent twelve month period. Changed rates applicable to Professional Services will apply to any Statement of Work entered into after the effective date of the increase but will not affect the rates for Professional Services provided under a Statement of Work signed before the effective date, except as Rhapsody and Customer otherwise agree. For the avoidance of doubt, the requirements set forth in this Section regarding fee increases do not apply to increases in fees due to, for example, an extension or increase in Customer's access to or use of the Cloud Service, an increase in the Number of Units, a change to the Professional Services to be provided, and so on. Except as expressly set forth in Section 8.a ("Warranties"), all fees and charges paid under or in connection with this Agreement are non-refundable and no right of setoff exists.

d. **Additional Payment Obligations.** Unless otherwise expressly provided in this Agreement, Customer's payment obligations are non-cancelable and, upon payment, all payments made by Customer are non-refundable and will be free of any deduction, set-off, counterclaim or withholding whatsoever. All payments will be made in the currency set forth in the applicable Transaction Document. Fees are due within 30 days from receipt of Rhapsody's invoice (or as otherwise set forth in the invoice) unless subject to a reasonable and good faith dispute. Specifically with respect to the Cloud Service, if fees are not paid when due and Customer does not remit payment within thirty (30) days after Rhapsody provides Customer with written notice (which may be by email) that fees are past due, Rhapsody may suspend Customer's access to the Cloud Service. This suspension is in addition to Rhapsody's other rights under this Agreement, including terminating this Agreement or the applicable Schedule for breach. In the event of any such suspension and unless Rhapsody has elected to terminate this Agreement or the applicable Schedule, Rhapsody may also require payment of a reinstatement fee before again providing



Customer with access to the Cloud Service. Past due amounts will incur interest at a rate equal to the lower of 1.5% per month or the highest rate permitted by law. In addition, Customer will reimburse Rhapsody for all reasonable and actual costs incurred by Rhapsody in collection of delinquent amounts not subject to a reasonable and good faith dispute.

e. **Taxes.** Amounts charged by Rhapsody do not include applicable taxes or similar fees now in force or enacted in the future resulting from any transaction under this Agreement. Customer is responsible for all such amounts and will pay them in full (except for taxes based on Rhapsody's net income). If Rhapsody has the legal obligation to pay or collect taxes for which Customer is responsible, the appropriate amount will be invoiced to and paid by Customer, unless Customer provides a valid tax exemption certificate authorized by the appropriate taxing authority.

f. **Expense Reimbursement.** Customer agrees to reimburse Rhapsody for all reasonable and appropriately documented travel and related expenses incurred by Rhapsody in performing Professional Services at Customer's location provided such expenses have been pre-approved by Customer.

## **8. Warranties**

### **a. Warranties.**

i. **Functionality of the Cloud Service.** Rhapsody warrants that the Cloud Service will provide the functionality described in the applicable Schedule, including the Documentation. In the event the Cloud Service is nonconforming, Rhapsody will fix, provide a work around, or otherwise address the nonconforming Service or, if Rhapsody is unable to do so, terminate Customer's access to the Cloud Service and return SaaS Fees for the Cloud Service previously paid to Rhapsody for the period beginning with Customer's notice of nonconformity through the remainder of the Initial Subscription Term or Extension Subscription Term, as applicable.

ii. **No Malicious Code.** Rhapsody warrants that it routinely tests the Cloud Service and the Rhapsody Software Components using up-to-date anti-virus software in efforts to detect and, if so detected, to eliminate, any disabling devices, viruses, Trojan horses, trap doors, back doors, Easter eggs, time bombs, cancelbots, or other computer programming routines designed to damage, detrimentally interfere with, surreptitiously intercept or expropriate any other software or data ("Malicious Code"). If Malicious Code is introduced into Customer's computer systems by the Cloud Service or the Rhapsody Software Components, Rhapsody will, at its own expense, assist and work with Customer, at Customer's direction, to remediate the damage caused by the Malicious Code, provided that Customer: (A) has taken all prudent business measures to prevent introduction of any such Malicious Code into its computer systems; (B) takes all prudent business measures to minimize the effects of any such Malicious Code; and (C) delivers sufficient documentation to Rhapsody to validate Customer's belief that such Malicious Code was introduced into Customer's computer system by the Cloud Service or the Rhapsody Software Components.

iii. **No Infringement.** Rhapsody warrants that provision of the Cloud Service does not infringe on the intellectual property rights of any third party. In the event of any breach of this warranty, Rhapsody will indemnify Customer as specified in Section 10.a ("Indemnity by Rhapsody").

