

STANDARD INCORPORATED TERMS & CONDITIONS

REVISED EFFECTIVE 1/1/2019

1) **Default and Early Termination.** Notwithstanding any language to the contrary, The Term of the Agreement shall be extended to the latest Renewal Date stated on any Client Order Form (COF) or other agreement form executed between AUH and the Client (together, the "Parties"). If either Party materially defaults in the performance of any of its obligations under the Agreement, except for non-payment ("Monetary Breach"), written notice shall be given to the defaulting Party specifying the section of the Agreement allegedly in default within thirty (30) days of such alleged default. If the alleged default is not substantially cured within thirty (30) days after receipt of such notice, or with respect to those defaults which cannot reasonably be cured within thirty (30) days, if the defaulting Party fails to proceed within thirty (30) days after receipt of such notice to proceed with all due diligence substantially to cure the default, but in any event does not substantially cure the default within ninety (90) days, then the Party not in default may, by giving written notice of termination to the defaulting Party, terminate the Agreement as of a date specified in the notice of termination. Termination by Client prior to the end of the agreed term (not including Month-to-Month Term after the first 3 months) ("Early Termination") shall require payment of (a) any outstanding balances, plus (b) the then current MSC (plus CPI, if applicable) times the remaining term of the Agreement, including renewal if less than the required notice period remains, plus (c) Interface, Setup and Implementation Fee(s) if they were waived at contract inception.

2) **Payment.** Timely receipt of all payments by AUH or its assignee is a condition precedent to all AUH obligations. Client shall pay all fees, charges, and invoiced amounts in full at the time(s) they are due irrespective of and without reduction or delay based upon (a) any claim, dispute, or right of setoff or recoupment asserted by Client at any time for any reason, or (b) the existence or claimed existence of any other dispute or controversy involving Client, AUH, or any other person or entity at any other time. If not otherwise stated, all amounts, including any one-time fees (UFC), monthly fees (MSC), ppm fees, minimums, and Additional Charges, are due and payable upon receipt of invoice by AUH, which shall be deemed "received" immediately when electronically transmitted to the Client's email address on file, or within three (3) days of being mailed by first class mail. All MSC amounts must be paid by approved ACH direct debit, or payable for the full remaining term in advance. Although AUH shall have no obligation to accept any payments other than by ACH direct debit or payment in full, in the event AUH does elect to accept such alternative payments, a \$35 convenience fee shall be added to each invoice. Any checks, authorized debits or credit card charges that are disputed or returned by AUH's bank shall be automatically re-deposited / re-debited, and Client will incur a \$75 NSF fee (or the maximum amount permitted by law) for each time that such return occurs, in addition to any other remedies contained herein, including those provided for Monetary Breach. All amounts not paid within five (5) days shall bear interest at the rate of one and one-half percent (1½%) per month, or the maximum permitted by law, whichever is greater.

Each of the following shall be deemed a "Monetary Breach": (a) Non-payment of any amounts due within five (5) days of the date when due; (b) Failure by Client to timely execute all documents or provide verbal authorization when requested, including any delivery & acceptance confirmation; (c) Client attempts to assign this assignment in whole or in part; (d) any notice from Client of termination prior to the end of the Term; (e) any proceedings in bankruptcy are instituted by or against Client or any guarantor of this Agreement, or if Client or any guarantor of this Agreement files, or any creditor or other person files, any petition in bankruptcy under any law, rule or regulation of the United States of America or of any State, or if a receiver of the business or assets of Client or of any guarantor of this Agreement shall be appointed, or if a general assignment is made by Client for the benefit of creditors; (f) the primary office used in Client's business is closed, or if any notice of closure is provided by Client or it is obvious from the facts and circumstances that the Client's business is no longer operating in the ordinary course of business for any amount of time (e.g., phone lines are disconnected, signage or advertising indicates closure, or similar indicia exist); (g) a majority of the Providers (defined below) retire or otherwise cease providing services on behalf of Client; (h) Client becomes insolvent under any generally accepted measure of insolvency, including if Client becomes unable pay its debts as they become due or if Client does not possess sufficient assets to pay its existing debts; (i) Client violates any law, regulation, ordinance, or contractual obligation to any person or entity that may result in the termination or suspension of Client's business operations for any period of time, or of the sale or transfer of any amount of Client's business or assets to any person or entity; (j) AUH informs Client of its belief that any event constituting a Monetary Breach has occurred and Client fails to provide evidence within fourteen (14) days reasonably satisfactory to AUH that disproves AUH's belief; or (k) any change of Client's ownership, whether in whole or in part.