iv. **Service Level Warranty.** Rhapsody warrants that the Cloud Service will meet the Service Levels as set forth in the Service Level Agreement referred to in Exhibit A. In the event of any failure to meet this warranty, Rhapsody will provide the service credits set forth in the Service Level Agreement.

v. **Professional Services.** Rhapsody warrants that it will perform Professional Services in a timely and professional manner in accordance with the applicable Statement of Work. If Rhapsody fails to do so and provided Customer has notified Rhapsody in writing of such failure within ten business days after Rhapsody has provided the Professional Services to Customer, Rhapsody will re-perform the Services as described in Section 6.a.i.C ("Acceptance of Professional Services"). If Rhapsody is unable to do so within a reasonable period of time, Customer may terminate the affected Statement of Work, and Rhapsody will refund to Customer amounts paid by Customer for the nonconforming Services under the Statement of Work.

## **9. Confidentiality.**

a. **Definition of Confidential Information.** "Confidential Information" means all confidential and proprietary information of a party (as the disclosing party) disclosed to the other party (as the receiving party), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure including, without limitation, all regulatory, commercial, financial (including pricing information), administrative and technological information of either party and any information concerning this Agreement; and provided that Confidential Information does not include any information that, without breach of any obligation owed to the disclosing party: (i) is or becomes generally known to the public; (ii) was known to the receiving party prior to its disclosure by the disclosing party; (iii) was independently developed by the receiving party without breach of this Agreement; or (iv) is received from a third party. If the receiving party is compelled by law to disclose Confidential Information of the disclosing party, it will provide the disclosing party with prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing party's cost, if the disclosing party wishes to contest the disclosure. All Confidential



Information will remain the sole and exclusive property of the party which has disclosed it.

- b. Obligations regarding Confidential Information.** The receiving party will (i) protect the confidentiality of the disclosing party's Confidential Information in the same manner that it protects the confidentiality of its own confidential information of like kind (but in no event using less than reasonable care); (ii) not use any of the disclosing party's Confidential Information for any purpose outside the scope of this Agreement, except with the disclosing party's prior written consent; (iii) disclose Confidential Information of the disclosing party only to those of the receiving party's employees, consultants and contractors who have a need to know such information and who have agreed, either as a condition of employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those terms and conditions applicable to the receiving party under this Agreement; and (iv) promptly notify the disclosing party if it becomes aware of any actual or suspected breach of confidentiality of the disclosing party's Confidential Information. The receiving party will be liable for any breach of the obligations of confidentiality by its employees, consultants or contractors.
- c. Injunctive Relief.** In the event of a breach (or threatened breach) by the receiving party of any of its obligations regarding the disclosing party's Confidential Information, the disclosing party will be entitled to seek injunctive relief in addition to any other remedies available to it.

## **10. Indemnification.**

### **a. Indemnity by Rhapsody.**

i. **Indemnity.** Rhapsody will indemnify, defend, and hold harmless Customer from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim Rhapsody's technology used to provide the Cloud Service (excluding any open source software) infringes or misappropriates any patent, copyright, trade secret or trademark of such third party. Notwithstanding the foregoing, in no event shall Rhapsody have any obligations or liability under this Section arising from: (A) use of the Cloud Service or any Optional Feature in a modified form or in combination with materials not furnished by Rhapsody; (B) any Customer Data (except as otherwise set forth in an applicable agreement dealing with data privacy and security, which is fully incorporated herein); or (C) Customer's use of the Cloud Service other than in accordance with this Agreement.

ii. **Possible Infringement.** If the Cloud Service becomes or, in Rhapsody's opinion, is likely to become the subject of a claim of infringement, Rhapsody will, at its sole option and expense, (A) obtain the right for Customer to continue using the Cloud Service; (B) provide a non-infringing functionally equivalent replacement; or (C) modify the Cloud Service to be non-infringing. If Rhapsody does not believe the foregoing options are commercially reasonable, Rhapsody may terminate Customer's access to the Cloud Service in which event Rhapsody will refund to Customer all prepaid fees for the remainder of the then-current Subscription Term on a pro rata basis.

**b. Indemnity by Customer.** Customer agrees to indemnify, defend and hold Rhapsody harmless from and against any loss, damage or claim by any third party resulting from (i) the unauthorized use or modification of the Services by Customer, its End Users, and/or either of their Users; and (ii) any liability that Rhapsody may have to any End Users or Users as a result of the Services or the Documentation.

**c. Conditions to Indemnification.** The obligations to indemnify under this Section 10 are contingent on the party who has the right to be indemnified (the "Indemnified Party") (i) promptly notifying the party providing the indemnification (the "Indemnifying Party") in writing of the existence of any such action; (ii) granting the Indemnifying Party sole authority and control for the defense or settlement of such action; and (iii) providing the Indemnifying Party with all reasonable assistance for the defense or settlement of such action. The Indemnified Party, at its own expense, may participate in the defense of any such action.

**d. Procedures to Indemnification Regarding Users and End Users.** Any and all claims from End Users or Users must be directed to Customer, and not Rhapsody, for indemnification, irrespective of Rhapsody's level of liability to such End Users or Users, pursuant to Customer's obligations set forth in Section 10.b.ii. For the avoidance of doubt, nothing in this Agreement shall obligate Rhapsody to take any action directly with a User or End User with respect to any claim. Rhapsody's obligations of indemnification to Customer under Section 10.a.i. are not limited by this Section 10.d.

## **11. Limitation on Liability.**

**a. General Cap.** Except with respect to liability arising from either party's obligations of indemnification under Sections 10 and 4.d.iii, Data Related Claims (as defined below), or Customer's obligation to pay amounts owed to Rhapsody under this Agreement (collectively, "Excluded Items"), in no event will either party be liable to the other (including, in the case of Rhapsody, to any End User or User) with respect to this Agreement or otherwise under any legal theory, whether in an action based on a contract, tort (including negligence and strict liability) or any other legal theory, however arising, for any incidental, special, exemplary or consequential damages, including but not limited to damages resulting from lost profits, interruption of business, loss of use of computer hardware, or loss of goodwill, even if the other party has been advised of the possibility of such damages. Except with respect to liability arising from Excluded Items, in no event will the aggregate liability of either

party for direct damages under this Agreement exceed the total payments made by Customer to Rhapsody during the six months prior to the event giving rise to the claim. This limitation of liability is cumulative, with all expenditures and payments made or other liability under this Agreement (except with respect to the Excluded Items) being aggregated to determine satisfaction of this limit. The existence of more than one such claim will not enlarge this limit in any respect. The limitations set forth in this Agreement also apply to Rhapsody's Suppliers. It is the maximum for which Rhapsody and its Suppliers are collectively responsible.

**b. Data Related Claims Cap.** Notwithstanding anything to the contrary herein or in any other agreement between Rhapsody and Customer, in no event will Rhapsody's liability stemming from data privacy, data security, patient data, data breach, security incident, or any other related claims pertaining to loss or compromises of Customer Data, including but not limited to a claim for breaches of Rhapsody's obligations under an agreement dealing with data privacy and security (collectively "Data Related Claims") exceed \$500,000 or five (5) times the total Fees payable by Customer to Rhapsody within a twelve (12) month period, whichever is lower.

## **12. Term; Termination.**

### **a. Term.**

i. **Agreement Term.** This Agreement commences on the Agreement Effective Date, which is the date upon which Customer clicks on the appropriate acceptance button in the AWS Marketplace and remains in effect until all Schedules and Statements of Work entered into by the parties have expired or been terminated unless earlier terminated as set forth herein ("Agreement Term").

ii. **Schedule Term.** Each Schedule will specify the Initial Subscription Term. If none is specified, the Initial Subscription Term will be for a period of twelve months from the Schedule Effective Date. Upon expiration of the Initial Subscription Term of a Schedule, the Schedule will automatically renew continuously for successive Extension Subscription Terms unless one party elects to terminate the Schedule by giving the other party at least 90 days' written notice prior to the end of the Initial Subscription Term or any Extension Subscription Term.

**b. Termination.** Either party may terminate this Agreement and/or any or all applicable Schedules and Statements of Work upon 30 days' written notice to the other party if the other party materially breaches this Agreement and fails to cure the breach within 30 days after delivery of the written notice. Statements of Work and Schedules may also be terminated as set forth in this Agreement. Either party may terminate this Agreement upon written notice to the other when there are no Schedules or Statements of Work in effect under it.

**c. Effect of Termination.** Upon any termination of a Schedule, (i) Rhapsody will cease providing Customer with the Cloud Service, (ii) Customer's use of the Cloud Service, any off-line Rhapsody Software Components, and any Deliverables will cease, and (iii) Rhapsody will delete Customer Data from Rhapsody's systems within 30 days of termination of this Agreement. In addition, upon any termination of this Agreement, each party will return to the other the original and all copies of the Confidential Information in the other's possession, custody or control or, in lieu of returning such Confidential Information, destroy all copies of such Confidential Information, and certify to such destruction in a writing signed by its officer. With respect to any Confidential Information of the disclosing party regarding which return or destruction is not feasible, the receiving party will continue to maintain its confidentiality in accordance with the terms of this Agreement.