Any Monetary Breach shall not require notice of default as provided in Section 1 above, and shall give AUH (i) the right, subject to any requirements under HIPAA, to immediately suspend without notice any or all services and deny Client any or all access to the Software and devices, reconnection to any of which will require a \$500 Reconnect Fee, (ii) the right to immediately terminate the Agreement and recover all damages from Client (including but not limited to amounts due from Early Termination as defined in Section 1 above), and (iii) such other rights and remedies against Client as may be provided under the Agreement and applicable law. AUH's rights and remedies are cumulative and not alternatives.

3) **Taxes, Travel and Shipping.** Taxes, Travel and freight charges are not included and are billed separately as charged or required by law. Unless stated otherwise, all payment amounts exclude any applicable sales, use, property or any other tax allocable to the System ("Taxes"). Any Taxes payable under the Agreement which are not added to the payment amounts due under this Agreement are due and payable by Client, and Client shall remain liable for any filing obligations. Travel charges will be charged as Additional Charges pursuant to the then current AUH Travel Policy.

4) **Ownership and Preservation of Property Rights.** Client acknowledges and agrees that all Software and AUH and its vendors' respective intellectual property (i.e., source code, copyrighted or patented material, trademarks, service marks, trade secrets, and proprietary and confidential information) are the property of AUH or its vendors, respectively, and are available for Client's use only pursuant to this Agreement. AUH or its vendors, respectively, retain all rights in their intellectual property, including any enhancements thereto or derivative works thereof. Client shall not modify, reverse assemble, or decompile, in whole or in part, the Software. It is expressly understood and agreed that title to, or ownership of, any part of the Software or any related items provided hereunder, including any enhancements thereto or derivative works thereof, shall not ever be transferred to Client. Client agrees not to use AUH's (or its vendors') service marks, trademarks or brand names (collectively, the "Marks") relating to the Software without AUH's prior written permission. AUH or its vendors, respectively, reserves all rights related to the Marks. AUH grant of any right to use any of the Software is subject to the rights retained by AUH or its vendors, which are exercisable in AUH and its vendors' sole discretion. AUH may use Client's identification in its marketing literature, including on its website.

5) **Force Majeure.** AUH shall be excused from performance under the Agreement and shall have no liability to Client for any period of time it is prevented from performing any of its obligations, in whole or in part, as a result of an event or delay that is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, strikes, lockouts, or labor difficulties, third party vendors, Client's failure or delay in training, changes in law or regulations, or any other similar cause beyond the reasonable control of AUH (each, a "Force Majeure Event"). If a Force Majeure Event occurs, AUH will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and it continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay.

6) **Limitation of Liability.**

- a) USE OF THE SOFTWARE AND SERVICES IS AT THE SOLE RISK OF THE CLIENT. AUH, ITS AFFILIATES AND THEIR THIRD PARTY VENDORS SHALL HAVE NO LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR ANY DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE PRODUCT OR WITH THE DELAY OR INABILITY TO USE THE PRODUCT, OR FOR ANY INFORMATION, PRODUCTS, OR SERVICES ADVERTISED IN OR OBTAINED THROUGH THE PRODUCT, AUH REMOVAL OR DELETION OF ANY MATERIALS SUBMITTED OR POSTED ON ITS PRODUCT, OR OTHERWISE ARISING OUT OF THE USE OF THE PRODUCT, RESULTING FROM UNAUTHORIZED ACCESS TO THE SYSTEM, LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS OF GOODWILL, ADDITIONAL EMPLOYEE HOURS OR LOSS OF ANTICIPATED SAVINGS OR REVENUE ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE PERFORMANCE OR FAILURE TO PERFORM THEREOF, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF AUH OR THIRD PARTY VENDORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES.
- b) ALL DATA ENTRY AND SUBMISSIONS ARE SOLELY THE RESPONSIBILITY OF THE CLIENT TO REVIEW AND SUBMIT; AUH SHALL NOT BE RESPONSIBLE FOR ANY ERRORS CONTAINED THEREIN, EVEN IF AUH ENTERED OR PREPARED THEM.
- c) AUH SHALL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN ANY CLAIMS OR OTHER INTERFACE TRANSMISSIONS TO OR FROM CLIENT. WITH RESPECT TO PROCESS OR TRANSMISSION ERRORS, AS CLIENT'S SOLE AND EXCLUSIVE REMEDY, AUH WILL USE COMMERCIALY REASONABLE EFFORTS TO CAUSE THE ENTITY TO REPROCESS OR RESUBMIT THE APPLICABLE TRANSMISSION. IT IS THE SOLE RESPONSIBILITY OF CLIENT TO REVIEW TRANSMISSION LOGS AND REPORTS AND TO IMMEDIATELY NOTIFY THE VENDOR OF ANY ERROR, OMISSION, OR OTHER DISCREPANCY. AUH SHALL NOT BE RESPONSIBLE FOR ANY UNAUTHORIZED OR OTHER IMPROPER TRANSMISSION BY OR ON BEHALF OF CLIENT. CLIENTS AND END USERS HEREBY ACKNOWLEDGE THAT ANY INFORMATION SENT OR RECEIVED DURING USE OF THE SOFTWARE OR SERVICES MAY NOT BE SECURE AND MAY BE INTERCEPTED OR OBTAINED BY UNAUTHORIZED PARTIES.
- d) THE CUMULATIVE LIABILITY OF AUH, ITS AFFILIATES AND THIRD PARTY VENDORS FOR ALL LOSS AND DAMAGE WHATSOEVER AND HOWSOEVER ARISING RELATED TO THE AGREEMENT OR ANY UNDERLYING TRANSACTION SHALL NOT EXCEED THE AMOUNTS PAID BY CLIENT TO AUH DURING THE SIXTY DAYS PRIOR TO THE WRITTEN NOTIFICATION TO AUH OF THE CLAIM.
- e) AUH EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY FOR ANY CLAIM FOR INJURIES OR DAMAGES RELATED TO THE USE OF SOFTWARE FOR DIAGNOSIS, TREATMENT OR CODING.
- f) CLIENT AGREES THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE PRODUCT MUST COMMENCE WITHIN SIX MONTHS AFTER THE CAUSE OF ACTION ACCRUES OR THE CAUSE OF ACTION IS PERMANENTLY BARRED.
- g) NEITHER AUH NOR ITS VENDORS ASSUME ANY RESPONSIBILITY FOR CLIENTS OR OTHER END USERS' USE OR MISUSE OF INDIVIDUALLY IDENTIFIABLE INFORMATION OR OTHER INFORMATION TRANSMITTED, MONITORED, STORED OR RECEIVED WHILE USING THE PRODUCT AND THE MATERIALS WITHIN THE PRODUCT.