**d. Survival.** Customer's obligation to pay Rhapsody amounts due hereunder will survive any expiration or termination of this Agreement. The terms of any other Sections that by their nature are intended to extend beyond termination, including 9 ("Confidentiality"), 10 ("Indemnification"), 11 ("Liability Limitation"), 12 ("Term; Termination"), and 13 ("General Provisions"), will survive termination of this Agreement for any reason.

## **13. General Provisions.**

**a. Certifications.** Any certification, regulatory approval or filings required (such as, but not limited to, site registration, device listing, medical device reporting, premarket notification, and proof of adherence to good manufacturing practices) are exclusively the responsibility of Customer. Rhapsody has no obligation to provide assistance in any form with respect to any such review, documentation, or filings.

**b. Governing Law.** This Agreement is governed by the laws of the Commonwealth of Massachusetts, without giving effect to its conflict of laws principles. Neither the United Nations Convention on Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act applies to this Agreement. If either party employs attorneys to enforce any rights arising out of or related to this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs from the other party.

**c. Assignment.** Customer may not assign this Agreement to any third party without the prior written consent of Rhapsody; provided, however, that Customer may, without the prior consent of Rhapsody but upon written notice and payment of the fees referenced in this Section, assign all of its rights under this Agreement to: (i) an entity that controls, is controlled by, or is under common control with Customer; (ii) a purchaser of all or substantially all of Customer's stock or assets; or (iii) a third party participating in a merger or other corporate reorganization in which Customer is a constituent corporation. If Customer

makes an assignment in accordance with Section (c)(i)-(iii) above, Rhapsody has the right to terminate the Agreement with thirty (30) days' notice to Customer. In addition, Rhapsody will be entitled to increase the fees that it charges Customer following any such assignment if the scope of use applicable to the Cloud Service authorized in any Schedule changes. This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Any other purported attempt to do so is void.

**d. Insurance.** During the Agreement Term, Rhapsody will maintain reasonable levels of public liability and professional indemnity insurance coverage, in each case for amounts and at levels of coverage and deductibles that are consistent with prudent commercial practice applicable to the scope and nature of the liabilities assumed under this Agreement. Upon Customer's request, Rhapsody will provide Customer with evidence to the reasonable satisfaction of Customer that Rhapsody continues to maintain the insurance described in this Section.

**e. Independent Contractors; Supervision of Personnel.** The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. There are no third party beneficiaries to this Agreement. Rhapsody is responsible for the supervision, direction, and control of its personnel engaged in providing Services under this Agreement.

**f. Suggestions.** Customer may from time to time provide suggestions, comments or other feedback ("Feedback") to Rhapsody with respect to the Services. Rhapsody is free to use the Feedback for any purpose, without obligation.

**g. Force Majeure.** Neither party will be liable to the other for any delay or failure to perform its obligations under this Agreement (excluding payment obligations) if the delay or failure arises from any cause or causes beyond that party's reasonable control.

**h. Publicity.** Notwithstanding anything to the contrary in this Agreement, Rhapsody may state publicly or list in announcements, presentations or other marketing materials the fact that Customer is a subscriber to and user of the Cloud Service and other Services of Rhapsody as an indication of Rhapsody's experience and Rhapsody may make a factual disclosure relating to the signing of this Agreement.

**i. Waiver; Severability.** A party's failure to exercise or enforce any right or provision of the Agreement will not constitute a waiver of such right or provision. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, then such provision will be construed, as nearly as possible, to reflect the intentions of the parties with the other provisions remaining in full force and effect.

**Initial Schedule  
to Cloud Services Agreement**

**All information, including pricing, contained in this Schedule is confidential.**

This Initial Schedule is effective as of the Agreement Effective Date of the Cloud Services Agreement between Rhapsody and the Customer Entity ("Customer") and confirms details regarding the Cloud Services provided to Customer. This Schedule is governed by the Agreement and defined terms not otherwise defined in this Schedule shall have the meanings ascribed to them in the Agreement. If the Customer chooses to go through a private offering to license Rhapsody's Cloud Services, that agreement, including any commercial details within, will supersede and replace entirely the terms of this Agreement.

<b>Initial Subscription Term:</b>	12 months
<b>Rhapsody Entity and address</b>	<b>InterOperability Bidco, Inc. d.b.a. Rhapsody ("Rhapsody")</b> 100 High Street, Ste 1560, Boston, MA 02110
<b>Customer Entity and address:</b>	<b>You, as the Customer using AWS Marketplace ("Customer")</b>
<b>Cloud Services:</b>	<i>Base Cloud Services.</i> Rhapsody provides Cloud Services using software and related services that facilitate data exchange between applications.  <i>Rhapsody Semantic</i>
<b>Hosting Territory:</b>	USA
<b>Currency:</b>	USD
<b>Annual SaaS Fees:</b>	\$60,000 per year  All SaaS Fees are per year to be paid annually in advance of the Schedule Effective Date.
<b>Use Restrictions:</b>	<b>Base EUID Amount:</b> 500,000  <b>Current Integration Network</b> Software may only be used for Customer's internal business purposes by either: (a) the entities within the Customer's network of facilities in place as of the Effective Date, defined as the Customer who accepted the terms of this Agreement at a single hospital, clinic, or facility location; or (b) the Customer solution or offering in place as of the Effective Date. The option to use (a) or (b) above is at Customer's discretion depending on the intended use of the Cloud Services, however once Customer has selected an option it may not be changed without contacting Rhapsody.  <b>("Current Integration Network")</b>  The license shall not apply to (i) increases in the Current Integration Network by or through any merger or acquisition subsequent to the Effective Date and (ii) changes to ownership where the operating model is replaced by that of another institution (e.g., a hospital system).  <b>Hosting Environment</b> A small hosting environment is based on a limit of up to 500,000 messages per day, depending on the types of messages. The size of the required environment will depend on several factors, such as Customer's actual message volume throughput, complexity of the messages, and usage requirements.  Any use of the service that requires performance above the levels outlined above shall incur additional Fees at the then current rates.
<b>Additional Terms and Conditions:</b>	
<b>Warranty Disclaimer:</b>	<a href="https://rhapsody.health/terms-and-conditions/">https://rhapsody.health/terms-and-conditions/</a> as may be updated from time to time.

**Exhibit A:**  
**Service Level Agreement**

<https://rhapsody.health/rhapsody-terms-and-conditions/> as may be updated from time to time.

**Business Associate Agreement**  
**For Subcontractor**

This Business Associate Agreement ("Agreement") for Subcontractor is made by and between InterOperability Bidco, Inc. d.b.a. Rhapsody ("Subcontractor") and the Customer identified on the first page of the Cloud Services Agreement ("Customer") (collectively, the "Parties"), and modifies any other prior agreement or contract for this purpose.

The effective date (the "Effective Date") of this Agreement is the effective date of the Engagement Letter and/or contracts entered into between Customer and Subcontractor.

**RECITALS**

If Subcontractor is a "Covered Entity" or a "Business Associate" and includes "Protected Health Information" (as those terms are defined in 45 CFR § 160.103), the terms of this Business Associate Agreement ("BAA"), hereby apply. The purpose of this Agreement is to comply with the Subcontractor requirements of (i) the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), (ii) the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH"), Pub. L. No. 111-5, Title XIII, and (iii) their implementing regulations, including but not limited to 45 C.F.R. parts 142 and 160-164, as may be amended, including the Privacy Rule and the Security Rule (together, the "Rules").

The Parties acknowledge that new HIPAA rules were published on January 25, 2013, that became effective on March 26, 2013 (the "New Rules"). Covered entities, business associates, and business associates' subcontractors are to comply with the New Rules in effect as of September 23, 2013.

WHEREAS, Customer and Subcontractor have entered into a relationship under which Subcontractor may receive, use, obtain, access or create Protected Health Information ("PHI") from or on behalf of Customer (the "Services") for Customer. As provided in the HIPAA Rules, PHI shall include, when applicable, Electronic Protected Health Information ("EPHI"). Subcontractor acknowledges having direct compliance obligations under the HIPAA Rules, and is bound to comply with all requirements of the HIPAA Rules made applicable to business associates pursuant to HITECH; and

WHEREAS, HIPAA, Public Law 104-191 and the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E, as amended, require Customer to enter into a contract with Subcontractor containing specific requirements pertaining to Business Associate's use and disclosure of PHI received from, or created or received on behalf of, Customer.

NOW, THEREFORE, for and in consideration of the recitals above and mutual covenants and conditions below, Customer and Subcontractor enter into this Agreement, and agree as follows:

1. **DEFINITIONS.** Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 160.103 and 164.501.
  - a. **"Breach"** means the acquisition, access, use or disclosure of PHI in a manner not permitted under the Privacy Rule, and which has been compromised, as defined in the omnibus rule regarding HIPAA issued by the Office for Civil Rights of the U.S. Department of Health and Human Services (the "Omnibus Rule"). Breach does not include: (i) any unintentional acquisition, access, or use of PHI by a workforce member or individual acting under the authority of Subcontractor if such acquisition, access, or use was made in good faith and within the scope of authority of such employee or individual and does not result in further use or disclosure in a manner not permitted under the Privacy Rule; (ii) any inadvertent disclosure by a person who is authorized to access PHI at Subcontractor to another person authorized to access PHI at Subcontractor, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the Privacy Rule; or (iii) a disclosure of PHI where Subcontractor has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
  - b. **"Designated Record Set"** means: (i) medical records, billing records, enrollment, payment, claims adjudication, and case or medical management records systems maintained by or for Customer; or (ii) records used, in whole or in part, by or for Customer, or the covered entities to which Customer provides business associate services, to make decisions about individuals. For purposes of this definition, the term "record" means any item, collection or grouping of information that includes PHI and is maintained, collected, used or disseminated by or for Customer.
  - c. **"Electronic Protected Health Information"** means information that comes within paragraphs 1(i) or 1(ii) of the definition of "protected health information," as defined in 45 C.F.R. § 160.103, limited to the information created, received, maintained or transmitted by Subcontractor on behalf of Customer.
  - d. **"Individual"** has the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
  - e. **"HITECH Act"** means Title XIII and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Public Law No. 111-5, and the regulations enacted thereunder.
  - f. **"Privacy Rule"** means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
  - g. **"Protected Health Information"** or **"PHI"** has the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by Subcontractor from or on behalf of Customer.
  - h. **"Required By Law"** has the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
  - i. **"Secretary"** means the Secretary of the U.S. Department of Health and Human Services or his designee.
  - j. **"Security Incident"** has the same meaning as the term "security incident" in 45 C.F.R. § 164.304.
  - k. **"Security Rule"** means the Security Standards and Implementation Specifications at 45 C.F.R. part 160 and part 164, subpart C.
  - l. **"Unsecured PHI"** means PHI that is not secured through the use of a technology or methodology that the Secretary specifies in guidance renders PHI unusable, unreadable or indecipherable to unauthorized individuals.

## 2. PERMITTED USES AND DISCLOSURES

- a. Provision of Services. Subcontractor may use and disclose PHI solely for the purpose of providing the Services to Customer.
- b. Other Permitted Uses. Subcontractor may use PHI, if necessary: (i) for the proper management and administration of the Subcontractor; and (ii) to carry out the legal responsibilities of the Subcontractor.
- c. Other Permitted Disclosures. Subcontractor may disclose PHI, if necessary, for the purposes described in Section 2.b if: (i) the disclosure is Required By Law; or (ii) Subcontractor obtains reasonable assurance from the person or entity to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person or entity, and the person or entity notifies Subcontractor of any instances of which it is aware in which the confidentiality of the information has been breached.
- d. Pursuant to an Authorization. Subcontractor may use or disclose PHI pursuant to a valid authorization by an Individual that satisfies the requirements of 45 C.F.R. § 164.508 and strictly for the purposes designated under the Subcontractor's Agreement.

## 3. OBLIGATIONS OF SUBCONTRACTOR

- a. Prohibition on Unauthorized Use or Disclosure. Subcontractor will not use or disclose PHI, except as permitted or required by the Privacy Rule, the Security Rule, this Agreement and the Agreement to which it is attached as an Addendum, or as Required By Law.
- b. Minimum Necessary. Subcontractor shall limit its use and disclosure of PHI under this Agreement to the "minimum necessary" as set forth in guidance that the Secretary issues under the Privacy Rule, or if guidance has not been issued, to the Limited Data Set (as defined by HIPAA) or the minimum necessary to carry out Business Associate's duties.
- c. The Parties agree that Sections 3.a and 3.b do not apply to: (1) disclosures to, or requests by, a health care provider for treatment; (2) uses or disclosures made to the Individual; (3) disclosures made pursuant to an authorization as set forth in 45 C.F.R. § 164.508; (4) disclosures made to the Secretary under 45 C.F.R. part 160, subpart C; (5) uses or disclosures that are Required by Law as described in 45 C.F.R. § 164.512(a); and (6) uses or disclosures that are required for compliance with applicable requirements of the Privacy Rule.
- d. Safeguards. Subcontractor will use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. Subcontractor will implement administrative, physical and technical safeguards as required by the Security Rule, and that reasonably and appropriately protect the confidentiality and integrity of the Electronic Protected Health Information that it receives, maintains or transmits on behalf of Customer. To the extent required by a specific Federal entity, Subcontractor must have the capacity to transport, or transmit Customer sensitive information in an encrypted form, using Customer-approved encryption tools that at a minimum, are or equivalent to FIPS 140-2 validated. Subcontractor also agrees to encrypt the storage of identifying information, which will be stored separately from clinical information.
- e. Duty to Report Violations. Subcontractor agrees to immediately report to Customer any use or disclosure of PHI by Subcontractor not provided for by the Privacy Rule, the Security Rule or this Agreement of which it becomes aware. Subcontractor agrees to report to Customer any Security Incident of which it becomes aware. If a breach occurs, Subcontractor also agrees to cooperate and assist in any steps taken by Customer to mitigate and address the breach.