7) **Not a Medical Substitute.**

THE SOFTWARE IS NOT A SUBSTITUTE FOR INDEPENDENT MEDICAL JUDGMENT AND SHOULD NOT BE RELIED UPON FOR ANY TYPE OF DIAGNOSIS OR TREATMENT PLAN FOR ANY CONDITION. RESULTS SHOULD BE INTERPRETED BY A MEDICAL PROFESSIONAL AND FURTHER ASSESSMENT IS NEEDED TO DETERMINE IF A DISORDER IS PRESENT. AUH MAY ALSO INCLUDE CERTAIN INFORMATION, REFERENCE GUIDES AND DATABASES INTENDED FOR USE BY LICENSED MEDICAL PROFESSIONALS. THESE TOOLS ARE NOT INTENDED TO GIVE PROFESSIONAL MEDICAL ADVICE. PHYSICIANS AND OTHER HEALTH CARE PROVIDERS SHOULD ALWAYS EXERCISE THEIR OWN CLINICAL JUDGMENT FOR ANY GIVEN SITUATION.

8) **Medical Necessity.**

IT IS THE RESPONSIBILITY OF THE CLINICIAN TO DETERMINE MEDICAL NECESSITY WHEN ORDERING PSYCHOLOGICAL ASSESSMENTS. ASSESSURHEALTH DOES NOT MAKE ANY RECOMMENDATIONS ON MEDICAL NECESSITY OF PSYCHOMETRIC EVALUATIONS. PSYCHOMETRIC ASSESSMENTS ARE INTENDED TO BE ADMINISTERED AS PART OF A BATTERY; THEREFORE, PRACTITIONERS SHOULD ADMINISTER MULTIPLE TESTS AS THEY DETERMINE MEDICALLY NECESSARY.

9) **Limited Warranty.**

CLIENT UNDERSTANDS THAT ITS USE OF THE SOFTWARE WILL DETERMINE IN LARGE PART THE SOFTWARE'S EFFECTIVENESS, AND REPRESENTS THAT IT HAS HAD SUFFICIENT OPPORTUNITY TO REVIEW THE SOFTWARE IN ITS CURRENT FORM, SEEK REFERENCES FROM OTHER CLIENTS AND OBSERVE THE SOFTWARE IN USE, INCLUDING FOR ITS SUB-SPECIALTY OR OTHER, SIMILAR SPECIALTIES. WHETHER OR NOT CLIENT HAS AVAILED ITSELF OF SUCH OPPORTUNITIES, CLIENT REPRESENTS THAT IT IS SATISFIED THAT THE SOFTWARE MEETS ITS SPECIFIC NEEDS, AND HEREBY SPECIFICALLY WAIVES ANY AND ALL RIGHTS OF RESCISSION OR CLAIMS UNDER THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT (FDUTPA), OTHER SIMILAR STATUTES, OR FOR FRAUD (IN THE INDUCEMENT OR OTHERWISE). ALL SOFTWARE AND SERVICES PROVIDED BY AUH AND/OR ITS VENDORS IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. AUH WARRANTS ONLY THAT IT WILL USE COMMERCIALY REASONABLE EFFORTS TO PROVIDE SERVICES AS OUTLINED HEREIN; THIS WARRANTY IS THE ONLY WARRANTY MADE BY AUH TO CLIENT. AUH MAKES AND CLIENT RECEIVES NO OTHER WARRANTY, EXPRESS OR IMPLIED. ANY AND ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED AND EXCLUDED. AUH DOES NOT REPRESENT THAT THE SYSTEM WILL MEET CLIENT'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.

- 10) Client Supplied Items. AUH is not responsible for providing maintenance for any Client Supplied Items, or any System issues that result therefrom, even if AUH referred or recommended the source of such Client Supplied Items.
- 11) Client's Additional Responsibilities.
- a) Any failure by Client to meet agreed milestones or to attend training may substantially delay Client's Go-Live date or otherwise hinder performance, including their ability to meet governmental or other contractual requirements.
 - b) Client is solely responsible for acquiring, servicing, maintaining, and updating all equipment that allow Client to access and use the Software. Client shall use the Software only in accordance with any and all operating instructions or procedures that may be issued by AUH. Client understands and agrees that the operation and availability of the systems used for accessing and interacting with the Software, including computer networks and the Internet or to transmit information, whether or not supplied by Client or AUH, can be unpredictable and may, from time to time, interfere with or prevent the access to and/or the use or operation of the Software. AUH and its affiliates are not in any way responsible for any such interference with or prevention of Client's access and/or use of the Software.
 - c) Client shall take reasonable steps to ensure the security of the Software and Client Data. Client shall be responsible for System and network password management and for ensuring that no virus is loaded onto the System as a result of Client's action (or inaction). Client is solely responsible for the selection, maintenance, and update of its own antivirus and other System protection in its locations.
 - d) Client is responsible for reporting all suspected software bugs, training deficiencies, enhancement requests, etc. through the then supported AUH reporting channel.
- 12) Indemnification and Legal Fees. To the fullest extent possible, Client agrees to indemnify, defend, and hold AUH, its employees, agents and independent contractors harmless from and against any and all claims, demands, losses, damages, costs, judgments, expenses, or liabilities (including reasonable legal fees) arising in whole or in part from, relating in whole or in part to, caused in whole or in part by, or alleged or claimed to be caused in whole or in part by: (a) Client's act or omission to act, including those acts or omissions of Client's employees or agents; (b) the violation of any law, regulation, or ordinance by Client, its employees or agents; or (c) AUH's own act or omission to act, including AUH's own negligence, arising from or relating to AUH's performance or exercise of any right or obligation under this Agreement.
- 13) Client Data. Client owns its own data once transmitted to Client; AUH is not the custodian of any Client data. Subject to HIPAA and other privacy laws, AUH may maintain a copy of all data, and access and use such data for the purpose of complying with its responsibilities herein, monitoring Client performance, conducting data analytics and/or otherwise.
- 14) Non-Hire; Non-Circumvention. During the period of the Agreement and for a period of one (1) year following any termination thereof, Client shall not, directly or indirectly: (a) hire, solicit, or encourage to leave AUH's employment, any employee, consultant, agent or contractor of AUH; (b) hire, solicit or engage any such employee, consultant, agent or contractor who has left AUH's employment or contractual engagement within one year of such employment or engagement; or (c) purchase (other than directly through AUH) any product or service, directly or indirectly, from any vendor or reseller that is then or has been within the preceding year contracted with AUH.
- 15) Non-Assignment. Client may not assign or transfer the Agreement or any of its rights or obligations hereunder without the prior written consent of AUH. It is understood that AUH may subcontract or assign this Agreement, in whole or in part, or some or all of its duties hereunder, by providing Client with written notice of such assignment.
- 16) Governing Law and Dispute Resolution.
- a) This Agreement is governed by and is to be construed and interpreted in accordance with the laws of the State of Florida. Without regard to any choice of law or conflict of law provisions or principles, Florida law shall govern any dispute arising from or in any way related to this Agreement, any of its terms, or the Parties' negotiations and/or interactions leading to the execution of this Agreement.
 - b) Dispute Resolution. If the parties should have a dispute directly or indirectly arising from or relating to this Agreement or the Parties' respective rights and duties under the Agreement, the Parties will resolve such dispute in the following manner:
 - i) If not resolved by good faith negotiations between the parties and/or their designated representatives within thirty (30) calendar days after either party transmits written notice from the other party setting forth such difference or dispute, any dispute between the Parties shall be escalated to mediation as provided in (b) below.
 - ii) Upon expiration of the time period in paragraph i) of this Section 16(b) and absent written agreement by the Parties to extend that time period, the Parties shall submit their dispute to any mutually acceptable mediation service located in Tampa, Florida. The Parties will request mediation by providing to the mediation service a joint written request for mediation, setting forth the subject of the dispute and the relief requested. The Parties shall cooperate with one another in selecting a mediation service, and shall cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings to occur in Tampa, Florida. Client's corporate representative (in addition to any outside legal counsel) shall travel to Tampa, Florida, to attend the mediation in person. The Parties further agree that all offers, promises, conduct, and statements, whether oral or written, made during the course of the mediation by any of the Parties, their agents, employees, experts, and attorneys, and by the mediator and any employees of the mediation service, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any litigation, arbitration, or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.
 - iii) Each of the Parties acknowledges that a failure to cooperate and participate in the mediation required under Section 16(b) would cause irreparable harm to the other Party for which monetary damages would not provide an adequate remedy. Accordingly, each of the Parties agrees that if either of the Parties fails to cooperate or participate in the mediation required under Section 16(b), then, in addition to any and all other rights and remedies that may be available, the other Party shall be entitled to pursue and obtain equitable and/or injunctive relief in a state or federal court located in Tampa, Florida, compelling the Party to cooperate and participate in mediation in Tampa, Florida. The state and federal courts of Tampa, Florida shall be the sole and exclusive forum and venue for such action, and the Parties agree that a Party seeking equitable and/or injunctive relief shall not be required to post any form of bond or security in order to obtain injunctive relief.