As soon as reasonably possible and in all cases, within five (5) working days of the first day on which any employee, officer, or agent of Subcontractor either knows or, by exercising reasonable due diligence, would have known that a Breach of Unsecured PHI has occurred, Subcontractor shall notify Customer of such Breach. The notification shall include the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Subcontractor to have been, accessed, acquired, used, or disclosed during such Breach. The notification shall also include: (1) a brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known; (2) a description of the types of Unsecured PHI that were involved in the Breach (such as full name, social security number, date of birth, home address, account number, or disability code); (3) recommended steps that Individuals should take to protect themselves from potential harm resulting from the Breach; and (4) a brief description of what Subcontractor is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches. Subcontractor shall maintain evidence to demonstrate that any required notification under this paragraph was made unless Subcontractor determines that a delayed notification applies.

- f. Subcontractors and Agents. Subcontractor agrees to ensure that any subcontractor or agent permitted under the Subcontract, and to whom it provides PHI, in any course or dealing, agrees in writing to the same restrictions and conditions that apply through this Agreement to Subcontractor with respect to such information. Subcontractor will ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information, agrees to implement reasonable and appropriate safeguards to protect it. Personnel Data made available to Subcontractor by Customer for the performance or administration of this Agreement shall be used only for those purposes and shall not be used in any other way without the prior written approval of the Customer. This clause expressly limits Business Associate's and its subcontractors' rights to use data as described in Rights in Data – General, FAR 52.227-14(d)(1).
- g. Inspection of Books and Records. Without limiting the operation of any provision of Section 5 below, and upon reasonable notice, Subcontractor agrees to make its internal practices, books, and records relating to the use and disclosure of PHI available to Customer or, at the request of Customer, to the Secretary in a time and manner designated by Customer or the Secretary for



purposes of the Secretary determining Customer's compliance with the Privacy Rule. On a periodic basis, Customer, including its Office of Inspector General, reserves the right to evaluate any or all of the security controls and privacy practices implemented by Subcontractor under the clauses contained in this Agreement. With 30 days' notice, at the request of Customer, Subcontractor must fully cooperate and assist in an Customer-sponsored security controls assessment at each location wherein Customer information is processed or stored, or information systems are developed, operated, maintained, or used on behalf of Customer, including those initiated by Customer's Office of Inspector General. Customer may conduct a security control assessment on shorter notice (to include unannounced assessments) as determined by Customer in the event of a security incident or at any other time. Subcontractor must take appropriate and timely action to correct or mitigate any weaknesses discovered during such testing.

- h. Security Regulations. The Parties acknowledge that effective on and after February 17, 2010, 45 C.F.R. §§ 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), and 164.316 (policies and procedures and documentation requirements) apply to Subcontractor in the same manner that such sections apply to Customer. In addition, the requirements of the HITECH Act that relate to security and privacy in Title XIII and Subtitle D respectively, apply to business associates.
- i. Report Pattern or Practice of Activity in Breach. If required under Section 13404 of the HITECH Act, if Subcontractor knows of a pattern of activity or practice of Subcontractor that constitutes a material breach or violation of the Customer's obligation under this Agreement, Subcontractor shall take reasonable steps to cure the breach or end the violation, and, if such steps are unsuccessful, terminate the Agreement or report the problem to the Secretary if termination is infeasible.
- j. Applicable Laws and Compliance with Federal Standards. Subcontractor is fully responsible and accountable for ensuring compliance with HIPAA and the Privacy Act, and Customer security and privacy directives and handbooks. This includes conducting compliant risk assessments, routine vulnerability scanning, system patching and change management procedures, and the completion of an acceptable contingency plan for each system. Subcontractor's control procedures must be equivalent to those procedures used to secure Customer systems. All external internet connections to Customer's network involving Customer information must be reviewed and approved by Customer prior to implementation. Subcontractor must receive, gather, store, back up, maintain, use, disclose and dispose of Customer information only in compliance with the terms of this Agreement, and applicable Federal and Customer information confidentiality and security laws, regulations and policies. If Federal or Customer information confidentiality and security laws, regulations and policies become applicable to Customer information or information systems after execution of this Agreement, the Parties agree to negotiate in good faith to implement the information confidentiality and security laws, regulations and policies in this Agreement.