As set forth in Section 16(a), and without regard to any choice of law or conflict of law provisions or principles, Florida law shall apply. In any proceeding under this paragraph iii) of Section 16(b), Client agrees to submit to the jurisdiction of the courts of Florida. Should either of the Parties pursue and obtain injunctive relief under this paragraph iii) of Section 16(b), that Party shall be entitled to an award of its reasonable attorneys' fees and expenses incurred obtaining such relief. Relief sought or obtained hereunder shall not limit or otherwise restrict the scope of disputes to be arbitrated, and no Party will undertake any proceeding designed to divest an arbitrator of jurisdiction.

- iv) If the Parties cannot resolve the dispute for any reason, including, but not limited to, the failure of either of the Parties to agree to comply with the mediation requirement or to agree to any settlement proposed by the mediator, then upon expiration of sixty (60) days from the date on which notice under paragraph i) of this Section 16(b) above was transmitted, either of the Parties may submit the dispute to be finally settled by arbitration to be held in Tampa, Florida, as provided in paragraphs v) – ix) of this Section 16(b).
- v) The arbitration will be conducted by one arbitrator. The Parties will attempt to select a single arbitrator by mutual agreement. If they are unable to do so within thirty (30) days after the initiating the arbitration proceeding, the Parties may request the appointment of a neutral arbitrator. The arbitration shall be administered by the American Arbitration Association. The rules of arbitration shall be the Commercial Arbitration Rules of the American Arbitration Association, except as modified herein or by any other instructions that the Parties may agree upon at the time, except that each of the Parties shall have the right to conduct discovery in any manner and to the extent authorized by the American Arbitration Association. If there is any conflict between those rules and the provisions of this Agreement, the provisions of this Agreement shall prevail.
- vi) The arbitrator's decision shall provide a reasoned basis for the resolution of each dispute and for any award. The arbitrator shall not have power to award any form of damages in excess of either actual compensatory damages or the contractual damages available to AUH under any terms of this Agreement or any other documents. In no event shall AUH's liability exceed any limitation of liability contained in this Agreement or any document between Client and AUH. The arbitrator shall not multiply actual damages or award punitive damages.
- vii) The award rendered by arbitration shall be final and binding upon the parties, and judgment upon the award shall be entered in a state or federal court located in Tampa, Florida, which shall be the sole and exclusive venue for entry of such judgment and any post-judgment proceedings. In connection with such judgment and/or post-judgment proceedings, as set forth in Section 16(a) and without regard to choice of law or conflict of law provisions that would result in the application of another law, Florida law shall apply to any dispute under this Section 16(b). Client agrees to submit to the jurisdiction of the courts of Florida.
- viii) Each of the Parties acknowledges its breach or threatened breach of any of its obligations under this Agreement would cause irreparable harm to the other Party for which monetary damages would not be an adequate remedy. Accordingly, each of the Parties agrees that in the event of a breach or a threatened breach by such party of any such obligations, the other Party shall, in addition to any and all other rights and remedies that may be available to them with respect to such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specifically as determined by the arbitrator without any requirement to post bond. In addition, the arbitrator may, at the request of a Party, order provisional or conservatory measures (including, without limitation, preliminary injunctions to prevent breaches of the Agreement). Nothing in this Section 16(b) will prevent any Party from obtaining relief in the form of provisional or conservatory measures (including, without limitation, preliminary injunctions, specific performance to prevent breaches, and an order compelling arbitration) in a state or federal court located in Tampa, Florida, which shall be the sole and exclusive forum and venue for such relief; provided, however that no Party will undertake any proceeding designed to divest an arbitrator of the arbitrator's jurisdiction. As set forth in Section 16(a) and without regard to choice of law or conflict of law provisions that would result in the application of another law, Florida law shall apply to any dispute under this Section. Client agrees to submit to the jurisdiction of the courts of Florida.
- ix) **Waiver of Jury Trial and Class Action and Multi-Party Waiver.** THE PARTIES IRREVOCABLY AGREE THAT ALL DISPUTES ARISING FROM OR RELATED TO THIS AGREEMENT WILL BE FINALLY AND EXCLUSIVELY SETTLED BY ARBITRATION. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENTS, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT. ANY ARBITRATION UNDER THIS SECTION 16(b) OR ANY COURT TRIAL (WHETHER BEFORE A JUDGE OR A JURY) WILL TAKE PLACE ON AN INDIVIDUAL BASIS WITHOUT RESORT TO ANY FORM OF CLASS, REPRESENTATIVE, OR COLLECTIVE ACTION, OR TO ANY REPRESENTATION AS OR BY A PRIVATE ATTORNEY GENERAL (THE "CLASS ACTION AND MULTI-PARTY WAIVER"). THIS CLASS ACTION AND MULTI-PARTY WAIVER PRECLUDES ANY PARTY FROM SERVING AS A REPRESENTATIVE OR BEING REPRESENTED IN ANY CLASS, REPRESENTATIVE, OR COLLECTIVE ACTION, AND FROM SERVING AS OR BEING REPRESENTED BY A PRIVATE ATTORNEY GENERAL, REGARDING ANY CLAIM ARISING FROM OR RELATING TO THIS AGREEMENT OR THE PARTIES' RESPECTIVE RIGHTS AND OBLIGATIONS UNDER THE AGREEMENT. REGARDLESS OF ANYTHING ELSE IN THIS SECTION 16(b), THE VALIDITY AND EFFECT OF THIS CLASS ACTION AND MULTI-PARTY WAIVER MAY BE DETERMINED ONLY BY A COURT AND NOT BY AN ARBITRATOR. THE PARTIES ACKNOWLEDGE THAT THIS CLASS ACTION AND MULTI-PARTY WAIVER IS MATERIAL AND ESSENTIAL TO THE ARBITRATION OF THEIR DISPUTES AND IS NOT SEVERABLE FROM THEIR AGREEMENT TO ARBITRATION. IF THIS CLASS ACTION AND MULTI-PARTY WAIVER IS LIMITED, VOIDED, OR FOUND UNENFORCEABLE, THEN THE PARTIES' AGREEMENT TO ARBITRATE SHALL BE NULL AND VOID WITH RESPECT TO SUCH PROCEEDING, SUBJECT TO ANY PARTY'S RIGHT TO APPEAL THE LIMITATION OR INVALIDATION OF THIS CLASS ACTION AND MULTI-PARTY WAIVER. THE PARTIES ACKNOWLEDGE AND AGREE THAT UNDER NO CIRCUMSTANCES WILL A CLASS ACTION BE ARBITRATED.

17) **Notices.** All communications or notices required or permitted by the Agreement shall be sufficiently given for all purposes hereunder if given in writing **specifically referencing this Section 17** and delivered (i) personally to a signatory hereof, (ii) by United States mail, return receipt requested, (iii) by document overnight delivery service or (iv) by facsimile, provided the sender delivers a confirmation copy as otherwise permitted of such facsimile within three (3) business days thereafter. All notices delivered in accordance with this Section shall be sent to the appropriate address or number, as set forth below, or to such other address or to the attention of such other person as the recipient Party has specified by prior written notice to the sending Party, and shall be effective upon its delivery to the addressee or three (3) business days after it is sent or dispatched, whichever occurs earlier. Notices shall be delivered, if to AUH, to the attention of **CONTRACT NOTIFICATION, 1000 N. Ashley Dr, Suite 300, Tampa, FL 33602**, and if to Client, at the email, fax or physical address on file with AUH. **Any notice to AUH not sent in strict compliance with this Section will not be considered notice under this Agreement.**

18) **Severability.** Each provision of the Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of the Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of the Agreement.

19) **Modification and Amendments.** AUH may from time to time modify these terms and conditions and either supply Client with a revised copy, summary of changes, or post a copy of the amended terms and conditions at <http://assessURhealth/documents>. If Client does not agree to (or cannot comply with) the terms and conditions as amended, Client must advise AUH of such by providing official Notice (pursuant to Section 17) of the specific Section change(s) contested on or before the later of (a) the Effective Date of these terms and conditions, or (b) five days from the date the new AUH Standard Incorporated Terms & Conditions are posted by AUH. Upon AUH receipt of such timely notice, AUH may elect to continue with the prior version of the AUH Standard Incorporated Terms & Conditions, or provide Client with the option to terminate the Agreement early pursuant to the immediately previously existing AUH Standard Incorporated Terms & Conditions. Client will be deemed to have accepted the revised AUH Standard Incorporated Terms & Conditions as amended upon continued use of the Software or Services for at least five days after any amendments or revisions are posted, without having provided any notice as required by this Section. No other modification or amendment by the Client or any representative of AUH to this Agreement, in whole or in part, is authorized or valid unless such modification or amendment is set forth in a written document executed by all Parties.