#### 4. OBLIGATIONS OF CUSTOMER

- a. Notice of Revocation of Authorization. Customer will provide Subcontractor with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Subcontractor's permitted or required uses and disclosures.
- b. Notice of Restriction. Customer will notify Subcontractor of any restriction to the use or disclosure of PHI that Customer has agreed to in accordance with 45 C.F.R. §164.522.
- c. Impermissible Requests. Customer will not request that Subcontractor use or disclose PHI in any manner that would not be permissible under the Privacy Rule or Security Rule if done by Customer.
- d. Disclosure of PHI. Customer shall notify Subcontractor of the identity of the employees of Customer who perform administrative functions for the Customer and who are authorized to handle PHI. To the extent practicable, Customer shall also notify Subcontractor each time PHI is given to Subcontractor by Customer.

#### 5. LIMITATION ON OBLIGATIONS

- a. Enforceability of Privacy Requirements. Any requirement imposed on Subcontractor in Section 3 of this Agreement shall not apply in the event a court of competent jurisdiction determines, in response to a challenge raised by Plan Sponsor, Customer or Business Associate, that the Privacy Rule or Security Rule provision requiring the inclusion of the requirement in this Agreement is unenforceable, invalid, or otherwise inapplicable to the relationship between Subcontractor and Customer or to the action that the Secretary may request of Subcontractor or Customer.

#### 6. TERM & TERMINATION

- a. Term. The term of this Agreement shall be effective as of the Effective Date, and shall terminate when all PHI is returned to Customer or destroyed, or, if it is infeasible to return or destroy PHI, protections are extended to such PHI, in accordance with the termination provisions of this Section 6. Any data destruction done on behalf of Customer by Subcontractor must be done in accordance with Customer's requirements. Self-certification by Subcontractor that the data destruction requirements provided by Customer have been met must be sent to Customer within 30 days of termination of the contract.
- b. Termination for Cause. Upon knowledge of a material breach of this Agreement by Subcontractor, Customer shall provide written notice of the breach and provide an opportunity for Subcontractor to cure the breach or end the violation within thirty (30) business days of such written notice, unless cure is not possible. If Subcontractor fails to cure the breach or end the violation within the specified time period or cure is not possible, this Agreement shall automatically and immediately terminate, unless termination is infeasible. In the event Customer must act to cure the breach, then any and all costs, damages, losses, or claims related to such cure shall be fully indemnified, without limitation, by Subcontractor.

- c. Termination Upon Notice. This Agreement may be terminated by Customer at any time by giving notice to Subcontractor at least sixty (60) days, or a shorter time upon written mutual agreement, prior to the termination.
- d. Effect of Termination. Except as provided in paragraph (b) of this Section 6.4, upon termination of this Agreement, for any reason, Subcontractor shall return or destroy PHI in whatever form or medium and retain no copies of such PHI. Subcontractor will complete such return or destruction as soon as possible, but in no event later than sixty (60) days from the date of the termination of this Agreement.

In the event that Subcontractor determines that returning or destroying the PHI is infeasible, Subcontractor shall provide to Customer notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Subcontractor shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Subcontractor maintains such PHI.

## 7. MISCELLANEOUS

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule, the Security Rule or the Omnibus Rule means the section as in effect or as amended, and for which compliance is required.
- b. Amendment. Subcontractor and Customer agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Customer to comply with the requirements of the Privacy Rule, the Security Rule and any other laws applicable through this Agreement.
- c. Survival. The respective rights and obligations of Subcontractor under Sections 6.d of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Customer to comply with the Privacy Rule and the Security Rule.
- e. Governing Law. To the extent that this Agreement is not governed by the requirements of HIPAA and other applicable Federal law, the Agreement is governed by the laws of the Commonwealth of Massachusetts, without reference to the Commonwealth's choice of law rules.
- f. Third Party Beneficiaries. Except as stated herein, nothing express or implied is intended to confer or create, nor be interpreted to confer or create, any rights, remedies, obligations or liabilities to or for any third party beneficiary.
- g. Responsible Person. (i) Rhapsody. The following person or, if no person is identified, the person holding the following title is authorized to act on behalf of Rhapsody, and receive any notice required to be provided by Subcontractor to Rhapsody under any provision in this Agreement:

InterOperability Bidco, Inc  
Attn: Legal Department/Privacy Office  
100 High Street, Suite 1560  
Boston, MA 02110, United States

(ii) Customer. To the extent notice is required to be provided by Subcontractor to Customer under any provision in this Agreement, notice shall be provided to a contact submitted to Rhapsody in writing.