20) **Entire Agreement and Client's Non-Reliance on Extrinsic Matters.** The Agreement (including, without limitation, any included Order Forms and Schedules) constitutes the entire understanding of the Parties with respect to the subject matter hereof and there are no restrictions, promises, warranties, covenants or undertakings other than those expressly set forth or referred to herein. The Agreement supersedes all prior negotiations, agreements and undertakings between the Parties with respect to such subject matter. The Agreement may be executed electronically or in one or more counterparts and by scan or facsimile, each of which shall be deemed an original. True photocopies shall be deemed as effective as the original signatures. In entering into this Agreement, Client has not relied upon or been induced by any statement or representation by AUH, AUH's representatives, or any other party other than the written terms contained in this Agreement and the documents expressly referenced in this Agreement.

21) **Additional Acts.** Each party promises and agrees to execute and deliver any additional documents and instruments and to perform any acts which may be necessary or reasonably required in order to give full effect to the Agreement. AUH reserves the right to audit all products and services for compliance; in the event that any audit uncovers that product(s) or service(s) have been used by unauthorized Providers, Users, or otherwise undercharged, AUH may retroactively charge, and Client shall pay for such product(s) or service(s) as Additional Services.

22) **No Third Party Beneficiaries.** The Agreement is not intended to and shall not be construed to give any person or entity, other than the Parties hereto, any interest, rights, or remedies (including, without limitation, any third party beneficiary rights) in connection with the Agreement or any provisions contemplated herein.

23) **Material Changes.** Notwithstanding anything herein to the contrary, the terms and conditions in the Agreement are subject to periodic review and may be revised by AUH in the event that support calls exceed the AUH average duration or frequency, or a significant change in any insurance, tax, vendor terms, CPI, third party reimbursement, or other regulations, laws, policies or procedures which materially and adversely affect the ability of AUH to provide services hereunder or otherwise render performance by AUH difficult, unprofitable, or burdensome. Likewise, products may be substituted for like products which, in AUH's sole discretion, are as good or better. In the event of any such change in any pricing or product substitution, Client may terminate such product or service only within 30 days of notice thereof as its sole remedy, and hold AUH harmless from any claims, actions, losses or damages arising from or relating to such termination.

24) **Relationship of Parties.** AUH, in furnishing Services to Client under the Agreement, is acting only as an independent contractor and shall have the exclusive control of the manner and means of performing the work contracted for hereunder. AUH does not undertake by the Agreement or otherwise to perform any obligations of Client, whether regulatory or contractual, or to assume any responsibility for Client's business or operations. Personnel supplied by AUH hereunder, whether or not located on Client's premises, are AUH employees or agents and shall not represent themselves to be otherwise. Nothing contained in the Agreement shall be construed to create a joint venture or partnership between the Parties.

25) **Construction.** The language used in the Agreement will be deemed to be the language chosen by the Parties to express their mutual intent, and the Parties agree that no term of this Agreement shall be construed against any Party under any circumstances. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Headings are for convenience only and are not intended either to interpret any provisions of this Agreement or to create any right or remedy.

26) **Authority.** Each of the Parties hereto represents to the other that such party has full power and authority to execute, deliver and perform the Agreement, and that the individual executing the Agreement on behalf of the party is fully empowered and authorized to do so. The Parties acknowledge that they have freely negotiated and executed this Agreement without duress after a sufficient opportunity was provided for all Parties to seek and obtain review of the Agreement by legal counsel of their choosing.

27) **Waiver.** The failure of either of the Parties to enforce any provision of the Agreement shall not operate as, or be construed to be, a waiver of that provision or of the Parties' rights in connection with any subsequent breach of the same or any other provisions of the Agreement. AUH does not waive any breach and/or default (including a Monetary Breach) unless AUH acknowledges such waiver in writing. Unless confirmed in writing by

AUH, any written waiver by AUH does not constitute a waiver of any subsequent breach and/or default (including a Monetary breach). No delay or omission by AUH in enforcing its rights or remedies under the Agreement shall waive or impair AUH's rights and remedies under the Agreement or otherwise available at law.

28) Schedules. AUH and Client each agree to perform certain obligations and be bound by all of the terms and conditions outlined in the COFs, agreements, amendments, policies, and schedules as may be modified by AUH from time to time at <http://assessURhealth/documents>. The terms and conditions of such additional COFs, agreements, policies and schedules including the AUH End User License Agreement ("EULA"), AUH Service Level Agreement ("SLA"), and AUH HIPAA Business Associate Agreement ("BAA"), are hereby incorporated into and made a part of the Agreement. Any conflict between this document and the terms of those documents shall be resolved in favor of this document. All of vendor's rights under any applicable EULA are assigned jointly to AUH and such vendor. In the event that Client requests AUH to execute an additional custom BAA, such custom BAA review and execution will be charged as an Additional Service and will require the following language: "Except as otherwise required by law as interpreted in its most narrow interpretation, nothing in this Business Associate Agreement (BAA) shall require any actions or standards of the BA, or its subcontractors, that are more restrictive or burdensome to BA than that which is required under the Contract, including BA's incorporated standard BAA, available at <http://assessURhealth/documents>. Any ambiguity or conflict between this document and BA's Contract, including its standard BAA, shall be interpreted and construed in favor of the Contract, including the incorporated standard BA."

29) Confidentiality and non-disparagement. Client agrees that this Agreement (including all related Pricing, Schedules, Orders, COFs and Amendments) and all written correspondence with AUH are confidential. Any disclosure of Confidential Information by Client which is not otherwise required by court order is prohibited, and considered to be a material breach of this Agreement. Client agrees not to post or otherwise make public any disparaging remarks or comments about AUH, including but not limited to the use of social media.

30) iPad®- Any electronic iPad® tablet(s) (including chargers and cases, altogether, the "Tablet") may be provided at no charge by either AUH or its Distributor, in which case it shall be for the sole purpose of using the Software, and must be returned at the end of the Term. Failure to return any Tablet within 10 days of the end of the Term will result in Client being charged the then current price for Tablet Replacement. Lost, broken or additional Tablets (or chargers) will be charged at the then current Tablet (or charger) price, plus shipping and sales tax. For tax and insurance purposes, Tablets are considered to be the property of the Client during their lawful possession.

31) Interfaces – If the executed COF includes an Interface, the following additional terms and conditions apply:

- a) All Interfaces are provided on a reasonable commercial efforts basis only, and there are no guarantees that they will be successful or delivered in any specific timeframe, notwithstanding anything stated to the contrary. All payments for Interfaces are due in full up front, and are non-refundable.
- b) All interface pricing assumes cooperation of the other vendor; otherwise, additional charges may apply. Third party vendors may also institute charges, for which Client is solely responsible.
- c) Client should require that its third-party interface vendors have a BAA from the respective vendor on file with the Client as the Covered Entity. AUH may require proof of cyber liability insurance before any interface is approved.

32) Intentionally Left Blank.

33) Payment Guarantee. Only if this option is included in the COF, there will be no penalty for early termination if CMS eliminates or reduces reimbursement by greater than 20% for the cumulative total of CPT codes: one of 96127, 96146 or 96160, plus G0442 and G0444, and does not replace with similar reimbursable codes, but only if terminated within 30 days after such change is published by CMS.

34) Additional Definitions. "Additional Charges" means charges that are included on all COF(s) that are not otherwise included in the Initial COF, and billed at AUH then standard rates. "Affiliates" of AUH mean any company under common ownership or control. "AUH" means assessURhealth, LLC. "Client Order Form", which may also be referred to as "COF", "Order" or "Quote" (all four terms are interchangeable), means the form signed by the Client outlining specific Software and/or Services purchased. "Client Supplied Items" include any and all software, hardware, equipment, networking and ISP Broadband or other connectivity channels purchased by the Client other than through AUH. "CPI" is the greater of 5% per year or the Consumer Price Index, as published by the US Department of Labor on its website www.bls.gov, for all urban consumers. "Go-Live" means the first date that the System is used for any operations of the Client. "Midlevel Providers", or "Midlevels", include Nurse Practitioners, Physician Assistants, Audiologists, Physical Therapists, Music & Speech Therapists, Chiropractors, Dentists, Hygienists, Licensed Social Workers, Midwives, Nutritionists, Dietitians, Counselors, Mental Health Practitioners, and Neurophysiologists who render care to patients. "MSC" means Monthly Service Charge, and may also just be referred to as Monthly Fees or Monthly when accompanied by a dollar amount. "Part Time" means less than 20 hours per week, and is subject to audit. "pppm" means per provider per month. "Providers" mean those Physicians, Optometrists, Anesthesiologists, Psychologists, Podiatrists and Midlevel Providers employed by or under contract with Client to provide services within the medical field, whether or not they bill separately. "Software" shall include the assessURhealth™ proprietary Psychometric Screening software on an iPad® ("Tablet") and delivered to the Client via either access by Client to a HIPAA secure portal, at AUH's option, or if included on the COF, through an interface to the Client's EHR system. "System" means the embodiment of the hardware, software and services provided by AUH under the Agreement. "UFC" means Up Front Charge.